



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,

चौथी मंज़िल 4th Floor, हडकोभवनHUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20260271MN000000DE93

क	फाइलसंख्या FILE NO.	S/49-406/CUS/JMN/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-434-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	26.02.2026
	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	134/DC/JMR/T/2024-25 dated 19.09.2024
	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	26.02.2026
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s. RSPL Limited, Survey No. 471, Dwarka Porabandar Highway, Village- Kuranga, Taluka - Dwarka, Dist, Devbhumi Dwarka Gujarat 361 335.

1. यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.

This copy is granted free of cost for the private use of the person to whom it is issued.

2. सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहैं.

	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.	
	निम्नलिखितसम्बन्धितआदेश/Order relating to :	
(क)	बैगेजकेरूपमेंआयातितकोईमाल.	
(a)	any goods imported on baggage.	
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो.	
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.	
(ग)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.	
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.	
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :	
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :	
(क)	कोर्टफीएक्ट, 1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां, जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.	
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.	
(ख)	सम्बद्धदस्तावेजोंकेअलावासाथमूलआदेशकी 4 प्रतियां, यदिहो	
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any	
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां	
(c)	4 copies of the Application for Revision.	
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र) यारु.1000/- (रूपएएकहज़ारमात्र), जैसाभीमामलाहो, सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क, मांगागयाब्याज, लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोएसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-	
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदि कोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसीमाशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण, पश्चिमीक्षेत्रीयपीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench



	दूसरीमंज़िल, बहुमालीभवन, निकटगिरधरनगरपुल, असार वा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन, सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-	
	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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररूपए.	
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो; पाँचहज़ाररूपए	
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो; दसहज़ाररूपए.	
(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)	इसआदेशकेविरुद्धअधिकरणकेसामने, मांगेगएशुल्कके 10% अदाकरनेपर, जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं, यादंडके 10% अदाकरनेपर, जहांकेवलदंडविवादमेंहै, अपीलरखाजाएगा।	
(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.	उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.	
	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. RSPL Limited, Survey No. 471, Dwarka Porabandar Highway, Village-Kuranga, Taluka - Dwarka, Dist, Devbhumi Dwarka Gujarat 361 335 (hereinafter referred to as "the appellant") has filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order in Original No. 134/DC/JMR/T/2024-25 dated 19.09.2024 (hereinafter referred to as "the impugned Order") passed by the Deputy Commissioner of Customs, Customs Division, Jamnagar, (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant, filed Bill of Entry No. F-2243323 dated 31.08.2022 seeking home clearance of 54,914MT of Limestone of UAE origin, imported by them through vessel M.V. BEKS SKY by classifying the same under Customs Tariff Heading No. 25210010 of the first schedule to the Customs Tariff Act, 1975. The subject Bill of Entry was assessed provisionally for the want of original documents, test report, etc. on the request of the appellant.

2.1 Since, the Limestone was of UAE origin, on the basis of original Certificate of Origin No. 2884325 dated 30.08.2022. The appellant has claimed exemption of BCD as per Sr. No. 11444 of Notification No. 022/2022-Cus dated 30-04-2022 and SWS @ 10%, as per Clause 108 of Finance Act, 2018. However, IGST @ 5%, applicable vide Notification No. 01/2017-IGST dated 28-06-2017, were levied on the provisionally assessed value of Rs. 8,64,66,250/-. Accordingly, the appellant paid, provisionally assessed duty of Customs amounting to Rs.63,20,683/- vide Challan No. 2040707115 dated: 31-08-2022.

2.2 Chemical Examiner, Gr II, Central Excise & Customs Laboratory, Vadodara vide their report no. RCL/JAMNAGAR/IMP/1927/22-23 dated 28.10.2022 confirmed that the sample received is of Limestone as per IS: 3204-1978 (RA 2015). The appellant vide their letter dated 22.09.2022 submitted all documents in original viz. Commercial invoice, Freight Invoice, Insurance Certificate, Bill of Lading, Barge & Crane Charge Invoice, Draft Survey Report of Load Port as well as of Discharge Port etc. and requested for final assessment of Bill of Entry and also, submitted demurrage declaration on 01.07.2024.

2.3 The adjudicating authority vide the impugned order finally assessed the subject Bill of Entry and ordered to pay differential duty on demurrage charges along with the applicable interest.



