



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

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

DIN - 20251171MN000002020C

क	फाइल संख्या FILE NO.	S/49-135/CUS/MUN/2023-24
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-397-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	11.11.2025
ड	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/MK/140/2023-24 dated 18.08.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	11.11.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Singla Timbers Private Limited, B-41, Under Bridge Road, Near Hospital Rajpura, Dist Patiala, Punjab - 140401



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 (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो।
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(ब)	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="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>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	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	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
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
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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>(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;</p> <p>(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।</p> <p>(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 ;</p> <p>(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 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>(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.</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>				



**ORDER-IN-APPEAL**

Appeal has been filed by M/s. Singla Timbers Private Limited, B-41, Under Bridge Road, Near Hospital Rajpura, Dist Patiala, Punjab -140401, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/MK/140/2023-24 dated 18.08.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that Customs Premises Based Audit (PBA) of the records of the Appellant covering the period FY 2018-2019, 2019-20 & 2020-2021 was conducted under Section 99A of the Customs Act, 1962 during the period from 14.11.2022 to 16.11.2022, on 28.11.2022, 29.11.2022 and from 8.12.2022 to 09.12.2022. The Appellant was informed about the audit schedule vide letter dated 15.02.2021. The audit could not be conducted continuously as the Appellant sought time for providing details/documents required by the auditors.

2.1 During the course of audit and on examination of records the following discrepancies have been observed-

**Para-I:** In 298 Bills of Entry, the Inco-terms mentioned in the invoice were not as per the Inco-terms declared in the Bills of Entry. In all the said Bills of Entry, the insurance value was not included in the Assessable Value resulting in short payment of Custom duty amounting to Rs.4,11,538/-

**Para-II:** Foreign Currency declared in two Bills of Entry i.e. BOE No. 6278253 & 6278336 both dated 07.05.2018 was found to be different from the foreign currency as declared in the import invoice. The foreign currency as per the invoice was found as Euro whereas in the Bills of Entry the same was declared as USD. The said mis-declaration has resulted in short payment of Customs duty amounting to Rs. 4,47,7961/-

**Para-III:** In two Bills of Entry i.e. 6973364 dated 27.06.2016 & 7642776 dated 14.08.2019, it was observed that the Importer has not correctly declared the invoice value in the Bills of Entry as per import invoice which has resulted in short levy of duty amounting to Rs.33,603/- & Rs.52,925/- (Total of Rs.86,528/-) respectively.

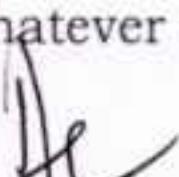


**Para-IV:** In 7 BOEs the Inco Terms was mentioned as 'FOB' in the invoice while the same was mentioned as 'CIF' in the BOE, the said mis-declaration has resulted in short levy of Customs duty amounting to Rs. 5,09,204/-.

2.2 The appellant vide letter dated 01.01.2023 and 02.03.2023 submitted para-wise reply as under:-

**Para-I** - All the import documents including those from the Audit has noticed as above were available for inspection and scrutiny by the Officers of Appraisement Group (Appraiser & the Assessing Officer) and also by the Shed /Drawback officers (Examiner, Superintendent & Deputy Commissioner). In case of any discrepancy, it was the responsibility and duty of the Customs officers to point out such discrepancies at the time of assessment of the Bill of Entry and before allowing clearance of the shipment the Assessing officer has been empowered under Section 17 of the Customs Act to reassess the Bill of Entry and charge the appropriate amount of duty. The appellant is confident that whatever duty was assessed (levied) by the Assessing Officer it was paid. There is no case of short payment of any duty. However, if for any reason the Assessing Officer could not levy and assess the correct amount of duty and if in any case it escaped the attention of the Customs Officers: there is a legal remedy available with the Proper Officer if there was been any short levy and he can proceed to recover the short levied duty under Section 28(1) of the Customs Act which was short-levied or short-paid whatever the proper officer takes a view as to whether it is case of short-levy or short-payment in view of Section 28(1)(a).

