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 – 20250471MN000000E33D

क	फ़ाइल संख्या FILE NO.	S/49-298/CUS/AHD/24-25
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) :	AHD-CUSTM-000-APP-008-25-26
ग	पारितकर्ता PASSED BY	Shri Akhilesh Kumar Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	07.04.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	10/AC/ICD/IMP/REF/2025, dated 14.02.2025
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	07.04.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Chiripal Poly Films Ltd., 3rd & 4th Floor, Chiripal House, Shivranjani Cross Roads, Satellite, Ahmedabad – 380 015

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 (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 ब्याज 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 ब्याज 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 ब्याज 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

M/s. Chiripal Poly Films Ltd., 3rd & 4th Floor, Chiripal House, Shivranjani Cross Roads, Satellite, Ahmedabad – 380 015 (hereinafter referred to as 'the Appellant') have filed the present appeal challenging the Order-In-Original No. 10/AC/ICD/IMP/REF/2025, dated 14.02.2025 (hereinafter referred to as 'the impugned order') passed by Assistant Commissioner of Customs, ICD - Khodiyar, Gandhinagar (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the Appellant vide letter dated 08.08.2024 (received on 12.08.2024) have submitted a refund claim for an amount of Rs. 7,03,04,767/- under Section 27 of the Customs Act, 1962, in respect of interest paid by them. The Appellant have submitted that for imports made under exemption of Advance Authorization Scheme subject to "Pre-import Condition", they had requested for re-assessment of 37 (thirty seven) Bills of Entry filed at ICD – Khodiyar, Gandhinagar under Circular No. 16/2023 – Cus., dated 07.06.2023. The reassessment of the concerned Bills of Entry were made by the officers in charge of the Port of Import (POI) and electronic challan was generated in the Customs EDI System for tax and interest thereon.

2.1 The Appellant had submitted that they had made an application vide letter dated 28.06.2023 to the Commissioner of Customs, Ahmedabad seeking assessment / re-assessment of Bills of Entry and requested exclusion of the amount paid equivalent to the interest amounting to Rs. 7,03,04,767/- from the list of Bills of Entry as tabulated in Working Sheet (Annexure – "I") attached to the said letter and to provide the refund of the said amount as per the provisions of Section 27 of the Customs Act, 1962.

2.2 The Appellant have vide letter dated 07.08.2023 submitted that the said Bills of Entry were re-assessed and they have paid the IGST amounting to Rs. 9,17,29,291/- along with an amount equivalent to interest totalling Rs. 7,03,04,767/-. The said amount was automatically calculated by the EDI system, leaving no room for them to make adjustment. Consequently, they were compelled to remit an amount of Rs. 7,03,04,767/- equivalent to auto-computed interest amount at the time of paying IGST during the re-assessment of the Bills of Entry.

2.3 The Appellant submitted that in the challan, interest was also shown because it is observed at Para 5.2 (c) of the Circular dated 07.06.2023 that payment of tax, along with applicable interest shall be made against the electronic challan by the importer. They further submitted that they have deposited the entire amount of tax as recorded in the challan, because it was not possible to deposit only the amount of tax without interest. The EDI system would not accept the payment if the amount being paid was not equal to the total figure / amount in the electronic challan. Payment of only the tax amount was not possible under the challan electronically generated in EDI system.

But interest was not applicable in this case. Therefore, they requested for waive of interest charged in the electronic challan, and also requested to reassess the Bills of Entry for the amount of tax.

2.4 The Appellant have submitted that the Government of India has clarified under the above Circular that tax, alongwith the applicable interest, shall be paid by importers. If interest was not applicable, then payment of interest cannot be insisted upon. The tax that they have to pay was IGST, which is levied under sub-section (7) of Section 3 of the Customs Tariff Act, 1962. IGST under Section 3(7) of the Customs Tariff Act is not "Customs duty" charged under Section 12 of the Customs Act, 1962, but it is an independent levy under a separate statute and an independent charging section. Under sub-section (12) of Section 3 of the Customs Tariff Act, 1962, it is laid down by the Parliament that the provisions of the Customs Act, 1962 and the Rules and Regulations made thereunder, including those relating to Drawbacks, refunds and exemption from duties shall be applicable, so far as may be, to the tax chargeable under Section 3 of the Tariff Act. There is no provision under Section 3 of the Customs Tariff Act or any other law for the time being in force, for charging interest in case of payment of IGST levied under sub section (7) of Section 3 of the Customs Tariff Act. Further, the Appellant relied on the decision of Hon'ble Bombay High Court in the case of M/s Mahindra & Mahindra Ltd., reported in 2022 (10) TMI 212 (Bombay High Court), wherein it has been held by the Hon'ble High Court that interest and penalty were not chargeable on tax levied under Section 3 of the Customs Tariff Act, because there was no specific provision under this Section of the Tariff Act for charging interest or imposing penalty in respect of duty chargeable under that section. The said judgement of the Hon'ble High Court was upheld by the Hon'ble Supreme Court while dismissing the Revenue's Special Leave Petition as reported in 2023(8) TMI 135 and the review petition filed by the Revenue in this case was also dismissed by the Hon'ble Supreme Court vide Order dated 09.01.2024. Thus, the Appellant have requested for refund of interest amounting Rs. 7,03,04,767/- paid by them.

