



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

चौथीमंजिल 4th Floor, हडको बिल्डिंग HUFCO Building, ईश्वर भवन रोड IshwarBhavan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN- 20250671MN000051565E

क	फाइलसंख्या FILE NO.	S/49-47/CUS/MUN/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 की धारा 128के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP-092-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
द	दिनांक DATE	18.06.2025
ज	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Bill of Entry No.2118451 dated 13.02.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	18.06.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s BD Associates 271-273, Katra Peran, IIInd Floor, Tilak Bazar, Khari Baoli, Delhi-110006

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 (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.
	खेत 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.	<p>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 :</p> <p>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 :</p> <p>(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।</p> <p>(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.</p> <p>(ख) सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो</p> <p>(b) 4 copies of the Order-in-Original, in addition to relevant documents, if any</p> <p>(ग) पुनरीक्षण के लिए आवेदन की 4 प्रतियां</p> <p>(c) 4 copies of the Application for Revision.</p> <p>(घ) पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीषक अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु.1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां, यदि शुल्क, मांगा गया व्याज, 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/-</p> <p>(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/-.</p>				
4.	<p>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</p> <p>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 :</p> <table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	<p>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-</p> <p>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 -</p> <p>(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 रुपए।</p> <p>(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;</p>				

(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रुपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रुपए
(ब)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रुपए से अधिक हो तो; दस हजार 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 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 BD Associates 271-273, Katra Peran, 2nd Floor, Tilak Bazar, Khari Baoli, Delhi-110006 (herein after referred to as the "appellant") have the present appeal in terms of Section 128 of the Customs Act, 1962, challenging the re-assessment dated 19.02.2024 made in the Bill of Entry No. 2118454 dated 13.02.2024 (herein after referred to as the "impugned BOE") by the assessing officer.

2. Facts of the case, in brief, as per appeal memorandum, are that the appellant, had imported the goods i.e. 40000 KGs of Inshell Walnut of USA Origin @ USD 1.10 per kg vide impugned BOE on self-assessment basis and the entire payment against the said import was made was 44000 USD for total quantity of 40000 kgs. Further, the said BOE was reassessed by the assessing officer and during the course of assessment, the value declared by the appellant appeared to be lower and the same was enhanced to USD 1.50 per kg.

2.1 Further, to avoid the detention and demurrage charges, the appellant deposited the customs duty on the loaded value on 29.2.2024 and the goods were allowed out of charge on 29.2.2024 as follows:

ASSESSABLE VALUE AS PER INVOICE

INVOICE NO.	INVOICE DATE	Qty	RATE/UNIT	VALUE in (USD)	EXCHANGE RATE	ASSESSABLE VALUE	CUSTOM DUTY	IGST	TOTAL DUTY (CUSTOM DUTY + IGST)
IN036767	20.11.23	20000	1.10	22000	83.95	1846900	1846900	184690	2031590
IN036769	20.11.23	20000	1.10	22000	83.95	1846900	1846900	184690	2031590
TOTAL									4063180

ASSESSABLE VALUE AS PER CUSTOM

INVOICE NO.	INVOICE DATE	Qty	RATE/UNIT	EXCHANGE RATE	ASSESSABLE VALUE	CUSTOM DUTY	IGST	TOTAL DUTY (CUSTOM DUTY + IGST)
IN036767	20.11.23	20000	1.50	83.95	2518500	2518500	251850	2770350
IN036769	20.11.23	20000	1.50	83.95	2518500	2518500	251850	2770350
TOTAL								5540700

UNDER PROTEST LETTER FILED FOR DUTY DIFFERENCE :-

1477520

Further, the appellant had paid the duties and taxes on enhanced value under protest at the material time as per letter dated 12.10.2023 and out of charge of the goods was allowed on 13.10.2023.

