



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

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

DIN - 20250671MN0000111AAE

क	फ़ाइल संख्या FILE NO.	(1) S/49-35/CUS/MUN/2024-25 (2) S/49-45/CUS/MUN/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)	MUN-CUSTOM-000-APP-088 to 089-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	17.06.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. 249/AC/KRP/REF/23-24 dated 29.02.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	17.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Chirag International, 23, Gadodia Market, Khari Baoli, Delhi-110009



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 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 जाँच 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 प्रतियाँ, 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 प्रतियाँ, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियाँ
(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/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियाँ. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए 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, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंजिल, 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 हजार रूपए.
	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 हजार रूपए
(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 हजार रूपए.
(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

Two appeals have been filed by M/s. Chirag International, 23, Gadodia Market, Khari Baoli, Delhi-110009, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 249/AC/KRP/REF/23-24 dated 29.02.2024 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner (Refund), Custom House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. It is observed that both the appeals are filed against the same impugned order, however the address of the office of Commissioner (Appeals) and date of filing are different as under :-

Table-I

Sr No.	Appeal File No.	Date of filing	Address of office of Commissioner(Appeals) in the appeal papers
1	S/49-35/CUS/MUN/2024-25	01.05.2024	4 th Floor, HUDCO Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009
2	S/49-45/CUS/MUN/2024-25	13.05.2024	7 th floor, Mridul Tower, Near Times of India Building, Ashram Road, Ahmedabad-380009

The Appellant had submitted vide their submission dated 06.05.2025 that the appeal filed at the address of office of Commissioner(Appeals) situated at 4th Floor, HUDCO Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009 (Sr. No. 1 above) may be taken into consideration ignoring the other duplicate appeal which was filed due to mistake of address. Accordingly, I take up the appeal File No. S/49-35/CUS/MUN/2024-25 for disposal. Further, as requested by the Appellant, I allow the second Appeal File No. S/49-45/CUS/MUN/2024-25 filed by the appellant to be treated as withdrawn.

2.1 Facts of the case, in brief, are that the Appellant had filed refund claim of Interest on encashment of Bank Guarantee of Rs. 24,03,754/- vide letter dated 03.08.2023 received on 08.08.2023 arising out of O-I-A No MUN-CUSTM-000-APP-38-23-24 dated 11.07.2023. The Appellant had filed Bills of Entry No 114753 dated 18.06.2007 and 115328 dated 09.07.2007 for import of "White Poppy Seeds" from Turkey. The value declared by the importer was very low compared to the price of US \$ 3200 for white poppy seeds of Turkey origin in the

International Market in public ledger in the month of May 2007. As the value declared by the importers were very low, it was proposed to load the value on the basis of price of white poppy seed available in the international market, however the Appellant requested for enhancement of value upto US 1700 MT and for provisional assessment of Bills of Entry along with the 50% Bank Guarantee of difference of duty between US \$ 3200/MT and US \$1700 MT. The Appellant had furnished Bank Guarantee of Rs.24,03,754/- as per **Table-II** below.

Table-II

Sr No.	Bank Guarantee No.	Date	Amount (In Rs.)
1	15/07-08	13.07.2007	13,94,179/-
2	16/07-08	13.07.2007	8,39,575/-
3	20/07-08	09.08.2007	1,70,000/-
Total			24,03,754/-

Accordingly Bills of Entry were assessed provisionally. Further, to finalise the provisional assessment, a Show Cause Notice was issued. Accordingly SCN dated 10.04.2008 was issued to reject the transactional value and to finalise the bills of entry US \$ 3200/ MT on the basis of Alert from Directorate of Valuation of poppy seed of Turkish origin, the clearance made at Nhava Sheva Customs House vide Bills of entry No. 788858 dated 06.06.2007 and 788859 dated 06.06.2007 and the price published in the Public Ledger in the month of May-2007.

2.1 The Show cause Notice dated 10.04.2008 was decided by the adjudicating authority vide OIO No. KDL/ 1590/AC/MP & SEZ/2008 dated 26.12.2008 and passed the following order;

(i) He rejected the declared value under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 1988 of the white poppy seeds of Turkish origin.

