सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

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

चौथी मंज़िल 4th Floor, हडकोभवनHUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road, नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009 दूरभाषक्रमांक Tel. No. 079-26589281

DIN – 20250571MN000091969F

क	फ़ाइलसंख्या FILE NO.	S/49-64/CUS/AHD/24-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-044-2025-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	27.05.2025
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	OIO No. 03/ICD-Valvada/DC-VKY/SURYA/23-24 dated 08.03.2024 passed by the Deputy Commissioner of Customs, ICD- Valvada.
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	27.05.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Surya Exim Limited, 3040, Jash Textiles & Yarn Market, Ring Road, Surat-395002.

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,नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै.**

	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)	बैगेज़केरूपमेंआयातितकोईमाल.
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्य स्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसे कमीहो.
(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)	सम्बद्धदस्तावेज़ोंकेअलावासाथमूलआदेशकी 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)यारु.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 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बंन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी 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, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण,पश्चिमीक्षेत्रीयपीठ / **Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**

	दूसरीमंज़िल,बहुमालीभवन,निकटगिरधरनगरपुल,असारवा,अहमदाबाद-380016	2nd Floor, BahumaliBhavan, 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)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररुपए.**	
(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;पांचहज़ाररुपए**	
(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;दसहज़ाररुपए.**	
(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,जहांकेवलदंडविवादमेंहै,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

M/s Surya Exim Limited, 3040, Jash Textiles & Yarn Market, Ring Road, Surat-395002 (hereinafter referred to as "the Appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against the OIO No. 03/ICD-Valvada/DC-VKY/SURYA/23-24 dated 08.03.2024 (hereinafter referred to as the "impugned order") passed by the Deputy Commissioner of Customs, ICD- Valvada (hereinafter referred to as the "adjudicating authority").

2. Briefly stated, facts of the case are that the Appellant had imported goods vide Bill of Entry No. 9382916, 9382922 and 9382929 all dated 22.02.2013 for clearance of PVC Resin (CTH No. 39042110) for total quantity of 262.5 MT and during the assessment it was observed that the value declared was US$ 968 PMT, which was found to be lower when compared to prices appearing in PLATT, during the relevant time and thus, the declared value was enhanced to US$ 1060 PMT. Further, the appellant paid the duty on the enhanced value 'under protest'. Thereafter, on the basis of the Test Report, the Bills of Entry was finally assessed vide Speaking Order No.02/12- 13 dated 28.02.2013, wherein the then adjudicating authority rejected the declared value of US$ 968 PMT and re-determined the same as US$ 1060 PMT (CIF) in terms of the prevailing PLATT prices as well as by following the instructions contained under Standing Order No. 7493/1999 dated 03.12.1999 as amended by SO No. 7718/2002 dated 12.07.2002 issued by Chief Commissioner of Customs, Mumbai. Being aggrieved, the said order was challenged by the appellant before the Commissioner Appeals.

2.1 Thereafter, the Commissioner (Appeals), Customs, Ahmedabad, vide OIA No. 402 to 404/2013/Commr.(A)/AHD dated 14.10.2013 had set aside the Order No. 02/12-13 dated 28.02.2013 mainly on the ground that the adjudicating authority had not considered the submission made by the appellant that the goods were of carbide grade with lower value as compared with the ethylene based PVC, the kind covered under the PLATT Price, in as much as the then adjudicating authority had not brought other collateral evidences on record to substantiate the stand and accordingly allowed the aforesaid appeals, with consequential relief. Accordingly, the appellant filed the refund claims of Rs. 242751/- towards differential Customs Duty paid under protest in respect of PVC RESIN SG-5 K66/68in respect of Bill of Entry No. 9382916, 9382922 and 9382929 all dated 22.02.2013, under Section 27 of the Customs Act, 1962.

