



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,  
चौथी मंज़िल 4th Floor, हड्को भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009  
दूरभाष क्रमांक Tel. No. 079-26589281

DIN – 20250871MN000000DB03

क्र	फ़ाइल संख्या FILE NO.	S/49-136/CUS/AHD/24-25
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) :	AHD-CUSTM-000-APP-157-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	07.08.2025
ड	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No. 27/AC/DAHEJ/REFUND/2024-25 dated 12.06.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	07.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Bharat Petroleum Corporation Ltd., Bharat Bhavan, 4 & 6, Curribhoy Road, Ballard Estate, P.B. No. 668 Mumbai – 400 001



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 बी बी (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 imported on baggage (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 मर्दों के शीर्ष के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां, यदि शुल्क, मांगा गया व्याज, 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 सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं।



	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> 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)	(क) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रुपए या उससे कम हो तो एक हजार रुपए.	
(a)	(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)	(ख) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रुपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रुपए	
(ब)	(ब) 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)	(ग) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रुपए से अधिक हो तो; दस हजार रुपए.	
(c)	(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	
(ध)	(ध) हम आदेश के विरुद्ध अधिकरण के मामले, 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)	(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 Bharat Petroleum Corporation Limited, Bharat Bhavan, 6 & 7, Currimbhoy Road, Ballard Estate, P. B. No. 668, Mumbai – 400 001 (hereinafter referred to as 'the Appellant') have filed the present appeal challenging the Order – In – Original No. 27/AC/DAHEJ/ REFUND/2024-25, dated 12.06.2024 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Customs, Dahej (hereinafter referred to as 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant had filed a refund claim of Rs. 1,46,81,845/- under Section 27 (1) (a) of the Customs Act, 1962 vide their letter bearing No. NIL, dated 05.01.2024 (received on 09.01.2024) on account of excess Customs duty paid by them against the final assessment of 11 (eleven) Bills of Entry as detailed at Para 2 of the impugned order.

2.1 The Appellant was engaged in import of Liquefied Gas (LNG) and filed Bills of Entry as per the details mentioned at Para 2 of the impugned order for clearance of imported LNG. The said Bills of Entry were assessed provisionally under Section 18 of the Customs Act, 1962 on execution of PD Bond and consequently, on production of original as well as other requisite documents, subject Bills of Entry were assessed finally. The amount of duty assessed provisionally and finally under the said Bills of Entry are as per the details mentioned in Para 2 of the impugned order.

2.2 The Appellant have filed the instant refund claim on the ground of excess duty payment made at the time of provisional assessment and the correct duty was ascertained and adjusted after final assessment as mentioned in Para 2 of the impugned order. The Appellant have imported LNG falling under Customs tariff heading 27111100. The Customs duties were levied on LNG on Ad Valorem basis based on the value determined in terms of Section 14 of the Customs Act, 1962 read with Customs Valuation Rules, 2007. The price of LNG was fixed based on Brent Plate price, therefore the subject Bills of Entry were provisionally assessed under Section 18 of Customs Act, 1962 by the Proper Officer and the Appellant paid the duties accordingly. On receipt of original documents, quantity unloaded report, Test Result etc., the Proper Officer had finalized the subject Bills of Entry and duty were assessed as per final DES (Delivery Ex-Ship) quantity unloaded and final Invoice price. The DES (Delivery Ex-Ship) quantity unloaded was lower than Bill of Lading quantity, and the final invoice value was lesser than the provisional invoice value. Accordingly, the transaction value of the goods and consequently the effective duty on the value reduced on final assessment. Therefore, the Appellant had filed Refund claim amounting to Rs. 1,46,81,845/- with respect to the 11 (eleven) Bills of Entry as per the details mentioned at Para 2 of the impugned order.

