



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,  
OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS),अहमदाबाद AHMEDABAD,  
चौथीमंजिल 4th Floor, हडको बिल्डिंगHUDCO Building, ईश्वर भुवन रोड IshwarBhuvan Road,  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009  
दूरभाषक्रमांक Tel. No. 079-26589281  
DIN- 20250471MN000000A139

क	फ़ाइलसंख्या FILE NO.	S/49-284/CUS/MUN/2024-25 S/49-285/CUS/MUN/2024-25 S/49-286/CUS/MUN/2024-25 S/49-287/CUS/MUN/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 की धारा 128कके अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP-005 to 008-25-26
ग	पारितकर्ता PASSED BY	SHRI AKHILESH KUMAR Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	11.04.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Bill of Entry No. 6427332, dated 29.10.2024 Bill of Entry No. 6427357, dated 29.10.2024 Bill of Entry No. 6427316, dated 29.10.2024 Bill of Entry No. 6441856, dated 29.10.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	11.04.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s. Kristi Overseas, Plot No. 360, Shanker Tekri, Udyog Nagar, Jamnagar-361004

1. यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.

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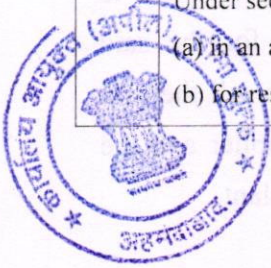
2. सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली 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.	
	खेत सम्बन्धित आदेश/Order relating to :	
(क)	बैगेज के रूप में आयातित कोई माल.	
(a)	any goods imported on baggage.	
(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 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके 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 :	
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	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



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**

M/s. Kristi Overseas, Plot No. 360, Shanker Tekri, Udyog Nagar, Jamnagar - 361004 (hereinafter referred to as the 'appellant') have filed the four appeals as per details in Table-I below under Section 128 of the Customs Act, 1962, challenging the fine imposed in the Bills of Entry mentioned therein -

**TABLE - I**

Sl. No.	Appeal No.	Bill of Entry No. & Date
1	S/49-284/CUS/MUN/2024-25	6427332, dated 29.10.2024
2	S/49-285/CUS/MUN/2024-25	6427357, dated 29.10.2024
3	S/49-286/CUS/MUN/2024-25	6427316, dated 29.10.2024
4	S/49-287/CUS/MUN/2024-25	6441856, dated 29.10.2024

2. Facts of the case, in brief, as per the appeal memorandum are that an Overseas Supplier M/s SCHOLZ RECYCLING GMBH, BERNDT-ULRICH-SCHOLZ-STR 1 3457 ESSINGEN, GERMANY had supplied the consignments of goods declared as BRASS SCRAP HONEY to one M/s. Shri Raj Brass Industries, who had also filed four Bills of Entry for the said consignments. But due to the financial problems, the Overseas Supplier decided to sell the said goods to the appellant firm. The appellant has made all the payments to the supplier and the relevant documents such as invoices, bills of lading etc. are in the name of the appellant.

2.1 M/s Scholz Recycling, the overseas supplier had earlier filed an application dated 09.08.2024 for amendment in the IGM No. 2382432, dated 13.07.2024 and IGM No. 2381046, dated 28.06.2024, to amend the old entries and to permit to amend the name of a new Consignee i.e. the appellant. M/s Shri Raj Brass Industries were the Original Importer and they had filed 4 Bills of Entry in the month of June & July 2024 for the goods in question. However, due to commercial dispute with the foreign supplier on quality issues in a previously imported and cleared consignment, M/s. Shree Raj Brass industries did not receive any original documents, establishing their title of ownership on the said goods, which would enable them to take delivery from the shipping line. Due to above mentioned commercial dispute, the foreign supplier has sought amendment of the IGM as they had sold the consignment to the appellant and who was



now in possession of all original documents i.e. Invoice, Bills of Lading etc. entitling to claim ownership of the import consignment in question.

