F.No. S/49-28/CUS/JMN/24-25

सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
चौथी मंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.
दूरभाष क्रमांक Tel. No. 079-26589281

DIN- 20260371MN000000DA74

क	फ़ाइल संख्या FILE NO.	S/49-28/CUS/JMN/2024-25
ख	अपीलआदेश संख्या **ORDER-IN-APPEAL No.** (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	JMN-CUSTM-000-APP-475-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	31.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	OIO No. 10/DC/KKK/2021-22 dated 29.11.2021
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	31.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Jay Shree Chamunda Ma Plastic, Prop Shri Jayendrasinh Gohil Plot no. 156, Sarita Society, Street 9 Gadhechi Vadla Bhavnagar-364003

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 है.**

	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)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported on baggage.
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order - In - Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जोअन्य रसीद,फीस,दण्ड,जब्तीऔर विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु.1000/- (रूपए एक हज़ार मात्र) ,जैसा भी मामला हो,से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां. यदि शुल्क,मांगा गया ब्याज,लगाया गया दंड की राशिऔर 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, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलियअधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल,बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd 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 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 हज़ार रुपए**	
(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 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 के10 % अदा करने पर,जहां केवल दंड विवाद में है,अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा** **(ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

M/s Jay Shree Chamunda Ma Plastic, Prop Shri Jayendrasinh Gohil Plot no. 156, Sarita Society, Street 9 Gadhechi Vadla Bhavnagar-364003 (hereinafter referred to as "the appellant") have filed an appeal in terms of Section 128 of the Customs Act, 1962 against the Order in Original No. 10/DC/KKK/2021-22 dated 29.11.2021 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Customs House, Pipavav (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant, holders of Importer-Exporter Code No. 2412013543, imported the Cargo i.e. Plastic Waste Polythylene (Non Toxic Non Hazardous)' in two containers bearing No. MSKU9907810 & TTNU9874962 against B/L No 559666223 dated 16.04.2013 by vessel MV Maersk KIMI V-1305 dated 28.04.2013 from UAE.

2.1 The appellant did not file BOE against B/L No 559666223 dated 16.04.2013, within the prescribed time limit. For this, the custodian i.e. M/s APM Terminal, Pipavav Port has served three notices on 07.03.2014, 24.03.2014 and 10.04.2014, to the appellant under section 48 of the Customs Act, 1962, for clearing the above mentioned cargo i.e. 'Plastic Waste Polythylene (Non Toxic Non Hazourdous). However, the appellant did not respond to said custodian. The custodian i.e. M/s APM Terminal, Pipavav Port 11.08.2014 requested the Deputy / Assistant Commissioner of Customs, Customs House, Gujarat Pipavav Port Limited, Pipavav to grant permission for seal cutting of Container bearing No. MSKU9907810 & TTNU9874962 for the purpose of assessing the value of the said cargo. The permission for the same was granted to the custodian on 09.09.2014. The said custodian vide letter dated 11.04.2016 requested Deputy /Assistant Commissioner, Custom House Pipavav to grant permission for auction and submitted the valuation report of the said cargo issued by government approved valuer i.e. B.G.Bhatt & Co., Ahmedabad as a Chartered Engineer. Further, he reported that the above mentioned cargo have value of Rs.5,06,000/-.

2.2 During the course of examination the said goods were found as per Bill of Lading "Plastic Waste Polyethylene" which falls under the chapter heading 39. Further, as per DGFT policy Circular No. 20/2002-2007 dated March 12, 2003 which is inter alia as under:-

"Subject:- Procedure relating to import of Plastic Waste/ Scarp"

Attention is invited to Public Notice No. 392 (PN)/92-97 dated 01.01.1997 according to which import of Plastic Waste/Scrap(Except PET Bottle Waste/Scrap) and animal dung or animal excreta shall not, be permitted, except against a license."

