



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
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DIN - 20251171MN0000444BA4

क	फ़ाइल संख्या FILE NO.	S/49-192/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-396-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	11.11.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Bill of Entry no. dated
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	11.11.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Royal Agri Chemicals and Fertilizers Pvt. Ltd., Office no. 204, Shyam Prabhu Complex, Karanpara Main road, Near RMC, Rajkot-360001



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 हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज 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 दस्तावेजों 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/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए 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 सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	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, केन्द्रीय 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	2 nd 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 हजार रूपए.	
(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 हजार रूपए	
(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 हजार रूपए.	
(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. Royal Agri Chemicals and Fertilizers Pvt. Ltd., Office no. 204, Shyam Prabhu Complex, Karanpara Main road, Near RMC, Rajkot-360001 (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the assessment of Bill of Entry no. 5041809 dated 14.08.2024 (hereinafter referred to as 'the impugned order') filed at Mundra Port.

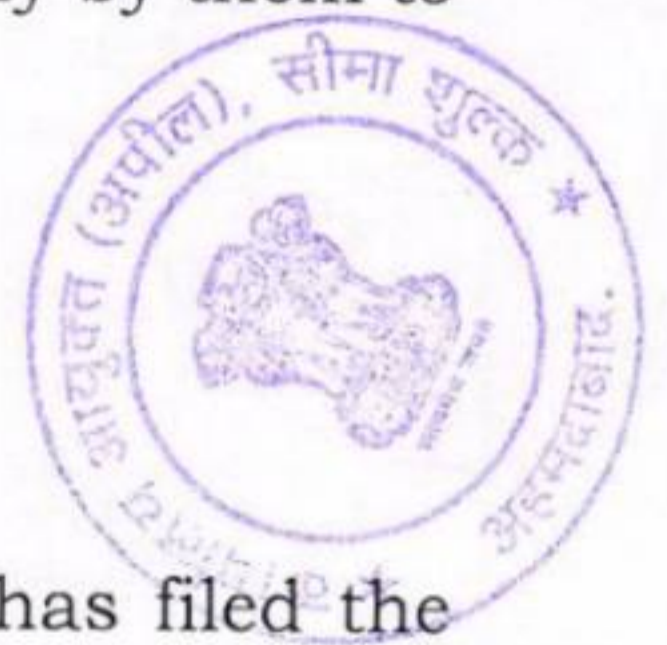
2. Facts of the case in brief as per the appeal memorandum, are that the Appellant holding PAN based IE code AAKCR5392R had imported goods declared as 'Super Humate Shiny Flakes' and classified under CTH 38089990 from Qingdao, China. The goods arrived on Mundra port on 13.08.2024 and were cleared/assessed vide BOE no. 5041809 dated 14.08.2024. The total duty payment to the tune of Rs. 9,28,925/- was paid by the appellant vide challan no. 2050549210. The total duty includes BCD Rs. 2,14,349/-, Customs (CVD) Rs. 2,24,466/-, SWS Rs. 21,424/- and IGST Rs. 4,68,674/-.

2.1 It is the submission of the appellant that the Assessing Officer (AO) has wrongly assessed to Customs (CVD) under Notification no. 3/2019-Cus (CVD) to the goods of appellant treating it as "Atrazine Technical" instead of fertilizer named Super Humate Shiny Flakes. It is further submitted that the said mistake of assessing of the Imported goods to Customs (CVD) came to the notice of the appellant when the assessed bill of entry copy was received which does not show any levy of Customs-CVD. In this scenario, the appellant requests to re-assess the bill of entry and seeks refund of Customs-CVD paid inadvertently by them to the tune of Rs. 2,24,466/-.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the assessment, the Appellant has filed the present appeal wherein they have submitted grounds which are as under:-

3.1 The appellant is regular importer of chemicals and fertilizers and are engaged in trading of the said goods. In the present case, the appellant purchased the fertilizer namely Super Humate Shiny Flakes falling under CTH 38089990 from the importer M/s. Prassana Exim on High Sea basis. The goods arrived at



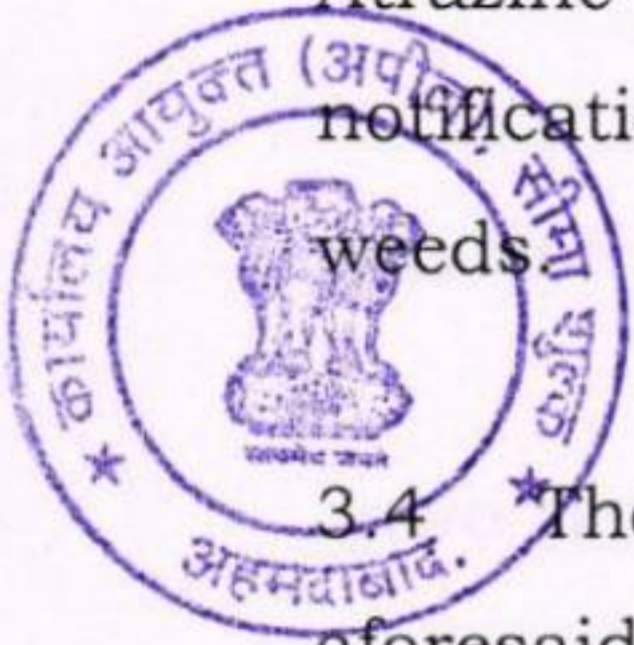
the Mundra port. The Bill of Entry was filed and was assessed to Customs duty vide BE no. 5041809 on 14.08.2024. It shows that the said goods are assessed to BCD @ 10%, Customs-CVD @ 9.52%, SWS @ 10% and IGST @ 18%. The total duty payment was worked as under:

Assessable value	Rs. 21,43,493.28
BCD	Rs. 2,14,349.30
Cus-CVD	Rs. 2,24,466.59
SWS	Rs. 21,434.90
IGST	Rs. 4,68,674.00
TOTAL Duty	Rs. 9,28,924.80

3.2 The appellant failed to notice the assessment of the goods under Customs CVD under Notification no. 03/2019-Cus-CVD dated 17.09.2019 and erroneously paid the amount of Rs. 2,24,466/- as CVD, as their product was declared as fertilizer viz. Super Humate Shiny Flakes falling under CTH 38089990. The assessed copy of BE no. 5041809 on 14.08.2024 did not reflect any CVD leviable on the said imported goods.

