



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

चौथी मंजिल 4th Floor, हड्डोभवन HUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250671MN0000624219

क	फ़ाइलसंख्या FILE NO.	S/49-504/CUS/JMN/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 की धारा 128 के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-038-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	26.06.2025
ड	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Speaking Order No 08/2023-24 dated 07.06.2023 issued from F. No. VIII/6(a)- 17/2023-24
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	26.06.2025
छ	अपीलकर्ताकानामवप्ता NAME AND ADDRESS OF THE APPELLANT:	M/s Ghaziabad Ship Breakers Pvt. Ltd., Plot No 38, Ship Recycling Yard, Alang/Sosiya, Taluka Tlaja, Dist Bhavnagar

1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेदीजातीहैजिनकेनामयहजारीकियागया है।
	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, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकते हैं।

	<p>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.</p>
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	बैगेजकेरूपमेंआयातितकोईमाल.
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो.
(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.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	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 केअधीननिर्धारितकिएगएनुसारइसआदेशकी 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) मैनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/- (रूपएएकहजारमात्र) , जैसाभीमामलाहो, सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां। यदिशुल्क, मांगागयाव्याज, लगायागयादंडकीराशीऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.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 केअधीनसूचितमामलोंकेअलावा अन्यमामलोंकेसम्बन्धमेंयदिकोईव्यक्तिइसआदेशसे आहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी. ए.-3 मेंसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकते हैं</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>सीमाशुल्क, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधि करण, पश्चिमीक्षेत्रीयपीठ</p> <p>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</p>
	<p>दूसरीमंजिल, बहुमालीभवन, निकटगिरधरनगरपुल, असारा वा, अहमदाबाद- 380016</p> <p>2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa,</p>

