



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- 20260371MN000000F65B

क	फ़ाइल संख्या FILE NO.	S/49-462/CUS/JMN/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):	JMN-CUSTM-000-APP-474-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	31.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	OIO No. 07/DC/RD/2024-25 dated 28.05.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	31.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Tata International Limited, Office No/11, Ground Floor Plot no.40, Sector 8, Gandhidham, Kachchh, Gujarat-370201

- 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.
- 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 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 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके 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 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 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, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, 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 रूपए.	
(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 रूपए	
(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 रूपए.	
(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 है, 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.	
	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.	



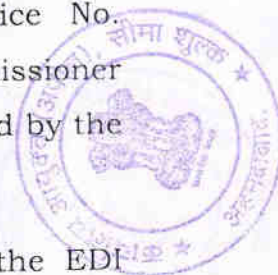
ORDER-IN-APPEAL

M/s. Tata International Limited, Office No/11, Ground Floor Plot no.40, Sector 8, Gandhidham, Kachchh, Gujarat-370201 (hereinafter referred to as "the appellant") have filed an appeal in terms of Section 128 of the Customs Act, 1962 against the Order in Original No. 07/DC/RD/2024-25 dated 28.05.2024 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Customs Division, Jamnagar (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant, vide letter No. Nil dated 15.01.2024 (received in the office of adjudicating authority on 19.01.2024) has filed a refund claim amounting to Rs. 51,92,493/- in terms of Section 27 of the Customs Act 1962, on account of interest paid against Customs duty payment for goods imported vide Bill of Entry No. 5385926 dated 05.04.2023 at Custom House Navlakhi.

2.1 The appellant had filed Bill of Entry No. 5385926 dated 05.04.2023 for import of 60,230 MT of Indonesian Steam Coal in bulk and availed exemption of BCD under Notification No. 46/2011-Cus dated 01.06.2011 as amended. The applicable custom duty of Rs. 4,61,13,380/- was paid by the appellant vide challan No. 2043571183 dated 12.04.2023, however due to technical glitches customs duty paid by the appellant was not synchronized/reflected in the EDI System. The appellant had produced the certificate dated 18.04.2023 issued by ICICI bank certifying that the Custom duty has been credited to the Government account vide transaction reference No. 1000510409, therefore in view of Public Notice No. 08/CCP/JMR/2023 dated 07.04.2023 issued by the Chief Commissioner (in-situ, Customs (P), Jamnagar, manual out of charge was granted by the Superintendent, CH- Navlakhi on 12.04.2023.

2.2 Since, the payment was not synchronized/reflected in the EDI System, the issue was raised to Saksham seva and during the month of June-2023, it is noticed that duty payment made on 12.04.2023 credited back to the appellant's ECL on 15.06.2023. The appellant in order to clear the bill of entry in the EDI System paid the interest amounting to Rs. 51,92,492/- on 12.01.2024 applicable for the period from date of payment



[Handwritten signature]

for the bill of entry to the date of clearing the bill of entry in EDI System i.e. 12.01.2024.

2.3 The adjudicating authority found that the Custom duty of Rs. 4,61,13,380/- paid by the appellant vide challan No. 2043571183 dated 12.04.2023 was credited to the appellant's Electronic Cash Ledger (ECL) in Customs on 15.06.2023 and after a significant delay of more than six months the appellant has cleared the bill of entry in the EDI System on 12.01.2024. The adjudicating authority further held that the issue was resolved in the month of June-2023 and subsequently Custom duty of Rs. 4,61,13,380 was credit to the appellant's Electronic Cash Ledger (ECL) on 15.06.2023 and the appellant failed to pay the duty and interest within 3 days (including holidays) from the date of removal of such system inability at the Common Portal therefore, the appellant is entitled for refund of interest only for the period from the date of payment for the bill of entry to date of credit i.e. 15.06.2023 of Customs duty in the ECL account of the appellant. Refund of interest for the period from the date of payment of customs duty to date of credit in ECL account i.e. 15.06.2023 is calculated to be Rs 11,93,894/-. Therefore, the adjudicating authority vide the impugned order sanctioned the refund claim of Rs. 11,93,894/- (Rupees Eleven Lakh Ninety Three Thousand Eight hundred Ninety Four only) and reject the remaining portion of claim Rs. 39,98,599/- (Rupees Thirty Nine Lakh Ninety Eight Thousand Five hundred Ninety Nine only) under Section 27 of the Customs Act, 1962.

