F. No. CUS/RFD/RD/408/2023-Ref

कार्यालय, आयुक्त सीमा शुल्क, नया सीमा शुल्क भवन,
बालाजी मंदिर के पास, कांडला - (गुजरात)
OFFICE OF THE COMMISSIONER OF CUSTOMS: KANDLA
NEW CUSTOMS BLDG., NR. BALAJI TEMPLE, KANDLA-370210 (GUJARAT)
दूरभाष :02836-271468-469 फैक्स : 02836-271467

DIN: 20260471ML000000F6B4

SHOW-CAUSE-NOTICE

M/s Merino Industries Limited (Formerly known as M/s Century Laminating Co. Limited), Plot 44 K.M. Stone, Delhi-Rohtak Road, Village Rohad – 124501, District Jhajjar, Haryana (hereinafter referred to as the “noticee” for the sake of brevity) filed the refund claim for pre-deposit amount of Rs.5,00,000/- (Rupees five lakh only) alongwith interest vide their letter dated 04.08.2023, received on 31.08.2023.

2. The brief facts of the case are that the noticee has imported 285 MT of Phenol and filed Bill of Entry No. 13316 dated 27.08.2004 for the clearance, declaring the price to be USD 1085 per MT for the same. It was found that in the same vessel, identical goods of the same country of origin were imported at the price of USD 1350 per MT. It appeared that the noticee had under-invoiced the goods and therefore, the Show-Cause-Notice bearing No. S/10-30/SCN/ Century-Laminating-Co./2004/Gr.-II dated 20.12.2004 was issued to them proposing for the rejection of the declared value of USD 1085 per MT under Rule 10A of the Customs Valuation Rules, 1988 and enhancing the value to USD 1350 per MT as per the contemporaneous import noticed under Rule 5 of the Customs Valuation Rules, 1988. It was also proposed that the differential duty amount of Rs.14,32,138/- should be confirmed and recovered from them. The adjudicating authority vide the Order-in-Original No. KDL/AC-II/JPS/06/ 2006 dated 17.03.2006 rejected the transaction value of the imported goods under Rule 10A of the Customs Valuation Rules, 1988 and enhanced the value of the impugned goods from USD 1085 per MT to USD 1350 per MT as per the contemporaneous price noticed under Rule 5 of the Customs Valuation Rules, 1988. He also ordered for recovery of differential duty of Rs.14,32,138/-. Being aggrieved by the aforesaid Order-in-Original dated 17.03.2006, the noticee preferred an appeal before the Hon'ble Commissioner of Customs (Appeals), which was rejected vide the Order-in-Appeal No. 279/2006 dated 22.12.2006. Aggrieved by the said Order-in-Appeal dated 22.12.2006, the noticee filed an appeal before the Hon'ble Tribunal. The Hon'ble Tribunal vide the Order No. S/500 & 501/WZB/AHD/2007 dated 25.04.2007, directed the noticee to deposit a sum of Rs.5 lakh as pre-deposit for hearing of the appeal. Accordingly, the noticee made the deposit of Rs.5 lakh vide Challan No. 03 dated 14.06.2007. Thereafter, the Hon'ble CESTAT vide Final Order No: A/12536-12537/2018 dated 01.11.2018, remitted the matter back for de-novo adjudication on the issue of valuation.

3. Upon issuance of the Hon'ble CESTAT's Final Order No. A/12536-12537/2018 dated 01.11.2018, the noticee had filed the refund claim for pre-deposit amount of Rs.5,00,000/- (Rupees five lakh only) alongwith interest vide their letter dated 04.08.2023, received on 31.08.2023.

