सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD

चौथी मंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.

दूरभाष क्रमांक Tel. No. 079-26589281

DIN-20250871MN0000888F27

क	फ़ाइल संख्या FILE NO.	S/49-288/CUS/AHD/2024-25
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-165-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	07.08.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	Order-In-Original No. 44/AC/DAHEJ/ REFUND/24-25 dated 16.01.2025 passed by the Assistant Commissioner of Customs, Custom House, Dahej.
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	07.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Adani Enterprises Ltd., Adani Corporate House, Shantigram, S. G. Highway, Ahmedabad 382421.

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 है.**
	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)	**बैगेज़ 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 दस्तावेज़ों 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 जोअन्य रसीद,फीस,दण्ड,जब्तीऔर विविध मदों के शीर्षके अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/- (रूपए एक हज़ार मात्र),जैसा भी मामला हो,से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां. यदि शुल्क,मांगा गया ब्याज,लगाया गया दंड की राशिऔर 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 सम्बंन्ध 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 अपीलियअधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल,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 हज़ार रुपए.**
(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; पांच हज़ार रुपए**
(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 हज़ार रुपए.**
(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 के10 % 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. Adani Enterprises Ltd., Adani Corporate House, Shantigram, S. G. Highway, Ahmedabad 382421 (hereinafter referred to as 'the appellant') has filed the present appeal against the Order-In-Original No. 44/AC/DAHEJ/REFUND/24-25 dated 16.01.2025 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner of Customs, Custom House, Dahej (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case in brief, as per the appeal memorandum, are that the appellant imported 37375 M.T Indonesian Steam Coal vide Bill of Entry No. 8745394 dated 12.12.2012 filed at Dahej Port Custom House (hereinafter referred to as the 'impugned Bill of Entry). While processing the payment of customs duty against the said import, the appellant inadvertently made payment twice against a single Challan No. 2005119380 dated 14.12.2012. Details of payment made by the appellant are summarized herein below:

Table-1

ICEGATE Reference No.	Date and Time of payment (yyyy-mm-dd, hh:mm:ss)	Internet transaction No.	Amount (in Rs.)
IG141212070851559371	2012-12-14, 19:24:08	CK23168985	38,92,202/-
IG141212071020545509	2012-12-14, 19:23:22	CK23169057	38,92,202/-

2.1 Pursuant to processing of aforesaid payment made twice inadvertently on the same date against the same Bill of Entry, the appellant stated to have approached State Bank of India for rectification and reversal of payment; however, the bank had shown their inability to reverse the same as the payment was credited to the government treasury account through ICEGATE.

2.2 In view of the inadvertent mistake occurred on the part of appellant in respect of duplication of payment, the appellant stated that vide letter dated 13.03.2013, submitted on 15.03.2013, they had approached the Additional Commissioner of Customs, Ahmedabad and requested for refund of the excess amount paid by them due to inadvertence.

2.3 The appellant, vide another letter dated 05.01.2016, submitted on 21.01.2016, reiterated their request to the Additional Commissioner of Customs, Ahmedabad for releasing the refund amount.

2.4 The Deputy Commissioner (Tech) of Customs, Ahmedabad vide letter F.No. VIII/20-01/Cus/T/2014 dated 23.02.2016 returned the original documents submitted vide letter dated 05.01.2016 and advised the appellant to approach the Assistant Commissioner of Customs, Surat Division, as he was the proper officer for sanctioning the refund. Thus, instead forwarding the refund documents to proper officer, the refund documents had been returned to the appellant.

2.5 Upon aforesaid instructions/directions by Customs Department, the appellant, vide letter dated 05.03.2016 reiterated their request for refund before the Assistant Commissioner of Customs, Surat Division, Surat.

2.6 According to the appellant, the Assistant Commissioner of Customs, Surat paid no heed to their request and kept silent for 8 long years. Thereafter, the Assistant Commissioner of Customs, Surat informed the appellant vide letter dated 17.04.2024 that the Bill of Entries were filed at Dahej Port, which is now in charge of an independent Assistant Commissioner and no longer under the Customs Division, Surat. Accordingly, the appellant was instructed to take up the matter with the authorities at Dahej Port.

2.7 In terms of the aforesaid direction/instruction, the appellant vide letter dated 31.07.2024 approached the Assistant Commissioner of Customs, Dahej to sanction refund of the amount which was inadvertently paid twice. The appellant vide the said letter annexed the relevant documents like Bill of Entry, Duty payment challan, C.A. certificate along with Bank statement to consider the refund request made by them.

2.8 The Superintendent of Customs, Dahej, vide letter dated 27.09.2024 (with approval of competent authority), directed the appellant to submit the documents as specified in the said letter dated 27.09.2024. This was the first time when the Revenue Department sought additional documents from the appellant.