(ii) He also ordered to finalise the provisional assessment of Bills of

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Entry no. 114753 dated 18.06.2007 and 115328 dated 09.07.2007 for import of "white poppy seeds" from Turkey (Country of Origin Turkey) US \$ 2700/MT under Rule 5 of the Customs Valuation (Determination of value of imported Goods Rules, 1988. He further ordered that the demands arising out from the finalisation of the above said Bills of Entry to be paid forthwith with interest under section 28AB of the Customs Act, 1962".

2.2 Being aggrieved by the aforesaid OIO, the Appellant preferred an appeal before the Commissioner of Customs (Appeals), Kandla at Ahmedabad and Commissioner (Appeals) had taken up the matter for disposal in denovo proceeding pursuant to CESTAT, Ahmedabad decision vide Order No. A/872/WZB/AHD/2010 dated 21.06.2010 under which the Hon'ble Tribunal has disposed of the appeal filed by the Appellant against OIA No. 365/2009/Cus/Commr(A)/KDL/ dated 27.07.2009 by way of remand to the Commissioner (Appeals) observing as under;

"After hearing both sides we find that the Commissioner (Appeals) has dismissed the appeal for non-compliance with the stay order passed by him. Learned advocate Shri P.M. Dave appearing on behalf of the appellant submits that they have already furnished a bank guarantee totally amounting to Rs.24,03,754/- at the time provisional release of the goods. Appellant has no objection if the said bank guarantee is encashed by the Revenue and consider as pre-deposit for hearing of their appeal.

2. In view of the encashment of the bank guarantee in question and inasmuch as the appeal has not been passed on merit by Commissioner (Appeals), we set aside the impugned order and remand the matter to him for decision on merit by treating the encashment of the bank guarantee as pre-deposit."

2.3 The matter was taken up for disposal by the Commissioner (Appeals) and same was disposed vide OIA. No. 146/2011/CUS/COMMR(A)/KDL dated 19.04.2011. The Commissioner (Appeals) at Para no. 6.12 of the aforesaid OIA has held that;

"In the light of the above discussion and findings, I uphold the Impugned order of re-determination of value, finalisation of assessments and confirmation of differential duty and interest, demands, the amounts of

which stands qualified by the adjudicating authority and communicated to the appellant vide letter dated 20. 04.2009. There is no merit in this appeal and same is dismissed".

2.4 Being aggrieved by the aforesaid OIA No. 146/2011/Cus/Commr. (A)/ KDL dated 19.04.2011, the Appellant filed appeal before the Hon'ble CESTAT, WZB, Ahmedabad. Hon'ble CESTAT vide Final Order No. A/10614/2019 dated 11.04.2019 held at Para 4 that;

"Heard both the sides and perused the records. We find that from the SCN, it can be seen that the reason for issuance of the SCN is basically an alert from the DG Valuation. In our view, merely by an alert of DG Valuation, SCN cannot be issued in mass to all the imports without investigating the fact of their declared value. Though in the subsequent inquiry, the department has found that as per the public ledger international price published therein is 3200 PMT FOB Turkey however as per the judgement of this Tribunal in the case of Ajay Exports (supra), the Tribunal has categorically held in the identical case that merely on the basis of international price published in the public ledger cannot be used for enhancement of the value. As regard the application of price of USD 2700 PMT on the basis of Bill of entry of contemporaneous import, we find that the bill of entry of Laxmi Trading Co. was relied upon wherein the 2700 PMT was enhanced price by the customs under the identical dispute. It is a settled law that for the purpose of Contemporaneous price, the price which is under dispute and enhanced out of such dispute cannot be taken as a price of Contemporaneous goods. Only a price which declared by the assessee and accepted by the department, the bill of entry thereof can only be taken as price of contemporaneous goods. Moreover, the enhancement of the price in the case of Laxmi Trading Co., the case was before the Tribunal and the enhancement was set aside by the Tribunal in the case of Ajay Exports and others including the Laxmi Trading Co. (supra) therefore on both the count i.e. either the international price published in the public ledger or contemporaneous price of Laxmi Trading Co., the enhancement is incorrect and illegal. As regard the judgement relied upon by the Ld. AR, we find that the absolutely identical facts and law point in respect of the same case from the same country or origin has been decided by this Tribunal in the case of Ajay Exports and others, therefore, the facts of those cases relied upon by the AR is different from the case in hand, therefore, the judgement are not applicable. As per



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above discussion, the enhancement of the price and consequential demand, interest etc. is not sustainable. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief."

