



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,

चौथी मंजिल 4th Floor, हड्कोभवनHUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN – 20250571MN000000D730

क	फ़ाइलसंख्या FILE NO.	S/49-08/CUS/KDL/24-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	KDL-CUS-000-APP-002-2025-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	07.05.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	BOE No. 2704506 dated 22.03.2024 assessed by Assistant Commissioner, 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., Kandla Foreshore Terminal, Near Booster, Station, Old Kandla, Kutch – 370201.

1. यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागया है।

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2. सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित)

केअधीनप्रस्तुलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआ

	देशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै।
	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)	बैगेजकेरूपमेंआपातितकोईमाल।
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्य स्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसे 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 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेउत्तर्गतउसकीजांचकीजाएगी 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, यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(e)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु. 1,000/- (रूपएकहजारमात्र) , जैसाभीमामलाहो, सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर. 6 कीदोप्रतियां। यदिशुल्क, मांगायाव्याज, लगायागयादंडकीराशीऔररूपएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु. 200/- औरयदिएकलाखसेअधिकहोतीफीसकेरूपमेंरु. 1,000/-
(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 मेसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं
	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 :



	<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>	
(क)	<p>अपीलसेसम्बन्धितमामलमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएयाउससेकमहोतोएकहजाररुपए.</p>	
(a)	<p>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>	
(ख)	<p>अपीलसेसम्बन्धितमामलमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएसेअधिकहोलेकिनरूपयेपचासलाखसेअधिकनहोतो;पांचहजाररुपए</p>	
(b)	<p>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>	
(ग)	<p>अपीलसेसम्बन्धितमामलमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपचासलाखरूपएसेअधिकहोतो;दसहजाररुपए.</p>	
(c)	<p>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>	
(घ)	<p>इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगाएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेहैं,यादंडके 10% अदाकरनेपर,जहांकेवलदंडविवादमेहै,अपीलरखाजाएगा।</p>	
(d)	<p>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) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.</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., Kandla Foreshore Terminal, Near Booster Station, Old Kandla, Kutch - 370201 (hereinafter referred to as "the Appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against the Bill of Entry No. 2704506 dated 22.03.2024 (hereinafter referred to as "the impugned BOE") assessed by The Assistant Commissioner, Customs House, Kandla (hereinafter referred to as "assessing 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 impugned BOE, at Kandla Port by partly claiming exemption from import duty provided under Notification No. 24/2015-Customs dated 08.04.2015, issued under Section 25 of Customs Act 1962, by producing Merchandise Export from India Scheme (MEIS) Scrip 0311031156 dated 14.02.2024 amounting to Rs. 44,30,399/- and balance payment of duty in Cash. Further, the impugned BOE was assessed by the assessing authority providing the exemption with regard to the Basic Customs Duty (BCD) as per the said Notification, by indicating the applicable rate of duty as "0" (Zero) in the impugned BOE and by debiting the amount of BCD as duty foregone by debiting the MEIS scrip. Further, the Social Welfare Surcharge (SWS) was charged at 10% on notional value of BCD in the impugned BOE.

3. Being aggrieved with the assessment of the impugned BOE, the appellant has filed the present appeal and mainly contended that;

- That the customs duty levied and collected was 'zero' in terms of notification No.24/2015-Cus. dated 08.04.2015, the Social Welfare Surcharge (SWS) at 10% of such 'zero' BCD should also be '0 (zero)'. Since the value of BCD is "Zero", the question of recovery of SWS should not arise.
- They have relied upon following case laws:

- RELIANCE INDUSTRIES vs CC Mumbai - 2024-TIOL-325-CESTAT-MUM
- CC vs PASUPATI ACRYLON LTD 2013 (296) ELT 182 (Guj.)
- CC vs RELIANCE INDUSTRIES LTD - 2015 (322) ELT 121 (Bom.)
- CC vs RELIANCE INDUSTRIES LTD - 2015 TIOL-3109 HC-MUM-CUS

- They have also relied on Circular No. 3/2022- Customs dated 01.02.2022 issued by Under Secretary to the Govt. of India wherein it is mentioned that if aggregate customs duty payable is zero on account of an exemption, the SWS shall be computed as 10% of value equal to

'Nil' (as aggregate amount of customs duties payable is zero). Law does not require computation of SWS on a notional customs duty calculated.