2.9 The appellant vide letter dated 21.10.2024 submitted the documents as sought vide letter dated 27.09.2024.

3. The Assistant Commissioner of Customs, Custom House, Dahej, issued a **Notice dated 25.11.2024 for rejection of refund** and called upon the appellant to Show Cause as to why the refund claim should not be rejected on the following premise:

a) *Against the Bill of Entry No. 8745394 dated 12.12.2012, Custom duty payment was made on 14.12.2012 and refund application was required to be filed before expiry of one year as per Section 27 of the Customs Act, 1962. But you have submitted the said refund application to the Additional Commissioner of Customs, Ahmedabad on 21.01.2016, which is beyond the period of one year. Therefore, it appears that the refund claim filed is not proper and liable for rejection being time barred.*

b) *Your letter dated 13.03.2013 addressed to the Additional Commissioner of Customs, Ahmedabad in this regard is not endorsed with any stamp of Customs showing submission of letter in Dept. office. You also failed to produce evidence showing the receipt of the said letter in Customs Dept. even though you have been specifically asked to produce the same. Therefore, it appears that the refund claim filed is not proper and liable for rejection being time barred.*

c) *You have submitted refund application to the office of Assistant Commissioner, Custom House, Dahej on 12.09.2024 which is beyond a period of 11 years and 9 months. Therefore, it appears that the refund claim filed is not proper and liable for rejection being time barred.*

d) *You have not submitted the details of correspondence made with the bank for refund of Rs. 38,92,202/- towards Custom duty inadvertently paid twice. You have also not submitted any evidence showing that the said amount has not been refunded by the Bank to you. Therefore, it appears that the refund claim filed is not proper and liable for rejection.*

4. The appellant vide letter dated 04.12.2204 filed their reply to aforesaid Notice dated 25.11.2024 and *inter-alia* contended the following:

- That the refund claim was not barred by limitation as the provisions of limitation would not be applicable in the present case as the appellant had not paid the amount towards any "duty liability" and the same was paid inadvertently due to mistake;

- That the Department is bound to refund the amount deposited/paid by mistake in terms of **Article 265 of Constitution of India** and the cannot be retained having not paid towards taxes or duty;

- That though the appellant was not required to make a formal refund application as the amount was paid under bonafide mistake and such a refund was to be granted without insisting for any formal application, however, the appellant did not receive the amount and therefore, the appellant made a request seeking refund on 13.03.2013 which was within the permissible time limit.

5. The aforesaid Notice dated 25.11.2024 has been adjudicated vide impugned Order-in-Original No. 44/AC/DAHEJ/REFUND/24-25 dated 16.01.2025. The adjudicating authority discarded all the submissions and documentary evidences put forward by the appellant and held that the letter dated 13.03.2013 was not stamped / acknowledged by the department and therefore, the refund application filed by the appellant is beyond the period of limitation prescribed under **Section 27** of the Customs Act, 1962. It was also held that pursuant to submission of letter dated 13.03.2013, the appellant did not approach the Customs Department for more than 2 years and 10 months and they only approached the Additional Commissioner of Customs, Ahmedabad vide letter dated 05.01.2016. The adjudicating authority also discarded the submissions of the appellant on the issue of limitation on the premise that the refund application was filed by the appellant under Section 27 of the Act and therefore, the said provision would be applicable in the instant case.

Filing of appeal

6. Being aggrieved, the appellant has filed the present appeal on 24.02.2025. As the appeal has been filed against Order towards rejection of refund claim, pre-deposit under the provisions of Section 129E of the Customs Act, 1962, does not require. In the Form C.A.-1, the date of communication of the impugned Order dated 16.01.2025 has been shown as 17.01.2025. As the appeal has been filed within normal period of 60 days as stipulated under Section 128(1) of the Customs Act, 1962, it has been admitted and being taken up for disposal on merits.

Grounds of Appeal

7. The appellant has raised various contentions in the Grounds of Appeal, which are as follows:

REFUND REQUEST WAS MADE WITHIN THE TIME LIMIT

A) The Respondent ought to have appreciated that in terms of settled law that the amount deposited under mistake of law or due to inadvertence, the same cannot be considered as "duty" and refund thereof, and the same is required to be refunded *suo motu* by the Department as the said amount is/was collected without the authority of law. Therefore, even though the Appellant was not required to file any application for refund, the Appellant vide letter dated 13.03.2013 requested to refund the amount paid twice due to inadvertence. Section 27 of the Customs Act provides to file the refund claim of duty within a period of one year from the date of payment. Since the Appellant inadvertently made payment twice on 14.12.2012, thus, the amount which was paid 2nd time under mistake does not represent the amount paid towards duty but the same remains as the amount deposited with the Govt. and therefore, provisions of Section 27 do not attract in the facts of the present case. Hence, the Respondent erred in rejecting the refund claim on the ground of limitation.

B) The Respondent erred in holding that the letter dated 13.03.2013 filed by the Appellant on 15.03.2013 before the Ld. Additional Commissioner of Customs, Ahmedabad has not been acknowledged / endorsed with any stamp of any Customs Office and therefore, the said letter cannot be considered as refund Application. The Respondent failed to appreciate that the said letter dated 13.03.2013 has been duly accepted by the concerned officer on 15.03.2013, which can be seen from the endorsement / acknowledgment made on the left side of the said letter by the concerned officer. Merely, not having any rubber stamp over the letter would not lead to the fact that the Appellant has not filed the said letter with the Customs department. The Respondent ought to have appreciated that had the letter not been filed with the Customs department, the endorsement / acknowledgement would not have been available.

C) The Respondent ought to have appreciated that on numerous occasions, the concerned officer of the Revenue department only receive/acknowledge the letter by way of their initials / signature and they do not affix official rubber stamp. However, merely non-affixing the rubber stamp would not lead to the fact that the said letter was not filed with the department. In view of the above, it is submitted that the letter dated 13.03.2013 filed by the Appellant was duly received/acknowledged by the appropriate officer in the office of Ld. Additional

Commissioner of Customs, Ahmedabad and therefore, the refund claim filed by the Appellant was correct as well as within the time-limit.

