



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,
चौथी मंजिल 4th Floor, हडकोभवनHUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009 दूरभाषक्रमांक Tel. No. 079-
26589281
DIN – 20250571MN000000E0A0

क	फाइलसंख्या FILE NO.	S/49-14/CUS/KDL/23-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	KDL-CUS-000-APP-008-2025-26
	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	30.05.2025
ड	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	BOE No. 5991294 dated 13.02.2012 read with Final order No. A/10452/2023 dated 14.03.2023 issued by Hon'ble CESTAT, Ahmedabad
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	30.05.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Welspun India Ltd, Welspun City, Village: Varsamade, Tal: Anjar, District Kutch - 370110

1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागया है।
2.	This copy is granted free of cost for the private use of the person to whom it is issued.
3.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसाचिव/संयुक्तसाचिव (आवेदनसंशोधन),वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकते हैं।
4.	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.
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	बैगेजकेरूपमेंआयातितकोईमाल.
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउत्तरेनगएमालयाउसगन्तव्यस्थानपरउत्तरेजानेकेलिएअपेक्षितमालउत्तरेनजानेपरयाउसगन्तव्यस्थानपरउत्तरेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो.
(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)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहत्थगुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअंतर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	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)	कोर्टफीएक्ट, 1870केमदसं.6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.
(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)	सम्बद्धदस्तावेजोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो
(ब)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोंकेशीर्षकेअधीनआतहैमेंरु. 200/- (रूपएदोसौमात्र)यारु. 1,000/- (रूपएएकहजारमात्र),जैसाभीमालहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां, यदिशुल्क,मांगागयाव्याज,लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु. 200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु. 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.1000/-.
4.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं
	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, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलयाधि करण,पश्चिमीक्षेत्रीयपीठ Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench

	दૂસરીમંજિલ, બહુમાલીભવન, નિકટગિરધરનગરપુલ, અસારવા, અહમદાબાદ-380016	2 nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	સીમાશુલ્કઅધિનિયમ, 1962 કીધારા 129 એ (6) કેઅધીન,સીમાશુલ્કઅધિનિયમ, 1962 કીધારા 129 એ(1)કેઅધીનઅપીલકેસાથનિન્નલિખિતશુલ્કસંલગ્ન્હોનેચાહિએ-	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 -
(ક)	અપીલસેસમ્બન્ધિતમામલેમેંજહાંકિસીસીમાશુલ્કઅધિકારીદ્વારામાંગાગયાશુલ્કઔરવ્યાજતથાલગાયાગયાદંડકીરકમપાઁચલાખરૂપએયાઉસકેમહોતોએકહજારરૂપએ.	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;
(ખ)	અપીલસેસમ્બન્ધિતમામલેમેંજહાંકિસીસીમાશુલ્કઅધિકારીદ્વારામાંગાગયાશુલ્કઔરવ્યાજતથાલગાયાગયાદંડકીરકમપાઁચલાખરૂપએસેઅધિકહોલેકિનરૂપયેપચાસલાખસેઅધિકનહોતો;પાંચહજારરૂપએ	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 ;
(ગ)	અપીલસેસમ્બન્ધિતમામલેમેંજહાંકિસીસીમાશુલ્કઅધિકારીદ્વારામાંગાગયાશુલ્કઔરવ્યાજતથાલગાયાગયાદંડકીરકમપચાસલાખરૂપએસેઅધિકહોતો;દસહજારરૂપએ.	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
(ઘ)	ઇસઆદેશકેવિરુદ્ધઅધિકરણકેસામને,માંગેગાશુલ્કકે 10% અદાકરનેપર,જહાંશુલ્કયાશુલ્કએવંદંડવિવાદમેહૈને,યાંડકે 10% અદાકરનેપર,જહાંકેવલંડવિવાદમેહૈને,અપીલરહાજાએના।	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.
	ઉક્તઅધિનિયમકીધારા 129 (એ) કેઅન્તર્ગતઅપીલપ્રાધિકરણકેસમક્ષદાયરપ્રત્યેકઆવેદનપત્ર- (ક) રોકઆદેશકેલાયાગલતિયોકોસુધારનેકેલાયાકિસીઅન્યપ્રયોજનકેલાયાએગાએઅપીલ : - અથવા (ખ) અપીલયાઆવેદનપત્રકાપ્રત્યાવર્તનકેલાયારઆવેદનકેસાથરૂપયેપાઁચસૌકાશુલ્કભીસંલગ્ન્હોનેચાહિએ.	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 Welspun India Ltd, Welspun City, Village: Varsamade, Tal: Anjar, District Kutch-370110 (hereinafter referred to as the "appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against the Bill of Entry No. 5991294 (hereinafter referred to as the "impugned BOE") assessed by the Assistant Commissioner of Customs, Customs House, Kandla. (hereinafter referred to as the "assessing authority").

