



सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
चौथी मंज़िल 4th Floor, हड्डो बिल्डिंग HUDCO Building, ईश्वर भुवन रोड Ishwar Bhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.

दूरभाष क्रमांक Tel. No. 079-26589281

DIN-20250471MN000000C411

क	फाइल संख्या FILE NO.	(1) S/49-218/CUS/AHD/2023-24 (2) S/49-219/CUS/AHD/2023-24
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-21 and 22-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	29.04.2025
ड	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	(1) O.I.O. No. 05/DC/ICD-SND/2022-23 dated 06.10.2022 passed by Deputy Commissioner of Customs, ICD-Sanand. (2) O.I.O. No. 02/DC/ICD-SND/2022-23 dated 26.08.2022 passed by Deputy Commissioner of Customs, ICD-Sanand.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	29.04.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	(1) & (2) M/s. CMR Green Technologies Ltd., 802-803, 8 th Floor, SSR Corporate Park, Sector 27B, 13/6, Delhi Mathura Road, Faridabad, Haryana - 121003.
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 (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.				
(ब)	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.	<p>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 :</p> <p>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 :</p> <p>(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.</p> <p>(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.</p> <p>(ख) सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो</p> <p>(b) 4 copies of the Order - In - Original, in addition to relevant documents, if any</p> <p>(ग) पुनरीक्षण के लिए आवेदन की 4 प्रतियां</p> <p>(c) 4 copies of the Application for Revision.</p> <p>(घ) पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार 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 राशि और 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/-</p> <p>(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/-.</p>				
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 :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	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
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 होते हैं लेकिन रुपये पचास लाख से अधिक न होते; पांच 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 होते हैं; 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।
(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.



ORDER-IN-APPEAL

1. M/s. CMR Green Technologies Ltd., 802-803, 8th Floor, SSR Corporate Park, Sector 27B, 13/6, Delhi Mathura Road, Faridabad, Haryana - 121003 (hereinafter referred to as the 'the appellant') has filed the present two appeals under Section 128 of the Customs Act, 1962, against following two Orders-In-Original, both passed by the Deputy Commissioner of Customs, ICD-Sanand, Ahmedabad (hereinafter referred to as the 'adjudicating authority').

Sr. No.	Appeal No. & date of filing of appeal	Order-In-Original No. & Date (collectively referred to as 'the impugned orders')	Bill of Entry No. & Date
1	No. S/49-218/CUS/AHD/2023-24, filed on 12.07.2023	05/DC/ICD-SND/ 2022-23 dated 06.10.2022	2635049 dated 05.02.2021
2	No. S/49-219/CUS/AHD/2023-24, filed on 12.07.2023	02/DC/ICD-SND/2022-23 dated 26.08.2022	9743255 dated 28.11.2020

2. The issue involved in both appeals is regarding challenge to the re-determination/enhancement of value of aluminium scrap imported by the appellant. Both appeals have been filed with applications for condonation of delay in filings of appeals.

Personal Hearing

3. Personal Hearing in these appeals was held on 23.04.2025, which was attended by Shri. Deepak Bhardwaj, AGM (Indirect Taxation) with Shri. Deen Mohammad, Manager (Indirect Taxation) of the appellant. They reiterated the submissions made at the time of filing of appeal. They have also produced a copy of a Judgment dated 27.11.2024 passed by Hon'ble High Court of Delhi in CUSAA 27/2022 and Others in the case of *Hanuman Prasad and Sons and Others*. They have also submitted copies of the following Orders of the Hon'ble CESTAT, Chandigarh, in the cases of *Century Metal Recycling Ltd. Vs. Commissioner of Customs, Faridabad*:

- Final Order No. 60161-60265/2025 dated 27.02.2025 in Customs Appeal No. 61392 of 2019 and other appeals
- Final Order No. 60266-60349/2025 dated 27.02.2025 in Customs Appeal No. 61303 of 2019 and other appeals

Discussion regarding delay in filing of appeals

4. Before going into the merits, it is to be decided as to whether the delay in filing of these appeals can be condoned or not.