As per above policy, the importation of Plastic Waste shall not be permitted except against a license. Since, the said import goods i.e. 'Plastic Waste Polyethylene (Non Toxic Non Hazardous)' is imported without license, therefore, the said goods comes under chapter 39 appears to be prohibited.

2.3 As per Basel No B3010 of schedule VI of Hazardous Waste (Management Handling, Transboundary Movement) Rules, 2016 which interalia as under:

SCHEDULE VI

(See rules 12(6), 12(7) and 14(1))

Hazardous and other wastes prohibited for import

B3010	*Solid plastic waste* *The following plastic or mixed plastic waste, prepared to a specification:* *Scrap plastic of non-halogenated polymers and co-polymers, including but not limited to the following:* *Ethylene, Styrene, Polypropylene, polyethylene terephthalate, Acrylonitrile, Butadiene, Polyacetals, Polyamides, polybutylene terephthalate, Polycarbonates, Polyethers, polyphenylene sulphides, acrylic polymers, alkanes C10-C13 (plasticiser), polyurethane (not containing CFC's), Polysiloxanes, polymethyl methacrylate, polyvinyl alcohol, polyvinyl butyral, Polyvinyl acetate* *Cured waste resins or condensation products including the following:*

	urea formaldehyde resins, phenol formaldehyde resins, melamine formaldehyde resins, epoxy resins, alkyd resins, polyamides *The following fluorinated polymer wastes (excluding post-consumer wastes):* *perfluoroethylene/ propylene, perfluoro alkoxy alkane, tetrafluoroethylene/per fluoro vinyl ether (PFA), tetrafluoroethylene/per fluoro methylvinyl ether (MFA), polyvinylfluoride, polyvinylidenefluoride*

Since the goods i.e. Plastic Waste Polyethylene (Non Toxic Non Hazourdous)' covers under Schedule VI (Hazardous and Other wastes prohibited for import) of Hazardous Waste (Management Handling, Transboundary Movement) Rules, 2016. Hence, the said goods comes under chapter 39, appears to be prohibited.

2.4 On the basis of DFGT policy Circular No. 20/2002-2007 dated March 12, 2003 and Basel No B3010 of schedule VI of Hazardous Waste (Management Handling, Transboundary Movement) Rules, 2016, the importation of said commodity comes under prohibited items and are liable for confiscation under section 111(d) of the Customs Act, 1962. The said cargo cannot be cleared through e-auction, since the cargo falls under prohibited items and therefore, the process of e-auction was not initiated by the said Custodian under Section 48 of the Customs Act, 1962. The said goods were seized under panchnama dated 20.12.2018 under section 110 of the Customs At, 1962 and the said cargo were handed over to the Custodian i.e. M/s APM Terminal, Pipavav under Supratnama dated 20.12.2018 for safe custody.

2.5 A Show Cause Notice was issued to the appellant for confiscation of the goods under section 111(d) of the Customs Act, 1962, valued at Rs. 5,06,000/- and for imposition of Penalty under section 112(a)(1) of the Customs act 1962.

2.6 The adjudicating authority vide the impugned order held that goods, declared as Plastic Waste Polyethylene, weighing 52.700 Metric Tons, having assessable value of Rs.5,06,000/- are liable for confiscation under

111(d) of the Customs Act, 1962. However, he refrain from actual confiscation of the goods as they are to be re-exported mandatory. The adjudicating authority ordered for re-export the goods within three months as per Para 15 of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 otherwise the goods will be confiscated under 111(d) of the Customs Act, 1962. He Imposed penalty of Rs.5,06,000/ on the appellant under Section 112(a)(1) of the Customs Act, 1962.