2.5 In view of above, the Appellant filed the refund application dated 11.01.2020 which was received on 04.02.2021. Further, letter dated 14.12.2011 was issued by the Deputy Commissioner (Import), Customs House, Mundra, to the Appellant that since the Appellant had not submitted the stay order, if any, issued by any appellate authority i.e. Court/CESTAT/Commissioner (Appeal) against OIO No. KDL/1590/AC/MP&SEZ/2008, dated 26.12.2008, the department had encashed the said Bank Guarantee of Rs.24,03,754/-. On scrutiny of refund application, it was requested to the Appellant to submit the documents vide letter dated 12.02.2020 which is as under;

- i. Original Proper Chartered Account Certificate
- ii. Original self-declaration cum undertaking that duty has neither been recovered nor passed on to buyer / other person.
- iii. Ledger of customs duty receivable for F.Y. 2008-09 to 2019-20.
- iv. Balance sheet for the F.Y. 2019 with all schedules / notes with 3CB and 3CD.
- v. Trial balance for the period from April-2019 to 31.01.2020
- vi. Refund application in the prescribed format.
- vii. Original copy of Bills of entry.
- viii. OIO NO. KDL/1590/AC/MP 8& SEZ/2008 dated 26.12.2008 and etc.



The department had issued reminders dated 02.03.2020, 24.03.2020, 24.04.2020 and 30.04.2020 to the Appellant for submission of documents sought vide letter dated 12.02.2020.

2.6 The Appellant had submitted the following documents vide letter dated 16.07.2020 received on 29.07.2020;

- (i) Copy of provisional assessed bills of entry.
- (ii) Ledger in respect of Bank Guarantees for custom duty/custom duty ledger A/c.
- (iii) C.A. Certificate dated 19.02.2020 issued by the M/s Chander Mohan and Associates (F.N 0002963N) certifying that claimant has neither recovered nor passed on the amount of custom

duty, redemption fine and penalty amounting to Rs. 24,00,754/- to buyer or other person.

- (iv) Form No. 3 CB and Form No. 3 CD certified by the CA.
- (v) Trading & Profit and Loss account for the year ended on 31.03.2019 and Balance Sheet as on 31.03.2019.
- (vi) Trial Balance for the Period from 01.04.2019 to 31.01.2020.
- (vii) Copy of OIO, OIA and CESTAT order.
- (viii) Copy of letter dated 23.02.2012 issued by AGM, SBBJ, Chandni Chowk, Delhi addressed to the DC-(Import) CH Mundra informing that they are enclosing draft no. 787206 dated 22.02.2012 of Rs. 24,03,754/ in favour of SBI A/C Custom Tax payable at SBI Mundra(Kutch).



2.7 Further, the Appellant submitted letter F.No. SMETH/2020-21/88 dated 01.12.2020 issued by the Chief manager, SBI informing that Demand Draft No. 787280 issued in favour of A/C Custom tax for Rs. 24,03,754/- was already paid at Branch code: 60356 (Ashapura Complex Mundra) on 11.06.2012. Initially draft no. 787206 dated 22.02.2012 issued for Rs.24,03,754/ by debit to account no. 51018756355 of Chirag International on dated 22.02.2012. Later on draft was cancelled multiple times and finally paid on Dated 11.06.2012.

2.8 The Superintendent (RRA), Customs House, Mundra vide letter from F.No. S/20-03/010/RRA/MCH/2019-20 dated 19.02.2020 has informed that Tribunal's order A/10614/2019 dated 11.04.2019 has been accepted by the Principal Commissioner, CH, Mundra on 18.11.2019. The Appellant vide letter dated 16.07.2020 received on 29.07.2020 submitted the requisite documents as discussed in para 2.6 above. The application shall be deemed to have been received on the date on which a complete application has been received as per Explanation to the Customs Refund Application (FORM) Regulations, 1995 read with para 6.1 of Chapter 14 of CBEC'S CUSTOM MANUAL for the purpose of payment of interest under section 27A of the Act. Therefore, the refund application shall be deemed to have been received on 29.07.2020 and within three months from this date i.e. 29.07.2020, the refund order should be issued on or before 29.10.2020. In that case, the refund order had been issued on 07.12.2020 vide order-in-original no. MCH/ 100/ MJ/DC/REF/2020-21. Therefore, the Appellant claimed the interest for delayed payment of refund. Further on the basis of **Table-III** as mentioned below Interest amounting to Rs. 15,015/- had been granted. The detail of the same is as mentioned below:-

