



## सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

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

DIN - 20251171MN0000333A51

क	फ़ाइल संख्या FILE NO.	S/49-78/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-398-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	13.11.2025
	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Bill of Entry no. 2781254 dated 28.03.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	13.11.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Ethical Specialty Chemicals Pvt Ltd, B-33, Globus D Mall, Plot no. 5&6 Block H-1A, Sector 63, Noida-201301



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 (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/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए 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 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 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 :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td><td><b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b></td></tr> <tr> <td>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td><td>2<sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td></tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
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5.	<p>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-</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> <p>(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 रुपए.</p> <p>(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;</p> <p>(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; पाँच हजार रुपए</p> <p>(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 ;</p> <p>(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 रुपए.</p> <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> <p>(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 ।</p> <p>(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.</p>				
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.				
	<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</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>				

**ORDER-IN-APPEAL**

Appeal has been filed by M/s Ethical Specialty Chemicals Pvt Ltd, B-33, Globus D Mall, Plot no. 5&6, Block H-1A, Sector 63, Noida-201301, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the assessment of Bill of Entry no. 2781254 dated 28.03.2024 (hereinafter referred to as 'the impugned order') by the Assessing Officer.

2. Facts of the case, in brief, as per the appeal memorandum are that the Appellant, at the time of filing of Bill of Entry no. 2781254 dated 28.03.2024, submitted the Country of origin Certificate (COO) through e-sanchit without proper code for Asean-India Free Trade Area Preferential Tariff. Hence, the system has not accepted the duty benefits against COO. At first BE was assessed under RMS without COO details. The appellant vide letter dated 29.03.2024 had submitted a request to re-call the RMS assessed Bill of Entry and to insert the COO benefits, the importer has also sent through e-sanchit the COO with proper Code. The appellant also submitted that they were ready to pay penalty if imposed by the department. The amendment fees of Rs.1000/- was paid by the Appellant.

2.1 As, the Bill of Entry was filed with incorrect details, penalty of Rs. 10,000/-under Section 117 of the Customs Act, 1962 was imposed. The COO uploaded in e-sanchit by the said importer is for the CTH 25292100, whereas, the Bill of Entry is filed under CTH 25292200. As CTH is different than the CTH mentioned in COO, therefore, the benefit of County of Origin was not given to the said importer. Thereafter, the Bill of Entry was assessed without COO benefit as per request of the importer by leaving BCD @5% and applicable SWS on invoice value of Rs. 25,85,520/-. The BCD @ 2.5% is payable for Acid grade fluorspar containing by weight more than 97% of calcium fluoride" whereas, the description of the product mentioned is "Fluorspar Powder" for which BCD should be levied at 5%. As per analysis certificate, the content of calcium fluoride is more than 97%, therefore, the product should be classified under CTH 25292200 and BCD payable is @5%. The appellant had wrongly paid BCD @2.5% on excess cargo of 930KGs.

2.2 Consequently, the Bill of Entry was assessed without giving benefit of COO as per request of the importer. Further, the appellant importer has also



paid the duty levied without any protest.

### **SUBMISSIONS OF THE APPELLANT:**

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

3.1 The appellant has submitted that the work of appraisement of documents and assessment of duty have been done without applying mind and total unawareness of work is displayed in the instant case. The work of assessment/appraisement of duty is done in irresponsible manner towards trade. The exemption from Customs duty is allowed to ICT heading Nos. 2525 to 2530, the data submissions under 25292200, was objected by a technical issue that Exemption certificate is showing ICT 25292100, hence it was advised submit request for re-call of Bill of Entry for allowing corrections. The appellant have complied same.

3.2 The duty exemption certificate is accepted by approving same on face of Bill of Entry column Certificate(s) in lieu of bond, then in such event no Customs duty is payable should have been corrected, while completing assessment. That for the sake of argument if ICT 25292200 is taken as correct without claim of exemption, the duty leviable as per tariff is 2.5%, whereas duty recovered @ 5%. Also when validity of Certificate under ASEAN-India Free Trade Area Preferential Tariff is accepted, then Customs duty is NIL, but appellant had to make payment as per assessment.