D) The Respondent ought to have appreciated that it is not the department's case that the letter dated 13.03.2013 was fabricated / forged in nature and therefore, the same cannot be relied upon. Once, the department has not raised any doubt about the genuinity of the said letter then such letter cannot be discarded by the Respondent.

E) The Respondent erred in holding that if the Appellant had actually submitted the letter dated 13.03.2013 to the Customs office, then they must have obtained reply from the Customs Office like the reply dated 23.02.2016 to the letter dated 05.01.2016 (filed on 21.01.2016). It is submitted that if the department has failed to respond to the letter dated 13.03.2013 then the Appellant could not be made liable and denied the rights accrued to them.

F) The Respondent failed to appreciate that it is the obligation upon the Revenue Department to respond to each and every letter of the party. However, merely non-giving response to the letter filed by the Appellant would not lead to the fact that the Appellant has failed to submit such letter before the concerned authority.

G) Without prejudice to above and even otherwise, it is an admitted fact that the Revenue Department do not respond to each and every letter filed by the party and they just take it on record and place it in their file. Further, in the present case, there is sheer negligence on the part of Respondent in failing to cross check the receipt of the letter dated 13.03.2013 with the Customs office, Ahmedabad and therefore, the impugned order is bad and mis-conceived in the eyes of law.

H) The Respondent ought to have appreciated that the Appellant in their letter dated 05.01.2016 referred to about the refund claim filed through the letter dated 13.03.2013. Had there been any afterthought on the part of the Appellant, then they could have avoided the reference of letter dated 13.03.2013. In fact, it was the obligation upon the Customs department, Ahmedabad to point out at that point of time only that there was no refund claim filed vide letter dated 13.03.2013 and therefore, the reliance on the said letter is not permissible.

I) The Respondent ought to have appreciated that the issue with respect to limitation was raised for the first time by the Respondent by way of the Notice dated 25.11.2024. In fact, the Appellant was regularly following up with the Revenue Department from time to time for the refund. However, no Authority raised any issue with respect to limitation.

J) The Assistant Commissioner failed to appreciate that the series of letters viz. letter filed with Ahmedabad Customs, Surat Customs shows without doubt that the Appellant indeed made a request with Ahmedabad Customs vide letter dated 13.03.2013. If the authority has any doubt about the veracity of the letter dated 13.03.2013, the Authority could have easily verified the same with the Ahmedabad Customs. Having failed to do so, the refund cannot be rejected on the ground of limitation.

PERIOD OF LIMITATION PRESCRIBED UNDER SECTION 27 OF THE CUSTOMS ACT, 1962 IS NOT APPLICABLE AS THE AMOUNT WAS NOT PAID TOWARDS ANY "DUTY" LIABILITY

K) Without prejudice to the aforesaid, it is submitted that the present claim arises due to the fact of inadvertent double payment made by the Appellant while filing Bill of Entry. Since, the excess payment was made due to the technical glitch on the portal of ICEGATE and therefore, Section 27 of the Act is not applicable in the facts and circumstances of present case. It is to be appreciated that Section 27 is applicable only in the circumstances when the refund is claimed pertaining to "Duty". In the present case, the double payment occurred due to inadvertence and technical glitch with the ICEGATE and the same was not paid towards any "duty" liability and therefore, Section 27 would not have any application in the facts and circumstances of the present case.

L) The Respondent erred in holding that since the Appellant himself filed the application for claiming refund under section 27 of the Act and therefore, they were very well aware of the provisions of the Act. The Respondent failed to appreciate that mere inadvertent mentioning / filing of the Application under Section 27 of the Act would not surpass the substantial provisions of the law and would not entail the provisions which were not applicable in the facts and circumstances of the case. It is a settled position of law that procedural lapses are

to be condoned when the other substantial provisions of law are being complied with.

M) Without prejudice to above, it is submitted that mere titling the refund request as "Request for Refund against Custom Duty paid twice through ICEGATE" cannot be considered as filing of Application under Section 27 and thereby will not make the said provision applicable when the refund was not pertaining to any "**duty**" liability.

N) The Respondent failed to appreciate that the amount wrongly deposited twice by the Appellant was not against any "duty liability" and therefore, such amount is/was in the nature of "deposit' only and the same cannot be retained by the department, as the same was collected wrongly and retained without the authority of law. Section 27 of the Act deals with refund of duty which reads as under:

27. Claim for refund of duty. *- (1) Any person claiming refund of any duty or interest, -*

(a) paid by him; or

(b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest:

Provided that where an application for refund has been made before the date on which the Finance Bill, 2011 receives the assent of the President, such application shall be deemed to have been made under sub-section (1), as it stood before the date on which the Finance Bill, 2011 receives the assent of the President and the same shall be dealt with in accordance with the provisions of sub-section (2):

Provided further that the limitation of one year shall not apply where any duty or interest has been paid under protest:

....

O) The Respondent ought to have appreciated that to claim the benefit of Section 27(1), the following factors shall have to be established:

(1) The refund claim should be of refund of duty;

(2) The payment of duty should be in pursuance of an order of assessment made by the officer of Customs lower in rank than an Assistant Collector of Customs and;

(3) The claim for refund of duty should be made within the period prescribed in that sub-section.