4. While processing the refund claim, the Assistant Commissioner (Refund), Custom House, Kandla found that in terms of the Circular No. 984/08/2014-CX dated 16.09.2014, issued by the CBEC, where the appeal is decided in favour of the party / assessee, he shall be entitled to refund of the amount deposited along with the interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 129EE of the Customs Act, 1962. Further as per the said Circular, the pre-deposit for filling appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 27 of the Customs Act, 1962. Therefore, in all cases where the appellate authority has decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the department or not. In the event of a remand, refund of the pre-deposit shall be payable along with interest. Therefore, Rs.5,00,000/- deposited by the noticee vide TR-6 Challan bearing No. 03 dated 14.06.2007 as pre-deposit in respect of the

Hon'ble Tribunal's Order No. S/500 & 501/WZB/AHD/2007 dated 25.04.2007, is required to be refunded along with interest in terms of the Circular No. 984/08/2014-CX dated 16.09.2014. After careful scrutiny of the refund claim in terms of the Circular No. 984/08/2014-CX dated 16.09.2014 and Section 129EE of the Customs Act, 1962, the Assistant Commissioner (Refund), Custom House, Kandla observed that, the Hon'ble CESTAT, Ahmedabad vide the Order No. A/12536-12537/2018 dated 01.11.2018 remanded the matter to the assessing authority for re-consideration of the valuation. Therefore, the Assistant Commissioner (Refund) has found that the noticee was eligible for the refund of pre-deposit amount of Rs.5,00,000/- and interest amount of Rs.3,41,753/- in terms of the Circular No. 984/08/2014-CX dated 16.09.2014 and Section 129EE of the Customs Act, 1962, and accordingly, vide the Order-in-Original No. KDL/AC/25/DSR/REF/2024-25 dated 03.05.2024, the refund of pre-deposit amounting to Rs.5,00,000/- and interest amount of Rs.3,41,753/- have been sanctioned to the noticee in terms of the Circular No. 984/08/2014-CX dated 16.09.2014 and Section 129EE of the Customs Act, 1962.

5. During the review proceedings of the aforesaid Order-in-Original No. KDL/AC/25/DSR/REF/2024-25 dated 03.05.2024, it was found that the Finance Act (No. 2), 2014 has been enacted on 06.08.2014; Section 129E and Section 129EE of the Customs Act, 1962 have been substituted with new Sections to prescribe mandatory pre-deposit as a percentage of the duty is in dispute or where duty and penalty are in dispute. The amended provisions apply to the appeals filed after 06.08.2014. Section 129E of the Customs Act, 1962 contains specific saving clause to state that all pending appeals / stay applications filed till the commencement of the Finance (No. 2) Act, 2014 shall be governed by the erstwhile provisions. Section 129EE of the Customs Act, 1962 has also been substituted to provide for payment of refund along with interest at the prescribed rate on the amount pre-deposited from the date of such payment till the date of refund. In exercise of the powers conferred under the new Section 129EE of the Customs Act, 1962, Notification No. 70/2014-Cus. (NT) dated 12.08.2014 has been issued specifying six percent as rate of interest on refunds made under those sections. The sanctioned refund of pre-deposit with interest thereon as per the Circular No. 984/08/2014-CX dated 16.09.2014, under the impugned Order-in-Original is incorrect as unlawful on the ground that, the amount of pre-deposit ordered by the Appellate Tribunal and deposited by the noticee was prior to enactment of the Finance Act (No. 2), 2014 w.e.f. 06.08.2014, amending Section 129E and Section 129EE of the Customs Act, 1962.

6. For proper appreciation of the facts and ease of reference, it is imperative to discuss the statutory provisions applicable to the present case. In this context, **Section 129E** of the Customs Act, 1962, **as it stood at the relevant time**, stipulating deposit, pending appeal, of duty and interest demanded or penalty levied, reads as under:-

SECTION 129E. Deposit, pending appeal, of duty and interest demanded or penalty levied.-

"Where in any appeal under this Chapter, the decision or order appealed against relates to any duty and interest demanded in respect of goods which are not under the control of the Customs authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the duty and interest demanded or the penalty levied:

***Provided** that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty and interest demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue:*

***Provided** further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty and interest demanded or penalty levied under the first proviso, the*

Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing."

