सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

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

DIN - 20250971MN000000B27F

क	फ़ाइल संख्या FILE NO.	S/49-36/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-189 -25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	19.09.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/237/AC/KRP/REF/2023-24 dated 26.02.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	19.09.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Hindustan Zinc Ltd., Yashad Bhavan, Udaipur, Rajasthan

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 exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी 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** (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. **200/-**(रूपए दो सौ मात्र)या रु.**1000/-**(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित 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 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 अपीलिय अधिकरण, 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 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

Appeal has been filed by M/s. Hindustan Zinc Ltd., Yashad Bhavan, Udaipur, Rajasthan, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/237/AC/KRP/REF/2023-24 dated 26.02.2024 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant had filed refund claim of Rs. 43,33,297/-under Section 27 of Customs Act, 1962, for excess duty payment at the time of import of NON COKING COAL(STEAM COAL) for 3 nos. of Bills of entry dated 29-04-2022 & 30-04-2022 which was re-assessed on 04-08-2022 (as detailed in table below), vide their letter dated 03-08-2023 received by the concerned office on 11-08-2023.

Table

S No	BE no & Date	Challan no & Date	Duty Difference
1	8483773 dated 29-04-2022	2039092955/ 29.04.2022	20,96,165/-
2	8488340 dated 30-04-2022	2039092269/30.04.2022	5,24,040/-
3	8488488 dated 30-04-2022	2039092279/30:04.2022	17,13,092/-
		Total	43,32,297/-

2.1 As per Section 27(1B)(c) of the Customs Act, 1962, the period of limitation for filing of refund claim is one year. As per Section 27(1B)(c) of the Customs Act, 1962, the limitation of one year shall be computed from the date of re-assessment and payment of duty. Accordingly, the refund claim for an amount of Rs. 43,33,297/-filed by the Appellant appeared to be barred by the limitation of time prescribed under Section 27(1B)(C) of the Customs Act, 1962 & filed by the Appellant appeared to be improper and liable to be rejected.

2.2 In view of above, Show Cause Notice F. No. CUS/RFD/OTH/601/2023-REF dated 10.11.2023 was issued to the Appellant, M/s. Hindustan Zinc Limited, Yashad Bhwan, Udaipur, Rajasthan 313004

calling upon them to show cause as to why:

i) The refund claim amounting to Rs. 43,33,297/-should not be rejected under the provisions of Section 27(1B)(C) of the Customs Act, 1962.

2.3 Consequently, the Adjudicating Authority passed the following order:

i. He rejected the refund of Rs. 43,33,297/- (Rupees Forty Three Lakhs Thirty Three Thousands Two Hundred Ninety Seven Only) as per as per provisions of Section 27 sub clause (c) of Sub Section 1(B) of Customs Act, 1962 to the Appellant viz. M/s. Hindustan Zinc Limited, Yashad Bhwan, Udaipur, Rajasthan 313004.

3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

3.1 Order in Original is passed in violation of principles of natural justice as no effective opportunity for personal hearing was granted to the appellant Appellant has submitted that the Assistant Commissioner has decided the matter without following the principle of natural justice, in as much as the order has been passed without hearing the appellant. The Assistant Commissioner has decided the matter in a hurriedly manner without considering the genuine request of appellant for adjournment. In the Show Cause Notice dt. 10.11.2023, the date of filing reply and appearance was mentioned as 23.11.2023 i.e. a very short notice period was granted to file the reply to the notice and for appearance. The Show Cause Notice dt. 10.11.2023 itself was received by the appellant on 16.11.2023. Appellant vide letter dt. 23.11.2023 sought an adjournment for 10 days for filing the reply to Show Cause Notice. Appellant received a letter dt. 29.12.2023, fixing the hearing on 10.1.2024. however this letter itself was received by the appellant on 17.1.2024 i.e. after the date of hearing, so the hearing could not be attended on 10.1.2024. Appellant then received a letter dt. 8.2.2024 fixing the hearing on 19.2.2024. The letter dt. 8.2.2024 was received by the appellant on 17.2.2024 i.e. on Saturday and the hearing was fixed on 19.2.2024 i.e. on Monday at Customs Office, Mundra Port.