2.2 However, Order in Appeal No. 402 to 404/2013/Commr.(A)/AHD dated 14.10.2013 passed by the Commissioner of Customs (Appeals), Ahmedabad was

examined by the Committee of Commissioner of Customs, Ahmedabad and Commissioner of Customs, Kandla and further, the Department had preferred to contest the Order-In-Appeal No. 402-404/2013/Commr.(A)/AHD dated 14.10.2013 passed by the Commissioner (Appeals), Customs, Ahmedabad, by filing an appeal before the CESTAT, Ahmedabad on 20.01.2014. However, as there was no evidence of any stay granted by CESTAT in the matter, the refund claim was processed and sanctioned vide OIO No. 30,31 & 32/13-14 dated 21.01.2014. Since, the matter was pending before CESTAT, accordingly, a protective demand vide show cause notice F.No. VIII/48-75 to 48-77/ICD-Valvada/Refund claim-49 to 51/13-14 dated 18.06.2014 was issued to the appellant and the same was transferred to Call book in terms of Para 2(i) of the Board Circular No. 162/73/95-CX.3 dated 14.12.1995, as per the approval of the Commissioner, Customs, Ahmedabad on the basis of the Department's appeal pending with CESTAT against OIA No. 402-404/2013/Cus/Commr(A)/AHD dated 14.10.2013.

2.3 Thereafter, the Hon'ble CESTAT, Ahmedabad vide its Final Order No. 12563- 12566/2023 dated 08.11.2023 has dismissed the appeal filed by the Department as infructuous, observing as under:

> *"4. From the above observation, it can be seen that all the government dues stand extinguished as per the resolution approved by the NCLT vide order dated 01.07.2022, therefore, there is no purpose even to proceed with the present appeals by the department. Accordingly, in our view, the Revenue's appeals became infructuous. Hence, the appeals are dismissed as infructuous."*

3. The above said Hon'ble CESTAT's Final Order No. 12563-12566/2023 dated 08.11.2023 had been accepted by the department on 23.11.2023. Therefore, the SCN F.No. VIII/48-75 to 48-77/ICD-Valvada/Refund claim-49 to 51/13-14 dated 18.06.2014 was retrieved from the Call book for adjudication. Thereafter, the adjudicating authority vide impugned order passed the following order as:

(i) He ordered for recovery of Rs. 2,42,751/-, which was erroneously refunded, from the appellant under Section 28(1) of Customs Act, 1962.

(ii) He ordered the appellant to pay interest at the appropriate rate on the amount erroneously refunded amounting to Rs. 2,42,751/- under Section 28AA of Customs Act, 1962.

4. Being aggrieved with the impugned order, the Appellants have filed the present appeal and mainly contended the following:

- That the impugned order violated the rule of Res-Judicata and the for same cause which is already decided by Hon'ble CESTAT Ahmedabad.
- That the demand confirmed under the impugned Order is legally unsustainable, as all liabilities against appellant including claims by Government/Statutory Authorities, stood permanently extinguished upon approval of the resolution plan under the Insolvency and Bankruptcy Code, 2016 by the Hon'ble NCLT, Ahmedabad vide order dated 01.07.2022.
- That the appellant was taken over by Agarwal Coal Corporation Pvt. Ltd. under the NCLT-approved resolution plan. The new management was not provided with prior records or notified about pending proceedings. Hence, the current entity cannot be held liable for actions of the former management.
- That the NCLT's approval of the resolution plan clearly states that all past claims, including contingent and unconfirmed dues, stand extinguished. This includes any customs duty demands or penalties arising before the CIRP.
- That without prejudice to the legal bar under IBC, the appellant reserves the right to challenge the merits of classification, valuation, and anti-dumping duty imposition if the extinguishment argument is not accepted.
- They have relied upon the various case laws, few of which are as under:
  a. M/s. Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss ARC (2021) 9 SCC 657
  b. ABG Shipyard Liquidator v. CBIC – Supreme Court.
  c. Essar Steel v. Satish Kumar Gupta
  d. Ramsarup Industries Ltd. v. CC – Delhi HC 2023 (12) TMI 577
  e. Arcelor Mittal Nippon Steel v. CC – CESTAT Ahmedabad 2023 (10) TMI 899.
  f. CESTAT Ahmedabad Final Order No. 12563-12566/2023 in the appellant's own case.

PERSONAL HEARING

5. Shri Vivek Bapat along with Ms. Nitu Chaturvedi both advocates, attended personal hearing on 21.05.2025 in virtual mode on behalf of the Appellant. They reiterated the submission made in the appeal memorandum.

DISCUSSION & FINDINGS

6. I have gone through the appeal memorandum filed by the appellant, records of the case and submissions made during personal hearing. The main contention in the appeal is that the appellant underwent CIRP (Corporate Insolvency Resolution Process) under the Insolvency and Bankruptcy Code, 2016 and the Resolution plan submitted by M/s Agarwal Coal Corporation Pvt. Ltd. was approved by the COC which was ultimately submitted to NCLT for approval. The NCLT vide its Order dated 01.07.2022 allowed the application and directed to the resolution of appellant and NCLT's approval of the resolution plan clearly states that all past claims, including any customs duty demands or penalties arising before the CIRP, stand extinguished. Therefore, the main issues to be decided in present appeal is whether the demand confirmed for the erroneous refund sanctioned to the appellant along with interest under Section 28(1) and Section 28AA of the Customs Act, 1962 respectively, in the facts and circumstances of the case, is legal and proper or otherwise.

