



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

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

DIN-20260371MN0000222C9B

क	फ़ाइल संख्या FILE NO.	S/49-311/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-909-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/522/AC/KRP/GR4/2024-25 dated 17.10.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. NEEL KANTH OVERSEAS, A-103/6, WAZIRPUR INDUSTRIAL AREA, DELHI-110 052



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 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 :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2 nd 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 हज़ार 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 हज़ार 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 हज़ार रूपए.
	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
	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

The present appeal has been filed by M/s. Neel Kanth Overseas, Delhi (hereinafter referred to as the "appellant") under Section 128 of the Customs Act, 1962, challenging Order-in-Original No. MCH/522/AC/KRP/GR4/2024-25 dated 17.10.2024 passed by the Assistant Commissioner of Customs, Custom House, Mundra.

2.1 The facts of the case, in brief, are that the appellant filed Bill of Entry No. 4716644 dated 31.08.2019 through their Customs Broker for import of "Stainless Steel Cold Rolled Coils" classifiable under CTH 72209090 of the Customs Tariff Act, 1975, declaring an assessable value of Rs. 31,61,226/-. The appellant claimed the benefit of concessional rate of duty under Sr. No. 967(I) of Notification No. 046/2011-Cus dated 01.06.2011 on the basis of a Certificate of Origin (COO) bearing No. KL-2019-AI-21-079575 dated 26.08.2019, purportedly issued by the Ministry of International Trade and Industry (MITI), Malaysia, in respect of the supplier M/s. MH Megah Maju Enterprise.

2.2 Subsequently, on the basis of information received from the Directorate of International Customs, CBIC vide letter dated 11.10.2023, it was indicated that the appellant had availed preferential tariff benefits under the ASEAN-India Free Trade Agreement by mis-declaring the origin of the goods. It was alleged that the Certificate of Origin submitted by the appellant was not genuine and that the same had not been issued by the competent authority in Malaysia, thereby resulting in wrongful availment of exemption and consequent evasion of customs duty.

2.3 In view of the above, it appeared that the Certificate of Origin No. KL-2019-AI-21-079575 dated 26.08.2019 was fake and invalid for the purpose of claiming preferential duty under Notification No. 046/2011-Cus. Accordingly, the appellant was alleged to have evaded customs duty amounting to Rs. 3,07,745/- by submitting a forged Certificate of Origin.

2.4 Accordingly, a Show Cause Notice dated 30.10.2023, along with corrigendum dated 31.08.2024, was issued proposing rejection of the Certificate of Origin, recovery of differential duty amounting to Rs. 3,07,745/- under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA, and imposition of penalties under Sections 114A and 114AA of the Customs Act,



1962.

2.5 The adjudicating authority, after due process, passed the impugned order wherein the benefit of the Certificate of Origin was rejected and the goods were ordered to be reassessed at the applicable tariff rate. The differential duty of Rs. 3,07,745/- was confirmed under Section 28(4) along with applicable interest under Section 28AA. Further, a penalty equal to the duty amount was imposed on the appellant under Section 114A, and an additional penalty of Rs. 1,50,000/- was imposed under Section 114AA of the Customs Act, 1962..

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the order passed by the Assistant Commissioner, Customs, Mundra. The Grounds of Appeal are not reproduced in detail for sake of brevity, as the copy of the same is available with the Appellant as well Respondent. However, the same have been examined and the brief is as under:

3.1 The appellant contends that the impugned order was passed in haste and in utter disregard of natural justice. They argue that the adjudicating authority failed to address submissions made in their representation dated July 8, 2024, and ignored their request for the supply of vital "relied upon documents". Furthermore, while the authority claimed the appellant chose not to join the proceedings, the appellant asserts they were denied a fair opportunity, noting that a request for a virtual hearing was ignored despite the personal hearing notice being received only on the day of the scheduled hearing. The appellant cites legal precedents to emphasize that the rule of audi alteram partem (no man should be condemned unheard) is a mandatory requirement for quasi-judicial authorities.