Being unable to attend PH in such a short notice, appellant vide mail dt. 20.2.2024 sought an adjournment on the ground of insufficient time. They also requested for granting a PH by virtual mode.

3.2 However, the request of adjournment was not considered by the adjudicating authority and the present order dt. 26.02.2024 has been passed rejecting the refund claim of Rs. 43,33,927/-. Appellant has therefore submitted that it is one of the essential postulates of the concept of the natural justice that justice must not only be done but manifestly seems to be done. The Appellant has submitted that although earlier notices for personal hearings was received by the appellant but they were not in position to attend the personal hearing on the given date because of receipt of notice after the date fixed for hearing or receipt of notice at a very short notice period and therefore, they remained deprived of the opportunity of personal hearing. However, ignoring such request the Adjudicating Authority preferred to pass the present Order in Original dt. 26.2.2024 without considering the fact whether PH notice was received by the appellant on time or not. Therefore, the present order so passed is in violation of principles of natural justice.

3.3 The Appellant has placed reliance on the following case laws in this regard:

a. In the case of LATH KATHA UDYOG Versus COLLECTOR OF CUSTOMS (PREVENTIVE), LUCKNOW, reported at 1997 (94) E.L.T. 101 (Tribunal), it was held that Remand - Adjudication - Natural justice - Personal hearing - Letter intimating date of hearing received on date of hearing - Fair and effective opportunity of hearing not given - Principles of natural justice not followed.

b. In the case of CITY DRINKS LTD. Versus COLLECTOR OF CENTRAL EXCISE, reported at 1990 (48) E.L.T. 566 (Tribunal), it was held that Adjudication Personal hearing Request for adjournment neither acknowledged nor considered - Natural justice violated by ex-parte order confirming demand and imposing penalty without giving opportunity for personal hearing and for submitting technical evidence - Rule 9(2) and 173Q(1) of Central Excise Rules, 1944, and Section 11A of Central Excises and Salt Act, 1944. The request of assessee to adjourn the date of personal hearing to enable them to submit their case and technical evidence, was neither acknowledged nor were they informed that the proceedings were being closed for an ex-parte decision. Thus there was a

violation of the principles of natural justice. The case remanded to the Collector of Central Excise for denovo adjudication. [para 4 and 6]

Adjudication Request for Adjournment. –

Each request has to be independently considered during hearing.

c. In the case of PRESSURE VESSELS & EQUIP. TESTING ENTERPRISES Versus C.C.E., SALEM, reported at 2010 (18) S.T.R. 719 (Tri. - Chennai), it was held that Natural justice - Hearing, absence of - Adjournment sought and such letter received on date of hearing - Impugned order not mentioning such request but noting that personal hearing fixed before not attended - Assessee not heard before passing order - Impugned revision order passed in violation of principles of natural justice set aside - Matter remanded to Commissioner for fresh decision - Section 33A of Central Excise Act, 1944 as applicable to Service tax vide Section 83 of Finance Act, 1994.

d. In the case of MEGHDEV ENTERPRISES Versus COMMISSIONER OF CENTRAL EXCISE, BHAVNAGAR, reported at 2009 (14) S.T.R. 95 (Tri. - Ahmd.), it was held that Natural justice - Violation of Personal hearing - specifically sought by assessee but not granted - Adjudication order passed based on reply and case records without giving personal hearing - Impugned order upheld adjudication order without considering violation of principles of natural justice Impugned order not sustainable Matter remanded to adjudicating authority for fresh decision - Section 73 of Finance Act, 1994.

e. Also, in the case of TATA MOTORS INSURANCE SERVICES LTD. Versus COMMR. OF S.T., BANGALORE, reported at 2011 (21) S.T.R. 621 (Tri. - Bang.), it was held that Natural justice - Hearing - Personal hearing fixed on 25-01-2007 or 29-01-2007 Impugned order passed ex parte without hearing noticee - Appellant stating that adjournment sought on 31-01-2007 and statutorily entitled to three adjournments - Adjournment request received by fax after date of hearing and rejected Impugned order passed on 13-02-2007 - SCN ought to have not been decided without hearing assessee when adjournment sought - Impugned order set aside - Matter remanded for fresh decision - Section 33A of Central Excise Act, 1944 as applicable to Service tax vide Section 83 of Finance Act, 1994.