3. Being aggrieved with the rejection of refund amounting to Rs 39,98,599/- vide the impugned Order, the appellant has filed the present appeal contending on various grounds as under:

3.1 The order passed by the respondent authority is in violation of principles of natural justice, since he has not considered the vital evidence produced by the appellant, which is relevant to the case. The appellant had submitted all the documentary evidence vide refund application dt. 15.01.2024. Even during the course of the Personal Hearing, the appellant made their submissions as to how they are eligible for refund claim. However, without considering the material on record is against the principles of natural justice and arbitrary. In this regard, the appellant relies on the following decisions:



(i) GVPR Engineers Ltd. v. Union of India, 2021 SCC Online TS 3686-Telangana High Court

(ii) Madhya Pradesh Special Police Establiskiment v. State of Madhya Pradesh and Others, 2004 (11) TMI 524-Supreme Court

3.2 The impugned order is passed without appreciating the facts on record properly. The appellant has duly discharged their obligation of payment of customs duty against the said BoE dt.05.04.2023. Credit of the said duty amount was even acknowledged by ICICI Bank vide their dt. 18.04.2023. On the basis of said letter issued by ICICI Bank, customs department also allowed manual Out of Charge (OOC). Therefore, the liability on the part of the appellant had been duly and timely discharged.

3.3 The respondent's finding that the appellant had paid the customs duty on 12.01.2024 and the BoE was cleared thereafter only cannot be a ground to reject the said refund as, even though on 15.06.2023, the amount of duty paid by the appellant got re-credited to their electronic ledger, there was not intimation of the same and neither was the appellant aware of the said technical issues of the Customs Portal due to which the duty was re-credited. The respondent's reliance on the advisory dt 27.07.2023 to deny the interest is not legally sustainable. The said advisory has not legal sanctity and cannot be the reason to deprive the appellant the rightful amounts due to them. Customs Circular No.9/2023 di 30.03.2023 stipulates that the significance of introduction of Electronic Cash Ledger (BCL) must be explained to importers/exporters and all types of stakeholders. Their attention should also be drawn to ECLR, notifications and DG Systems implementation advisories. In the absence of any proof that the credit of the amounts in the ECL was communicated by the respondent authorities as to initiate further action by the appellant, interest amounts cannot be collected from them.

3.4 The appellant acted bonafidely based on the certificate issued by the ICICI Bank. Unless the same is controverted or further information is received from the department or from the Bank, they cannot be burdened on teething problems that arose in implementing the new regulations, i.e., Customs (Electronic Cash Ledger) Regulations, 2022. It is trite law for



technical infractions on the portal, stake holders cannot be made to suffer. The Hon'ble High Court of Bombay in the case of Larsen & Toubro Limited Versus the Union of India (2024 (11) TMI 805-Bombay High Court examined the challenges faced by the importers and exporters in online transactions of DGFT and held the following:

"26. The DGFT cannot adopt an attitude that its technological systems are not geared to deal with such situations and that is officials will not deal with such situations. Human and artificial intelligence must join to serve the people and achieve ease of business and not be at loggerheads. Suppose any party is entitled to any benefits under the law or under the schemes formulated by the Government to promote exports or trade in that case, such benefits must not be denied or unduly delayed by citing, technological glitches or the fact that the current electronic systems meant to assist the implementation of the law or operation of such schemes are inadequate or need revamping. What the law grants cannot be denied or unduly delayed by technology meant only to assist in implementing the law. If such an approach continues, the claims of leveraging technology to serve the people or ease of doing business will remain paper slogans"

