



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,
चौथी मंज़िल 4th Floor, हडकोभवन HUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009 दूरभाषक्रमांक Tel. No. 079-
26589281

DIN -20250571MN000000C621

क	फ़ाइलसंख्या FILE NO.	S/49-38 to 41/CUS/JMN/MAY/2025-26
ख	अपीलआदेशसंख्या ORDER-IN- APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-17 to 20-25-26
	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	30.05.2025
ड	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	As detailed in Table A of the Order
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	30.05.2025
छ	अपीलकर्तानामवपता NAME AND ADDRESS OF THE APPELLANT:	1. M/s Ashapura International Ltd, Jeevan Udyog Building, 3 rd Floor, 278, DN Road, Fort, Mumbai – 400001. 2. M/s Ashapura Minechem Ltd., Jeevan Udyog Building, 3 rd Floor, 278, DN Road, Fort, Mumbai – 400001. 3. M/s Ashok Alco Chem Ltd., Room No 104, Vegkatesh Chambers, 1 st Floor,

	Ghanshyam Talwatkar Marg, Fort, Mumbai -400001. 4. M/s Bombay Minerals Ltd., Jeevan Udyog Building, 3 rd Floor, 278, DN Road, Fort, Mumbai - 400001
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1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै. This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहैं. 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. निम्नलिखितसम्बन्धितआदेश/Order relating to : (क) बैगेजकेरूपमेंआयातितकोईमाल. (a) any goods imported on baggage. (ख) भारतमेंआयातकरनेहेतुकीसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो. (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) सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी. (c) Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंग्रहहोनेचाहिए : 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) कोर्टफीएक्ट, 1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां, जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए. (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) सम्बद्धदस्तावेजोंकेअलावासाथमूलआदेशकी 4 प्रतियां, यदिहो (b) 4 copies of the Order-in-Original, in addition to relevant documents, if any (ग) पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां (c) 4 copies of the Application for Revision. (घ) पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र) या रु. 1000/- (रूपएएकहजारमात्र), जैसाभीमामलाहो, सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी. आर. 6 कीदोप्रतियां. यदिशुल्क, मांगागयाव्याज, लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु. 200/- औरयदिेकलाखसेअधिकहोतोफीसकेरूपमेंरु. 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.	<p>मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदि कोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं</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, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधि करण, पश्चिमीक्षेत्रीयपीठ</td><td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td></tr> <tr> <td>दूसरीमंजिल, बहुमालीभवन, निकटगिरधरनगरपुल, असार वा, अहमदाबाद-380016</td><td>2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td></tr> </table>	सीमाशुल्क, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधि करण, पश्चिमीक्षेत्रीयपीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरीमंजिल, बहुमालीभवन, निकटगिरधरनगरपुल, असार वा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधि करण, पश्चिमीक्षेत्रीयपीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरीमंजिल, बहुमालीभवन, निकटगिरधरनगरपुल, असार वा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	<p>सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन, सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-</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>				
(क)	<p>अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएयाउससेकमहोतोएकहजाररूपए.</p>				
(a)	<p>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)	<p>अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो; पाँचहजाररूपए</p>				
(b)	<p>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 ;</p>				
(ग)	<p>अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपचासलाखरूपएसेअधिकहोतो; दसहजाररूपए.</p>				
(c)	<p>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</p>				
(घ)	<p>इसआदेशकेविरुद्धअधिकरणकेसामने, मांगेगएशुल्कके 10% अदाकरनेपर, जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं, यादंडके 10%अदाकरनेपर, जहांकेवलदंडविवादमेंहैं, अपीलरखाजाएगा।</p>				
(d)	<p>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.</p>				
6.	<p>उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएगलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.</p>				
	<p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p>				
	<p>(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.</p>				



ORDER-IN-APPEAL

Four appeals have been filed by different exporters as detailed in Table A below (hereinafter referred to as "the appellants") in terms of Section 128 of the Customs Act, 1962 against the Orders-in-Original (Details as per Table-A) (hereinafter referred to as "the impugned orders") passed by the Assistant Commissioner, Customs Division, Jamnagar (hereinafter referred to as "the adjudicating authority").

