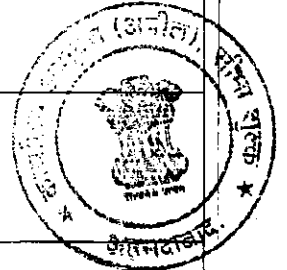




सीमाशुल्क(अपील) आयुक्तकाकार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,
चौथी मंज़िल 4th Floor, हडकोभवन HUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281
DIN – 20250471MN0000620023

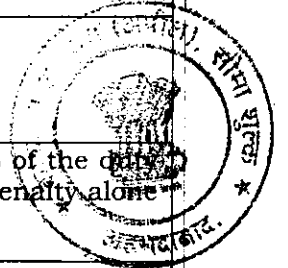
क	फ़ाइलसंख्या FILE NO.	S/49-09/CUS/KDL/23-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	KDL-CUS-000-APP-01-2025-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	25.04.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	CUS/RFD/IGST/49/2022 dated 13.01.2023 issued by Assistant Commissioner, Refund, Customs House, Kandla
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	25.04.2025
छ	अपीलकर्तकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Clean Science and Technology Pvt. Ltd., Office No 603 and 604, 6th floor, Tower No.15, Cybercity Magarpatta City, Hadapsar, Pune - 411013



1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै. This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीनलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआ

	देशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहैं।
	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.
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	बैगेजकेरूपमेंआयातितकोईमाल।
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो।
(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)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	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)	कोर्टफीएक्ट, 1870केमदसं.6 अनुसूची 1 केअधीननिर्धारितकिंगएअनुसारइसआदेशकी 4 प्रतियां, जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए।
(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)	सम्बद्धदस्तावेजोंकेअलावासाथमूलआदेशकी 4 प्रतियां, यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र) या रु. 1000/- (रूपएएकहज़ारमात्र), जैसाभीमामलाहो, सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां। यदिशुल्क, मांगागयाब्याज, लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु. 200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु. 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.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदि कोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं
	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, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण, पश्चिमीक्षेत्रीयपीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench

	दूसरीमंज़िल, बहुमालीभवन, निकट गिरधरनगरपुल, 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 जहाँ कि सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उस से 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 जहाँ कि सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो ले कि न रूपये 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 जहाँ कि 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, जहाँ शुल्क या शुल्क एवं दंड विवाद में है, या दंड के 10% अदा करने पर, जहाँ 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 रूपये 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 Clean Science and Technology Pvt. Ltd., Office No. 603 and 604, 6th floor, Tower No.15, Cybercity Magarpatta City, Hadapsar, Pune - 411013 (hereinafter referred to as "the Appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against the Letter F.No. CUS/RFD/IGST/49/2022 - Ref, dated 13.01.2023 (hereinafter referred to as "the impugned letter") issued by the Assistant Commissioner, Refund, Customs House, Kandla (hereinafter referred to as "the letter issuing authority").

2. Briefly stated, facts of the case as per the appeal memorandum are, that the appellant was engaged in exportation/importation of goods without payment of Customs duty under Advance Authorisation Scheme issued by DGFT, in terms of Notification No. 18/2015 - Cus, dated 01.04.2015 and had availed the exemption from payment of IGST on Bill of entries made at Kandla Port for the period 13.10.2017 to 05.07.2018. Further, the said notification was amended by Notification No. 79/2017 - Cus, dated 13.10.2017 wherein the condition of pre - import and physical export were inserted as condition for the purpose of availment of exemption of IGST. Thereafter, the appellant realized that they were not fulfilling the condition of pre-import and were required to pay the IGST on such imports made in the past and hence, made the payment of IGST of Rs. 1,67,85,045/- along with interest of Rs. 14,27,585/- even before the receipt of letter F.No. DRI/KZU/CF/(INT-09)/2018/4916 dated 27.08.2018 from DRI, Kolkata Zonal Unit, wherein it was directed to the appellant to pay differential IGST along with interest.

3. Further, appellant had also availed the ITC of Rs. 1,67,85,045/- in the GSTR-3B monthly returns. Appellant has also stated that the Hon'ble Gujarat High Court in the matter of M/s. Maxim Tubes Co. Pvt. Ltd., 8s others vide Judgment dated 04.01.2019 had set aside the pre-import condition inserted by DGFT under Notification No. 33/ 2015-20, dated 13.10.2017 and in Notification No. 18/2015-Cus dated 01.04.2015 by amending Notification No. 79/2017-Cus, dated 13.10.2017. Accordingly, appellant filed the claim of refund of interest dated 28.05.2019 in the jurisdictional office stating that Judgement of Hon'ble Gujarat High court is squarely applicable in their case and above amount of Rs. 1,67,85,045/- paid along with interest of Rs. 14,27,585/- is not due to the exchequer and liable to be refunded and as they had already taken the ITC of IGST amounting to Rs. 1,67,85,045/- in GST Credit Register, they had filed the application for the refund of interest amount of Rs. 14,27,585/-. Further, as per the documents available on the record, it is observed that the appellant had requested for personal hearing in the matter vide their letter dated 07.11.2022.