3.5 The refund claim was cleared by the Pre-Audit, as per Para 16 of the impugned order and there is no reason to reject the refund filed by the appellants, when the audit had verified all the parameters for sanctioning the refund. In terms of Chapter 14, Para 7.1 of Customs Manual, 2023, the procedure has been prescribed

"(d) Audit: Pre-audit of refund claims (other than those to be post-audited) will be conducted by the Assistant/Deputy Commissioner (Audit), in the Commissionerate Headquarters Office. Thereafter, the Assistant/Deputy Commissioner of Group Division will pass an order-in-original in respect of the claim. Thereafter, the orders-in-original passed in this regard shall be subjected to review by the Commissioner concerned. The applications of refund of amount below Rx. 50,000/- may be post audited on the basis of the random selection by Assistant/Deputy Commissioner (Audit). The selection can be made in such a way that 25% of the refund applications are post-audited. The applications of refund for amount between Rs.50,000/- and Rs. 5 lakhs should be compulsorily post-audited. This audit system is aimed at



checking improper sanction and payment of refunds. However, this does dispense with the verification of the refund vouchers and the re-conciliation of refunds, which shall be done by the Chief Account Officers. It may be ensured that where pre audit is involved, the same is completed at the earliest so that the disposal of refund applications is not unduly delayed."

Since in the present case, there is no objection from the Audit, the refund ought to have been sanctioned by the learned respondent authority.

3.6 It is a well settled legal principle that "lex non cogit ad impossibilia" which translates to "the law does not compel the impossible. In the present case as well, technical glitches or issues of the Customs Portal are beyond the control of the appellant and in such a case, making a successful payment of duty reflecting in the Portal is an impossible task to the appellant. Considering the aforementioned letter of Bank and manual allowance of OOC by customs department itself, the appellant cannot be penalised and interest can be collected from them. In this regard, the appellant relies on the following:

- (i), Tikona Infinet Private Limited Versus Union of India 12024 (10) TMI 670-Bombay High Court)
- (ii) State Of Gujarat, Versus Sa Himnani Distributors Pvt Ltd [2014 (7) TMI 783-Gujarat High Court]

3.7 The appellant cannot be said to have evaded duty or have the intention to delay the payment of the same wilfully. It was merely because of the circumstances beyond the control of the appellant that, the claim was refund of interest was raised at a much later date. It is humbly prayed to allow the said refund of interest to the appellant.

4. Shri C. S. Srinivas, Consultant, appeared for personal hearing on 26.02.2026 on behalf of the appellant. He reiterated the written submission made at the time of filing appeal.

5. Before going into the merits of the case, it is observed that the date of communication of the impugned order as per appeal memorandum is 10.06.2024 and the present appeal was filed on 10.02.2025, i.e., after 185 days beyond normal period of 60 days. In this regard the appellant vide their affidavit dated 02.02.2026 submitted that the Order-in-Original dated



28.05.2024 was communicated to the appellant company via email dated 10.06.2024; however, the same was not brought to the notice of the management as it remained unattended by the concerned officer., Ms. Mamta Anil Purohit, Manager (Customs & Foreign Trade – Corporate), who was handling such matters. It is submitted that Ms. Purohit resigned from the company and was relieved from service on 17.12.2024. It is further contended that no physical copy of the impugned order was served upon the appellant, and in the absence of effective communication, the appellant remained unaware of the said order and could not initiate appellate proceedings within the prescribed time. Upon gaining knowledge of the order, the appellant filed the present appeal on 10.02.2025, resulting in a delay of 185 days from the statutory time limit.

5.1 It is observed that the appellant in his affidavit has submitted that the Order-in-Original dated 28.05.2024 was communicated to their company via email dated 10.06.2024. It is also noted that the date of communication of the impugned order as per appeal memorandum is also 10.06.2024. At this juncture I refer to the Section 153 of the Customs Act, 1962, which deals with the Modes for service of notice, order, etc. and the same is as under:

“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

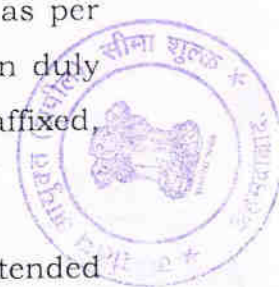
(e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.