**Para II** - All the impugned Import Invoices from where the Audit has noticed as above, were submitted to the Customs while filing the Bill of Entry for seeking clearance of the imported goods. And both of these invoices were available for examination, and scrutiny by the Officers of Appraisement Group (Appraiser & the Assessing Officer) and also by the Shed /Dock officers (Examiner, Superintendent & Deputy Commissioner). Had any of these officers noticed this discrepancy, it was their bounden duty to take cognizance and proceed to reassess the Bill of Entry after determining the Assessable Value in INR applying the conversion rate of the particular foreign currency as per the relevant Notification issued in this respect and charge appropriate duly accordingly under the provisions of Section 17 of the Customs Act, 1962. Further submitted that there is no case of short-paid duty, whatever amount of duty was levied and




assessed by the Proper Officer it had been paid by the importer. Had there been any case of short payment of any amount of duty, the Customs would not have allowed clearance of the goods. However, if for any reason it has escaped the attention of all of the live Customs Officers, there is a legal remedy available with the Proper Officer and he can proceed to recover the short-paid duty only after holding that there was a case of short-levy under Section 28(1) of the Customs Act.

**Para III** - Audit has not elaborated as to on what count there was short levy. In the absence of any information which may have resulted in short levying the duty by the Proper Officer. It is therefore prayed that let the Proper Officer proceed to determine the amount of duty if there was any short levy before the importer is asked to pay the short levied amount without orders having been issued under Section 17 & 28 of the Customs Act, 1962.

**Para IV** - It may please be appreciated that the as per the terms of the Agreement between the Shipper and the Importer the agreed price was not on FOB basis. It is requested to have a look at the Bill of Lading where it has been clearly mentioned that the freight is prepaid in Malaysia. And nothing on account of Ocean Freight has been paid by the Importer in addition to the prices shown in the Import Invoice. The matter has been taken up with Shipper and he informed that the words FOB has been inadvertently typed in the Invoices. And since they were required to mention the FOB value while seeking the COO certificate, the CIF value as per the Proforma Invoice (Agreement) words was wrongly mentioned FOB. In other words, the price charged by the Shipper in the Invoice is not the FOB value. It may also please be appreciated that in some cases the import was against Letter of Credit and In the LC also the value for which LC was obtained was not the FOB Value. Hence there is no occasion for presuming that the Ocean Freight has been borne by the importer over and above the Invoice price and in these circumstances there is no occasion for demanding any duty of the Ocean Freight which are already included In the Invoice value.

2.3 An opportunity was given by the Audit Team to the Appellant to pay the said short payment of Duty amounting to Rs. 14,55,066/- . Further, the Appellant were issued SCN whereby they were called upon to show cause to the Adjudicating Authority as to why :

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- i. Total differential duty amounting to Rs. 14,55,066/- (Fourteen Lakh Fifty Five Thousand Sixty Six only) on impugned goods imported vide Bill of Entry as mentioned in annexures should not be demanded and recovered in Cash/E-payment challan under Section 28(4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable;
- ii. All the goods imported vide Bills of Entry mentioned in annexures which were self-assessed and have already been cleared, having assessable value to the tune of Rs.55,44,16,928/- (Rupees Fifty Five Crore Forty Four Lakh Sixteen Thousand Nine Hundred and Twenty Eight Only) indicated in annexures, should not be held liable to confiscation under Section 111 (m) & (o) of the Customs Act, 1962;
- iii. Penalty should not be imposed upon appellant under section 112 (ii) read with section 112(a) and/or 114A of the Customs Act 1962 for short paid differential duty amounting to Rs. 14,55,066/- (Fourteen Lakh Fifty-Five Thousand Sixty-Six only)

