



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
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DIN - 20251071MN000000F071

क	फ़ाइल संख्या FILE NO.	S/49-137/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-382-25-26
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/ADC/MK/142/2023-24 dated 10.08.2023
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 Jageshwar Plastic House, D-1593, DSIDC Industrial Area, Narela Near Mangla Mall, Delhi - 110040



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 :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td><td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td></tr> <tr> <td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td><td>2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td></tr> </table>	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
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 Jageshwar Plastic House, D-1593, DSIDC Industrial Area, Narela Near Mangla Mall, Delhi - 110040, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/MK/142/2023-24 dated 10.08.2023 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner of Customs, Mundra.

2. Facts of the case, in brief, are that the appellant filed various bills of entry as mentioned in "Table-A" below, through its Customs Brokers namely M/s R R Logistics & M/s A D Mehta Clearing Agency, for import of goods declared as "Non Magnetic Stainless Steel Cold Rolled Circle Grade J3 (Mixed Size) (200 & 201 Series)" availing the benefit of Sr. No. 967(1) of Notification No. 046/2011 dated 01.06.2011 on the basis of Certificates of Origin purportedly issued by the Ministry Of International Trade and Industry, Malaysia.

Table - A**(Value in Rs.)**

Sl. No.	Bill of Entry and Date	Description of Goods	Ass. Value of the goods	COO reference no.	Name of Supplier
1.	4966341 dated 19.09.2019	Non Magnetic Stainless Steel Cold Rolled Circle 201 Grade J3	2785365	KL-2019-AI-21-010876 dated 18.09.2019	M/s Artfransi International SDN BHD, Malaysia
2.	4966378 dated 19.09.2019	Non Magnetic Stainless Steel Circle Grade J3 (Mixed Size)	5907402	KL-2019-AI-21-010632 dated 26.08.2019	M/s Artfransi International SDN BHD, Malaysia
3.	4649803 dated 26.08.2019	Non Magnetic Stainless Steel Circle Grade J3 (Mixed Size)	6027376	KL-2019-AI-21-010628 dated 14.08.2019	M/s Artfransi International SDN BHD, Malaysia
4.	4154324 dated 20.07.2019	Non Magnetic Stainless Steel Circle Grade J3 (200 Series) (Mixed Size)	2651681	KL-2019-AI-21-023614 dated 12.07.2019	M/s CEKAP Prima SDN BHD, Malaysia
		Total	1,73,71,824/-		



2.1 The intelligence gathered by the Officers of SIIB Section, Custom Mundra indicated that certain importers were importing "Non Magnetic Stainless Steel Cold Rolled Circle Grade J3 (Mixed Size) (200 & 201 Series)" classifying the same under CTH 7220 through ASEAN Countries especially Malaysia and violating the Rules meant for Determination of Origin of Goods under the Preferential Trade Agreement between the Government of ASEAN and Indian Rules, 2009 in order to avail exemption from payment of Basic Custom Duty. Further, Intelligence suggested that exporters in Malaysia are providing COO Certificate to the Importers of "Non Magnetic Stainless Steel Cold Rolled Circle Grade J3 (Mixed size 200&201 Series)" mentioning Criteria as either WO (Wholly Obtained goods or the Regional Value Content (hereinafter referred to as RVC) to be above 15% whereas the same were not actually qualifying the minimum requirement of 15%, value addition as per the Notification No. 189/2009-Cus (N1) dated 31.12.2009. In view of the above mis-declaration by the importers undue benefits on the basis of the preferential certificates of origin were being availed which resulted into misuse of the FTA resulting in evasion of large amount of customs duty. Therefore, the above mentioned Bills of Entry were taken up for further verification.

2.2 As the intelligence suggested that the importer had wrongly availed the benefit of the preferential rate of duty, therefore the above mentioned Bills of Entry were taken up for further verification. During the investigation, a letter F.No. 456/241/2021-CUS. V dated 21.04.2021 received from Ministry of Finance, Department of Revenue, CBIC, New Delhi regarding the verification of Country of Origin Certificates under AIFTA Preferential Certificates whereby they informed as under:

"2. In this regard, it is to inform that the Ministry of International Trade and Industry, Malaysia vide its email dated 25.03.2021 has informed that they have never received a COO application from Artfransi International SDN BHD."