5. I find that the appellant has filed the both appeals on 12.07.2023. In their Appeal Memorandums in Form No. CA-1, the date of communication/receipt of the decision or order appealed against, has been mentioned as 27.06.2023 in both cases. Thus, it was *prima facie* appeared that both appeals have been filed within the period of 60 days, as prescribed under Section 128(1) of the Customs Act, 1962. However, for both appeals, the appellant has filed applications for condonation of delay of all days in filing of appeals. The appellant has not mentioned the number of days for which the condonation of delay has been sought for. Both applications for condonation of delay have been similarly worded, except the date of the impugned orders, against which the appeals have been filed. In these applications for

condonation of delay, the appellant has stated that they had not received the impugned orders issued on 06.10.2022 and 26.08.2022; so, they have requested by email dated 19.05.2023 to pass speaking order. Then, the department reissued the said orders on 27.06.2023 and the appellant has filed the present appeals on 12.07.2023. The appellant further mentioned that they had not received the impugned orders and so they could not file the appeal within time, which resulted in the delay, which was neither intentional nor wanton. The appellant has relied upon following case laws in support of their contention that a lenient approach has to be adopted regarding condonation of delay:

- *Bhag Singh and Others Vs. Major Daljit Singh and Others reported in 1987 (32) ELT 258 (SC)*
- *Collector, Land Acquisition, Anantnag and Another Vs. MST. Katiji and Others reported in 1987 (28) ELT 185 (SC)*
- *Standard Treads Pvt. Ltd. Vs. Collector of Central Excise, Cochin reported in 1996 (83) ELT 30 (Ker)*
- *United Telecoms Ltd. Vs. Commissioner of Customs, Bangalore reported in 2011-TIOL-678-HC-KAR-CUS*

6. In view of the above, the appellant has requested to condone the delay of all days in filing of both appeals without mention of any specific number of days, for which the condonation has been sought for.

7. I shall examine the issue regarding delay in filing of two appeals separately.

8. Appeal No. S/49-218/CUS/AHD/2023-24, filed on 12.07.2023 against O.I.O. No. 05/DC/ICD-SND/2022-23 dated 06.10.2022

8.1 The appellant has claimed to have received the aforesaid O.I.O. dated 06.10.2022 on 27.06.2023. In this regard, they have submitted a copy of the letter F.No. VIII/10-34/Sanjivani/ICD-SND/21-22 dated 27.06.2023 issued by the Deputy Commissioner of Customs, ICD-Sanand. The said letter has been reproduced as under:

कानपुर अधिकारी अधिकारी कानपुर
अहमदाबाद
- On next page -

A.15

उप-अधिकारी का कार्यालय (सीमा शुल्क), आईसीडी-सानंद, अहमदाबाद
Office of the Deputy Commissioner of Customs, ICD-Sanand, Ahmedabad
मुनि आश्रम के समीप, कडी- सानंद पार्क, पाना-नीधराड, सानंद, अहमदाबाद
Near Muni Ashram, Sanand-Kadi Road, Village-Nidhrad, Sanand, Ahmedabad
e-mail : customs-sanand@gov.in

By Speed Post/ E-mail

F.No. VIII/10-34/Sanjivani/ICD-SND/21-22 | 2.6 |

Date: 27.6.2023

To,
M/s CMR Green Technologies Ltd.,
Unit No. 802-803, 8th Floor, SSR Corporate Park,
Sector 27B, Faridabad,
Haryana 121003.

Gentlemen,

SUB: Request for speaking order

Please refer to your letter dated 19.5.2023 sent by e-mail.

2. In this regard it is to inform you that Order-in-Original Nos. 09/DC/ICD-SND/2021-22 dated 17.1.2022 and 02/DC/ICD-SND/2022-23 dated 26.8.2022 had been dispatched by R.P.A.D. with Outward Nos. 1312 and 1839 respectively and Order-in-Original No. 05/DC/ICD-SND/2022-23 dated 6.10.2022 had been received by your authorised Customs Broker.



3. Section 153(a) of the Customs Act stipulates the mode of service as tendering the same directly to the Customs broker and Section 153(b) of the Customs Act provides for service by registered post to the last known address. Further sub-section 3 of Section 153 of the Customs Act stipulates that in the event that an order is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved. In view of the above it is to mention that the aforesaid Orders-in-Original have already been delivered to you.

4. However, photocopies of the said Orders-in-Original are attached herewith for your reference, please.

Yours sincerely,


(Kriti Pandey)
Deputy Commissioner

Encl.: as above

8.2 With the above letter, photocopies of the impugned orders have been sent to the appellant. After going through the copy of the O.I.O. dated 06.10.2022, I observe that the said O.I.O. was handed over to authorised person of the Customs Broker of the appellant on 06.12.2022 itself and a dated signature of the said authorised person with his G-Card No. G/29/2021 has been obtained on the last page of the office copy of the said O.I.O. The said page is as under:

- On next page -

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data of identical goods are available with the department and value declared by the importer is much less than the data available with the department.

