सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250671MN000011111F

क	फ़ाइल संख्या FILE NO.	S/49-341/CUS/AHD/2023-24
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)	AHD-CUSTM-000-APP-105-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.06.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. 15/DC/ICD/IMP/2023-24, dated 26.09.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Mehta Steel, G-106, RICO Industrial Area, Sanchore-343041 Rajasthan

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 exported
(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

Appeal has been filed by M/s. Mehta Steel G-106, RICO Industrial Areas, Sanchore-343041, Rajasthan, (hereinafter referred to as 'the Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 15/DC/ICD/IMP/2023-24, dated 26.09.2023 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, ICD - Khodiyar, Customs, Ahmedabad (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant had filed refund claim for Rs. 4,83,919/- of Additional Duty of Customs 4%, which was paid by them at the time of import of the goods, under notification No.102/2007- Cus., dated 14.09.2007 vide their letter received on 20.03.2017. The Appellant has imported "Cold Rolled Stainless Steel Coils (CTH 72202090) vide below mention Bills of Entry. The details of Bill of Entry and payment of Customs duty including 4% SAD (Additional Duty of Customs) plus quantity imported and quantity sold on payment of VAT / CST for which subject refund was claimed are as under-

Bill of Entry No. & Date	Description of goods	Challan No. & Date	Amount of duty paid through Challan	Amount of 4% SAD paid	Imported Qty. (In Kgs.)	Sold on payment of VAT / CST (In Kgs.)	Unsold / damaged / SAD pass on (In Kgs.)	Refund claimed
5148027, dated 04.05.16	Cold Rolled SS Coils	2014766512 dated 11.05.16	1818454	334309	61666	61666	0	334309
5172299, dated 06.05.16	Cold Rolled SS Coils	2014803399 dated 16.05.16	814129	149610	46624	46624	0	149610
								483919

2.1 In support of claim and fulfillment of the conditions of the subject notification, following documents have been submitted by the Appellant at the time of filing of the refund claim;

i. Refund Application in the prescribed proforma.
ii. Importer's copies of relevant Bills of Entry appropriate in original.
iii. Copy of Challan/s (E-Receipt/s) evidencing payment of Customs Duty.
iv. Certificate/s issued by M/s. T. L. Jain & Co., (Member Ship No.077234), Chartered Accountants.
v. Copies of Sale Invoice/s.
vi. Self-Declaration by the claimant in view of the Notification No.102/2007-Customs dated 14.09.2007.
vii. Self-Attested Copies of VAT/ST return for the relevant month/Quarter Alongwith challan/s evidencing payment of CST
viii. Copy of "Receivable" ledger Account for the relevant period

2.2 The procedure for refund of 4% Additional Duty of Customs is governed by Notification No. 102/2007-Customs, dated 14.9.2007 and procedures has been set out

prescribed vide Circular No. 6/2008-Customs dated 28.4.2008 read with Circular No.16/2008-Customs, dated 13.10.2008. As per Notification No. 102/2007-Cus dated 14.09.2007, the exemption from the whole of the Additional Duty of Customs leviable under sub-section (5) of section 3 of the Customs Tariff Act, has been granted on the goods imported into India for subsequent sale on payment of State VAT /Sales Tax or CST shall be given effect if the following conditions are fulfilled:

(a) The importer of the said goods shall pay all duties, including the said additional duty of customs, leviable thereon, as applicable, at the time of importation of the goods;

(b) The importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub-section (5) of section 3 of the Customs Tarill Act, 1975 shall be admissible;

(c) The importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer before the expiry of one year from the date of payment of the said additional duty of customs;

(d) The importer shall pay on sale of the said goods, appropriate sales tax or value added tax, as the case may be;

(e) The importer shall, inter alia, provide copies of the following documents alongwith the refund claim:

i. Document evidencing payment of the said additional duty,

ii. Invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed:

iii. Documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods.

