



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 - 20250771MN000000D525

क	फ़ाइल संख्या FILE NO.	S/49-133/CUS/MUN/2024-25
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-151-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	14.07.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Bill of Entry No. 4017366 dtd.15.06.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	14.07.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Arora Vinyl Pvt. Ltd., Plot No. 921, MIE, Part-A, District Jhajjar, Bahadurgarh, Haryana-124507



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

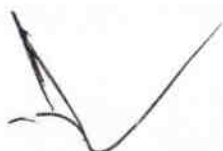
M/s. Arora Vinyl Pvt. Ltd., Plot No. 921, MIE, Part-A, District Jhajjar, Bahadurgarh, Haryana-124507 (hereinafter referred to as the 'appellant') has filed the present appeal in terms of Section 128 of the Customs Act, 1962, challenging the assessment of Bill of Entry filed at Custom House, Mundra .

2. Facts of the case, in brief, as per the appeal memorandum are that the appellant is engaged in the manufacturing of Kane Vinyl PVC Paste Resin PSH-31 20KG PB from Malaysia. The appellant got an offer from their supplier namely Kaneka Paste Polymers SDN BHD, Malaysia for supply for the said item and after due negotiation, the appellant as well as the foreign supplier entered for supply of 50MT @ 1.02/kg. The said supplier after confirmation of the Purchase Order No. INV20240403-04 dated 03.04.2024 shipped the consignment vide Invoice No. 93200101 dated 20.05.2024 for a total value of USD 51,000. Three containers containing the same goods were laden were shipped at port Kalang on 17.05.2024 and Bill of Lading for the said consignment was issued on 20.05.2024. The consignment reached Mundra Port for which IGM was filed on 13.06.2024 at 0000 hrs. i.e. midnight of 12.06.2024.

2.1 The Govt. of India vide Notification No. 09/2024-Cus (ADD) dated 13.06.2024 imposed Anti Dumping Duty under Section 9A of Customs Tariff Act, 1975 which was uploaded on the official gazette at 22.10 hrs on 13.06.2024.

2.2 The appellant filed their Bill of Entry No. 4017366 dated 15.06.2024 for clearance of the said consignment. The goods were assessed at the normal rate of duty. However, later on a query was raised on 28.06.2024 asking the appellant as to why Anti Dumping duty in terms of Notification No. 09/2024-Cus (ADD) dated 13.06.2024 be not levied. That the appellant replied to the said query vide letter dated 05.07.2024 and submitted letter stating therein that Anti Dumping Duty is not leviable as the consignment has already reached Indian Port for which IGM was also filed prior to coming into affect of the Anti Dumping Notification. However, the goods were not cleared and the appellant was asked to pay applicable ADD as per Notification No. 09/2024-Cus (ADD) dated 13.06.2024.

2.3 The appellant paid Anti Dumping Duty under protest and cleared the



goods as delay in release of the consignment was causing disruption in manufacturing activities.

2.3 Thereafter, the appellant vide letter dated 07.07.2024 requested the assessing officer to issue a speaking order. However, no speaking order has been passed .

3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned assessment of Bill of Entry, the appellant has filed the present appeal wherein they have submitted grounds which are as under:-

3.1 The Assessing Authority has erred in both law and facts and therefore the impugned assessment is liable to be set aside. A bare perusal of the Bill of Lading dated 20.05.2024 reveals that the goods were shipped on Board on 17.05.2024 and therefore the goods was already out of control of shipper as well as the appellant when there was no Anti Dumping Duty in force. It is submitted that the consignment has already sale from prior to coming into force of the anti dumping duty notification, the same cannot be made applicable to such consignment. The consignment reached to Mundra Port on 12.06.2024 at night and the Import general manifest was filed at midnight 00.00.00 hrs. when the time showed as 13.06.2024 and still at the time of filing of manifest, no anti dumping duty notification was imposed. The anti damping duty notification came into force on 13.06.2022 at 22.10 hrs.

3.2 It is admitted fact on record that Notification No. 09/2024-CUS (ADD) dated 13. 06.2024 was uploaded in the official gazette only after 22:10 hours on 13.06. 2024. Therefore, at the time the goods were imported (00:00:00 hours on 13.06. 2024), this notification was not yet in force. As the notification was not in force at the time of import, no Anti Dumping Duty was applicable on the consignment. The retrospective application of a notification imposing duties prior to its publication is the domain of the legislature only No such retrospective application has been indicated in Notification No. 09/2024-Cus (ADD) dated 13.06.2024 Hence, retrospective application of the notification by the assessing authority was contrary to the law.



