



सीमा शुल्क (अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंजिल 4th Floor, हड्डो भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250671MN0000811669

क्र	फाइल संख्या FILE NO.	
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)	S/49-70/CUS/MUN/2024-25 MUN-CUSTM-000-APP-051-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
द	दिनांक DATE	02.06.2025
च	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Decision of Additional Commissioner communicated vide letter dated 26.04.2024 issued by the Assistant Commissioner
छ	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	02.06.2025
	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. K. D. Steels, A-45, Group Wazir Pur Industrial Area, Delhi - 110 052



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 (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/- (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 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 लाला 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="0"> <tr> <td style="vertical-align: top;">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 style="vertical-align: top;">दूसरी मंजिल, 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 मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
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दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	<p>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-</p> <p>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 -</p> <p>(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 रुपए.</p> <p>(ख) 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;</p> <p>(ग) 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 रुपए</p> <p>(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 ;</p> <p>(ज) 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 रुपए.</p> <p>(च) 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</p> <p>(झ) इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।</p> <p>(द) 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.</p> <p>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.</p> <p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>				

ORDER-IN-APPEAL

The present appeal has been filed by M/s. K. D. Steels, A-45, Group Wazir Pur Industrial Area, Delhi – 110 052 (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the decision of Additional Commissioner, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority') communicated vide letter dated 26.04.2024 issued by the Assistant Commissioner.

2. Facts of the case, in brief, are that the appellant vide letter dated 15.04.2024 informed the Deputy Commissioner of Customs, Gr-IV, Custom House, Mundra that they had filed Bill of Entry for the clearance of the goods of Stainless Steel Cold Rolled Coils Grade J3 against Bill of Lading No.025D726785 dated 24.10.2023 and occurred an amount toward the Penalty of Rs.13,91,531/- for Late presentation Charges of Bill of Entry. The appellant also submitted that they had already filed the same documents under Bill of Entry no. 8702122 dated 09.11.2023. The appellant also submitted that the same was under query in the System was raised by the Group Officer to produce BIS NOC as the material was Stainless steel Cold Rolled Coils grade J3 and B/L was after 20/10/2023 as per Circular dated 20/10/2023 issued by the Ministry of Steel, Technical Division. The appellant vide above letter submitted that after that they applied for NOC from the BIS and they received the NOC on 08/04/2024, wherein BIS NOC mentioned the Bill of Entry No. 8702122 and Bill Lading No. 025D726785. Upon receipt of BIS NOC, they tried to submit the query along with NOC and they noticed that the Bill of Entry Number did not exist in system. Therefore, they had filed fresh Bill of Entry No.3000256 dated 12/04/2024 and occurred an amount of Rs.13,91,531/- as late filing charges. The appellant requested to waive off the late presentation charges against the Bill of Entry No.3000256 and accept the BIS NOC.

2.1 Consequently the adjudicating authority passed the impugned order wherein the adjudicating authority ordered as under :-

- i. He found that no justifiable reason viz. any technical glitches for waiver of late fee/Presentation Charges in respect of BE No. 3000256 dated 12.04.2024 has been-found. Hence, no approval was granted by the competent authority for waiver of late fee/presentation charges as



requested by appellant.

3. SUBMISSIONS OF THE APPELLANT:

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

3.1 On 09.11.2023, the appellant filed one Bill of Entry no. 8702122 with Custom House, Mundra for clearance of imported goods, namely, 54.750 MT of Stainless-Steel Cold Rolled Coils Grade J3, along with documents, like (i) Commercial Invoice No. KD1021 dated 21.10.2023 issued by overseas supplier M/s. Sinoss Ever International Limited, Hong Kong (ii) Packing list (iii) Bill of Lading No. 025D726785 dated 24.10.2023, etc.

3.2 During the course of assessment, the appellant was issued a query asking them inter alia to produce BIS Certificate or one time BIS exemption certificate as per Steel and Steel Products (Quality Control Order) Order, 2020 and Circular dated 20.10.2023 issued by Ministry of Steel. As soon as the appellant received the certificate, they attempted to upload the same and thereby comply with the query. However, it was noticed that the Bill of Entry was purged and hence, a requirement arose to file a fresh Bill of Entry. Accordingly, the appellant filed a fresh Bill of Entry for one and same goods in the form of Bill of Entry no. 3000256 dated 12.04.2024. However, the assessing officer treated filing of Bill of Entry on 12.04.2024 as late presentation of Bill of Entry and proposed to levy charges for late presentation of Bill of Entry as provided in Regulation 4 (3) of Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018.