2.3 In support of their refund claim, the Appellant had submitted following documents:-

(Signature)



- i. Consolidated Refund application of duty in prescribed proforma (Part-A);
- ii. Copy of Bills of Entry and Original finally assessed Bills of Entry. Copy of e-receipts evidencing payment of duty. Provisional Proforma Invoice, Final Invoice, confirmation memorandum. Customs Duty calculation sheet, Certificate of Origin, Bill of lading, and Final Survey Report;
- iii. Importer's Declaration for consolidated refund amount mentioning all 11 Bills of Entry, Undertaking dated NIL with respect to each Bills of Entry, E-mail Message report showing Remittance of Final Invoice value to the supplier;
- iv. Financial result for the quarter and financial year ended on 31.03.2023 consisting statement of asset and liabilities as on 31.03.2023, Relevant Notes and break up of amount;
- v. Letter F. No. CH/DJ/Misc/212/22-23 dated 18/04/2023 issued by the office of Assistant Commissioner of Customs, Dahej with reference to communication of date of final assessment of the Bills of Entry;
- vi. Chartered Accountant's Certificate dated 24.12.2023 with reference to each Bill of Entry separately issued by M/s Aditya Bhagwat & Associates (MRN 193001) mentioned hereunder with reference to unjust enrichment enclosing G/L account balance and vendor line item display under code of Business area 2600 reflecting the claimed refund amount as claim recoverable;

2.4 The Appellant had filed the instant refund claim of Rs. 1,46,81,845/- under Section 27 (1) (a) of the Customs Act, 1962 with reference to excess duty payment found after final assessment of subject Bills of Entry and had submitted declaration, wherein they have declared that:

- (a) They had paid excess customs duty Rs. 1,46,81,845/- against respective Bill of Entry as lower quantity of LNG was Imported into India vis-a-vis the quantity mentioned in the Bill of lading;

Sr. No.	Name of the Vessel	Bill of Entry No.	Bill of Entry date	Provisional duty (In Rs.)	Final duty (In Rs.)	Refund
1.	Gasiag Shanghai	4868936	19.01.2018	54927111	53657187	1269925
2.	Fraiha	5579705	07.11.2019	77263253	77190302	72950
3.	SCF Mitre	5538987	12.03.2018	60963145	59496588	1466557
4.	LNG Enugu	7350748	24.03.2020	20934304	19352100	1582204
5.	Gasiag Geneva	7934613	06.09.2018	68221327	66285791	1935536
6.	Malanje	4113706	18.07.2019	55485981	54713653	772328
7.	LNG Reiver Niger	7717402	21.05.2020	9523264	9018889	504374
8.	Maran gas Achilles	9839862	29.01.2019	59668657	55380546	4288111
9.	Sanagal sambizanga	4808671	07.09.2019	51640260	51591492	48768
10.	Soya	3340920	22.05.2019	76334958	75662522	672436
11.	Soya	2600014	04.02.2021	57372240	55303584	2068656
						14681845



- (b) They had neither recovered nor going to recover the amount of Rs. 1,46,81,845/- from any customer on or after sanction of refund for which application has been filed;
- (c) The refund claim had been made on the ground of finalization of all subject Bill of Entry, (as started above) by this formation, i.e., CH Dahej;
- (d) The content of this refund claim are true and correct;
- (e) No refund of said duty / part of duty amount had been claimed anywhere at any time and said refund claim had been filed only with this office;
- (f) There is no government dues pending against them as on date;
- (g) Input Tax credit had not been claimed for the amount or part of the amount which is claimed as refund;
- (h) The burden of Rs. 1,46,81,845/- claimed as refund of excess duty paid by them, had not been passed on to any other firm /company or person and still lies with the Appellant;

2.5 The instant refund claim had been aroused due to excess duty payment found after final assessment. After the receipt of OTR, the above subject Bills of Entry were finally assessed and in the EDI system the department comments were inserted. As per the EDI system, the details of final assessment no. and date are as under-

Sr. No.	Bill of Entry No.	Bill of Entry date	Name of the Vessel	Final assessment No. in EDI System	BE finally assessed on (date of adjustment of duty)	Refund claim filed	No. of days on or after which the claim was filed	Refund amount claimed
1.	4868936	19.01.2018	Gasiag Shanghai	2338120	09.01.2023	09.01.2024	366	1269925
2.	5579705	07.11.2019	Fraiha	2338122	09.01.2023	09.01.2024	366	72950
3.	5538987	12.03.2018	SCF Mitre	2338139	09.01.2023	09.01.2024	366	1466557
4.	7350748	24.03.2020	LNG Enugu	2338116	09.01.2023	09.01.2024	366	1582204
5.	7934613	06.09.2018	Gasiag Geneva	2338131	09.01.2023	09.01.2024	366	1935536
6.	4113706	18.07.2019	Malanje	2338127	09.01.2023	09.01.2024	366	772328
7.	7717402	21.05.2020	LNG Reiver Niger	2338117	09.01.2023	09.01.2024	366	504374
8.	9839862	29.01.2019	Maran gas Achilles	2338126	09.01.2023	09.01.2024	366	4288111
9.	4808671	07.09.2019	Sanagal sambizanga	2338124	09.01.2023	09.01.2024	366	48768
10.	3340920	22.05.2019	Soya	2338128	09.01.2023	09.01.2024	366	672436
11.	2600014	04.02.2021	Soya	2338138	09.01.2024	09.01.2024	366	2068656
								14691845