Table-III

Refund (In Rs.)	Amt.	Period for Interest	No of days Delay	Interest @6%
24,03,754/-		30.10.2020 to 06.12.2020	38	15,015/-

2.9 Further, the Appellant disagreed with the Interest amount as sectioned vide O-I-O No. MCH/86/LP/AC/Ref/MCH/2020-21 dated 13.12.2021 and filed appeal before the Appellate Authority. The said appeal was decided vide Order-In-Appeal No. MUN-CUSTOM-000-APP-38-23-24 dated 11.07.2023 wherein the Appellate Authority remanded the matter to the adjudicating Authority for passing a fresh speaking order on the basis of submissions made by the Appellant .

2.10 In view of above, the appellant filed the refund application of Interest vide dated 03.08.2023 received on 08.08.2023 and claiming Interest @ of 12% from the date of encashment of the bank guarantee.

2.11 The Adjudicating Authority vide impugned order rejected the refund of interest on encashment of Bank Guarantee amounting to Rs. 24,03,754/- as per as per provisions of Circular No. 984/08/2014-CX dated 16.09.2014 read with Section 129E of the Custom Act, 1962.

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 It is submitted that the Adjudicating Authority has passed the impugned Order-in-Original mechanically and rejected the refund Application even without appreciating that this is a clear case of refund of pre-deposit or duty deposit. The Adjudicating Authority has passed the impugned Order-in-Original in most casual manner and the order is cryptic and non-speaking in nature. He has wrongly passed the present order even without verification of the facts on record. Further, he has dared to pass the present Order-in-Original even



intentionally violating the clear and categorical direction of the Board given for the issue in question. The Adjudicating Authority has failed to appreciate that in the present case he has issued Show Cause Notice on the irrelevant issue as it is very clear from the record of the present case that the Bank Guarantee amount of Rs. 24,03,754/- was encashed vide Order-in-Original passed by Adjudicating Authority and the same was physically encashed on 11.06.2012 and the same was decided as pre-deposit vide Tribunal Order No. A - 872 / WZB / AHD / 2010 dated 21.06.2010. Afterwards also the Ld. Commissioner (Appeals) dealt the present issue treating the Bank Guarantee amount of Rs. 24,03,754/- as Pre-Deposit as required under section 129E of Customs Act 1962. The Ld Adjudicating Authority has ignored the above mentioned factual matrix and wrongly Observed:-

".....

.....

In this instant case, Since the bank guarantee amounting to Rs. 24,03,754/- was encashed on 11.06.2022., i.e., after the filing of appeal with Commissioner (Appeal) and it is not to the extent of 7.5% or 10% as mentioned in above circular, therefore, it cannot be treated as pre-deposit in terms of Section 129E of the Customs Act, 1962 and accordingly the question of refund does not arise.

30. In view of above, the Bank Guarantee amounting to Rs. 24,03,754/- which was encashed on 11.06.2012., i.e., after the filing of appeal with Commissioner (Appeals) and not to the extent of 7.5% or 10% may not be treated as a Pre-deposit in terms of Section 129E thus, the refund claim of interest on encashment of Bank Guarantee amounting to Rs. 24,03,754/- filed by the claimant is held to be improper and liable to be rejected.

.....

....."

3.2 There is no dispute to the fact that the appellant furnished Bank Guarantee of Rs. 24,03,754/- at the time of provisional assessment as security money against the duty difference. He has also failed to appreciate that the said amount of Bank Guarantee had been encashed by the department transforming the same as cash security even before the decision of the Appellate Authority. The Adjudicating Authority has further failed to appreciate that the action of the department in the present case was illegal, improper and not permissible under law as it is decided in the following case laws : UNION OF INDIA vs. DABHOL

A. K.

POWER COMPANY [2006 (199) E.L.T. 782 (Bom.)], AJANTA LEATHER FASHION (P) LTD. vs. COMM. OF CUS. (PORT), KOLKATA [2007 (218) E.L.T. 624 (Tri. - Kolkata) and METAL PLAST EXIM (INDIA) LTD. vs. COMMISSIONER OF CUSTOMS, KANDLA [2012 (280) E.L.T. 120 (Tri. - Ahmd.)].

