



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,  
OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS),अहमदाबाद AHMEDABAD,  
चौथीमंज़िल 4th Floor, हडको बिल्डिंगHUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009  
दूरभाषक्रमांक Tel. No. 079-26589281  
DIN- 20250471MN0000020070

क	फ़ाइलसंख्या FILE NO.	S/49-21/CUS/MUN/2025-26
ख	अपीलआदेश संख्या ORDER-IN- APPEAL NO. (सीमाशुल्कअधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP-010-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	17.04.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	OIO No. MCH/ADC/AKM/259/2024-25, dated 17.01.2025 issued by the Additional Commissioner, Customs, Mundra.
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	17.04.2025
छ	अपीलकर्तकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s. S P Polymer, A-10, Rooma Industrial Area, General Extension, Rooma, Kanpur-208024

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.
	खित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods imported on baggage.
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षक 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 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 अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं





	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	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.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	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; पाँच 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**

M/s. S P Polymer (IEC No. 0608006459), A-10, Rooma Industrial Area, General Extension, Rooma, Kanpur -208024 (hereinafter referred to as the 'appellant') have filed the present appeal in terms of Section 128 of the Customs Act, 1962 challenging the Order - In - Original No. MCH/ADC/AKM/259/2024-25, dated 17.01.2025 (hereinafter referred to as the 'impugned order') issued by the Additional Commissioner, Customs, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant had filed Bill of Entry No. 5580001, dated 13.09.2024 through their Custom Broker M/s Kashyap Shipping Pvt. Ltd. for clearance of 78,468 KGS of goods declared as "Calcium Gluconate Technical Grade Not for Medicinal Use" having an assessable value of Rs. 22,18,437/-. For the said import, the appellant had applied for Dual Use NOC with Deputy Drug Controller, Central Drugs Standard Control Organisation (CDSO), North Zone, Ghaziabad on 29.09.2024. However, they were not given dual Use NOC by the CDSO authorities stating that " *The said applications were scrutinized and several times queries have been issued, however, the firm has not submitted the requisite documents, hence this office is unable to issue Dual use NOCs*". Prima facie, it appeared that the imported goods need Dual Use NOC for clearance and in absence of the same, the said goods were liable for confiscation under Section 111(d) of the Customs Act, 1962.

2.1 The appellant requested for re-export of above goods vide letter dated 30.12.2024. Further, vide letter dated 16.01.2025 they submitted that they do not want Show Cause Notice and personal hearing in the case.

2.2 Thereafter, the adjudicating authority has vide impugned order passed order as detailed below:



- (i) Ordered for confiscation of imported goods declared as "*Calcium Gluconate Technical Grade - Not for Medicinal Use*" weighing 78,468 KGS having Assessable Value of Rs. 22,18,437/- imported vide Bill of Entry No. 5580001 dated 13.09.2024 under Section 111(d) of the Customs Act, 1962. However, he give an option to the appellant to re-export the confiscated goods on payment of redemption fine of Rs. 1,00,000/- under Section 125 of the Customs Act, 1962.
- (ii) Imposed a penalty of Rs. 50,000/- on the appellant under Section 112 (a) (i) of the Customs Act, 1962.
- (iii) Allowed the appellant to re-export the goods declared as "*Calcium Gluconate Technical Grade - Not for Medicinal Use*" weighing 78,468 KGS having Assessable Value of Rs. 22,18,437/-

3. Being aggrieved with the impugned order, the appellant have filed the present appeal wherein they have, interalia, contended as under :-

