सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
चौथी मंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.
दूरभाष क्रमांक Tel. No. 079-26589281
DIN-20260271MN000005730A

क	फ़ाइल संख्या FILE NO.	F.No. S/49-272/CUS/AHD/2024-25
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-548-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	04.02.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	O.I.O. No. 85/AC/ACC/OIO/Horizon/2024-25 dated 30.10.2024 passed by the Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	04.02.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Horizon Titanium Inc., Shed No. 32, Mangal Industrial Estate, Near Chakudiya Mahadev Temple, Rakhial, Ahmedabad – 380023.

1.	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है. This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की

	प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	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.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported on baggage.
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(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)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	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)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(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)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order - In - Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जोअन्य रसीद,फीस,दण्ड,जब्तीऔर विविध मदों के शीर्षके अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र),जैसा भी मामला हो,से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां. यदि शुल्क,मांगा गया ब्याज,लगाया गया दंड की राशिऔर रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.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.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते 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 :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलियअधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	द्वसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	**2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016**
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	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 -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.	
(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;**	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए	
(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 ;**	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.	
(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**	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने,मांगे गए शुल्क के 10 % अदा करने पर,जहां शुल्क या शुल्क एवं दंड विवाद में हैं,या दंड के10 % अदा करने पर,जहां केवल दंड विवाद में है,अपील रखा जाएगा।	
(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.**	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- **(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.**	

कार्यालय आयुक्त (अपील), सीमा शुल्क अहमदाबाद

ORDER-IN-APPEAL

M/s. Horizon Titanium Inc., Shed No. 32, Mangal Industrial Estate, Near Chakudiya Mahadev Temple, Rakhial, Ahmedabad – 380023 (hereinafter referred to as 'the appellant') has filed the present appeal against Order-In-Original No. 85/AC/ACC/OIO/ Horizon/2024-25 dated 30.10.2024 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant has filed a Bill of Entry No. 3147114 dated 03.11.2022 for import of Titanium Bars of dimensions 5.0 X 300 MM and 5.5 X 300 MM. During the data analysis carried out by NCTC, it was noticed that there were some instances of mis-classification of such goods under Customs Tariff Item ('CTI') 8108 9010 instead of the correct CTI 8108 9090 resulting into short payment of Basic Customs Duty ('BCD'). The relevant tariff entries are as under:

Table-1

CTH/CTSH/CTI		Item Description	Rate of BCD
8108		TITANIUM AND ARTICLES THEREOF, INCLUDING WASTE AND SCRAP	
8108 20 00	-	Unwrought titanium; powders	5%
8108 30 00	-	Waste an scrap	5%
8108 90	-	Other:	
8108 90 10	---	Titanium, wrought	5%
8108 90 90	---	Other	10%

3. In the impugned order, it has been observed that Titanium is broadly classified in three different forms. They are -

a) Unwrought - Titanium in raw form where no process has been done on Titanium;
b) Wrought – Titanium is beaten to shapes viz. plates, bars, tubes, rods, billets, etc.;
c) Finished products or Articles of Titanium – Vessel, Heat Exchangers, Machines components etc.

4. Further, it has been observed that Wrought Titanium is classifiable under CTI 8108 9010, if such imported products are in form of beaten shapes such as plates, bars, tubes, rods, billets etc. Whereas, on analysis of data, it appeared that the items imported are final Titanium products such as Titanium Seamless U-tubes, Titanium Bend U-tubes, Titanium Plates, etc. due to the reason that they had undergone further processing like cutting, forming, machining and joining, turning them into necessary shape and dimension. Accordingly, it appeared that the imported goods are correctly classifiable under CTI 8108 9090 as Articles of Titanium which attract 10% BCD.

5. In view of the above, a Show Cause Notice dated 27.03.2024 has been issued to the appellant, which has been adjudicated vide impugned Order-In-Original dated 30.10.2024. Vide impugned Order, the adjudicating authority has confirmed the demand of duty amounting to Rs. 1,09,482/- under the provisions of Section 28(4) and imposed a penalty of Rs. 1,09,482/- on the appellant under the provisions of Section 114A of the Customs Act, 1962.

Admission of Appeal:

6. The appellant has submitted a copy of the T.R.-6 Challan dated 31.12.2024 evidencing payment of Pre-deposit of Rs. 11,000/- for filing of appeal, as prescribed under Section 129E of the Customs Act, 1962. In the Appeal Memorandum, the Date of communication of the impugned order dated 30.10.2024 has been shown as "08.11.2024". Whereas, the present appeal has been filed on 06.01.2025, i.e. within normal period of 60 days from the date of receipt of impugned order, as stipulated under Section 128(1) of the Customs Act, 1962. So, the appeal has been admitted and being taken up for disposal on merits.

7. One set of the appeal memorandum has been sent to the Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad, vide this office letter F.No. S/49-272/CUS/AHD/2024-25/5766 dated 25.03.2025 for comments on this appeal. However, no reply thereof has been received. So, I proceed to the decide the appeal on the basis of documents submitted by the appellant.