2.3 Also, a letter F. No. 456/119/2021-CUS V dated 21.05.2021 received from Ministry of Finance, Department of Revenue, CBIC, New Delhi regarding the verification of Country of Origin Certificates said to be issued in Malaysia under AIFTA for export of Stainless Steel Coils/Circles whereby they informed that Ministry of International Trade and Industry, Malaysia (MITI) vide

email dated 18.05.2021 confirmed that they never received any COO application from M/s CEKAP Prima SDN BHD. As the issuing authorities had confirmed that they never received a Country of Origin application from Artfransi International SDN BHD and M/s CEKAP Prima SDN BID, therefore, it appeared that COOs submitted by the importer to avail the benefit of Sr. No. 967(1) of Notification No. 046/2011 dated 01.06.2011 are fake.

2.4 Further, in this regard Summons dated 27.04.2021 were issued to the importer and concerned CB, however no one appeared for the statement purpose. Another Summons dated 29.11.2021 was issued but no one turned up. Thereafter, a letter dated 11.04.2022 was written to submit the import related document, however, no response received from the importer. The details of the imports and the amounts of duties foregone as a result of producing the fake certificate of origin are as under:

Table - B

Sl. No.	B/E No. & Date	A. V.	BCD @ 7.5%	SWS @10% of BCD	IGST @18%	Total duty	Duty Paid	Diff. Duty
1	4966341 dated 19.09.2019	2785365	208902.37	20890.2375	542728.37	772520.98	501366	271154.9828
2	4966378 dated 19.09.2019	5907402	443055.15	44305.515	1151057.28	1638417.94	1063332	575085.9447
3	4649803 dated 26.08.2019	6027376	452053.2	45205.32	1174434.21	1671692.73	1084928	586764.7336
4	4154324 dated 20.07.2019	2651681	198876.07	19887.60	516680.04	735443.72	477303	258140.7254
		Rs. 1,73,71,824/-					Total diff. duty	Rs. 16,91,146.39/-

It appeared that M/s Jageshwar Plastic House had evaded the customs duty to the tune of Rs.16,91,146/- by adopting the above modus operandi.

2.5 Further, the Show Cause Notice dtd. 31.01.2023 was issued to M/s Jageshwar Plastic House to show cause, as to why:-

- The goods imported vide bills of entry as mentioned in Table-A with Assessable Value of Rs.1,73,71,824/- (Rupees One Crore Seventy-Three Lakhs Seventy One Thousand Eight Hundred and Twenty Four



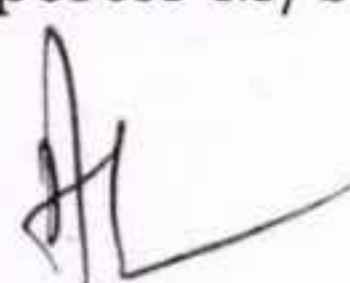
only) should not be confiscated under Section 111(o) & 111(m) of the Customs Act, 1962.

- ii. The duty exemption benefit of the Notification No. 46/2011-Cus. dated 01.06.2011, as amended, claimed and extended at the time of assessment of bills of entry as mentioned in Table-A should not be denied and the Differential duty amount of Rs. 16,91,146/- (Rupees Sixteen Lakhs Ninety One Thousand One Hundred and Forty Six only) should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962.
- iii. Interest on the amount mentioned in Table-B above should not be recovered under the provisions of Section 28AA of the Customs Act, 1962.
- iv. Penalty under Section 114A of the Customs Act, 1962 should not be imposed on M/s Jageshwar Plastic House in relation to the said goods.
- v. Penalty under Section 114AA of Customs Act, 1962 should not be imposed on M/s Jageshwar Plastic House in relation to said goods;

2.6 Consequently, the Adjudicating Authority passed the order as under:

- i. She confirmed and order for confiscation of the goods having Assessable value of Rs.1,73,71,824/- (Rupees One Crore Seventy-Three Lakhs Seventy One Thousand Eight Hundred and Twenty Four only) pertaining to Bills of Entry No. 4966341 dated 19.09.2019, 4966378 dated 19.09.2019, 4649803 dated 26.08.2019 and 4154324 dated 20.07.2019, as Goods declared were in contravention of Section 46 of the Act and are therefore liable for confiscation under Section 111 (m) and 111(o) of the Customs Act, 1962. However, she refrained from imposing the fine as goods are not available for confiscation.

- ii. She confirmed and ordered to recover differential duty of Rs. 16,91,146/- (Rupees Sixteen Lakhs Ninety One Thousand One Hundred and Forty Six only) under section 28(4) of Customs Act, 1962 along with interest at applicable rate under section 28AA of the Customs Act, 1962 from the Importer M/s Jageshwar Plastic House.