3.4 In light of above settled law; appellant submit that the Order in Original dt. 26.2.204 is liable to be set aside as the same has been passed in violation of principle of Natural Justice.

3.5 The present refund arising out of finalization of provisional assessment in not a refund of duty and thus limitation of time prescribed under Section 27(1B)(C) of the Customs Act, 1962 is not applicable. Without prejudice to above, appellant submit that the issue involved in the present case is that whether refund of amount paid with reference to provisional assessment by the appellant is governed by Section 27 of Customs Act, 1962 and the provision of time limit is applicable.

3.6 Appellant filed a refund claim of Rs. 43,33,927/- under Section 27 of the Customs Act, 1962 for excess amount paid at the time of import of NON Coking Coal (Stem Coal) for three Bills of Entries dt. 29.4.2022 and 30.4.2022 which was re assessed on 4.8.2022 and the duty was finalized by the assessing officer. The final amount of duty assessed showed excess amount of Rs. 43,33,927/- paid which did not bear the character of the custom duty. Such excess amount of Rs. 43,33,927/- was liable to be returned by Customs department suo motu because it was not in the nature of Customs duty and therefore, it did not require filing of any refund claim. Since revenue did not pay the excess amount lying with them on final assessment, therefore appellant had no option but to file a formal refund application submitted on 11.08.2023 for refund of excess amount of Rs. 43,33,927/- on completion of the final assessment of the said Bill of Entry. A SCN dated 10.11.2023 was issued to the appellant to clarify as to why claim of Rs. 43,33,927/- should not be rejected on time limit as provided under Section 27(1B)(C) of the Customs Act, 1962 & Notification no. 93/2008-Cus dt. 1.8.2008. The appellant then filed a reply dt. 29.11.2023 to Show Cause Notice inter alia submitting the grounds why the refund is not governed by Section 27 of Customs Act, 1962 and thus not time bar. However, the reply did not find favor with the Id. Adjudicating authority rejected the refund so filed by the appellant by passing a non- speaking order without considering the submissions made by the appellant. The adjudicating authority has rejected the refund claim by holding that Rs. 43,33,927/- deposited was duty and claim filed on 11.08.2023 after completing final assessment on 4.8.2022 is beyond the time limit of one year stipulated under Section 27 of the Customs Act, 1962.

3.7 Appellant submits that the amount of Rs. 43,33,927/- is not a duty but an estimated amount as part of provisional duty. The proper Officer should have released this amount in the same manner as was released the bond and

bank guarantee. The excess deposit is not different from the bank guarantee because both are in the nature of security deposit therefore, the refund of the same is not governed by Section 27 of Customs Act, 1962. It is further submitted that in the present case as per Regulation 2 of Customs (Provisional Duty Assessment) Regulations 2011 there are two clauses for provisional assessment namely, (1) Importer executes bond in amount equal to difference between duty that may be finally assessed or re-assessed and the provisional duty (2) Importer deposit with proper officer such sum not exceeding twenty percent of the provisional duty, as the officer may direct. Thus, having deposited entire provisional duty was only security deposit and not a duty. Therefore, the time limit as provided under Section 27 will apply for returning of Security deposit.