P) The Respondent failed to appreciate that if the amount was not paid towards any "duty liability", then there is no scope to claim refund of that payment under Sec. 27(1) of the Act. Similarly, even if the payment was Customs duty, but if that payment was not made in pursuance of an order of assessment made by an officer of Customs lower in rank than an Assistant Collector of Customs then also the refund of duty cannot be made under Sec. 27(1). In the present case, the excess payment was not made against any duty liability and therefore, the limitation provided under Section 27 will not be applicable in the present case.

Q) The Respondent failed to appreciate the decision passed in the case of **Kansai Nerolac Paints Ltd. Versus Commissioner of Cus. (Imports), Mumbai** reported in 2014 (300) ELT 255 (Tri-Mumbai) wherein it was held that:

3. The fact in short is that the appellant imported one consignment of pigments and paid duty as per the assessable value of Bills of Entry dated 21-2-2009 and 24-2-2009 manually and e-payment. On realization that the duty has been paid twice therefore they filed a refund claim on 29-8-2009. ***The said refund claim was rejected on the premise that the same is filed beyond the period of six months.***

4. I have gone through the facts as well as perused the records.

5. It is an admitted fact that the duty payable by the appellant has been paid. ***The excess duty paid was not required to be paid by the appellant. Therefore the same cannot be treated as duty. As held by this Tribunal in the case of Shankar Ramchandra Auctioneers - 2010 (19) S.T.R. 222 (Tri.-Mum.) wherein it was held that the excess amount paid erroneously as duty which was not required to pay, there is no bar to return of such amounts. Therefore, the provisions of***

Section 11B of Central Excise Act, 1944 are not applicable. Relying on the said decision, I hold that the provisions of Section 11B ibid are not applicable to the facts of this case. Therefore not filing the refund claim in time cannot be the reason for denying the claim as bar of limitation is not applicable to this case.

6. With these observations I set aside the impugned order and the appeal is allowed with consequential relief.

R) The Respondent ought to have appreciated that when an amount is paid in excess of the customs duty payable, such amount cannot be considered as the "customs duty" and would not, therefore, fall within the ambit of Section 27 of the Act providing for refund of customs duty. Reliance is placed upon the following decisions wherein it was held that though there is no provision for refunding the amount which is paid in excess, but the department cannot retain the excess amount, if any paid by the assessee and the same is required to be refunded:

- UPL Ltd. Versus Union of India, 2022 (379) E.L.T. 183 (Guj.)
- DHL Express India Pvt. Ltd. Vs. CST, Bengaluru-1, 2021 (377) E.L.T. 594 (Kar.)
- Star Textile Engg. Works Ltd. Vs. Collector of Customs, Bombay, 1985 (22) E.L.T. 552 (Tribunal)
- Rattanindia Power Ltd. Vs. CCE, Delhi, 2022 (65) G.S.T.L. 122 (Tri. - Del.)

S) The Respondent ought to have appreciated that the department has not cross-checked the receipt of the letter dated 13.03.2013 with the office of Ld. Additional Commissioner of Customs, Ahmedabad. Had there been any doubt over the receipt of the said letter, the Respondent ought to have called for the records from the office of the Additional Commissioner of Customs, Ahmedabad and cross checked to verify the receipt of the said letter on 15.03.2013.

T) The Respondent erred in distinguishing the decision passed in the case of **3E Infotech Versus CESTAT, Chennai,** 2018 (18) G.S.T.L. 410 (Mad.) on the premise that in the said case, the party was not liable to pay Service Tax and thereby filed the refund Application. However in the instant case, the Appellant had imported coal under Bill of Entry and custom duty was liable to be paid and the Appellant paid the customs duty as per the provisions of the Act. The said findings of the

Respondent are totally misconceived and frivolous as in the present case, the Appellant has mistakenly made double payment against the Bill of Entry No. 8745394 dated 12.12.2012. Since, the double payment was made inadvertently and therefore, the Appellant vide letter dated 13.03.2013 made a request seeking refund of the double/excess amount paid by them. It is important to mention here that the Appellant is not contesting or challenging the duty liability against Bill of Entry No. 8745394 dated 12.12.2012, in fact the Appellant is only claiming the refund of double/excess payment made by them. Therefore, the ratio of **3E Infotech (supra)** will be directly applicable in the facts and circumstances of the present case.

U) The Respondent failed to consider the other decisions apart from (3E Infotech and AIA Engineering) which were cited before them during the course of personal hearing and therefore, the impugned order is completely baseless and illegal.

V) The Respondent ought to have considered that the Appellant paid the amount twice and the same can be substantiated through various third party documents such as Bank statement, Bank letter, Challan generated from the Customs Department official website i.e. ICEGATE. The Respondent should have considered that all these are third party evidence and unless proved to be fabricated, the same cannot be denied by the Respondent.

W) The Respondent erred in not appreciating the Public Notice No.15/2015 dated 12.08.2015 issued by the Commissioner of Customs, Kandla wherein 5 steps procedure is prescribed for cross-checking the issue of double payment which are:

"(a) Verification from the PAO/e-PAO office regarding double/multiple payments for the same Bill of Entry of the amount to be refunded as also being reported by the banks in the scroll for transfer to RBI;

(b) Verification from Challan enquiry available at the ICEGATE website (http://www.icegate.gov.in/web/Challan Enquiry) may also be done by appropriate officer regarding the payments made and the corresponding acceptance/rejection status by the ICES system;

(c) Verification by the System Manager from ICES data regarding the facts of payment integration and the corresponding transaction recorded in the ICES System; and

(d) Verification/confirmation from the Bank regarding the transactions claimed to have been paid by the Importer/agent in excess and whether the same has been transferred to the Govt. Account or not."