2.3 Above refund application and supportive documents, certificates were scrutinized and verified by the refund section with reference to the compliance to the conditions of the Notification No. 102/2007-Cus dated 14.09.2007, in light of the procedure prescribed in the clarification issued by the Board vide Circular No. 6/2008-Customs dated 28.4.2008 read with Circular No. 16/2008-Customs dated 13.10.2008. During scrutiny of the claim, it was observed that refund claim in respect of bill of Entry No. 5172299 dated 06.05.2016 has not been filed with jurisdictional Deputy / Assistant Commissioner as provide condition 2 (c) of the Notification. Further the Appellant had been failed to fulfill condition 2 (b) of the Notification since specific SAD declaration had not been mentioned on the invoices produced with the claim. Therefore, a query letter dated 19.04.2017 followed by a reminder dated 09.05.2017 was issued to the Appellant. Since the refund claim appeared inadmissible due to non-fulfillment of conditions of Notification; it was also asked to state whether a show cause notice or personal hearing is desired in the matter. No written submission was received from the Appellant. Accordingly, the Deputy Commissioner of Customs, ICD – Khodiyar vide the Order in Original No. 571/DC/ICD/IMP/REF/2016, dated 14.06.2023 rejected the refund claim of

4% Additional Customs Duty of Rs.4,83,919/- filed by the Appellant.

2.4 Being aggrieved, the Appellant preferred an appeal before the Commissioner (Appeals), Customs, Ahmedabad. The Commissioner (Appeals), Customs, Ahmedabad vide OIA No. AHD-CUSTM-000-APP-057-18-19, dated 22.06.2018 remanded back the case to the proper officer to ascertain the facts, examine the documents, submission and case law relied upon by the Appellant and pass speaking order a fresh following principal of natural justice and legal provisions.

2.5 Personal hearings in the matter were fixed on 16.05.2023 11.08.2023, 16.08.2023 & 18.08.2023, however no one appeared for hearing on 11.08.203 and 10.08.2023. The Appellant vide letter dated 18.08.2023, requested for adjournment for hearing on 18.08.2023. Accordingly, it was decided to conduct personal hearing via video conference, wherein CA, Pradeep Jain, Authorized Representative of the Appellant appeared for virtual hearing on 26.08.2023 before the adjudicating authority. He submitted that the case was remanded back by the Commissioner (Appeals) for fresh adjudication considering the various judgments quoted by them in their defense reply.

2.6 Subsequently, in the remand proceedings, the adjudicating authority vide the impugned order has rejected the refund claim of 4% Additional Customs Duty of Rs. 4,83,919/-, filed by the Appellant.

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal wherein they have submitted grounds which are as under:-

3.1 It is submitted that the Adjudicating Authority has passed the impugned order has rejected the refund claim of the appellant on two grounds –

i. The invoice issued by the sales invoices does not bear the endorsement specified under condition no. 2(b) of Notification no. 102/2007-Cus dated 14.09.2007;
ii. The VAT payable (₹ 1,31,378/-) shown in certificate is not tallying with the amount of VAT payable (₹ 2,16,921.38/-) in the VAT return.

3.2 Regarding the above referred allegations, it is submitted that these are the same allegations that were subject matter of initial order in original no. 571/DC/ICD/IMP/REF/2017, dated 14.06.2017. These allegations were duly addressed in the written submissions submitted during course of personal hearing held in remand proceedings. However, the submissions given in this respect have not been considered at all and the impugned order in original has been passed for rejecting the refund claim on the same grounds as that of initial order in original. This approach is not sustainable and the impugned order deserves to be quashed.

3.3 Aligning with above, it is reiterated that the impugned order is alleging that the Appellant had not fulfilled the condition no. 2 (b) of the Notification no. 102/2007-Cus

dated 14.09.2007 read with para (iv) of the Circular no. 16/2008-Cus dated 13.10.2008. This condition states that "in respect of the goods covered herein, no credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible". In this respect, it is submitted that the question of mentioning this endorsement will arise only if the 4% SAD is mentioned on the VAT invoice issued by the importer. In the instant case, they have not mentioned the amount of SAD paid by them at the time of import, on the invoice as they have claimed its refund. Since the amount of SAD has not been separately mentioned on the invoice, there is no question of passing on the credit of SAD. There is possibility of buyer availing the credit of SAD only if the same is mentioned on the invoice issued by the appellant. When a duty amount is not mentioned on the invoice, no person can avail its credit. Therefore, there is no need of mentioning the endorsement that no credit of additional duty of customs will be allowed.