A major grievance is the department's failure to provide essential documents and allow the cross-examination of witnesses. The appellant argues that withholding these "vital documents" severely prejudiced their ability to make an effective representation. They rely on various court rulings, including CCE & Land Customs v. Sanawarmal Purohit, to argue that acting on undisclosed information is a violation of natural justice. Additionally, the adjudicating authority reportedly neither allowed nor rejected the request for cross-examination, an omission the appellant claims necessitates a remand for de novo adjudication.

3.3 The appellant challenges the merits of the case, asserting that the allegation is based solely on a general letter from the OSD (FTA Cell) CBIC, which



does not constitute conclusive proof that the Country-of-Origin Certificate (COO) is fake. They argue that no independent investigation was conducted regarding the appellant or the foreign supplier, and no searches or summons were issued. The appellant maintains that the COO is genuine and that the burden of proving it is fake lies entirely with the department, which they claim has failed to discharge this onus.

3.4 The appellant argues that the demand is barred by limitation as the show-cause notice was issued beyond the standard two-year period. They contend that the "extended period" of five years under Section 28(4) of the Customs Act was incorrectly invoked because there was no evidence of collusion, willful misstatement, or suppression of facts with the intent to evade duty. Citing the Supreme Court in *Uniworth Textiles Ltd. v. CCE*, the appellant emphasizes that mere non-payment is not equivalent to a deliberate default and that the "mental element" of intent must be proven by the department.

3.5 The appeal disputes the penalties imposed under Sections 114A and 114AA of the Customs Act. Regarding Section 114A, the appellant argues the ingredients for the penalty were not satisfied, especially since the department failed to prove collusion or suppression. Regarding Section 114AA, the appellant provides an extensive legislative history to argue that this section was specifically intended by the legislature to penalize fraudulent "paper-only" exports where no goods actually crossed the border. Since this case involves a physical import of goods, they argue Section 114AA is legally inapplicable.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 26.02.2026, following the principles of natural justice wherein Shri Gaurav Prakash, Advocate, appeared for the hearing and re-iterated the submissions made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Assistant Commissioner, Customs, Mundra and the defense put forth by the Appellant in their appeal.

5.1 A perusal of the Impugned Order reveals that it was passed ex-parte. The Adjudicating Authority recorded that the Noticee did not submit a defense reply or appear for the personal hearings, necessitating an ex-parte decision



based on available records. While the Department proceeded with the Order-in-Original under the assumption of non-compliance/wilful suppression, the non-effective hearing notices raises a serious question regarding the observance of principles of natural justice. The cornerstone of all administrative and quasi-judicial proceedings is the principle of *Audi alteram partem* (hear the other side). The opportunity to file a reply and present one's case, either in writing or personally, is fundamental to a fair adjudication process.

5.2 The statutory provisions under the Customs Act place a high premium on the right to be heard. Section 122A of the Customs Act, 1962 states:

"(1) The adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires."

5.3 The use of the word "shall" makes it mandatory for the authority to grant a hearing. Furthermore, the proviso to Section 122A(2) allows for adjournment if sufficient cause is shown. In the instant case, the imposition of heavy civil liabilities, including duty demands and penalties, carries serious civil consequences. It is a settled principle of law that any order involving civil consequences must be passed in strict adherence to the Principles of Natural Justice. An ex-parte order is an exception, not the norm, and should only be resorted to when there is willful and repeated non-cooperation, which must be conclusively recorded.

5.4 It is pertinent to observe that by concluding the proceedings ex-parte, the Adjudicating Authority did not get the opportunity to go through the submissions made by the Appellant. The essence of adjudication lies in the impartial consideration of the arguments presented by both the Revenue and the Noticee. In this case, since the Appellant's detailed written submissions and their specific arguments were not taken on record or deliberated upon due to the absence of a hearing, the Adjudicating Authority was effectively deprived of the material necessary to form a balanced and well-reasoned opinion. Consequently, the findings recorded in the Impugned Order are one-sided, based solely on the investigation report, without the benefit of the counter-arguments which might have altered the final decision.