X) The Respondent erred in interpreting the Public Notice No. 15/2015 dated 12.08.2015 to the extent that the amount is to be refunded to the importer or CHA following the due procedure of refund provided under section 27 of the Act. It is to be appreciated that the said Public Notice dated 12.08.2015 only provides that the procedure prescribed under Section 27 is to be followed while sanctioning the refund claim. However, the said procedure cannot bypass the provisions of laws. Once, it is held that Section 27 would not be applicable in the case of refund of any payment which is not considered as "duty" than in such circumstances, the procedure and limitation prescribed under Section 27 will not have any application.

Y) The Respondent failed to appreciate that the Public Notice No. 15/2015 (supra) itself provides that the double / multiple payment of amount post acceptance of the amount of customs duty in the system is only a **deposit** with the government. Once, it is admitted that the excess payment is in the nature of "deposit" and not "duty", then the provisions of Section 27 will not have any relevance for refunding such excess payment to the party.

DEPARTMENT CANNOT RETAIN THE AMOUNT WITHOUT AUTHORITY OF LAW IN TERMS OF ARTICLE 265 OF THE CONSTITUTION OF INDIA

Z) The Respondent failed to appreciate the decision of Hon'ble Supreme Court in the case of **Shiv Shanker Dal Mills etc. Vs. State of Haryana and Others reported in AIR 1980 SC 1037** wherein Hon'ble Supreme Court held as under:

"..... Where public bodies, under colour of public laws, recover people's moneys, later discovered to be erroneous levies, the dharma of the situation admits of no equivocation. **There is no law of limitation,**

especially for public bodies, on the virtue of returning what was wrongly recovered to whom it belongs. Nor is it palatable to our jurisprudence to turn down the prayer for high prerogative writs, on the negative plea of "alternative remedy", since the root principle of law married to justice, is *ubi jus ibi remedium.*

(Emphasis Supplied)

AA) The Respondent failed to appreciate the decision passed by Hon'ble Karnataka High Court in the case of **Bellatrix Consultancy Services Vs. Commr. of C.T., Bangalore reported in 2022 (67) G.S.T.L. 59 (Kar.)**, wherein it was held that there is no law of limitation for public bodies of returning what was wrongly recovered to whom it belongs.

BB) The Respondent ought to have appreciated that once it is found that the amount paid by the Appellant was not towards any "duty liability" than the department cannot retain the said amount as the same is illegal and contrary to Article 265 of the Constitution of India. Further, in the case of excess / double / wrong payment by the assessee, it is obligation upon the department itself to refund the amount to the concerned party, otherwise, it would be in clear violation to Article 265 of the Constitution of India as the department was not empowered to collect the amount without any authority of law.

CC) The Respondent ought to have appreciated that **Article 265** of the Constitution of India provides that "**no tax shall be levied or collected except by authority of law**". In the present case, the department has collected and retained the amount which was not liable to be paid by the Appellant and therefore, such illegal retainment of the amount is directly in teeth of Article 265 of the Constitution of India.

DD) The Respondent erred in not considering the decision passed in the case of **Comsol Energy Pvt. Ltd. Versus State of Gujarat**, 2021 (55) G.S.T.L. 390 (Guj.) wherein it was held that:

"This Court, in the case of Binani Cement Ltd. v. Union of India, reported in 2013 (288) E.L.T. 193 (Guj.), held that where the duty is collected without any authority of law, such collection of duty is

considered as collected without authority of law and, therefore, is opposed to Article 265 of the Constitution of India and, thus, unconstitutional. It is held that the assessee is not bound by the limitation prescribed under the special law for claiming the refund of the excess duty or duty collected illegally.

The appellant also placed Reliance upon the following decisions:

- East Anglia Plastics (I) Ltd. Vs. Assistant Collector of Customs, 1990 (50) E.L.T. 508 (Cal.).
- Hind Agro Industries Limited Versus Commissioner of Customs, 2008 (221) E.L.T. 336 (Del.)
- Joshi Technologies International Vs. Union of India, 2016 (339) ELT 21 (Guj)

EE) The Respondent failed to consider the decision passed in the case of **Vedanta Ltd. Vs. Commissioner of Customs (Port) reported in 2017 (345) E.L.T. 577 (S.C.)** whereby it was held that refund of excess paid duty cannot be barred by limitation under Section 27 of Customs Act, 1962.

FF) The Respondent ought to have appreciated the decision passed by Hon'ble CESTAT in the case of **S. Sakthikumar Vs. Commissioner of GST & Central Excise, Madurai** reported in 2022 (61) G.S.T.L. 364 (Tri. - Chennai), whereby it was held that rejection of refund claim of Service Tax paid under mistake of law (under mistake / due to inadvertence in the present case) on ground of limitation is not proper. Refusing to return amount is against the mandate of Article 265 of Constitution of India.

GG) The Respondent erred in not appreciating the decision passed in the case of **Union of India Vs. Telecare Network (India) Pvt. Ltd. reported in 2024 (387) E.L.T. 395 (S.C.)** whereby they affirmed the view taken by Hon'ble Delhi High Court that since CVD had been paid on imported mobile phones in excess under mistake of facts and law, limitation for refund under Section 27(3) of Customs Act, 1962 was not applicable.

