



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 - 20251071MN0000777F62

क	फ़ाइल संख्या FILE NO.	S/49-146/CUS/MUN/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)	MUN-CUSTM-000-APP-380-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.10.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original no. MCH/315/AC/ROJ/Gr-V/2023-24 dtd. 25.07.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.10.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Gravita India Limited, Survey No. 43, Patri-Gundala Road, Near NH 8A, Village Moje Gundala, Taluka Mundra- Kutch (Gujarat)-370410



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 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 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 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 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के 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 रुपए 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, केन्द्रीय 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; पांच 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 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. Gravita India Limited, Survey No. 43, Patri-Gundala Road, Near NH 8A, Village Moje Gundala, Taluka Mundra-Kutch (Gujarat)-370410, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/315/AC/ROJ/Gr-V/2023-24 dated 25.07.2023 (hereinafter referred to as 'the impugned order') issued by the Assistant Commissioner of Customs, Import Group-V, Customs House, Mundra.

2. Facts of the case, in brief, are that the Appellant filed Bill of Entry No. 6813127/11.07.2023 through their CB M/s. Aradhya Global Freight Forwarder, for the clearance of 100.03 MTS Net Weight of LEAD SCRAP having total Assessable Value Rs.77,86,444/-, imported vide BL No. BWA0100077E/08.06.2023 and Invoice No. AIR0308B/23 dated 08.06.2023. The cargo was examined under the supervision of Superintendent and Deputy Commissioner Docks Examination, Custom House Mundra, in presence of authorized person of the CB. During the examination of the cargo, the weight of goods was found to be 9.667 MTS in excess of the declared weight of cargo Net Weight of 100.03 MTS, which is 9.59% of the declared quantity. Duty calculation in respect of the mis-declared quantity and value of the same has worked out to be as under:

Descripti on of goods	Excess Gross Weight of goods (In MTS)	Unit Rate of goods (In (USD)	Invoice Value USD)	Accessable Value enhanced (In enhanced (In INR)	Differential Duty Payable (In INR)
LEAD SCRAP	9.667	935.000050	9038.65	7,52,490/-	1,46,661/-
			9038.65	7,52,490/-	1,46,661/-

2.1 Thus, the appellant mis-declared the quantity of goods to the tune of 9.667 MTS valued at Rs.7,52,490/- and the duty involved in respect of mis-declared good is Rs.1,46,661/- The appellant failed to observe the conditions of Section-46(4) of the Customs Act, 1962 and made the goods liable for confiscation under the provisions of Section 111(1) and 111(m) of the Custom Act 1962 & rendered themselves liable to the penal action under the provisions of Section 112(a) of the Customs Act, 1962.

2.2 The importer M/s. Gravita India Limited, vide their letter dated



20.07.2023 submitted that they do not want Personal Hearing & Show Cause Notice in this matter and stated that they are ready to pay differential duty on subject excess goods.

2.3 Consequently, the Adjudicating Authority passed the following order:

- a. He demanded & confirmed applicable differential duty of Rs.1,46,661/- and ordered to confiscate the goods viz. 9.667 MTS valued at Rs.7,52,490/- imported against Bill of Entry No. 6813127/11.07.2023 under Section 111(1) and 111(m) of the Customs Act, 1962, however he gave an option to the importer to redeem the same on payment of Redemption Fine of Rs. 75,000/- (Rupees Seventy five thousand only) in lieu of confiscation under Section 125 of the Customs Act, 1962.
- b. He imposed a Penalty of Rs. 14,666/- (Rupees Fourteen thousand six hundred & sixty six only) on M/s. Gravita India Limited, Survey No. 43, Patri- Gundala Road, Near NH 8A, Village Moje Gundala, Taluka Mundra-Kutch (Gujarat)-370410, under Section 112(a) (ii) of Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

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

3.1 The appellant had no intention to cause import of any quantity over and above the quantity declared in the Bill of Entry. However, due to nature of goods, it appeared that some quantity was found in excess on weighment. In as much as the impugned order has nowhere found that the appellant had intentionally or knowingly imported any excess quantity, Adjudicating Authority could have exercised restraint from extremely harsh action like confiscation under Section 111 (1) and (m) of Customs Act, 1962 and imposition of penalty under Section 112 (a) of Customs Act, 1962.