3.8 Reliance is placed on the judgment of Hon'ble Supreme Court in Para 95 in the case of MAFATLAL INDUSTRIES LTD v/S. UOI- 1997 (89) E.L.T. 247 (S.C.) = 2002-TIOL-54-SC-CX-CB wherein, it was held that no recoveries or refund consequent upon the adjustment under Sub-rule (5) of Rule 9B will not be governed by Section 11A or Section 11B as the case may be. It is further submitted that on finalization of provisional assessment it is obligatory on the revenue officers to refund the amount for which even no refund application is required. Refund claim in such case was not governed under Section 27 of the Customs Act, 1962 and the assessee is not required to prove that burden of duty not passed on to buyers. He submits that the present case is on better footing as the amount of Rs. 16,39,458/- was paid under protest was security deposit and not duty. Appellant thus submit that amount deposited by them cannot be treated as an amount of duty and the same would partake the character of duty only when it is appropriated towards demand of duty in a quasi judicial action.

3.9 In this view of the matter, the amount claimed as refund in this case is not an amount of duty and therefore the time-bar provisions of Section 27 cannot be applied. In view of above settled position of law, refund of Rs. 43,33,927/- should be granted to the appellant. Theses submissions were made before the Adjudicating authority as well, however he has simply rejected the refund without giving any finding on the submissions made by the appellant which makes the order completely non speaking and liable to be set aside on this ground as well. Appellant submit that such order of adjudicating authority, rejecting refund as such without discussing and giving finding on the arguments put forth by appellant before him can be said to be a non speaking and mechanical order which is liable to be set aside.

3.10 Every appellate authority is entitled to know the grounds on which the lower authority has disposed the matter. It is, therefore, necessary for the Assistant Commissioner while disposing the matter to record the reasons for taking the view that he or she takes in relation to the issues which are sought to be raised in the matter under consideration. When a statute ensures the right of appeal, the aggrieved party is entitled to know the reasons for deciding the matter contrary to his submissions so that he can effectively pursue the matter before the appellate authority. Failure on the part of the authority to record reasons would result in injustice to the aggrieved party. An adjudicating authority, while deciding a matter, it has to consider every fact on record, for and against the assessee, and has to give its findings in a manner which would clearly indicate the questions which had arisen for determination, the evidence on record that has been considered and the reasoning applied for arriving at the conclusions which have been arrived at. The adjudicating authority, therefore, mechanically rejected the refund without considering the submissions made by appellant in reply to Show Cause Notice. The order is thus liable to be set aside on this ground alone. Appellant place reliance on the following case laws in this regard:

a. In the case of COCA COLA (1) PVT. LTD. Versus COMMISSIONER OF SERVICE TAX, DELHI, reported at 2015 (40) S.T.R. 547 (Tri. - Del.), it was held that Order Adjudication order - Non-speaking order - Cost imposable on adjudicating authority - Confirmation of demand on expenditure incurred in foreign currency and reimbursements made as service recipients - Adjudicating authority's "analysis" verbatim reproduction of assessee's submission quoted and no finding recorded about taxability - Also, findings totally irrelevant vis-à- vis assessee's contentions and analysis too cryptic and inadequate to arrive at finding - Adjudicating authority completely non-speaking regarding methodology/reasons/grounds based on which "best judgment" figures arrived at and adopted for levy of Service Tax - Arbitrary "best judgment" assessment of value not sustainable quasi-judicially therefore, quibbling over figures at best of academic interest - Adjudicating authority highly and conspicuously non-speaking, non-reasoned, arbitrary and cavalier while passing impugned order - Non-application of mind writ bold and large across impugned order - Therefore, impugned order set aside - Costs of 25,000 imposed on adjudicating authority payable to Prime Minister's National Relief Fund, within four weeks - Section 35C of Central Excise Act, 1944

b. In the case of FREIGHTLINKS INTERNATIONAL (I) P. LTD. Versus C.C.E., C. & S.T., COCHIN, reported at 2014 (33) S.T.R. 711 (Tri. - Bang.), i twas held that Order - Non-speaking order - Failure to discuss or consider various decisions cited by assessee in Order-in-Original - Non-consideration of submission made on aspect of Service Tax liability on ocean freight - No indication regarding ratio of decision cited, reasons for their irrelevancy and contrary decisions considered - Similarly no finding regarding invocation of extended period and imposition of penalty Therefore, matter required to be remanded to original adjudicating authority.

c. In the case of RUNGTA PROJECTS LTD. Versus COMMISSIONER OF C. EX., ALLAHABAD, reported at 2011 (24) S.T.R. 495 (Tri. - Del.), it was held that Adjudication order - Non-speaking order - Discussion in order just reproduction of show cause notice and submissions of assessee - No discussion of issue by Commissioner Matter needs reconsideration by adjudicating authority - Impugned order non-speaking order - Matter remanded.

