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-20260771MN0000FB878C

क	फ़ाइल संख्या FILE NO.	S/49-143/CUS/JMN/JUN/2025-26
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-37-2026-27
ग	पारितकर्ता PASSED BY	Shri Vishwajeet Singh Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	29.07.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	64/AC/BVR/2024-25 dated 26.12.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	29.07.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	1. M/s Agrasen Ship Breakers Pvt. Ltd. Plot No. 113, Sosiya Ship Breaking Yard, Sosiya, P.O. Manar, Bhavnagar

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.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क(	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported
(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 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित 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 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 अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd 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 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 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. Brief facts of the case

1.1 M/s Agrasen Ship Breakers Pvt. Ltd. Plot No. 113, Sosiya Ship Breaking Yard, Sosiya, P.O. Manar, Bhavnagar (herein after referred to as the "Appellant for the sake of brevity) has filed the present appeal against Order-In-Original No. 64/AC/BVR/2024-25 dated 26.12.2024 (herein after referred to as the "impugned order") issued by the Assistant Commissioner, Customs Division, Bhavnagar (herein after referred to as the "Adjudicating Authority).

1.2 A refund amount of Rs. 2,40,004/- was sanctioned to the Appellant under section 27 of Customs Act by the Assistant Commissioner. Customs Division, Bhavnagar vide his Order-in-Original no. 11/CUS-REF/2023-24 dated 29.09.2023. The amount was paid to the Appellant on 03.10.2023.

1.3. After sanctioning of refund claim, it was observed by the Department that while sanctioning the refund the Assistant Commissioner had not properly examined the aspect of unjust enrichment as per Board's Circular No. 07/2008 dated 28.05.2008. Audited Balance Sheet and other related financial records, certificate of CA etc. had not been verified to find that the refund claimed was reflected in the books of account of the claimant as "claims receivable". If the duty paid was shown as expenditure and formed part of Profit and Loss account of the claimant then as a settled position in law, incidence of duty has been passed on to other person.

1.4. Being aggrieved with the order passed by the Assistant Commissioner. Customs Division, Bhavnagar, the Department had filed appeal before Hon'ble Commissioner (Appeals), Customs, Ahmedabad on the grounds that:

"The adjudicating authority did not examine the aspect of unjust enrichment as per Board's Circular No. 07/2008 dated 28.05.2008. The adjudicating authority has sanctioned the refund claim to the Claimant without examining the relevant financial records to determine as to whether burden of duty has been passed on to the ultimate buyer or otherwise. Since oil imported alongwith the vessel coming for breaking up is sold as such, therefore, it was necessary for the adjudicating authority to examine the relevant financial records to verify if the Customs duty paid at the time of import has been shown as revenue expenditure or receivable from the Government in books of account so as to ascertain the test of unjust enrichment with regard to refund claim filed by the Claimant. However, the adjudicating authority has not verified these aspects and sanctioned the refund claim of Rs. 2,40,004/- to the Claimant. Hence, the impugned Order-In-Original

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No. 11/CUS-REF/2023-24 dated 29.09.2023 was examined by the Department in exercise of powers vested under section 129 D (2) and it was of the view that the impugned order is not legal & proper and hence an appeal is required to be filed against the impugned order before the Commissioner of Customs (Appeals), Ahmedabad".

1.5. Thus, it appeared that the refund of Rs. 2,40,004/- was erroneously sanctioned to the Appellant vide Order-In-Original No. 11/CUS-REF/2023-24 dated 29.09.2023 by the Assistant Commissioner under section 27 of Customs Act, 1962 which was required to be recovered from them under section 28 of Customs Act. In view of above, show cause notice no. GEN/ADJ/AC/331/2024—O/oDC/AC-Div-BVR-Cus-Prev-Jamnagar dated 27.02.2024 was issued to M/s. Agrasen Shipbreakers Pvt Ltd., as to why-

(i) Refund of customs duty of Rs. 2,40,004/- (Rupees Forty One Thousand Nine Hundred Twenty Seven only) as erroneously sanctioned and granted should not be recovered from them under Section 28 of the Customs Act, 1962 and
(ii) Interest at appropriate rates, should not be demanded and recovered from them on the amount (i) above from the date of such erroneous refund under Section 28AA of the Customs Act, 1962.

1.6 The show cause notice dated 26.12.2024 was adjudicated vide the impugned order wherein the Adjudicating Authority confirmed the demand of Rs. 2,40,004/- under Section 28 of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962.

1.7 Being aggrieved by the impugned order, the Appellant preferred the present appeal.

2. **Ground of Appeal submitted by the Appellant**

2.1. The Appellant submitted that the Learned Assistant Commissioner erred in adjudicating the SCN for recovery of refund amount against which appeal is already pending before Hon'ble Commissioner Appeals. He erred is not appreciating matter being sub-judice before the higher authority, adjudication of the present SCN cannot be proceeded with as the same result into multiplicity of proceedings.