3.3 The appellant tendered a detailed submission bringing out the compulsion involved in filing Bill of Entry no. 3000256 dated 12.04.2024 in respect of goods that were already covered by Bill of Entry no. 8702122 dated 09.11.2023 (since purged) and on this basis, it was pleaded to grant waiver from such charges, which is duly provided for in the proviso to Regulation 4 (3) to the said Regulations.

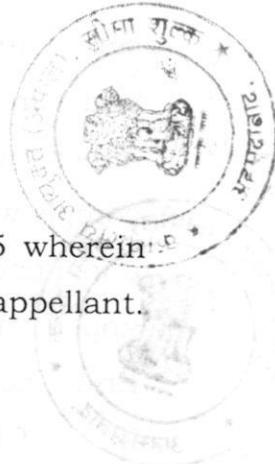
3.4 The competent authority, i.e. Additional Commissioner brushed aside the facts and circumstances as well as bona fides of appellant and also without giving an opportunity of personal hearing, has rejected the request for waiver of charges for alleged late presentation of the bill of entry. Consequently,

the appellant was compelled to pay an amount of Rs. 13,91,531/- towards late presentation charges without any justifiable and lawful reasons.

3.6 The appellant has submitted that the impugned decision is passed without granting personal hearing and hence, the same violates principles of natural justice. The impugned decision is also a non-speaking decision inasmuch as it has not given any consideration to the submission tendered by the appellant, particularly, with regard to the undisputed position that the appellant had already filed Bill of Entry No. 8702122 dated 09.11.2023 for the very same goods.

3.7 The appellant submitted that when a Bill of Entry was already filed earlier, late presentation charge is not leviable. The appellant submitted that the competent authority was wide discretion to waive the charges and the same is not pegged or confined to technical glitches only. Hence, the reasoning advanced by the Competent authority to decline the request for waiver is not in accordance with the object and purpose of the proviso to sub-regulation (3) of Regulation (3) of the Regulations.

PERSONAL HEARING:



4. Personal hearing in the matter was held on 20.05.2025 wherein Shri Vikas Mehta, Consultant, appeared for hearing representing the appellant. He reiterated the submissions made in the appeal memorandum.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs House, Mundra and the defense put forth by the Appellants in their appeal. The Appellant has filed the present appeal on 06.06.2024. In the Form C.A.-1, the Appellant has mentioned date of communication of decision of Additional Commissioner on 26.04.2024. Hence, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant has submitted a copy of the challan No.2048709327 dtd. 26.04.2024 towards payment of entire duty amount and late fee/presentation charges amounting to Rs. 27,89,352/-. As the appeal has been filed within the stipulated time-limit under Section 128(1) of the

A handwritten signature in black ink, appearing to read 'J. H.' or 'J. H. J.'.

Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

5.1 On going through the material on record, I find that following issue is to be decided in the present appeal :

- i. Whether the impugned decision, rejecting the waiver of late presentation charges, violates principles of natural justice.
- ii. Whether late presentation charges are leviable when an earlier Bill of Entry for the same goods was filed but subsequently purged from the system.
- iii. Whether the competent authority exercised its discretion properly under Regulation 4(3) of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018.

5.2 Firstly, I take up the issue whether the impugned decision, rejecting the waiver of late presentation charges, violates principles of natural justice. The Appellant's contention that the impugned decision was passed without granting a personal hearing and is a non-speaking order holds merit. Principles of natural justice mandate that a party affected by an adverse decision must be given an opportunity to be heard. While the decision was communicated via a letter, the record does not indicate that a formal personal hearing was offered or conducted before the decision to reject the waiver was made. Furthermore, the impugned decision merely states that "no justifiable reason viz. any technical glitches... has been found." It fails to provide detailed reasoning or address the specific points raised by the Appellant in their letter dated 15.04.2024, particularly the crucial point that the original Bill of Entry was purged. A non-speaking order, especially one with significant financial implications, is generally not sustainable in law.