3.3 It is a settled position of law that no tax can be imposed on the subject without words in the Act/Notification clearly showing an intention to lay a burden upon him. As Notification No. 09/2024-Cus (ADD) dated 13.06.2024 does not indicate any intention to burden any transactions prior to its publication with ADD, the assessing officer has illegally collected the ADD in the present case.

3.4 The principle of correct classification and assessment of Customs Duty must strictly adhere to the legal and factual circumstances of the case and it is the duty cast upon the assessing officer to not only to collect the duty but to collect the same applying the correct provision of law and notifications. The retrospective application of duties, or incorrect imposition thereof, without proper legal backing, undermines the legal framework governing customs and trade regulations.

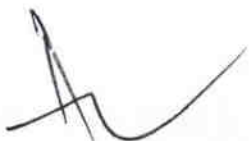
3.5 The 'Import under Section 9A of the Customs Tariff Act, 1975 will have to be understood to mean entering of territorial waters. It is submitted that the goods in question were shipped and imported prior to the introduction of the subject Notification which imposed the said anti dumping duty.

PERSONAL HEARING

4. Personal hearing in the matter was held on 03.07.2025 in virtual mode. Shri Prem Ranjan Kumar, Advocate, appeared for hearing representing the appellant. He reiterated the submissions made in the appeal memorandum.

DISCUSSION AND FINDINGS:

5. Before going into the merits of the case, I find that the present appeal has not been filed within statutory time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962. As per the appeal memorandum the date of communication of order/assessment appealed against is 03.07.2024 whereas the appeal has been filed on 12.09.2024. Thus the appeal has been filed after a delay of 11 days beyond stipulated period of 60 days . In their application for condonation for delay, the appellant has submitted that the delay was caused due to the reason that the concerned Director who is authorized to file the appeal was out of station . It is further submitted that the delay is neither intentional nor deliberate and requested for condonation of delay.




5.1 The delay upto 30 days in filing of appeal beyond the time limit of 60 days is condonable as stipulated under Section 128(1) of the Customs Act, 1962. Therefore, in the interest of justice, I take a lenient view and allow the appeal filed by the appellant as admitted by condoning the delay of 8 days in filing appeal under the proviso to the Section 128(1) of the Customs Act, 1962.

5.2 Now coming to the merits of the case, the issue to be decided in the present appeals is whether the assessment made in the Bills of Entry mentioned at Table -II above by levying Anti Dumping duty imposed vide Notification No. 09/2024-Cus(ADD) dtd. 13.06.2024 in the facts and circumstances of the case, is legal and proper or otherwise.

5.3 I find that the appeal have been filed against assessment of Bill of Entry. It is observed that the Hon'ble Supreme Court in case of ITC Ltd Vs CCE Kolkata [2019 (368) ELT216] has held that any person aggrieved by any order which would include self-assessment, has to get the order modified under Section 128 or under relevant provisions of the Customs Act, 1962. Hence, the appeal preferred by the appellant against assessment in the impugned Bill of Entry are maintainable as per the judgment of the Supreme Court in ITC case supra.

5.4 It is further observed that no speaking order by the proper officer in the matter is available. Hence, I find that entire facts are not available on records to verify the claims made by the appellant. Copy of appeal memorandum were also sent to the jurisdictional officer for comments. However, no response have been received from the jurisdictional office. Therefore, I find that remitting the case to the proper officer for passing speaking orders in each case becomes sine qua non to meet the ends of justice. Accordingly, the case is required to be remanded back, in terms of sub-section (3) of Section 128A of the Customs Act, 1962, for passing speaking order by the proper officer under Section 17(5) of the Customs Act, 1962 after following the principles of natural justice. While passing the speaking order, the proper officer shall also consider the submissions made in present appeals on merits. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs – 2004 (173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels P. Ltd. [2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins

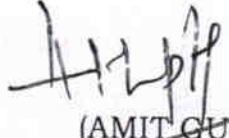


Cookers Ltd. [2012 (284) E.L.T. 677(Tri. - Del)] wherein it was held that Commissioner (Appeals) has power to remand the case under Section-35A(3) of the Central Excise Act, 1944 and Section-128A(3) of the Customs Act, 1962.

6. Accordingly, the appeal filed by the appellant is allowed by way of remand.



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


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

F. No. S/49-133/CUS/MUN/2024-25

2421

Date: 14.07.2025

By Registered post A.D/E-Mail

To,
M/s. Arora Vinyl Pvt. Ltd.,
Plot No. 921, MIE, Part-A,
District Jhajjar, Bahadurgarh,
Haryana-124507

Copy to:

1. The Chief Commissioner of Customs, Ahmedabad zone, Custom House, Ahmedabad.
2. The Pr. Commissioner of Customs, Customs House, Mundra.
3. The Dy/Asstt Commissioner of Customs, Custom House, Mundra.
4. Guard File.