सीमाशुल्क(अपील) आयुक्तकाकार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS),अहमदाबाद AHMEDABAD,
चौथीमंज़िल 4th Floor, हडको बिल्डिंगHUDCO Building, ईश्वर भुवन रोड़ IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281
DIN- 20250971MN000000C02F

क	फ़ाइलसंख्या FILE NO.	S/49-153/CUS/MUN/2023-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 की धारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP- 179 -25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	01.09.2025
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-In-Original No. MCH/162/KRP/ AC/REF/ 2023-24 dtd. 09.11.2023 issued by the Assistant Commissioner(Refund), Customs , Mundra
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	01 .09.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s. Kunj Bihari Textiles, Khewat No. 78/47, Bakoli Bakhtawarpur Road, Village Bakoli , Delhi 110036

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.
	खेत 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

	दूसरी मंज़िल,बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, BahumaliBhavan, 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.	

ORDER-IN-APPEAL

M/s. Kunj Bihari Textiles, Khewat No. 78/47, Bakoli Bakhtawarpur Road, Village Bakoli Delhi 110036 (hereinafter referred to as the 'appellant') has filed the present appeal in terms to Section 128 of the Customs Act, 1962, challenging the Order-In-Original No. MCH/162/KRP/ AC/REF/ 2023-24 dtd. 09.11.2023 (hereinafter referred to as the 'impugned order') passed by the Assistant Commissioner of Customs (Refund) , Mundra (hereinafter referred to as the 'adjudicating authority').

2.1 The brief facts of the case are that the appellant had filed 51 Bills of Entry as mentioned in Table-A of the impugned order through their Customs Broker M/s SSS Sai Forwarders Pvt. Ltd at Custom House, Mundra for clearance of goods declared as "100% Polyester Knitted Fabrics rolls of assorted colours & weight " falling under CTH 60063200 of Custom Tariff Act, 1975, originating from China. It was found that the declared unit price was around Rs. 89/Kg whereas the lowest contemporaneous import of this commodity was around Rs. 110/Kg (declared value) for similar goods imported. The Competent authority had rejected the declared value vide OIO No. MCH/DC/NJ/GR-III/803/2016-17 dated 27.02.2017, MCH/AC/AAA/GR-III/645/2019-20 dated 20.02.2020, MCH/AC/RRR/GR-III/436/2018-19 , MCH/DC/NJ/GR-III/700/2016-17 dated 04.01.2017, MCH/DC/NJ/GR-III/701/2016-17 dated 03.01.2017, MCH/DC/SP/GR-III/203/2016-17 dated 30.06.2016, MCH/AC/RRR/GR-III/423/2018-19 dated 13.12.2018, MCH/AC/RRR/GR-III/443/2018-19 dated 21.12.2018, MCH/AC/RRR/GR-III/436/2018-19 dated 19.12.2018, MCH/DC/JS/GR-III/113/2017-18 dated 29.06.2017, MCH/DC/JS/GR-III/114/2017-18 dated 29.06.2017 and assessed the Bill of Entry by enhancing the value for Sr. No. 1 to 20 in Table A of impugned order as mentioned below and passed the order as under.

(a) He rejected the value declared by the appellant under the provision of Rule 12 of CVR, 2007 and re-determined the value at Rs. 151/Kg as per rule 3(4) read with Rule 5 of the CVR, 2007 and Bills of Entry had been assessed accordingly:

(b) He rejected the protest letters submitted by the appellant and appropriated the duty paid under protest.

2.2 Being aggrieved with the above orders, the appellant had preferred the appeal before the Appellate Authority. The said appeals were decided vide Order-In-Appeal No. MUN-CUSTM-000-APP-079-21-22 dated 15.06.2023, MUN-CUSTM-000-APP-249 to 265-17-18 dated 30.11.2017, MUN-CUSTM-000-APP-481 to 494-16-17 dated

10.01.2017, MUN-CUSTM 000-APP-073 to 075-19-20 dated 01.08.2019, MUN-CUSTM-000-APP-138 to 191-17-18 dated 29.06.2017, MUN-CUSTM-000-APP-002 to 020-18-19 dated 10.04.2018 wherein the Appellate Authority passed the following order;

"19. In view of above discussion, I find that there is no legal infirmity either in the process of rejection of declared value or in the process of redetermination of the value. All the statutory provision and prescribed procedure, including the principles of natured justice were duly observed by the proper officer. Therefore. I do not find any justification to interfere with the findings of the adjudicating authority...

