



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंज़िल 4th Floor, हड्डको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाष क्रमांक Tel. No. 079-26589281

DIN – 20250571MN0000000F76

क	फ़ाइल संख्या FILE NO.	S/49-416/CUS/AHD/23-24
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-047-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	28.05.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO. / BILLS OF ENTRY NO.	Bill of Entry No. 9401906, dated 26.12.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	28.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Sakar Industries Pvt. Ltd., H/10, Madhavpura Market, Near Police Commissioner Office, Shahibaug Road, Ahmedabad – 380 004
		Factory Address: M/s. Sakar Industries Pvt. Ltd. 140, Santej – Vadsar Road, Post - Santej, Tal - Kalol, Dist. – Gandhinagar, Gujarat – 382721

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 दी दी (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 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.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज 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 दस्तावेजों 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 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु.1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए 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 सम्बन्ध 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, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd 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 हजार 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; पाँच हजार 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 हजार 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 के %10 अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।	
(द)	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.	

ORDER IN APPEAL

M/s. Sakar Industries Pvt. Ltd., H/10, Madhavpura Market, Near Police Commissioner Office, Shahibaug Road, Ahmedabad – 380 004, having factory at 140, Santej – Vadsar Road, Post - Santej, Tal - Kalol, Dist. – Gandhinagar, Gujarat – 382721 (hereinafter referred to as 'the Appellant') have filed an appeal challenging the assessment made in the Bill of Entry No. 9401906, dated 26.12.2023.

2. Facts of the case, in brief, as per appeal memorandum, are that the Appellant is regular importer of "Aluminum Scrap of various grades" and had filed the Bill of Entry No. 9401906, dated 26.12.2023 under self-assessment. The Appellant had filed the said Bill of Entry along with all the prescribed documents. The said Bill of Entry was selected by EDI system for the purpose of verification of the declaration made. The value of the goods was declared @ USD 1000 / MT as per the Invoice supplied by the supplier on the basis of transaction value. However, the Assessing Officer had enhanced the transaction value from USD 1000 to USD 1294 / MT under Section 14 (1) of the Customs Act, 1962 as per DGoV Alert Circular by comparing contemporary data of import of similar / identical goods, wherein value of scrap material was calculated on the basis of LME prices as shown in Para 7 of DGoV Circular dated 15.11.2018 and demanded extra Basic Customs Duty amount @ 2.5% to the tune of Rs. 17,277/- allegedly without following the prescribed procedure for rejection of the transaction value under Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as declared by the Appellant. Considering the urgency of the requirement of the material and to save the amount of demurrage and detention charges, the Appellant got the goods cleared by giving their letter dated 29.12.2023 for acceptance of enhanced value on the basis of DGoV Circular dated 15.11.2018 by paying the duty as assessed by the Assessing Officer.

3. Being aggrieved with the assessment on the enhanced transaction value, the Appellant have filed the present appeal challenging the value enhancement. The Appellant, *inter-alia*, have raised various contentions and filed detailed submissions as given below in support their claims:

- The Assessing Officer has rejected the declared transaction value without assigning any reason and without giving an opportunity to them to explain their case. As such the enhancement of transaction value is bad in law and it has been done contrary to Customs Law and Customs Valuation Rules.
- Section 17(4) of the Customs Act empowers the proper officer to re-assess the duty leviable on the imported goods, if he is in opinion that the self-assessment is not done correctly; that however, sub section 5 of Section 17 of the Customs



Act, 1962 enjoins a duty on him to pass a Speaking Order or re-assessment after giving an opportunity to explain the case; that no such opportunity has been given to them and the proper officer has not passed any Speaking Order for enhancement of the declared value, which is mandatory to pass within 15 days;

- It is settled law that order of assessment made in Bill of Entry is an order under Section 17 (5) of the Customs Act, 1962; that in case, such is found contrary to self-assessment of importer and Speaking Order not being passed by Assessing Officer within 15 days of assessment of Bill of Entry, hence, re-assessment is liable to be set aside. They relied upon the decision of the Tribunal in the below mentioned case in support of their contentions:

(i) *Sigma Power Products Pvt. Ltd., Vs. CC (Port)-2017 (350) E.L.T. 510 (Cal.)*

- Enhancement of transaction value is against the provision of Section 14 of the Customs Act, 1962 and Customs Valuation Rules;
- That the Assessing Officer neither followed the provisions of Section 14 of the Customs Act, 1962 nor Customs Valuation Rules, 2007; that the Assessing Officer did not assign any reason for rejecting the declared transaction value nor mentioned the rule under which the same was re-determined.

That the supplier and the Appellant are not related and the Appellant has not paid any additional amount to the supplier of the goods. As such, there was no reason to reject the declared transaction value; that it is settled law that unless there is additional consideration involved or any of the exceptions as specified in Rule 3 (2) of the Customs Valuation Rules, 2007 is attracted, the transaction value cannot be rejected. No such allegations or findings is forthcoming in re-assessment proceedings.