2.4 Consequently, the Adjudicating Authority adjudicated the above SCN and passed the following order:

- a. She confirmed the Demand of Total differential duty amounting to Rs. 14,55,066/- (Fourteen Lakh Fifty-Five Thousand Sixty-Six only) on impugned goods imported vide Bill of Entry as mentioned in annexures and ordered to recovered the same through Demand Draft/payment challan under Section 20(4) of the Customs Act, 1962 from the appellant.
- b. She ordered to recover the applicable interest on the differential Duty as above as per the provisions of Section 28AA of the Customs Act, 1962.
- c. She held that the goods imported vide Bills of Entry mentioned in annexures on which there is short payment of Duty, therefore, the impugned Goods, having assessable value to the tune of Rs.55,44,16,928/- (Rupees Fity Five Crore Forty Four Lakh Sixteen Thousand Nine Hundred and Twenty Eight Only) were liable for Confiscation under Section 111 (m) & (o) of the Customs Act, 1962; however, she found that the Impugned Goods were cleared at relevant time and not available for confiscation under the Circumstances, he



refrained from imposing any Redemption Fine on the impugned goods under import.

d. She imposed Penalty of Rs. 14,55,066/- (Rupees Fourteen Lakh Fifty Five Thousand Sixty Six only) on the Appellant as per provisions of section 114A of the Customs Act, 1962 for short paid differential duty amounting to Rs. 14,55,066/- (Fourteen Lakh Fifty Five Thousand Sixty Six only) plus penalty equal to the applicable interest under Section 28AA payable on the duty demanded and confirmed above on appellant under Section 114A of the Customs Act, 1962.

**SUBMISSIONS OF THE APPELLANT:**

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

3.1 The Respondent for confirming the demand of differential duty has heavily relied upon and taken the only ground that - "as per the provisions of the Customs Act, 1962, responsibility for correct calculation/declaration and assessment of Duty lies on the Importer; find fault to correctly calculate declaration and assess Duty liability on the Goods under Import is the sole responsibility of the Importer as per the Provisions of Section 17 of the Customs Act, 1962 and due to their failure to do so, in the instant case there is Short Payment of Duty, therefore, the Demand issued as per the provisions of the Section 28(4) of the customs Act. 1962 is Correct." But the Respondent miserably failed to bring on record willful misstatement or suppression of facts with intent on the part of the appellant to evade payment of duty. The Respondent failed to understand, realise and appreciate that the Show Cause Notice was issued without bringing on record any of the ingredients which are necessary for invoking extended period of limitation under Section 28(4) of the Customs Act, 1962.

3.2 Para-I - Allegation - In 298 Bills of Entry, Insurance Value was not included resulting in Short Payment of Customs Duty amounting to Rs.4,11,538/- :

3.2.1 Submissions of the appellant - There is no allegation or findings by the Respondent department that any of the Import Document submitted while filing the Bill of Entry was fake, fabricated or any information in those documents was manipulated. All the import documents were available with the Customs for their verification and in both of these cases the Bills of Entry were facilitated cleared. RMS




in those cases facilitated the Bills of Entry were subjected to the "RVR" and all such Five/Seven Officers of Customs (Appraiser, Deputy Credit and the Appraisement Group, Shed Officers - Examiner, Superintendent & scrutinised all of these 298 Bills of Entry under Section 28(1) out any Customs Act, 1962, the Importer cannot be blamed for the failures on the part of the Customs Officers. Even if the insurance was not included in the value, it was only @1.25% the insurance amount included in the value, it was to be added more than that prescribed 1.25%. On this ground Respondent is without any lawful justification hence has to be discarded. Customs Broker there who overlooked this omission, it was on the part of the cannot be termed as wilful misstatement or suppression giving rise to invocation of extended period of limitation under Section 28(4) of the Customs Act. As there is no occasion for invoking extended period the SCN as well as the Order-in-Original confirming the demand of differential duty against Para-I is not sustainable hence merits to be quashed.