3.3 In this connection, the appellant has submitted letters dated 11.01.2020, 10.07.2021, 13.09.2021, 22.10.2021 wherein the appellant time and again explained the case and facts on record to the Adjudicating Authority. However, the Adjudicating Authority did not consider those letters and ended his justice by sanctioning interest of Rs. 15,015/- mis-interpreting the case as refund of duty amount under Sec. 27 of Customs Act, 1962. The Order-in-Original passed by the Adjudicating Authority is found cryptic and non-speaking Order and he has also intentionally violated the principal of natural justice. Accordingly, the present Order-in-Original legally merits for setting aside ab initio.

3.4 The Adjudicating Authority has failed to appreciate that in the present matter, Hon'ble Tribunal has already treated the Bank Guarantee amount of Rs. 24,03,754/- which was subsequently encashed during the appeal period as pre-deposit. From the facts of the case it is clearly seen that in subsequent appeal the Ld. Commissioner of Customs (Appeal) has also treated the above mentioned deposit as pre-deposit only for the purpose of Sec. 129E of Customs Act, 1962. Now at this stage of remand adjudication the Ld. Adjudicating Authority cannot take different stand at the advice of Audit Department. He has not followed the direction of the Commissioner of Customs (Appeal) given vide his Order-in-Appeal No. MUN - CYSTM - 000 - APP - 38 - 23 - 24. It is very clear from the impugned Order-in-Original that Ld. Adjudicating Authority has made an attempt to make a fresh and different case at the remand adjudication stage defying the direction of the Hon'ble Commissioner (Appeal). For this purpose, he has also mis-interpreted the Board Circular ignoring the decision of Hon'ble Tribunal wherein the present deposit has been treated as pre-deposit which was followed subsequently by the Commissioner of Customs (Appeals).

3.5 The Adjudicating Authority has also failed to appreciate that it is settled in law that the encashed Bank Guarantee amount is nothing but duty deposit / pre-deposit and the same cannot be treated as assessed duty amount. The case law KOMATSU INDIA PVT. LTD. vs. COMMISSIONER OF CUSTOMS

[2023 (01) LCX 0093] is referred in support of the above mentioned contention. The Adjudicating Authority has failed to appreciate that Ld. Commissioner of Customs (Appeal) has remanded the present matter only to check whether the rate of interest will be 12% as it was claimed subsequently by the appellant on the basis of decisions of the higher forum of law in the matter of :

- a. COMMISSIONER OF CENTRAL EXCISE, HYDERABAD vs. I.T.C. LTD. - 2005 (179) E.L.T. 15 (S.C.).
- b. SONY PICTURES NETWORKS INDIA PVT. LTD. vs. THE UNION OF INDIA, THE COMMISSIONER OF CUSTOMS, AND CENTRAL EXCISE, THE ASSISTANT COMMISSIONER OF CUSTOMS - 2017 - TIOL - 1102 - HC - KERALA - CUS.
- c. M/s. HINDUSTAN PERFUMERS vs. COMMISSIONER, CENTRAL GOODS AND SERVICE TAX - 2022 - TIOL - 145 - CESTAT - DEL.
- d. GOVIND MILLS LTD. vs. COMMISSIONER OF C. EX., ALLAHABAD - 2014 (35) S.T.R. 444 (ALL.).
- e. SONY PICTURES NETWORKS INDIA PVT. LTD. vs. UNION OF INDIA - 2017 (353) E.L.T. 179 (KER.).
- f. MADURA COATS PVT. LTD. vs. COMMISSIONER OF C. EX., KOLKATA - IV - 2012 (285) E.L.T. 188 (CAL.).
- g. VIKRAM ISPAT vs. UNION OF INDIA - 2009 (234) E.L.T. 74 (BOM.).
- h. M/s. TEHRI PULP AND PAPER LTD. vs. COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX - 2022 - TIOL - 63 - CESTAT - ALL.