The Appellant has submitted that there was no malafide interest or hiding any facts from the Customs authorities, hence levy of fine and penalty are not just and fair approach by Lower authority. As per Hon'ble Apex Court even a penny as penalty is not just and fair, if no malafide intention is found on records. The same may kindly be ordered to be refunded. The appellant has submitted that the trade should be given opportunity for explanation and/or trade should know the reasons for resorting to such harsh steps. That there is no offence and/or violation of any provisions of Customs Act 1962 by the appellant, hence recovery of Rs.1000/- towards fine and Rs.10000/- towards penalty is also unlawful act, which may also be set-aside and order of refund of Customs duty, fine and penalty as under may please be ordered in the interest

A handwritten signature in black ink, appearing to be 'A' or 'A. S. S.'.

of justice . The details of amount sought as refund is as under :-

01] Rs.149314.00 Towards customs duty.

02] Rs. 675.00 Interest levied.

03] Rs. 1000.00 Towards Fine.

04] Rs. 10000.00 Towards Penalty.

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Rs.160989.00 Total.

#### **PERSONAL HEARING:**

4. Personal hearing was granted to the Appellant on 19.06.2025, following the principles of natural justice wherein Ms. Prabha Aggarwal, Director of the Appellant appeared for the hearing and she re-iterated the submission made at the time of filing the appeal.

#### **DISCUSSION AND FINDINGS:**

5. I have carefully gone through the case records, and the defense put forth by the Appellant in their appeal.

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

(i) Whether the non-issuance of a reasoned, formal adjudication order (Speaking Order) by the Adjudicating Authority to the Appellant, articulating the basis for denying the preferential tariff exemption and imposing fine/penalty, violates the principles of natural justice and warrants the remand of the case.

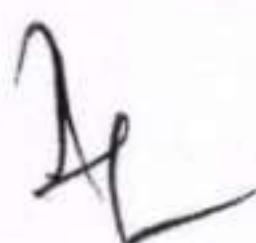
5.2 Before going into the merits of the case, I find that the appeal has been filed after a delay of 10 days beyond the prescribed limit of 60 days. Appellant has submitted the reason for delay that they were repeatedly requesting the issuance of speaking order which was not issued. In the interest of justice, I take a lenient view and condone the delay of 10 days and admit the appeal.



5.3 Now coming to the merits of the case, the foundational principle of natural justice mandates that administrative and quasi-judicial authorities must give a reasoned decision, commonly known as a "Speaking Order". The denial of a claimed duty exemption, followed by an assessment at a higher rate and the imposition of a penalty/fine, constitutes an action adverse to the Appellant. Such an action requires the authority to communicate the underlying reasons to the aggrieved party. The CHA's letter on 09.04.2024 stating they were "advised by our principals for arranging payment of Customs duty to avoid further monetary losses" was clearly an act under duress to prevent massive detention and demurrage charges. As per the comments on the appeal received from Deputy Commissioner, Import Assessment, Customs House, Mundra, the impugned Bill of Entry was assessed without COO benefit as per the request of the Appellant. This cannot be construed as a voluntary waiver of the statutory right to a reasoned order. The Appellant's continued subsequent requests for a "Speaking Order" confirm that the payment was under protest to secure the release of the cargo.

5.4 The original Bill of Entry (BoE No. 2781254 dated 28.03.2024) filed by the Appellant claimed a 'Nil' rate of Basic Customs Duty (BCD) under the AIFTA-COO. The Customs Authority subsequently denied this benefit, assessed the BCD at 5%, and levied a fine and penalty. This denial of a claimed exemption and application of a different duty rate clearly constitutes a re-assessment (or alteration of the self-assessment). Since the proper officer deemed the self-assessment (i.e., the claim for Nil duty under the AIFTA-COO) to be "incorrect in any material particular," a Speaking Order detailing the reasons for this re-assessment was legally mandated by Section 17(5). The record clearly shows the non-admissibility of the exemption and the imposition of a penalty/fine. The subsequent request for payment by the CHA to mitigate demurrage cannot, under any circumstances, override the statutory requirement for a reasoned decision.