3.3 Para-II – Allegation - In 2 Bills of Entry No. 627853 dated 07.05.2018 & No. 627836 dtd. 07.05.2018 foreign currency was found as Euro but was declared as USD resulting into Short Payment of Customs Duty amounting to Rs.4,77,956/:

3.3.1 Submissions of the appellant : There is no allegation or findings by the Respondent department that any of the Import Document submitted while filing the Bill of Entry was Fake, Fabricated or any information in those documents was manipulated. All the import documents were available with the Customs for their verification and in both of these cases the Bills of Entry had been re-assessed by the Proper Officer: as evident from the below detailed facts:

i. Bill of Entry No.6278253 dated 07.05.2018 (was self assessed on 07.05.2018)

Value	Self-Duty Assessed	Self-Re-Assessed & cleared By Proper officer	Value Re-assessed	Duty Re-assessed
35,59,317	11,02,676	On date 08.05.2018 at 17.12.18	36,02,007	11,15,902

ii. Bill of Entry No. 6278336 dated 07.05.2018 (was self-assessed on 07.05.2018)

Value	Self-Duty assessed	Self-Re-Assessed & cleared Value	Value Re-assessed	Duty Re-assessed
35,03,705	10,85,448	On date 09.05.2018 at 17.12.26	35,45,729	10,98,467

From the above it may please be seen that self-assessment of the appellant was rejected and the Bills of Entry were re-assessed under Section 17(4) of the Customs Act, 1962.

It is to be believed that the Proper Officer of Customs must have done due diligence



before resorting to re-assessment at the enhanced value and once he has rejected the self-assessment of the appellant and proceeded to re-assess the Bills of Entry under Section 17(4), and when whatever duty was re-assessed by the Assessing Officers and the appellant had paid the re-assessed duty before the Customs allowed OOC, thereafter there is no justification for invoking extended period of limitation and confirm the demand of differential duty under Section 28(4).

3.3.2 Under the law it was the responsibility of the Customs Department to file an Appeal before the Commissioner (Appeals) if the Re-assessment had not been done by the Assessing officer, but instead after the lapse of period of more than 58 months, the Customs would wake up and slap the importer with charge of Short Payment of Duty instead of proceeding against its own officers who had failed to perform their duties and are responsible for the loss of revenue. If the five Officers of Customs (Appraiser, Deputy Commissioner Appraisement Group, Shed Officers Examiner, Superintendent & Deputy Commissioner) who had processed and scrutinised both of these Bills of Entry and failed to point out any discrepancy within the period stipulated under Section 28(1) of then Customs Act, 1962, the Importer cannot be blamed for the failures on the part of the Customs Officers.

3.3.3 Even if for argument's sake it is assumed that there was some omission, it was on the part of the Customs Broker only who overlooked but even for such omission on his part it cannot be termed as willful misstatement or suppression giving rise to invocation of extended period of limitation under Section 28(4) of the Customs Act. As there is no occasion for invoking extended period in respect of these two Re-assessed Bills of Entry, the SCN as well as the Order-in-Original confirming the demand of differential duty against Para-II is not sustainable hence merits to be quashed.

3.4 Para-III Allegation in TWO (02) Bills of Entry No.6973364 dated 27.06.2018 & 7642776 dated 14.08.2018, Invoice Value has not declared correctly in the Bills of Entry, resulting into Short Payment of Customs Duty amounting to Rs.33,603/- & 52,925/-:

3.4.1 Submissions of the appellant: There is no disclosure in the SCN or the O-I-O as to on what count there was Short Payment of duty. The fact remains that whatever Customs Duty was Re-assessed by the Proper Officer it was paid by the importer, and it is a fact on record that it was only thereafter the Customs had allowed OOC. There




is no allegation or findings by the Respondent department that any of the Import Document submitted while filing the Bill of Entry was Fake, Fabricated or any information in those documents was manipulated. All the import documents were available with the Customs for their verification and in both of these cases the Bills of Entry had been re-assessed by the Proper Officer as is evident from the below detailed facts:

- i. Bill of Entry No.7642776 dated 14.05.2018 was self-assessed on 14.08.2018 but was Re-assessed by the Proper Officer on 16.08.2018 and OOC was issued by Customs on 21.08.2018. And there is no misdeclaration with regard to value as has been alleged by the Respondent. The Invoice No.043 dated 14.07.2018 was for USD 29472.16 and the same has been truthfully declared in the Bill of Entry. And applying the Exchange Rate USD 1= 69.25 INR and assessable value arrived at Rs.35,76,500/- with IGST liability of Rs.6,43,770/- (@18%). And even after re-assessment by the Proper Officer the amount of IGST payable was Rs.6,43,770/- and that has been correctly paid by the importer. There is no Short payment and nothing more was required to be paid.
- ii. In the case of Bill of Entry No.697334 dated 27.06.2018, there is no misdeclaration with regard to value as has been alleged by the Respondent. The Invoice No.040 dated 30.05.2018 was for USD 41,194.48 and the same has been truthfully declared in the Bill of Entry. And applying the Exchange Rate USD 1 69.10 INR and assessable value arrived at Rs.28,46,538.84 with IGST liability of Rs.5,12,377/- (@18%). There is no Short Payment and nothing more was required to be paid. Though this Bill of Entry was RMS facilitated as such it must have been audited by the Commissionerate Audit Team. And had they found any discrepancy they could have pointed out within the normal period of limitation.

In both of these Bills of Entry the Customs has alleged Short Payment of IGST of Rs.86,528/- and it must be appreciated that this amount of IGST was available for ITC as such it is Revenue neutral case. There is no gain to the Importer nor any loss to the Revenue.

3.4.2 It may please be appreciated whatever duty was assessed/re-assessed by the Assessing Officers, had been paid by the importer, only thereafter the Customs allowed OOC, thereafter there is no justification for invoking extended period of limitation and confirm the demand of differential duty under Section 28(4). Under the law it was the responsibility of the Customs Department to file an Appeal before the Commissioner (Appeals) if the Re-assessment had not been done by the Assessing



officer, but in circumstances after the lapse of period of more than 56 months, the Customs would wake up and slap the importer with charge of Short Payment of Duty instead of proceeding against its own officers who had failed to perform their duties and are responsible for the loss of revenue. And if the Five Officers of Customs (Appraiser, Deputy Commissioner Appraisement Group, Shed Officers Examiner, Superintendent & Deputy Commissioner) who had processed and scrutinised both of these Bills of Entry and failed to point out any discrepancy within the period stipulated under Section 28(1) of then Customs Act, 1962, the Importer cannot be blamed for the failures on the part of the Customs Officers.

3.4.3 Even if for argument's sake it is assumed that there was some omission, it was on the part of the Customs Broker and the Customs Officers as well who overlooked such omission on their and after 56 months there is no justification to allege willful misstatement or suppression on the part of the importer giving rise to invocation of extended period of limitation under Section 28(4) of the Customs Act. As there is no occasion for invoking extended period in respect of these two Re-assessed Bills of Entry also, the SCN as well as the Order-in-Original confirming the demand of differential IGST against Para-III is not sustainable hence merits to be quashed.

3.5 Para-IV- Allegation in SEVEN (07) Bills of Entry, Invoice Value was FOB but declared as CIF, resulting into Short Payment of Customs Duty amounting to Rs.5,09,204/-:

3.5.1 Submissions of the appellant: In response to the Audit observations, it was submitted that "It may please be appreciated that the as per the terms of the Agreement between the Shipper and the Importer, the agreed price was not on FOB basis. Your goodself is requested to have a look at the Bill of Lading where it has been clearly mentioned that the freight is prepaid in Malaysia. And nothing on account of Ocean Freight has been paid by the importer in addition to the prices shown in the Import Invoice. The matter has been taken up with Shipper and he informed that the words FOB has been inadvertently typed in the Invoices. And since the shipper was required to mention FOB Value while seeking the COO Certificate, the CIF value as per the Proforma Invoice (Agreement) was wrongly mentioned with words 'FOB'. In other words the price charged by the Shipper in the Invoice is not the FOB Value. It may please be appreciated that in some cases the import was against Letter of Credit and in the LC also the value for which LC was obtained was not for FOB Value. Hence there is no occasion or justification for presuming that the Ocean Freight has been borne by the importer over and above the invoice price. In these circumstances there is no




justification for demanding duty on the Ocean Freight element which is already included in the Invoice value.

