



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंजिल 4th Floor, हड्डो भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
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DIN-20250671MN0000020657

क	फाइल संख्या FILE NO.	S/49-147/CUS/AHD/24-25
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)	AHD-CUSTM-000-APP-119-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
द*	दिनांक DATE	30.06.2025
ज*	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. 10/ICD-Tumb/DC-VKY/Ref /AYM SYNTEx LTD/2024-25 Dated 23/07/2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	AYM SYNTEx LTD, Survey No.374/1/1, Village Saily, Silvasa-396230.

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.	<p>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।</p> <p>Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.</p> <p>निम्नलिखित सम्बन्धित आदेश/Order relating to :</p> <p>(क) बैगेज के रूप में आयातित कोई माल.</p> <p>(a) any goods exported</p> <p>(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 न गए माल की मात्रा में अपेक्षित माल से कमी हो।</p> <p>(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.</p> <p>(ग) सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।</p> <p>(c) Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.</p>
3.	<p>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 :</p> <p>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 :</p> <p>(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।</p> <p>(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.</p> <p>(ख) सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो</p> <p>(b) 4 copies of the Order-in-Original, in addition to relevant documents, if any</p> <p>(ग) पुनरीक्षण के लिए आवेदन की 4 प्रतियां</p> <p>(c) 4 copies of the Application for Revision.</p> <p>(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 से अधिक हो तो फीस के रूप में रु. 1000/-</p> <p>(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</p>

	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 :				
	<table border="0"> <tr> <td style="vertical-align: top;">सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td><td style="vertical-align: top;">Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td></tr> <tr> <td style="vertical-align: top;">दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td><td style="vertical-align: top;">2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td></tr> </table>	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 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
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 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 हजार रुपए.				
(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 रुपए				
	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 ;				
	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 रुपए.				
(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

The present appeal has been filed by M/s AYM SYNTEx LTD, Survey No.374/1/1, Village Saily, Silvasa-396230, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. 10/ICD-Tumb/DC-VKY/Ref /AYM SYNTEx LTD/2024-25 dated 23/07/2024 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner of Customs, ICD Tumb (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant had filed a refund claim of Rs. 31,45,775/- under Section 27 of the Customs Act, 1962, on 23.08.2022 for the alleged duty paid against Warehouse Bill of Entries for import of various grade Nylon Chips. The Appellant vide the aforesaid application has submitted that, while filing the said Warehouse Bill of Entries, the duty wrongly debited from RODTEP/ROSCTL e-scrip. Subsequently, while filing Ex-Bond Bill of Entry they again paid the duty by using other RODTEP/ROSCTL e-scrip as they could not remove the license which they tried by re-calling the Warehouse Bill of Entry. Hence, they claim that a case of double duty debit arises.

2.1 The details of the aforesaid Warehouse Bill of Entries and Ex-Bond Bill of Entries along with RODTEP/ROSCTL E-scrips are as under:

TABLE-I

S. No	Warehouse BOE No & Date	RODTEP/ROSC TL LIC. No & Date	Amount	Ex-Bond BOE No & Date	RODTEP/ROSC TL LIC. No & Date	Amount
1	8015519, 25.03.2022	2203009252 date 14.03.2022	918911.50	9033308, 09.06.2022	2111004332 date 10.11.2021	918911.50
2	8089489, 31.03.2022	2203000187 date 01.03.2022	685864.20	9020656, 08.06.2022	2111004332 date 10.11.2021	685864.20
3	8645639, 12.05.2022	2110005265 date 29.10.2021	1541000	9126341, 15.06.2022	2111004332 date 10.11.2021	1541000.00
		Total Refund Amount:	3145775.70		Total	3145775.70

2.2 The Appellant had submitted the following documents along with their refund claim:

- Refund Application in the prescribed format for Rs. 31,45,775/-.

- Copies of all the said three Warehouse Bill of Entries.
- Copies of all the said three Ex-Bond Bill of Entries.
- Declaration given towards unjust enrichment.
- The "Customs Duty refund receivable Ledger" duly signed by the Chartered Accountants.
- Chartered Accountant's certificate regarding the discharge of unjust enrichment.

