



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,
चौथी मंजिल 4th Floor, हड्डकोभवनHUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250671MN0000611686

क	फाइलसंख्या FILE NO.	S/49-102/CUS/JMN/2024-25
	अपीलआदेशसंख्या ORDER-IN- APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) : 	JMN-CUSTM-000-APP-031-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	25.06.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	33/AC/CHS/REF/2024-25 dated 16.04.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	25.06.2025
छ	अपीलकर्ताकानामवप्ता NAME AND ADDRESS OF THE APPELLANT:	M/s Atlantic Global Shipping Pvt. Ltd., 301/401, 3 rd Floor, Anurag Avenue, Limda Lane, Opposite Jawahar Pan, Jamnagar, Gujarat – 361001.

1.	यह प्रतिउसव्यक्ति 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 कीधारा 129 डीडी (1) (यथासंशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता होतो इस आदेश की प्राप्तिकी तारीख से 3 महीने के अंदर अपरसंचिव/संयुक्त संचिव (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 आया तितकोई माल। (a) any goods imported on baggage. (ख) भारत में आया तकरने हेतु किसी वाहन में लादा गया याले किन भारत में उन के गन्तव्य स्थान पर उत्तर रेनगाए माल याउ सगन्तव्य स्थान पर उत्तर रेनगाए माल की मात्रा में अपेक्षित माल से कम हो। (ब) 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 बना एगाए 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 उसके 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 मद्दसं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रतियां 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 (यथासंशोधित) में निर्धारित फीस जो अन्यरसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) यारु. 1,000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलानटी. आर. 6 की दो प्रतियां। यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए के लाख खाया उस से कम होतो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक होतो फीस के रूप में रु. 1,000/-। (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. 1,000/-।
4.	मदसं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता होतो वे सीमाशुल्क अधिनियम 1962 कीधारा 129 ए (1) के अधीन फॉर्म सी. ए. -3 में सीमाशुल्क के न्द्रीय उत्पाद शुल्क और सेवाकर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं। In respect of cases other than those 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, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधि करण,पश्चिमीक्षेत्रीयपीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरीमंजिल,बहुमालीभवन,निकटगिरधरनगरपुल,असार वा,अहमदाबाद-380016	2 nd Floor, BahumaliBhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगगयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएयाउससेकमहोतोएकहजाररुपए	
(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;	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगगयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएसेअधिकहोलेकिनरूपयेपचासलाखसेअधिकनहोतो;पांचहजाररुपए
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगगयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपचासलाखरूपएसेअधिकहोतो;दसहजाररुपए	
(द)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेहै,यादंडके 10%अदाकरनेपर,जहांकेवलदंडविवादमेहै,अपीलरखाजाएगा।	
(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.	
6.	उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-	
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

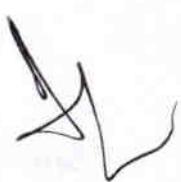


ORDER-IN-APPEAL

M/s Atlantic Global Shipping Pvt. Ltd., 301/401, 3rd Floor, Anurag Avenue, Limda Lane, Opposite Jawahar Pan, Jamnagar, Gujarat – 361001(hereinafter referred to as “the appellant”) have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order-In-Original (OIO) No. 33/AC/CHS/REF/2024-25 dated 16.04.2024 (hereinafter referred to as “the impugned order”) issued by the Assistant Commissioner, Customs House, Sikka (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, facts of the case are that the appellant vide their letter dated 12.03.2024 have filed a refund claim of ₹20,83,730/-, representing excess customs duty paid during the coastal conversion of the vessel *MT Maersk Value* upon its arrival at Sikka Port. The vessel was converted from foreign run to coastal run, and accordingly, the appellant filed Bill of Entry No. F-69 dated 08.11.2008. This was provisionally assessed to customs duty amounting to ₹38,98,635/-, which was paid by the appellant through Challan No. 315 dated 17.11.2008. However, upon final assessment conducted on 09.03.2009, the total duty liability was reassessed at ₹18,14,905/-, resulting in an excess payment of ₹20,83,730/-.