2.6 In view of the above, the claim appeared to be hit by limitation of time (i.e. beyond the period of limitation of one year from the date of adjustment of duty after final assessment) stipulated in para (c) of sub-section 18 of Section 27 of Customs Act, 1962 and appeared to be liable for rejection.

2.7 Accordingly, a Show Cause Notice R. No. CH/DJ/REF/708/2023-24, dated




20.03.2024 issued under E-file No. CUS/RFD/RD/122/2024-DAH-PORT-CUS-COMMRTE-AHMEDABAD (DIN 20240371MN00000082AD), was issued to the Appellant, asking as to why the refund claim of Rs.1,46,81,845/- with reference to the Bills of Entry as mentioned in Annexure 1 of the Show Cause Notice, filed vide Letter dated 05.01.2024 (received on 09.01.2024) should not be rejected under the provisions of Section 27 of the Customs Act, 1962.

2.8 The adjudicating authority vide the impugned has passed the order as detailed below:-

(i) He has rejected the refund claim of Rs. 1,46,81,845/- with reference to the Bills of Entry (as mentioned hereunder) under Section 27 of the Customs Act, 1962 filed by the Appellant

Sr. No.	Bill of Entry No.	Bill of Entry date	Final Assess-ment No. in EDI System	BE finally assessed on(date of adjustment of duty)	Refund claim filed	No. of days on or after which the claim was filed	Refund amount claimed
1.	4868936	19.01.2018	2338120	09.01.2023	09.01.2024	366	1269925
2.	5579705	07.11.2019	2338122	09.01.2023	09.01.2024	366	72950
3.	5538987	12.03.2018	2338139	09.01.2023	09.01.2024	366	1466557
4.	7350748	24.03.2020	2338116	09.01.2023	09.01.2024	366	1582204
5.	7934613	06.09.2018	2338131	09.01.2023	09.01.2024	366	1935536
6.	4113706	18.07.2019	2338127	09.01.2023	09.01.2024	366	772328
7.	7717402	21.05.2020	2338117	09.01.2023	09.01.2024	366	504374
8.	9839862	29.01.2019	2338126	09.01.2023	09.01.2024	366	4288111
9.	4808671	07.09.2019	2338124	09.01.2023	09.01.2024	366	48768
10.	3340920	22.05.2019	2338128	09.01.2023	09.01.2024	366	672436
11.	2600014	04.02.2021	2338138	09.01.2024	09.01.2024	366	2068656
							Total <b>14681845</b>

3. **Contention** Being aggrieved with the impugned order passed by the Adjudicating Authority, the Appellant have filed present appeal. The Appellant have, *inter-alia*, submitted detailed submissions on following points in support of their contentions:

- They vide reply dated 27.03.2024 apprised the adjudicating authority regarding the decision of the Hon'ble High Court of Delhi in the case of INDIAN OIL CORPORATION LTD-2014 (308) ELT 169. The said decision held that the limitation in case of refund has to be calculated from the date of service of order;
- The adjudicating authority in the impugned order has held that the decision in the Indian Oil Corporation (supra) relied by them is not proper and cannot be considered inasmuch as the said decision, upheld by the Hon'ble High Court of Delhi vide order dated 05.05.2015 in CUSAA No.09/2015 has further been challenged by the department before the Hon'ble Supreme Court by filing Special Leave to Appeal (Civil) No. 32272 of 2015;