Gist of written submissions:

8. The appellant has submitted, inter alia, that the appellant has imported Titanium Bars, which had been manufactured from Titanium Sponge. Further, the imported Titanium Bars were in wrought form and classifiable under ITC HS 8108 9010. The product so imported was to be supplied for manufacturing Orthopedic implants etc. The appellant further submitted that they had not imported *Titanium Seamless U-tubes, Titanium Bend U-tubes, Titanium Plates*, rather they had imported Titanium Bars. The imported Titanium Bars are not final product which can be used directly, but the said product would go for further manufacturing and then to be used for Ortho Implants. The appellant further submitted that Department has not obtained any technical opinion or certificate from the independent Engineer, as far as the classification of the imported goods is concerned. The appellant further submitted that the SCN issued by the Ld. Asst. Commissioner is vague as the same is not clear on what bases department has considered the imported goods under CTH 8108 9090.

The appellant further submitted that the Ld. Asst. Comm. has erred while invoking section 28(4) of the Customs Act, 1962.

9. In this regard, the appellant submitted that the main issue is the classification of the goods, the appellant is the view of that the classification shall be under the CTH 8108 9010 and the ld. Asst. Commissioner is of the view that the product shall be classified under CTH 8108 9090. Hence, this the issue of the difference of the opinion more precisely concerned with interpretation of the classification of the goods. For the said difference Section 28(4) of the Act cannot be invoked. Section 28(4) can be invoked only when there is reason of collusion or Suppressions or any willful mis-statement. Further Ld. Asst. Comm. has not stated in the OIO that how the act done by the appellant amounts to collusion or suppressions or willful misstatement. On the issue of extended period of limitation u/s 28(4), the appellant relied upon following case laws:

- Cosmic Dye Chemicals and Associated Cement Co. v. CCE - 1995 (75) E.L.T 721(S.C)
- Pushpam Pharmaceuticals Co. Ltd v. CCE - 1995 (78) E.L.T. 401 (S.C)
- Cheran Engineering Corporation Ltd v. CCE - 1986 (26) E.L.T. 611 (Tribunal)
- Uniworth Textiles Ltd v. CCE - (2013) 9 SCC 753

The ld. Adjudicating authority has erred in levying the penalty under section 114A of the Act.

10. The appellant further submitted that the penalty under section 114A is required to be paid only when where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful misstatement or suppression of facts. That in the present case, the main issue is regarding difference in interpretation of the classification of the goods. For the said difference section 114A of the Act cannot be invoked. No penalty is imposable when classification is the issue – Reliance Rasayan v. CCE - 2006 (200) ELT 251 (CESTAT).

11. In view of the above, the appellant has requested to set aside the impugned order and allow the appeal with consequential relief.

Personal Hearing:

12. Personal Hearing in this matter was held on 17.12.2025, which was attended by Shri. Ronak Lalwani, Advocate, on behalf of the appellant. He reiterated the submissions made at the time of filing of appeal.

Discussion and findings:

13. I have carefully gone through the facts of the case and written as well as oral submissions made by or on behalf of the appellant M/s. Horizon Titanium Inc. The issue, which is to be decided in the present appeal, is proper classification of imported goods – whether they fall under CTI 8108 9010 (as classified by the appellant) or CTI 8108 9090 (as held by the adjudicating authority).

14. At the outset, I find that the appellant has declared the goods as *Titanium Bars*, whereas, the adjudicating authority has observed that the items imported are final Titanium products such as *Titanium Seamless U-tubes, Titanium Bend U-tubes, Titanium Plates, etc.* due to the reason that they had undergone further processing like cutting, forming, machining and joining, turning them into necessary shape and dimension. On this basis, the impugned goods have been classified under CTI 8108 9090 as Articles of Titanium (Para 5 of the impugned order refers).

आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

15. In this regard, I have seen the copy of the Invoice No. YT20220922-HE dated 18.10.2022 issued by the foreign supplier M/s. Shaanxi Aone Titanium Metal Materials Co. Ltd., Shaanxi, China. In the said Invoice, the Item Name, i.e. description of goods, has been shown as Titanium Bar. There is no contra evidence relied upon in the SCN or OIO regarding said description of goods. No evidence has been discussed and relied upon in the Show Cause Notice or Order-In-Original, in support of this allegation to the effect that the impugned goods are Articles of Titanium like Titanium Seamless U-tubes, Titanium Bend U-tubes, Titanium Plates, etc. Also there is no evidence to the effect that the imported goods had undergone further processing like cutting, forming, machining and joining, turning them into necessary shape and dimension. In the Show Cause Notice, description of goods shown in the Bill of Entry has been relied upon, which indicate that the imported goods are Titanium Bars. No investigation has been carried out and no document/evidence has been adduced in support of the allegation to the effect that the imported goods are Articles of Titanium.