2. Briefly stated, facts of the case are that the appellant had imported a consignment of Indonesian steam (non-coking) coal in bulk falling under Chapter 27011920 vide Bill of Entry (BOE) No. 5991294 dated 13.02.2012 and claimed the benefit of 1% Countervailing Duty (CVD) under Notification No. 1/2011-CE dated 01.03.2011. However, during the assessment, the assessing authority levied a 5% CVD instead in terms of CBEC Circular D.O. F.No. B-1/3/2011-TRU dated 25.03.2011. The appellant under protest paid the CVD accordingly. Further, the appellant paid the CVD accordingly appellant under protest. Further, being aggrieved with the assessment of subject Bill of entry, the appellant had filed an appeal before Commissioner of Customs, Appeals Ahmedabad on the following grounds that that coal is not a "manufactured product" and, therefore, is not liable to excise duty under the Central Excise Act. Consequently, no CVD, which mirrors excise duty under the Customs framework, can be imposed on imported coal. Thereafter, Commissioner Customs (Appeals), Ahmedabad Vide OIA No. 355/2013/CUS/COMMR(A)/KDL dated 08.05.2013 dismissed the appeal on the ground that the appellant had not filed any application for the condonation of delay.

3. Thereafter, being aggrieved the appellant had challenged the aforesaid OIA dated 08.05.2013 before the Hon'ble CESTAT, Ahmedabad. The Hon'ble Tribunal had vide final order No. A/10452/2023 dated 14.03.2023 condoned the delay and remanded the matter to the Commissioner (Appeals), Customs, Ahmedabad to decide the issue of refund on merits which is reproduced as below:

"The Commissioner (Appeals) has not condoned the delay of 6 days in filing appeal before Commissioner (Appeals) on the ground that no application was filed before him. It is noticed in the appeal filed by the appellant that the reason given is that the employee who was supposed to travel to Ahmadabad to submit the appeal in time could not do so and had to send it through registered post AD. Hence, there was delay. It seems the appeal was sent on the last day i.e. 18.04.2012 by registered



post AD. We find that the appellant has been able to show reasonable cause for condonation of delay, the delay in filing appeal before the Commissioner (Appeals) is condoned. Since the Commissioner (Appeals) has not dealt with the merits of the case, the matter is remanded to the Commissioner (Appeals) for passing order on merits."



PERSONAL HEARING

4. Shri Suriyanarayanan, Advocate attended the personal hearing on 24.01.2025 in virtual mode. He reiterated the submission made in the appeal memorandum and submitted an additional submission dated 17.02.2025. However, due to change in appellate authority, a fresh PH was provided to which Shri Suriyanarayanan, Advocate attended the personal hearing on 06.05.2025 in virtual mode wherein he reiterated the submission as made earlier.

DISCUSSION & FINDINGS

5. I have gone through the appeal memorandum filed by the appellant, records of the case and submissions made during personal hearing. The main contention in the appeal is the CVD should be assessed at 1% concessional rate in terms of Notification No. 01/2011- CE whereas the assessed by the assessing authority has assessed the CVD at 5% in terms of Notification No. 2/2011- CE dated 01.03.2011. Therefore, the main issue to be decided in the present appeal is whether the CVD assessed at 5% in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It is observed that the appellant had filed a Bill of Entry to import the impugned goods of Indonesian origin i.e. steam (non-coking) coal in bulk falling under Chapter 27011920 claiming the benefit of CVD @1% vide impugned BOE which was disallowed by the assessing authority and levied CVD @5% . In this regard, it is observed that that no speaking order has been passed for the assessment of impugned Bill of Entry. Hence, I find that entire facts are not available on records to verify the claims made by the appellant. Therefore, I find that remitting of the case to the proper officer for passing speaking order becomes sine qua non to meet the ends of justice. Accordingly, the case is required to be remanded back, in terms of sub-section (3) of Section 128A of the Customs Act, 1962, for passing speaking order by the proper officer 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 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.