13. In view of the above, I find that the Assessing Officer has not enhanced the value on the basis of assumption but value enhancement was done after ascertaining the facts and due examination of the documents and also contemporaneous data on import. Therefore, I confirm the assessment done by the assessing officer in respect of the Bill of Entry No. 2635049/05.02.2021.

14. Further, the directions of the Commissioner [Appeals], Customs, Ahmedabad, to issue the appropriate orders under the provisions of Customs Act, 1962 have been communicated to all the Faceless Assessment Groups [FAGs] located at various Customs locations, where the Bills of Entry, Annexed at Sr. No. 1 to 3 & 5 to 8, in the Order-in-Appeal No. AHD-CUSTM-000-APP-1489 to 1496-21-22, dated 01.02.2022 passed by the Commissioner (Appeals), Customs, Ahmedabad, were assessed.

15. In view of the above discussions, I pass the following order:

:: ORDER ::

I uphold the assessment done by the Assessing Officer and accordingly, re-determine the value of the imported goods covered in the Bill of Entry No. 2635049/ 05.02.2021 in terms of the provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1), 4(2) and Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Parul S. Srivastava
(PARUL SRIVASTAVA)
Deputy Commissioner
Customs, ICD-Sanand
Ahmedabad

Date: 06.10.2022



File No. VIII/10-34/Sanjivani/ICD-SND/21-22 /1898
to
1899

BY REGISTERED POST A.D.

To,
M/s CMR Green Technologies Ltd.,
[Formerly known as M/s Sanjivani Non-ferrous Trading Pvt. Ltd.],
Office:- Unit No.802-803, 8th Floor,
SSR Corporate Park, Sector-27B,
13/6, Delhi-Mathura Road,
Faridabad, Haryana- 121003.

Copy to:

1. The Commissioner of Customs, Ahmedabad. [Through: Asstt. Commr. (RRA)]
2. The Commissioner (Appeals), Customs, Ahmedabad.
3. Guard File.

*Received on behalf of
CMR Green Technologies Ltd
Parul Srivastava
06/10/2022*

8.3 From the above copy of the last page of O.I.O. it is evident that the said O.I.O. dated 06.10.2022 has been served to the Customs Broker of the appellant on 06.10.2022, who has clearly written that the said O.I.O. has been received on behalf of M/s. CMR Green Technologies Ltd. Further, I find that as per Section 153(1)(a) of the Customs Act, 1962, an

order can be served by giving or tendering it to Customs Broker of the appellant. Extracts of the relevant statutory provisions are as under (underline supplied):

"SECTION 153. Modes for service of notice, order, etc. — (1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely :—

- (a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;
- (b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;
- (c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;
- (ca) by making it available on the common portal;
- (d) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or
- (e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.

(2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).

(3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.”

8.4 In view of the above provisions, I am of the view that the O.I.O. dated 06.10.2022 has been served on 06.10.2022 itself and so, the contention of the appellant that it has been received on 27.06.2023 is not acceptable. On 27.06.2023 only photocopies of the impugned orders have been supplied, whereas, the original order dated 06.10.2022 has been served on 06.10.2022 itself.

8.5 The appellant has filed the Appeal No. S/49-218/CUS/ AHD/2023-24 on 12.07.2023 against O.I.O. dated 06.10.2022, which has been served on 06.10.2022. Thus, I find that the appeal has been filed on 279th day from the date of service of the O.I.O. Thus, there is a **delay of 219 days** beyond the normal period of 60 days and the delay is much more than the condonable delay of 30 days, as stipulated under Section 128(1) of the Customs Act, 1962.

9. Appeal No. S/49-219/CUS/AHD/2023-24, filed on 12.07.2023 against O.I.O. No. 02/DC/ICD-SND/2022-23 dated 26.08.2022

9.1 The appellant has claimed to have received the aforesaid O.I.O. dated 26.08.2022 on 27.06.2023. In this regard, they have submitted a copy of the letter F.No. VIII/10-34/Sanjivani/ICD-SND/21-22 dated 27.06.2023 issued by the Deputy Commissioner of Customs, ICD-Sanand. The said letter has already been reproduced in Para 8.1 hereinabove.

9.2 As mentioned in the said letter, the said O.I.O. dated 26.08.2022 has been **dispatched by R.P.A.D.** with Outward No. 1839. It has been also mentioned in the said letter that Sub-section 3 of Section 153 of the Customs Act stipulates that in the event that an order is sent by registered post or speed post, it shall be deemed to have been received by the assessee at the expiry of the period normally taken by such post in transit unless contrary is proved.