5.5 The Appellant contends that no "speaking order" was passed and no opportunity of hearing was provided before the re-assessment. The imposition of a penalty/fine of Rs. 10,000/- and Rs. 1,000/- respectively is a punitive action under a specific statutory provision. The Appellant categorically submitted that they were: "not informed/permited any opportunity to explain the circumstances which lead the assessing officer to impose fine and penalty". The



non-issuance of a reasoned order on this matter is a gross violation of the 'audi alteram partem' rule (hear the other side).

5.6 The necessity of a speaking order is universally upheld as a cardinal tenet of natural justice. The Adjudicating Authority, by failing to issue a reasoned order, has acted in a quasi-judicial capacity without disclosing the material on which the adverse decision (re-assessment, fine, and penalty) was based. This omission prevents the Appellant from effectively challenging the decision and curtails the Appellate Authority's ability to conduct a meaningful review. As the Adjudicating Authority has failed to pass the statutory speaking order, the matter must be remanded back to the original authority with a directive to comply with Section 17(4) of the Customs Act, 1962, and pass a reasoned order under Section 17(5) of the Customs Act, 1962 for the re-assessment, explicitly addressing the rejection of the COO and the legal basis for denying the AIFTA exemption, the imposition of fine and penalty. The Appellate Authority cannot assume the role of the original Adjudicating Authority and provide the reasons in place of the Proper Officer.

5.7 Since a penalty and a fine were imposed under the Customs Act, 1962, it was mandatory for the Adjudicating Authority to pass a formal, reasoned Order-in-Original, even if the assessment was done on the system. The Appellate Authority cannot confirm the penalty/fine without reviewing the original reasoned order.

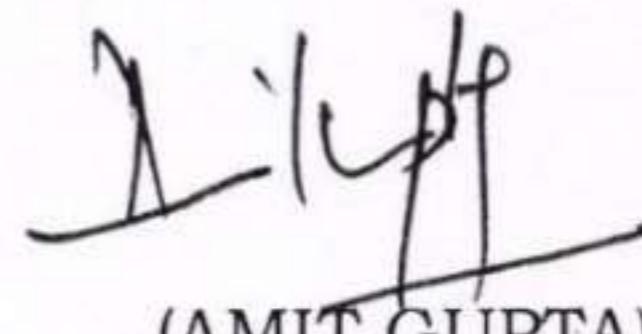
5.8 While the Appellant's primary contention rests on the non-receipt of a speaking order, they refer to the payment under duress and lack of mala fide intention. This indirectly aligns with the spirit of jurisprudence requiring proportionality in penalties, which cannot be judged without the original decision. The Appellate Authority's power to remand under Section 128A of the Customs Act, 1962, is for the purpose of ensuring all legal and procedural requirements are met. The non-existence of a speaking order is a procedural defect, directly impinging on the Appellant's right to appeal a reasoned decision. Therefore, the current situation of proceeding without a formal speaking order constitutes a procedural lapse and a violation of the fundamental principle of natural justice, warranting a remand.

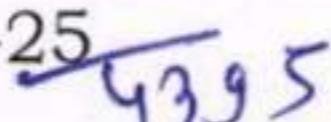


6. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

(i) The matter is remitted back to the Adjudicating Authority to pass a fresh, reasoned, and formal "Speaking Order" (Order-in-Original) addressing all the issues raised by the Appellant in their appeal memo.

7. The appeal filed by M/s Ethical Specialty Chemicals Pvt Ltd is hereby allowed by way of remand.

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

F. No. S/49-78/CUS/MUN/2024-25 

Date: 13.11.2025

By Speed Post/E-Mail

To,  
M/s Ethical Specialty Chemicals Pvt Ltd,  
B-33, Globus D Mall, Plot no. 5&6  
Block H-1A, Sector 63,  
Noida-201301



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.

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