6.1 Before going into the merits of the case, I find that as per CA-1 Form of the Appellant, the present appeal has been filed on 28.05.2024 against the impugned order dated 08.03.2024 which is not within statutory time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962

6.1.1 In this regard, it is relevant to refer the legal provisions governing filing an appeal before the Commissioner (Appeals) and his powers to condone the delay in filing appeals beyond 60 days. Extracts of relevant Section 128 of the Customs Act, 1962 are reproduced below for ease of reference:

> *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.]*

Section 128 of the Customs Act, 1962 makes it clear that 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.

6.1.2 It is observed from the appeal memorandum that the appeal has been filed on 13.02.2024 resulting in a delay of 14 days in filing of appeal beyond the time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962. However, the appellant has requested for the condonation of delay. In light of the above provisions of law and considering the submissions of the Appellant and also considering the fact that the appeals have been filed within a further period of 30 days. I allow the condonation of delay in filing the appeal, taking a lenient view in the interest of justice in the present appeal.

6.2 It is observed that the appellant has contended that they underwent Corporate Insolvency Resolution Process (CIRP) initiated by the State Bank of India under Section 7 of the Insolvency and Bankruptcy Code, 2016, and the resolution plan submitted by M/s Agarwal Coal Corporation Pvt. Ltd. was approved by the Hon'ble NCLT, Ahmedabad on 01.07.2022. As per the resolution plan and judicial precedents, including the Hon'ble Supreme Court ruling in *Ghanashyam Mishra & Sons Pvt. Ltd.*, all past liabilities, including statutory and government dues, whether admitted or not, stand permanently extinguished. The new management, having taken over after CIRP, had no access to prior records and cannot be burdened with legacy liabilities and same is supported with multiple rulings given by Hon'ble Delhi High Court and CESTAT Ahmedabad, confirming that tax and customs dues prior to CIRP approval are no longer enforceable.

In this regard, it is observed that the resolution plan submitted by M/s Agarwal Coal Corporation Pvt. Ltd. was approved by Hon'ble NCLT vide order dated 01.07.2022. The relevant para of the same is reproduced as below:

"...

III. The Resolution Applicant claimed various reliefs and concessions in the resolution plan. However, we grant the reliefs in the following manner and to this extent;

a. After the payment of the dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders prior to CIRP against the Corporate Debtor shall stand permanently extinguished after the approval of the resolution plan. We further hold that other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall also stand extinguished against the Corporate Debtor after the approval of the resolution plan. contingent/unconfirmed extinguished;

....."

In view of the above, it is observed that the if a company has completed the Corporate Insolvency Resolution Process (CIRP) and a resolution plan is approved under Section 31 of the IBC, all past claims, including tax and

customs dues, whether known, unknown, admitted, or contingent, stand extinguished unless specifically provided for in the resolution plan. Further, it is also observed that the IBC law prevails over Customs Act, 1962 as per Section 238 of IBC which is reproduced as under:

Section 238 – Provisions of this Code to override other laws

"The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

6.3 Further, I find that the appellant has relied on the Judgment cited by Hon'ble Supreme Court in the matter of M/s. Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss ARC (2021) 9 SCC 657 and the relevant para is reproduced as under:

"...

130. In the foregoing paragraphs, we have held, that 2019 amendment to Section 31 of I&B Code is clarificatory and declaratory in nature and therefore will have a retrospective operation. As such, when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject matter of the petition are the proceedings, which relate to the claims of the respondents prior to the approval of the plan, in the light of the view taken by us, the same cannot be continued. Equally the claims, which are not part of the resolution plan, shall stand extinguished.

..."

6.4 Further, the appellant have submitted the Judgment of Hon'ble CESTAT Ahmedabad, in their own previous matter i.e. CC Customs Ahmedabad vs Surya Exim Limited, wherein the Hon'ble CESTAT Ahmedabad vide Final Order No. 12563-12566/2023 dated 05.10.2023 has rejected the appeal and dismissed the demand. The relevant para of the same is reproduced as below:

"....