3.2 The quantum of fine to the extent of Rs. 75,000/- which is 50% of the declared value is extremely harsh and not in commensurate with the alleged



offence. Hence, it is prayed to quash and set the fine imposed in lieu of confiscation. The appellant further submitted that imposition of penalty without mens rea is not permissible in law. There is no evidence to suggest that appellant had prior knowledge about import of excess quantity. On this basis, it is prayed to quash and set aside the penalty imposed on the appellant under Section 112 (a) of Customs Act, 1962. The appellant say and submit that the difference arose owing to error on the part of CFS in failing to deduct tare weight from gross weight in order to determine the actual weight of imported goods for levying duty. As such, there is no excess import so as to invite confiscation and penalty.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 09.07.2025, following the principles of natural justice wherein Shri Vikas Mehta, Consultant appeared for the hearing and he re-iterated the submission made at the time of filing the appeal. He also tendered copy of decision in case of Poddar Car World Pvt Ltd, 2025 (7) TMI 324, Calcutta HC. He requested to consider the appeal on merit after condoning the delay. On merits, he submitted that there was some mistake by CFS in weighment procedure and as such, there was no excess import. He requested to remand the matter.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Assistant Commissioner, Customs House, Mundra and the defense put forth by the Appellant in their appeal.

5.1 Section 128(1) of the Customs Act, 1962, mandates that an appeal to the Commissioner (Appeals) must be presented within sixty days from the date of communication of the order. The proviso allows the Commissioner (Appeals) to condone the delay for a further period of thirty days if sufficient cause is shown. This establishes a maximum permissible delay period. In the instant case, the timeline is as under:

- Date of Communication of OIO: 28.07.2023.
- Original 60-day Period Ends: 26.09.2023.
- Maximum Extended 30-day Period Ends: 26.10.2023.
- Date of Filing the Appeal: 07.12.2023.




5.2 The appeal was filed on November 07.12.2023 with a delay of 72 days , which is beyond the statutory maximum period of ninety days (60 days + 30 days) from the date of communication of the Order-in-Original. It is an established and settled position of law that the Commissioner (Appeals) is a creature of statute and possesses no inherent powers beyond those explicitly conferred by the parent Act. The statutory language in the proviso to Section 128(1) is an exclusionary one, clearly delineating the maximum extent to which delay can be condoned, which is "a further period of thirty days".

5.3 The issue of the appellate authority's power to condone delay beyond the statutory limit is conclusively settled by the Hon'ble Supreme Court of India in the case of Singh Enterprises v. Commissioner of Central Excise, Jamshedpur [2008 (221) E.L.T. 163 (S.C.)]. The Supreme Court examined the pari materia provisions of Section 35 of the Central Excise Act, 1944, which is structurally identical to Section 128 of the Customs Act, 1962. The Court categorically held that the appellate authorities, being creatures of statute, are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The language of the proviso clearly shows that the Appellate Authority has no power to allow the appeal to be presented beyond the extended period. There is a complete exclusion of Section 5 of the Limitation Act, 1963, as the special statute prescribes its own specific, finite period of limitation. Following this definitive pronouncement, the delay of 42 days beyond the total permissible period of 90 days cannot be condoned by this Appellate Authority, regardless of the merits of the case or the reason cited for the delay. The inability to condone the delay is not a matter of discretion, but a jurisdictional bar imposed by the statute.

5.4 The learned Consultant for the Appellant, Shri Vikas Mehta, relied upon a High Court decision in the case of Poddar Car World Private Limited to request condonation of the delay by invoking the principles relating to Section 5 of the Limitation Act. This submission is misplaced and legally untenable for the following reasons:

- a) Contextual Difference in Law: The case of Poddar Car World Private Limited vs. The Superintendent of Cost and Central Excise [2025 (7) TMI 324 - Calcutta High Court] deals with the limitation period prescribed under Section 107 of the Central Goods and Services Tax (CGST) Act,




2017. While the CGST Act is a fiscal statute, its limitation provisions are distinct, and the Calcutta High Court's finding on the non-exclusion of Section 5 of the Limitation Act in that specific context is not applicable to an appeal filed under Section 128 of the Customs Act, 1962.

