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

DIN-20260871MN00000BE345

क	फ़ाइल संख्या FILE NO.	S/49-29/CUS/JMN/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) :	JMN-CUSTM-000-APP-43-2026-27
ग	पारितकर्ता PASSED BY	Shri Vishwajeet Singh Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	04.08.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	26/ADC/DBK/2023-24 dated 09.02.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	04.08.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	1. M/s Nayara Energy Ltd., P.B.no. 24, Khambhalia PO, Dist: Dev Bhumi Dwarka, Gujarat 361305.

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 imported
(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.

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(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

1. Brief facts of the case

1.1 M/s Nayara Energy Ltd., P.B.no. 24, Khambhalia PO, Dist: Dev Bhumi Dwarka, Gujarat 361305. (herein after referred to as the "Appellant for the sake of brevity) has filed the present appeal against Order-In-Original No. 26/ADC/DBK/2023-24 dated 09.02.2024 (herein after referred to as the "impugned order") issued by the Additional Commissioner, Custom(Prev), Jamnagar, (herein after referred to as the "Adjudicating Authority).

1.2 The Appellant vide application dated 10.07.2008 had requested for fixation of Brand Rate of Basic Custom Duty and Cess paid thereon for product Furnace Oil (FO) exported by them from Vadinar Port vide Shipping Bill No. F-11/08-09 dated 23.05.2008, F-13/08-09 dated 04.06.2008 & F-15/08-09 dated 11.06.2008 under Rule 6 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. When the Applicant submitted the relevant documents removing the deficiencies in its Original Application dated 10.07.2008, acknowledgement dated 05.05.2009 with Registration No. 135/DBK/2009 was issued to the Applicant by the then Assistant Commissioner, Central Excise, Rajkot. Later on, the Applicant vide Application dated 20.07.2009 requested to add component of NCCD in their Original Application dated 10.07.2008.

1.3. Show Cause Notice dated 01.09.2009 was issued from F. No. VIII/20-37/Cus-T/2008 to the Applicant by the then Additional Commissioner, Central Excise, Rajkot on the grounds of delayed submission of Drawback Application and negative value addition.

1.4. Brand Rate Fixation Order dated 31.12.2009 was issued from F. No. VIII/20-37/Cus-T/2008 in the instant case by the then Additional Commissioner, Central Excise, Rajkot only for Basic Custom Duty and Cess paid thereon wherein, no duty incidence on account of NCCD was considered for computing Brand Rate eligibility as NCCD was not specified for fixation of Brand Rate.

1.5. As the Brand Rates of Duty Drawback were fixed for Basic Custom Duty and Cess paid thereon as discussed at Para 2.2 above, Drawback Sanction Order No. 167/AC/DBK/2009-10 dated 05.02.2010 for Shipping Bill No. F-11/08-09 dated 23.05.2008 & Drawback Sanction Order No. 168 to 169/AC/DBK/2009-10 dated 05.02.2010 for Shipping Bill No. F-13/08-09 dated 04.06.2008 & F-15/08-09 dated 11.06.2008 were issued accordingly by the then Assistant Commissioner of Customs, Custom Division, Jamnagar.

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1.6. Being aggrieved for not considering component of NCCD for fixation of Brand Rate in the aforesaid Brand Rate Fixation Order dated 31.12.2009, the Applicant preferred an Appeal before the Commissioner (Appeals), Customs and Central Excise, Rajkot which vide Order-in-Appeal No. 332 to 344/2010/COMMR (A)/CMC/RAJ dated 27.07.2010 held,

"I find no reason to uphold the impugned order of the Lower Authority as far as it relates to non-inclusion of NCCD for computing Brand Rate eligibility since virtue of Section 12 of Customs Act, 1962; the NCCD leviable under Section 134 of the Finance Act, 2003 becomes the duty of Customs. And since, it is a duty of Customs, as per Section 75 of Customs Act, 1962, the Drawback thereof is admissible in as much as the Notification No. 37/95-Customs (NT) dated 26.05.1995 under which Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 has been notified has been issued under Section 75 of the Customs Act, 1962".

