



सरकारी जारी

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  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009  
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250771MN000000E022

क	फाइल संख्या FILE NO.	S/49-249/CUS/MUN/2023-2024
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-124-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	10.07.2025
ड	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original No. MCH/222/AC/KRP/REF/2023-24 dated 14.02.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	10.07.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Sunrise Trader, C-6/9, Sector-IV, Eldeco Estate One, GT Road, Panipat



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 जाच 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 :				
	<table border="0"> <tr> <td style="vertical-align: top;">सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td><b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b></td> </tr> <tr> <td style="vertical-align: top;">दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2<sup>nd</sup> 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	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
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5.	<p>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-</p> <p>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 -</p> <p>(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.</p> <p>(ख) 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;</p> <p>(ग) 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; पाँच हजार रुपए</p> <p>(ब) 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 ;</p> <p>(द) 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.</p> <p>(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</p> <p>(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 ।</p> <p>(द) 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.</p> <p>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.</p> <p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>				
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**ORDER-IN-APPEAL**

The present appeal has been filed by M/s. Sunrise Trader, C-6/9, Sector-IV, Eldeco Estate One, GT Road, Panipat, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. MCH/222/AC/KRP/REF/2023-24 dated 14.02.2024 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner of Customs, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant had filed a refund claim for Rs. 5,58,351/- under the provisions of Section 27 of Customs Act, 1962 read with Notification No.102/2007-Cus., dated 14.09.2007 for 3 nos. of Bills of Entry, vide their letter NIL dated received by the office of Assistant Commissioner on 20.09.2023. The details are as under-

S. No	BE No. & Date	Quantity	Item	4% SAD Claimed.
01	8369103/30.01.2017	21000	Polyester Bed Cover	153227.40
02	8137442/10.01.2017	21000	Polyester Bed Cover	152562.20
03	8136939/10.01.2017	21000	Polyester Bed Cover	152562.20
			Total	458351.80

2.1 As per Notification No. 102/2007 dated 14.09.2007 as amended vide Notification No. 93/2008-Customs dated 01.08.2008, the period of limitation for filing of refund claim is one year from the date of payment of the said additional duty. Further, as per Notification No. 93/2008 dated 01.08.2008 "*(c) the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer before the expiry of one year from the date of payment of the said additional duty of customs;*". As per Notification No. 102/2007 dated 14.09.2007 as amended vide Notification No. 93/2008-Customs dated 01.08.2008, the limitation of one year shall be computed from the date of payment of the said additional duty of Customs. Therefore, the refund claim of Rs. 4,58,351/- filed by the appellant appeared to be barred by the limitation of time prescribed under Section 27 of the Customs Act, 1962 and Notification No. 102/2007 dated 14.09.2007 as amended vide Notification No. 93/2008-Customs dated 01.08.2008. Thus, the refund claim of Rs. 4,58,351/- filed by the appellant appeared to be improper and liable to be rejected.




2.1 In view of above, Show Cause Notice F. No. CUS/RFD/OTH/321/2023-REF dated 29.11.2023 issued to the appellant, calling upon them to show cause as to why:

(i) The refund claim amounting to Rs. 4,58,351/-should not be rejected under the provisions of Section 27 the Customs Act, 1962 and time limit mentioned in Notification No. 102/2007 dated 14.09.2007 as amended vide Notification No. 93/2008-Customs dated 01.08.2008.

2.5 The adjudicating authority vide the impugned order as ordered as under:

i. He rejected the refund of Rs. 4,58,351/- (Rupees Four lakhs Fifty Eight Thousands Three Hundred Fifty One Only) as per as per provisions of Notification No. 102/2007 dated 14.09.2007 as amended vide Notification No. 93/2008-Customs dated 01.08.2008 read with Section 27 of the Custom Act, 1962.