- b) Binding Supreme Court Precedent: The binding authority on the interpretation of the pari materia limitation clause in the former Central Excise Act (and by extension, the Customs Act) is the Supreme Court's clear ruling in Singh Enterprises (supra), which explicitly concluded that there is a complete exclusion of Section 5 of the Limitation Act. This precedent, being that of the apex court on the interpretation of the power of the Commissioner (Appeals) under a similar fiscal law, holds supremacy and is binding on this forum.
- c) Jurisdictional Bar: The ratio of the Calcutta High Court decision regarding the CGST Act cannot override the binding interpretation of the Supreme Court on the limitation clause of the Customs Act/Central Excise Act. The power of the Commissioner (Appeals) under the Customs Act is strictly circumscribed by the 90-day outer limit, and any appeal filed after this period is a nullity in the eyes of law.

5.5 The Calcutta High Court judgment deals specifically with an appeal filed under Section 107 of the CGST Act, 2017. The ratio of the judgment relies on the principle that Section 5 of the Limitation Act is attracted because it has not been expressly or impliedly excluded by Section 107 of the CGST Act, 2017. Therefore, the reliance placed on the Poddar Car World Private Limited judgment is incorrect in law for the purpose of an appeal under the Customs Act, 1962. Unlike the CGST Act, the established judicial precedent concerning the Customs Act, 1962, prohibits the condonation of delay beyond the statutory maximum period of ninety days. As the appeal was filed on 07.12.2023, it is clearly barred by limitation.

5.6 The Commissioner (Appeals) has no jurisdiction under Section 128 of the Customs Act, 1962, to entertain an appeal filed beyond the permissible period. Any discussion on the merits of the case is therefore pre-empted by this finding on maintainability.




5.7 In view of the above findings, the appeal filed by M/s. Gravita India Ltd. is time-barred as it was presented beyond the maximum statutory period of ninety days prescribed under the proviso to Section 128(1) of the Customs Act, 1962. In light of the fact that the appeal was filed on 07.12.2023, which is 42 days beyond the maximum statutory period allowed under the proviso to Section 128(1) of the Customs Act, 1962, this forum is left with no jurisdiction or power to entertain the appeal. The appeal is, therefore, legally time-barred.

6. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, and for the reasons set forth in the findings above, I pass the following order:

(i) The appeal filed by M/s. Gravita India Limited against Order-in-Original No. MCH/315/AC/ROJ/Gr-V/2023-24 dated 25.07.2023 is rejected as being barred by limitation, having been filed beyond the maximum statutory period of ninety days as prescribed under the proviso to Section 128(1) of the Customs Act, 1962.

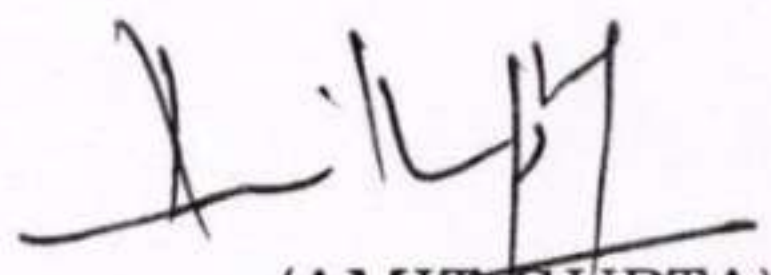
(ii) Consequently, the findings and operative part of the Order-in-Original No. MCH/315/AC/ROJ/Gr-V/2023-24 dated 25.07.2023 remain undisturbed due to the non-adjudication of the appeal on its merits.

7. The appeal filed by M/s. Gravita India Limited is hereby rejected.



સત્વાપિત/ATTESTED

અધીક્ષક/SUPERINTENDENT
સીમા શુલ્ક (અપીલ્સ), અહમદાવાદ
CUSTOMS (APPEALS), AHMEDABAD


(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-146/CUS/MUN/2023-24
4273

Date: 30.10.2025

By Speed Post /E-Mail

To,
M/s. Gravita India Limited,
Survey No. 43, Patri-Gundala Road,
Near NH 8A, Village Moje Gundala,
Taluka Mundra-Kutch (Gujarat)-370410

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Mundra.
3. The Assistant Commissioner of Customs, Import Group-V, Custom House, Mundra.
4. Guard File.