6.1. Further, **presently**, the provisions of **Section 129EE** of the Customs Act, 1962, stipulating interest on pre-deposit amount, read as under:-

SECTION 129EE. Interest on delayed refund of amount deposited under Section 129E. -

"Where an amount deposited by the appellant under Section 129E is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest at such rate, not below five per cent. and not exceeding thirty-six per cent. per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such amount from the date of payment of the amount till, the date of refund of such amount :

Provided that the amount deposited under Section 129E, <u>prior to the commencement of the Finance (No. 2) Act, 2014</u>, shall continue to be governed by the provisions of Section 129EE as it stood before the commencement of the said Act."

6.2. On going through **Section 129EE** of the Customs Act, 1962, as it stands presently, it appears that as per the *proviso* thereof, the amount deposited under Section 129E, prior to the commencement of the Finance (No. 2) Act, 2014, shall continue to be governed by the provisions of Section 129EE, as it stood before the commencement of the Finance (No. 2) Act, 2014. Further, the Finance (No. 2) Act, 2014 was commenced with effect from **06.08.2014**. Thus, the amount deposited under Section 129E, **prior to 06.08.2014**, shall continue to be governed by the provisions of Section 129EE, as it stood before the commencement of the Finance (No. 2) Act, 2014. In the instant case, the pre-deposit amount of Rs.5,00,000/- was deposited by the noticee vide Challan No. 03 dated **14.06.2007** in pursuance of the Order No. S/500 & 501/WZB/AHD/2007 dated 25.04.2007, passed by the Appellate Tribunal, under the first *proviso* to

Section 129E, prior to 06.08.2014. Therefore, as per the present *proviso* to Section 129EE of the Customs Act, 1962, the said amount of Rs.5,00,000/- deposited on 14.06.2007 under Section 129E, prior to the commencement of the Finance (No. 2) Act, 2014, shall continue to be governed by the provisions of Section 129EE, as it stood before the commencement of the Finance (No. 2) Act, 2014.

6.3. In this context, **Section 129EE** of the Customs Act, 1962, **as it stood before the commencement of the Finance (No. 2) Act, 2014**, reads as under:-

SECTION 129EE. Interest on delayed refund of amount deposited under the proviso to Section 129E. -

"Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as appellate authority), under the first proviso to Section 129E, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in Section 27A after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount."

6.4. Further, vide Notification No. 75/2003-Cus. (N.T.) dated 12.09.2003, the Central Government has fixed the rate of interest for the purpose of Section 27A *ibid* as under:-

"In exercise of powers conferred by Section 27A of the Customs Act, 1962 (52 of 1962) and supersession of the Notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 25/2002-Customs (N.T.) dated 13th May, 2002 [GSR 356E dated 13th May, 2002], except as respects things done or omitted to be done

before such supersession, the Central Government hereby fixes the rate of interest at six percent per annum for the purposes of the said Section."

6.5. From the above statutory provisions of interest provided under Section 129EE of the Customs Act, 1962, as it stood before the commencement of the Finance (No. 2) Act, 2014, read with Notification No. 75/2003-Cus. (N.T.) dated 12.09.2003, it appears that where an amount deposited by the appellant in pursuance of an order passed by the appellate authority, under the first *proviso* to Section 129E, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate of six percent per annum after the expiry of three months from the date of communication of such order to the adjudicating authority, till the date of refund of such amount.

7. In view of above, it appears that the sanctioned refund of pre-deposit with interest thereon as per the Circular No. 984/08/2014-CX dated 16.09.2014, under the impugned Order-in-Original No. KDL/AC/25/DSR/ REF/2024-25 dated 03.05.2024 is incorrect as unlawful on the ground that, the amount of pre-deposit ordered by the Appellate Tribunal and deposited by the noticee was prior to enactment of the Finance Act (No. 2), 2014 w.e.f. 06.08.2014, amending Section 129E and Section 129EE of the Customs Act, 1962. The aforesaid Order–in-Original dated 03.05.2024, passed by the Assistant Commissioner (Refund), Customs House, Kandla appears to not legal and correct and is therefore, required to be set aside. Accordingly, the department has filed an appeal before the Hon'ble Commissioner of Customs (Appeals), Ahmedabad as per the Review-cum-Authorisation Order No. 4/OIO/ 2024-25 dated 18.07.2024.