5.5 Now I come to the issue whether late presentation charges are leviable when an earlier Bill of Entry for the same goods was filed but subsequently purged from the system. This is the central point of the dispute. Regulation 4(3) of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, prescribes charges for late presentation where the Bill of Entry is not filed within the stipulated time and "the proper officer of Customs is satisfied that there was no sufficient cause for such delay." However, the proviso to this sub-regulation states: "Provided that where the

proper officer is satisfied with the reasons of delay, he may waive off the charges referred to in the second proviso to subsection (3) of section 46 of the Customs Act, 1962 (52 of 1962)."

5.6 The undisputed fact is that the Appellant initially filed a Bill of Entry (No. 8702122) on 09.11.2023, well within time. The necessity to file a fresh Bill of Entry (No. 3000256 dated 12.04.2024) arose because the original Bill of Entry was "purged" from the system. This "purging" is a system-related issue, not an act or omission attributable to the Appellant's negligence or deliberate delay.

5.7 The legal maxim *Lex Non Cogit ad Impossibilia* (the law does not compel a person to do that which is impossible) is directly applicable here. Once the original Bill of Entry was purged, it became impossible for the Appellant to proceed with it or to comply with the query related to it. Filing a fresh Bill of Entry was the only recourse available to them to clear their goods. Penalizing an importer for a delay caused by a system anomaly, over which they had no control, would be unjust and contrary to the spirit of the law, which aims to penalize defaults, not unavoidable circumstances.

5.8 I rely on the CESTAT judgment in *H. Kumar Gadecha v/s Commissioner of Customs, Ahmedabad*, 2009 (243) ELT 248 (Tri.-Ahmd.), which supports the principle that if an act was impossible to perform, no penalty should be imposed. While that case pertained to defacement of documents, the underlying principle of not penalizing for impossibility or circumstances beyond control is relevant.

5.9 The competent authority's reasoning that "no justifiable reason viz. any technical glitches... has been found" is a narrow interpretation of "technical glitches." The purging of a Bill of Entry from the system is indeed a severe technical issue that directly impeded the Appellant's ability to comply. To deny waiver on such a ground is to ignore the practical realities of electronic filing and to impose an undue burden on the importer for a fault not their own.

5.10 Now I come to the issue whether the competent authority exercised its discretion properly under Regulation 4(3) of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018. The proviso to Regulation 4(3) grants the proper officer discretion to waive the charges if satisfied with the reasons for delay. This discretion must be exercised judiciously

and not arbitrarily. By limiting the "reasons of delay" solely to "technical glitches" in a restrictive sense and ignoring the fundamental issue of a purged Bill of Entry, the competent authority has failed to exercise its discretion properly. The purpose of such waiver provisions is to provide relief in genuine cases where the delay is beyond the control of the party. The Appellant's situation, where a previously filed Bill of Entry was removed from the system, clearly falls into such a category.

5.11 The principle laid down by the Hon'ble Supreme Court in *Hindustan Steel Ltd. v/s State of Orissa*, 1978 (2) ELT (J159) (S.C.), that "*penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation*," is also relevant. In the present case, the Appellant's actions were not in defiance of law; rather, they were an attempt to comply after an unforeseen system issue. Their conduct was bona fide. Therefore, the rejection of the waiver of late presentation charges by the competent authority is found to be arbitrary and not in consonance with the principles of natural justice and the proper interpretation of the Regulations.

In view of the detailed discussions and findings above, I pass the

following order:



(i) I hold that the impugned decision, rejecting the waiver of late presentation charges, was passed without due consideration of the Appellant's submissions and without proper application of discretion, thereby violating principles of natural justice.

(ii) I further hold that the late presentation charges are not leviable in this case, as the delay in filing the fresh Bill of Entry was caused by the purging of the original Bill of Entry from the system, a circumstance beyond the Appellant's control.

7. The appeal filed by M/s. K. D. Steels is hereby allowed with consequential relief, if any, as per law.



(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-70/CUS/MUN/2024-25

126 Date: 02.06.2025

By Registered post A.D/E-Mail

To,
M/s. K. D. Steels
A-45, Group Wazir Pur Industrial Area,
Delhi – 110 052.

सत्यापित/ATTESTED

Amrit
Amrit/SUPERINTENDENT
सीમा शुल्क (अप્પોલ), અહુભાગાદ,
CUSTOMS (APPEALS), AHMEDABAD

Copy to:

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