HH) The Respondent erred in not considering the decision of Hon'ble Gujarat High Court which is jurisdictional High Court in the present case, passed in the case of

UPL Ltd. Vs. Union of India reported in 2022 (379) E.L.T. 183 (Guj.), whereby it was held that duty paid on same goods on two occasions by mistake cannot be treated as Duty as referred under Section 27 of Customs Act, 1962; therefore, limitation for claiming refund would not be applicable. Hon'ble Court further held that where authority did not refund excess payment which was mistakenly paid 3 years back, assessee was entitled to interest on refund @ 6%

II) The Respondent ought to have considered the decision passed by Hon'ble CESTAT, Principal Bench, New Delhi in the case of **Rattanindia Power Ltd. Vs. Commr. of Cus., C. Ex. & CGST, Delhi reported in 2022 (65) G.S.T.L. 122 (Tri. - Del.)** whereby it was held that Department cannot deny refund of amount paid under mistaken notion. Hon'ble CESTAT while directing Board to notify appropriate warnings to Departmental Adjudicating Authorities requiring them to observe proper judicial protocol further held as below:

11. I further observe that the issue has repeatedly been clarified about non-applicability of Section 11B upon such refunds which pertains to an amount paid under mistake without any liability. The adjudicating authorities are observed to have miserably failed to follow the law as got settled by the Hon'ble Apex Court, by various High Courts and by various Benches of this Tribunal as in the case of M/s. Chhattisgarh Civil Supplies Corporation Ltd. v. Commissioner of Central Excise & Service Tax reported as 2020 (2) TMI 1202-CESTAT New Delhi, in the case of Kerala Ex-serviceman Welfare Association v. Comm. of Service Tax & Central Excise reported as 2022 (3) TMI 985-CESTAT BANGALORE and in the case of Dexterous Products Pvt. Ltd. v. Comm. of C. Ex. & S.T., Indore reported as 2019 (28) G.S.T.L. 51 (Tri. - Del.).

12. Hon'ble High Court of Karnataka in the case titled as XL Health Corporation India Pvt. Ltd. v. UOI & Others reported as Writ Petition No. 37514/2017 decided on 22-10-2018 [2018 (19) G.S.T.L. 611 (Kar.)] has held as follows:

"The adjudicating authorities throwing to the winds the principles of judicial discipline by not following the binding order passed by Higher forum reflects total callous, negligent and disrespectful behaviour. The

court held that same cannot be tolerated. If this kind of lack of judicial discipline which if goes unpunished will lead to more litigation and chaos and such public servants are actually threat to the society."

JJ) The Respondent erred in not considering the decision passed by Hon'ble Karnataka High Court in the case of **Commissioner of C. Ex., Bangalore-III Vs. Motorola India Pvt. Ltd. reported in 2006 (206) E.L.T. 90 (Kar.)** whereby it was held that amount paid by mistake in excess of duty cannot be termed as duty, hence rule of time bar not applicable to excess amount paid over duty.

KK) The Respondent ought to have appreciated the ratio laid down by Hon'ble Karnataka High Court in the case of **Way2Wealth Brokers Pvt. Ltd. Vs. Commissioner reported in 2021-TIOL-1969-HC-KAR-ST,** in Para 14 held as under :-

"Considering 11B of the Act, 1944, a coordinate Bench of this Court in the case of Commissioner of Central Excise v. KVR Constructions (supra) has held thus :-

"18. From the reading of the above section, it refers to claim for refund of duty of excise only, it does not refer to any other amounts collected without authority of law. In the case of hand, admittedly the amount sought for as refund was the amount paid under mistaken notion which even according to the Department was not liable to be paid.

It has been thus observed that what one has to see is whether the amount paid by the assessee under a mistaken notion was refundable. Mere payment made by the assessee will neither validate the nature of payment nor the nature of transaction. The same could not make it service tax. When there is a lack of authority to collect such service tax not liable to be paid by the assessee, it would not give the department the authority to retain the amount paid by the assessee. Therefore, mere nomenclature would not be an embargo on the right of the petitioner to demand refund of payment made under a mistaken notion. This judgment has been confirmed by the Hon'ble Apex Court dismissing the appeal filed by the Revenue. Having regard to the facts and circumstances of the case, this judgment is squarely applicable to the case on hand."

LL) The Respondent erred in not considering the decision passed by Hon'ble Karnataka High Court in the case of **DHL Express India Pvt Ltd Vs CST 2021 (4) TMI 598** keeping in view the judgment of Hon'ble Supreme Court in the case of Mafatlal Industries Ltd - 1997 (89) E.L.T. 247 (S.C.), whereby it was held that when the duty is paid without authority of law, the refund provisions under Section 27 of the Customs Act would not be applicable and the limitation in terms of Limitation Act would be applicable.

MM) The Respondent failed to consider the decision passed by Hon'ble CESTAT in the case of **Ericsson India Pvt Ltd Vs CC reported in 2022 (5) TMI 587 – CESTAT New Delhi**, held that double payment cannot be treated as duty and must be refunded as the department has no legal authority to retain them.

NN) In view of the above, the appellant has requested to sanction the refund of pre-deposit along with applicable interest from the date of making the deposit to the date of refund.

In view of the above submissions, the Appellant submits that even otherwise, the impugned order passed by the Respondent is without any basis and deserves to be quashed and set aside in the interest of justice.

Personal Hearing

8. Personal Hearing in this matter was held in virtual mode, i.e. through video conference, on 02.07.2025, which was attended by Shri Amit Laddha, Advocate, on behalf of the appellant company. He reiterated the written submissions made at the time of filing of appeal.