Accordingly, the Commissioner(Appeals) set aside the Impugned Order and allowed the Appeals.

1.7. Being aggrieved with the aforesaid Order-in-Appeal dated 27.07.2010, the Department preferred an Appeal before Hon'ble CESTAT which vide Order dated 16.08.2011 disposed of the Departmental Appeal as non-maintainable in terms of first proviso of Section 129 (A) (1) (b) of Customs Act, 1962 and directed that the Department may consider moving correct forum, if they are advised to do so.

1.8. Subsequently, the Department preferred R/Tax Appeal No. 123/2012 before the Hon'ble High Court of Gujarat. The Hon'ble High Court vide judgement dated 06.12.2019 held that "NCCD is nothing but the duty of Customs and the same can be considered for computing Brand Rate of Duty Drawback". No SLP was preferred before the Hon'ble Supreme Court by the Department against the Order dated 06.12.2019 of Hon'ble High Court of Gujarat.

1.9. Central Board of Indirect Taxes and Customs vide its Instruction No. 5/2020-Customs dated 12.05.2020 also clarified that, the incidence of NCCD is required to be factored in calculation of Brand Rate of Duty Drawback. The Appellant filed Application dated 12.09.2023 in reference of their earlier Application dated 10.07.2008 (received on 17.07.2008 by the department) requesting for Fixation of the Brand Rate of NCCD and Cess paid thereon instead of filing fresh Application.

1.10 The Adjudicating Authority, after considering the facts of the case and submission made by the Appellant held that the Application dated 10.07.2008

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which was revised on 20.07.2009 & disposed of vide Brand Rate Fixation Order dated 31.12.2009 issued from F. No. VIII/20-37/Cus-T/2008 by the then Additional Commissioner, Central Excise, Rajkot and again pressed upon on 12.09.2023, for fixation of Brand Rate of component of NCCD and Cess paid thereon is liable to be rejected for want of adherence to the time limit as prescribed under Rule 6 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. And Accordingly, the Adjudicating Authority rejected the application filed by the Appellant for fixation of Brand Rate of NCCD and CEss paid thereon, on imported petroleum crude oil used in the manufacturing of furnace oil(FO) exported under shipping Bill No. F-11/08-09 dated 23.05.2005, F-13/08-08 dated 04.06.2008 & F-15/08-09 dated 11.06.2008 under Rule 6 of the Customs & Central Excise Duties and Service Tax Rules, 1995.

1.11 Being aggrieved by the impugned order, the Appellant preferred the present appeal.

2. **Ground of Appeal submitted by the Appellant**

2.1. The Appellant submitted that the Respondent has erred in holding that the Appellant has delayed in filing the claim for drawback on the NCCD component and that the same ought to have been filed pursuant to the judgement of the High Court. The Respondent has failed to appreciate that the claim for drawback dated 10.07.2008 was filed on 17.08.2008 and the same was also revised on 20.07.2009. Further, vide an order dated 31.12.2009, the Additional Commissioner of Central Excise, Rajkot, decided the drawback claim and fixed the Brand Rate of drawback for the component of Basic Custom Duty, while rejecting the component of NCCD. By fixing the brand rate in respect of Basic Custom Duty and rejecting the same in respect of NCCD, vide the said order, the Additional Commissioner of Central Excise, Rajkot, effectively condoned the alleged delay in filing the application dated 10.07.2008, revised on 20.07.2009, for fixation of brand rate of duty drawback. Thus, the claim for drawback was filed way back in 2008 itself.

2.2 The Appellant further submitted that appeal against the said order dated 31.12.2009 filed by the Appellant was allowed by the Commissioner (Appeals), who held that NCCD ought to be considered while computing the Brand Rate of Duty Drawback. In the review against the said order, no ground of the claim being time-barred was filed by the revenue. Aggrieved by the said order of Commissioner (Appeals), the Department appealed to the CESTAT and then to the High Court of Gujarat, which, vide judgement dated 06.12.2019 dismissed the Department's appeal and held that "NCCD is nothing but the duty of

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Customs and the same can be considered for computing Brand Rate of Duty Drawback." The matter having settled by the High Court, it was clearly impermissible to raise a new contention, which was never urged in the ongoing proceedings.