3. On careful consideration of the submission made by the learned Authorized Representative and perusal of records, we find that the present respondent company has undergone the proceedings under insolvency and bankruptcy code, whereby as per the NCLT order, the

present appellant company has been taken over by some other company namely M/s Agarwal Coal Corporation Private Limited. In this regard, this Tribunal in the respondent's case in their other appeal bearing number C/10055/2013 passed a final order A/12174-12176/2022 dated 12.12.2022 whereby though the order was passed on merit but made an observation as regard the issue of IBC decided by NCLT vide its order dated 01.07.2022.

...

As per the above order of NCLT, we find that dues of government, if any, shall stand extinguished. Similar view was also expressed by the Hon'ble Supreme Court which was referred in the NCLT order in para 16. Which is reproduced below:

> *"16. As far as reliefs and concessions claimed by the resolution applicant, the law has been well settled by the Hon'ble Supreme Court in the case of Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021 in the following words: I. "The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.*
>
> *II. We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of IB Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief..."*

18. With regard to pending dues of Customs, the Hon'ble Supreme Court in the recent judgement dated 26th August 2022 of Sundaresh Bhatt, in Civil Appeal No. 7667 of 2021 held as under: -

"54. On the basis of the above discussions, following are our conclusions:

i) Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

ii) ii)After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of

the procedure laid down. in strict compliance of the time periods prescribed under the IBC. before the adjudicating authority.

iii) In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC. 55. Resultantly, we allow the appeal and set aside the impugned order and judgment of the NCLAT. There shall be no orders as to costs." 19. For the reason of aforesaid NCLT order in the appellant case and the above cited Apex Court judgments, the dues of the Government, including the present dues, if any, is not prima facie recoverable. However, since we decide this appeal on its merit and fact of the case, we do not incline to give conclusive finding on the basis of NCLT order."

4. From the above observation, it can be seen that all the government dues stand extinguished as per the resolution approved by the NCLT vide order dated 01.07.2022, therefore, there is no purpose even to proceed with the present appeals by the department. Accordingly, in our view, the Revenue's appeals became infructuous. Hence, the appeals are dismissed as infructuous."

6.5 In light of the Judgments cited above, I am of the considered view that the demand confirmed vide impugned order was not the part of the resolution plan approved by Hon'ble NCLT, therefore, the same stands extinguished and this fact has also been considered by the Hon'ble CESTAT Ahmedabad in the appellant's matter itself as discussed in *para supra*. Further, it is pertinent to mention that the Final Order No. 12563-12566/2023 dated 05.10.2023 passed by Jurisdictional Hon'ble CESTAT, Ahmedabad is binding upon the lower quasi-judicial authorities including the Commissioner (Appeals), Customs, Ahmedabad.

6.6 In view of the above, I am bound to follow the precedence laid by judgment of Hon'ble CESTAT, Ahmedabad, in light of the law laid by Hon'ble High Court of Gujarat in case of Lubi Industries LLP [2018 (337) E.L.T. 179 (Guj.)] on judicial discipline and binding nature of judgment of superior court:

"6. In our opinion, the Assistant Commissioner committed a serious error in ignoring the binding judgment of superior Court that too in case of the same assessee. The principle of precedence and judicial comity are well established in our legal system, which would bind an authority or the Court by the decisions of the Coordinate Benches or of superior Courts. Time and again, this Court has held that the departmental authorities would be

bound by the judicial pronouncements of the statutory Tribunals. Even if the decision of the Tribunal in the present case was not carried further in appeal on account of low tax effect, it was not open for the adjudicating authority to ignore the ratio of such decision. It only means that the Department does not consciously agree to the view point expressed by the Tribunal and in a given case, may even carry the matter further. However, as long as a judgment of the Tribunal stands, it would bind every Bench of the Tribunal of equal strength and the departmental authorities taking up such an issue. An order that the adjudicating authority may pass is made appealable, even at the hands of the Department, if the order happens to aggrieve the Department. This is clearly provided under Section 35 read with Section 35E of the Central Excise Act. Therefore, even after the adjudicating authority passes an order in favour of the assessee on the basis of the judgment of the Tribunal, it is always open to the Department to file appeal against such judgment of the adjudicating authority."

(emphasis supplied)

7. In view of the above discussion, the impugned order is set aside and appeal of the appellant is allowed.

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

(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD

F.Nos. S/49-64/CUS/AHD/24-25 1252

Dated – 27.05.2025

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