2.5 The Appellant had filed 37 (thirty seven) Bills of Entry at ICD – Khodiyar, Gandhinagar during the relevant period where they appeared to have violated the pre-import condition and accordingly, the Appellant vide letter dated 28.06.2023 and 07.08.2023 had shown their willingness to pay the IGST on the subject imports where they had violated the pre-import conditions and requested for re-call and re-assess the said Bills of Entry filed by them during the period from 13.10.2017 to 09.01.2019. The request for re-calling and re-assessment of said BEs led to believe that the Appellant had requested for the subject re-assessment so as to charge the tax (as provided under Para 5.2 (b) of the Circular); to generate the electronic challan in the Customs EDI System (as provided under Para 5.2 (c) of the Circular) for enabling them for making the payment; to follow the further procedure of making notional Out of Charge (OOC) etc. (as provided under Para 5.2 (d) of the Circular). Therefore, in view of the request of the Appellant, the subject Bills of Entry were re-called and re-assessed and the Appellant had paid the IGST

alongwith interest as complying the Order of Hon'ble Supreme Court and Circular No. 16/2023-Cus, dated 7.6.2023.

2.6 It appeared that the Appellant have never contested at the time of assessment made as per Circular No. 16/2023-Cus., dated 07.06.2023 without any protest. Further, the said Circular had not been declared ultra vires till date by the competent authority and assessment was made final on the request of the Appellant and therefore, now claiming the refund without challenging the assessment was not permitted in view of the judgment of Hon'ble Supreme Court in the case of ITC Limited Vs. Commissioner of Central Excise, Kolkata-IV reported in 2019 (368) E.L.T. 216 (S.C.). Therefore, it appeared that the interest of Rs. 7,03,04,767/- had correctly been paid by the said Appellant, while paying IGST as per the judgement of the Hon'ble Supreme Court of India in case of Civil Appeal No. 290 of 2023 (UOI and others Vs. Cosmo Films Ltd.) and the CBIC Circular No. 16/2023-Cus, dated 07-06-2023. Further, it appeared that the said payment of IGST and interest was made by the Appellant voluntarily, unconditionally and without any protest.

2.7 Accordingly, a Show Cause Notice under F. No. VIII/20-45/ICD/REF/2024, dated 06.11.2024 was issued to the Appellant proposing to reject the claim of refund of interest of Rs. 7,03,04,767/- paid by them along with payment of IGST under Section 27 of the Customs Act, 1962;

2.8 The adjudicating authority has vide the impugned order rejected the refund claim of Rs. 7,03,04,767/- under Section 27 of the Customs Act, 1962.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellant have filed the present appeal. The Appellant have, inter-alia, raised various contentions and filed detailed submissions as given below in support of their claims:

- They have become entitled for Refund as consequential relief on implementation of the Final Order No. 11628-11630/2024, dated 23-07-2024 and cash release of the payment of Interest amount of Rs. 7,03,04,767/- paid in 2023;
- There was no provision, at the material time, under section 3 (7) or 3 (12) of Customs Tariff Act 1975 for any recovery of short paid, non paid IGST and Article 265 of Constitution of India, stipulates that no tax shall be levied or collected except by authority of law. Thus, amount of Interest deposited by them in 2023 for the Bill of Entry of Ahmedabad and retained by Customs authority at Ahmedabad is also not justified and amount of interest recovered and retained by the Government requires to be returned to them. The settled law shows that unstayed orders of Higher Authorities have to be unreservedly followed and implemented by field officers. There is no stay from any competent higher court against implementing Tribunal's Final Order dated 23.07.2024;