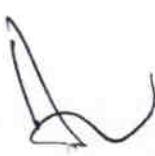


- That filing of the special leave petition against decision of the Hon'ble High Court before the Hon'ble Supreme Court does not cease the implementation of underlying decision of lower authorities. They placed reliance upon the decision of the Hon'ble Supreme Court in the case of Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, [(1992) 3 SCC 1] in support of their claim;
- That the above view of the Hon'ble Court has been followed by the Hon'ble High Court of Delhi in the case of Principal Commissioner of C. Ex., Delhi-I vs. Space Telelink Ltd. [2017 (355) E.L.T. 189 (Del.)]. Similar view has been taken by the Hon'ble High Court of Bombay in the case of CCEX. & ST vs. Mutha Founders Pvt. Ltd. [2017 (347) ELT 411 (Bom.)] wherein it is held that merely because an appeal filed against an order is pending before a higher forum, does not mean that the order under challenge is incapable of implementation and enforcement unless specific stay or ad-interim relief has been granted in the respective case to cease the operation of the judgment of the subordinate courts;
- In the present case, the Hon'ble Supreme Court has not yet decided the matter adversely in matter of Indian Oil (supra). Therefore, the underlying principle / basis / ratio decendi laid down in the said case will prevail. The same is binding upon the subordinate authorities. Non-compliance / non-adherence of the same amounts to gross violation of principle of judicial discipline. They placed reliance upon the decision of the Hon'ble Supreme Court in the case of Union of India Kamlakshi Finance Corporation Ltd. [1991 (55) ELT 433 (SC)];
- They also placed reliance on the decision taken by the Hon'ble CESTAT Ahmedabad in the case of GAIL (India) Limited versus Commissioner of Customs, Ahmedabad where in it was held that:

*"In view of the above, we find that the case of appellant is covered by the aforesaid decisions on date of service of finalization of provisional assessment is the relevant date for this purpose."*

- In the matter of GAIL (India) Limited versus Commissioner of Customs, Ahmedabad, the adjudicating authority had submitted that the order of Hon'ble CESTAT, Ahmedabad dated 25.08.2023, has not attained its finality, as department has preferred appeal against order to the higher formation. In this regard, it may be noted that Hon'ble High Court Gujarat has dismissed the appeal filed by department against the order of Hon'ble Tribunal as referred above in an order passed on 20<sup>th</sup> June 2024. Relevant portion of the order is reproduced below:

*"Merely because the Custom Department has uploaded the final assessment orders on portal is not sufficient compliance of intimation to the assessee as it is a condition sine quanon to file the refund claim within one year as per section 27 (1B)(c) of the Act from the date of finalization provided such order of assessment is communicated to the assessee. Therefore, the Tribunal has rightly taken into consideration the various documents intimating the respondent assessee about the*




finalization of provisional assessment communicated by the respondent in para No. 6 of the order which is quoted hereinabove."

- The Hon'ble high court has clearly mentioned that just uploading the details of finalisation on ICEGATE portal is not sufficient to prove the intimation of final assessment. Hence, the contention of the adjudicating authority that period of one year should be counted from the date when comments were inserted in EDI systems is incorrect. Hon'ble High Court has undoubtedly held that period of one year should be counted from the date of service of intimation of finalization of assessment by upholding the decision of Hon'ble tribunal. It may be noted that High Court of Gujarat is having jurisdiction on the adjudicating authority as well as appellant, hence the order passed by the court is binding on the them and the adjudicating authority must follow the same and provide consequential relief to them;
- Moreover, while passing the order the adjudicating authority did not consider the judgment of Hindustan Times Ltd vs. Collector of customs 1991 (56) E.L.T. 856 (Tribunal) before CEGAT New Delhi, which is reproduced below for ease of reference:

*"Though the assessment was finalized and duty adjusted on 31-3-1984, the fact of finalization was communicated and came to the knowledge of the appellants only on 19-11-1984 and therefore, it is from that date that limitation will be computable for the purpose of refund claim. The refund claim having been filed within the period of six months from the date of communication of final assessment, is within time and not barred by limitation. [AIR 1959 Calcutta 219 relied upon.]"*

