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 – 20250671MN000000C2B5

क	फ़ाइल संख्या FILE NO.	S/49-139/CUS/AHD/23-24
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)	AHM-CUSTM-000-APP-070-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	11.06.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-In-Original No. 70/DC/ICD/IMP/REF/2022, dated 17.03.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	11.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Pacifica Hotels (Ahmedabad Project) P. Ltd. 86/2/6, Ramdev Nagar Cross Road, Near Satellite Police Station Ahmedabad-380015

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	**मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं**	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER IN APPEAL

Appeal has been filed by M/s Pacifica Hotels (Ahmedabad Project) P. Ltd., 86/ 2/ 6, Ramdevnagar Cross Road, Near Satellite Police Station, Ahmedabad-380015 (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order – In – Original No. 70/DC/ICD/IMP/REF/2022, dated 17.03.2023 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner of Customs, ICD - Khodiyar, Ahmedabad Customs (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant have preferred refund claim for an amount of Rs. 3,42,664/- under claim form of refund on 01.02.2023.

2.1 The refund claim was filed on the grounds that the Appellant had filed Bill of Entry No. 3462351, dated 06.04.2021 for clearance of goods which involved Feather Pillow Natural, Polyfill Pillow and Pillow covers, imported from China. As the said goods required N.O.C. from Animal Quarantine and the same was not allowed at ICD - Khodiyar Port, the Bill of Entry was not released by R.M.S. Subsequently, the consignment was transshipped to Nhava Sheva.

2.2 Against Bill of Entry No. 3462351, dated 06.04.2021 filed at ICD - Khodiyar Port, they had paid duty to the tune of Rs. 3,42,664/- on 08.04.2021, vide Challan No. 2034516509. After that, they filed Bill of Entry at Nhava Sheva with Number 8573514, dated 06.05.2022 and paid duty of Rs. 3,15,641/- under the said Bill of Entry vide Challan No. 2039171468, dated 09.05.2022. The goods were cleared from Nhava Sheva subsequently. In view of the above, they had applied for the refund of an amount of Rs. 3,42,664/-.

2.3 The adjudicating authority observed that the duty amount claimed as refund was paid on 08.04.2021 whereas the claim of the refund was preferred on 01.02.2023. Thus, the claim appeared to be preferred beyond the time limit of one year as stipulated under Section 27 of the Customs Act, 1962.

2.4 In view of the above, the Appellant was issued S.C.N. No. VIII/2005/ICD/Ref/2023 dated. 27.02.2023 asking them as to why their claim for refund for an amount of Rs. 3,42,664/- shall not be rejected under Section 27 read with Section 17 of the Customs Act, 1962.

2.5 The adjudicating authority vide the impugned order rejected the refund claim of Rs. 3,42,664/- preferred by the Appellant 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, wherein they have submitted grounds which are as under:-

3.1 That they had filed Bill of Entry No. 3462351, dated 06.04.2021 for clearance of goods which involved Feather Pillow Natural, Polyfill Pillow and Pillow covers / imported from China. As the said goods required N.O.C. from Anirnal Quarantine and the same was not allowed at ICD - Khodiyar Port, the Bill of Entry was not released by R.M.S. Subsequently, the consignment was trans- shipped from ICD - Khodiyar to Nhava Sheva. Against B/E No. 3462351 dated. 06.04.2021 filed at ICD - Khodiyar Port, they had paid duty to the tune of Rs. 3,42,664/- on 08.04.2021, vide Challan No. 203. After that, they filed Bill of Entry at Nhava Sheva with Number 8573514, dated 06.05.2022 and paid duty of Rs. 3,15,641/- under the said Bill of Entry vide Challan No. 2059171468, dated 09.05.2022. The goods were cleared from Nhava Sheva subsequently. In view of the above, they had applied for the refund of an amount of Rs. 3,42,664/- from ICD - Khodiyar.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 13.05.2025 following the principles of natural justice wherein Shri S J Vyas, Advocate, appeared on behalf of the Appellant. He reiterated the submissions made at the time of filing the appeal and also submitted letter dated 13.05.2025, wherein he submitted that that the refund is rejected on the ground of limitation. It is submitted that, in the facts of present case, a Bill of Entry was filed and the amount payable as per the said Bill of Entry was deposited. However, the Bill of Entry could not be processed at ICD - Khodiyar and therefore the goods were transshipped to Nava Sheva, from where ultimately the goods were cleared on payment of duty. It is submitted that when the deposit made, it was not in the nature of customs duty in as much as the BOE was never assessed. Therefore, the amount deposited was in the nature of deposit and not in the nature of duty. Therefore, the question of applying the limitation provisions under the Customs Act never arose. The section 27 would apply only to the duty of customs and not to the deposit made. Therefore, the order rejecting the refund is incorrect and is required to be set aside. He relied upon the Hon'ble Tribunal Final Order No. 50011 / 2020 dated 09.01.2020 in the case of Oriental Insurance Co Ltd.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the adjudicating authority and the defense put forth by the Appellants in their appeal.