16. I find that the SCN has been issued merely on the basis of data analysis report issued by NCTC, which states that there are some instances of import data of mis-classification of goods under CTI 8108 9010 instead of the correct classification under CTI 8108 9090 to evade higher BCD (Para 2 of the impugned order refers). I am of the view that the report of NCTC, as mentioned in the impugned order, is a general report in nature and there is no document or any other evidence available in support of the allegation made in the SCN and confirmed in the impugned order.

17. Had the appellant really imported Articles of Titanium like Titanium Seamless U-tubes, Titanium Bend U-tubes, Titanium Plates etc., in place of the Titanium Bars, there should be evidence in form of Statement or any other document in support of such allegation and the imported goods should have been held as liable for confiscation on account of mis-declaration. Whereas, in the present case, there is no proposal in the SCN and no corresponding order in the impugned order holding the goods liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 or any other provision of law. In absence of any evidence, the bald allegation made in the SCN and upheld in the impugned order, is not sustainable.

आयुक्त (अपील), ... कार्यालय ... अहमदाबाद

18. In addition to the above, I find that there is no proposal in the SCN to change description of the goods and also, there is no corresponding order of the adjudicating authority to change the description. So, even after issuance of the impugned order, the description of imported goods remains same as declared by the appellant. Further, in the proposals made in Para 12 of the Show Cause Notice, there is no proposal to change the classification from CTI 8108 9010 to CTI 81089090. So, in Para 19 of the impugned order, containing 'Order' portion, there is no explicit order to classify the goods under CTI 8108 9090. Whereas, in the impugned order the demand of duty has been confirmed under the provisions of Section 28(4) without any order towards change of classification and description of goods, which is not proper.

19. Now, coming on the issue of proper classification of Titanium Bars, I find that in Para 3 & 4 of the impugned order, it is mentioned as under (emphasis supplied):

"Titanium is broadly classified in three different forms. They are -

a) Unwrought - Titanium in raw form where no process has been done on Titanium;

b) Wrought – Titanium is beaten to shapes viz. plates, <u>bars</u>, tubes, rods, billets, etc.;

c) Finished products or Articles of Titanium – Vessel, Heat Exchangers, Machines components etc.

4. Wrought Titanium is classifiable under CTI 8108 9010, if such imported products are in form of beaten shapes such as plates, <u>bars</u>, tubes, rods, billets etc. … … …"

20. The appellant claimed that the imported goods were Wrought form. There is no allegation or evidence in the impugned order to the effect that the imported goods were not in Wrought form. Therefore, it is undisputed that the imported goods were in Wrought form. Further, the description of goods as Titanium Bars does not undergo any change, as discussed hereinabove. Therefore, I am of the view that Wrought Titanium Bars are appropriately classifiable under CTI 8108 9010.

कार्यालय आयुक्त (अपील), सीमा शुल्क अहमदाबाद

21. In view of the above discussion, it can be said that Titanium and Articles thereof, fall under CTH 8108; and within the said CTH, Titanium Bars of Wrought Titanium are appropriately classifiable under CTI 8108 9010; whereas, Articles of Titanium are classifiable under CTI 8108 9090, subject to the applicable Section Notes of Customs Tariff. As there is no evidence in this case to the effect that the imported goods were Articles of Titanium, the proposed classification under CTI 8108 9090 is not sustainable and so, the declared classification under CTI 8108 9010 is required to be upheld.

22. As the demand is not sustainable on merits, I do not discuss the issue regarding applicability of Section 28(4) i.e. invoking extended period of limitation for raising demand. Further, I hold that when the demand of duty itself is not sustainable on merits, interest and penalty are not leviable.

23. In view of the above facts, discussion and findings, I pass the following order:

Order

I set aside the impugned Order-In-Original No. 85/AC/ACC/OIO/ Horizon/2024-25 dated 30.10.2024 passed by Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad, and allow the appeal filed by M/s. Horizon Titanium Inc. with consequential relief in accordance with law.

(Amit Gupta)
Commissioner (Appeals),
Customs, Ahmedabad

F.No. S/49-272/CUS/AHD/2024-25

Date: 04.02.2026

By E-mail (As per Section 153(1)(c) of the Customs Act, 1962)

To

M/s. Horizon Titanium Inc.,
Shed No. 32, Mangal Industrial Estate,
Near Chakudiya Mahadev Temple, Rakhial, Ahmedabad – 380023.
(email: info@horizontitanium.com , yash@horizontitanium.com)

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
   (email: ccoahm-guj@nic.in)

2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
   (email: cus-ahmd-guj@nic.in rra-customsahd@gov.in)

3. The Deputy/Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad.
   (email: aircargo-amd@gov.in)

4. Shri Ronak Lalwani, Advocate, Ahmedabad.
   (email: advronaklalwani@gmail.com , rohan@rthakkar.com)

5. Guard File.

* * * * *