- It is very clear from the above judgment that the period of limitation should be counted from the date of communication to them. Hence the relevant date in their case is 14<sup>th</sup> July 2023, the date of the letter intimating finalization of Bills of Entry. Even after submitting this judgment earlier in SCN reply, the adjudicating authority proceeded to pass the order without considering the same;
- In spite of producing so many favorable judgments, the adjudicating authority proceeded to pass adverse order. It is hereby requested that your good office kindly consider the submission in spirit and grant us with refund;
- Without prejudice to the above ground the Appellant submitted that the adjudicating authority did not appreciate their ground with respect to mechanism of calculation of period of limitation along with judgment cited and proceeded to pass order in ignorance of the same. It is submitted again that even if the one year limitation period is required to be reckoned from the date of final assessment mentioned in letter i.e. 9<sup>th</sup> Jan 2023, then too the limitation period of one year ends on 9<sup>th</sup> Jan 2024, accordingly the refund application is filed well within time; They had drawn attention to Section 9 of General clause act, 1897 which speaks about manner of calculation of time period of limitation in any act, the same is reproduced below:



*"In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to"."*

- Now, Section 27 of the Customs Act states that the application for refund of duty shall be filed within a period of 1 year from date of adjustment of duty after final assessment. On a conjoint reading of both the provisions, for the purpose of limitation, the first day i.e. the date of final assessment 9th Jan 2023 should be excluded. Hence the period of 1 year would begin from 10th Jan 2023 and would end on 9th Jan 2024, the date on which refund application of Appellant was acknowledged by department. In a similar matter CESTAT Hyderabad in the matter of Commissioner of Customs, Hyderabad vs. M/s. Sree Krishna Enterprises - 2017 (6)- TMI 883 held that the date of payment of duty in case of refund of SAD should be excluded while calculating limitation period of one year. Similar view has also been taken by various CESTATs including in the matter of Sarvamangal Synthetics Ltd. vs. Commissioner of C. Ex. Coimbatore 2003 (1) TMI 393 - CEGAT, Chennai, relevant portion extracted as below:

*"The provisions of Section 9 of General Clauses Act, 1897, are squarely applicable. Under Section 9(1) of the Act, it has been laid down that in any Act or Regulation made after the commencement of the Act, it shall be sufficient, for the purpose of excluding the first in a series of days, or any other period of time, to use the word 'from'. Sub-section (2) of Section 9 ibid lays down that this section applicable to all Central Acts made after the 3rd day of January, 1868. [1986 (25) E.L.T. 551 (Tribunal); 1992 (61) E.L.T. 732 (Tribunal) relied on.]"*

- From perusal of the above, it is very clear that they had submitted the refund claim within the timelines as mentioned in Section 27 of the Customs Act and hence the application of refund claim is not time barred in the instant case;

#### PERSONAL HEARING:

4. Personal hearing in the matter was held on 24.06.2025. Shri Gaurav Bajaj, Deputy General Manager and Ms. Janvi Bothra, Assistant Manager, appeared for hearing on behalf of the Appellant. They had reiterated the submissions made at the time of filing of appeal. They also filed additional written submissions, wherein, they reiterated their earlier submissions and further submitted below mentioned compilations of judgments in support of their claim:

- i. *Arcelomittal Projects Ltd. vs. C.C. Mundra – 2023 (6) TMI 1013 – CESTAT, Ahmedabad;*
- ii. *Larsen & Toubro Ltd. vs. Commissioner of CGST & CEX., Kolkata, North Commissionerate – 2022 (8) TMI 166 – CESTAT, Kolkata;*
- iii. *Hindustan Times Ltd. vs. Collector of Customs – 1991 (5) TMI 149 – CEGAT, New Delhi;*




- iv. *Hind Offshore Pvt. Ltd. vs. Commissioner of Customs, Mumbai, Import – I - 2022 (6) TMI 1090 – CESTAT, Mumbai;*
- v. *Indian Oil Corporation Ltd. vs. CC (Export), New Delhi - 2014 (12) TMI 1047 – CESTAT, New Delhi;*
- vi. *Gail (India) Ltd. vs. CC., Ahmedabad – 2023 (10) TMI 1044 – CESTAT, Ahmedabad;*
- vii. *Commissioner vs. Indian Oil Corporation Ltd. – 2015 (5) TMI 1224 – Delhi High Court;*
- viii. *Commissioner of C. Ex. & Service Tax vs. Mutha Founders Pvt. Ltd. – 2016 (10) TMI 1300 – Bombay High Court;*
- ix. *The Principal Commissioner, Customs, Ahmedabad Commissionerate vs. Gail (India) Ltd. – 2024 (6) TMI 1190 – Gujarat High Court;*
- x. *Commissioner of Customs Hyderabad vs. Sree Krishna Enterprises - 2017 (6) TMI 883 – CESTAT, Hyderabad;*
- xi. *Sarvamangal Synthetics Ltd. vs. Commr. of C. Ex., Coimbatore – 2003 (1) TMI 393 – CEGAT, Chennai;*