5.1 The Appellant has filed the present appeal on 11.05.2023. The date of communication of the impugned Order-In-Original dated 17.03.2023 has been shown as

17.03.2023. Thus, the appeal has been filed within normal period of 60 days, as stipulated under Section 128 (1) of the Customs Act, 1962. As the appeal has been filed against rejection of refund claim, pre-deposit under the provisions of Section 129 E of the Customs Act, 1962 is not required. As the appeal has been filed within the stipulated time-limit, it has been admitted and being taken up for disposal on merits.

5.2 On going through the material on record, I find that following issue is required to be decided in the present appeal which are as follows:

(i) Whether the amount paid by the Appellant at ICD - Khodiyar was "customs duty" or a "deposit," and consequently, whether the limitation period prescribed under Section 27 of the Customs Act, 1962, is applicable to the refund claim.

5.3 The Appellant contends that the amount of Rs. 3,42,664/- paid at ICD - Khodiyar was a "deposit" and not "customs duty" because the Bill of Entry was never assessed there. This argument is crucial to their claim that Section 27 of the Customs Act, 1962, which deals with "claim for refund of duty," is not applicable. Section 27 (1) of the Customs Act, 1962, clearly states: "Any person claiming refund of any duty or interest— (a) paid by him; or (b) borne by him... may make an application for refund of such duty or interest to the Assistant Commissioner of Customs or Deputy Commissioner of Customs before the expiry of one year from the date of payment of such duty or interest."

5.4 The Bill of Entry (No. 3462351, dated 06.04.2021) itself, as per the provided records, indicates that duty was declared and paid against it. The payment was made through Challan No. 2034516309, on 08.04.2021. Even if the Bill of Entry was not "finally assessed" at ICD - Khodiyar due to the NOC issue, the payment was made as "duty" in relation to an import transaction under the Customs Act, 1962. It was not a general security deposit or an amount paid under protest. The very act of filing a Bill of Entry and making a payment against it, even if the goods could not be cleared from that port, characterizes the payment as duty. The subsequent trans-shipment and clearance from another port does not retrospectively alter the nature of the initial payment made under the Customs Act.

5.5 The Appellant had relied on the Tribunal's decision in Oriental Insurance Company Limited vs. Commissioner of Central Excise & Service Tax, 2020 (370) ELT 19 (Tri.-Del.). It is imperative to analyze this judgment in context. The full text of the judgment reveals that it pertains to a refund of service tax paid mistakenly on an exempted service. The Tribunal, relying on various High Court judgments (Delhi, Karnataka, Madras, Bombay, Kerala), held that when service tax was not leviable at all but was paid due to a mistake, the limitation under Section 11B of the Central Excise Act (which is pari materia to Section 27 of the Customs Act for refund limitations) would not apply. The core

reasoning in those cases was that if the levy itself was without authority of law, the amount collected did not have the "colour of validity" as a tax, and therefore, the statutory limitation for refund of "duty" would not be attracted.