2.2 M/s. MSC Agency (India) Private Limited, the shipping line, filed an application dated 06.09.2024 for amendment in IGM No. 2382432 dated 13.07.2024 (Line 36 & 30) and in IGM No. 2381046, dated 28.06.2024 as required under the provisions of Section 30 of the Customs Act, 1962. M/s. MSC Agency (India) Private Limited approached Customs with a written request for amendment in IGM.

2.3 The Assistant Commissioner of Customs, Custom House, Mundra vide Order-in-Original No. MCH/569/TD/AC/MCD/AMND/2024-25 dated 29.10.2024 & Order-in-Original No. MCH/570/TD/AC/MCD/AMND/ 2024-25 dated 29.10.2024 has allowed the amendment as requested by M/s MSC Agency (India) Private Limited and also permitted the amendment request to be made in the EDI system for further action.

2.4 However, due to oversight, the CHA had cancelled the Bills of Entry instead of amending the names in the Bills of Entry and have filed the new Bills of Entry for subjected four consignments. Therefore, for the said oversight of the CHA, the system has considered it as fresh Bills of Entry and accordingly fine for late filing was auto calculated and imposed on the appellant. The details of all the four Bills of Entry is as under :-

Table-II

Sr. No.	Bill of Entry No. and date	Value (Rs.)	Fine imposed (Rs.)
1	6427332, dated 29.10.2024	1,26,65,111/-	12,15,000/-
2	6427357, dated 29.10.2024	1,18,04,839/-	10,35,000/-
3	6427316, dated 29.10.2024	1,20,53,362/-	12,15,000/-
4	6441856, dated 29.10.2024	1,12,30,781/-	10,55,000/-

The Late Fee is apparently charged under Section 46(3) of the Customs Act, 1962. As the appellant didn't receive any speaking order or any other communication from the proper officer, it was anticipated that the amount is only for the Customs duty as advised by the system and paid the amount, so as to avoid further delay and demurrages etc. It is established by the documents that the appellant received the above two orders in original for amendment on 29.10.2024 and appellant immediately filed the Bill of Entry on 30.10.2024. The appellant submits that they paid the amount of fine in all these bills of entry erroneously and therefore now filing a separate appeal in respect of all Bills of Entry for refund of the amount imposed by the system as fine.

3. Being aggrieved with the fines imposed in the Bills of Entry as per Table-II above, the appellant have filed the present appeal, inter alia, on following grounds:

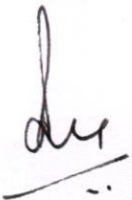


- The proper officer has failed to consider and appreciate the facts in its proper perspective and not conveyed the amount of fine calculated by the system to the appellant by providing speaking order or otherwise.
- This is a case where the Department ought to have exercised the discretion judiciously by granting waiver as this is a case where Appellant had not filed a fresh Bill of Entry for the first time for the same consignment but has filed a Bill of Entry by mistake instead of making corrections in the old Bills of Entry. It is clear from the copy of the Orders dated 29.10.2024 that the intention was always to change the name of the customer Therefore question of imposing late fee charges merely because of a mistake of a CHA in filing Bills.
- Bills of Entry on account of the factors mentioned above would not justify the levy of late fee charges on the appellant.
- Before imposing such a significant fine, the principles of natural justice were not adhered to. The appellant was neither issued a proper notice nor afforded an opportunity to explain, defend, or be heard through a personal hearing.
- In view of the fore goings the imposition of fine vide the impugned Bill of Entry, is not based on valid legal grounds and is liable to be set aside

4. Personal hearing in the all the four appeals was held on 07.03.2025. Shri Hiren Ruparel, Partner, appeared for hearing. He reiterated the submissions made at the time of filing of appeals. He also filed additional submissions as under :-

- In the facts and circumstances of the case, it appears that the Late Fee is apparently charged under Section 46(3) of the Customs Act, 1962 without giving natural justice and a speaking order. The late fee being in the nature of a penalty, and being excessive imposed for a clerical, bona fide, rectifiable mistake the appellant is aggrieved. The appellant, inter alia, rely on the ratio decidendi in the following decisions/judgments/orders which are applicable in favour of the appellant in the facts and circumstances of the case.

