



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,
चौथी मंज़िल 4th Floor, हडकोभवन HUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN – 20250571MN0000666BD5

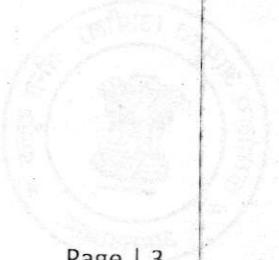
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| क | फ़ाइलसंख्या FILE NO. | S/49-05/CUS/KDL/24-25 |
| ख | अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128केअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962): | KDL-CUS-000-APP-003-2025-26 |
| ग | पारितकर्ता PASSED BY | Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad |
| घ | दिनांक DATE | 07.05.2025 |
| ड | उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO. | CUS/APR/ASS/528/2024 dated 13.03.2024 issued by Assistant Commissioner, Refund, Customs House, Kandla |
| च | अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON: | 07.05.2025 |
| छ | अपीलकर्ताकानामवप्ता NAME AND ADDRESS OF THE APPELLANT: | M/s Indian Oil Corporation Limited. Ltd., LPG Import Terminal, PO Box No.7, K.K.Road, Kandla – 370210. |

- यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागया है।
This copy is granted free of cost for the private use of the person to whom it is issued.
- सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआ

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| | देशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसंचिव/संयुक्तसंचिव (आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकते हैं। |
| | Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order. |
| | निम्नलिखितसम्बन्धितआदेश/Order relating to : |
| (क) | बैगेजकेरूपमेंआयातितकोईमाल। |
| (a) | any goods imported on baggage. |
| (ख) | भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउत्तरेनगएमालयाउसगन्तव्य स्थानपरउत्तरेजानेकेलिएअपेक्षितमालउत्तरेनजानेपरयाउसगन्तव्यस्थानपरउत्तरेगएमालकीमात्रामेंअपेक्षितमालसे कमीहो। |
| (b) | any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination. |
| (ग) | सीमाशुल्कअधिनियम, 1962 केअध्याय X तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी। |
| (c) | Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder. |
| 3. | पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए : |
| | The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by : |
| (क) | कोर्टफीएक्ट, 1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां, जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए। |
| (a) | 4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870. |
| (ख) | सम्बद्धदस्तावेजोंकेअलावासाथमूलआदेशकी 4 प्रतियां, यदि हो |
| (ब) | 4 copies of the Order-in-Original, in addition to relevant documents, if any |
| (ग) | पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां। |
| (c) | 4 copies of the Application for Revision. |
| (घ) | पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु. 1000/- (रूपएएकहजारमात्र) , जैसाभीमामलाहो, सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर. 6 कीदोप्रतियां। यदिशुल्क, मांगगयाब्बाज, लगायागयादंडकीराशि औररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु. 200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु. 1000/- |
| (d) | The duplicate copy of the T.R.6 challan evidencing payment of Rs. 200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs. 200/- and if it is more than one lakh rupees, the fee is Rs. 1000/-. |
| 4. | मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदिकोईव्यक्तिइसआदेशसे आहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकते हैं। |
| | In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address : |



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| | <p>सीमाशुल्क, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधि करण, पश्चिमीक्षेत्रीयपीठ</p> <p>दूसरीमंजिल, बहुमालीभवन, निकटगिरधरनगरपुल, असार वा, अहमदाबाद-380016</p> | <p>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</p> <p>2nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</p> |
| 5. | <p>सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन, सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-</p> | <p>Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -</p> |
| | <p>(क) अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएयाउससेकमहोतोएकहजाररुपए.</p> | |
| | <p>(a) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;</p> | |
| | <p>(ख) अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएसेअधिकहोतेकिनरूपयेपचासलाखउससेअधिकनहोतो, पांचहजाररुपए</p> | |
| | <p>(b) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;</p> | |
| | <p>(ग) अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपचासलाखरूपएसेअधिकहोतो, दसहजाररुपए.</p> | |
| | <p>(c) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees</p> | |
| | <p>(घ) इसआदेशकेविरुद्धअधिकरणकेसामने, मांगेगएशुल्कके 10% अदाकरनेपर, जहांशुल्कयाशुल्कएवंदंडविवादमेहैं, यादंडके 10% अदाकरनेपर, जहांकेवलदंडविवादमेहैं, अपीलरखाजाएगा।</p> | |
| | <p>(d) An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.</p> | |
| 6. | <p>उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरूपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.</p> | <p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> |
| | <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p> | |



ORDER-IN-APPEAL

M/s Indian Oil Corporation Limited, Ltd., LPG Import Terminal, PO Box No.7, K.K.Road, Kandla – 370210 (hereinafter referred to as “the Appellant”) have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against the Letter F.No. CUS/APR/ASS/528/2024, dated 13.03.2024 (hereinafter referred to as “the impugned letter”) issued by the Assistant Commissioner, Refund, Customs House, Kandla (hereinafter referred to as “the letter issuing authority”).