5.6 However, the facts of the present case are distinguishable:

- Nature of Levy: In the Oriental Insurance case, the service itself was exempt, meaning the levy of service tax was not applicable. In the present case, customs duty is always leviable on imported goods unless specifically exempted. The goods were imported, and duty was paid. The issue was not that customs duty was not leviable on the goods, but that the goods could not be cleared from the initial port due to other regulatory requirements (Animal Quarantine NOC).

- Payment under Statute: The payment made by Pacifica Hotels was explicitly against a Bill of Entry, a document prescribed under the Customs Act for import clearance. It was not a payment made in a vacuum or under a fundamental misunderstanding of the applicability of customs duty itself. The payment was made as "duty" in the normal course of customs procedures.

- "Duty" vs. "Deposit": The argument that it was a "deposit" because the Bill of Entry was not "assessed" is weak. A Bill of Entry is filed for assessment and payment of duty. The payment made against it, even if provisional or subject to further clearance, is intrinsically linked to the duty liability. The Customs Act does not provide for a separate category of "deposits" for duty payments that fall outside the purview of Section 27. If the amount was indeed "duty" paid in relation to an import, even if the import could not be completed from that specific port, the refund mechanism and its associated limitations under Section 27 would apply.

5.7 The Hon'ble Supreme Court in Mafatlal Industries Ltd. vs. Union of India, 1997 (89) ELT 247 (SC), a Constitution Bench decision, categorically held that "no claim for refund of any duty shall be entertained except in accordance with the provisions of the statute." It further stated that every claim for refund of excise duty (and by extension, customs duty) can be made only under and in accordance with Section 11B (or Section 27) in the forms provided by the Act. The only exception carved out was where the provision of the Act under which the duty has been levied is found to be unconstitutional, which is not the case here.

5.8 The adjudicating authority correctly observed that the Appellant "by an oversight paid Tax... for which they had an ample time of one year... for filing of the refund claim or adjust the same against other output service." This implies that the payment was indeed duty, albeit paid for a transaction that could not be completed at that specific port. The proper course of action for a refund of such duty is to file an application under Section 27 within the prescribed time limit.

5.9 The payment of duty was made on 08.04.2021. The refund claim was filed on 01.02.2023. Section 27 of the Customs Act, 1962, mandates that a refund application

must be made "before the expiry of one year from the date of payment of such duty or interest." Clearly, the refund claim filed on 01.02.2023 is well beyond the one-year period from 08.04.2021. There is no provision in Section 27 to extend this limitation period for reasons such as trans-shipment or inability to clear goods from the initial port. The only exception to the one-year limitation is if the duty was paid under protest, which is not the case here.

6. Based on the foregoing discussion and findings, I find no infirmity in the impugned order passed by the adjudicating authority. The payment made by the Appellant was in the nature of customs duty, and therefore, the refund claim is governed by the provisions of Section 27 of the Customs Act, 1962. The claim was filed beyond the statutory period of one year from the date of payment of duty, and no valid ground for condonation of delay or non-applicability of limitation has been established. The reliance on the Oriental Insurance case is misplaced as the facts are distinguishable, and the payment in this case had the "colour of validity" as duty paid under the Customs Act.

7. In view of the above findings, I hereby uphold the Order-in-Original No. 70/DC/ICD/IMP/REF/2022, dated 17.03.2022 and reject the appeal filed by the Appellant.

8. The appeal filed by the Appellant is hereby rejected.

(Amit Gupta)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-139/CUS/AHD/2023-24 1347

Date: 05.06.2025
11

By Registered post A.D/E-Mail

To,
M/s. Pacifica Hotels (Ahmedabad Project) Pvt. Ltd.
86/2/6, Ramdevnagar Cross Roads,
Near Satellite Police Station,
Ahmedabad - 380015

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, Ahmedabad.
3. The Deputy Commissioner of Customs, ICD - Khodiyar, Ahmedabad.
4. Guard File.