5.5 The Appellate Authority, in a situation where the Adjudicating Authority has passed an order without the benefit of the assessee's defence reply or appearance, and the assessee now appears before the Appellate Authority with

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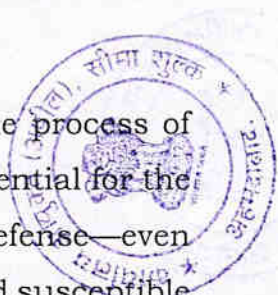
a defence, finds it just and proper to afford a fresh opportunity. A plethora of decisions from the Hon'ble Tribunal (CESTAT) have consistently set aside ex-parte orders where the principles of natural justice were, or appeared to be, violated, and remanded the matter back to the Adjudicating Authority for a fresh decision after providing a proper hearing. The setting aside of an ex-parte order and remanding the matter is a justified course of action when sufficient cause, such as non-receipt of notice, is shown for non-appearance/non-submission of reply.

5.6 While the Adjudicating Authority followed the procedural requirement of granting three hearings, the substantive issues involved are complex and require a balanced examination of law and fact.

5.7 The Department invoked the five-year extended period under Section 28(4) of the Customs Act, 1962. For such invocation to be legally sustainable, the Department must prove "willful misstatement" or "suppression of facts" with an intent to evade duty. The Appellant argues that since no independent investigation was conducted and the COO was not rejected, no demand can be raised in the matter and the bill of entry was filed in 2019 and the demand has been raised after a period of 4 years. These findings require a deep dive into the correspondence and the self-assessment records of the Appellant, which were not scrutinized due to the ex-parte nature of the order.

5.8 The principles of natural justice, specifically the maxim "Audi Alteram Partem" (hear the other side), are the bedrock of administrative and quasi-judicial decision-making in India. In the context of the Customs Act, 1962, this is not merely a formality but a statutory mandate under Section 122A, which requires the Adjudicating Authority to give an opportunity of being heard to the party chargeable with duty or penalty. When an order is passed without a defense reply, the authority lacks the benefit of the importer's justification for a specific entry. This results in a "unilateral assessment" that fails to address valid legal counter-points.

5.9 Even if an authority intends to confirm a demand, the process of evaluating a defense reply and addressing it in the final order is essential for the "reasoned decision" requirement. An order that ignores a potential defense—even if due to the party's absence—leaves the adjudication incomplete and susceptible to being termed "arbitrary." In matters involving differential duty and penalties, a remand is preferred over a summary decision at the appellate stage. It allows the original authority—the fact-finding body—to record fresh findings after



examining the importer's evidence. This ensures that the Appellant's right to a fair trial is preserved without bypassing the initial stage of adjudication.

5.10 Fresh adjudication is necessary primarily because the findings in the impugned order regarding "willful misstatement" and the invocation of the extended period under Section 28(4) are one-sided and lack the requisite evidentiary depth. The Appellant has argued that their declaration and submission of COO was bonafide. The Adjudicating Authority must examine whether the Appellant had a bona fide belief in their COO, which can only be done after considering their defense.

5.11 As an appellate authority, I find that confirming serious charges of fraud or suppression without a comprehensive counter-view results in a legally fragile order. A remand allows the fact-finding authority to verify the Appellant's records, correspondence with the department. This ensures that the final decision is based on a complete factual matrix rather than a default confirmation of the SCN.

5.12 To ensure that the "substantial justice" is not sacrificed at the altar of "technicalities," and considering the Appellant is now ready to participate in the proceedings, I find it fit to remand the case. This will allow the Adjudicating Authority to examine all the issues on merits and the validity of the invocation of the extended period of limitation. Since the matter is being remanded on the preliminary ground of violation of principles of natural justice, I am not examining the merits of the case at this stage. All issues remain open for the Adjudicating Authority to decide afresh.

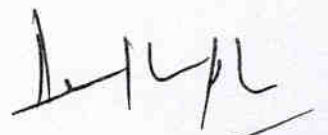
6. In view of the above discussions and findings, and in the interest of natural justice:

- a. The appeal is allowed by way of remand. The impugned Order-in-Original is set aside. The matter is remanded to the Adjudicating Authority for fresh adjudication.



सत्यापित/ATTESTED

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


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

F. No. S/49-311/CUS/MUN/2024-25

Date: 30.03.2026

By Speed post A.D/E-Mail

To,
M/s. NEEL KANTH OVERSEAS,
A-103/6, WAZIRPUR INDUSTRIAL AREA,
DELHI-110 052

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.