2.3 The Appellant had imported Nylon-6 Chips of various grades and they have kept the goods in the Bonded Warehouse vide the aforesaid Warehouse Bill of Entries. They filed the said warehouse bill of entries by loading the said RODTEP/RODCTL E-scrip Licenses instead of only debiting the Warehouse Bond. Further, they had submitted that, they approached the department to recall and remove the license from the system. However, they were unable to delete the license from the warehouse bill of entries. Subsequently, again while filing the Ex-Bond Bill of Entries, the Appellant used another RODTEP/ROSCTL E-scrips for payment of Basic Customs Duty against import of Nylon Chips. Thus, they have paid the duty twice and hence have claimed the refund of duty excess paid.

2.4 Vide Order-In-Original No. 04/ICD-Tumb/DC-VRK/Ref/AYM SYNTEX LTD/2022-23 dated 16.11.2022, passed by the Deputy Commissioner of Customs, ICD Tumb, the said refund claim was rejected stating that refund claim of Rs. 31,45,775/- filed by M/s. AYM Syntex Ltd. was not maintainable and liable for rejection.

2.5 Being aggrieved with the OIO No. 04/ICD-Tumb/DC-VRK/Ref/AYM SYNTEX LTD/2022-23 dated 16.11.2022, M/s. AYM Syntex Ltd., preferred an appeal before Commissioner of Customs (Appeals), Ahmedabad. Vide Order-In-Appeal No. AHD-CUSTM-000-APP-461-23-24 dated 28.02.2024, the Commissioner of Customs (Appeals), Ahmedabad has allowed the appeal filed by M/s. AYM Syntex Ltd., by way of remand to the adjudicating authority for passing fresh order with direction that the adjudicating authority shall examine the available facts, documents, submissions made by the appellant and issue speaking order following principles of natural justice and legal provisions.

2.6 Referring to the OIA No. AHD-CUSTM-000-APP-461-23-24 dated 28.02.2024, M/s. AYM Syntex Ltd., vide letter dated 12.04.2024, have requested the adjudicating authority to grant PH on 10th July, 2024. Personal Hearing was fixed on 10.07.2024. Shri Viren C Dayal, Authorised representative appeared on behalf of M/s. AYM Syntex Ltd. and requested for one-week time for written submission along with request to sanction the refund claim for an amount debited i.r.t. Warehouse Bills of Entry No. 8015519 dated 25.03.2022, 8089489 dated 31.03.2022 and 8645639 dated 12.05.2022. Post hearing, M/s. AYM Syntex Ltd., vide letter dated 13.07.2024, have submitted their written submission and quoted various judgments on which they have relied upon where refund in cash allowed in case duty credit was not possible.

2.7 Consequently, the Adjudicating Authority passed the impugned order as under:

- i. He rejected the refund of Rs. 31,45,775/- (Rupees Thirty One Lakh Forty Five Thousand Seven Hundred Seventy Five only) claimed by M/s. AYM Syntex Ltd, SURVEY NO 374/1/1, VILLAGE SAILY, SILVASA, 396230, under Section 27 of Customs Act, 1962.

2.8 Being aggrieved with the impugned order, the Appellant has filed the present appeal. As this appeal is against rejection of refund claim, pre-deposit under Section 129E of the Customs Act, 1962 is not required. In the Form C.A.-1, the date of communication of the impugned order dated 23.07.2024 has been shown as 23.07.2024 and the present appeal has been filed on 10.09.2024. As the appeal has been filed within the normal time-limit of 60 days, as prescribed under Section 128(1) of the Customs Act, 1962, it has been taken up for disposal on merits.

3. SUBMISSIONS OF THE APPELLANT:

The Appellant has filed the present appeal wherein they have submitted grounds which are as under:

3.1 The appellant has submitted that the Deputy Commissioner of Customs, ICD-Tumb, Umbergaon, erred in rejecting the Appellant's application for refund of the duty of Rs.31,45,775/-, which admittedly on his own finding,



was not payable at the time of Warehousing of the goods and which was wrongly paid at the time of Warehousing of the goods by debit of RODTEP/ ROSCTL Scrips. The Deputy Commissioner erred in rejecting the refund application without issuing any Show Cause Notice and without granting a personal hearing to the Appellant. The impugned Order-in-Original is therefore passed in violation of the principles of natural justice and is liable to be set aside on this ground itself.