2.1. Earlier, the Assistant Commissioner, Customs House, Sikka, vide Order-in-Original No. 17/AC/CHS/REF/10-11 dated 30.09.2010, had sanctioned the refund claim dated 10.07.2009 filed by the appellant. However, the amount was ordered to be credited to the Consumer Welfare Fund under Section 27(2) of the Customs Act, 1962, read with Sections 18(5) and 280, due to non-compliance with the doctrine of unjust enrichment. Aggrieved by this order, the appellant filed an appeal before the Commissioner (Appeals), which was rejected vide Order-in-Appeal No. 23/Commr (A)/JMN/2011. Subsequently, the appellant preferred an appeal before the Hon’ble CESTAT, Ahmedabad, which allowed the appeal and granted consequential relief vide Final Order No. FO/C/A/10387-10388/2024-CU(DB) dated 08.02.2024. Pursuant to the said order, the appellant, vide letter dated 12.03.2024 addressed to the adjudicating authority submitted a copy of the Hon’ble CESTAT’s Final Order and requested the release of the refund amount of ₹20,83,730/-, which had earlier been sanctioned and transferred to the Consumer Welfare Fund, along with applicable interest.



2.2 The adjudicating authority, vide impugned order dated 16.04.2024, has sanctioned refund claim of Rs 20,83,730/- under Section 27 of the Customs Act, 1962 read with erstwhile Section 129E and Section 129EE of the Customs Act, 1962 and ordered to recover the amount of Rs 20,83,730/- from the Consumer Welfare Fund credited vide Order in Original No. 17/AC/CHS/REF/10-11 dated 30.09.2010. The adjudicating authority rejected interest claim of the appellant.

3. Being aggrieved with the impugned order, dated 16.04.2024, the appellant have filed the present appeal and mainly contended that;

- The lower Authority's contention that the impugned refund of duty deposit of 110% of the duty leviable on the fuel and other stores consumed by the ship on 'coastal voyage under a provisionally assessed Bill of Entry (BE) being claimed by the Appellant under section 27 of the Customs Act, 1962, is a refund of pre-deposit made under section 129E; and that the provisions of section 129EE would be applicable and therefore no interest is payable is grossly misplaced and erroneous for the reasons enumerated herein below. As such, the arguments put forth in Para 12 to 15 of the impugned Order-in-Original No. 33/AC/CHS/REF/2024-25 dated 16.04.2024, for rejection of the claim of interest merits to be quashed and set aside as it is legally unsustainable. The refund claimed was in respect of the excess duty deposited by the Appellant at the time of provisional assessment and as had been ordered to be refundable upon finalization of the assessment by the department. The Appellant had got the vessel MT Maersk Value converted from 'foreign run' to 'coastal run'. On conversion of the said vessel, the Appellant had filed Provisional Bill of Entry No. F-69 dated 08.11.2008 for payment of 110% duty deposit in respect of the bunker fuels and stores likely to be consumed during the 'coastal run', as per the provision contained in the Board's Circular No. 58/97 dated 06.11.1997. The said BE was provisionally assessed and an amount of Rs.38,98,635/- was paid by the Appellant as deposit towards the 110% of duty payable on the estimated quantity of bunker fuels and stores likely to be consumed. After reversion of the said vessel, the BE was finally assessed on 09.03.2009 and the duty liability was finalized at Rs.18,14,905/- Thus, an excess amount of Rs.20,83,730/- was found to have been deposited at the time of provisional assessment. The appellant vide letter dated 10.07.2009 filed a refund claim under section 27 of the Customs Act, 1962 for



refund of excess duty deposited. A deficiency memo dated 17.07.2009 was issued by the Respondent for producing documentary evidence related to unjust enrichment. The refund claim complete in all respects including CA certificate and documents evidencing that no unjust enrichment was involved were submitted by the appellant vide letter dated 31.05.2010.