3. The Appellant contended that duty on demurrage charges was not payable and filed the present appeal and mainly contended that;

- Rule 10 (2) of the Customs Valuation Rules provides that the value of the imported goods shall include the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation and the cost of insurance to the place of importation. At the time of the introduction of the Customs Valuation Rules in its present form and along with the introduction of the new Section 14 of the Customs Act (vide Section 95 of the Finance Act, 2007), an Explanation was added to Rule 10 (2) of the Customs Valuation Rules. Though the said Explanation provides that the cost of transport of the imported goods under Rule 10(2)(a) includes the ship demurrage charges on chartered vessels, lighterage or barge charges. It is also clarified that the said Explanation is to take care of cases of imports by time-chartered vessels or bulk carriers discharging goods on high seas needing additional expenditure for delivery of the goods at the "place of importation" mentioned in Rule 10(2)(a).
- Even though Explanation to Rule 10(2)(a), Customs Valuation Rules, prescribes the inclusion of ship demurrage charges, the same goes beyond the purview of Section 14 of the Customs Act. Because it is a settled law that Rule cannot override over Act especially when the rule has been held ultra-virus by the higher judicial forums. thus cannot become part of transaction value.
- As per Section 14 of the Customs Act, 1962, the value of imported or exported goods shall be the transaction value. In the case of imported goods, the transaction value shall be:

The price actually paid or payable when goods are sold for export to India For delivery at the place and time of importation

Where the buyer and seller of the goods are not related and Price is the sole consideration for the sale.

*The transaction value shall include any amount paid or payable for availing any of the following services which does not include demurrage charges.

1.Engineering, 2. Brokerage and commissions, 3. Royalty, 4.Lice fees, 5. Insurance, 6. Loading, 7.Cost of transportation to the place. importation, 8. Handling charges, 9. Unloading etc.

- The Adj. Autho. failed to appreciate that the higher forum including Apex Court has decided the cases on the similar issue in favour Appellant. He further relied upon the following cases:



- (i) Commissioner Central Excise, Mangalore vs Mangalore Refinery & Petrochemicals Ltd. (2015-TIOL-306-SC-CUS]
- (ii) Hon'ble CESTAT Ahmedabad in the case of C.C. Ahmedabad V Reliance Industries Limited (CESTAT Ahmedabad) Customs Appeal No.10267 of 2021
- (iii) Hon'ble CESTAT Ahmedabad in the case of Sanghi Industries Ltd Vs C.C.-Kandla (CESTAT Ahmedabad) in Customs Appeal No. 10127 of 2016 DB

• The principles of the judicial discipline requires that the order of the higher appellate Authority should be followed unreservedly by the subordinate authority and it cannot be disregarded simply because the said appellate order is subject matter of appeal which is pending. In this aspect the appellant relied upon the following decisions:

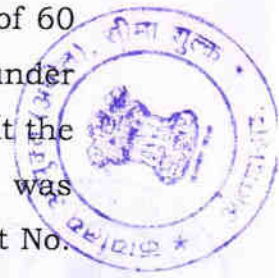
(i) Aay Sons Elastomerics India and others v. State of UP and others 1995(29) ATJ-561

(ii) UOI -vs.- Kamalakshi Finance Corporation AIR 1992 SC 711

• Amendment to Customs Valuation Rules vide Circular 39/2017-25. Customs dated 26-09-2017 issued by the Central Board of Excise & Customs, New Delhi. are also self-explanatory. The demand of duty, interest and penalty may be dropped and the proceedings be set aside and with consequential relief to the appellant.

4. Shri R K Ambwani, Tax Consultant, appeared for personal hearing in virtual mode on 15.01.2026 on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

5. Before going into the merits of the case, it is observed that the appeal filed by the appellant, have been filed beyond normal period of 60 days but within the condonable period of 30 days as stipulated under Section 128(1) of the Customs Act, 1962. Appellant has submitted that the impugned order was received by them on 19.09.2024 and the appeal was to be filed by 18.11.2024 and the appeal was filed through Speed post No. EH238182524IN before 14-11-2024 at the address mentioned in the preamble of the impugned order i.e. 7th floor, Mrudul Tower, Behind Times of India, Ashram Road, Ahmedabad-380009 and the same was returned being wrong address. Upon receiving the returned post on 23.11.2024, the appellant immediately re-submitted the appeal at the functional address of the Commissioner of Customs (Appeals) i.e. 4th Floor, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009, on 28-11-2024. Thus there is delay which was unintentional, procedural, and caused solely due to incorrect/ address mentioned in the assessment order, which was entirely beyond the control of the appellant. The appellant further submitted that



at no stage there was any negligence or deliberate delay on their part. The appellant further requested that the delay in filing the appeal if any may kindly be condoned under the applicable provisions of the Customs Act, 1962, and the appeal may please be admitted and decided on merits. Therefore, taking a lenient view to meet the ends of justice, I allow the appeal, as admitted condoning the delay in filing the appeal beyond the normal period of 60 days under proviso to the Section 128(1) of the Customs Act, 1962.