5.2 Further, the appellant has contended that condition of cenvat credit not being availed by them is not fulfilled cannot be ground to disallow the exemption in this case as they had imported the impugned goods and availing the cenvat credit outside India is not possible. Further, the appellant has emphasized on the following case laws:

- Rashtriya Chemicals and Fertilisers Ltd Versus CCE-2024 (2) TMI 1417-CESTAT Hyderabad dated 26.02.2024
- SRF Ltd Versus CC-2015 (4) TMI 561-Supreme Court
- CC Versus Sun Star International and others-2015 (8) TMI 191- CESTAT Chennai upheld in Commissioner Versus Enterprises International Ltd-2017 (4) TMI 80-SC Order.

In this regard, it is relevant to the above referred case laws and the relevant para of **Rashtriya Chemicals and Fertilisers Ltd Versus CCE-2024 (2) TMI 1417-CESTAT Hyderabad** is reproduced as below:

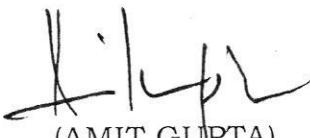
"7. We have considered the arguments on both sides and perused the records. It is true that any exemption notification must be strictly construed against the assessee who is claiming the benefit of the same. In this case, the only point of dispute is whether or not the CENVAT credit has been availed for the goods in question. It is not in dispute that the goods have been imported and therefore were manufactured outside India. The CENVAT Credit Rules, 2004 or CENVAT Credit Rules, 2002 are framed under the Central Excise Act, 1944. This Act applies to the whole of India but not beyond. When the Central Excise Act itself does not extend outside India, neither will the CENVAT Credit Rules. Therefore, it is impossible for anyone outside India to avail the benefit of CENVAT credit. Therefore, in respect of imports, it is impossible that the condition of CENVAT credit not being availed is not fulfilled. This has been decided by the Hon'ble Apex Court in the case of SRF Ltd., [2015 (318) ELT 607 (SC)]. We respectfully follow the ratio of the judgment of the Hon'ble Apex Court and hold that the appellant is entitled to the benefit of the exemption notifications 01/2011 & 02/2011-CE in respect of their imports.

8. In view of the above, the impugned orders are set aside and the appeals are allowed."

5.3 In this appeal, I find that since no speaking order has been passed, therefore, the original adjudicating authority needs to pass the speaking order in light of the submissions given by the appellant after giving principles of natural justice.

6. In view of the above discussion, I allow the appeal by way of remand to the adjudicating authority with the direction to pass the speaking order in light of the aforesaid judgments. Further, it is to clarify that, while passing this order, no findings or views have been expressed on the merits of the case or on the submissions made by the appellant. These shall be independently examined and considered by the adjudicating authority in accordance with law.




 (AMIT GUPTA)
 COMMISSIONER (APPEALS)
 CUSTOMS, AHMEDABAD

F. Nos. S/49-14/CUS/KDL/23-24 *✓ 5*

Dated – 30.05.2025

By Registered Post A.D.

To,

M/s Welspun India Ltd,
 Welspun City, Village: Varsamade,
 Tal: Anjar, District Kutch-370110

सत्यापित/ATTESTED

 આધીકનક/ઉપરિન્દેન્ડન્ટ
 સીમા શુલ્ક (અપીલ્સ), અહમદાબાદ
 CUSTOMS (APPEALS), AHMEDABAD

Copy to:

- 1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
- 2. The Commissioner of Customs, Customs House, Kandla.
- 3. The Deputy/Assistant Commissioner of Customs, Customs House, Kandla.
- 4. Guard File.