3.3 As the appellants goods were not specified, the same were classified as others under CTH 38089990. The said CTH attracts Customs duty of 10%, Social Welfare surcharge and IGST of 18%. But the same was considered as Atrazine Technical and levied Customs CVD @ 9.52% under Notif. No. 03/2019-Cus CVD dated 17.09.2019. From the said notification, it is clear that only one product named Atrazine technical falling under different headings attracts CVD. This Atrazine technical is also known with different names as stated in the aforesaid notification. The Atrazine technical is herbicide which controls the growth of weeds.

3.4 The appellant submits the test report of the said product imported vide aforesaid BE tested in private Laboratory M/s. Microtek Research & Analytical Lab, Vadodara and its test result dtd. 07.10.2024. It clearly shows that there is no atrazine in these goods so as levy Customs-CVD. The appellant also submits herewith the Certificate of Analysis (CoA) dated 12.06.2024 of the supplier exporter of the goods vide BE 5041809 dated 14.08.2024. The department has not drawn any sample nor made any provisional assessment and have suo-moto changed the imported product classification from Humate flakes into Atrazine



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technical, which is totally illegal and unjustified and thereby, any levy of CVD imposed onto Humate flakes is uncalled for. So, the appellant challenges the said assessment order. Also, the Customs CVD wrongly paid is liable to be refunded.

3.5 The appellant also submitted the Bill of Entry no. 2363784 dated 29.02.2024 of CH, Pipavav wherein, the appellant has imported Super Humate Shiny flakes falling under CTH 38089990. The said BE was assessed with BCD, SWS and IGST only and there was no levy on Customs CVD as done in the present case. There cannot be two different criteria of assessment at two different Custom Houses for the same product within the Gujarat Zone. On this ground also, the assessment order of current BE dated 14.08.2024 is challenged and any wrong levy of CVD may please be refunded to the appellant.

3.6 The appellant in this regard relies on the following Supreme Court rulings, wherein it is held that before seeking refund of duty, the assessment proceedings requires to be challenged before appellate authority.

- (i) ITC Ltd. Vs. COMMISSIONER OF CENTRAL EXCISE, KOLKATA-IV reported at 2019(368) ELT 216 (SC)
- (ii) PRIYA BLUE INDUSTRIES LTD. VS. COMMISSIONER OF CUSTOMS (PREVENTIVE) reported at 2004 (172) E.L.T. 145 (S.C.)

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 09.09.2025 wherein Shri D M. Prithiani, Consultant appeared for personal hearing on behalf of the appellant in virtual mode. He reiterated the submission made at the time of filing of appeal. He also made additional submissions as under :-

- i. Their product is Super Humate Shiny Flakes and not Atrazine technical.
- ii. No ADD is imposable of their imported product.
- iii. Their product does not attract ADD for which Bill of Entry in their own case is submitted.
- iv. Chemical composition of their product is also submitted with test report.
- v. Assessed copy of Bill of Entry does not show any levy of ADD, hence it is wrongly levied and collected, so liable to be refunded.



DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records and the grounds of appeal. The core issue to be addressed is the legality of the levy of CVD under Notification No. 3/2019-Cus (CVD) on the subject goods.

5.1 I find that the appeal has been filed against assessment of Bill of Entry disputing levy of CVD under Notification No. 3/2019-Cus (CVD) on goods imported vide the impugned Bill of Entry. It is observed that the Hon'ble Supreme Court in case of ITC Ltd Vs CCE Kolkata [2019 (368) ELT216] has held that any person aggrieved by any order which would include self-assessment, has to get the order modified under Section 128 or under relevant provisions of the Customs Act, 1962. Hence, the appeal preferred by the appellant against self-assessment in the impugned Bill of Entry is maintainable as per the judgment of the Supreme Court in ITC case supra.

5.2 It is further observed that no speaking order by the proper officer in the matter is available. Hence, I find that entire facts are not available on records to verify the claims made by the appellant. Copies of appeal memorandum was also sent to the jurisdictional officer for comments. However, no response have been received from the jurisdictional office. Therefore, I find that remitting the case to the proper officer for passing speaking order becomes sine qua non to meet the ends of justice. Accordingly, the case is required to be remanded back, in terms of sub-section (3) of Section 128A of the Customs Act, 1962, for passing speaking order by the proper officer under Section 17(5) of the Customs Act, 1962 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 P. Ltd. [2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677(Tri. – Del)] wherein it was held that Commissioner (Appeals) has power to remand the case under Section-35A(3) of the Central Excise Act, 1944 and Section-128A(3) of the Customs Act, 1962.



6. Accordingly, the appeal filed by the appellant is allowed by way of remand.



(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-192/CUS/MUN/2024-25 4330

Date: 11.11.2025

By Speed post/E-Mail

To,
M/s. Royal Agri Chemicals and Fertilizers Pvt. Ltd.,
Office no. 204, Shyam Prabhu Complex,
Karanpara Main road, Near RMC,
Rajkot-360001

सत्यापित/ATTESTED

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

Copy to:

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