- The interest on the impugned refund of duty deposit of 110% of the duty leviable on the fuel and other stores consumed by the ship on a 'coastal voyage' as assessed on finalization of a provisional Bill of Entry being claimed by the Appellant under section 27 of the Customs Act, 1962, not being a pre-deposit attracting the provisions of section 129E and 129EE, will have to be dealt under section 27A of the Customs Act, 1962.
- From the facts and the relevant provisions of the Customs Act, 1962 applicable, it can be seen that the interest on the refund claimed, if not paid within three months from the date of receipt of the application, has to be paid immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty. The refund claim after removal of all deficiencies along with the CA certificate to the effect that the duty incidence has not been passed on to any other person and the copy of the relevant ledger account, was filed on 31.05.2010 in the present case. The refund was admissible and was sanctioned vide OIO No. 17/AC/CHS/REF/10-11 dated 30.09.2010. However, instead of paying the sanctioned refund amount to the Appellant, it was credited to the Consumer Welfare Fund on the grounds of unjust enrichment on the pretext that no evidence was produced to show that the duty amount claimed as refund was not passed on to the customers.
- The said OIO dated 30.09.2010 pertaining to the crediting of the sanctioned refund to the Consumer Welfare Fund was only challenged before the Commissioner of Customs (Appeals), which was rejected. The OIA was challenged before the CESTAT with the same prayer of setting aside the order of the lower authority to the extent of transferring the sanctioned amount to the Consumer Welfare Fund. The Hon'ble CESTAT allowed the Appellant's appeal with consequential relief.
- In view of the above, it is clear that the CESTAT's Final Order dated 08.02.2024 has allowed the appellant's prayer of setting aside the OIO to the extent of transferring the refund amount to the Consumer Welfare Fund with consequential relief. However,

the said Order has not accorded any fresh sanction of refund and the order of the Assistant Commissioner dated 30.09.2010 sanctioning of refund was final. The CESTAT's order dated 08.02.2024 had only modified the OIO dated 30.09.2010 to the extent that instead of the refund amount sanctioned being credited to the Consumer Welfare Fund be paid to the appellant.

- The OIO to the extent of sanctioning the refund had attained finality on 30.09.2010 itself. The Assistant Commissioner's views expressed in the discussions in para 12 to 15 of the impugned OIO is totally misconstrued and not relevant to this case as the refund claim in the present case pertains to refund of excess duty deposited at the time of provisional assessment which was claimed on finalization of the assessment. The said refund which was claimed under section 27 of the Customs Act, 1962 cannot be equated to a pre-deposit made under section 129E of the Customs Act, 1962 as held by the learned Assistant Commissioner in the discussions in the said Para 12 to 15 of the OIO. Further, as the refund claimed is in respect of duty deposited at the time of provisional assessment which was found to be paid in excess at the time of finalization of the assessment, the same is covered under section 27 of the Customs Act, 1962 and the interest payable on the delay in payment of refund is under section 27A ibid and not under section 129EE of the Customs Act, 1962 as held by the learned Assistant Commissioner in Paras 12 to 15 of the impugned OIO.
- Thus, it can be seen that as the refund claimed under section 27 of the Customs Act, 1962 had attained finality on the date on which it was sanctioned, i.e. 30.09.2010, the interest on the delayed payment of refund would be payable as per the provisions under section 27A ibid, immediately after expiry of three months from the filing of the refund claim i.e. 31.05.2010.

4. Shri Muralidhar Panicker, Consultant, appeared for personal hearing on 10.06.2025 in virtual mode. He reiterated the submission made at the time of filing appeal.

5. I have gone through the appeal memorandum filed by the appellant, the impugned order and documents on record. The issue to be decided in present appeal is whether the impugned order passed by the adjudicating authority denying interest on refund of Customs duty consequent upon CESTAT Final Order No. FO/C/A/10387-10388/2024-CU(DB] dated 08.02.2024, in respect of refund claim, after removing all the deficiencies,