- When the Hon'ble Tribunal has allowed Appeals with consequential reliefs, the adjudicating authority should have implemented the said Final Order dated 23.07.2024, first and returned amount of Interest of Rs. 7,03,04,767/-, recovered from the them during the proceedings in 2023, which was not payable under existing law at the material time in 2023;
- The adjudicating authority has not adhered to the CBEC Circular No. 802/35/2004 – CX., dated 08.12.2004, wherein it has been directed to all the field officers that the refund of deposit must be returned within 3 months from the date of the order passed by the Appellate Tribunal / Court or other Final Authority, unless there is a stay on the order of Final Authority or CESTAT or Court, by Supreme Court;
- The CBEC's Circular No. 984/8/2014 – CX., dated 16.09.2014 and Circular No. 1053/2/2017 – CX., dated 10.03.2017 are binding Circulars and should be followed as by all the field formations under CBIC;
- Thus, it is clear mandate that where appeal is decided in favour of the assesse, he shall be entitled to refund of the amount deposited along with the interest from the date of making the deposit to the date of refund.
- The adjudicating authority have not followed the CBEC's directives through Circulars dated 22.02.2001, 08.12.2004, 15.01.2015, 16.09.2014 and 10.03.2017 etc., on refund claims filed after unstayed judicial orders by higher authorities. This type of actions by the adjudicating authority is violation of judicial decisions and violation of administrative mandate by CBEC, which they were mandatorily required to follow. They relied upon the decision of Hon'ble Supreme Court of India in the case of M/s. Kamalakshi Finance Corporation reported in [1991 (55) ELT 433 (SC)] in support of their claim;
- They have strong objection that though HON'BLE CESTAT ORDER was issued on 23.07.2024 in their favour, ICD – Khodiyar, Gandhinagar have not yet refunded total Interest amount of Rs. 7,03,04,767/- paid since 2023 in spite of their Application for Refund and subsequent requests made. Hence, this application may be allowed and revenue may be directed to return the Interest amount, when there is no stay against the Final Order dated 23.07.2024. Revenue has already recovered the interest of Rs. 7,03,04,767 /- deposited since 2023. Hence, equity of justice is in their favour. This conduct of the Customs Officers at ICD – Khodiyar, Gandhinagar amounts to gross injustice to the Appellant caused by these officers to give effect to orders of authorities higher to them;

  They have strongly objected the SCN dated 10.12.2024, participated in PH with a request to release the Refund. However, the impugned order has rejected the refund with unjustified, unsustainable and incorrect view, which is disobedience of orders by this Hon'ble Tribunal and abuse of powers and process of law;
- The actions of authorities at ICD – Khodiyar, Gandhinagar in not implementing the Tribunal's Order dated 23.07.2024 are excise of powers by misusing and abusing process of law by unjustified actions; that while claiming "Consequential Relief" after judicial Order by Higher authority, it is not their responsibility / obligation to get relevant Bill of Entry Re-assessed or modified establishing eligibility for refund in

terms of decision by the Hon'ble Supreme Court in ITC Ltd vs CCE [2019 (368) ELT- 216 (S.C.)] which has held that in case any person is aggrieved by any order which would include self-assessment, he has to get order modified u/s 128 or under other relevant provisions of the Customs Act 1962. In this case, such self-Assessment was availing exemption @ NIL duty and its Re-Assessment of relevant Bill of Entry was done with "duty + Interest in 2023" by the proper officers, which was upheld by Commissioner of Customs, who has adjudicated the case on 18-04-2024 and such OrderIn-Original dated 18.04.2024 was modified by Tribunal on 23.07.2024 [as higher supervisory authority];