- The Impugned Order which has been passed, is partially erroneous to the extent the findings concerning "Dual use NOC" is concerned. At present "Dual use NOC" has been issued by Drug Officer in favor of the Appellant vide Letter dated 25.03.2025. Therefore, this entire issue is no more res integra and settled.
- It has been has referred in Para-9.4 of the Impugned Order that the request of the Appellant to allow for re-export of the goods is tenable since the provisions of Drugs and Cosmetics Act, 1940 are not specifically restricting the re-export of such consignments where dual use NOC is not being granted. This view of the Impugned Order is a correct supposition and is not challenged in this appeal but further it needs to be appreciated in the light of the fact that "Dual use NOC" has been issued by Drug Officer in favor of the Appellant vide Letter dated 25.03.2025. Therefore, the issue of payment of redemption fine in lieu of the confiscation on the goods in terms of section 125 of the Customs Act 1962 should be further relaxed.
- The entire issue pertains to the import of Cargo and subsequently non issuance of "Dual use NOC" which were finally issued vide Letter dated 25.03.2025 in favor of the Appellant. It is submitted that the Impugned order has wrongly confirmed a penalty of Rs.50,000/ under Section 112(a) of the Customs Act, 1962. The case pertains a curable procedural defect and the same has already been cured subsequently vide Letter dated 25.03.2025. It is now a trite law that the procedural





infraction is to be condoned and the law is settled now that substantive benefit cannot be denied for procedural lapses. The Impugned Order has held in Para-9.3 that the Appellant was required to apply for the "Dual Use NoC" subsequent to the import of the goods. Therefore the reasonable steps would have been to apply for the same but the procurement of the said document in a timebound manner is not in the hands of the Appellant. Therefore any detention of the Cargo on the premises that the document has not been issued is wrong specially when "Dual use NoC" has been issued in favor of the Appellant vide Letter dated 25.03.2025.

- In the absence of any evidence or justification the penalty cannot be imposed upon the Appellant. Because Section 112 of the Act has to be read in isolation to vicarious liability as the CHA is only Service provider not employee and thus the liability of the CHA cannot be saddled on the Recipient Appellant. This argument is in pursuance to the delay in obtaining the "Dual use NOC" The Appellant had no domain and control over the specified and assigned job of CHA and in the end they succeeded in obtaining the "Dual use NOC" vide Letter dated 25.03.2025
- The penalty is not imposable upon the Appellant as they have not violated any of the aforesaid contents provided in the provisions. The Appellant is not liable to penalty under Section 112(a) of the Act since the goods are themselves not liable to confiscation. The "Dual use NOC" has been issued by Drug Controller in favor of the Appellant vide Letter dated 25.03.2025. Thus when the goods are not liable to confiscation, the allegation that Appellant did an act making goods liable to confiscation does not survive and the penalty cannot be imposed upon the Appellant.
- The learned Adjudicating authority is bound by the principle of judicial discipline which requires that due regard be given to the law laid down in terms of the above cited judicial pronouncements. The Appellant, therefore, requests the respected Hon'ble Appellate Authority to take a fair and judicious view in the matter by abiding with the law as laid down by the higher appellate authorities in terms of the above cited judicial pronouncements.
- The appellant has placed reliance on case laws as detailed in their appeal memorandum.

4. Personal hearing in the matter was held on 16.04.2025. Shri Anirudh Gupta, Proprietor, appeared for the hearing. He reiterated the submissions made in the appeal memorandum.



5. I have carefully gone through the facts of the case and submissions made by the appellant in their appeal memorandum as well as those made during the personal hearing. I find that the appellant has contended that the entire issue is based on the issuance of Dual Use NOC which was not available earlier but has now been received by the appellant. They have further contended that after issuance of Dual Use NOC, the redemption fine imposed in lieu of confiscation under Section 125 of the Customs Act, 1962 should be relaxed. The appellant has also submitted that after production of Dual Use NOC, the goods are not liable for confiscation under Section 111(d) of the Customs Act, 1962 and hence penalty under Section 112(a)(i) of the Customs Act, 1962 cannot be imposed upon them. Therefore, the issue to be decided in the present appeal is as under:-

- (i) Whether the impugned order passed by the adjudicating authority wherein the impugned goods have been held liable for confiscation under Section 111(d) of the Customs Act, 1962 imposing Redemption under Section 125(1) of Customs Act, 1962 on the appellant while permitting re-export of the goods, in the facts and circumstances of the case, is legal and proper or otherwise.