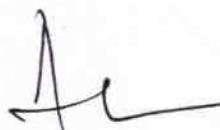
### **3. SUBMISSIONS OF THE APPELLANT:**

Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

  
3.1 The fact in issue here which the Adjudicating authority also agreed with is relevant date from which the period of 1 year should be calculated for claiming refund. The issue was clearly explained to the Adjudicating authority along with the relevant facts in the written reply filed and also during the personal hearing but still for no apparent reason the refund claim was rejected. The below mentioned dates are not in dispute and agreed upon by the Adjudicating authority in the impugned order.

#### **List of important dates:**

- Filing of bill of entries- 30.01.2017 & 10.01.2017.
- Goods seizure all consignments - 25.03.2017 & 11.04.2017
- SCN for misclassification & confiscation - F.No. DRI/AZU/CI/Enq-S(int-3)/2017 dated 04.05.2017
- CESTAT



- Ahmedabad order- F.No. A/10013-10026/2022 dated 11.01.2022.
- Letter for Provisional Release on bond subject to Supreme Court Judgment- 21.02.2023.
- Provisional Release of goods dated 12.08.2022 & 15.10.2022.
- Final Adjudication by Supreme Court: Civil Appeal No. 5440-5453/2022 order Dated 05.09.2022.
- Final Assessment of goods - 21.04.2023.
- Filing of Refund claim 20.09.2023 (mentioned in Show Cause Notice)

3.2 Since the above mentioned dates were not in dispute there was no reason for the authority to reject the claim of appellant as in the impugned order itself, the Adjudicating authority agreed that the relevant date for limitation period would be 1 year from the date of final assessment of good as quoted under:

"Further, provisions of aforesaid Section 27 sub clause (c) of Sub Section I(B) of Customs Act, 1962, are as under:-

*"27. (1) Any person claiming refund of any duty or interest-*

*1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely*

*(c) where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment."*

3.3 The provisions referred by the appellant itself clarifies that if refund of any differential duty arises after re-assessment which were initially provisionally assessed as per Section 18 of Customs Act, 2024 the limitation of one year shall be computed from date of such reassessment. In this instant case refund of SAD arises after domestic sale of imported goods. Therefore computation of 1 year in this case cannot be regarded as per aforesaid provisions referred by the appellant.

3.4 It is clearly evident from the order of Adjudicating authority that he also agreed with the Appellant's submission that period of limitation is to be reckoned with from the date of final assessment of goods i.e. 21.04.2023 and



date of filing of refund claim is 20.09.2023 which is well within 1 year but still for no apparent reason in the last line he rejected the claim holding computation of 1 yr in this case cannot be regarded as per provisions referred by the appellant.

3.5 It is really strange that the Adjudicating authority does not dispute the dates of filing of claim or final assessment date and reproduced the provision relied upon by the appellant regarding the limitation period and still rejected the refund claim. It seems the claim was to be rejected no matter how legitimate the claim is which absolutely wrong.

3.5 Secondly, according to the Adjudicating Authority "*I find as per Notification No. 102/2007 dated as amended vide Notification No. 93/2008-Customs dated 01.08.2008, the period of limitation for filing of refund claim is one year from the date of payment of the said additional duty*". Filing of refund has to be done according to Section 27 of Customs Act, 1962. The notifications mentioned above are subject to the Section 27 not vice versa. As per the Section 27 sub clause (c) of Sub Section 1(B) it clearly mentions the relevant date of refund shall be the date of final assessment of goods which in this case is 21.04.2023 and application for filing refund is 20.09.2023 which shows the claim of refund is well within the prescribed limit of 1 yr. therefore to take the payment of duty from the date of payment of duty would be contrary to the Section 27 of the customs Act 1962. Passing the order of refund without going through the relevant provisions and only picking up a part of notification to justify the rejection is bad in law.