3.2 Without prejudice to the aforesaid ground, in any event, the Deputy Commissioner having himself held that no duty was payable at the time of Warehousing of the goods, he should have granted refund of the duty paid at the time of Warehousing of the goods. The Deputy Commissioner should have held that since the duty was not payable at the time of Warehousing of the goods and since the Appellant had paid duty twice on the said goods, first at the time of Warehousing by the debit of the three Scrips dated 14-3-2022, 1-3-2022 and 29-10-2021 respectively and second, at the time of home consumption clearance of the said good by debit of the scrip dated 10-11-2021, there was double payment of duty on the said goods and therefore the Appellant was entitled to refund of the duty wrongly paid at the time of Warehousing of the goods.

3.3 The Deputy Commissioner seriously erred in holding that since there is no liability to pay duty at the time of Warehousing of the goods, no refund can be granted of the duty wrongly paid at the time of Warehousing of the goods. He erred in not appreciating that the very fact that duty was not payable at the time of Warehousing of the goods, is itself ground for refund of the duty wrongly paid at the time of Warehousing of the goods. Reliance is placed in this behalf on the decision of the Hon'ble Tribunal in the case of Dhariyal Chemicals v CCE - 2022-TIOL-115-CESTAT-AHM, in which it is held that where duty was not payable and yet it, was paid, that itself is a ground for grant of refund of the duty so paid and the same cannot be a ground for rejecting the claim for refund of duty.

The Deputy Commissioner has seriously erred in his interpretation of Section 27(1) of the Customs Act 1962, which provides for refund of duty paid or borne by the person claiming the refund. He erred in proceeding on the basis that since Section 27 provides for refund of duty paid by the importer, no refund

can be claimed where no duty was payable. The said interpretation placed by the Deputy Commissioner on Section 27 is totally absurd and perverse. He erred in not appreciating that question of refund of duty paid can arise only when the duty of which the refund is claimed was not payable. The fact that duty was not payable, but wrongly paid, becomes a ground for grant of refund and not for rejecting the refund.

3.5 The Deputy Commissioner erred in proceeding on the basis that the duty was paid intentionally though the same as not payable at the time of the warehousing of the goods. There is no basis for such a finding. In any event, once it is an admitted position that duty was not payable, the same has to be refunded irrespective of whether the payment was mistakenly made or was intentionally made. Reliance is placed in this behalf on the decision in Dhariyal Chemicals v CCE - 2022-TIOL-115-CESTAT-AHM, in which though the duty was voluntarily paid, it was held that since the same was not payable, the same had to be refunded.

3.6 The Deputy Commissioner erred in holding that the Appellant had suo-motu debited the E-Scrips. He erred in not appreciating that the E-Scrips are debited by the system and not by the Appellant. In any event, the same is entirely irrelevant since as held in the aforesaid decision, when duty which was not payable has been paid, that is a ground to refund the duty paid and not a ground to reject the refund claim.

3.7 The Deputy Commissioner erred in proceeding on the basis that the Appellant deliberately paid the duty by debit of the Scrips at the time of warehousing of the goods, with a view to encash the e-Scrips by claiming cash refund. The Deputy Commissioner erred in not appreciating that the Appellant had sought reversal of the said debit; however, the same could not be reversed in the system. In any event, the said reason advanced by the Deputy Commissioner is totally misconceived and untenable since the refund need not be ordered in cash and the same can be ordered by Re-credit of the Scrips with the amount of duty which was debited in the Scrips. The question therefore of encashing the e-scrips does not arise. Without prejudice to the aforesaid submission, in any event, there is no bar in law from granting cash refund of

duty paid by debit of Scrip as laid down in Jaideep Ispat & Alloys P. Ltd v CC 2022 (379) ELT 483.

3.8 The Appellants rely on the following Judgements where refund in cash was allowed in case duty credit was not possible:

- a. Dhariyal Chemicals Vs. CCE-2022-TIOL-115-CESTAT-AHM.
- b. 2003(7) TMI 177-CESTAT, MUMBAI, Other Citation: 2003 (158) E.L.T. 215 (Tr.-Mumbai) Commissioner of C. Ex. Ahmedabad Vs. Babu Textile Industries, wherein refund of duty paid through RG23A Part-II Register (MODVAT Credit) is allowed in cash.
- c. 2004 (4) TMI 175-CESTAT, Mumbai, Other Citation: 2004 (170) E.L.T. 507 (Tri-Mumbai) Commissioner of C. Ex. Ahmedabad-I Vs. Arcoy Industries.
- d. 2001 (10) TMI 208-CEGAT, New Delhi, other Citation: 2002 (147) E.L.T. 457 (Tri. Del.) Eicher Tractor Vs. Commissioner of C. Ex. Hyderabad, wherein refund of duty paid through RG23A Part-II Register (MODVAT Credit) is allowed in cash.
- e. 2019 (3) TMI 718-CESTAT Delhi, other Citation: 2019 (369) E.L.T. 1287 (Tri.Del.) CC New Delhi ICD TKD Export Vs. SEL Manufacturing Company Ltd., wherein it is held that amount deposited during investigation by surrendering DEPB / Excise rebate claim is eligible for refund in cash.
- f. 2016 (2) TMI 247- Delhi High Court, other Citation: 2016 (334) E.L.T. 624, Allen Diesels India Pvt. Ltd. Vs. Union of India & Ors., wherein it is held that SAD amount paid through DEPB Scrips is eligible for refund in cash.
- g. 1978 (2) TMI 207- Delhi High Court, other Citation: 1978 (2) E.L.T. 127 (Del) Modi Rubber Ltd., Modinagar Vs. Union of India and Ors.
- h. 1989 (12) TMI 216- CEGAT, New Delhi, Bombay High Court, other Citation: 1994 (70) E. L. T. 722 (Tribunal) National Organic Chemicals Inds. Ltd. Vs. Collr. of C. Ex. Bombay-III, wherein it is held that the appellant unable to set-off of duty paid on input namely, 'Cobalt Octate' used by the appellants in manufacture of their product during the period June to September 1977 under

provisions of Notification No. 178/77 as the said notification was rescinded, therefore, entitled to claim refund in cash also.

3.9 The Appellant relay order No. 38/90-C dated 17-1-1990 in Appeal No. E/1900/85-C in the case of M/s. Hindustan Lever Ltd. v. Collector of Central Excise, Bombay [1990 (47) E.L.T. 466 (Tri.)], in which the Tribunal has held that such amount can be claimed by way of cash refund also.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 24.06.2025, following the principles of natural justice wherein Shri Vikas Mehta, Consultant; and Shri. Sushant Patil, Asstt. Manager Tax, appeared for the hearing. They reiterated the submission 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 Deputy Commissioner of Customs, ICD Tumb, and the defense put forth by the Appellant in their appeal.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

- i. Whether the impugned order has correctly interpreted Section 27(1) of the Customs Act, 1962, in the context of duty collected when no duty was payable.
- ii. Whether the adjudicating authority's finding that the Appellant suo motu or intentionally debited the Scrips to encash them as cash refund, is sustainable.
- iii. Whether the adjudicating authority has adequately followed the directions of the previous remand order and provided a reasoned justification for rejecting the refund.
- iv. Whether the government can retain duty admittedly paid in excess due to the system's debit and subsequent double payment.

5.2 The Adjudicating Authority's interpretation of Section 27(1) is fundamentally flawed. Section 27 provides for a refund of "duty paid" or "borne"

by a person. The very premise of a refund claim is that an amount has been paid which was either in excess of what was due, or not due at all, or subsequently became refundable. To argue that no refund can be granted because no duty was "payable" at the time of warehousing is perverse. The "not payable" aspect is precisely the ground for claiming the refund, not for rejecting it.

5.3 This principle has been upheld by the CESTAT in Dhariyal Chemicals v CCE - 2022-TIOL-115-CESTAT-AHM. This judgment squarely addresses the situation where duty was voluntarily paid but found not payable, and held that it must be refunded. The adjudicating authority's failure to address or distinguish this direct precedent is a serious flaw.

5.4 The Adjudicating Authority's finding that the Appellant intentionally debited the Scrips to convert them into cash refund is speculative and lacks conclusive evidence. The Appellant clearly explained that the debit occurred due to the system's operation when the Scrips were inadvertently declared at the warehousing stage, and they later attempted to get the debit reversed, but the system did not allow it. Furthermore, as argued by the Appellant and supported by judicial precedents like Jaideep Ispat & Alloys P. Ltd v CC 2022 (379) ELT 483, there is no absolute bar in law against granting cash refund of duty paid by debit of Scrip, if re-credit is not feasible. The question of a motive to encash is irrelevant, if the duty was genuinely paid twice and one payment was erroneous. The department cannot retain an amount collected in excess due to its own system's limitations or an importer's bona fide mistake. The National Organic Chemicals Industries Ltd. Vs. Collector of C. Ex., Bombay-III [1994 (70) E.L.T. 722 (Tribunal)] case also supports the view that the assessee is entitled to refund if a duty was incorrectly paid due to a misapprehension, irrespective of intent.