6. I have gone through the facts of the case available on record, grounds of appeal and submission made by the appellant at the time of personal hearing. It is observed that the issues to be decided in present appeal is whether the impugned order passed by the adjudicating authority by including demurrage charges in the assessable value, in the facts and circumstances of the case, is legal and proper or otherwise.

6.1 It is observed that the appellant, filed Bill of Entry No. F-2243323 dated 31.08.2022 seeking home clearance of 54,914MT of Limestone of UAE origin, imported by them through vessel M.V. Beks Sky by classifying the same under Customs Tariff Heading No. 25210010 of the first schedule to the Customs Tariff Act, 1975. The subject Bill of Entry was assessed provisionally for the want of original documents, test report, etc. on the request of the appellant. Chemical Examiner, Gr II, Central Excise & Customs Laboratory, Vadodara vide their report no. RCL/JAMNAGAR/IMP/1927/22-23 dated 28.10.2022 confirmed that the sample received is of Limestone as per IS: 3204-1978 (RA 2015). The appellant vide their letter dated 22.09.2022 submitted all documents in original viz. Commercial invoice, Freight Invoice, Insurance Certificate, Bill of Lading, Barge & Crane Charge Invoice, Draft Survey Report of Load Port as well as of Discharge Port etc. and requested for final assessment of Bill of Entry and also, submitted demurrage declaration on 01.07.2024.

6.2 It is observed that the adjudicating authority vide the impugned order finally assessed the subject Bill of Entry and ordered to pay differential duty on demurrage charges along with the applicable interest. I have gone through the impugned order and observe that no personal hearing was granted before issuance of the impugned order. I am of the considered view that a reasonable opportunity of being heard is required to be provided. By not providing a reasonable opportunity of being heard, the requirement of natural justice was not satisfied. Thus, the impugned order has been issued in violation of the principles of natural justice. Since no personal hearing was given to the appellant, there is no finding of the adjudicating authority on the contentions raised by the appellant as well as

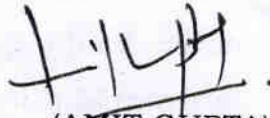
the case laws relied upon by him. Hence, all the contentions are raised by the appellant in the appeal memorandum have been made for the first time before me and the adjudicating authority has no opportunity to record his findings on the same. Therefore, I find that remitting of the case for passing speaking orders after providing the appellant with an opportunity for personal hearing becomes *sine qua non* to meet the ends of justice. Accordingly, the case is required to be remanded back, in terms of sub-section of (3) of Section 128A of the Customs Act, 1962, for passing speaking order by the adjudicating authority by following the principles of natural justice. 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 Bombay Hon'ble 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)] holding 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.

7. In view of the foregoing, the appeal is allowed by way of remand to the adjudicating authority for passing a reasoned and speaking order, after affording the appellant an adequate opportunity of personal hearing. The adjudicating authority is directed to examine all relevant facts, documents, case laws and submissions placed on record during the appeal proceedings. Based on such examination, fresh orders shall be issued expeditiously, strictly in accordance with the principles of natural justice and the applicable legal provisions. It is clarified that, while passing this order, no findings or views have been expressed on the merits of the case or on the submissions made by the appellant. These shall be independently examined and considered by the adjudicating authority in accordance with law.

8. In view of above, 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.

By Registered Post A.D.

F.No. S/49-406/CUS/JMN/2024-25

5923

Dated -26.02.2026

To,

- (i) M/s. RSPL Limited, Survey No. 471,
Dwarka Porabandar Highway,
Village-Kuranga, Taluka - Dwarka, Dist,
Devbhumi Dwarka Gujarat 361 335
- (ii) Shri R.K. Ambwani, Tax Consultant,
226, Indrapuri Colony, Indore, 452017, (M.P.)



Copy to:

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs (Prev), Jamnagar.
3. The Deputy/Assistant Commissioner of Customs, Customs Division, Jamnagar.
4. Guard File.