8. Therefore, in the event of the final decision of the Hon'ble Commissioner of Customs (Appeals), Ahmedabad in respect of the above-mentioned appeal comes in favour of the department in future, the pre-deposit amount of Rs.5,00,000/- and interest amount of Rs.3,41,753/- which were refunded to M/s Merino Industries Limited (Formerly known as

F. No. CUS/RFD/RD/408/2023-Ref

M/s Century Laminating Co. Limited), Plot 44 K.M. Stone, Delhi-Rohtak Road, Village Rohad – 124501, District Jhajjar, Haryana shall become recoverable from them.

9. Now, therefore, **M/s Merino Industries Limited** (Formerly known as M/s Century Laminating Co. Limited), Plot 44 K.M. Stone, Delhi-Rohtak Road, Village Rohad – 124501, District Jhajjar, Haryana, are hereby called upon to show cause to the Deputy/Assistant Commissioner of Customs, Refund Section, Customs House, Kandla, having his office at Near Balaji Temple, Kandla – 370210, District Kutch, Gujarat, as to why:

9.1. the pre-deposit amount of Rs.5,00,000/- (Rupees five lakh only) erroneously refunded to them, should not be demanded and recovered in the event of decision of the Hon'ble Commissioner of Customs (Appeals), Ahmedabad in the aforesaid appeal comes in favour of the department/appellant, under the provisions of Section 28(1) of the Customs Act, 1962;

9.2. the interest amounting to Rs.3,41,753/- (Rupees three lakh forty-one thousand seven hundred and fifty-three only) erroneously refunded to them, should not be demanded and recovered in the event of decision of the Hon'ble Commissioner of Customs (Appeals), Ahmedabad in the aforesaid appeal comes in favour of the department/appellant, under the provisions of Section 28(1) of the Customs Act, 1962; and

9.3. the interest on erroneously refunded pre-deposit amount and erroneously refunded interest amount mentioned at Para-9.1. and Para-9.2. respectively above, should not be demanded and recovered from them in the event of decision of the Hon'ble Commissioner of Customs (Appeals), Ahmedabad in the aforesaid appeal comes in favour of the department/appellant, under the provisions of Section 28AA of the Customs Act, 1962.

10. M/s Merino Industries Limited (Formerly known as M/s Century Laminating Co. Limited), Plot 44 K.M. Stone, Delhi-Rohtak Road, Village

Rohad – 124501, District Jhajjar, Haryana, are hereby called upon to file their reply within 30 (thirty) days from the date of receipt of this show-cause-notice, enclosing therewith all the material evidences upon which they intend to rely upon in support of their defence in this case.

11. They are also advised to indicate in their written explanation/submission as to whether they desire to be heard in person by the adjudicating authority designated herein, before the case is adjudicated. If no mention is made about this in their written submission, it would be presumed that they do not desire to be heard in person.

12. If no cause is shown by the noticee against the preceding actions proposed to be taken against them as mentioned above within 30 (thirty) days from the date of the receipt of this notice by them and/or if they do not appear in person for personal hearing before the said adjudicating authority when the case is posted for hearing, the case would be liable to be adjudicated ex-parte on the basis of the material evidences available against them, in the records concerned without any further reference to them.

13. This notice is issued without prejudice to any other action/actions that may be taken against the said noticee and/or any persons concerned with this case, under the provisions of the Customs Act, 1962, as amended from time to time and the rules made there-under and/or under any other law for the time being in force, in the Republic of India.

14. The documents relied upon for the purpose of this notice, are shown in Annexure-A to this show-cause-notice and copies thereof are either already available with the noticee or enclosed herewith.

Encl: Annexure-A

Digitally signed by
Haroon Rashid Khan
Date: 21-04-2026
17:34:17

(H.R. Khan)
Assistant Commissioner (Refund)
Custom House, Kandla.