Table A

Sr. No	Appeal No	Name of Appellant	Order-in-Original No. and Date	Contract No. & Date
01	S/49-38/CUS/JMN/MAY/2025-26	M/s Ashapura International Ltd	28/AC/Tech/2018-19/ 12.06.2018	AML/MIT/001/2014 dt 21.10.2014
02	S/49-39/CUS/JMN/MAY/2025-26	M/s Ashapura Minechem Ltd.	29/AC/Tech/2018-19/ 12.06.2018	AML/MIT/001/2014 dt 21.10.2014
03	S/49-40/CUS/JMN/MAY/2025-26	M/s Ashok Alco Chem Ltd.	30/AC/Tech/2018-19/ 12.06.2018	MIDDLE/ALCL/001/2014 DT 12.02.2014
04	S/49-41/CUS/JMN/MAY/2025-26	M/s Bombay Minerals Ltd.	31/AC/Tech/2018-19/ 12.06.2018	BML/ALPH/001/2015 dt 21.01.2015

Since issue involved in all the four appeals are identical, hence all the appeals are taken for disposal in this common Order.

2. Briefly stated, the facts of the case are that in 2014-05 and 2015-16, appellants have exported Bauxite Ore to the buyers in China under different shipping bills on payment of appropriate customs duty calculated on the FOB value. As per terms of contracts between the appellants and the buyers, the buyers would appoint an independent surveyor to carry out the discharge port sampling and analysis of the cargo according to internationally accepted sampling and analysis procedure and there would be price adjustments based on quality related premiums and penalties. The premium and penalty shall be settled by issuing debit/credit notes in pre-decided manner.

2.1 The buyers raised debit notes on the appellants on the basis of analysis conducted at discharge port and this resulted into reduction in the invoice value and consequently FOB value of export goods. As the FOB value got reduced compared to the FOB value on which export duty was paid at the time of export of goods, the duty payable on export goods also reduced. Since the duty actually paid at the time of export was more than what was payable after reduction in FOB value, the appellants intended to claim refund of surplus amount of export duty paid, and for that, the appellants requested for amendment in shipping bills under Section 149 of the Customs Act, 1962 to the extent of revision in FOB value as per debit notes issued by the foreign buyers. The proper officer vide letter dated 16.12.2016, rejected the request for amendment. The adjudicating authority issued rejection letter to the appellant accordingly.

2.2 Being aggrieved, the applicant filed an appeal against the aforesaid letter / order dated 16.12.2016 to the Commissioner (Appeal), Customs, Ahmedabad, who vide Order-In-Appeal No. JMN-CUSTM-000-APP-030 to 033/17-18 dated 08.08.2017 remitted the matter back to the proper officer directing them to examine the available facts, provisions of law, documents and evidences, submissions of the applicant and then pass speaking order in the case after following principles of natural justice and adhering to the legal provisions.

2.3 In de-novo proceedings, the adjudicating authority passed the impugned orders dated 12.06.2018, wherein the appellant's applications for amendment were rejected by the adjudicating authority on the ground that the appellants were not having any documentary evidence as stipulated in the proviso to Section 149 of the Customs Act, 1962.

2.4 Being aggrieved, with the impugned orders dated 12.06.2018 the applicant filed an appeal before the Commissioner (Appeal), Customs, Ahmedabad, who vide Order-In-Appeal No. JMN-CUSTM-000-APP-059 to 062/19-20 dated 29.12.2020 rejected all the appeals on the ground of limitation as provided under Section 128 of Customs Act, 1962 without going into merits of the case.

2.5 Being aggrieved by Order-in-Appeal Nos. JMN-CUSTM-000-APP-059 to 062/19-20 dated 29.12.2020, issued by the Commissioner (Appeals), Customs, Ahmedabad, the appellant preferred appeals before the Hon'ble CESTAT, Ahmedabad. The Hon'ble Tribunal, vide Final Order Nos. 12742-12745/2023 dated 11.12.2023, held that the appeals before the Commissioner (Appeals) were not barred by limitation. Accordingly, the Hon'ble Tribunal set aside the aforesaid Orders-in-Appeal and remanded

the matters to the Commissioner (Appeals) for de novo adjudication on merits, without going into the issue of limitation. In view of the directions contained in the Tribunal's Final Order dated 11.12.2023, the present appeals filed by the appellant against the original orders dated 12.06.2018 are now taken up for fresh consideration on merits