3.4 In continuation to above, it is reiterated that when the amount of SAD was not mentioned on the Invoice, the question of taking its credit does not arise at all. This view has been supported by various appellant authorities, some of the decisions are cited as follows:

i. *Maruti Suzuki India Ltd. v. CC (Import), Mumbai - 2013 (296) E.L.T. 100 (Tri.-Mum.) – (Para 5.1. may be referred);*
ii. RKG International Pvt. Ltd. v. CCE & Cus., Noida -2013 (290) E.L.T. 253 (Tri.-Del.);
iii. Equinox Solution Ltd. v. Malva Industries Ltd. - 2011 (272) E.LT. 310 (Tri.-Mum.)- *(Para 6 may be referred);*

In view of above decisions it is clear that when the SAD amount is not mentioned on the Invoice, there is no question of putting a stamp of non-admissibility of credit of SAD. This is exactly their case, therefore, extending the benefit of these decisions, the impugned order is liable to be set aside.

3.5 It is further submitted that the condition of endorsement / stamp that "no credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible" has been kept in the Notification No. 102/2007-Cus in order to ensure that the double benefit in form of refund and credit is not claimed. In other words, it is the intention of the Government that either the refund of SAD is allowed under the provisions of this Notification or the same can be recovered from the buyer by passing on its credit. In the instant case, this intention is fulfilled as only refund is claimed and the credit has not been passed on. Therefore, since the intention of Government is fulfilled, the refund of SAD is not deniable. Reliance is placed on the following case law-

i. *Novo Nordisk India Pvt. Ltd. v. CC (ACC & Import) - 2013 (292) E.L.T. 252 (Tri.-Mum.) - (Para 5 may be referred);*.

In view of above case laws, when the objective of putting the condition in the Notification is fulfilled, the benefit of SAD refund is not deniable to the Appellant. In view of above decisions, the impugned order is not justified and is liable to be quashed. It is worthwhile to mention here that all the above referred submissions given in context of condition No. 2 (b) of Notification No. 102/2007-Cus dated 14.09.2007 were duly given at paragraph number 4 to 6 of the written submissions filed on 31.08.2023. However, none of the above submissions have been discussed while passing the impugned order. This makes the impugned order non-speaking which deserves to be quashed.

3.6 Further, the impugned order has rejected the refund claim on the grounds that the VAT payable (₹ 1,31,378/-) shown in Certificate is not tallying with the amount of VAT payable (₹ 2,16,921.38/-) in the VAT Return. The detailed submissions in this regard were given at para number 8 of the written submissions filed on 31.08.2023 which has not been discussed, distinguished or considered while passing the impugned order. In this para, it was submitted that the difference between the figures of CA Certificate and VAT return was on account of fact that the VAT return comprise of the details of all the Sale Invoices issued during a quarter. On the other hand, the CA certificate is issued in respect of only those Sale Invoices in respect of which the SAD refund is filed. In the instant case, during the quarter of April 2016 to June 2016 which is the period in issue, the Appellant had issued four Sale Invoices (which were shown in VAT return). However, the SAD refund was filed only in respect of two invoices (for which CA certificate was issued). Thus, there was difference in the values.

3.7 In continuation to above, it is submitted that during the quarter April to June 2016, the Appellant had issued four Sales Invoices tabulated as follows:

Invoice no. & date	**Quantity**	**VAT (₹)**
1 dated 13.05.2016	61666	89,416
2 dated 27.05.2016	46624	41,962
3 dated 22.06.2016	49066	41215
4 dated 27.06.2016	53406	44329
Total VAT payable for quarter of April to June 2016		216922

Thus, total VAT payable on these four invoices comes to ₹ 2,16,922/- which was duly paid vide following two challans: -

Challan No. & Date	Amount paid (₹)
0011562250 dated 16.06.2016	131378
0012057837 dated 14.07.2016	85544
Total VAT paid for quarter of April to June 2016	216922

The details of these four invoices, VAT paid thereon amounting to ₹ 216922/- was duly shown in the return filed for the quarter April to June 2016.