- That Customs Valuation Rules, 2007 provides the procedure for rejection of declared transaction value; that Rule 12 of the Valuation Rules deals with rejection of declared value; that as per sub rule 2 of Rule 12, the proper officer at the request of the importer is bound to intimate the importer in writing the grounds for doubting the truth for accuracy of the value declared in relation to goods imported by the importer and provide reasonable opportunity of being heard before taking a final decision under sub-rule 1. However, the Appellant was not informed that the declared value is not acceptable to the department and the same has been enhanced arbitrarily;
- That it is settled law that if there is no evidence of any amount paid over and above the invoice value, the transaction value cannot be rejected. They relied upon the following decision in support of their contentions:

(i) *CC Delhi Vs. Maruti Fabrics Impex – 2016 (343) E.L.T. 963 (Tri. Del.)*

(ii) *Sedna Impex India Pvt. Ltd. Vs. CC, Faridabad – 2017 (347) E.L.T. 317 (Tri. Chan).*



(iii) *Sunland Alloys – Hon'ble CESTAT Ahmedabad Final Order No. A-11030-11080/2022*

- That it is no more rest integra that assessment of a Bill of Entry is a quassi-judicial exercise of power and the same is appealable. They relied upon the decision of Hon'ble Tribunal in the case of *Ashok Leyland Ltd. Vs. CCE, Chennai – 2014 (173) E.L.T. 518* in support of their contentions:

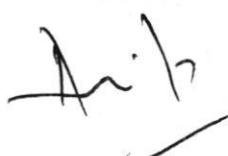
PERSONAL HEARING:

4. Personal hearing in the matter was held on 07.05.2025 in virtual mode. Shri. H.K. Hirani, Consultant, appeared for hearing on behalf of the Appellant. He had reiterated the submissions made at the time of filing of appeal. Further, he also filed additional written submissions, wherein, he inter-alia, submitted that:

- The issue of Valuation of Scrap has been finally decided by Hon'ble SC and Tribunals.
- The Assessing Officer has rejected the declared transaction value of the Appellant without assigning any reason as per Rule 12 of CVR 2007;
- The provision of Section 17 relates to Self-assessment of duty and not for verification of declared value;
- If the value is proposed to be enhanced; then details of such imports are required to be supplied so that the importer can explain the value difference. Without the supply of relied upon documents related to contemporaneous import; such as B/E; invoices etc., the enhancement of value is arbitrary and illegal. The Proper Officer cannot quote a few selected B/Es from NIDB and proceed to enhance the value. This practice itself is illegal and must be stopped;
- The query raised by the Proper Officer had been duly replied with the evidence of contemporary B/Es assessed at declared value. The lower authority has not taken into consideration the reply to the query submitted. The lower authority has relied upon the NIDB data but the copy of which was not supplied. The re-determination of value on the basis of NIDB data itself is illegal and arbitrary;
- Relied upon B/E and invoices not supplied to them;
- It is for the revenue to supply the basis of enhancement and not for the Appellant to supply the evidence with regard to valuation of goods. The invoice is the basis of valuation. No two consignment can be similar / identical. This itself proves that the value cannot be determined on the basis of NIDB data;

DISCUSSION & FINDINGS:

5. I have carefully gone through the appeal memorandum as well as records of the case, submissions made by the Appellant during course of hearing as well as the



Shri/ Amritlal Patel has been issued a copy of the present appeal.

to assess duty amount will be assessed based on available facts, documents and evidences available on record. The issue to be decided in the present appeal is whether the enhancement of the transaction value of the imported goods in the Bill of Entry No. 9401906, dated 26.12.2023, without issuing speaking order under Section 17 (5) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It is observed that the Appellant has filed the present appeal on 19.01.2024. In the Form C.A.-1, the date of communication of the Order / Bill of Entry dated 26.12.2023 has been shown as 03.01.2024. Therefore, the appeal has been filed within normal period of 60 days, as stipulated under Section 128 (1) of the Customs Act, 1962. Further, the Appellant has paid the entire duty as assessed by the Assessing Officer of the Bill of Entry No. 9401906, dated 26.12.2023, thereby fulfilling the requirement of pre-deposit of filing the appeal as envisaged under the Section 129 E of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and complies with the requirement of Section 129E of the Customs Act, 1962, the appeals has been admitted and being taken up for disposal on merits.



Since, the appeal is filed challenging re-assessment of the impugned Bill of Entry, no speaking order, as envisaged under Section – 17 (5) of the Customs Act, 1962, is available on record and the contentions raised in the appeal memorandum have been raised for the first time before the appellate authority. The adjudicating authority had no occasion to consider the same. Moreover, the appeal was sent to the adjudicating authority for his comments on the grounds raised in the appeal, but there has been no response. Since, entire facts are not available on record to verify the claims made by the Appellant, I find remitting the cases, for considering the submission of the Appellant and 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 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 above, I allow the appeal by way of remand to the Assistant / Deputy Commissioner, Customs, ICD – Sanand for passing speaking order immediately as envisaged under Section 17(5) of the Customs Act, 1962. He shall examine the available facts, documents, submissions made by the Appellant in the present appeal and

SD-2024

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issue speaking order following principles of natural justice and legal provisions. While passing this order, no opinion or views have been expressed on the merits of the case or the submissions made by the Appellant in this regard, which shall be independently examined by the proper officer.

8. The appeal preferred by the Appellant is allowed by way of remand.


(Amit Gupta)

Commissioner (Appeals)
Customs, Ahmedabad

F. No. S/49-416/CUS/AHD/2023-24 Date: 28.05.2025

By Registered Post A.D

To,

M/s. Sakar Industries Pvt. Ltd.,
H/10, Madhavpura Market,
Near Police Commissioner Office,
Shahibaug Road,
Ahmedabad – 380 004



Factory Address:

M/s. Sakar Industries Pvt. Ltd.
140, Santej – Vadsar Road,
Post - Santej,
Tal - Kalol, Dist. – Gandhinagar,
Gujarat – 382721

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
3. The Assistant / Deputy Commissioner, Customs, ICD - Sanand, Kadi Road, Sanand.
4. Guard File.