2.3 The Appellant further submitted that it was pursuant to the judgement of the High Court and issuance of the Instruction no. 5/2020 dated 12.05.2020 that the Appellant again approached the Department for deciding its long pending applications for brand rate of duty drawback vide letters dated 02.06.2020 and 12.09.2023. Thus, as can be seen from the facts detailed above, the letters dated 02.06.2020 and 12.09.2023 are not fresh applications for drawback but are in continuation of the original application of drawback dated 10.07.2008, revised on 20.07.2009. The Respondent has failed to appreciate that the letter dated 12.09.2023 is not an application but the letter merely explains the facts and requests for pending fixation of brand rate of duty drawback of NCCD portion.

2.4 The Appellant further submitted that without prejudice to the above, the Respondent has erred in holding that letter dated 02.06.2020 was filed only in reference to order-in-appeal no. JMN- CUSTM-000-APP-257 & 258-19-20 dated 17.02.2020 and the same is not related with the instant issue. In this regard, it is submitted that the Respondent has failed to appreciate that although the order-in-appeal dated 17.02.2020 is referred in the said letter, the request made in the said letter for fixation of brand rate of drawback for the component of Social Welfare Surcharge and NCCD is with respect to all the pending drawback applications and not only in respect to the order dated 17.02.2020. Therefore, assuming without admitting that the Appellant was required to file fresh application for drawback, it is submitted that the said letter dated 02.06.2020 was filed within 60 days from the date of the Instruction no. 5/2020-Cus. dated 12.05.2020 and was within the time required under Rule 6 of the Drawback Rules.

2.5 The Appellant further submitted that there was no requirement of filing any new or fresh application as the original application dated 10.07.2008 itself had been allowed by the Commissioner (Appeals) and the High Court. Vide an order dated 31.12.2009, the Department decided the original application dated 10.07.2008 and the revised application dated 20.07.2009 filed by the Appellant, without considering the NCCD component for the brand rate. It was this very proceeding which was disputed right upto the High Court and the High Court decided the matter in favour of the Appellant by holding that NCCD ought to have been considered while computing the brand rate, thereby upholding the

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order of Commissioner (Appeals). Thus, the original application was disputed till the stage of High Court, which decided the matter in favour of the Appellant. Accordingly, pursuant to the order of the High Court, further reminder letters were filed by the Appellant dated 02.06.2020 and 12.09.2023. Thus, the Respondent has erred while holding that the original application dated 10.07.2008 was decided and disposed off by the Additional Commissioner of Central Excise, Rajkot, vide its order dated 31.12.2009 and that fresh application ought to have been filed by the Appellant.

2.6 The Appellant further submitted that the Respondent was only required to give effect to the Commissioner (Appeal)'s order, which was upheld by the High Court and there were no fresh proceedings that were filed. Further, submitted that while the Respondent has considered 60 days for filing the drawback application from the date of the judgement of High Court or the date of the clarification issued by CBIC, the original application for drawback was filed much earlier, i.e. way back in 2008. Therefore, the drawback application was filed much within time.

2.7. The Appellant further submitted that without prejudice to the above, assuming without admitting that there was a delay in filing the drawback application, the Respondent ought to have informed the Appellant about the alleged delay, which is condonable by Central Government. The Respondent could not have directly rejected the drawback application on the basis of time bar. Also submitted that although the timelines prescribed under Rule 6 of the Drawback Rules are applicable to the Appellant, there is no requirement of filing any fresh application for drawback pursuant to the judgement of the High Court, which upheld the decision of the Commissioner (Appeals) on the NCCD application already on record.