F. No. CUS/RFD/RD/408/2023-Ref

F. No. CUS/RFD/RD/408/2023-Ref. Dated: 21.04.2026

By Regd. Post. A.D./Speed Post/ By Hand

To
M/s Merino Industries Limited,
(Formerly known as M/s Century Laminating Co. Limited),
Plot 44 K.M. Stone, Delhi-Rohtak Road,
Village Rohad – 124501,
District Jhajjar, Haryana.

Copy forwarded for an information and necessary action to:

1. The Deputy/Assistant Commissioner (Review), Custom House, Kandla.
2. Guard file of the Refund Section, Custom House, Kandla.

Annexure-"A" to the SCN

Issued to M/s Merino Industries Limited (Formerly known as M/s Century Laminating Co. Limited), Plot 44 K.M. Stone, Delhi-Rohtak Road, Village Rohad – 124501, District Jhajjar, Haryana for erroneous refund given vide the Order-in-Original No. KDL/AC/25/DSR/REF/2024-25, dated 03.05.2024.

Details of the relied upon documents

Sr. No.	Particulars of document	Remarks
1.	Final Order No. A/12536-12537/2018 dated 01.11.2018, passed by the Hon'ble CESTAT, West Zonal Bench, Ahmedabad.	Copy already available with the noticee
2.	Order-in-Original No. KDL/AC/25/DSR/REF/2024-25 dated 03.05.2024, passed by the Assistant Commissioner of Customs, Refund Section, Customs House, Kandla.	Copy already available with the noticee
3.	Review-cum-Authorisation Order No. 4/OIO/2024-25, dated 18.07.2024, passed by the Commissioner of Customs, Customs House, Kandla.	Copy enclosed herewith

21/4/2026
Insp. (Refund)
CH. Kandla.

21/4/2026
Supdt. (Refund)
CH., Kandla

	कार्यालय: आयुक्तसीमाशुल्क, कांडला सीमाशुल्कभवन, कांडला बंदरगाह , कच्छ, गुजरात- 370210 *OFFICE OF THE COMMISSIONER OF CUSTOMS:* *CUSTOM HOUSE, KANDLA PORT, KUTCH, GUJARAT- 370210.*	

REVIEW CUM AUTHORISATION ORDER NO. 4/OIO/2024-25

Arising out of Order in Original No. KDL/AC/25/DSR/REF/2024-25 Dated 03.05.2024 passed by the Assistant Commissioner (Refund), Customs, Kandla in the case of M/s. Merino Industries Limited, 44, K M Stone, Delhi Rohtak Road, Vill. Rohad, Dist. Jhajjar, Haryana – 124501

Review Order passed by: The Commissioner, Customs House, Kandla.

BRIEF FACTS OF THE CASE

1.1 M/s Merino Industries Limited, Plot 44 K.M. Stone, Delhi Rohtak Road, Village Rohad, Dist Jhajjar, Haryana-124501 (hereinafter referred to as "the claimant"), earlier known as M/s Century Laminating Co Ltd, filed a refund claim of pre-deposit amount of Rs.5,00,000/- along with interest under Section 129EE of the Customs Act, 1962 in terms of CESTAT Order No. A/12536-12537/2018 dated 01.11.2018, vide letter on 31.08.2023.

1.2 The background of the matter in brief is that, a Demand

Cum Show Cause notice bearing F. No S/10-30/SCN/Century Laminating Co/2004-Gr-II dated 18.12.2004 was issued to M/s Century Laminating Co calling upon to show cause as to why:-

(i) The value of Rs.1085 USD per MT declared by M/s Century Laminating Co Ltd in respect of Phenol imported by should not be rejected under Rule 10 (a) of the Customs Valuation Rules, 1988;The value of Phenol should not be enhanced to USD 1350 per MT under Rule 5 of the Customs Valuation Rules, 1988 and;

(ii) Differential duty of Rs.14,32,138/- should not be recovered from M/S CENTURY LAMINATING CO.

1.3 Aforesaid show cause notice was adjudicated by the Assistant Commissioner of Customs vide Order in Original No. KDL/AC.II/JPS/06/2006 dated 17.03.2006 whereby it was held against M/s century laminating co ltd and confirmed the demand of customs duty of Rs.14,32,138/- as raised in the show cause notice.

