



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

चौथी मंज़िल 4th Floor, हडकोभवन HUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009 दूरभाषक्रमांक Tel. No. 079-26589281

DIN-20250671MN0000555BB4

क	फ़ाइलसंख्या FILE NO.	S/49-04/CUS/KDL/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	KDL-CUS-000-APP-013-2025-26
	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	25.06.2025
ड	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. KDL/166/PS/AC/Gr.VII/12-13 dated 18.02.2013 read with Final order No. A/11734/2023 dated 17.08.2023 issued by Hon'ble CESTAT, Ahmedabad
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	25.06.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s JMD Oils Pvt. Ltd., 5/24, Ramesh Nagar, New Delhi - 110015



1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै. 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, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहैं. 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.



	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.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी 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 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 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) मेंनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र) या रु. 1000/- (रूपएएकहज़ारमात्र), जैसाभीमामलाहो, सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क, मांगागयाब्याज, लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु. 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.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदि कोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं	
	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, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियधिकरण, पश्चिमीक्षेत्रीयपीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरीमंजिल, बहुमालीभवन, निकटगिरधरनगरपुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016



5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-
	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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररूपए.
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पाँचहज़ाररूपए
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररूपए.
(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)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं,यादंडके 10% अदाकरनेपर,जहांकेवलदंडविवादमेंहैं,अपीलरखाजाएगा।
(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.	उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.
	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**

The present appeal has arisen on account of the Final Order No. A/11734/2023 dated 17.08.2023 passed by the Hon'ble CESTAT, Ahmedabad in the case of M/s JMD Oils Pvt. Ltd., 5/24, Ramesh Nagar, New Delhi - 110015 (hereinafter referred to as the "appellant"), whereby the Hon'ble Tribunal has remanded the matter to the Commissioner (Appeals) to pass order on merits. Initially, the appellant had filed the appeal, in terms of Section 128 of the Customs Act, 1962, against Order-in-Original No. KDL/166/PS/AC/Gr. VII/12-13 dated 18.02.2013 (hereinafter referred to as the "impugned order") passed by Assistant Commissioner of Customs, Group VII, Custom House, Kandla (hereinafter referred to as the "adjudicating authority").

2. Briefly stated, facts of the case are that the appellant had imported various items as mentioned in the condition sheet to the EPCG Licence No. 0530137002 dated 15.09.2004 claiming benefit of Notification No. 97/2004 dated 17.09.2004 from the payment of various Customs duties viz. Basic Customs duty, CVDs, ADD, Safeguard duties. Further, it appeared that the appellant had imported the goods under the aforesaid licenses; however, they had failed to produce the requisite installation certificate to date. Further, the Export Obligation Period (EOP) was expired, and the appellant had neither furnished any documentary evidence of fulfillment or discharge of the export obligation nor submitted any proof of extension of the EOP granted by the licensing authorities. Accordingly, the appellant was issued a Show Cause Notice dated 14.09.2012, was proposed:

- *Why the appropriate duties should not be recovered under the provisions of the Customs Act, 1962 on the goods procured duty free clearance under Notification No.: 97/2004 dated 17.09.2004*
- *Why the interest at the appropriate rate should not be charged under the provisions of the Custom Act, 1962;*
- *Why the conditions of the Bond executed by them should not be enforced for the failure to comply with the conditions of the exemption notification claimed.*

2.1 Further, it appeared that even after 8 years of obtaining the License, appellant had failed to discharge the Export Obligation and had not made any exports. Accordingly, the adjudicating authority vide the impugned order passed the following orders as:



i) Confirmed the demand of duties of Rs. 2,25,82,920/- on the duty free imports in respect of the EPCG Licence No. 0530137002 dtd. 15.09.2004 under the provisions of Section-28 (2) of the Customs Act, 1962 read with section 143 of the Customs Act 1962.

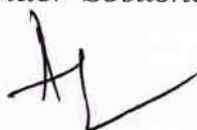
ii) The appellant shall also be liable to pay Interest as applicable on the aforesaid duties under the provision of Section 28 AB to the Customs Act, 1962 from the date of clearance till the date of payment in terms of the Bond furnished by them.

(iii) The appellant had executed a Bank Guarantee for Rs.93,29,930/- along with the Bond in terms of Notification and ordered to encash the Bank Guarantee and adjust the same towards part-payment of the duty.