- In facts of this Refund claim, after the CESTAT's Order dated 23.07.2024, no obligation is cast by the law on them to get said Bill of Entry Re-assessed to claim Refund as a consequential Relief. Refund claim does not require any re-assessment of Bill of Entry to be obtained by them. The self-assessment and orders of Re-assessment, stand modified by the Hon'ble CESTAT's Final Order dated 23.07.2024. Hence, relied upon decision in case of ITC Ltd vs CCE [2019 (368) ELT- 216 (S.C.)] is stand complied with in this refund claim. This is not a logical view by AC Customs at ICD – Khodiyar, Gandhinagar to delay the Refund claim under unjustified assumptions and presumptions;
- They further relied upon the following decision in support of their claim:-
  i. *2007 (218) E.L.T. 647 (S.C.) – UOI vs. Vicco Laboratories;*
  ii. *2015 (324) E.L.T. 417 (S.C.) – CC (Port), vs. Cosmo Steel (P) Ltd;*
  iii. *2003 (158) E.L.T. 3 (S.C.) – UOI vs. Ahmedabad Electricity Co. Ltd.;*
  iv. *2011 (269) E.L.T. 307 (S.C.) – Commissioner of Customs, Calcutta vs. G.C. Jain;*
  v. *2015 (319) E.L.T. 597 (S.C.) – Commissioner of C. EX., Gujarat vs. Aditya Yarns Pvt. Ltd.;*
  vi. *2020 (374) E.L.T. 175 (Bom.)- Mangalnath Developers vs UOI;*
  vii. *2018 (361) E.L.T. 890 (Tri. – Mumbai) – Imtiyaz Eqbal Pothiawala vs Commissioner of Customs, Mumbai;*
  viii. *2018 (8) G.S.T.L. 101 (Guj.) – Manishkumar Batukbhai Kathiriya vs. Principal Commissioner Of Cus.;*
  ix. *2023 (384) E.L.T. 8 (S.C.) and (2023) 3 Centax 49 (S.C.)- Godrej Sara Lee Ltd vs. Excise And Taxation Officer-Cum-Assessing Authority;*
  x. *2018 (361) E.L.T. 73 (Raj.) – CCE, Jaipur-I vs. Jaipur Syntex Ltd.;*
  xi. *2017 (358) E.L.T. 1058 (Tri. – All.) Tycon Automation Pvt. Ltd., vs. Commr. of Cus. C.E. & S.T., Noida;*
  xii. *2018 (8) G.S.T.L. 179 (Tri. – All.) – M & B Footwear Pvt. Ltd vs. CCE;*

3.1 Copy of the appeal was sent to the adjudicating authority, i.e., The Assistant Commissioner, Customs, ICD – Khodiyar, Gandhinagar. The adjudicating authority vide his letter dated 24.03.2025 submitted the comments on the grounds of appeal as under:-

- They had not challenged the assessment / re-assessment of the said Bills of Entry before claiming refund of interest paid by them. Claiming of such refund is not admissible in terms of judgment of the Hon'ble Supreme Court in the case of ITC

Limited Vs. Commissioner of Central Excise, Kolkata-IV reported in 2019 (368) E.L.T. 216 (S.C.);

- The observations of the Hon'ble Supreme Court in the case of ITC Limited clearly mandate that before applying for refund, the Appellant needs to challenge the order of assessment / self-assessment, if he is aggrieved, and get the said order modified under Section 128 or under other relevant provisions of the Customs Act. The Appellant was at liberty to file an appeal before the Commissioner of Customs (Appeals) at the relevant time challenging the assessment / self-assessment, but they chose not to do so. It therefore, clearly implies that the Appellant has accepted such assessment / self-assessment mandating payment of interest amount along with IGST in terms of Circular No. 16/2023-Cus, dated 07.06.2023. Thus, the refund claim in question has been filed by them without following the due procedure and legal provisions which mandates challenging the assessment under Section 128 of the Customs Act, 1962;
- They also relied upon the decision of the Hon'ble CESTAT, Chennai in order dated 28.06.2023 in the case of M/s Tamil Nadu Generation in Customs Appeal No. 41713 of 2013, wherein it has been held that the refund claim is not maintainable in the absence of any challenge to assessment order;
- In view of the above, it is evident that the Appellant filed the instant claim without taking recourse to legal remedies available to them against the assessment/self-assessment relating to payment of interest in terms of Circular No. 16/2023-Cus dated 07.06.2023. Thus, the refund claim has been filed in clear violation to the norms set by the Hon'ble Supreme Court vide its judgment in the case of ITC Ltd. (cited supra). Hence, the refund claim filed by them was non-maintainable and rejected;

4. Personal hearing in the matter was held on 26.03.2025 in virtual mode. Shri. P. P. Jadeja, Consultant, appeared for hearing on behalf of the Appellant. The Advocate reiterated the submissions made at the time of filing of appeal. The Advocate has also submitted comments on the letter dated 24.03.2025 of the adjudicating authority and has also submitted written submission as under:-