3.11 In light of above settled position of law, the Order in Original is liable to be set aside on this ground alone. Since the refund of Rs. 43,33,927/-has been withheld and the amount has remained with government without any authority of law therefore, appellant request for compensation by way of interest on this amount.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 27.05.2025, following the principles of natural justice wherein Sourabh Nagda, Chartered Accountant appeared for the hearing in virtual mode and he re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Assistant Commissioner, Customs House, Mundra and the defense put forth by the Appellant in their appeal.

5.1 On going through the material on record, I find that the following issues need to be addressed:

(i) Whether the Order-in-Original was passed in violation of the principles of natural justice.

(ii) Whether the refund claim is barred by the limitation period specified in Section 27 of the Customs Act, 1962.

5.2 The Appellant contends that they were not given an effective opportunity for a personal hearing and that their requests for adjournment and a virtual hearing were ignored. However, the principles of natural justice are not violated by every procedural irregularity. A claim of a short notice for a hearing does not automatically invalidate an order, especially when the party has the opportunity to make written submissions. The inordinate delay in adjudication that would lead to a violation of natural justice, as cited in precedents, typically involves delays of many years, causing significant prejudice to the petitioner. This is not the case here. As long as the adjudicating authority considers the written submissions, which were filed by the Appellant in response to the Show Cause Notice, a proper hearing is deemed to have been afforded. The cases cited by the Appellant, such as TATA MOTORS INSURANCE SERVICES LTD., typically involve instances where no opportunity for a hearing was given at all, which is not the case here. Therefore, this ground of appeal is not sustainable.

5.3 The core of the Appellant's refund claim rests on the argument that the excess amount of Rs. 43,33,927/- paid was not "duty" but an "estimated amount as part of provisional duty" or a "security deposit," and therefore, the limitation period under Section 27 of the Customs Act, 1962, should not apply. They contend that the department should have returned this amount suo motu upon final assessment. The Appellant relies on the Supreme Court's judgment in MAFATLAL INDUSTRIES LTD v. UOI - 1997 (89) E.L.T. 247 (S.C.), which stated that refunds consequent upon adjustment under Rule 9B are not governed by Section 11A or Section 11B (equivalent to Section 27 in Customs for some aspects). The Adjudicating Authority, however, relies on Section 18(2)(a) of the Customs Act, 1962, which states that when duty provisionally assessed is finally assessed, the amount paid shall be adjusted against the duty finally assessed, and any excess shall entitle the importer to a refund. The Adjudicating Authority clearly holds that "the duty paid provisionally will always be treated as payments towards duty".

5.4 Upon a careful review, the interpretation by the Adjudicating Authority aligns with the statutory scheme of provisional assessment. Section 18 of the Customs Act, 1962, clearly deals with "Provisional assessment of duty." The duty paid provisionally, though subject to final adjustment, is still considered a payment towards customs duty. It is not merely a "security deposit" akin to a bond or bank guarantee, which is governed by separate provisions. The Supreme Court's ruling in Mafatlal Industries Ltd. v. Union of India primarily dealt with excise duty refunds arising from price variations under Rule 9B of the Central Excise Rules, 1944 (now omitted). While the principle of suo motu refund in certain situations was discussed, the context of provisional assessment under Section 18 of the Customs Act, 1962, is specifically addressed by Section 27(1B)(c). This specific provision, inserted later, clarifies the limitation period for refunds arising from provisional assessments. Therefore, the general principle of suo motu refund espoused in Mafatlal Industries Ltd. is not directly applicable here to override the specific provision for provisional assessments under the Customs Act. The Supreme Court in a later case of Union of India v. ITC Ltd., 1993 (67) ELT 3 (SC), distinguished between a simple excess payment of duty and a refund arising from re-assessment/provisional assessment. While a simple excess payment may not require a refund application, a refund arising from a re-assessment or finalization of provisional assessment under specific statutory provisions requires adherence to those provisions. Therefore, the Appellant's argument that the amount was a "security deposit" and not "duty" is legally untenable in the context of Section 18 and Section 27(1B)(c) of the Customs Act, 1962.