Out of these four invoices, refund of SAD under Notification No. 102/2007-Cus which is subject matter of present case has been claimed by the Appellant on the two Invoices (Invoice no. 1 dated 13.05.2016 and 2 dated 27.05.2016). Therefore, CA Certificate was also issued in respect of these two invoices involving VAT of ₹ 131378/-. However, VAT was paid on all the four invoices and VAT return for the quarter was filed by showing all the four invoices involving the VAT amounting to ₹ 216922/-. This is the reason why amount of VAT paid as shown in CA Certificate does matches with VAT paid in return for the quarter April to June 2016. Thus, the Appellant had very well explained the reason of difference arising in the amount of VAT shown in CA Certificate and amount of VAT shown in VAT Return in the written submissions filed by them before the learned adjudicating authority at the time of persona hearing. As the reasons were duly explained, the learned adjudicating authority was supposed to discuss and distinguish these submissions and explain as to why the same have not been accepted while passing the impugned order. However, this has not been done and the impugned order has turned out to be a non-speaking order which is not justified and deserves to be quashed in view of following decisions of Hon'ble Apex Court:

i. *State of Himachal Pradesh vs. Sardara Singh - [2008-TIOL-160-SC-NDPS];*
ii. Commissioner of Central Excise, Bangalore vs. Srikumar Agencies - [2008 (232) E.L.T. 577 (S.C.)];

In view of above judgments, the impugned order in original is a nonspeaking order as it has ignored the submissions made by the Appellant. Therefore, the impugned order is not tenable in the eyes of law and is liable to be quashed and the appeal should be allowed.

3.8 It is further submitted that the refund should not be withheld on account of procedural lapses if the claimant has substantially complied with the conditions attached to the refund. In the instant case, the very basic motive of Government for issuing Notification no. 102/2007-Cus, dated 14.09.2007 is to allow refund of SAD paid at the time of import if the same is not passed onto the customer. Thus, if a person is able to establish the correlation between goods imported under the given Bill of Entry and those sold in the given Sale Invoices and he is able to prove that the SAD so paid at the time of import has not been passed on to customer while issuing the Sale Invoices; it can be said that the claimant has substantially complied with the conditions attached to refund. Therefore, the refund should be allowed and technical lapses should be ignored. In the instant case, the learned adjudicating authority has himself accepted that the Appellant has substantially complied with the pre-requisites of the refund. This is proved by the following paras reproduced from the impugned order: -

> *"15.1 The claimant has produced copies of the sales invoices as per the Annexure-B, as required under condition 2(e)(ii) of the notification, wherein the description of the Bills of Entry and Sales invoices tally to establish co-*

relation between the imported goods and the goods sold subsequently which is checked and verified by refund section. It is, further noticed that the sales invoices indicate Bill of Entry no. under which that particular item was imported. Hence, the co-relation between the goods imported under the given Bill of Entry and those shown as sold in the given invoices is established. I also find that the Chartered Accountant in his certificate dated 01.03.2017 has certified the same in the para-4 of the certificate.

15.2 In view of the above discussion and verification report and certificates submitted by the CA, I find that the claimant has provided sufficient evidences to establish the correlation between the goods imported vis a vis the goods sold."

The analysis of above paragraphs reproduced from the impugned order makes it ample clear that there is absolutely no doubt that the goods imported and sold further were the same. The impugned order has also not doubted the genuineness of the CA Certificate. Only two doubts were raised, which were of procedural nature. Even those doubts were already clarified in the written submissions submitted during personal hearing of remand proceedings on 31.08.2023. A detailed discussion on the same have already been done in forgoing paras. This proves that the Appellant has substantially complied with the conditions attached to refund of SAD and the refund has merely been rejected on the procedural grounds. This approach is not sustainable in view of following decisions: -

i. Formica India Division vs. Collector of Central Excise - [1995 (77) E.L.T. 511 (S.C.)]

As such, the verdicts of Hon'ble Supreme Court are in their favour and therefore the impugned order should be quashed. Following decisions are also relied upon:

i. *C.C.E., Mangalore v/s Mangalore Refinery & Petrochemicals Ltd - [2002 (150) ELT 114 (Tri-Bang)] – (Para 3 & 4 may be referred);*
ii. *Benara Udyog Pvt. Ltd. vs. Collector of C.Ex., Kanpur - [1998 (103) E.L.T. 104 (Tribunal)];*
iii. *Vikram Laminators Pvt. Ltd. vs. Collector of C. Excise, Aurangabad - [1995(79)E.L.T. 147 (Tribunal)];*
iv. *Techocrats Engineering Co. vs. Commissioner of C. Ex., Mumbai – II - [2001(137) E.L.T. 459 (Tri.-Mumbai)];*
v. *Delhi Paper Products Co. vs. Collector of C. Ex. New Delhi - [2000(125)E.L.T. 661(Tribunal)] – (Para 4 may be referred);*
vi. *Tufail Ahmed vs. Collector of Central Excise - [1992(62) E.L.T. 745 (Tribunal)];*
vii. Lokhandwala Construction Industries vs. C.C.E., MUMBAI-II - (1997(92)E.L.T. 703 (Tribunal)]:-