- The letter dated 24.03.2025 of the adjudicating authority has reiterated the findings of the impugned order taking shelter from the decision of the Hon'ble Supreme Court in the case of ITC Ltd reported in ITC Ltd vs CCE -2019 (368) ELT- 216 (S.C.). However, it is clear mandate that where appeal is decided in favour of the assessee, he shall be entitled to refund of the amount deposited with interest from the date of making the deposit to the date of refund in respect of unstayed orders of the higher authorities. The adjudicating authority have not followed CBEC's directives in Circulars dated 22.02.2001, 08.12.2004, 15.01.2015, 16.09.2014 and 10.03.2017 etc., on refund claims filed after unstayed judicial orders dated 23.07.2024 by the Hon'ble CESTAT Ahmedabad. Such actions by the adjudicating authority are violation of judicial decisions and

violation of administrative mandate by CBEC, which they were mandatorily required to follow. Such view in the impugned order is not correct, justified and sustainable in the Tax Administration in India. Revenue is required to first implement the Hon'ble CESTAT Order dated 23-07-2024 as law laid down by Hon'ble Supreme Court in Kamalakshi Finance Corporation-{1991(55) ELT-433(SC)};

- The adjudicating authority has rejected refund under unsustainable view that refund cannot be entertained unless Order of assessment, is not modified, as held in case of ITC Ltd vs CCE -2019 (368) ELT- 216 (S.C.)]. However, the adjudicating authority have not correctly interpreted the said decision and incorrectly applied in this case, when it is already complied with in this case and applicable as the officers have applied in the facts of this case. Identical view is taken by both the authorities to reject refund, when the AC Customs ACC, Ahmedabad has allowed such refund on 24.10.2024 and the other Customs Commissionerate at Mundra and JNCH have allowed such consequential refund on 11.12.2024 and 18.12.2024 respectively;
- It is a settled law that while claiming "Consequential Relief" after judicial Order by Higher authority, it is not the responsibility / obligation or any such requirement on their part to get relevant Bill of Entry Re-assessed or modified establishing eligibility for the refund in terms of decision by the Hon'ble Supreme Court in case of ITC Ltd vs CCE [2019 (368) ELT- 216 (S.C.)]. In this case, such self-assessment was availing exemption @ NIL duty and its Re-Assessment of relevant Bill of Entry was done with "duty + Interest in 2023" by proper officers, which was upheld by Commissioner of Customs, who has adjudicated the case on 18.04.2024 and the said order dated 18.04.2024 has been modified by the Hon'ble CESTAT, Ahmedabad on 23.07.2024. Needless to mention that the Hon'ble CESTAT is the highest fact finding supervisory authority in terms of provisions of the sub-section (6) of section 129C of Customs Act, 1962 read with Rule 40 of CESTAT Procedure Rules 1982. After Hon'ble CESTAT's Order dated 23.07.2024, there is no obligation cast by law on them to get said Bill of Entry Re-assessed to claim Refund as a consequential Relief. Refund claim also does not require any re-assessment of Bill of Entry to be obtained by claimant. The Order of assessment, stand modified by the Hon'ble CESTAT's Final Order dated 23.07.2024. Hence, decision in ITC Ltd vs. CCE -2019 (368) ELT- 216 (SC) stand complied with in claim. The relevant Bill of Entries were part of the SCN which was adjudicated vide O-I-O dated 18.04.2023 and set aside by the Final Order dated 23.07.2024. The self-assessment and orders of Re-assessment, stand modified by the Hon'ble CESTAT's Final Order dated 23.07.2024. Hence, decision in ITC Ltd vs. CCE -2019 (368) ELT- 216 (S.C.) stand complied with in this claim;
- They submitted the below mentioned documents and requested to allow their appeals in view of the directions of the Hon'ble CESTAT dated 23.07.2024:

i. *OIO No. 80/AC/ACC/OIO/Chiripalpolyfilms/2024-25, dated 24.10.2024 issued by ACC, Ahmedabad, allowed refund of Rs. 4,73,657/-;*
ii. *OIO No. MCH/178/ARK/DC/REF/2024-25, dated 12.11.2024 issued by DC, Customs, Mundra, allowed refund of Rs. 1,43,38,992/-;*
iii. *OIO No. 877/2024-25/AM(i)-NS-III, dated 18.12.2024 issued by AC, Customs, JNCH, allowed refund of Rs. 1,13,48,980/-;*
iv. *Protective demand issued from F. No. CUS/RFD/MISC/672/2024/CRC, dated 10.01.2025 by the AC, Customs, JNCH who allowed the refund;*

5. I have carefully gone through the impugned order, appeal memorandum filed by the Appellant and submissions made by the Appellant during course of hearing as well as the documents and evidences available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority rejecting the refund claim for an amount of Rs. 7,03,04,767/- under Section 27 of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