5.5 The previous Order-in-Appeal dated 28.02.2024 explicitly remanded the matter for a "fresh hearing" and directed a "speaking and reasoned order" after examining "available facts, documents, [and] submission made by the appellants." The impugned order, however, largely reiterates the original grounds of rejection without genuinely engaging with or rebutting the Appellant's detailed submissions and cited case laws. By failing to adequately address the arguments related to Section 27 interpretation, the suo motu debiting of scrips, the double

payment scenario, and the judicial precedents cited, the adjudicating authority has not truly passed a "speaking and reasoned order" as directed. This amounts to a clear non-compliance with the remand directions. The Hon'ble Supreme Court in Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and Prom Steel Pvt. Ltd. [2012 (284) E.L.T. 677 (Tri.-Del.)] has consistently held that non-compliance with remand directions warrants intervention by the appellate forum.

5.6 This is a fundamental principle of taxation: 'no tax can be levied or collected without the authority of law' (Article 265 of the Constitution). When it is an undisputed fact that duty has been paid twice on the same quantity of goods, one of these payments is clearly an excess collection without the backing of law. The government cannot unjustly enrich itself by retaining such excess payment. The Appellant's situation, resulting from a system-driven debit and the inability to reverse it, leading to a compelled second payment, squarely falls into the category where excess collection is undeniable.

5.7 As mentioned in the impugned order, the appellant has submitted 'Customs Duty refund receivable Ledger' duly signed by a Chartered Accountant and also, a Certificate of C.A. regarding discharge of unjust enrichment, for which there is no contrary finding in the impugned order. The principle of unjust enrichment, typically applied in refund cases to prevent a claimant from profiting when the burden has been passed on, has no place in a clear case of double payment where the Appellant is merely seeking return of duty admittedly not due at one stage.

6. In view of the detailed discussions and findings above, I find that the impugned order passed by the adjudicating authority is legally unsustainable. The Adjudicating Authority has erred in interpreting Section 27 of the Customs Act, 1962, and in rejecting the refund claim based on a flawed understanding of the double payment scenario and the nature of duty debited through Scrips. The adjudicating authority has also failed to adequately follow the directions of the previous remand order.

7. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

- 1) I hereby set aside the Order-in-Original No. 10/ICD-Tumb/DC-VKY/Ref/AYM SYNTEX LTD /2024-25 dated 23.07.2024.
- 2) I hold that the duty of ₹31,45,775/- debited from RODTEP/ROSCTL Scrips at the time of Warehousing was erroneously collected, as no duty was payable at that stage.
- 3) I hold that the Appellant, M/s. AYM Syntex Limited, is entitled to the refund of ₹31,45,775/-.
- 4) I direct the adjudicating authority to process and sanction the refund of ₹31,45,775/- to the Appellant by way of re-credit of the corresponding Scrips with the amount equal to duty which was debited therein, or in cash, if re-credit is not possible, with applicable interest as per law, within a period of 30 days from the date of communication of this order.

The appeal filed by M/s. AYM Syntex Limited is hereby allowed.



(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

F.No. S/49-147/CUS/AHD/2024-25

Date: 30.06.2025

By E-Mail (as per Section 153(1)(c) of the Customs Act, 1962)

To,
M/s. AYM Syntex Ltd.,
Survey No.374/1/1,
Village Saily, Silvasa-396230.
(email: santosh@jaishipping.net)

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad. (email: ccoaahm-guj@nic.in)
2. The Principal Commissioner of Customs, Ahmedabad. (email: cus-ahmd-guj@nic.in ; rra-customsahd@gov.in)
3. The Deputy/Assistant Commissioner of Customs, ICD-Tumb (email: cusicd-tumb@gov.in)
4. Shri Vikas Mehta, Consultant, Ahmedabad (email: vikas@dlegal.in)
5. Guard File.