3. Being aggrieved with the impugned order the appellant has filed the present appeal contending on various grounds as under:

3.1 Learned Deputy Commissioner erred in not appreciating that admittedly appellant has not filed the Bill of Entry and sought clearance of goods, and hence in view of following decisions, he cannot be held as importer of the goods, and hence no penalty can be sustained upon the appellant. He relied upon the following decisions:

i. Manish Karia V. CC (Import), Nhava Sheva-2014 (301) ELT 415 (Tri. Mum)

ii. Bhavane PTE LTD - Commissioner of Customs, Chennai - 2011 (266) ELT 240 (Tri. - Chennai)

iii. Commissioner of Customs, Kandla V. Guljag Industries Ltd-2010 (259) ELT 710 (Tri. Ahd)

iv. Bashayir V CC, Chennai 2006 (206) ELT 5641 (Tri. Chennai).

3.2 The appellant submits that he is not the owner of the goods, nor he has held out himself to be the importer of the goods, and hence section 111 (d) is not applicable to the appellant; in that view penalty upon the appellant under section 112 (a) (1) of the Act is not sustainable. Further, without prejudice to the aforesaid, and in any event, the goods in question are not prohibited absolutely; and it is not the case in the impugned order that appellant has any role in the allegedly improper importation of the goods; the case in the impugned order is that importer has not filed bill of entry within time. In that view also, penalty upon the appellant under section 112(a) (1) of the Act is not tenable.

4. Shri Rahul Gajera, Advocate, appeared for personal hearing on 12.01.2026 on behalf of the appellant. He reiterated the written submission made at the time of filing appeal.

5. Before adverting to the merits of the case, it is observed that the appellant, in the appeal memorandum (Form No. C.A.-1), has claimed to have received the impugned order dated 29.11.2021 only on 01.04.2024, i.e., after a lapse of more than two years. The appellant has also contended that the Show Cause Notice was not served upon them. In order to verify the correctness of these assertions, a letter bearing F. No. S/49-28/CUS/JMN/2024-25/5248 dated 15.01.2026 addressed to the Deputy Commissioner of Customs, Customs House, Pipavav, seeking details regarding the date and mode of service of the impugned order as well as the Show Cause Notice, along with documentary evidence. In response, the Assistant Commissioner, Customs House, Pipavav, vide letter F. No. VIII/48-06/Misc-corr/20-21/Pt-III dated 19.01.2026, informed that as per the records available with their office, the impugned order dated 29.11.2021 was dispatched to the appellant by Registered Post on 10.12.2021 and was duly delivered at the appellant's premises on 12.12.2021. The dated acknowledgement received from the postal authorities was also furnished in support. It was further informed that the Show Cause Notice was dispatched on 14.06.2019 through Shree Maruti Courier Services Pvt. Ltd. and was delivered to the appellant on 15.06.2019. Documentary evidence in the form of proof of delivery and courier tracking details was also provided to substantiate the service.

5.1 Further a copy of letter F.No. VIII/48-06/Misc-Corr/20.21/Pt-III dated 19.01.2026 received from the Assistant Commissioner, Customs House, Pipavav as discussed above was sent to the appellant for offering his comments vide this office letter F. No. S/49-28/CUS/JMN/2024-25 dated 02.02.2026. In reply the advocate of the appellant vide letter dated 12.02.2026 submitted that he never received the said order dated 29.11.2021 prior to the date disclosed in the appeal. The signature appearing on the Regd. A.D. acknowledgment furnished by the department is not his and therefore the alleged service cannot be treated as valid or binding. Regarding the Show Cause Notice dated 14.06.2019, he submitted that although the signature on the courier slip appears similar, but he stated that he did not receive the notice. The appellant also submitted Affidavit in this regard.