3. It is observed that the appellant being aggrieved with the impugned orders, has mainly contended that;

- The impugned order is a non-speaking one. The Ld. Assistant Commissioner has not considered all the submissions made by the appellants. The Ld. Assistant Commissioner has failed to consider the documents (purchase order, contract, etc.) submitted by the appellants. Hence, the impugned order is liable to be set aside on this ground alone.
- The amendment in the Shipping Bills sought by the appellants is in accordance with Section 149 of the Customs Act, 1962. Appellants states and submits that they exported the goods to the foreign buyers in terms of the Contract which provide that the final price adjustment will be done on the basis of the surveyor report at the discharge port. The extract of Clause 14 and 16 of the Contract dated 21.10.2014 in respect of appeal mentioned at Sr. No. 01 of the Table A above is reproduced as under

14. FINAL DETERMINATION OF WEIGHT

Seller shall, at its cost, arrange for the determination of the weight of the Shipload at the Load port by means of draft survey before commencement and after completion of loading and shall obtain a certificate of weight from an international recognized surveyor. The load port surveyor's determination of weight shall form the basis for the Seller's provisional invoice.

Buyer at their cost shall organize a draft survey by CCIC OR ANY OTHER INTERNATIONAL REPUTED SURVEYOR OTHER THAN SGS & INTERTEK, to ascertain the quantity. Such certificate of weight as determined by the draft survey at discharge port shall form the basis for final quantity determination and issue of Seller's final commercial invoice. Buyer to despatch by DHL/TNT/UPS air courier the original draft survey report of the discharge port to the Seller (address as per 26. Notices) within 30 days of completion of the discharging of the cargo.

16. PRICE ADJUSTMENTS BASED ON QUALITY RELATED PREMIUMS AND PENALTIES

Based on the analysis result of CCIC discharge port which is described in clause 13 above, the premium and penalty shall be settle by issuing Debit/Credit notes as below:

Al2O3: For every percent increase of Al2O3 above 43% the price shall be increase by USD0.70 per DMT and for every percent decrease in Al2O3 below 43% the price shall decrease by USD0.70 per DMT. Fractions shall be prorated. \$102: For every percent increase in SiO2 above 7%, the price shall be decreased by USD0.70 per DMT and for every percent decrease in SiO2 below 6%; the price shall be increased by USD0.70 per DMT. Fractions shall be prorated"

- The appellants submitted that from a perusal of the above clause, it becomes clear that the price adjustment shall be made by the buyer based on the quality of the export products. The quality of export products shall be determined by the CCIC at discharge port. In terms of price adjustment clause of the Contract dated 21.10.2014, the buyer would issue the debit/credit notes to the appellant on the basis of analysis report of CCIC, Singapore at discharge port, taking into consideration contents of Al2O3 and SiO2 in the Bauxite ore received by the buyer. The said clause provides that the contract price adjustment is based on quality and penalties/bonuses settled by issuing debit/credit notes. Hence, from perusal of the contract, it is clear that the buyers shall make the final payment after adjustment of debit notes/credit notes, if any; and the same shall be considered as contract price. It is an admitted fact in the impugned orders that the buyer has issued a debit note to the Appellant.

Appellants states and submits in respect of appeal mentioned at Sr. No. 01 of the Table A above that the foreign buyer had issued a debit note on them in terms of the Contract dated 21.10.2014 for the differential amount, thereby reducing the FOB value of the Shipping Bills. Since, the export duty was paid on the FOB value at the time of Export, and subsequently, the FOB value of the goods was reduced, the appellants shall be allowed to amend the FOB value declared in the Shipping Bills in terms of Section 149 of the Customs Act, 1962 and consequently, the excess duty paid at the time of export shall be refunded to the Appellants.

- The adjudicating authority rejected the request of the appellants to amend the Shipping Bills on the ground that the new FOB value was not shown in any documents at the time of exports. Appellants states and submits that the above finding of the Ld. Assistant Commissioner is incorrect in law as well as facts, Section 149 of the Customs Act, 1962 is reproduced below for ready reference:

"Section 149: Amendment of documents: - Save as otherwise provided in Section 30 and 41, the proper officer may, in his discretion, authorize any document, after it has been presented in the Custom House to be amended:

Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorized to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be."