- iii. She imposed a penalty of Rs. 16,91,146/- (Rupees Sixteen Lakhs Ninety one Thousand One Hundred and Forty Six Only) plus penalty equal to applicable interest under section 28AA payable on the duty demanded and confirmed above on the Importer M/s Jageshwar Plastic House under section 114A of Customs Act, 1962.
- iv. She also imposed a penalty of Rs. 4,00,000/- (Rupees Four Lakhs only) on the Importer M/s Jageshwar Plastic House under section 114AA of Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

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

3.1 The Appellant, with unwavering legal and moral conviction, asserts that the Country of Origin Certificates presented by them, which were subjected to denial of customs duty exemption in the impugned Order in Original, are authentic and legitimate documents, duly issued by the competent authority within the Government of Malaysia. Consequently, the Appellant contends that they were fully justified in seeking the entitlement of duty exemption as stipulated within the scope of these certificates. The aforementioned show cause notice was issued subsequent to a cursory verification process, resulting in the reception of reports conveyed via letter No.456/241/2021-CUS. V dated 23rd April 2021 and No.456/119/2021-CUS V dated 21st May 2021. In light of the inadequacy of the initial verification process, the Appellant found themselves in a perplexing predicament when called upon to respond to the show cause notice, given their lack of authority to initiate an independent investigation. On the Appellant's part, they undertook strenuous efforts to painstakingly establish the circumstances leading to the erroneous reporting of the authenticity of the Country of Origin Certificates, as referenced in the aforementioned two letters. These diligent endeavors served to reaffirm the irrefutable fact that the certificates in question were, indeed, legitimately issued by the competent authority, while the prior communications failed to reflect the factual and accurate state of affairs.



3.2 In light of the identified error, the Ministry of International Trade & Industry, Malaysia, has undertaken a comprehensive investigation and subsequently rectified the matter by issuing a formal communication referenced as No.MITI/007721/23(02), dated 12th October 2023. This communication is addressed to the Director (International Customs Division), Central Board of Indirect Taxes & Customs, Department of Revenue, Ministry of Finance, situated at Room No.49, North Block, New Delhi-110001. The purpose of this communication is to officially validate and confirm the authenticity and accuracy of all Country-of-Origin Certificates, which had previously been erroneously called into question in the impugned Order in Original.

3.3 The preceding communication unequivocally establishes that the Country of Origin Certificate presented by the Appellant during the clearance of the bills of entry was indeed issued by the competent authority. Accordingly, the Appellant's correct utilization of the exemption stipulated under notification No.189/2009-Cus (N.T.) dated 31st December 2009 is entirely warranted. In paragraph 7.1 of the show cause notice, it is alleged, without substantiating evidence, that the Appellant was involved in a conspiracy to defraud the Government of India by illicitly exploiting the benefits of the concessional rate of customs duty as per Notification No. 46/2011-Cus dated 01.06.2011. Notably, no formal investigation was conducted to establish the existence of such a conspiracy or to identify any co-conspirators. Accusations of such a grave nature, bearing criminal implications, should not have been levied in the absence of a thorough and substantiated inquiry. The investigation process was tainted due to the prejudicial content documented in paragraph 1 of the show cause notice, which regrettably led to a cursory examination, culminating in the issuance of the said notice. Consequently, the learned adjudicating authority made a grave error in finding the existence of a conspiracy without any substantiating evidence.

3.4 In light of the aforementioned proposition, the demand ascertained in the show cause notice and confirmed in the impugned order, the confiscation and penalties confirmed are not sustainable and required to be dropped.

PERSONAL HEARING:

4. It is pertinent to mention that the appellant had not submitted the challan for pre-deposit along with the appeal filed on 07.11.2023 and in the



Index of appeal at Sr. No.5 , the appellant had mentioned that they will pre-deposit challan in 10 days. Further in the Sr. No. 6 of CA-1 meant for mentioning the details of pre-deposit, they have mentioned ' Not Applicable'. However, the same was not produced with this office. Personal hearing was granted to the Appellant on 21.05.2025, following the principles of natural justice wherein the appellant was specifically informed about non payment of pre-deposit . The appellant requested vide their letter dtd. 20.05.2025 for adjournment of 4 weeks for arranging the pre-deposit which was not paid while filing of appeal. Thereafter Personal hearing were fixed on 12.06.2025 and 02.07.2025. However ,the appellant vide their letters dtd.11.06.2025 and 01.07.2025 requested to grant one month for making arrangement of pre-deposit. I find that despite considerable time and opportunities provided to the appellant in the interest of justice, it is observed that the appellant has neither paid the pre-deposit nor appeared for personal hearing. I therefore proceed to decide the case on the basis of available records.