2.2 The Appellant further submitted that without prejudice to the aforesaid preliminary it is by which he has sanctioned the refund of the excess duty paid and has ordered the same to be credited to the Consumer Welfare Fund on the ground of unjust enrichment and confirm demand as erroneously sanctioned

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and order to recover along with interest is not tenable in law and is liable to be set aside. He should have ordered the refund to the credit of appellant instead.

2.3. Certificate from Chartered Accountant Confirming that the Custom Duty was not passed onto any buyer or third party: -The Appellant further submitted that the certificate dated 28.01.2025 and 12.02.2025 issued by Charted Accountant M/s. D.L. Vora & Associates, certifies that oil and fuels found in the ship at the time of import, on which duty was paid, were not passed on to any buyer or third party. Moreover, the certificate confirms that no customs duty was charged at the time of sale, indicating that duty was not passed on to customers and/or third parties. The copies of above two CA certificates are hereto annexed as ExhibitC-, collectively.

2.4 Comparison of the Bill of Entry with the Sales Invoices of the Appellant would show that the Bunkers were sold at a price below the import price/value on which such duty was assessed and consequently the Appellants have not been able to recover even the cost of the Bunkers, much less the duty paid thereon: The Appellant further submitted that it is evident form the Bill of Entry and the Appellant's sales invoices, that the price at which the Appellant sold the imported bunkers is much below the import price/value of the Bunkers on which the duty was assessed. Therefore, the Appellant has not been able to even recover the import price of the Bunkers, much less the duty paid thereon. Consequently, the question of the Appellant having passed on and recovered from the buyers, the duty paid on the Bunkers does not arise. Clearly, therefore the burden of the said duty has been borne by the Appellant and has not been passed on to the buyers. A perusal of the Appellant's Sales Invoices would show that the Appellant has only recovered the GST payable on the local sales and not the import duty paid on the Bunkers.

2.5. Merely because the duty amount was debited to expenses in Profit & Loss Account, it does not follow that incidence thereof was passed on to the buyers, when the price at which the Bunkers were sold to the buyers, was even less than the import price on which the duty was assessed: The Appellant further submitted that the Assistant Commissioner has proceeded on the premise that since the duty paid on the Bunkers was debited to expenses, it must be considered to have been passed on to the buyers by the Appellant. The said premise on which the Order of the Assistant Commissioner is based is untenable in law.

2.6. The Appellant also submitted that it is settled law that debit of the duty amount to expenses, without corresponding addition in the import price to arrive

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at the local sale price, means that Appellant has absorbed and borne the said amounts and it cannot lead to the conclusion that the Appellant has passed on the incidence thereof. In the present case, not only has the Appellant not added the duty amount to the import price to arrive at the local sale price, but in fact, the local sale price is even below

2.7 The Appellant further submitted that the issue of unjust enrichment does not apply and placed reliance upon the following well settled case laws.

(i) 2015 (327) ELT 13 (Mad): Commissioner of C. Ex., Chennai - 1,

(ii)2017 (348) ELT 537 (Tri. Chennai): Mennekes Electric India P. Ltd. v/s Commissioner of Cus, Chennai-II,

(iii) 2018 (360) ELT A204 (Bom.): Commissioner v/s Tata Motors Ltd.,

(iv) 2020 (371) ELT 542 (Chan.): Gaurav Enterprises v/s Commissioner of Customs, Amritsar,

(v) 2022 (60) G.S.T.L. 48 (Del.): Rambagh Palace Hotel Pvt. Ltd. v/s Commissioner of C. Ex. & GST, Jaipur - I.

2.8. The Appellant also craved leave to add, amend, alter and vary the aforesaid ground of appeal and submit documents, case laws when required.

2.9 The Appellant filed application for condonation of delay wherein it has been submitted by the Appellant that there is no delay at the end of appellant in filing appeal however since the OIO dated 26.12.2024, which was served to the Appellant for the first time only on 29.05.2026, i.e. after lapse of long period, the present application is being preferred in order to explain the same in the event appeal is treated defective on account of lapse of time form the date of impugned order. The Applicant submitted that this application seeking condonation of delay in filing appeal against the OIO No. 64/AC/BVR/2024-24 dated 26.12.2024 passed by the Assistant Commissioner, Bhavnagar as follows:

2.10 The Appellant further submitted that they received a letter dated 30.04.2025 from the Superintendent of Customs, SBY, Alang seeking to recover the refund in reference to aforementioned OIO. However, they did not receive a copy of the said order. Upon realizing this, they immediately requested the concerned department to provide a copy of the order, which was finally issued to them on 29.05.2025. The delay in filing the appeal was purely due to non-receipt of the order copy and was beyond their control. The delay was intentional and caused by procedural circumstances. As soon the Appellant obtained the copy of the order, they promptly initiated the appeal filing process. The Appellant further submitted that no prejudice will be caused to the Department of the delay

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is condoned. On the other hand, irreparable loss would be caused to the Applicant if the delay is no condoned and the appeal is not admitted.

3. PERSONAL HEARING:

Opportunity of personal hearing was granted to the Appellant. Shri Rahul Gajera appeared for personal hearing in virtual mode on 15.07.2026 wherein he re-iterated written submission filed during the appeal.