2.3 The appellant preferred appeals against the above Order-In-Appeals before the Hon'ble CESTAT, Ahmedabad who vide Final Order No. A/11267-11270/2023 dated 15.06.2023 passed the following order:-

"(8) As per our above discussion and findings and settled legal position as discussed above, the appellant are clearly entitled for the exemption Notification No. 30/2004-CE dated 09.07.2004 for exemption of CVD on the imported goods.

9. Accordingly, the impugned order is set aside. Appeals are allowed with consequential relief

5. In view of above discussion and settled legal position, we set aside the impugned orders and allow the appeals with consequential relief to the appellants, if any, in accordance with law.

3. It is seen that the aforesaid decision in the case of M/s. Sedna Impex India P. Ltd. covers all the issues raised in instant dispute. Miscellaneous application for admitting for this new ground in respect of Notification No. 30/2004-CE, is also allowed. Consequently following the decision in the case of M/s. Sedna Impex India P. Ltd., the appeals are allowed.

In view of the above, the 51 Bills of Entry had been re-assessed by Gr.III, Custom House, Mundra on 07-11-2023.

2.4 Consequently, the appellant had filed refund claim of Rs. 1,32,35,291/- for the excess duty paid arising out of arising out of CESTAT's Final Order No. A/11267-11270/2023 dated 15.06.2023. The Refund sanctioning authority has granted refund of Rs. 1,32,35,291/- under Section 27 of the Customs Act, 1962 vide impugned order.

3. Being aggrieved with the above impugned order, the appellant have filed the present appeal against the impugned order to the extent that the adjudicating authority has not granted interest of the refund amount sanctioned. The appellant have inter-*alia*, raised various contentions and filed detailed submissions as given below in support their claims:

- Adjudicating Authority failed to appreciate that excess custom duty which was paid by the appellant at the time of clearance was illegally collected as the same was not payable. Therefore, they were entitled for the grant of interest from the date of payment till the date of refund as the said amount got the colour of pre-deposit.

- The Hon'ble High Court of Karnataka in a recent judgment dated 24.11.2022 in the Writ Petition No. 16917 of 2022 (T-Res) titled as LM Wind Power Blades (India) Pvt. Ltd. Versus Union of India & Ors., relying on the judgment of Bombay High Court & Ors. held that the amount of refund was payable alongwith interest.

- The CESTAT in the case of Customs Appeal No. 5001/2007 titled as Leather Sellers versus Commissioner of Customs has held that the refund lying with the department is always in the nature of pre-deposit and therefore, it carries interest when the same become refundable.

- Interest is a statutory provision and it has to be complied with by the Department and the same cannot be denied if the same are payable and the Central Board of Excise & Customs has issued Circulars from time to time in this regard.

- They were entitled to interest as consequential relief once the declared value by the appellant was found acceptable. The department cannot enrich itself at the cost of the appellant by way of first collecting excess duty without any basis and thereafter delaying the finalisation of bills of entry for more than 6 years.

- the issue of grant of refund from the date of application is no more res integra as this Hon'ble High Court time and again reiterated that delayed refund of amount attracts interest from the date of application till date of payment. The Appellant relies upon the following judgments:

i Tata Infotech Ltd. versus CC, New Delhi reported in 2004 (173) ELT 8 (Del.)

ii. Principal Commissioner versus Risho India Pvt. Ltd. reported in 2016 (333) ELT 33 (Del.)

iii. Mera Baba Realty Associate (P) Ltd. versus Comm. of Service Tax reported in 2017 (52) STR 131 (Del.)

iv. Micromax Informatics Ltd. versus Union of India reported in 2018 (361) ELT 968 (Del.)

v SR Polyvinyl Ltd. Versus CCE reported in 2020 (371) ELT 283 (Del.)

- The Hon'ble Allahabad High Court has also categorically held that interest is payable in the case of Hamdard (Wakf) Laboratories Vs. Union of India reported in 2005 (188) ELT 476 (All.) where the refund was granted after a delay. The same view was again reiterated by the Hon'ble Allahabad High Court in the case of Siddhant Chemicals V/s Union of India reported at 2014 (307) E.LT. 44 (All) and held that interest on the delayed refund has to be paid automatically under Section 11BB of the Central Excise Act, 1944 (pari-materia to Section 27A of the Customs Act, 1962). In this case the Hon'ble High Court has held that payment of interest is not dependent of claim by the party, instead authority is statutorily obliged to pay the interest. It was further held that the waiver of interest by the party is irrelevant and payment of interest cannot be denied on such ground.