The aforesaid decisions clearly bring about the position that substantial benefit cannot be denied for the procedural lapses. In the instant case, there is no doubt regarding the following facts: -

- SAD was duly paid at the time of import.
- The goods sold through the sale invoices submitted with refund claim were the same as those imported vide bill of entries in issue.
- CA Certificate is correct and authentic.
- The difference between amount of CA certificate and amount of VAT return was due to fact that the four sale invoices were issued, while refund claim was filed in respect of only two sale invoices.
- As the amount of SAD was not mentioned on the sale invoice, it is not possible for the buyer to claim its refund. Thus, there was no need of any declaration on the sale invoice regarding the fact that the credit is not allowed on the amount of SAD.

Thus, as the conditions attached to refund have been substantially complied with, extending the benefit of above cited decisions, the impugned order should be smashed.

3.9 The Appellant has further submitted that they had filed a number of judicial pronouncements at the time of filing written submissions during the course of remand proceedings. The citations of these judgments have been merely reproduced in the impugned order; however, none of these judgments have been discussed and distinguished while passing the impugned order. These judgments have been categorically cited and discussed in the forgoing paras. Thus, the impugned order has turned out to be a non-speaking and non-reasoned order which is not sustainable in view of the judgments of Hon'ble Supreme Court in the case of State of Himachal Pradesh vs. Sardara Singh - [2008-TIOL-160-SC-NDPS] and Commissioner of Central Excise, Bangalore vs. Srikumar Agencies - [2008 (232) E.L.T. 577 (S.C.)] as already cited in the forgoing paras. Therefore, the impugned order in original being a non-speaking and non-reasoned order deserves to be quashed.

3.10 The Appellant has submitted that the impugned order is arising out of remand proceedings. The learned Commissioner (Appeals) has remanded the case by passing Order in Appeal No. AHD-CUSTM-000-APP-057-18-19, dated 22.06.2018. While remanding the case, learned Commissioner (Appeals) has issued following directions at para 9 to the adjudicating authority: -

> *"09. In view of the above discussions, I remit the matter to the proper officer who shall examine and verify all the facts, submissions and case laws relied upon by the appellant and pass speaking order afresh by following legal provisions and principles of natural justice."*

Thus, the learned adjudication officer was supposed to examine and verify all the facts, submissions and case laws and pass the speaking order. However, in view of submissions made in forgoing paras, it is clear that: -

- The learned adjudicating authority has totally ignored the submissions made in respect of following allegations –
  - The Invoice issued by the Sales Invoices does not bear the endorsement specified under condition no. 2(b) of Notification no. 102/2007-Cus dated 14.09.2007.

- The VAT payable (₹ 1,31,378/-) shown in certificate is not tallying with the amount of VAT payable (₹ 2,16,921.38/-) in the VAT return.

- None of the case laws cited by the Appellant in their written submissions submitted during the course of personal hearing has been discussed and distinguished.
- The impugned order has been passed on the same lines as that of the initial order in original no. 571/DC/ICD/IMP/REF/2017 dated 14-6-2017. No submissions made during the course of personal hearing has been considered irrespective of the fact that the same were available on face of record.

The above facts clarifies that the remand directions of learned Commissioner (Appeals) have not been followed while passing the impugned order. This approach is erroneous as while passing the order in remand proceedings, the authority passing the order is bound to comply with remand directions. If remand directions are not complied with, the order so passed is liable to be quashed. In this context, reliance is placed on following judgments: -

i. *Commissioner of Central Excise, Agra vs. Okay Glass Industries - [2015 (330) E.L.T. 872 (All.)] – (Para 17 may be referred);*
ii. *Madura Coats Pvt. Ltd. vs. Commissioner of C. Ex., Tirunelveli - [2019 (365) E.L.T. 345 (Tri. - Chennai)];*

In view of above cited decisions, it is ample clear that where the matter is remanded back, the adjudicating authority is bound to follow the decision given by remanding authority. The adjudicating authority cannot pass the de-novo order on the exactly same grounds as were there in the earlier order. In the case of Appellant also, the impugned order has been passed on the same grounds as were there in the initial order. Therefore, extending the benefit of above referred judgments, the impugned order is liable to be dropped.