4. DISCUSSION AND FINDINGS:

4.1 On perusal of the appeal filed by the Appellant, it is observed that the Appellant has filed the form CA-1 on 12.06.2025. The date of OIO is 26.12.2024 and the Appellant has mentioned the date of receipt of OIO as 29.05.2025. Therefore, there seems to be considerable delay between the date of OIO and the date of receipt of OIO as mentioned by the Appellant. Therefore, an email dated 21.07.2026 was sent to the Custom Division, Bhavnagar to submit the date of dispatch of OIO or the date of receipt of OIO as available with their office. The Customs Division office vide email dated 21.07.20256 enclosed the signed receipt of the OIO wherein the authorized signatory of the Appellant had received the impugned order on 27.12.2024. Therefore, for the purpose of limitation, it is held that the impugned Order-in-Original dated 26.12.2024 was received by the appellant on 27.12.2024. Whereas, the appeal has been received in this office on 12.06.2025.

Screenshot of the receipt of OIO is produced below for ready reference.

15 In view of the above findings I pass the order as under

ORDER

(i) I confirm the demand of Rs. 2,40,004/- (Rupees Two Lakhs Forty Thousand Four only) as erroneously sanctioned and granted and order to recover the same under Section 28 of the Customs Act, 1962, and

(ii) I order to charge and recover applicable interest leviable on the confirmed amount of Rs. 2,40,004/- above, under Section 28AA of the Customs Act,1962 which should be paid by/recovered from the Noticee forthwith.

26/12/24

(Rajeev Kumar Singh)
Assistant Commissioner.

M/s. Agrasen Shipbreakers Pvt. Ltd.
Plot No. 113, Sosiya Ship Breaking Yard, Sosiya,
P.O.-Manar, Dist-Bhavnagar

Copy to:
1. The Commissioner of Customs, Custom (Prev), Jamnagar
2. The Additional Commissioner of Customs, Customs (Prev.), Jamnagar
3. The Superintendent of Customs, SBY Alang, Bhavnagar
4. Guard file

AGRASEN SHIP BREAKERS PVT LTD

AUTHORISED SIGN
27-12-24

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Thus, it is proved that this appeal has been filed after a delay of 166 days from the date of receipt of OIO. Therefore, I find that the Appellant has filed the appeal after a period of more than 106 days, from the date ending the period of 60 days as prescribed for filing appeal under Section 128(1) of the Customs Act, 1962.

4.2 It is also observed that the appellant has applied for condonation of delay in vide application dated Ni. In this regard, I have gone through the provisions of limitations for filing an appeal as specified under Section 128 (1) of the Customs Act, 1962. Thus, it is relevant to refer the legal provisions governing filing an appeal before the Commissioner (Appeals) and his powers to condone the delay in filing appeals beyond 60 days. Extracts of relevant Section 128 of the Customs Act, 1962 are reproduced below for ease of reference:

> 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.]

4.3 Section 128 of the Customs Act, 1962 makes it clear that 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.

4.4 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

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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."

4.5 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] have taken a similar view while dealing with Section 128 of the Customs Act, 1962.

4.6 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.

4.7 Further, an email dated 22.07.2026 was also send to the Appellant to submit clarification regarding the date of receipt of OIO as claimed by them and the date of receipt of OIO as reported by the Custom Division, Alang, Bhavnagar. However, no reply was received from the Appellant.

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4.8 In light of the above observation, I find that the appeal has been filed after 90 days from the date of receipt of the impugned order. I find that the appeal has been filed by the Appellant after a period of 76 days from the date ending the period of 90 days. 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.

4.9 It is also observed that impugned order has confirmed the demand of Rs. 240004/- under Section 28 of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962. Therefore, the Appellant was also liable for a pre-deposit of 7.5% of the confirmed demand. With respect to the requirement of mandatory pre-deposit of 7.5% for filing the appeal, it is observed that the Appellant has not paid the mandatory pre-deposit as required under Section 129E of the Customs Act, 1962. Therefore, the appeal is not admissible on the aforementioned ground also.

5. In view of the discussion made above, I do not admit the appeal filed by the Appellant on the grounds of limitation and non-payment of mandatory pre-deposit of 7.5 % of the disputed amount without going into the merits of the case

सत्यापित/ATTESTED
अधीक्षक/SUPRERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

Vishwajeet Singh 29.07.2026.

(Vishwajeet Singh)
Commissioner (Appeals),
Customs, Ahmedabad
Date: 07.2026

F. No. S/49-143/CUS/JMN/2024-25

By Registered post A.D

By Registered post A.D/Email

M/s Agrasen Ship Breakers Pvt. Ltd. Plot No. 113, Sosiya Ship Breaking Yard, Sosiya, P.O. Manar, Bhavnagar.

Copy to,

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in).
2. The Commissioner, Customs (Prev), Jamnagar.
3. The Deputy/Assistant Commissioner, Custom Division, Alang, Bhavnagar.
4. Guard File