6. It is observed that Appellant had vide letter dated 08.08.2024 (received on 12.08.2024) submitted a refund claim for an amount of Rs. 7,03,07,767/- under Section 27 of the Customs Act, 1962, in respect of interest of IGST paid by them. The Appellant have submitted that for imports made under exemption of Advance Authorization Scheme subject to "Pre-import Condition", they had requested for re-assessment of 37 (thirty seven) Bills of Entry filed at ICD – Khodiyar, Gandhinagar, under Circular No. 16/2023 – Cus., dated 07.06.2023. It is observed that they had filed 37 (thirty seven) Bills of Entry at ICD – Khodiyar, Gandhinagar during the relevant period where they appeared to have violated the pre-import condition and accordingly, the Appellant vide letter dated 28.06.2023 and 07.08.2023 had shown their willingness to pay the IGST on the subject imports where they had violated the pre-import conditions and requested for re-call and re-assess the said Bills of Entry filed by them during the period from 13.10.2017 to 09.01.2019. Therefore, in view of their request, the subject Bills of Entry were re-called and re-assessed and the Appellant had paid the IGST alongwith interest in compliance of the Order of Hon'ble Supreme Court and Circular No. 16/2023-Cus, dated 07.06.2023.

6.1 It is further observed that the instant refund claim for an amount of Rs. 7,03,04,767/- was filed by the Appellant as a consequence of the Hon'ble CESTAT, Ahmedabad Final Order No. 11628 – 11630 / 2024, dated 23.07.2024 passed in their case. However, the adjudicating authority was of the view that since the Appellant have never contested at the time of assessment made as per Circular No. 16/2023 – Cus,, dated 07.06.2023 and since the Circular dated 07.06.2023 had not been declared ultra vires till date by the competent authority and assessment was made final on the request of the Appellant, therefore, claiming the refund without challenging the assessment was not permitted in view of the judgment of Hon'ble Supreme Court in the case of ITC Limited

Vs. Commissioner of Central Excise, Kolkata-IV reported in 2019 (368) E.L.T. 216 (S.C.). Therefore, the interest of Rs. 7,03,04,767/- had been held to be correctly been paid by the Appellant, while paying IGST as per the judgement of the Hon'ble Supreme Court of India in case of Civil Appeal No. 290 of 2023 (UOI and others Vs. Cosmo Films Ltd.) and the CBIC Circular No. 16/2023-Cus, dated 07-06-2023. Thereafter, a Show Cause was issued to the Appellant, which was adjudicated vide the impugned order rejecting the refund claim of Rs. 7,03,04,767/- paid by them along with payment of IGST under the provisions of Section 27 of the Customs Act, 1962.

6.2 It is observed that the adjudicating authority while rejecting the refund claim of Rs. 7,03,04,767/- has in the impugned order held that:-

> *"13. In view of the above, it is evident that the claimant filed the instant claim without taking resource to legal remedies available to them against the assessment/self-assessment relating to payment of interest in terms of Circular No. 16/2023 – Cus, dated 07.06.2023. The refund claim has been filed in clear violation to the norms set by the Hon'ble Supreme Court vide its judgment in the case of ITC Ltd. (cited supra). Hence, I am constrained to reject the refund claim filed by them as non-maintainable. The case law cited by the claimant are not applicable as the instant case is squarely covered by the said judgment of the Hon'ble Supreme Court in the matter of ITC Ltd."*

6.3 On perusal of the impugned order, it is observed that the adjudicating authority has not considered and given any findings on the order of the Hon'ble CESTAT Ahmedabad dated 23.07.2024, during the course of adjudication, which was required to be examined by him and record specifically his findings on the said order dated 23.07.2024. However, the adjudicating authority rejected the refund claim merely on the ground that the refund claim was not maintainable in view of the judgement of the Hon'ble Supreme Court in the case of ITC Ltd supra. Thus, the impugned order insofar it relates to rejecting the refund claim is concerned suffers from legal infirmity as being non-speaking order.