- In terms of proviso to the Section 149 of the Customs Act, 1962, when the goods already left and are exported, then the amendment has to be done on the basis of the documentary evidence, which was in existence at the time of export. This proviso has been brought in statue so that the genuine exporter does not lose out their bonafide export benefits. The appellants states and submits that in the present case also, the amendment in the Shipping Bills are sought only on the basis of documents available at the time of export i.e., the contract. In the said Sales & Purchase Contract dated 21.10.2014 in respect of appeal mentioned at Sr. No. 01 of the Table A above, it is categorically stated that the export price is liable to changed based on the contract terms depending upon the quality analysis at the discharge port and such price will be treated as final for the purpose of export valuation and realization. There is no new document created after the export of goods, but the price changes as per the quality analysis, at the discharge port. The only amendment is required to be made is that instead of the FOB value declared at the time of export, the new FOB value arrived at after reducing the value to the extent of penalty as per the quality of the product at material time. In the said contract dated 21.10.2014, it is clearly mentioned and agreed upon vide clause 16 that the methodology used for issue of debit note which deals with the final determination of the weight and quality. Hence, the appellants should be allowed to amend the Shipping Bills in dispute under any circumstances.

- The appellant relied upon the following case laws in support of their contention:

- (i) Kims Health Care Management Ltd. V/s. CCE, Cochin reported in 2014 (308) ELT 95 (Tri. Bang).
- (ii) CC Vs. KBL Biotech Ltd. reported in 2017 (345) ELT 305 (Tri. - Mum).
- (iii) Pratibha Pipes & Structural (P) Ltd. Vs. CC(EP), Mumbai reported in 2014(314) ELT 161 (Tri. Mumbai.)

- In view of their above submission, the appellants submitted that they shall be allowed to amend the said Shipping Bills and consequently refund claims which were filed for differential duty paid in excess may also be sanctioned and the impugned order be set aside.

4. Shri Shrikant Gharat, Advocate and Shri Anshul Jain, Advocate, appeared for personal hearing on 23.05.2025. They reiterated the submissions made at the time of filing appeal.

5. I have carefully gone through the impugned order, appeal memorandum and submissions made by the appellant and the submissions made during personal hearing as well as the documents and evidences available on record. The limited issue to be decided in the present appeals is whether the impugned order rejecting the appellants request for amendment in the shipping Bills under Section 149 of the Customs Act, 1962, in the fact and circumstances of the case is legal and proper or otherwise.

5.1 During the years 2014-05 and 2015-16, the appellants have exported Bauxite Ore to buyers in China under various shipping bills, paying export duty on the FOB value declared at the time. As per the contractual terms, the buyers appointed independent surveyors to conduct discharge port sampling and analysis, with price adjustments made through debit/credit notes based on quality-related premiums and penalties. Following discharge port analysis, the buyers issued debit notes, resulting in a reduced invoice and FOB value, thereby lowering the export duty liability. Since duty had already been paid on the original, higher FOB value, the appellants sought a refund of the excess duty by requesting amendment of the shipping bills under Section 149 of the Customs Act, 1962. However, their request was rejected by the proper officer via letter dated 16.12.2016. Aggrieved, the appellants filed an appeal before the Commissioner (Appeals), Customs, Ahmedabad, who, through Order-in-Appeal No. JMN-CUSTM-000-APP-030 to 033/17-18 dated 08.08.2017, remanded the matter for issuance of a speaking order.

5.2 In the de novo proceedings, the adjudicating authority passed orders dated 12.06.2018 rejecting the appellants' request for amendment of shipping bills on the ground that they lacked documentary evidence as required under the proviso to Section 149 of the Customs Act, 1962. Aggrieved, the appellants filed appeals before the Commissioner (Appeals), Customs, Ahmedabad, who, vide Order-in-Appeal No. JMN-CUSTM-000-APP-059 to 062/19-20 dated 29.12.2020, dismissed the appeals on the ground of limitation. On further appeal, the Hon'ble Tribunal, Ahmedabad, vide Final Order No. 12742-12745/2023 dated 11.12.2023, held that the appeals were not time-barred and remanded the matter to the Commissioner (Appeals) for decision on merits.

5.3 It is observed that the adjudicating authority vide the impugned orders rejected the appellant's request for amendment in the Shipping Bills



under Section 149 of the Customs Act, 1962 on the ground that the appellants were not having any documentary evidence as stipulated in the proviso to Section 149 of the Customs Act, 1962.

5.4 In this regard, it is observed that the appellants, in their grounds of appeal, have contended that as per the proviso to Section 149 of the Customs Act, 1962, once the goods have been exported, any amendment to the shipping bill must be based on documentary evidence that existed at the time of export. The appellants submitted that in the present case, the amendment sought is based solely on documents available at the time of export i.e., the Sales and Purchase Contract. The said contract expressly states that the export price is subject to adjustment based on quality analysis conducted at the discharge port, and the final price determined in this manner would be considered for export valuation and realization. It is further submitted that no new documents were created post-export. The FOB value was merely adjusted in accordance with pre-agreed terms in the contract, based on debit notes issued after quality analysis. The amendment sought is thus limited to revising the initially declared FOB value to reflect the reduced value, as per contractual terms. The contracts clearly outline the methodology for issuing debit notes, which govern the final determination of weight and quality, thereby justifying the requested amendment.