Findings

9. I have carefully gone through the impugned order and written as well as oral submissions made by or on behalf of the appellant. The issue to be decided in the present appeal is whether the impugned order towards rejection of refund claim as time-barred under the provisions of Section 27, is legal and proper or not, particularly when it is undisputed that the duty amount was deposited twice by mistake.

10. One set of the appeal memorandum filed by the appellant was forwarded to the Deputy Commissioner of Customs, Custom House, Dahej, vide this office letter F.No. S/49-

288/CUS/AHD/2024-25/5739 dated 25.03.2025 for his comments on the contentions raised by the appellant. No reply thereof has been received from the office of the Deputy Commissioner of Customs, Custom House, Dahej. In this situation, I have to rely upon the submissions made by the appellant.

11. At the outset, I find that there is no dispute in this case about the fact that the duty amount of Rs.38,92,202/- was paid twice on 14.12.2012 for the Bill of Entry No. 8745394 dated 12.12.2012 against a single Challan No. 2005119380 dated 14.12.2012. Particulars of the same have been shown in Table-1. I have seen the copy of the impugned Bill of Entry in which the total duty amount has been shown as Rs.38,92,202/-. I have also seen the copies of two E-Receipts issued by State Bank of India, showing particulars as mentioned in Table-1. I have also seen entries in the Bank Statement of SBI for Account No. 32561927915 for the date 14.12.2012, which shows two debit entries of Rs.38,92,202/- on the same date. These documents clearly show that the duty amount of Rs.38,92,202/- was paid/debited twice on 14.12.2012. Even in the impugned order, there is no denial to the importer's contention that the duty amount was paid twice. Thus, it is admitted position that the duty amount of Rs.38,92,202/- payable against the Bill of Entry No. 8745394 dated 12.12.2012 was paid/debited twice on 14.12.2012.

12. I find that the second payment of Rs.38,92,202/- was neither appropriated against any duty liability assessed under the provisions of Section 17 nor Section 18, nor it has been appropriated against any demand raised under Section 28 of the Customs Act, 1962. Under this situation, I am of the view that the second payment of Rs.38,92,202/- cannot be considered in nature of 'duty', but it was merely 'deposit' in government account. Therefore, I find that the adjudicating authority erred in holding the second payment of Rs.38,92,202/- as 'duty' and thereby rejecting the refund claim as time-barred under the provisions of Section 27 of the Customs Act, 1962.

13. The appellant has repeatedly stated that the amount claimed as refund cannot be considered as duty and therefore, the provisions of Section 27 do not attract in the preset case. In this regard, the appellant has relied upon various case laws as mentioned hereinabove, which are in favour of them and applicable to the present case.

13.1 In the case of **Kansai Nerolac Paints Ltd. Versus Commissioner of Cus. (Imports), Mumbai** reported in 2014 (300) ELT 255 (Tri-Mumbai), it was observed that the excess duty paid was not required to be paid by the appellant; that therefore, the same cannot be treated

as duty. The Tribunal relied upon the case of **Shankar Ramchandra Auctioneers - 2010 (19) S.T.R. 222 (Tri.-Mum.)** wherein it was held that the excess amount paid erroneously as duty which was not required to pay, there is no bar to return of such amounts. Therefore, it has been held that the provisions of Section 11B of Central Excise Act, 1944 are not applicable.

13.2 I have also referred the Judgment dated 21.12.2020 passed by Hon'ble High Court of Gujarat in the case of **Comsol Energy Pvt. Ltd. Versus State of Gujarat** reported in 2021 (55) G.S.T.L. 390 (Guj.). Extracts from the same are given under:

> ***"8. This Court, in the case of Binani Cement Ltd. v. Union of India, reported in 2013 (288) E.L.T. 193 (Guj.), held that where the duty is collected without any authority of law, such collection of duty is considered as collected without authority of law and, therefore, is opposed to Article 265 of the Constitution of India and, thus, unconstitutional. It is held that the assessee is not bound by the limitation prescribed under the special law for claiming the refund of the excess duty or duty collected illegally."***

The ratio of the above-mentioned Judgment of the jurisdictional High Court in the case of **Comsol Energy Pvt. Ltd. (supra)** is squarely applicable to the present case and therefore, I respectfully follow the same.

14. I also rely upon the **Article 265 of the Constitution of India** which clearly give a mandate that ***"No tax shall be levied or collected except by authority of law."*** In view of the above position of law, I am of the view that the amount of Rs.38,92,202/- cannot be retained by Customs Department and the appellant was not bound by the limitation prescribed under the special law, i.e. Section 27 of the Customs Act, 1962, for filing the refund claim.

15. As regards the issue of limitation in filing claim, I thus hold that provisions of Section 27 are not applicable in the present case and therefore the time-limit of one year for filing refund claim, as prescribed under Section 27, would also not applicable. Further, I find that the appellant has submitted a copy of their letter dated 13.03.2013, which is addressed to the Additional Commissioner of Customs, Ahmedabad requesting for refund. In left margin of the said letter, there is a hand written marking/signature dated 15.03.2013, which is not legible, but appears to have been made by Customs officer. As there is no rubber-stamp or

acknowledgement of this letter, the adjudicating authority has not accepted that contention of the claimant to the effect that they have already requested the refund vide letter dated 13.03.2013, which had been submitted on 15.03.2013. In this regard, I find that in the subsequent letter dated 05.01.2016, which bears Rubber-Stamps of Customs Department dated 21.01.2016, the appellant has given reference to their earlier letter submitted on 15.03.2013, but, there is no rebuttal of Customs Department regarding veracity of the said letter dated 13.03.2013.