(ii) Whether penalty imposed on the appellant under Section 112(a)(i) of the Customs Act, 1962 vide impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise

5.1 Before going into the merits of the case, I find that as per appeal memorandum, the present appeal has not been filed within statutory time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962. In this regard, it is relevant to refer the legal provisions governing filing an appeal before the Commissioner (Appeals) and his powers to condone the delay in filing appeals beyond 60 days. Extracts of relevant Section 128 of the Customs Act, 1962 are reproduced below for ease of reference:

*SECTION 128. Appeals to [Commissioner (Appeals)]. — (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order.*

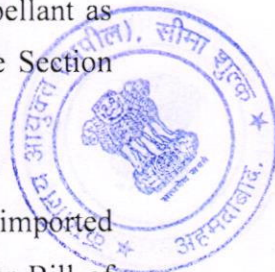


*[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]*

Section 128 of the Customs Act, 1962 makes it clear that the appeal has to be filed within 60 days from the date of communication of order. Further, if the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days.

5.1.1 It is observed from the Appeal Memorandum that the date of communication of order appealed against is mentioned as 20.01.2025 and the appeal has been filed on 03.04.2025. Therefore, I find that there is delay of 13 days in filing of Appeal beyond the appeal period of 60 days. In their application for condonation for delay, the appellant have submitted that the the delay has been caused as the appellant was unwell from 14.02.2025 to 12.03.2025. It is further submitted that Kanpur city was closed for working from 13.03.2025 to 20.03.2025 due to Holi and Ganga Mela local holiday. It is further submitted that the advocates of Kanpur and Allahabad were on strike from 25.03.2025 to 29.03.2025 followed by Eid holidays from 30.03.2025 to 31.03.2025. The delay upto 30 days in filing of appeal beyond the time limit of 60 days is condonable as stipulated under Section 128(1) of the Customs Act, 1962. Therefore, in the interest of justice, I take a lenient view and allow the said appeal filed by the appellant as admitted by condoning the delay of 13 days in filing appeal under the proviso to the Section 128(1) of the Customs Act, 1962.

5.2 Now coming to the merits of the case, it is observed that after the appellants imported goods declared as "Calcium Gluconate Technical Grade Not for Medicinal Use" under Bill of Entry No. 5580001, dated 13.09.2024, they applied for Dual Use NOC with CDSO on 29.09.2024. However, they were not given Dual Use NOC by the CDSO authorities and in absence of the same, the goods appeared liable for confiscation under Section 111(d) of the Customs Act, 1962 and accordingly ordered by the adjudicating authority in the impugned order dated 17.01.2025. The appellant has now produced the copy of NOC issued vide F. No. NOC/NZ/2025/000681 dated 25.03.2025 issued to them by the office of Deputy Drugs Controller (India), CDSCO ( North Zone), Ghaziabad along with the appeal filed before me. I find that the above NOC has been produced for the first time before me and the adjudicating authority had no occasion to consider the said document during adjudicating proceedings. Therefore, I find that remitting the case to the adjudicating authority 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

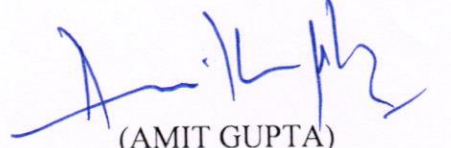




passing speaking order by the adjudicating authority by following the principles of natural justice. While passing the speaking order, the adjudicating authority shall also consider the submission of appellant made in present appeal on merits. In this regard, I also rely upon the judgment of Hon'ble 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)] wherein it was held 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. Accordingly, the appeal filed by the appellant is allowed by way of remand.



  
(AMIT GUPTA)  
Commissioner (Appeals)  
Customs, Ahmedabad

Date: 17.04.2025

F.No. S/49-21/CUS/MUN/2025-26

By Registered Post A.D/E-Mail.

To,  
M/s. S P Polymer, (IEC No. 0608006459)  
A-10, Rooma Industrial Area,  
General Extension, Rooma,  
Kanpur-208024  
( Email-anirudh@splperfect.com)

Copy to :-

1. The Chief Commissioner of Customs, Ahmedabad Zone, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs House, Mundra.
3. The Additional Commissioner of Customs, Customs House, Mundra.
4. Guard File.