Area	ગુજરાત ક્રમાંક ૩૫ અને ૩૬ નાના ૨૭	Ahmedabad-380 016
5.	સીમાશુલ્કઅધિનિયમ, 1962 કીધારા 129 એ (6) કેઅધીન, સીમાશુલ્કઅધિનિયમ, 1962 કીધારા 129 એ(1)કેઅધીનઅપીલકેસાથનિપ્રલિખિતશુલ્કસંલગ્નોનેચાહિએ-	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 -
(ક)	અપીલસેસમ્બન્ધિતમામલેમેજહાંકિસીસીમાશુલ્કઅધિકારીદ્વારામાંગયાશુલ્કઔરવ્યાજતથાલગાયાગયાદંડકીરકમપાંચલાખરૂપએયાઉસસેકમહોતોએકહજારરૂપએ.	અપીલસેસમ્બન્ધિતમામલેમેજહાંકિસીસીમાશુલ્કઅધિકારીદ્વારામાંગયાશુલ્કઔરવ્યાજતથાલગાયાગયાદંડકીરકમપાંચલાખરૂપએસેઅધિકહોલેકિનરૂપયેપચાસલાખસેઅધિકનહોતો; પાંચહજારરૂપએ
(ા)	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;	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;
(ખ)	અપીલસેસમ્બન્ધિતમામલેમેજહાંકિસીસીમાશુલ્કઅધિકારીદ્વારામાંગયાશુલ્કઔરવ્યાજતથાલગાયાગયાદંડકીરકમપાંચલાખરૂપએસેઅધિકહોતો; પાંચહજારરૂપએ	અપીલસેસમ્બન્ધિતમામલેમેજહાંકિસીસીમાશુલ્કઅધિકારીદ્વારામાંગયાશુલ્કઔરવ્યાજતથાલગાયાગયાદંડકીરકમપાંચલાખરૂપએસેઅધિકહોતો; પાંચહજારરૂપએ
(બ)	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 ;	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 ;
(ગ)	અપીલસેસમ્બન્ધિતમામલેમેજહાંકિસીસીમાશુલ્કઅધિકારીદ્વારામાંગયાશુલ્કઔરવ્યાજતથાલગાયાગયાદંડકીરકમપચાસલાખરૂપએસેઅધિકહોતો; દસહજારરૂપએ.	અપીલસેસમ્બન્ધિતમામલેમેજહાંકિસીસીમાશુલ્કઅધિકારીદ્વારામાંગયાશુલ્કઔરવ્યાજતથાલગાયાગયાદંડકીરકમપચાસલાખરૂપએસેઅધિકહોતો; દસહજારરૂપએ.
(ચ)	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	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
(ધ)	ઇસાદેશકેવિરુદ્ધઅધિકરણકેસામને, માંગેગાયાશુલ્કકે 10% અદાકરનેપર, જહાંશુલ્કયાશુલ્કએવંડંડવિવાદમેહૈને, યાદંડકે 10% અદાકરનેપર, જહાંકેવલદંડવિવાદમેહૈને, અપીલરહાજાએગા।	ઇસાદેશકેવિરુદ્ધઅધિકરણકેસામને, માંગેગાયાશુલ્કકે 10% અદાકરનેપર, જહાંશુલ્કયાશુલ્કએવંડંડવિવાદમેહૈને, યાદંડકે 10% અદાકરનેપર, જહાંકેવલદંડવિવાદમેહૈને, અપીલરહાજાએગા।
(દ)	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.	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.
* અક્તુબર (અપીલ), સીમાશુલ્ક રોકાદશકેલિએયાગલતિયોકોસુધારનેકેલિએયાકિસીઅન્યપ્રયોજનકેલિએકિએગાઅપીલ : - અથવા (ક) રોકાદશકેલિએયાગલતિયોકોસુધારનેકેલિએયાકિસીઅન્યપ્રયોજનકેલિએકિએગાઅપીલ : - અથવા (ખ) અપીલયાઆવેદનપત્રકાપ્રત્યાવર્તનકેલિએદાધરઆવેદનકેસાથરૂપયેપાંચસૌકાશુલ્કભીસંલગ્નોનેચાહિએ.		
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. Ghaziabad Ship Breakers Pvt. Ltd., Plot No 38, Ship Recycling Yard, Alang/Sosiya, Taluka Tlaja, Dist Bhavnagar (hereinafter referred to as "the appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against the Speaking Order No 08/2023-24 dated 07.06.2023 issued from F. No. VIII/6(a)-17/2023-24 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Customs Division, Bhavnagar (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant had imported vessel MV MSC LUCIA for breaking up as per Memorandum of Agreement dated 02.05.2023 and filed Bill of Entry No. 6182929/2023-24, dated 30.05.2023 under Section 46 of the Customs Act, 1962. The Bill of Entry was provisionally assessed by classifying the goods viz. Vessels for breaking under CTH 89.08, Bunkers (inside/outside Engine Room Tank) under CTH 89.08, Provisions under CTH 98.05 and Paints, Thinner, Chemicals, Acid and Grease under CTH 3814. On production of Original Memorandum of Agreement with all other relevant documents, the Bill of Entry was finally assessed vide the impugned order by classifying fuel and oil (bunkers) inside and outside Engine Room Tanks under CTH 2710.

3. Being aggrieved with the impugned Order, the appellant has filed the present appeal contending as under;

- The ground of issuance of the subject speaking order appears to have been disclosed by applying the case law as decided in the case of Priya Holdings Pvt. Ltd, (2003 (153) E.L.T. 104 (Tri. Del), but this case law is not applicable in the present case. Subsequent to this case law, the Hon'ble Tribunal Ahmedabad vide their Order dated 01.12.2022 bearing No. A/11792-11851/2022 dtd. 01.12.2022, passed in case of M/s Navyug Ship Breaking Co & Other, This Order is annexed as, (herein after referred to as Annexure G passed in case of M/s Navyug Ship Breaking Co & Other. In this order, now Hon'ble Tribunal Ahmedabad has clearly pleased to held that whether the remaining Stock of bunker either lying inside the engine room or lying outside the engine room of the vessel are solely classifiable under Chapter Heading No. 8908.00 instead of under Chapter Heading No. 2710 of Customs Tariff Act, 1975. This case law deserves to be taken in to considered being settled issue as well the ship under reference had been imported in May, 2023. Therefore, this settled case law is squarely applicable in the present case.
- In addition to above they submitted that the impugned Order appears to have been passed without following the principle of natural justice though