filed on 31.05.2010, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It is observed that the appellant, vide letter dated 12.03.2024, filed a refund claim of ₹20,83,730/-, being the excess duty paid during the coastal conversion of the vessel *MT Maersk Value* upon its arrival at Sikka Port. The vessel was converted from foreign run to coastal run, and the appellant had filed Bill of Entry No. F-69 dated 08.11.2008, which was provisionally assessed to customs duty amounting to ₹38,98,635/-. The said amount was paid vide Challan No. 315 dated 17.11.2008. However, upon final assessment on 09.03.2009, the duty liability was reassessed to ₹18,14,905/-, resulting in an excess payment of ₹20,83,730/-. Earlier, the Assistant Commissioner, Customs House, Sikka, vide Order-in-Original No. 17/AC/CHS/REF/10-11 dated 30.09.2010, sanctioned the refund claim dated 10.07.2009 but ordered the amount to be credited to the Consumer Welfare Fund under Section 27(2) of the Customs Act, 1962, read with Sections 18(5) and 280, citing non-compliance with the doctrine of unjust enrichment. Aggrieved by this decision, the appellant filed an appeal before the Commissioner (Appeals), which was rejected vide OIA No. 23/Commr(A)/JMN/2011. The appellant thereafter approached the Hon'ble CESTAT, Ahmedabad, and was granted consequential relief vide Final Order No. FO/C/A/10387-10388/2024-CU(DB) dated 08.02.2024. Pursuant to the CESTAT order, the appellant, vide letter dated 12.03.2024 addressed to the adjudicating authority submitted a copy of the final order and requested that the refund amount of ₹20,83,730/-, previously sanctioned and credited to the Consumer Welfare Fund, be released to them along with applicable interest.

5.2 The adjudicating authority, vide impugned order dated 16.04.2024, has sanctioned refund claim of Rs 20,83,730/- under Section 27 of the Customs Act, 1962 read with erstwhile Section 129E and Section 129EE of the Customs Act, 1962 but rejected the claim of interest of the appellant. There is no dispute in respect of the amount of refund sanctioned. The present appeal has been filed for rejection of refund of interest only.

5.3 I have gone through the impugned orders and observe that no personal hearing was granted before issuance of the impugned order rejecting interest claim of the appellant. Further, the adjudicating authority has no opportunity to consider the grounds submitted by the appellant in the grounds of appeal as no personal hearing was granted before issuance of the impugned order. I am of the considered view that a reasonable opportunity of being heard is required to be provided.

Therefore, requirement of natural justice was not satisfied. Thus, the impugned orders were issued in violation of the principles of natural justice. Therefore, I find that remitting of the case for passing speaking orders after providing the appellant with an opportunity for personal hearing becomes *sine qua non* to meet the ends of justice. Accordingly, the case is required to be remanded back, in terms of sub-section of (3) of Section 128A of the Customs Act, 1962, for passing speaking order by the adjudicating authority by following the principles of natural justice. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs - 2004(173) ELT 117 (Guj.), judgment of Bombay Hon'ble High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels P. Ltd. - [2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677(Tri. - Del)] holding that Commissioner(Appeals) has power to remand the case under Section-35A (3) of the Central Excise Act, 1944 and Section-128A (3) of the Customs Act, 1962.

6. In view of the above, I allow the appeal by way of remand to the adjudicating authority for passing speaking order, after providing opportunity of personal hearing to the appellant. The adjudicating authority shall examine available facts, documents, submissions and accordingly take necessary action and issue appropriate orders afresh immediately as discussed above, after following the principles of natural justice and adhering to the legal provisions. While passing this order, no opinion or views have been expressed on the merits of the dispute or the submissions made by the appellants, which shall be independently examined by the proper officer.

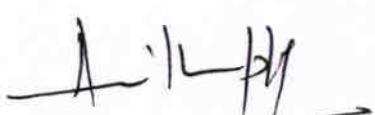


सत्यापित/ATTESTED

अधिकारक/SUPERINTENDENT

सीमा शुल्क (अपील), अहमदाबाद,
CUSTOMS (APPEALS), AHMEDABAD.

By Registered Post A.D.



(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

F.Nos. S/49-102/CUS/JMN/2024-25
1963

Dated -25.06.2025

To,

1. M/s Atlantic Global Shipping Pvt. Ltd.,
301/401, 3rd Floor, Anurag Avenue,
Limda Lane, Opposite Jawahar Pan,
Jamnagar, Gujarat - 361001

Copy to:

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