16.1 Further, I find that the appellant had initially claimed refund by submitting letters to the Additional Commissioner of Customs, Ahmedabad. Vide letter F.No. VIII/20-01/Cus/T/ 2014 dated 23.02.2016, the Deputy Commissioner (Tech), Customs, Ahmedabad, returned the documents to the appellant and advised them to approach the Assistant Commissioner of Customs, Surat Division, as he was the proper officer for sanctioning the refund. In this regard, I am of the view that instead of returning the documents related to refund to the appellant, the Additional Commissioner or Deputy Commissioner (Tech) posted at Customs, HQ, Ahmedabad, should have forwarded the application for refund to the Assistant Commissioner of Customs, Surat Division, who at that time competent to process the refund claim. On this issue, I rely upon the Judgment dated 18.01.2024 of Hon'ble High Court of Gujarat in the case of **Mascot Valves Pvt. Ltd. Vs. Union of Indian** reported as (2024) 21 Centax 495 (Guj.) wherein it has observed that *when the petitioner filed rebate claim on 14th July, 2008 i.e. within time before the respondent No.5 - Superintendent, he ought to have forwarded the same to the Assistant Commissioner - respondent No.4 who is a superior officer, instead of returning the original claims to the petitioner.* I also rely upon the Order dated 22.09.2010 of Hon'ble High Court of Gujarat in the case of **Commissioner of Central Excise Vs. AIA Engineering Ltd.** reported as 2011 (21) STR 367 (Guj.), wherein it has been held that *since the original application for refund was filed within time, though before wrong authority, it cannot be said that the said application was barred by limitation.*

16.2 As the Customs office, HQ., Ahmedabad, had returned the application for refund to the appellant vide letter dated 23.02.2016, they had submitted the refund application dated 05.03.2016 (submitted on 06.04.2016) to the Assistant Commissioner of Customs, Surat Division.

16.3 After a long period of 8 years, the Assistant Commissioner of Customs, Surat Division, vide letter dated 17.04.2024, informed the appellant to take up the matter with Assistant Commissioner of Customs, Dahej Port, because presently Dahej Port no longer falls under

jurisdiction of Customs Division Surat for the purpose of processing refund claim. There is no explanation from the appellant as to why during the long period of 8 years, i.e. 05.03.2016 to 17.04.2024, they have not taken up this matter of refund with Customs authorities or why they have not submitted any reminder regarding pendency of the refund claim.

16.4 Ultimately, the appellant had taken up the matter with Assistant Commissioner of Customs, Dahej, vide letter dated 31.07.2024 (submitted on 12.09.2024) and submitted various documents, including documents regarding unjust enrichment. Vide letter dated 27.09.2024, the Superintendent of Customs, Dahej, has sought further documents, which have been supplied by the appellant vide letter dated 21.10.2024 (submitted on 24.10.2024). Thereafter, a Notice dated 25.11.2024 for rejection of refund has been issued and the adjudicating authority, vide impugned order dated 16.01.2025 rejected the refund claim on the ground of limitation under Section 27 of the Customs Act, 1962. As I have already hold that the provisions of Section 27 are not applicable in this case, the impugned order is required to be set aside.

17. As regards the appellant's claim for interest on refund, I find that there are following two provisions under the Customs Act, 1962, which prescribe for payment of interest on refunds:

- Section 27A: Interest on delayed refund of duty
- Section 129EE: Interest on refund of Pre-deposit made u/s 129E

I find that the provisions of Section 27A of the Customs Act, 1962, regarding interest on delayed refund of duty, are not applicable to this case inasmuch as this not a case of refund of 'duty', but this is a case of refund of 'deposit'. Further, Section 129EE is also not applicable inasmuch as it prescribes interest on refund of Pre-deposit made under Section 129E. In the present case, the amount claimed as refund is not in nature of Pre-deposit. Such Pre-deposit u/s 129E are required to be made for filing appeals, which is not the present case. Further, this is not a case that the appellant was compelled by any agency of Customs Department to deposit the duty, but the appellant itself deposited the amount twice by mistake. As the amount deposited by the appellant has not been appropriated against duty liability, it remains in nature of 'deposit', not in nature of 'duty' or 'pre-deposit'. There is no provision under the Customs Act, 1962, for grant of interest on refund of such deposits. In absence of any statutory provision, I am unable to order for grant of interest on refund of this deposit.

18. In view of the above facts, discussion and findings, I pass the following order.

Order

18.1 I set aside the impugned Order-In-Original No. 44/AC/DAHEJ/REFUND/24-25 dated 16.01.2025 passed by the Assistant Commissioner of Customs, Custom House, Dahej, and I direct the adjudicating authority to grant refund the deposit of Rs.38,92,202/- to the appellant expeditiously.

18.2 The appeal filed by M/s. Adani Enterprises Ltd. is allowed to this extent.

(Amit Gupta)
Commissioner (Appeals),
Customs, Ahmedabad

F.No. S/49-288/CUS/AHD/2024-25 Date: 07.08.2025

By E-mail (As per Section 153(1)(c) of the Customs Act, 1962)

To
M/s. Adani Enterprises Ltd.,
Adani Corporate House, Shantigram,
S. G. Highway, Ahmedabad - 382421.
(Email: customercare.irm@adani.com)

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
(email: ccoahm-guj@nic.in)

2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
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