5.2 From the report dated 19.01.2026 received from the Assistant Commissioner, Customs House, Pipavav, it is evident that the impugned Order-in-Original dated 29.11.2021 was dispatched to the appellant by Registered Post on 10.12.2021 and was duly delivered at the appellant's premises on 12.12.2021. This fact is duly corroborated by the dated acknowledgement issued by the postal authorities and placed on record. The appellant has contended that the signature appearing on the Registered A.D. acknowledgement is not his. In this regard, I am of the considered view that the impugned order was duly served at the appellant's declared address through Registered Post, as evidenced by the acknowledgement on record. It is not practicable that the addressee must personally receive the communication in every case. Service effected at the declared address and acknowledged by a person present at the premises constitutes valid service. Accepting the appellant's contention would render the statutory mode of service through registered post unworkable, as delivery cannot be made contingent upon the personal presence of the addressee at all times. In the absence of any cogent evidence to disprove such service, the contention of the appellant is not tenable. Further, with regard to the service of the Show Cause Notice, the appellant has admitted that the signature appearing on the courier receipt is his, though he has claimed non-receipt of the notice. This admission itself indicates that the Show Cause Notice was duly delivered, and the plea of non-receipt is not credible. Accordingly, there exists clear and reliable documentary evidence establishing proper and effective service of both the impugned order and the Show Cause Notice upon the appellant. In this context, reference is made to Section 153 of the Customs Act, 1962, which prescribes the modes of service of any decision, order, summons, notice or other communication under the Act. The said provision specifically recognizes service through registered post, speed post, or courier with acknowledgement due, delivered to the person concerned or to his authorised representative at his last known place of business or residence, as valid service. Once such communication is duly dispatched and acknowledged as delivered, the requirement of service stands fully satisfied in the eyes of law.

5.3 It is evident from the records that the appellant received the impugned order dated 29.11.2021 through Registered Post on 12.12.2021. It is further observed that the present appeal has been filed on 10.04.2024, i.e., with a delay of 790 days beyond the prescribed statutory period of 60 days. In this regard, I have gone through the provision of limitations for filing an appeal as specified under Section 128(1) of the Customs Act, 1962. The same is reproduced hereunder:

> *"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.]"*

5.4 As per the legal provisions under Section 128 of the Customs Act, 1962, 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.

5.5 It will also be relevant to refer to the judgment of Hon'ble Supreme Court in case of Singh Enterprises – [2008 (221) E.L.T. 163 (S.C.)], wherein the Hon'ble Apex Court had, while interpreting the Section 35 of the Central Excise Act, 1944, which is pari materia to Section 128 of the Customs Act, 1962, held that the appeal has to be filed within 60 days, but in terms of the proviso, further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The relevant para is reproduced below:

"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner 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. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."

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5.6 The above view was reiterated by the Hon'ble Supreme Court in Amchong Tea Estate [2010 (257) E.L.T. 3 (S.C.)]. Further, the Hon'ble High Court of Gujarat in case of Ramesh Vasantbhai Bhojani – [2017 (357) E.L.T. 63 (Guj.)] and Hon'ble Tribunal Bangalore in the case of Shri Abdul Gafoor Vs Commissioner of Customs (Appeals) [2024-TIOL-565-CESTAT-BANG] took a similar view while dealing with Section 128 of the Customs Act, 1962.

5.7 In terms of legal provisions under Section 128 of the Customs Act, 1962 and in light of the judicial pronouncements by the Hon'ble Supreme

Court, Hon'ble High Court and Hon'ble Tribunal Bangalore, it is settled proposition of law that the appeals before first appellate authority are required to be filed within 90 days, including the condonable period of 30 days as provided in the statute, and the Commissioner (Appeals) is not empowered to condone any delay beyond 30 days.

5.8 In light of the above observation, I find that the appeal has been filed after 90 days from the date of receipt of the order. I am not empowered to condone the delay in filing the appeal beyond the period specified in Section 128 of the Customs Act, 1962. Hence, the same is held to be time barred.

6. In view of above, I reject appeal on the grounds of limitation without going into the merits of the case.

सत्यापित/ATTESTED
अधीक्षक/SUPRERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

By Registered Post A.D.

F. No. S/49-28/CUS/AHD/2024-25 Dated --31.03.2026

To,

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कार्यालय आयुक्त (अपील), सीमा शुल्क अहमदाबाद

Copy to:

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs (Prev), Jamnagar.
3. The Deputy/Assistant Commissioner of Customs, Customs House, Pipavav.
4. Guard File.