3.6 The appellant has drawn attention to the case law : M/s. TEHRI PULP AND PAPER LTD vs. COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX [2022 - TIOL - 63 - CESTAT - ALL] wherein under the similar circumstances, Hon'ble CESTAT has decided to sanction the refund of interest on the pre-deposit @ 12% following the decision of Hon'ble Apex Court. In view of the above mentioned submissions it is very clear that the Adjudicating Authority has failed to appreciate the facts of the present case and he has taken some irrelevant and baseless grounds to reject the refund application for interest

filed by the appellant.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 06.05.2025, following the principles of natural justice wherein Shri N N Chakarborty, Consultant appeared for the hearing and he re-iterated the submission made at the time of filing the appeal. He also filed additional submissions wherein he reiterated the reliance on the laws cited in the appeal memorandum. He further requested to ignore the appeal filed by them addressed to the office of Commissioner(Appeals) at 7th floor, Mridul Tower, Near Times of India Building, Ashram Road, Ahmedabad-380009 and consider the other appeal petition.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Assistant Commissioner (Refund), Custom House, Mundra and the defense put forth by the Appellant in their appeal. The Appellant has filed the present appeal on 01.05.2024. In the Form C.A.-1, the Appellant has mentioned date of communication of the Order-In-Original dated 29.02.2024 as 09.03.2024. Hence, 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 within the stipulated time-limit under Section 123(1) of the Customs Act, 1962 and pertains to refund matter, it has been admitted and being taken up for disposal.

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

- (i) Whether the adjudicating authority correctly interpreted the nature of the Bank Guarantee encashment (i.e., whether it constitutes a "pre-deposit" for the purpose of interest accrual under Section 129EE) in light of the Hon'ble CESTAT's previous binding order.
- (ii) Whether the adjudicating authority correctly applied the provisions for interest on refund of the amount, particularly regarding the applicable rate of interest and the relevant section of the Customs Act, 1962.

5.2 The Appellant strongly relies on the CESTAT's Final Order No. A/872/WZB/AHD/2010 dated 21.06.2010, which "treated" the Bank Guarantee amount of Rs. 24,03,754/- as a "pre-deposit" for the purpose of Section 129E of the Customs Act, 1962. It is crucial to understand the context of this CESTAT order. Section 129E, as it stood prior to the 2014 amendment, dealt with the power of the appellate authority to dispense with pre-deposit for filing an appeal. The CESTAT's order likely "treated" the BG as a pre-deposit for the purpose of granting stay or allowing the appeal to be entertained without further cash deposit. This interpretation of "pre-deposit" for the purpose of Section 129E (stay) does not automatically extend to making it a "deposit made under Section 129E" for the purpose of interest accrual under Section 129EE.

5.3 Section 129EE of the Customs Act, 1962, specifically states: "Where an amount deposited by the appellant under Section 129E is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest..." The key phrase is "under Section 129E." The Bank Guarantee in question was encashed on 11.06.2012. The statutory pre-deposit regime of 7.5% or 10% under Section 129E came into effect only from 06.08.2014. Therefore, the BG amount was not a statutory pre-deposit made under the amended Section 129E. It was either a general guarantee or a deposit made during investigation/adjudication.

5.4 The adjudicating authority's reasoning that the BG amount could not be treated as a pre-deposit in terms of the specific percentages (7.5% or 10%) is relevant because those percentages define the statutory pre-deposit under the amended Section 129E. If the deposit does not fall squarely within the ambit of "amount deposited by the appellant under Section 129E," then Section 129EE, which specifically provides for interest on such deposits, may not be directly applicable. The CESTAT orders cited by the appellant often distinguish between "pre-deposits" for stay purposes and "payments of duty" or "deposits during investigation" for interest purposes. Some of these judgments also refer to a 6% interest rate for pre-deposits, particularly those made after the 2014 amendment.

5.5 If the amount is not a "deposit made under Section 129E" for the purpose of Section 129EE, then its refund, if due, would fall under the general refund provisions of Section 27 of the Customs Act, 1962. Section 27A of the

Customs Act, 1962, deals with interest on delayed refunds of duty. It stipulates that if duty is not refunded within three months from the date of application, interest shall be paid at a rate "not below five percent" (which is currently 6% per annum as per Notification No. 70/2014-Cus(NT) dated 06.08.2014).