#### DISCUSSION & FINDINGS:-

5. I have carefully gone through the appeal memorandum as well as records of the case and the submissions made on behalf of the Appellant during the course of hearing. The issue to be decided in the present appeal is whether the impugned order rejecting the refund claim of the Appellant on the ground of limitation, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 The Appellant has filed the present appeal on 09.08.2024. In the Form C.A.-1, the date of communication of the impugned Order-In-Original dated 12.06.2024 has been shown as 20.06.2024. Thus, the appeal has been filed within normal period of 60 days, as stipulated under Section 128 (1) of the Customs Act, 1962. As the appeal has been filed against rejection of refund of excess duty found after final assessment and no demand has been raised vide the impugned order, pre-deposit under the provisions of Section 129 E of the Customs Act, 1962 is not required. As the appeal has been filed within the stipulated time-limit, it has been admitted and being taken up for disposal on merits.

6. As the issue in hand pertains to rejection of the refund claim it is relevant to refer to Section 27 of the Customs Act, 1962, which is reproduced below for ease of reference:

**“27. Claim for refund of duty. - (1) Any person claiming refund of any duty or interest, -**

- (a) paid by him; or
- (b) borne by him,



may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest :

(1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely :-

(a) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of Section 25, the limitation of one year shall be computed from the date of issue of such order;

(b) where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction;

(c) where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment."

6. On perusal of the above provisions of the Act, it is clear that once the provisional assessment is done and the assessee is entitled to the refund claim, then he has to make application within a period of one year under Section 27 read with Section 27(1B) of the Act.

7. It is observed that the Appellant have filed the refund claim of Rs. 1,46,81,845/- on the ground of excess duty payment made at the time of provisional assessment, which was later adjusted upon final assessment of the impugned 11 (eleven) Bills of Entry. It is further observed that the said Bills of Entry were finally assessed (date of adjustment of duty) on 09.01.2023 and the application of the refund was filed by the Appellant on 09.01.2024.

8. It has been contended by the Appellant that the refund application filed vide letter dated 05.01.2024 received by Customs office on 09.01.2024 is within the time limit of one year in view of the Section 9 of General Clause Act, which is reproduced below for ease of reference.

*"In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to"."*

8.1 On perusal of the above legal provision, it emerges that for the purpose of limitation, the first day, i.e., the date of final assessment 09.01.2023 should be excluded. In the instant case, it is not under dispute that the refund claim was filed by the Appellant on 09.01.2024. Hence the period of 1 year would begin from 10.01.2023 and would end on 09.01.2024, the date on which refund application of the Appellant was received.



8.2 It is further observed that the Appellant has relied upon the decision of Hon'ble CESTAT Ahmedabad in the case of M/s. Arcelomittal Projects Ltd. vs. C.C. Mundra reported in 2023 (6) TMI 1013 – CESTAT, Ahmedabad (Final Order No. A/ 11307 / 2023, dated 21.06.2023), wherein it was held that:

*"4.1 In terms of Section 9, the date of deposit of duty (SAD) being 26.08.2011 and 25.08.2011. The period of one year shall commence on 27.08.2011 and 26.08.2011 respectively. Accordingly, the one year shall be completed on 27.08.2012 and 26.08.2012. In this fact, the first refund claim since filed on 27.08.2012 is well within 1 year and in respect of second refund claim though the one year is completed on 26.08.2012 but being Sunday the filing of refund on Monday i.e. 27.08.2012 is well within the time limit prescribed in terms of Section 10 of General Clauses Act, 1897....."*

8.3 It is observed that in the instant case, it is not under dispute that the impugned Bills of Entry were finalized on 09.01.2023 and the refund claim was filed by the Appellant on 09.01.2024. Therefore, in view of above legal provision and decision of M/s. Arcelomittal Projects Ltd supra, I am of the considered view that the refund claim filed by the Appellant is within the time limit of one year as envisaged under Section 27 of the Customs Act, 1962.