6.4 The Appellant on the other hand has contended that the order of assessment stands modified by the Hon'ble CESTAT Ahmedabad Final Order dated 23.07.2024. It has been further contended that the relevant Bills of Entry were part of the SCN which was adjudicated by the Pr. Commissioner of Customs, Ahmedabad vide O-I-O dated 18.04.2023 which has been set aside by the Hon'ble CESTAT Ahmedabad Final Order dated 23.07.2024. Thus, the self-assessment and orders of re-assessment, stand modified by the Hon'ble CESTAT Ahmedabad Final Order dated 23.07.2024. Hence, decision in ITC Ltd vs. CCE -2019 (368) ELT-216 (S.C.) stand complied with in this claim. In this regard, it is relevant to refer to the Hon'ble CESTAT Ahmedabad Final Order No. 11628 – 11630 / 2024, dated 23.07.2024, which is reproduced below for ease of reference:-

"5.20 We find that interest is recovered as per Para 5.2(c) of Circular No. 16/2023-Cus dated 07-06-2023, Appellant had no option, but, to pay "Interest" along with IGST, if they wish to avail option to pay IGST in compliance to para 75 of decision dt. 28-04-2023 by Apex Court. We find that in this case, issue is IGST leviable under Section 3(7) of Customs Tariff Act 1975. Section 3(7) is charging section for IGST on goods imported into India, and it is a separate levy independent of Customs Duty leviable under Section 12 of Customs Act. Thus, the Circular No. 16/2023-Cus dated 0706-2023 directing to charge applicable interest is ex-facie, contrary to provision for charging "interest" u/s 3(7) of Customs Tariff Act 1975 and decisions of the Hon'ble Supreme Court, Punjab & Haryana High Court, Gujarat High Court, Bombay High Court and other decisions, as mentioned above. We observe that any Circular issued by CBIC would reflect only the views of Officers on any issue, but, law is also settled that decision by Court will always prevail over the views expressed in a CBIC Circular. The decisions of Hon'ble Supreme Court in the cases of 2002 (139) ELT-3(SC) - CCE, Vadodara vsDhiren Chemical Industries and 2008 (12) STR-416(SC) - CCE, BolpurvsRatan Melting & Wire Industries shows that circular contrary to the statutory provisions has really no existence in the law."

5.21 xxx

5.22 xxx

5.23 xxx

5.24 In view of the above mentioned provisions of law and judicial pronouncements, it is settled that in the absence of specific provision relating to levy of Interest, Redemption Fine and Penalty in respective legislation for levy duty, the same cannot be demanded or imposed or recovered by taking recourse to machinery provisions relating to recovery of 32 C/10228-10230/2024 the duty. Therefore, the orders for recovery of "Interest, Redemption Fine and Penalty" in these cases are not sustainable considering charging provisions of the Customs Act 1962 and relevant provisions under the Customs Tariff Act, 1975 and the decisions rendered thereon as mentioned above. The issue on imposing Interest, Redemption Fine and Penalty is no longer ResIntegra.

5.25 We also note that adjudicating authority has relied upon a few decisions in the impugned orders, which are on different facts and applicable in such facts. The facts and issue in the present cases are not identical to those cases. Therefore, the ratio of the decision is not directly applicable in the present case.

6 Since we decide these Appeals on the multiple counts, on merits and limitation, the other issues raised by the appellant are not taken up or discussed and the same are left open.

7. In view of our above discussion and findings, the impugned orders on confirmation of demands for interest and appropriation thereof, order of confiscation of goods, imposition of Redemption fine and penalty are not sustainable and the same are set aside. The appeals are allowed with consequential reliefs in the above terms."

6.5 It is observed that the Hon'ble CESTAT, Ahmedabad, vide Final Order No 11628 – 11630 / 2024, dated 23.07.2024 has set aside the order of the Pr. Commissioner of Customs, Ahmedabad dated 18.04.2023, confirming the demands for interest, appropriation thereof, order of confiscation of goods, and imposition of Redemption fine.

There is no stay on the operation of the order of the Hon'ble Tribunal, Ahmedabad. Therefore, I am of the considered view that since there is no stay on the said Final Order dated 23.07.2024, this order of the jurisdictional Hon'ble CESTAT, Ahmedabad is binding upon the lower quasi-judicial authorities. The impugned order has been passed by the adjudicating authority in clear violations of principles of judicial discipline. The adjudicating authority has vide letter dated 24.03.2025, while offering comments on the appeal memorandum, stated that the Appellant has filed Miscellaneous Application bearing No. C/Misc/10015/2025 in Appeal No. C/10229/2024 before the Hon'ble CESTAT, Ahmedabad. The Hon'ble CESTAT vide Order dated 19.02.2025 allowed time to the adjudicating authority to correct the situation as per law till the next date (24.03.2025). On perusal of the facts and circumstances of the case, it is apparent that the impugned order is a non-speaking order and has been passed in violation of the principles of judicial discipline. The same is not legally sustainable and is liable to be set aside.