2.8 The Appellant relied on the following judgements of the High Courts and the CESTAT, wherein, in the context of refund applications, the Courts have held that there is no requirement of filing fresh application following a successful appeal/revision proceeding by the assessee. The Courts have further held that a fresh application is not required to be made at each stage of proceeding, if initial claim before Assistant/ Deputy Commissioner is not successful:

a. Commissioner vs. SPIC Ltd. - 2015 (318) E.L.T. A178 (Mad.);

b. Advance Systems vs. Commissioner of Central Excise & CGST - 2023 (78) G.S.T.L. 414 (Del.);

c. Astrazeneca India Pvt. Ltd. vs. Commissioner of Central Tax, Bangalore North - 2022 (58) G.S.T.L. 339 (Tri. - Bang.);

d. Exxat Systems Pvt. Ltd. vs. State of Gujarat - 2022 (61) G.S.T.L. 572 (Guj.).

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Accordingly, the impugned order rejecting the application for drawback filed by the Appellant deserves to be quashed and set aside on this ground as well.

2.9 Without prejudice to the above, the Appellant further submitted that the application for drawback filed by the Appellant in 2008 was res judicata, pursuant to the judgement of the High Court. The Respondent has failed to appreciate that the impugned order passed by him is in violation of the decision of the Hon'ble High Court of Gujarat, wherein the Court has clearly held that NCCD ought to be considered while computing the Brand rate of Drawback. The Respondent ought to have appreciated that pursuant to the judgement of the High Court, he ought to have immediately decided the pending applications of the Appellant, without even expecting any reminders from the Appellant. It is submitted that despite the order of the High Court, the Respondent has simply tried to find some flimsy technical reason to deny the drawback to the Appellant, which is not only grossly incorrect but is also in violation of the judgement of the High Court. It is submitted that the revenue cannot now resort to new reasons to reject the drawback application. The impugned order thus deserves to be quashed and set aside on this ground alone.

2.10. The Appellant further submitted that the Respondent has erred in rejecting the application for drawback without issuing any show cause notice and without granting an opportunity of personal hearing to the Appellant, in violation of the principles of natural justice. It is submitted that pursuant to the pre-consultation letter issued by the Department, which was responded to by the Appellant, the Respondent directly issued the impugned order, rejecting the drawback application of the Appellant, without issuing any show cause notice and without granting any personal hearing to the Appellant. It is a settled position in law that a show cause notice is the foundation in any proceedings and a show cause notice ought to spell out clear allegations against an assessee, which the assessee can then respond to and defend by filing a reply to the show cause notice as also during the course of the personal hearing. The Appellant relied on the following judgements of the Supreme Court of India in this regard:

a. Commissioner vs. Ballarpur Industries Ltd. 2007 (215) E.L.T. 489 (S.C.);
b. Commissioner vs. Gas Authority of India Ltd. 2008 (232) E.L.T. 7 (S.C.);
c. Precision Rubber Industries (P) Ltd. vs. Commissioner of C. Ex., Mumbai [2016 (334) E.L.T. 577 (S.C.)].

2.11. The Appellant further submitted that the Hon'ble Supreme Court in the case of Maneka Gandhi vs. Union of India [(1978) 1 SCC 248] reiterated that the principle of Audi Alteram Partem is the basic concept of the principle of natural

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justice. This doctrine states that no one shall be condemned unheard. This ensures a fair hearing and fair justice to both the parties. Under this doctrine, both the parties have the right to speak. No decision can be declared without hearing both the parties. The aim of this principle is to give an opportunity to both the parties to defend themselves. The Appellant further refers to the decision of the Hon'ble Supreme Court in the case of Dharmpal Satyapal Ltd. Ds. Dy. CCE [2015 (320) E.L.T. 3 (S.C.)] in this regard. The impugned order passed in violation of the principles of natural justice thus deserves to be quashed and set aside on this count alone.

2.12. The Appellant further submitted that the Hon'ble Supreme Court in the case of Maneka Gandhi vs. Union of India [(1978) 1 SCC 248] reiterated that the principle of Audi Alteram Partem is the basic concept of the principle of natural justice. This doctrine states that no one shall be condemned unheard. This ensures a fair hearing and fair justice to both the parties. Under this doctrine, both the parties have the right to speak. No decision can be declared without hearing both the parties. The aim of this principle is to give an opportunity to both the parties to defend themselves. The Appellant further refers to the decision of the Hon'ble Supreme Court in the case of Dharmpal Satyapal Ltd. Ds. Dy. CCE [2015 (320) E.L.T. 3 (S.C.)] in this regard. The impugned order passed in violation of the principles of natural justice thus deserves to be quashed and set aside on this count alone.