the Hon'ble Supreme Court of India has clearly held that the disputed stock of bunker either lying inside the engine room tank of vessel or lying outside the engine room tank of vessel are nothing but clearly held as Integral part of the old and used vessels imported for breaking purpose.

- They further submitted that so far as the question of "time limit in filling the appeal, it is to say and submit that this concept may kindly be taken in to consideration by taking of statutory provisions as provided under sub section 5 of Section 17 of Customs Act, 1962.
- They finally prayed to remand back the case to decide a fresh as the same appears to have been passed without taking in to consideration, various settle case laws as referred in the matter by your Appellant as well. passed by violation of principle of natural justice.

4. Shri Rahul Gajera, Advocate, appeared for personal hearing on 19.06.2025 on behalf of the appellant. He reiterated the written submission made at the time of filing appeal.

5. Before going into the merits of the case, it is observed that the date of communication of the impugned order as per appeal memorandum is 13.06.2023 and the present appeal was filed on 04.03.2025, i.e., after 630 days. In this regard, I have gone through the provision of limitations for filing an appeal as specified under Section 128(1) of the Customs Act, 1962. The same is reproduced hereunder:

"SECTION 128. Appeals to [Commissioner (Appeals)]. — (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order.

[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]"

5.1 As per the legal provisions under Section 128 of the Customs Act, 1962, the appeal has to be filed within 60 days from the date of communication of order. Further, if the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days.

5.2 It will also be relevant to refer to the judgment of Hon'ble Supreme Court in case of Singh Enterprises – [2008 (221) E.L.T. 163 (S.C.)], wherein

the Hon'ble Apex Court had, while interpreting the Section 35 of the Central Excise Act, 1944, which is pari materia to Section 128 of the Customs Act, 1962, held that the appeal has to be filed within 60 days, but in terms of the proviso, further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The relevant para is reproduced below:

“8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the ‘Limitation Act’) can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period.”

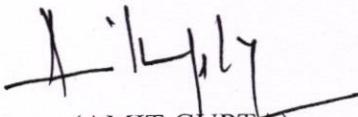
5.3 The above view was reiterated by the Hon'ble Supreme Court in Amchong Tea Estate [2010 (257) E.L.T. 3 (S.C.)]. Further, the Hon'ble High Court of Gujarat in case of Ramesh Vasantbhai Bhojani – [2017 (357) E.L.T. 63 (Guj.)] and Hon'ble Tribunal Bangalore in the case of Shri Abdul Gafoor Vs Commissioner of Customs (Appeals) [2024-TIOL-565-CESTAT-BANG] took a similar view while dealing with Section 128 of the Customs Act, 1962.

5.4 In terms of legal provisions under Section 128 of the Customs Act, 1962 and in light of the judicial pronouncements by the Hon'ble Supreme Court, Hon'ble High Court and Hon'ble Tribunal Bangalore, it is settled proposition of law that the appeals before first appellate authority are required to be filed within 90 days, including the condonable period of 30 days as provided in the statute, and the Commissioner (Appeals) is not empowered to condone any delay beyond 30 days.

5.5 In light of the above observation, I find that the appeal has been filed after 90 days from the date of receipt of the order. I am not empowered to condone the delay in filing the appeal beyond the period specified in Section 128 of the Customs Act, 1962. Hence, the same is held to be time barred.

6. In view of above, I reject appeal on the grounds of limitation without going into the merits of the case.




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

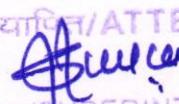
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अधीक्षक/SUPERINTENDENT
सौमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

Copy to:

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