6.6 In view of the above, I am required to follow the precedence laid by judgment of the Hon'ble CESTAT, Ahmedabad dated 23.07.2024 supra, in light of the law laid by Hon'ble High Court of Gujarat in case of Lubi Industries LLP [2018 (337) E.L.T. 179 (Guj.)] on judicial discipline and binding nature of judgment of superior court :

> *"6. In our opinion, the Assistant Commissioner committed a serious error in ignoring the binding judgment of superior Court that too in case of the same assessee. The principle of precedence and judicial comity are well established in our legal system, which would bind an authority or the Court by the decisions of the Coordinate Benches or of superior Courts. Time and again, this Court has held that the departmental authorities would be bound by the judicial pronouncements of the statutory Tribunals. Even if the decision of the Tribunal in the present case was not carried further in appeal on account of low tax effect, it was not open for the adjudicating authority to ignore the ratio of such decision. It only means that the Department does not consciously agree to the view point expressed by the Tribunal and in a given case, may even carry the matter further. However, as long as a judgment of the Tribunal stands, it would bind every Bench of the Tribunal of equal strength and the departmental authorities taking up such an issue. An order that the adjudicating authority may pass is made appealable, even at the hands of the Department, if the order happens to aggrieve the Department. This is clearly provided under Section 35 read with Section 35E of the Central Excise Act. Therefore, even after the adjudicating authority passes an order in favour of the assessee on the basis of the judgment of the Tribunal, it is always open to the Department to file appeal against such judgment of the adjudicating authority."*
>
> (emphasis supplied)

6.7 It will not be out of context to recollect the observations of the Hon'ble Supreme Court in case of Kamlakshi Finance Corporation Ltd. [1991 (55) E.L.T. 433 (SC)], on the issue :

"6. .....It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.

7. .....The position now, therefore, is that, if any order passed by an Assistant Collector or Collector is adverse to the interests of the Revenue, the immediately higher administrative authority has the power to have the matter satisfactorily resolved by taking up the issue to the Appellate Collector or the Appellate Tribunal as the case may be. In the light of these amended provisions, there can be no justification for any Assistant Collector or Collector refusing to follow the order of the Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. ....."

7. In view of above discussions and respectfully following the judgment of Hon'ble CESTAT, Ahmedabad, I am of the considered view that the Appellant is eligible for refund claim for an amount of Rs. 7,03,04,767/- under the provision of Section 27 of the Customs Act, 1962. The impugned order is legally not sustainable and is, accordingly, set aside.

8. It is pertinent to mention that in the similar matters, the refund claim filed by the Appellant have been sanctioned by the Assistant Commissioner, Air Cargo Complex, Ahmedabad, the Assistant Commissioner of Customs, CRC – I, NS – III, JNCH and the Deputy Commissioner of Customs (IGST / Refund), Mundra.

9. It is further observed that the aspect of doctrine of unjust enrichment has not been examined in the impugned order. Hence, the matter needs to be remanded to the adjudicating authority to only verify the aspect of unjust enrichment and to dispose of the refund claim of the Appellant accordingly.

10. In view of the above observations, I find that remitting the present appeal to adjudicating authority for deciding the aspect of unjust enrichment in the case, has become sine qua non to meet the ends of justice. Accordingly, the case is remanded back to the adjudicating authority, in terms of sub-section of (3) of Section 128A of the Customs Act, 1962, for passing a fresh order by following the principles of natural justice.

In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs- 2004 (173) ELT 117 (Guj.), Judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and Judgments of Hon'ble Tribunals in case of Prem Steels Pvt. Ltd. [2012-TIOL-1317-CESTAT-DEL] and Hawkins Cookers Ltd. [2012 (284) E.L.T. 677 (Tri.-Del)] holding that Commissioner (Appeals) has power to remand the case under Section – 35A (3) of the Central Excise Act, 1944 and Section – 128A (3) of the Customs Act, 1962.

11. In view of the above, I set aside the impugned order and allow the appeal filed by the Appellant by way of remand to the adjudicating authority, for passing fresh order, after examining the aspect of unjust enrichment, after taking the submission made by the Appellant in the present appeal on record, after following principles of natural justice.

07 April, 2025.

(Akhilesh Kumar)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-298/CUS/AHD/2024-25

Date: 07.04.2025

By Registered post A.D

To,
M/s. Chiripal Poly Films Ltd.,
3rd & 4th Floor, Chiripal House,
Shivranjani Cross Roads,
Satellite,
Ahmedabad – 380 015

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1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
3. The Assistant Commissioner, Customs, ICD – Khodiyar, Gandhinagar.
4. Guard File.