9.3 In the present case, the appellant has not produced any evidence to the effect that the O.I.O. sent by the Registered Post has not been received by them. Therefore, I am of the view that the said Order was served within the normal period of 7 days. As the O.I.O. has been issued on 26.08.2022, it is deemed to have been served on 02.09.2022, as per the provisions of Section 153(1)(a) read with Section 153(3) of the Customs Act, 1962.

9.4 The appellant has filed the Appeal No. S/49-219/CUS/ AHD/2023-24 on 12.07.2023 against O.I.O. dated 26.08.2022, which is deemed to have been served on 02.09.2022. Thus, I find that the appeal has been filed on 313th day from the date of service of the O.I.O. Thus, there is a **delay of 253 days** beyond the normal period of 60 days and the delay is much more than the condonable delay of 30 days, as stipulated under Section 128(1) of the Customs Act, 1962.

10. Regarding condonation of delay beyond the period of 30 days:

10.1 As per the proviso to Section 128(1) of Customs Act, 1962, if the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. Thus, the Commissioner (Appeal) has no statutory power to condone the delay beyond the period of 30 days.

10.2 In this regard, I rely upon the Judgment of the Hon'ble Supreme Court in case of *Singh Enterprises Vs. Commissioner of C.Ex., Jamshedpur* [2008 (221) E.L.T. 163 (S.C.)], wherein the Hon'ble Apex Court while interpreting the Section 35 of the Central Excise Act, 1944, which is *pari materia* to Section 128 of the Customs Act, 1962, held that the appeal has to be filed within 60 days, but in terms of the proviso, further time of 30 days can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The relevant para of the said Judgment is reproduced below (underline supplied):

“8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963



(in short, the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."

10.3 The above view was reiterated by the Hon'ble Supreme Court in the case of *Amchong Tea Estate* [2010 (257) E.L.T. 3 (S.C.)]. Further, the Hon'ble High Court of Gujarat in case of *Ramesh Vasantbhai Bhojani* [2017 (357) E.L.T. 63 (Guj.)] and the Hon'ble Tribunal, Bangalore in the case of *Shri Abdul Gafoor Vs Commissioner of Customs (Appeals)* [2024-TIOL-565-CESTAT-BANG] took a similar view while dealing with Section 128 of the Customs Act, 1962.

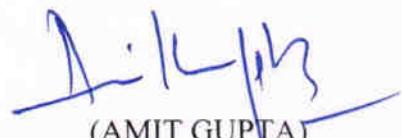
10.4 In terms of legal provisions under Section 128 of the Customs Act, 1962 and in light of the judicial pronouncements by Hon'ble Supreme Court, Hon'ble High Court and Hon'ble Tribunal, it is settled proposition of law that the appeals before first appellate authority under the provisions of Customs Act, 1962, are required to be filed within 90 days, including the condonable period of 30 days, as provided in the statute; and the Commissioner of Customs (Appeals) is not empowered to condone any delay beyond 30 days.

10.5 The case laws relied upon by the appellant in support of their application of condonation of delay are not applicable here because the facts and circumstances are different.

11. In light of the above observation, I am of the view that the Appeal No. S/49-218/CUS/AHD/2023-24, which has been filed after **delay of 219 days**, beyond the statutory time-limit of 60 days, is time-barred in terms of Section 128(1) of the Customs Act, 1962. Further, the Appeal No. S/49-219/CUS/AHD/2023-24, which has been filed after **delay of 253 days**, beyond the statutory time-limit of 60 days, is also time-barred in terms of Section 128(1) ibid. Thus, both appeals are liable to be rejected on the grounds of limitation without going into merits.

Order:

12. In view of the above discussion, I reject both appeals filed by M/s. CMR Green Technologies Ltd. on the grounds of limitation.


(AMIT GUPTA)
Commissioner (Appeals)
Customs, Ahmedabad

F.Nos. S/49-218/CUS/AHD/2023-24
S/49-219/CUS/AHD/2023-24

Date: 29.04.2025

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

To
M/s. CMR Green Technologies Ltd.,
802-803, 8th Floor, SSR Corporate Park,
Sector 27B, 13/6, Delhi Mathura Road,
Faridabad, Haryana - 121003.
(email: deepak.b1@cmr.co.in , deenu.m@cmr.co.in)



Copy to:

1. The Chief Commissioner of Customs, Ahmedabad Zone, Customs House, Ahmedabad. (email: ccoaahm-guj@nic.in)
2. The Pr. Commissioner of Customs, Ahmedabad.
(email: cus-ahmd-guj@nic.in ; rra-customsahd@gov.in)
3. The Deputy/Assistant Commissioner of Customs, ICD-Sanand.
(email: customs-sanand@gov.in , customs.sanand@gmail.com)
4. Guard File.

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