3.6 More over it has been held in several cases including the Hon'ble Supreme Court of India that one year condition does not apply to the SAD refund matters as held in:

2014 (304) E.L.T. 660 (Del.) IN THE HIGH COURT OF DELHI S. Ravindra Bhat and R.V. Easwar, JJ., SONY INDIA PVT. LTD. Versus COMMISSIONER OF CUSTOMS, NEW DELHI

3.7 Section 27(1) of the Customs Act prescribes a time limit of expiry of "one year, from the date of payment of such duty or interest...". Section 27(1B) lists out three contingencies when the one year limit applies with modified effect. That provision has the effect of shifting the date from which the refund claim is to be reckoned. All that can be inferred from the term "so far as may be" would



be that specific provisions relating to the mechanism applicable for refund, in the Customs Act, applied; not the period of limitation. The Customs authorities had never understood Section 27(1) as to mean that a one year period of limitation was applicable. Audioplus (supra) and United Chemicals Industries (supra) are both testimony to this. It is the circulars/notifications of 2008 and No. 16/2009 which for the first time harped on the one year period of limitation. Circular No 6/2008, dated 28-4-2008 issued by the C.B.E. & C. stated that :

*"4. Time-Limit:*

*"4.1 In the Notification No. 102/2007-Cus., dated 14-9-2007, no specific time-limit has been prescribed for filing a refund application. Under the circumstances, a doubt has been expressed that whether the normal time-limit of six months prescribed in Section 27 of the Customs Act, would apply. In the absence of specific provision of Section 27 being made applicable in the said notification, the time-limit prescribed in this section would not be automatically applicable to refunds under the notification. Further, it was also represented that the goods imported may have to be dispatched for sale to different parts of the country and that the importer may find it difficult to dispose of the imported goods and complete the requisite documentation within the normal period of six months. Taking into account various factors, it has been decided to permit importers to file claims under the above exemption up to a period of one year from the date of payment of duty. Necessary change in the notification is being made so as to incorporate a specific provision prescribing maximum time-limit of one year from the date of payment of duty, within which the refund could be filed by any person. It is also clarified that the importers would be entitled to refund of duties only in respect of quantities for which the prescribed documents are made available and the claims submitted within the maximum prescribed time of one year. Unsold stocks would not be eligible for refunds."*

*"Plainly, therefore, Section 27 was understood as not applying to SAD cases, even though it was in the statute book for many years. Yet, with the introduction of the circular and then the notification (No. 93), the Customs authorities started insisting that such limitation period which was prescribed with effect from 01.08.2008 (by notification) became applicable. There is a body of law that essential legislative policy aspects (period of limitation being one such aspect) cannot be formulated or prescribed by*



subordinate legislation. *Khemka and Co. (Agencies) Private Ltd. v. State of Maharashtra, (1975) 35 STC 571* and other decisions are authority on the question that in matters which deal with substantive rights, such as imposition of penalties and other Olga other provisions that adversely affect statutory rights, the parent enactment must clearly impose such obligations; subordinate legislation or rules cannot prevail or be made, in such cases. The imposition of a period of limitation for the first time, without disseminated amendment, through a notification, therefore could not prevail."

Reliance is placed on the following case laws-

*Commissioner of Customs, (Import) ICD, New Delhi Versus Bhimeshwari Overseas reported at (2023) 8 Centax 176 (S.C.)*

*Special Leave Petition (Civil) Diary No. 23340 of 2023, decided on 4-7-2023*

*Customs : For refunding special additional duty, no statutory limitation period is applicable.*

*Refund (Customs) - Special Additional Duty - Limitation period In impugned order, High Court had followed its earlier decision in case of Sony India Pvt. Ltd. 2014 (304) E.L.T. 660 (Del.) to hold that refund of SAD could not be denied on ground of limitation On appeal by Revenue, HELD: No interference was called for against impugned order which was upheld accordingly - Section 27 of Customs Act, 1962. [para 2]*

*Appeal dismissed in favour of assessee*

#### CASE REVIEW

*Commissioner v. Bhimeshwari Overseas - (2023) 8 Centax 175 (Del.) - Affirmed [Para 2]*