5.5 The dispute also revolves around the applicability and computation of the limitation period for the refund claim. The Appellant argues that the refund claim, arising from the finalization of a provisional assessment, is not a "refund of duty" and therefore not subject to the limitation period under Section 27. This argument is legally flawed.

5.4 Section 27(1) of the Customs Act, 1962, mandates that an application for a refund of any duty or interest must be made "before the expiry of one year, from the date of payment of such duty or interest". Furthermore, Section 27(1B)(c) provides a specific and unambiguous rule for cases involving provisional assessment or re-assessment. It states that "where any duty is paid provisionally under section 18, the limitation of one year shall be computed from

the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment". In the instant case, the re-assessment order was passed on 04.08.2022. The refund claim was filed on 11.08.2023, after a year later. A refund claim must be filed before the expiry of one year. The refund claim was, therefore, filed after the statutory one-year period had expired.

5.5 This interpretation is further supported by Notification No. 93/2008-Cus., dated 01.08.2008, which specifically provides that the claim for refund of additional duty of customs must be filed "before the expiry of one year from the date of payment of the said additional duty of customs". While the notification refers to "payment of additional duty," in the context of provisional assessments and re-assessments, Section 27(1B)(c) provides the specific trigger for the limitation period. This is in accordance with legal precedents which have affirmed that the limitation period for a refund claim, even in cases of provisional assessment, starts from the date of final assessment or re-assessment and not from the initial provisional payment. Therefore, the refund claim is squarely hit by the limitation of time prescribed under Section 27(1B)(c) of the Customs Act, 1962.

5.6 The Appellant's final ground is that the OIO is a non-speaking order as it did not discuss every submission made by them. While it is a settled principle of law that quasi-judicial orders must be reasoned and "speaking," this does not mean that every single argument of the assessee must be addressed verbatim. An order is considered "speaking" if it addresses the core legal issue and provides a logical and reasoned conclusion. In this case, the OIO clearly and directly addressed the central issue of the refund claim, which was its timeliness. The order correctly applied the limitation period as prescribed under Section 27(1B)(c) and concluded that the claim was time-barred. This specific reasoning is sufficient to make the order a "speaking order" as it provides a clear legal basis for the decision. The rejection of the appeal is based on a fundamental principle of customs law, and the OIO's concise focus on this point does not render it a non-speaking order.

5.7. After considering the facts of the case, the grounds of appeal raised by M/s. Hindustan Zinc Ltd., and the relevant provisions of the Customs Act, 1962, and jurisprudence, I find no merit in the appeal. The OIO correctly applied

the provisions of Section 27(1B)(c) of the Customs Act, 1962, and the refund claim filed on 11.08.2023 was indeed time-barred, as it was filed more than one year after the re-assessment order of 04.08.2022. The claims of violation of natural justice and a non-speaking order are also not substantiated by the facts or law.

6. Therefore, the appeal filed by M/s. Hindustan Zinc Ltd is rejected . The Order-in-Original No. MCH/237/AC/KRP/REF/2023-24 dated 26.02.2024 is hereby upheld.

(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-36/CUS/MUN/2024-25 3586

Date:19.09.2025

By Speed post/E-Mail

To,
M/s. Hindustan Zinc Ltd.
Yashad Bhavan
Udaipur, Rajasthan

Copy to:

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

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