2.12. The Appellant craved to add, alter, amend, withdraw and/or delete all or any of the above grounds on or before the date of hearing and produce such other and further oral and /or documentary evidence as may be considered necessary. The Appellant requested for opportunity of personal hearing in the matter and prayed that

a) The impugned order dated 09.02.2024 passed by the Respondent be quashed and set aside;

b) Any other consequential relief that the Appellate Authority may be pleased to grant.

3. Personal Hearing

Opportunity of personal hearing was given to the Appellant. Miss Kartik Dedhia, Advocate appeared for personal hearing through virtual mode i.e. video conferencing on 21.05.2026. The Advocate reiterated the submission made at the time of appeal.

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4. Discussions and Findings

4.1 The date of the impugned order is 09.02.2024 and the date of filing appeal by the Appellant is 10.04.2024. The Appellant has submitted that the date of receipt of OIO is 12.02.2024 thus, based on the above dates, I find that the Appellant had the appeal well within the time period of 60 days prescribed under the provisions of Section 128 of the Customs Act, 1962 from the date of receipt of OIO.

4.2. I find that the matter pertains to the issue fixation of Brand Rate of Duty Drawback of the NCCD and Cess thus there is no question of pre-deposit of 7.5% of duty demanded as prescribed under Section 129E of the Customs Act, 1962.

4.3 The Customs Office, Jamnagar was requested for submission of comments of the appeal filed by the Appellant vide letter dated 06.06.2024 but no comments have been received by this office till date therefore, I am taking up the issue for decision based on the facts of the case and documentary evidence available on record.

4.4 I have carefully gone through the case records, show cause notice and corresponding order passed by the adjudicating authority and the defense put forth by the Appellants in their appeal. The following issues arise for determination:

(i) Whether the application of Appellant for fixation of Brand Rate application of NCCD and Cess paid thereon is incorrectly rejected or otherwise.

(i) Whether the case is fit for remand back to Adjudicating Authority.

4.5 On perusal of the impugned order I find that the impugned order does not contain any details of personal hearing granted in the matter during the course of rejection of refund claim and issuance of impugned order. I am of the considered view that the Adjudicating Authority is law bound to follow the principal of natural justice and give opportunity of personal hearing to the Appellant as they same have not been granted to the Appellant.

4.6 Accordingly, in the interest of justice and in order to ensure compliance with the principles of natural justice, I deem it appropriate to remand the matters to the adjudicating authority under Section 128A (3) of the Customs Act, 1962. In this regard, reliance is placed upon the judgment of the Hon'ble Gujarat High Court in Medico Labs [2004 (173) E.L.T. 117 (Guj.)], the judgment of the Hon'ble Bombay High Court in Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)], and the decisions of the Hon'ble Tribunal in Prem Steels Pvt. Ltd. [2012-TIOL-

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1317-CESTAT-DEL] and Hawkins Cookers Ltd. [2012 (284) E.L.T. 677 (Tri.-Del.)], wherein the appellate authority's power to remand under Section 128A(3) of the Customs Act, 1962 has been recognized.

5. In view of the foregoing discussion, the appeal is allowed by way of remand. The impugned order is set aside and the case is remanded to the Adjudicating Authority for de-novo adjudication in accordance with law after giving opportunity of personal hearing to the Appellant following the principle of natural justice. It is expressly clarified that no opinion or views have been expressed on the merits of the case.

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

Vishwajeet Singh
04.08.2026

(Vishwajeet Singh)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-29/CUS/JMN/2024-25

By Registered post A.D/Email

M/s Nayara Energy Ltd., P.B.no. 24, Khambhalia PO, Dist: Dev Bhumi Dwarka, Gujarat 361305

To,

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in).
2. The Commissioner, Customs (Prev), Jamnagar.
3. The Additional/Joint Commissioner, Customs Jamnagar.
4. Guard File.