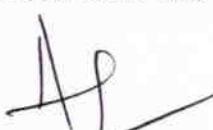
*REPRESENTED BY : S/Shri Balbir Singh, ASG, Prahlad Singh, Annirudh Sharma li, Ishaan Sharma, Praneet Pranav, Advocates and Mukesh Kumar Maroria, AOR, for the Petitioner.*

*[Order]. - Delay condoned.*

*2. This Court is of the opinion that the impugned order does not call for interference. The special leave petition is accordingly dismissed.*

*3. Pending application(s), if any, also stand disposed of.*

3.8 The above case laws were produced before the Assistant Commissioner also but it was held that the above Judgment is not relevant as



the disputed period was before issue of Notification No. 93/2008 but fails to mention the judgment went in great detail about the limitation period in the impugned notification. Lastly the filing of refund application is always after the final assessment of goods otherwise in all the cases the refund filed before that is always considered pre matured and hence rejected on that ground only. Therefore going by the final assessment of goods i.e. 21.04.2023 and refund filed is well within one year i.e 20.09.2023. The Appellant is also eligible for the appropriate interest from the date of filing of refund claim and due to department's delay. Therefore 3 months from date of filing of application of refund the appropriate interest with the principal amount be granted.

**PERSONAL HEARING:**

4. Personal hearing was granted to the Appellant on 27.05.2025 following the principles of natural justice wherein Shri Manish Saharan, Advocate, appeared for the hearing and he re-iterated 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 Assistant Commissioner, Customs , Mundra 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 refund claim of 4% SAD is time-barred as per the provisions of Section 27 of the Customs Act, 1962, read with Notification No. 102/2007-Cus., as amended.

5.2 The adjudicating authority's interpretation of the limitation period in the impugned order appears to be based on a narrow reading of Notification No. 102/2007-Cus., as amended by Notification No. 93/2008-Customs. While Notification No. 93/2008-Customs indeed inserted a clause specifying a one-year period from the date of payment of ADD for filing refund claims, the legal position regarding the applicability of Section 27 to SAD refunds has been a subject of judicial scrutiny. The Hon'ble High Court of Delhi, in the case of Sony



India Pvt. Ltd. Versus Commissioner of Customs, New Delhi, 2014 (304) E.L.T. 660 (Del.), extensively deliberated on this matter. The Court unequivocally held that Section 27(1) of the Customs Act, 1962, prescribing a one-year time limit, was never intended to apply to SAD refunds. The Court reasoned that the Customs authorities themselves had not applied this limitation for many years, and it was only with the introduction of Circulars and Notification No. 93/2008-Customs that this limitation was sought to be imposed. Crucially, the Delhi High Court emphasized that "essential legislative policy aspects (period of limitation being one such aspect) cannot be formulated or prescribed by subordinate legislation. The imposition of a period of limitation for the first time, without statutory amendment, through a notification, therefore could not prevail."

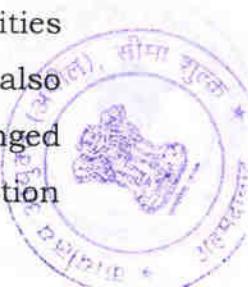
5.3 This ratio was squarely affirmed by the Hon'ble Supreme Court of India in Commissioner of Customs, (Import) ICD, New Delhi Versus Bhimeshwari Overseas, (2023) 8 Centax 176 (S.C.). The Supreme Court, while dismissing the Special Leave Petition, held that *"For refunding special additional duty, no statutory limitation period is applicable."* This pronouncement by the Apex Court is binding on all lower authorities. The adjudicating authority's contention that the Sony India Pvt. Ltd. judgment is not relevant because it pertained to a period before Notification No. 93/2008-Customs is a misreading of the judgment. The Sony India Pvt. Ltd. judgment precisely analyzed the validity and effect of Notification No. 93/2008-Customs in imposing a limitation period where none existed statutorily. The judgment clearly holds that such a limitation imposed through a notification, without corresponding statutory amendment to Section 27, cannot prevail. Therefore, the period of import (2017) in this case is covered by the legal principle established in these judgments.