2. Briefly stated, facts of the case as per the appeal memorandum are that the appellant have imported LPG Propane and LPG Butane vide 14 provisional Bill of Entries, at Kandla Port during the period from January 2023 to September 2023 in terms of Notification No. 39/2022- Customs (NT) dated 30.04.2022 which prescribes the Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between India and the United Arab Emirates) Rules, 2022, (hereinafter referred to as the CEPA Rules) and Notification No. 22/2022- Customs, dated 30.04.2022 provides preferential rates/exemption of Basic Customs Duty (BCD) for the products imported into India from UAE. Further, the appellant informed that at the time of filing Bill of Entries, the COO was not available in the prescribed format, which is a primary condition for availment of concessional benefits for import of UAE origin products, therefore the provisional Bill of Entries were filed. Further, the appellant vide letter dated 06.03.2024 submitted documents along with COO for the 14 Bill of entries filed for UAE origin products along with final calculation with a request to finalize all the provisional Bill of entries on the basis of such documents.

3. Further, appellant's request was rejected vide Letter dated CUS/APR/528/2024-GR-I-O/o Commr- Cus- Kandla dated 13.03.2024 stating that benefit of COO to the Bill of entries cannot be extended in terms of Section 149 of the Customs Act, 1962 read with Rule 15(11) and Rule 21(1) of the CEPA Rules citing the rejection grounds that:

- The appellant has not claimed country of origin benefit in any of the BoE in question;
- Neither the appellant has claimed COO benefit in any of the BOE nor made any written request at the material time for claiming COO benefit in any of the BoE;



- The appellant was not in possession of the country of origin certificate as it was issued at later date than presenting the Bill of entries;
- In light of provisions of Section 149 of Customs Act 1962, the amendment sought by the appellant may not be accepted since at the time of filing of BoE, the appellant was not in possession of the Country of Origin certificate as it was issued at later date than presenting the Bill of entries and clearance of the cargo also.
- As per Rule 21(1) of the Customs Tariff Rules 2022 (Notification 39/2022-Cus(NT)), appellant had to submit Certificate of Origin to the Customs at the time of filing of import declaration.
- The CoO for all the imports were issued retrospectively after lapse of five working days from the date of exportation, but no reason for delay was found recorded on any of the Certificate of origin and thereby failed to fulfill the requirement as provided under Rule 15(11) ibid.

4. Being aggrieved with the impugned letter, the appellant has filed the present appeal and mainly contended that;

- That the impugned letter has been issued without granting any opportunity of personal hearing and making submissions is in gross violation of the principles of natural justice.
- That they have filed customs declaration at the time of filing of provisional Bill of entry and has submitted the Certificate of origin, though not in the prescribed format for availing the concession, with the department. Hence it was already made aware that the goods imported in the subject Bill of entries pertains to UAE origin.
- That the subject 14 Bill of entries filed by IOCL is filed u/s 18(1) of Customs Act as "Provisional" Bill of entries awaiting final documents. However, the impugned letter issued by department disregards the said fact and speaks about amendment u/s 149 of Customs Act, which is applicable for the changes to be made after the Bill of entry is finalized and has relied upon:
 - a. CCE Vs India Tyre and Rubber Co. Ltd- 1997(94) ELT 495 Mad HC
 - b. DENSO HARYANA PVT. LTD. Vs. COMMISSIONER OF CUSTOMS, NEW DELHI- 2004 (176) E.L.T. 548 (Tri. - Del.)
 - c. CCE Vs PMT Machine Tools-1991(55) ELT 592- Tribunal
 - d. SHREE VALLABH GLASS WORKS LTD. Vs CCE- 1996 (86) E.L.T. 355 (Tribunal).

SWASTIK FRAGRANCES Vs CCE- 2000 (121) E.L.T. 375 (Tribunal)

A.L



- That Rule 15 of the CEPA Rules provides the procedure for issuance of Certificate of Origin. Sub-rule 11 of the said Rule provides that under exceptional cases, where certificate of origin has not been issued at the time of exportation or within five working days from the date of shipment, the COO may be issued retrospectively. It also states that the COO can be issued retrospectively but no longer than twelve months from the date of shipment and the same condition has been fulfilled.
- That in a similar issue for the appellant's own unit at Paradeep, Commissioner (Appeals) has allowed the reassessment of Bill of entries based on the COO, issued after filing of Bill of entries and has further relied upon following cases:
 - COMMISSIONER OF CUS. (PORT-IMPORT), CHENNAI Vs. EXIDE INDUSTRIES LTD.
 - OKAYA POWER LTD VS. COMMR. OF C. EX. & CUS., CHANDIGARH - 2017 (356) E.L.T. 241 (Tri. - Chan.)
 - COMMISSIONER OF CUS. (IMPORT), NAVA SHEVA Vs. S.K. WEAVING PVT. LTD- 2018 (361) E.L.T. 383 (Tri. - Mumbai).
- That the Appellant in its letter dated 06.03.2024 has only requested for finalization of the provisional Bill of entries based on the final documents, including COO, received at a later stage. No request has been placed for amendment of Bill of Entries u/s 149 of the Act. Hence, reference of section 149 of the Act while rejecting the Appellant's request of seeking concessional benefit is not tenable.
- That the Certificate of Origin can be issued retrospectively under the CEPA Rules itself read with the agreement. Hence, the Notification dated April 30, 2022 read with the Tariff Rules and further read with CEPA itself provides for exemption from payment of duty. Accordingly, it is wholly legal, permissible and proper for the Appellant to seek amendment of the Bill of Entry basis the retrospectively issued 'Certificate of Origin' for the purpose of claiming exemption from Customs duty under the Notification dated April 30, 2022 issued Section 25 of the Customs Act.