PERSONAL HEARING:

4. Personal hearing in the matter was on 07.05.2025, following the principles of natural justice. Shri Pradeep Jain, Chartered Accountant appeared for the hearing on behalf of the Appellant and re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the adjudicating authority and the defense put forth by the Appellant in their appeal memorandum. Ongoing through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

i. Whether the adjudicating authority failed to follow the specific directions of the previous remand order, rendering the impugned order non-speaking and legally unsustainable;

ii. Whether the refund claim can be rejected on the ground that the Sales Invoices do not bear the specific endorsement as per Condition 2 (b) of Notification No. 102/2007-Customs;

iii. Whether the refund claim can be rejected on the ground of discrepancies between the VAT certificate and VAT return regarding the amount of VAT paid;

iv. Whether the refund claim for Bill of Entry No. 5172299, dated 06.05.2016 was correctly rejected due to jurisdictional issues.

5.1 Being aggrieved, the Appellant has filed the present appeal on 21.11.2023. In the Form C.A.-1, the date of communication of the impugned Order-In-Original dated 26.09.2023 has been shown as 30.09.2023. Thus, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. As the appeal has been filed against rejection of refund claim and no demand has been raised vide the impugned order, pre-deposit under the provisions of Section 129E is not required. As the appeal has been filed within the stipulated time-limit, it has been admitted and being taken up for disposal on merits.

6. The critical point is whether the adjudicating authority failed to follow the specific directions of the previous remand order, rendering the impugned order non-speaking and legally unsustainable. The previous Order-in-Appeal (AHD-CUSTM-000-APP-057-18-19, dated 22.06.2018) specifically directed the adjudicating authority to "examine and verify all the facts, submissions and case laws relied upon by the Appellant and pass speaking order afresh by following legal provisions and principles of natural justice.". The impugned order, however, appears to largely reiterate the original grounds of rejection without adequately addressing the Appellant's detailed submissions and the plethora of case laws cited by them during the remand proceedings. For instance, the Appellant extensively cited judicial pronouncements regarding the compliance with Condition 2 (b), but the impugned order simply re-affirms non-compliance without a proper rebuttal or distinguishing of these judgments.

6.1 This failure to engage with the submissions and remand directions renders the impugned order a non-speaking order and an act of defiance of the appellate authority's directions. The Hon'ble Supreme Court in State of Himachal Pradesh vs. Sardara Singh reported at 2008-TIOL-160-SC-NDPS and Commissioner of Central Excise, Bangalore Versus Srikumar Agencies reported at 2008 (232) E.L.T. 577 (S.C.) has categorically stated that a non-speaking or non-reasoned order, especially in remand proceedings, is not sustainable and violates the principles of natural justice. The adjudicating authority is bound to follow the directions given in the remand order.

6.2 Condition 2 (b) of Notification No. 102/2007-Customs requires that the importer, while issuing the Invoice for sale of the said goods, "shall specifically indicate in the Invoice that in respect of the goods covered therein, no credit of the Additional Duty of Customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible."

6.3 The Appellant's argument is persuasive: if the SAD amount is not separately mentioned on the Sales Invoices, the question of buyers availing its credit simply does not arise. A buyer can only take credit of a duty if it is specifically shown on the Invoice. When no SAD amount is mentioned, no credit can be taken. The purpose of Condition 2 (b) is to prevent double benefit (refund to importer and CENVAT credit to buyer). If no SAD is shown, no credit is possible, and the purpose of the Notification is fulfilled. This view is consistently supported by various judicial pronouncements cited by the Appellant:

- In Maruti Suzuki India Ltd. v. CC (Import), Mumbai [2013 (296) E.L.T. 100 (Tri.-Mum.)], the Tribunal held that if SAD is not separately mentioned on the Sales Invoice, the question of buyers taking any credit would not arise at all.

- RKG International Pvt. Ltd. v. CCE & Cus., Noida [2013 (290) E.L.T. 253 (Tri.-Del.)] similarly held that since Customs Duty was not even mentioned on the Invoices, purchasers could not claim credit, and the purpose of the notification was fulfilled.

- Equinox Solution Ltd. v. Malva Industries Ltd. [2011 (272) E.L.T. 310 (Tri.-Mum.)] also affirmed that if no duty is mentioned in the Invoice, the buyer cannot take credit.