5.4 Even assuming, for the sake of argument, that a limitation period were applicable, the adjudicating authority's rejection of the Appellant's reliance on Section 27(1B)(c) of the Customs Act, 1962, is unconvincing. Section 27(1B)(c) explicitly states: *"where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment."* The facts of the case clearly show a protracted legal process involving seizure, SCN, CESTAT order, Supreme Court judgment, provisional release, and finally, the final assessment of goods on 21.04.2023. The duty, in effect, remained in dispute until the final assessment. Therefore, the Appellant's argument that the limitation period should be reckoned from the date of final

assessment (21.04.2023) is in consonance with the plain language of Section 27(1B)(c). The refund claim filed on 20.09.2023 is undeniably within one year from this date.

5.5 The adjudicating authority's observation that "refund of SAD arises after domestic sale of imported goods. Therefore computation of 1 year in this case cannot be regarded as per aforesaid provisions referred by the noticee" is a non-sequitur. The "domestic sale" is a condition for claiming SAD refund, but it does not alter the "relevant date" for limitation purposes, especially when the assessment itself was subject to litigation and finalized much later. The provisional nature of the assessment and the subsequent finalization directly fall under Section 27(1B)(c).

5.6 . The adjudicating authority has failed to provide a compelling rebuttal to the Appellant's arguments, particularly concerning the Supreme Court and High Court judgments that directly address the non-applicability of statutory limitation to SAD refunds. Merely stating that the judgments are "not relevant" without a detailed explanation of their inapplicability in the context of the legal pronouncements regarding the imposition of limitation by notification is insufficient. The principle of *stare decisis* demands that lower authorities follow the pronouncements of higher courts. The adjudicating authority also failed to adequately reconcile the specific facts of this case, involving a prolonged legal battle and a delayed final assessment, with the spirit and letter of Section 27(1B)(c) of the Customs Act, 1962.



6. In light of the clear pronouncements by the Hon'ble Supreme Court and the Hon'ble High Court of Delhi that no statutory limitation period is applicable for SAD refunds, the very basis for the rejection of the refund claim by the adjudicating authority is rendered untenable. Even if a limitation were to be considered, the facts of the case, involving a final assessment much later than the import, bring the refund claim squarely within the ambit of Section 27(1B)(c) of the Customs Act, 1962. Therefore, the impugned order, being contrary to settled legal principles and judicial precedents, is liable to be set aside.

7. In view of the above findings, I hereby order as under:

(i) I hereby set aside the Order-in-Original No. MCH/222/AC/KRP/REF/2023-24 dated 14.02.2024.

(ii) I hold that the refund claim of Rs. 4,58,351/- for 4% Additional Duty of Customs (SAD) filed by M/s. Sunrise Trader is not time-barred.

(iii) The adjudicating authority is directed to sanction the refund of Rs. 4,58,351/- along with appropriate interest as per Section 27A of the Customs Act, 1962, from the date immediately after the expiry of three months from the date of receipt of the refund application until the date of refund.

8. The appeal filed by M/s. Sunrise Trader is hereby allowed.



F. No. S/49-249/CUS/MUN/2023-24

2368

By Registered post A.D/E-Mail

(AMIT GUPTA)

Commissioner (Appeals),  
Customs, Ahmedabad

Date: 10.07.2025

To,  
M/s. Sunrise Trader,  
C-6/9, Sector-IV, Eldeco Estate One,  
GT Road, Panipat

सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT  
सीमा बूलक (स.पी.ल), अहमदाबाद.  
CUSTOMS (APPEALS), AHMEDABAD.

Copy to:

1. The Chief Commissioner of Customs, Ahmedabad zone, Custom House, Ahmedabad.  
2. The Principal Commissioner of Customs, Custom House, Mundra.  
3. The Dy/Asstt Commissioner of Customs, Custom House, Mundra .  
4. Guard File.