4. Further, the letter issuing authority vide letter F. No. CUS/RFD/IGST/49/2022 - Ref, dated 13.01.2023 returned the refund claim application stating that *"there are no provisions for granting IGTS refund manually from Customs formation except there is a payment of excess duty and IGST paid on imports in case of specialized agencies as provided vide circular No. 23/201- Customs dated 01.08.2019."*

4.1 Being aggrieved with the impugned letter, the appellant has filed the present appeal and mainly contended that;

- The Appellant imported goods under Advance Authorization and initially availed exemption under Notification No. 18/2015-Cus dated 01.04.2015. Later, assuming the exemption was not available, the Appellant paid IGST and interest.
- The Hon'ble Gujarat High Court in *Maxim Tubes Co. Pvt. Ltd. v. Union of India* held that the pre-import condition and Condition (xii) of Notification No. 18/2015-Cus (inserted via Notification No. 79/2017-Cus) were *ultra vires* and struck them down.
- Based on this ruling, IGST was not payable. Hence, the Appellant is entitled to a refund of the interest paid amounting to Rs. 14,27,585/-.
- The refund claim was filed in time in the prescribed form under the Customs Refund Application (Form) Regulations, 1995. However, no deficiency memo or personal hearing was provided. The refund was returned via letter dated 13.01.2023 citing Circulars irrelevant to the present case.
- Section 27 and 27A of the Customs Act mandate that refund claims must be processed within three months and interest paid on delay. The department failed to act within this timeline.
- The cited Circulars (Nos. 16/2019, 23/2019, and Instruction No. 15/2017) pertain to IGST refunds on exports and do not apply to interest refund on imports. The return of the refund application was delayed and appears to be an afterthought.
- The Appellant requested a personal hearing (letter dated 07.11.2022), which was denied. The refund was returned without due process.
- To preserve the right to refund and avoid limitation under Section 27, the appeal is being filed. Failure to appeal would result in the claim being treated as closed.
- The issue is sub judice, with the department's appeal pending before the Hon'ble Supreme Court in *Maxim Tubes*. The refund claim should have been kept in abeyance or transferred to the Call Book.
- The appeal is filed within the prescribed time limit to keep the claim alive until the matter is finally settled by the Hon'ble Supreme Court.

4. Shri Rajendra Khadilkar, Consultant, appeared for personal hearing on 23.04.2025 on behalf of the Appellant. He reiterated the submission made in the appeal memorandum. He also submitted copy of decision of Hon'ble High Court of Mumbai in case of M/s A.R. Sulphonates Private Limited vs Union of India [2025-VIL-328-BOM-CU] wherein it was held that levy of interest upon the IGST payment is beyond the provisions of the Customs Act, 1975.

5. Before going into the merits of the case, I find that as per appeal memorandum, the present appeal has not been filed within statutory time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962.

5.1 In this regard, 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.]

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.

5.2 It is observed from the Appeal Memorandum that the appellant has received the impugned order on 06.02.2023 and the appeal has been filed on 01.06.2023. Since the appellant has mentioned the date of receipt of impugned order as 06.02.2023 in their appeal memorandum, there is delay of 55 days in filing of appeal beyond the time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962. The appellant has in the application for condonation of delay had not mentioned the number of delayed days. However, as per the case records, the delay is 55 days beyond the time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962.

5.3 Therefore, I find that there is delay of 55 days in filing of Appeal beyond the appeal period of 60 days. As per the proviso to Section 128 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. 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."

5.4 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 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.

5.5 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, the Hon'ble High Court and the 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.

5.6 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 and the same is held to be time barred under Section 128 of the Customs Act, 1962. I am not empowered to condone the delay in filing the appeal beyond 30 days.

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



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

F.Nos. S/49-09/CUS/KDL/23-24

Dated - 25.04.2025

By Registered Post A.D.

To,
M/s Clean Science and Technology Pvt. Ltd./
Office No 603 and 604,
6th floor, Tower No.15,
Cybercity Magarpatta City,
Hadapsar, Pune - 411013

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

Copy to:

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Commissioner of Customs, Customs, Kandla.
3. The Deputy/Assistant Commissioner of Customs, Customs House, Kandla.
4. Guard File.