PERSONAL HEARING

4. 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 relied upon the following cases:

- LOUIS DREYFUS COMPANY INDIA PVT. LTD VS COMMISSIONER OF CUSTOMS, KANDLA CUSTOMS-(2024) 16 Centax 184 (Tri.-Ahmd)/2024 (388) E.L.T. 507 (Tri.-Ahmd)
- Emami Agrotech Ltd. Vs Commissioner of Customs (Port), Kolkata (2023) 12 Centax 203 (Tri.-Cal)
- M/s EMAMI AGROTECH LIMITED VS COMMISSIONER OF CUSTOMS (PORT), KOLKATA 2025- VIL-156-CESTAT-KOL-CU
- Reliance Industries Ltd. Vs Commissioner of Customs (Import), ACC, Mumbai (2024) 16 Centax 480 (Tri.-Bom)
- M/s DALMIA CEMENT (BHARAT) LIMITED VS UNION OF INDIA AND OTHERS 2024-VIL-1255- ORI-CU
- TATA MOTORS LTD VS COMMISSIONER OF CUSTOMS, NHAVA SHEVA-V 2025-VIL-178- CESTAT-MUM-CU



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

5. 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 SWS charged at 10% of the BCD during the assessment of the impugned BOE in terms of Section 17 of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 Before going into the merits of the case, I find that as per CA-1 Form, the present appeal has been filed on 15.05.2024 against the impugned BOE dated 22.03.2024 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.

5.2 It is observed that that no speaking order has been passed for the assessment of impugned Bill of Entry. Hence, I find that entire facts are not available on records to verify the claims made by the appellant. Therefore, I find that remitting of the case to the proper officer for passing speaking order becomes sine qua non to meet the ends of justice. Accordingly, the case is required to be remanded back, in terms of sub-section (3) of Section 128A of the Customs Act, 1962, for passing speaking order by the proper officer 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 P. Ltd. - [2012-TIOL-1317-CESTAT-DEL] and the case of 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.

5.3 Further, I have perused the copy of Circular No. 03/2022- Customs dated 01.02.2022, submitted by the appellant, citing the clarification regarding applicability of Social Welfare Surcharge on goods exempted from basic and other customs duties/cesses which reads as:

....

2. The matter has been examined. Social Welfare Surcharge (SWS) is levied and collected, as a duty of customs, vide Section 110 of the Finance Act, 2018 (13 of 2018) and is calculated at the rate of 10 per cent. on the aggregate of duties, taxes and cesses which are levied and collected by the Central Government as a duty of customs on goods imported into India.

3. In this regard, it may be noted that at present SWS applies at the rate of 10% of the aggregate of customs duties payable on import of goods and not on the value of imported goods. If aggregate customs duty payable is zero on account of an exemption, the SWS shall be computed as 10% of value equal to 'Nil' (as aggregate amount of customs duties payable is zero). Law does not require computation of SWS on a notional customs duty calculated.

4. Thus, it is clarified that the amount of Social Welfare Surcharge payable would be 'Nil' in cases where the aggregate of customs duties (which form the base for computation of SWS) is zero even though SWS has not been exempted at tariff rate where applicable aggregate of duties of customs is zero.

....



4.12

In view of the above, it is observed that the appellant has taken the exemption of BCD under Notification No. 24/2015-Customs dated 08.04.2015, issued under Section 25 of Customs Act 1962, by producing Merchandise Export from India Scheme (MEIS) Scrip 0311031156 dated 14.02.2024, therefore, the assessing authority shall examine the facts of the case and the applicability of the said circular in the instant case to the extent of levy of SWS.

6. In view of the above discussion, I allow the appeal by way of remand to the authority for assessment of impugned BOE after taking the submissions made by the appellant in the present appeal on record and in lights and facts of the applicability of Circular No. 03/2022- Customs dated 01.02.2022. 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 व्यापार (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

(AMIT GUPTA)

COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

F.Nos. S/49-08/CUS/KDL/23-24
By Registered Post A.D.

Dated – 07.05.2025

To,
M/s Indian Oil Corporation Limited. Ltd.,
Kandla Foreshore Terminal,
Near Booster Station, Old Kandla,
Kutch – 370201.

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.