PERSONAL HEARING

5. Shri Rahul Maloo, Assistant Manager Finance, appeared for personal hearing on 18.03.2025 on behalf of the Appellant. He reiterated the submission made in the appeal memorandum. He also submitted copy of the case laws relied upon in the appeal memorandum and copy of Circular Instruction No. 21/2024- Customs, dated 16.10.2024 wherein the similar issue is discussed. Further, due to change in appellate authority, a fresh PH was given to the appellant which was attended by Shri Arun Kumar PB, Senior Manager



Finance, on 06.05.2025 on behalf of appellant. He also reiterated the submissions made in the appeal memorandum.

DISCUSSION & FINDINGS

6. I have gone through the appeal memorandum filed by the appellant, records of the case and submissions made during personal hearing. The issues to be decided in present appeal are whether the benefit of Certificate of Origin not granted to the appellant and the request for finalization of BOE rejected in terms of Section 149 of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

6.1 Before going into the merits of the case, I find that as per CA-1 Form, the present appeal has been filed on 03.05.2024 against the impugned letter dated 13.03.2024 which is within the statutory time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit, it has been admitted and being taken up for disposal in terms of Section 128A of the Customs Act, 1962.

6.2 It is observed that the appellant have contended that they have not received any opportunity of personal hearing and making submissions before the rejection of their request for finalization of assessment of 14 Bills of Entry. In this regard, I find that the appellant could not present his case before the original authority at the first instance. Therefore, I am of the considered view that in the interest of justice an opportunity may be granted to the appellant to be heard and to make the relevant submissions.

6.3 Further, the appellant have submitted the copy of Instruction No. 21/2024- Customs dated 16.10.2024 citing the issue of retrospective issuance of certificates of origin under India-UAE CEPA and quoted the Para 2.1 of the same which reads as :

"The Certificate of Origin shall be issued prior to, at or within a period of five working days of the date of exportation. However, under exceptional cases, where a Certificate of Origin has not been issued at the time of exportation or within five working days from the date of shipment due to involuntary errors or omissions, or any other valid reasons, the Certificate of Origin may be issued retrospectively, bearing the words "ISSUED RETROSPECTIVELY" in box 9 of the Certificate of Origin, with the issuing authority also recording the reasons in writing on the exceptional circumstances due to which the certificate was issued retrospectively. The Certificate of Origin can be issued retrospectively but no longer than twelve months from the date of shipment."

A.L



On the basis of documents and submissions made by the appellant, I find that the appellant have submitted the COO after they have received the same in the prescribed format after which they had requested for final assessment and as the appellant have imported the impugned goods under CEPA agreement therefore, the above said Instruction is applicable in the instant case. Therefore, the letter issuing authority shall examine the facts of the case in light of the Circular as mentioned above and finalize the assessment of the subject 14 Bills of Entry.

6.4 In view of the above, I find that remitting the present appeal to the authority for passing fresh order for considering the submissions made by the appellant in the present appeal has on record, become sine qua non to meet the ends of justice. Accordingly, the case is remanded back to the adjudicating authority, in terms of sub-section of (3) of Section 128A of the Customs Act, 1962, for passing a fresh order by following the principles of natural justice. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs - 2004 (173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels Pvt. Ltd. [2012-TIOL-1317-CESTAT-DEL] and Hawkins Cookers ltd. [2012 (284) E.L.T. 677 (Tri.-Del)] holding that Commissioner (Appeals) has power to remand the case under Section – 35A (3) of the Central Excise Act, 1944 and Section – 128A (3) of the Customs Act, 1962.

7. In view of the above discussion, I allow the appeal by way of remand to the authority for finalizing the assessment of subject 14 Bills of Entry after taking the submissions made by the appellant in the present appeal on record and in lights of facts and instructions provided vide Circular Instruction No. 21/2024- Customs dated 16.10.2024. The authority shall examine the available facts, documents, submissions and issue speaking order afresh following principles of natural justice and legal provision.



सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT
सीमा आयुक्त/COMMISSIONER
CUSTOMS (APPEALS) BAD.

F.Nos. S/49-05/CUS/KDL/23-24
By Registered Post A.D.


(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD

Dated – 07.05.2025

To,
M/s Indian Oil Corporation Limited. Ltd.,
LPG Import Terminal,
PO Box No.7, K.K.Road, Kandla – 370210

Copy to:

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Commissioner of Customs, Customs, Kandla.
3. The Deputy/Assistant Commissioner of Customs, Customs House, Kandla.
4. Guard File.