1.4 Aggrieved from the aforesaid OIO, M/s CENTURY LAMINATING CO LTD filed an appeal along with an application for stay before the learned Commissioner (Appeals), challenging the Order in Original dated 17.03.2006. Vide Stay Order No: 27/2006 the learned Commissioner (Appeals) directed to deposit of Rs. 10 lakh as a condition for entertainment of the appeal.

1.5 Challenging the said Stay Order, M/s CENTURY LAMINATING CO LTD filed a Writ Petition in the Hon'ble Gujarat High Court bearing Special Civil Application No:

20525/2006, which came to be disposed of by the Hon'ble Court vide an Order dated 20.11.2006, directing the Commissioner (Appeals) to dispose of the appeal on merits.

1.6 The learned Commissioner (Appeals) heard the appeal on merits and Vide Order in Appeal No. 279/2006 dated 22.12.2006, the learned Commissioner (Appeals) rejected the appeal preferred by M/S CENTURY LAMINATING CO LTD.

1.7 Aggrieved by the aforesaid Order in Appeal No. 279/2006 dated 22.12.06, M/S CENTURY LAMINATING CO LTD filed an appeal before the Hon'ble Tribunal. Vide Order No S/500 & 501/WZB/AHD/2007 dated 25.04.2007, the Hon'ble Tribunal directed M/S CENTURY LAMINATING CO LTD to deposit a sum of Rs. 5 lakh rupees as pre-deposit for hearing of the appeal. M/S CENTURY LAMINATING CO LTD complied with the said Stay Order and made the deposit vide **Challan dated 03 dated 14.06.2007**. CESTAT Vide Final Order No A/10623-10624/2015 dated 13.05.2015, the Hon'ble Tribunal rejected the Appeal preferred by M/S CENTURY LAMINATING CO LTD.

1.8 Further, M/S CENTURY LAMINATING CO LTD preferred Civil Appeal against the CESTAT Judgment dated 13.05.15, which was registered as Diary No: 37381 of 2015, which was dismissed as withdrawn vide Order dated 04.01.2016 seeking leave to approach the Hon'ble Tribunal by filing a review petition.

1.9 Thus, M/S CENTURY LAMINATING CO LTD once again approached the Hon'ble Tribunal filing Miscellaneous Application No C/ROM/10109-10110/2016-DB, which was decided vide Final Order No: A/12536-12537/2018 DATED

01.11.2018. The said Final Order was remitted back for de novo adjudication on the issue of valuation. Therefore, the claimant has filed for the refund of pre-deposit along with interest.

1.10 The adjudicating authority vide Order in Original No. KDL/AC/25/DSR/REF/2024-25 Dated 03.05.2024, refunded the pre-deposit of Rs 5,00,000/- along with interest in terms of Circular No. 984/08/2014-CX dated 16.09.2014.

GROUNDS OF APPEAL

2.1 The Assistant Commissioner of Customs, Customs House, Kandla has passed the impugned Order in Original No. KDL/AC/25/DSR/REF/2024-25 Dated 03.05.2024 in terms Circular No. 984/08/2014-CX dated 16.09.2014.

2.2 The Finance Act (No.2), 2014 has been enacted on 06.08.2014, Section 129E of the Customs Act, 1962 have been substituted with new sections to prescribe mandatory pre-deposit as a percentage of the Duty demanded is in dispute or where duty demanded and penalty levied are in dispute.

2.3 The amended provisions apply to appeals filed after 06.08.2014. Section 129E of the Customs Act, 1962 contain specific saving clause to state that all pending appeals / stay applications filed till the enactment of the Finance Bill shall be governed by the erstwhile Provisions.

2.4 Section 129EE of the Customs Act, 1962 have also been substituted to provide for payment of refund along with interest at the prescribed rate on the amount pre-deposited from the date of such payment till the date of refund. In exercise of the powers conferred under the new Section 129EE of the Customs Act, Notification No. 70/2014-CUS(NT) Dated 12.08.2014 have been issued specifying six percent as rate of interest on refunds made under those section.