5.5 I have also perused the relevant Section 149 of the Customs Act, 1962 and the same is reproduced as under:

“SECTION 149. Amendment of documents. — *Save as otherwise provided in sections 30 and 41, the proper officer may, in his discretion, authorise any document, after it has been presented in the custom house to be amended [in such form and manner, within such time, subject to such restrictions and conditions, as may be prescribed]:*

Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorised to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be.”

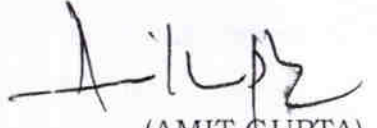
Upon a plain reading of Section 149 of the Customs Act, 1962, it is evident that the provision permits amendment of a shipping bill on the basis of



documentary evidence that was in existence at the time of export of goods. I have carefully examined the grounds of appeal submitted by the appellant. It is observed that the amendment to the Shipping Bill in the present case has been sought solely on the basis of documents that were available at the time of export i.e., the Sales & Purchase Contract. The said contract clearly stipulates that the export price is subject to revision based on quality analysis conducted at the discharge port. It further states that the final price, determined upon such analysis, shall be treated as the final value for the purposes of export valuation and realization. In view of the above, the reduction in the FOB value has arisen strictly in accordance with the contractual terms that were in force at the time of export. Accordingly, the appellant has requested an amendment to the Shipping Bills to reflect the revised FOB value. Therefore, it is evident that the request for amendment is consistent with the scope and intent of Section 149 of the Customs Act, 1962, as it is based on contemporaneous documentary evidence that existed at the time of export.

5.6 I am of the considered view that the request for amendment of the shipping bills is squarely covered under the provisions of Section 149 of the Customs Act, 1962. This section permits amendments to export documents, including shipping bills, provided the request is supported by documentary evidence that was in existence at the time the goods were exported. In the present case, the appellants have sought amendment of the FOB value declared in the shipping bills. This request is based on the Sales & Purchase Contract, a document that was undeniably in force and available at the time of export. The said contract explicitly outlines that the final export price would be determined based on quality analysis at the discharge port, and that such price would be considered final for the purpose of export valuation and realization. The revised FOB value, therefore, is not the result of any post-export development or newly introduced information, but rather a direct outcome of contractual terms that governed the transaction from the outset. The reduction in the FOB value is thus a reflection of the agreed pricing mechanism laid out in the original contract. Since the amendment sought pertains to a valuation adjustment grounded in pre-existing contractual terms and supported by documentary evidence available at the time of export clearance, I am of the considered view that the conditions stipulated under Section 149 are fully met in this case. Accordingly, the request for amendment merits consideration within the legal framework provided under the said section.

6 In view of the foregoing, I set aside the impugned orders and allow the appeals. The proper officer is directed to amend the Shipping Bills in accordance with Section 149 of the Customs Act, 1962, and to grant consequential relief, if any, as admissible under law


(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

By Registered Post A.D.

F.Nos. S/49-38-41/CUS/JMN/2025-26

Dated -30.05.2025

To,

1. ✓ M/s Ashapura International Ltd,
Jeevan Udyog Building, 3rd Floor,
278, DN Road, Fort, Mumbai - 400001,
2. M/s Ashapura Minechem Ltd.,
Jeevan Udyog Building, 3rd Floor,
278, DN Road, Fort, Mumbai - 400001,
3. M/s Ashok Alco Chem Ltd., Room No 104,
Vegkatesh Chambers, 1st Floor,
Ghanshyam Talwatkar Marg, Fort, Mumbai - 400001,
4. M/s Bombay Minerals Ltd., Jeevan Udyog Building,
3rd Floor, 278, DN Road, Fort, Mumbai - 400001
5. SRA Consulere Advocates, 702-g, Hubtown Solaris,
N. S. Phadke Marg, Near East-West Flyover,
Opposite Ginger Hotel, Andheri (E), Mumbai - 400069



Copy to:

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs, Jamnagar.
3. The Deputy Commissioner of Customs, Customs Division, Jamnagar
4. Guard File

सत्यापित/ATTESTED

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