(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."

A plain reading of Section 153 of the Customs Act, 1962 makes it clear that any order, decision, summons, notice or other communication under the Act or the rules framed thereunder may be served through any of the modes specified in clauses (a) to (e) of sub-section (1). It is further observed that Section 153(1) (c) specifically provides for service through electronic means, i.e., by sending the communication to the e-mail address furnished by the person concerned or available in official correspondence. Further, as per Section 153(2), such communication shall be deemed to have been duly served on the date on which it is tendered, transmitted, published, affixed, or uploaded in the manner prescribed under sub-section (1).

5.2 It is also observed that the appellant, in the affidavit, has contended that no physical copy of the impugned order was served upon the company and, in the absence of such service, they were not aware of the passing of the order and were therefore unable to take timely action within the prescribed period. However, this contention is not tenable in view of the admitted fact that the impugned Order-in-Original was communicated to the appellant through e-mail on 10.06.2024. In terms of Section 153(1) (c) read with Section 153(2) of the Customs Act, 1962, service of an order through the registered e-mail address constitutes valid and complete service



in law. Further, the fact that the appellant has filed the present appeal, despite claiming non-receipt of the physical copy, clearly indicates that the appeal has been preferred on the basis of the impugned order received through e-mail. This establishes that the appellant had access to and knowledge of the impugned order, and therefore the plea of lack of awareness is not sustainable.

5.3 The appellant, in the affidavit, has admitted that the Order-in-Original dated 28.05.2024 was communicated to the company via e-mail dated 10.06.2024. Accordingly, in terms of Section 153(1) (c) read with Section 153(2) of the Customs Act, 1962, the impugned order is deemed to have been duly served upon the appellant on 10.06.2024. It is further observed that the present appeal has been filed on 10.02.2025, i.e., with a delay of 185 days beyond the prescribed period of 60 days. In this regard, I have gone through the provision of limitations for filing an appeal as specified under Section 128(1) of the Customs Act, 1962. The same is reproduced hereunder:

“SECTION 128. Appeals to [Commissioner (Appeals)]. — (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order.

[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]”

5.4 As per the legal provisions under Section 128 of the Customs Act, 1962, the appeal has to be filed within 60 days from the date of communication of order. Further, 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.



5.5 It will also be relevant to refer to the judgment of Hon'ble Supreme Court in case of Singh Enterprises – [2008 (221) E.L.T. 163 (S.C.)], wherein the Hon'ble Apex Court had, 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 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 relevant para is reproduced below:

“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.”

5.6 The above view was reiterated by the Hon'ble Supreme Court in 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 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.

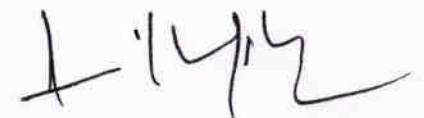
5.7 In terms of legal provisions under Section 128 of the Customs Act, 1962 and in light of the judicial pronouncements by the Hon'ble Supreme Court, Hon'ble High Court and Hon'ble Tribunal Bangalore, it is settled proposition of law that the appeals before first appellate authority are required to be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

5.8 In light of the above observation, I find that the appeal has been filed after 90 days from the date of receipt of the order. I am not empowered to condone the delay in filing the appeal beyond the period specified in Section 128 of the Customs Act, 1962. Hence, the same is held to be time barred.

6. In view of above, I reject appeal on the grounds of limitation without going into the merits of the case.

सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD


(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

By Registered Post A.D.

F. No. S/49-462/CUS/JMN/2024-25

Dated -31.03.2026

To,

- (i) M/s. Tata International Limited,
Office No/11, Ground Floor Plot no.40,
Sector 8, Gandhidham, Kachchh,
Gujarat-370201.,



Copy to:

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs (Prev), Jamnagar.
3. The Deputy/Assistant Commissioner of Customs, Customs Division, Jamnagar.
4. Guard File.