(iv) On encashment of Bank Guarantee the appellant was directed to make the payment of balance of duty along with applicable interest within 15 days of the receipt of this order.

3. Being aggrieved with the impugned order, the appellant had filed the appeal by filing a Memorandum of Appeal dated 06.03.2013; however, due to an inadvertent error, the same was wrongly addressed and dispatched to the Commissioner of Customs (Appeals), Custom House, Kandla. The said appeal, which was filed well within the limitation period prescribed under Section 128 of the Customs Act, 1962 was further filed on 09.03.2017 in the Office of Commissioner (appeals) Ahmedabad. Further, the said appeal was admitted by the Commissioner (Appeals) Ahmedabad after round of communication with the Customs House, Kandla and in terms of Section 128 of the Customs Act. Since, the appellant had not deposited the mandatory 7.5% pre deposit for filing the appeals, therefore, the said appeal was rejected vide OIA No. KDL-CUSTM-000-APP-037-17-18 as follows:

*"Section 129E of the Customs Act, 1962 stipulates that the Tribunal (or the Commissioner (Appeals), as the case may be) shall not entertain any appeal unless the appellant has deposited seven and a half percent of the duty, in cases where duty or duty and penalty are in dispute, or the penalty amount where such penalty alone is in dispute, pursuant to a decision or order passed by an officer of customs lower in rank than the Commissioner of Customs. In view of the appellant's failure to comply with the mandatory requirements under Sections 128 and 129E of the*





*Customs Act, 1962, I am left with no option but to reject the appeal as non-maintainable, without entering into the merits of the case."*

3.1 Further, being aggrieved with the Commissioner Appeals OIA, the appellant challenged the same before the Hon'ble CESTAT, Ahmedabad who vide Final Order No. A/11734/2023 dated 17.08.2023 remanded the matter to this office stating as follows:

*"4. We have considered the rival submission. We find that the appellant has by mistakes sent the appeal papers to the office of the Commissioner, Kandla instead of Commissioner (Appeals) Ahmedabad. In identical case the Tribunal in the case of M/s. Maruti Udyog Ltd-2009 (244) ELT 66 (Tri. Ahd.) has held that in such cases benefit should be allowed to the appellant. Moreover, it is pointed out that the appellant that they have made the pre- deposit. In these circumstances, we set aside the impugned order and remand the matter to the Commissioner (Appeals) to pass order on merits.*

*5. The appeal is allowed by the way of remand."*

3.2 Further, it is relevant to reproduce the original grounds of appeal filed by the appellant which are as follows:

- That the confirmation of demand on the sole ground that the Export Obligation Period (EOP) has expired is legally unsustainable. As per Para 5.11.3 of the Foreign Trade Policy, the EOP gets automatically extended for a period equivalent to the duration of any government-imposed export ban. This statutory extension was not considered by the adjudicating authority.
- That the appellant could not complete the export obligation or obtain the Export Obligation Discharge Certificate (EODC) solely because of the ban imposed by the Government of India on export of the resultant product. There was no willful default or mala fide intention, and hence confirmation of duty is unjust and excessive.
- That the adjudicating authority erroneously held that the EODC was to be produced within 30 days of expiry of the license without appreciating the extended EOP under para 5.11.3. This reflects a





failure to consider material facts and a misreading of procedural requirements.

- That the impugned order is against settled legal principles laid down in various decisions of Hon'ble High Courts and CESTAT. The appellant reserves the right to rely on such precedents during the course of the hearing.

### **PERSONAL HEARING**

4. Shri Ashish Bhatt, Advocate attended the Personal Hearing on 11.06.2025 in virtual mode on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