9. On perusal of the impugned order, it is observed that the adjudicating authority have not given any findings on the merits of the admissibility of the refund, inasmuch as whether the refund is admissible or otherwise, which was required to be recorded before examining the aspect of limitation. Further, the impugned order is silent on the aspect of unjust enrichment. Thus, the impugned order is non speaking order and suffers from the legal infirmity on this count. Under the circumstances, I am constrained to remand the matter to the adjudicating authority to decide the merits of the admissibility of the refund claim.

9.1 It is pertinent to mention that for claiming refund, it is mandatory for the Appellant to show that he has paid the amount for which refund has been claimed and had not passed on the incidence of such amount to any other person. In this regard, it is relevant to rely upon the decision of Hon'ble Supreme Court in the case of Sahkari Khand Udyog Mandal Ltd. vs. Commissioner of C.Ex. & Customs reported in 2005 (181) ELT 328 (SC), which is reproduced below for ease of reference:

*"48. From the above discussion, it is clear that the doctrine of 'unjust enrichment' is based on equity and has been accepted and applied in several cases. In our opinion, therefore, irrespective of applicability of Section 11B of the Act, the doctrine can be invoked to deny the benefit to which a person is not otherwise entitled. Section 11B of the Act or similar provision merely gives legislative recognition to this doctrine. That, however, does not mean that in absence of statutory provision, a person can claim or retain undue benefit. Before claiming a relief of refund, it is necessary for the petitioner/appellant to show that he has paid the amount for which relief is sought, he has not passed on the burden on consumers and if such relief is not granted, he would suffer loss."*

9.2 In view of the above, in my considered view the doctrine of unjust enrichment is applicable to the instant case also and the adjudicating authority is required to examine the relevant financial documents to determine as to whether incidence of duty has been passed on to other person or otherwise in view of the above judicial pronouncement of the Hon'ble Supreme Court and in terms of Board's Circular No. 07/2008, dated 28.05.2008.

10. In view of the above observations, I find that remitting the present appeal to adjudicating authority for deciding the refund on merits and examining the aspect of unjust enrichment, has become sine qua non to meet the ends of justice. Accordingly, the case is remanded back to the adjudicating authority, in terms of sub- section 3 (b) of Section 128A of the Customs Act, 1962, for passing a fresh order 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 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 Pvt. Ltd. [2012-TIOL-1317-CESTAT-DEL] and 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.

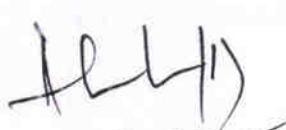
11. In view of above, I set aside the impugned order and allow the appeal filed by the Appellant by way of remand to the adjudicating authority for passing fresh order after considering the submissions made by the Appellant in the present appeal on record. The Adjudicating Authority shall examine the available facts, documents, submissions and issue speaking order afresh following principles of natural justice and legal provisions. No view on merits has been expressed in this order.

12. The appeal preferred by the Appellant is allowed by way of remand

सत्यापित/ATTESTED  
  
 अधीक्षक/SUPERINTENDENT  
 नीमा इन्स्ट्रक्टर (अपील्स), अहमदाबाद  
 JUSTICE (APPEALS), AHMEDABAD  
 F. No. S/49-136/CUS/AHD/24-25  
 १८८३

By Registered post A.D



  
 (Amit Gupta)  
 Commissioner (Appeals),  
 Customs, Ahmedabad

Date: 07.08.2025

To,

1. M/s Bharat Petroleum Corporation Limited,  
 Bharat Bhavan,  
 6 & 7, Currimbhoy Road,  
 Ballard Estate,  
 P. B. No. 668,  
 Mumbai – 400 001

2. M/s Bharat Petroleum Corporation Ltd.,  
12<sup>th</sup> Floor, F Wing,  
Maker Towers,  
Cuffe Parade,  
Mumbai – 400 005



Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
3. The Assistant Commissioner, Customs, Customs House, Dahej, Ahmedabad.
4. Guard File.