3. Being aggrieved with the assessment of impugned BOE, the appellant has filed the present appeal and mainly contended the following:

- That the assessing authority failed to pass a *speaking order* within 15 days after reassessing and enhancing the value in contravention of the importer's declared transaction value, which is a mandatory legal requirement.
- That the customs authority loaded the declared price from USD 1.10/kg to USD 1.50/kg without citing any valid basis or reasons, even though the declared value was supported by authentic documents (invoice, B/L, payment proof, agreement, etc.) and Full payment was made via banking channels. There is no allegation of under-invoicing or relationship between buyer and seller that could justify rejecting the declared value.
- That the declared value cannot be rejected without reasonable doubt and a proper sequential valuation under Rules 4 to 9. No such process or reasoning was followed.
- That Appellant provided contemporaneous import data showing that similar goods were assessed at similar prices. Yet, customs arbitrarily enhanced value in this case alone, creating inconsistency and legal infirmity and enhancement of value based solely on NIDB data is not valid without further supporting evidence or demonstration of identical and contemporaneous imports.
- They have relied upon the following Judgments:

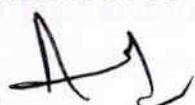
- *Sigma Power Products Pvt. Ltd. v. Commissioner of Customs* [2017 (350) ELT 510 (Cal)]
- *ABB Ltd.* [2019 (369) ELT 1260 (Tri.-Mumbai)]
- *V.S.M. Impex Pvt. Ltd.* [2019 (370) ELT 930 (Tri.-Chandigarh)]
- *Sanjivani Non-Ferrous Trading Pvt. Ltd.* [2019 (365) ELT 3 (SC)]
- *CC Visakhapatnam v. Aggarwal Industries Ltd.* [2011 (272) ELT 641 (SC)]
- *Shah B. Impex v. CC (Imports), Chennai* [2024 (16) Centax 288 (Tri.-Mad)]

PERSONAL HEARING

4. Shri Shubhankar Jha, Advocate attended the personal hearing on 27.05.2025 in virtual mode on their behalf. He reiterated the submission made in the appeal memorandum.

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 that assessing officer had not issued any speaking order and without considering the contemporaneous imports, wrongly rejected the declared value. Therefore, the main issue to be decided is that the declared



value rejected by the assessing officer and enhancing the declared value, in the facts and circumstances of the case, is legal and proper or otherwise.

6.1 Before going into the merits of the case, I find that as per CA-1 Form of the Appellant, the present appeal has been filed on 13.05.2024 against the impugned order dated 19.02.2024, and thus the present appeals have not been filed within statutory time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962.

6.1.1 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.

6.1.2 It is observed from the Appeal Memorandums that the Appellant had received the impugned order on 20.02.2024 and appeal have been filed on 13.05.2024 resulting in a delay of 23 days in filing of appeal beyond the time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962. Appellant has requested for the condonation of delay. In light of the above provisions of law and considering the submissions of the Appellant and also considering the fact that the appeals have been filed within a further period of 30 days. I allow the condonation of delay in filing the appeal, taking a lenient view in the interest of justice in the present appeal.

6.2 I find that the appeals have been filed against assessment of Bill of Entry. It is observed that the Hon'ble Supreme Court in case of ITC Ltd Vs CCE Kolkata [2019 (368) ELT216] has held that any person aggrieved by any order

which would include self-assessment, has to get the order modified under Section 128 or under relevant provisions of the Customs Act, 1962. Hence, the appeal preferred by the appellant against assessment in the impugned Bill of Entry is maintainable as per the judgment of the Supreme Court in ITC case supra.

6.3 It is further observed that no speaking order by the proper officer in the matter is available. Hence, I find that entire facts are not available on records to verify the claims made by the appellant. Copies of appeal memorandum were also sent to the jurisdictional officer for comments. However, no response has been received from the jurisdictional office. Therefore, I find that remitting the case to the proper officer for passing speaking orders in each case 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 of the Customs Act, 1962 by following the principles of natural justice. While passing the speaking order, the proper officer shall also consider the submissions made in present appeals 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.



In view of the above discussion, I allow the appeal by way of remand to the proper officer for passing fresh order after examining the available facts, documents, submissions and after giving the sufficient opportunity to the appellant of being heard thus maintaining the principles of natural justice and legal provision.

(AMIT GUPTA)
Commissioner (Appeals)
Customs, Ahmedabad
Date: 18.06.2025

F.No. S/49-47/CUS/MUN/2023-24
1505

By Registered Post A.D/E-Mail.

To,
BD Associates
271-273, Katra Peran, IIInd Floor,
Tilak Bazar, Khari Baoli, Delhi-110006

सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद
CUSTOMS (APPEALS), AHMEDABAD

Copy to:-

1. The Chief Commissioner of Customs, Ahmedabad zone, Customs House, Ahmedabad.
2. The Commissioner of Customs, Customs House, Mundra
3. The Deputy/Assistant Commissioner of Customs, Customs House, Mundra.
4. Guard File.