### **DISCUSSION & FINDINGS**

5. I have gone through the appeal memorandum filed by the Appellant, records of the case and submissions made during personal hearing. The main contention of the appeals is that the impugned order demanding duty is unjustified as the export obligation period stood extended due to an export ban. Therefore, the main issue to be decided in the present appeal are whether the impugned order confirming the duty under the provisions of Section-28 (2) of the Customs Act, 1962 read with Section 143A of the Customs Act, 1962 along with interest under the provision of Section 28 AB to the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It is observed that the appellant had imported capital goods under the EPCG Scheme availing exemption of customs duty subject to the fulfillment of export obligation within the prescribed period. However, the appellant had not submitted the Export Obligation Discharge Certificate (EODC) nor any evidence showing completion of the export obligation or extension of the Export Obligation Period (EOP) by the licensing authority. The appellant has contended that they could not fulfill the export obligation under the EPCG Scheme due to the imposition of a government ban on the export of the resultant product, which continued during the relevant obligation period, thereby rendering the performance of the export condition impossible within the originally stipulated timeframe. In this regard, I find that the appellant has failed to produce the Export Obligation Discharge Certificate (EODC) or any substantive documentary evidence to demonstrate fulfillment of the export obligation or to show that the obligation period was formally extended by the competent licensing authority. The appellant's mere reference to a general ban on export of the resultant product, without establishing a direct and specific relation between the ban and



the goods covered under the EPCG license, or furnishing any communication from DGFT granting extension, does not satisfy the compliance requirements under the EPCG Scheme. In such cases, the burden of proving either fulfillment of export obligation or the impossibility of performance due to legal restrictions lies squarely on the appellant, and in the present case, such burden remains unmet. Therefore, the contention of the appellant is liable for rejection.

5.2 Further, Judgment dated 13.01.2025 cited by Hon'ble Delhi High Court in the matter of Kbs Industries Ltd And Anr Vs The Customs Central Excise And Service Tax Settlement Commission Principal Bench New Delhi & Ors wherein the Hon'ble High Court have confirmed the duties and penalties as the appellant could not fulfill the export obligations. The relevant para of the same is reproduced as below:

"....

46. Admittedly, the petitioners had bound themselves to the said conditions and had availed the benefit of the said Notification. In this view, we are unable to accept that the impugned order imposing interest on delayed payment of duties is contrary to law.

47. The petitioners had also challenged the constitutional vires of the Notification dated 01.04.2015. However, as noted at the outset, the learned counsel for the petitioners did not seriously contest the same and in our view rightly so. The petitioners' challenge to the Notification is insubstantial. The exemption was granted subject to the importer satisfying its export obligations. The petitioners do not challenge the grant of advance authorizations and permission to import the goods in question without payment of duties on the condition of fulfilling the export obligations. Clearly, if the conditions were not satisfied, the petitioner would be liable to pay the duties on the material imported.

48. Admittedly, such duties would be payable on the date of clearance of the goods and therefore stipulating that the interest would be payable on such dates if the conditions are not satisfied cannot by any stretch be stated to be arbitrary or unreasonable.

49. In view of the above, we find no merit in the petition, the same is, accordingly, dismissed. The pending application is also disposed of.

....."

In this regard, I have carefully considered the facts of the case in light of the judicial pronouncement relied upon by the Department, and I find that the ratio laid down therein is squarely applicable to the present matter. The appellant was granted the benefit of exemption from customs duties conditionally, subject to fulfillment of export obligation within the prescribed



time frame as mandated under the relevant Export Promotion Scheme. However, the appellant has failed to fulfill the said obligation, and no justifiable or legally sustainable reason has been provided for such non-compliance. Accordingly, the demand of duty, along with applicable interest and imposition of penalty under the relevant provisions of law, is found to be in accordance with law and is upheld.

6. In view of the foregoing discussions and findings, I find no reason to interfere with the conclusions drawn by the adjudicating authority. Accordingly, the impugned order is upheld, and the appeal filed by the appellant is hereby rejected.



(AMIT GUPTA)  
COMMISSIONER (APPEALS)  
CUSTOMS, AHMEDABAD

F. Nos. S/49-04/CUS/KDL/24-25

Dated – 25.06.2025

1673

By Registered Post A.D.

To,

M/s JMD Oils Pvt. Ltd.,  
5/24, Ramesh Nagar,  
New Delhi – 110015

સત્યાપિત/ATTESTED  
અધીક્ષક/SUPERINTENDENT  
સીમા શુલ્ક (અપીલ), અમદાવાદ.  
CUSTOMS (APPEALS), AHMEDABAD.

**Copy to:**

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Commissioner of Customs, Customs House, Kandla.
3. The Deputy/Assistant Commissioner of Customs, Gr VII, Customs House, Kandla.
4. Guard File.





1/11/57

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श्री १३३३/५७

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श्री १३३३/५७

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