DISCUSSION AND FINDINGS:

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

5.1 The right to appeal is a creation of statute and must be exercised subject to the conditions laid down in the statute itself. The primary issue is the Appellant's failure to deposit the mandatory pre-deposit as prescribed under Section 129E of the Customs Act, 1962. Section 129E(i) of the Customs Act, 1962, explicitly mandates:

"The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,— (i) under sub-section (1) of section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the [Principal Commissioner of Customs or Commissioner of Customs]".

5.2 The right to appeal is a conditional statutory remedy. For an appeal filed against an Order-in-Original passed by an Additional Commissioner, the mandatory pre-deposit is 7.5% of the aggregate of the Duty, Fine, and Penalty in dispute. The facts on record demonstrate that the Appellant has failed to comply




with this statutory requirement. The Appellant's original appeal form stated "Not Applicable" for the pre-deposit, which is factually incorrect as pre-deposit is mandatory. The subsequent requests for Personal Hearing (PH) by the Commissioner (Appeals) repeatedly drew the Appellant's attention to the non-compliance of the pre-deposit. The PH notice dated 08.05.2025 explicitly states: "It is to inform that till date you have not made the pre-deposit as prescribed under Section 129E of the Customs Act, 1962...". The Appellant, in its own communication dated 01.07.2025 (and 11.06.2025, 20.05.2025), admitted its inability to make the payment due to "financial constraints" and requested extensions of one month to arrange the requisite funds. As of the date of passing this order, the Appellant has failed to submit any proof of payment (e.g., TR-6 Challan) of the mandatory 7.5% pre-deposit.

5.3 The appeal was filed without the necessary pre-deposit, which is a mandatory statutory requirement for the appeal to be 'entertained'. The core legal principle at hand is established in Section 129E(i) of the Customs Act, 1962, which explicitly states that the Commissioner (Appeals) "shall not entertain any appeal" unless the appellant has deposited the prescribed percentage of the duty or penalty in dispute. The word "shall not entertain" in Section 129E creates an absolute bar for the appellate authority to proceed with the merits of the case in the absence of the stipulated pre-deposit. The appellate authority has no discretionary power to waive the pre-deposit below the statutory percentage, which was explicitly removed by the 2014 amendment to Section 129E. In the instant case, despite having been notified and given an opportunity during the hearing, the Appellant failed to provide proof of the mandatory deposit before the final consideration of the appeal.

5.4 The records conclusively demonstrate that the mandatory deposit was not made at the time of filing the appeal, nor by the date of the Personal Hearing. The office of the Commissioner (Appeals) formally notified the Appellant on 08.05.2025 that the pre-deposit as prescribed under Section 129E was "not made" till that date. The Appellant was aware of the statutory defect but failed to rectify it before the final consideration of the appeal, confirming a clear and sustained non-compliance with the jurisdictional requirement of Section 129E. In line with the settled legal position, the appeal is not entertainable.

5.5 Since the appeal cannot be entertained due to the fatal procedural defect of non-payment of the mandatory pre-deposit, it is not necessary and indeed impermissible to proceed to discuss the merits of the appeal. The appeal



is therefore rejected solely on the ground of non-compliance with the statutory pre-condition.

6. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

- i. The appeal filed by M/s. Jageshwar Plastic House against the Order-in-Original No. MCH/ADC/MK/142/2023-24 dated 10.08.2023 is hereby rejected on the ground of non-compliance with the mandatory pre-deposit requirement under Section 129E(i) of the Customs Act, 1962, without going into the merits of the case.


(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-137/CUS/MUN/2023-24


Date: 30.10.2025

By Speed post /E-Mail

To,
M/s Jageshwar Plastic House,
D-1593, DSIDC Industrial Area,
Narela Near Mangla Mall, Delhi - 110040



સત્યાપિત/ATTESTED


અધીક્ષક/SUPERINTENDENT
સીમા શુલ્ક (અપીલ), અમદાવાદ.
CUSTOMS (APPEALS), AHMEDABAD

Copy to:

1. ✓ The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.