6.4 The adjudicating authority failed to adequately address these binding precedents. Given that the Appellant has confirmed (through a Chartered Accountant Certificate and their submissions) that SAD was not passed on, and not shown separately on the invoices, the substantive benefit of refund cannot be denied on this procedural ground alone.

6.5 The Appellant has provided a detailed explanation for the alleged discrepancy in VAT amounts. They clarified that the CA Certificate's VAT figure (₹1,31,378/-) relates specifically to the two Invoices on which SAD refund was claimed, whereas the VAT return figure (₹2,16,922/-) represents the total VAT paid for the entire quarter (April to June 2016), which includes other sales not related to the SAD refund claim. They have also provided the relevant Challans and VAT returns to substantiate this explanation. This explanation appears logical and is supported by documentary evidence. The adjudicating authority's rejection of the refund on this ground without properly appreciating the Appellant's detailed reconciliation is erroneous. The difference is clearly explained by the scope of the documents (specific Invoices vs. Quarterly Return) and does not indicate any non-compliance or ineligibility for refund.

6.6 The impugned order rejected the refund for Bill of Entry No. 5172299, on the ground that it pertained to Pipavav Port, and the refund claim should have been filed there. The Appellant has rightly argued that if there was a jurisdictional issue, the correct course of action for the adjudicating authority would have been to transfer the file to the appropriate jurisdiction, not to outright reject the claim. This is a well-established principle that a substantive right (like a refund) should not be denied on procedural grounds, especially when the mistake is on the part of the department. The Hon'ble Supreme Court in Formica India Division vs. Collector of Central Excise reported at 1995 (77) E.L.T. 511 (S.C.) and the Tribunal in C.C.E., Mangalore vs. Mangalore Refinery & Petrochemicals Ltd reported at 2002 (150) ELT 114 (Tri-Bang) have emphasized that technical or procedural lapses should not lead to the denial of substantive benefits. The Appellant had filed the claim, and if the receiving office was not the correct one, it should have been transferred.

6.7 As discussed across various issues, the adjudicating authority's decision to reject the refund claim appears to be based on procedural lapses (non-endorsement, jurisdictional error, VAT discrepancy explanation not accepted) rather than a substantive finding of ineligibility or unjust enrichment. The Hon'ble Supreme Court and various High Courts and Tribunals have consistently held that substantive benefits should not be denied on account of technical or procedural irregularities, provided the conditions are substantially complied with and there is no unjust enrichment. The Appellant has provided a CA Certificate confirming no unjust enrichment, and the SAD was paid by them.

6.8 The various cases cited by the Appellant, including those on SSI exemption, reinforce this principle:

- Benara Udyog Pvt. Ltd. Versus Collector Of C. Ex., Kanpur [1998 (103) E.L.T. 104 (Tribunal)];
- Vikram Laminators Pvt. Ltd. Versus Collector Of C. Ex., Aurangabad [1995(79)E.L.T.147 (Tribunal)];
- Technocrats Engineering Co. Versus Commissioner Of C. Ex., Mumbai-Ii [2001(137) E.L.T. 459 (Tri-Mumbai)];
- Delhi Paper Products Co. Versus Collector Of C. Ex., New Delhi [2000(125)E.L.T. 661(Tribunal)];
- Tufail Ahmed Versus Collector Of Central Excise [1992(62) E.L.T. 745 (Tribunal)];
- Lokhandwala Construction Industries Ltd. Versus C.C.E., Mumbai-Ii [1997(92)E.L.T.703 (Tribunal)];

These judgments collectively establish that minor procedural deficiencies or non-filing of declarations should not result in the denial of a substantive benefit if the conditions are otherwise fulfilled and the underlying purpose of the provision is met (i.e., no unjust enrichment).

6.9 Given the detailed explanations and supporting case laws presented by the Appellant, the impugned order's decision to reject the refund claim on the stated grounds

is found to be unsustainable. The adjudicating authority appears to have failed to adequately discharge its responsibilities as directed in the previous remand order, particularly by not properly examining and verifying the Appellant's submissions and applying relevant judicial precedents.

7. In view of the above findings, the impugned order is legally not sustainable and is, accordingly, set aside.

8 Accordingly, the impugned order is set aside and appeal is allowed with consequential relief, if any, in accordance with law.

(Amit Gupta)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-341/CUS/AHD/2023-24 1735 Date: 30.06.2025

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