2.5 The Sanctioned Refund of Pre-Deposit with Interest thereon as per the Circular No. 984/08/2014-CX Dated 16.09.2014, under the impugned Order in Original is incorrect as unlawful on the ground that, the Amount of Pre-Deposit ordered by Appellate Tribunal and Deposited by the Claimant were prior to enactment of the Finance Act (No.2), 2014 w.e.f. 06.08.2014 amending Section 129E and 129EE of the Customs Act, 1962.

2.6 The provision prevailed under Section 129E of the Customs Act, at the time, when Pre-Deposit was ordered to be made and deposited were reads as,

> *"Deposit ..... provided that where in any particular case, the Commissioner (Appeals) or the Appellate Authority is of opinion that the deposit of duty and interst demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interest of revenue".*

2.7 The Provision prevailed under Section 129EE of the Customs Act, at the time, when Pre-Deposit was ordered to be made and deposited were reads as,

> *" Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal, under the first proviso to section 129E, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in Section 27A after the expiry of three months from the date of communication of the order to the appellate authority, till the date of refund of such amount".*

2.8 The provision prevailed under Section 27A of the Customs Act, at the time, when Pre-Deposit was ordered to be made and deposited were reads as,

> *"if any duty ordered to be refunded to an applicant is not refunded within three months from the date of receipt of application under sub-section(1) of that section"*

2.9 In view of above, the Sanctioned Refund of Pre-Deposit with Interest thereon as per the Circular No. 984/08/2014-CX Dated 16.09.2014, under the impugned Order in Original is incorrect as unlawful on the ground that, the Amount of Pre-Deposit ordered by Appellate Tribunal and Deposited by the Claimant were prior to enactment of the Finance Act (No.2), 2014 w.e.f. 06.08.2014 amending Section 129E and 129EE of the Customs Act, 1962. The aforesaid Order–in-Original passed by the Assistant Commissioner (Refund), Customs House, Kandla appears to not legal and correct and is therefore, required to be set aside.

I, M. RAMMOHAN RAO , Commissioner of Customs, Customs House, Kandla therefore in exercise of powers vested under the provisions of sub-section (2) of Section 129D of the Customs Act, 1962, direct/authorise the Deputy/Assistant Commissioner, Refund, Customs, Kandla vide this review order, to file one appeal before the Commissioner of Customs(Appeals), Ahmedabad against above Order-in-Original No. KDL/AC/25/DSR/REF/2024-25 Dated 03.05.2024 passed by the Assistant Commissioner (Refund), Customs, Kandla in the case of M/s. Merino Industries Limited, 44, K M Stone, Delhi Rohtak Road, Vill. Rohad, Dist. Jhajjar, Haryana – 124501, with the following prayers for granting relief:

<u>RELIEF CLAIMED IN APPEAL</u>

In view of above facts and submissions, Order in Original No. KDL/AC/25/DSR/REF/2024-25 Dated 03.05.2024 passed by the Assistant Commissioner (Refund), Customs, Kandla in the case of M/s. Merino Industries Limited, 44, K M Stone, Delhi Rohtak Road, Vill. Rohad, Dist. Jhajjar, Haryana – 124501 is not legal, proper and correct and therefore, in the interest of justice, Commissioner of Customs (Appeals), Ahmedabad may kindly-

i) Set aside the Order in Original Order in Original No. KDL/AC/25/DSR/REF/2024-25 Dated 03.05.2024 passed by the Assistant Commissioner (Refund), Customs, Kandla.

ii) Remand back the Order in Original Order in Original

No. KDL/AC/25/DSR/REF/2024-25 Dated 03.05.2024 passed by the Assistant Commissioner (Refund), Customs, Kandla.

iii) Grant any other relief as may be deemed fit under the law and in the interest of justice.

This review order has been passed at Kandla on 18-07-2024 .

(M. RAMMOHAN RAO)
COMMISSIONER
18-07-2024
Commissioner of Customs
Custom House, Kandla.

Signed by M Ram Mohan Rao
Date: 18-07-2024 00:11:47