- 2019-TIOL-3231-CESTAT-MAD ECOM GILL COFFEE TRADING PVT LTD VS COMMISSIONER OF CUSTOMS, TUTICORIN
- 2019 (370) E.L.T. 1396 (TRI. CHENNAI -BLUELEAF TRADING COMPANY VERSUS THE COMMISSIONER OF G.S.T. & CENTRAL EXCISE
- 2021 (7) TMI 762-CESTAT CHENNAI JAIHIND TRADERS VERSUS COMMISSIONER OF CUSTOMS, TUTICORIN





- ST. Antony's Traders Versus Commissioner of Customs, Tuticorin [2021 (3) TMI 1167(CESTAT CHENNAI)]
- A.K. Rajavel & Co. Versus Commissioner of Customs, Tuticorin [2021 (3) TMI 423 [CESTAT CHENNAI]]
- 2024 (6) TMI 199-CESTAT KOLKAT COMMISSIONER OF CUSTOMS (PORT), KOLKATA VERSUS UMA POLY SOLUTIONS PRIVATE LIMITED
- 2019 (370) E.L.T. 396 (Tri. - Chennai )-KIRTILAL KALIDAS JEWELLERS PVT LTD VERSUS COMM. OF GST & C.EX., TRICHY
- (2023)2 Centax 261 (Tri.-Bom)- MIRC ELECTRONICS LTD. VS COMMISSIONER OF CUSTOMS, NHAVA SHEVA
- Akbar Badruddin Jiwani vs. Collector of Customs reported in [1990 (47) ELT 161 (SC)]
- Merck Spares Vs Collector of Central Excise & Customs, New Delhi reported in [1983 (13) E.L.T. 1261 (C.E.G.A.T.)]
- Shama Engine Valves Ltd. Bombay vs. Collector of Customs, Bombay reported in (1984 (18) E.L.T. 533 (Tribunal)
- Madhusudan Gordhandas & Co. vs. Collector of Customs, Bombay reported in (1987 (29) E.L.T. 904 (Tribunal),
- 1978 (2) ELT (J 159) (SC HINDUSTAN STEEL LTD. VS STATE OF ORISSA

➤ A penalty can be imposed only where there is any contumacious of deliberate violation of provisions of the Act, neither of which was done by the Appellant in the present case so penalty cannot be imposed. It is well established that a penalty for venial breach or clerical error is not imposable. The imposition of penalty vide the impugned order is harsh, unjustified and imposed for bona fide clerical mistakes and oversight, and for such breaches, no penalty should be imposed. The factors which are germane for penalties being imposed are guilt, dishonest conduct or acting in conscious disregard of a binding obligation, and not a single ingredient is present in the instant case.

5. It is observed that that present appeals have been filed by the appellant against the fine imposed in the Bills of Entry presumably for late filing as per Section 46(3) of the Customs Act, 1962. 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 fine imposed in the impugned Bill of Entry is maintainable as per the judgment of the Hon'ble Supreme Court in ITC case supra.



5.1 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 were 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 orders in each case 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 of the Customs Act, 1962 by following the principles of natural justice. While passing the speaking order, the proper officer shall also consider the submissions made in present appeals on merits. 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, all the four appeals filed by the appellant are allowed by way of remand.



*Akhil Kumar*  
 (AKHILESH KUMAR)  
 Commissioner (Appeals)  
 Customs, Ahmedabad

Date: 11.04.2025

F.No.S/49-284/CUS/MUN/2024-25  
 F.No.S/49-285/CUS/MUN/2024-25  
 F.No.S/49-286/CUS/MUN/2024-25  
 F.No.S/49-287/CUS/MUN/2024-25

By Registered Post A.D/Email.

To,  
 M/s. Kristi Overseas,  
 Plot No. 360, Shanker Tekri, Udyog Nagar,  
 Jamnagar-361004  
 (Email-kristi151108@gmail.com)

**Copy to :-**

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