- The Hon'ble Supreme Court in the case of Union of India versus Hamdard (Waqf) Laboratories reported in 2016 (333) ELT 193 (SC) has reiterated that Interest on delayed refund is payable under Section 11BB of Central Excise Act, 1944 on expiry of three months from date of receipt of application from such date, till date of refund of duty.

- The Hon'ble Supreme Court again reiterated that delayed refund attracts interest from the date of application till the date of payment as held in the case of Manisha Pharmoplast Pvt. Ltd. versus Union of India reported in 2020 (374) ELT 145 (SC).

PERSONAL HEARING

4. Personal hearing in the matter was granted to the appellant on 29.04.2025, 22.05.2025, 05.06.2025 and 17.06.2025. However, no one appeared for personal hearing. A copy of the appeal memorandum was sent to the adjudicating authority for comments. However, no response has been received. Hence, I proceed to decide the case on merits on the basis of the documents available on record. I have carefully gone through the facts of the case and submissions made by the appellant in their appeal memorandum as well as the impugned order.

DISCUSSION AND FINDINGS

5.1 It is observed that the appellant had filed various filed Bills of Entry as mentioned in the impugned order for clearance of "Polyester Knitted Fabrics rolls of assorted colours & weight". During the assessment, it was found that the declared unit price was low as compared to the lowest contemporaneous import of this commodity for similar goods imported. The said Bills of Entry were finally assessed by the Assessing Authority by enhancing the value as per contemporary imports. The appellant had filed appeals before the Appellate Authority against the aforesaid assessment orders. The said appeals were rejected by the Commissioner (Appeals), Ahmedabad. The appellant preferred appeal against the above Order-In-Appeal before the Hon'ble CESTAT, Ahmedabad who vide Final Order No. A/11267-11270/2023 dated 15.06.2023 allowed the appeals of the appellant. Consequently, the Bills of Entries were reassessed and accordingly the appellant filed refund claim arising out of the Re-assessment orders. The Refund sanctioning authority has granted refund vide impugned order.

5.2 It is the appellant's contention that the adjudicating authority has not granted any interest on the refund sanctioned. Therefore, the issue to be decided in the present appeals is whether the impugned orders passed by the adjudicating authority not sanctioning interest on refund amount sanctioned, in the facts and circumstances of the case, is legal and proper or otherwise.

5.3 It is observed that the adjudicating authority has vide impugned order sanctioned the refund of the excess duty paid. The appellant have in appeal memorandum submitted that they have not received interest on the refund sanctioned vide impugned orders. It is observed from the impugned order that there is no discussion on the issue of interest on refund amount sanctioned. It is also not clear whether the appellant had claimed interest in their application for refund. Hence, it appears from the records, that

the appellant has claimed interest on refund for the first time in present appeal. I find that the adjudicating authority had no opportunity to decide the issue of claim of interest on refund by the appellant. In view of the same, I find it appropriate to remand back the matter to the adjudicating authority for examining the appellant's claim of interest made in the present appeal. Accordingly, the matter is remanded back to the adjudicating authority for considering the request of interest made by the appellant and pass a speaking order by following the principles of natural justice in terms of sub-section (3) of Section 128A of the Customs Act, 1962. 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)] wherein it was held 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. The adjudicating authority, while passing the order in remand proceedings, shall also consider the submissions made in the present appeal and pass speaking order after following principles of natural justice.

6. Accordingly, the appeal of the appellant is allowed by way of remand

(AMIT GUPTA)
Commissioner (Appeals)
Customs, Ahmedabad

Date: 01.09.2025

F.No.S/49-153/CUS/MUN/2023-24 3155

सत्यापित/ATTESTED
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

By Registered Post A.D.

To,
M/s. Kunj Bihari Textiles,
Khewat No. 78/47, Bakoli Bakhtawarpur Road,
Village Bakoli ,
Delhi -110036

Copy to :-

1. The Chief Commissioner of Customs, Ahmedabad zone, Custom House, Ahmedabad.
2. The Pr. Commissioner of Customs, Custom House, Mundra
3. The Deputy/Assistant Commissioner of Customs (Refund), Custom House, Mundra
4. Guard File.