5.6 The adjudicating authority sanctioned Rs. 15,015/- interest, treating the claim as a refund of duty under Section 27 of the Customs Act, 1962. This approach aligns with the view that if Section 129EE is inapplicable, Section 27A is the default provision for interest on refunds. The Appellant's claim for 12% interest is often based on judgments pertaining to involuntary deposits (e.g., during raids/investigations) or specific periods where a higher rate was judicially determined due to the absence of a clear statutory rate. However, for refunds of duty, the statutory rate under Section 27A (currently 6%) is generally applied. The Delhi High Court in *Raj Kumar Batra Vs Commissioner of Customs (Preventive)* clarified that interest on delayed refunds under Section 27A is at 6% per annum.

5.7 The previous remand order directed the adjudicating authority to "examine the appellant's contention and pass a speaking order afresh" particularly regarding the claim for interest at 12% on the pre-deposit. The adjudicating authority did re-examine the claim, passed a fresh speaking order, and sanctioned interest, albeit at a rate different from what the Appellant claimed. While the Appellant may disagree with the outcome, the adjudicating authority has fulfilled the procedural requirement of re-adjudication and provided reasons for its decision. The remand did not mandate a specific outcome (12% interest) but directed re-examination and a speaking order. The adjudicating authority's interpretation, even if unfavorable to the appellant, is an exercise of its adjudicatory power in compliance with the remand.

5.8 As discussed, the entitlement to 12% interest typically arises in specific circumstances (e.g., involuntary deposits, pre-2014 statutory amendments, or where the refund order predates the 6% notification). Given that the BG was encashed in 2012, before the formal 7.5%/10% pre-deposit regime, and the refund is being processed under Section 27A, the statutory rate of 6% per annum (as applicable under Section 27A) is the appropriate rate. The adjudicating authority's sanction of interest at this rate is consistent with the current statutory framework for duty refunds. The legality of the encashment



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itself is a separate issue from the interest on refund, and the adjudicating authority's order focuses on the latter.

6. In view of the detailed discussions and findings above, I find that the impugned Order-in-Original is legally sustainable. The adjudicating authority has correctly interpreted the nature of the encashed Bank Guarantee as not falling under the specific provisions of Section 129EE for interest accrual, and has appropriately applied Section 27A of the Customs Act, 1962, for the refund of interest. The adjudicating authority has also complied with the directions of the previous remand order by re-examining the claim and passing a speaking order. The Appellant's contentions for 12% interest are not found to be applicable in the facts and circumstances of this case.

7. In view of the detailed discussions and findings above on each of the issues, and in exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:



(i) The adjudicating authority has correctly interpreted the nature of the Bank Guarantee encashment and appropriately applied Section 27A of the Customs Act, 1962, for the purpose of interest on refund.

(ii) The adjudicating authority has properly complied with the specific directions of the Hon'ble Commissioner (Appeals)'s remand order dated 11.07.2023.

(iii) The Appellant is entitled to interest as sanctioned by the adjudicating authority in the impugned order, in accordance with Section 27A of the Customs Act, 1962.

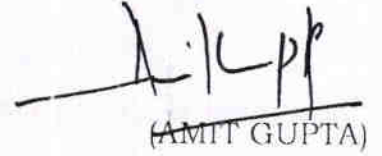
Therefore, the impugned Order-in-Original No. 249/AC/KRP/REF/23-24 dated 29.02.2024 is hereby upheld.

8.1 The appeal filed by M/s. Chirag International bearing F. No. S/49-35/CUS/MUN/2024-25 is hereby rejected.

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8.2 The appeal filed by M/s. Chirag International bearing F. No. S/49-45/CUS/MUN/2024-25 is dismissed as withdrawn.




(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

Date: 17.06.2025


F.No. S/49-35/CUS/MUN/2024-25

F.No. S/49-45/CUS/MUN/2024-25

1445

By Registered post A.D/E-Mail

To,
M/s. Chirag International,
23, Gadodia Market, Khari Baoli,
Delhi-110009.

સત્યાગ્રહ/ATTESTED

સુપરિન્ટેન્ડેન્ટ / SUPERINTENDENT
સીમા સુલક (અમીત), અમદાવાદ
CUSTOMS APPEALS, AHMEDABAD

Copy to:

1. ✓ The Chief Commissioner of Customs, Ahmedabad zone, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs House, Mundra.
3. The Deputy /Assistant Commissioner of Customs (Refund), Custom House, Mundra.
4. Guard File.