3.6 From the above submissions it becomes abundantly clear that there is no cause for alleging willful mis-statement or suppression of facts giving rise to invocation of extended period of limitation under Section 28(4) of the Customs Act, 1962. As such the demand for differential duty is neither sustainable on merits as explained above nor under Section 28(4) as no extended period can be invoked.

3.7 And since no amount of duty has been short paid by the appellant nor any is payable, there is no occasion for charging of Interest under Section 28AA of the Customs Act, 1962.

3.8 As the Respondent has not determined any duty under Section 28(8) of the Customs Act, nor there was any case of Short Payment of Duty by reason of collusion or any wilful mis-statement or suppression of facts, the penal provisions of Section 114A of the Customs Act, are also not attracted. In view of the above the Penalty imposed under Section 114A of the Customs Act, 1962 also dose not sustain and merits to be quashed and set aside.

3.9 In view of the above submissions, the Appellate Authority may please appreciate that it is established beyond any doubt that there is no basis, justification or ground for proceeding under Section 28(4) of the Customs Act, as such the impugned order is bad in law and not sustainable in the eyes of law thus deserves to be quashed.

#### **PERSONAL HEARING:**

4. Personal hearing was granted to the Appellant on 02.07.2025, following the principles of natural justice wherein Shri Rajinder Singh, Consultant appeared for the hearing and he re-iterated the submission made at the time of filing the appeal. He also submitted additional submissions by email dtd. 02.07.2025 as under :-

- Neither in the Show Cause Notice nor in the Order-in-Original there are any allegations or findings that the ingredients required for invoking extended period were present. Reliance is placed on the following judicial pronouncement:



1. Commissioner of Central Excise & Service Tax Goa Vs. M/s IFB Industries Ltd. [2019 ACR 228 CESTAT Mumbai]

2. M/s Bedmutha Industries Ltd Vs. CCE & ST Nashik (2019 ACR 34 CESTAT Mumbai)

3. Amway India Enterprises Pvt Ltd. Vs. Commissioner of C. Ex New Delhi (2018 ACR 157 CESTAT New Delhi)

4. Commissioner of Customs Vs. Magus Metals P Ltd. [2018 ACR 156 Supreme Court of India]

5. Pushpam Pharmaceuticals Co Vs Collector of C Ex Bombay (1995 (3) TMI 100-SC)

6. Cosmic Dye Chemicals Vs Collector of C Ex Bombay - 1994 (9) TMI 86 SC)

- The Respondent Adjudicating Authority proceeded to confirm the demand under Section 28(4) of the Customs Act without realising and appreciating that this section empowers to issue Show Cause Notice. In this case the very basic ingredients for invoking the extended period of limitation do not stand satisfied. For this reason alone, the order impugned cannot be sustained and is liable to be set aside.
- Further Sub-Section 28(4) does not confer any jurisdiction or propriety on the Respondent to confirm any demand. As the Respondent has failed to pass any order under the provisions of Section 28(8) for confirmation of the Demand, the demand confirmed under Section 28(4) does not sustain. On this ground itself the demand order is not maintainable.
- In addition to the judgments mentioned above the following judicial rulings/judgments are also relied upon by the appellant in support its contention that the extended period of limitation is not applicable in this case.




(i) Anand Nishikawa Co. Ltd, vs. Commissioner of Central Excise, Meerut (2005) 7 SCC 749

(ii) Easland Combines, Coimbatore vs. Collector of Central Excise, Coimbatore (2003) 3 SCC 410,

(iii) Uniworth Textiles Ltd. vs. Commissioner of Central Excise, Raipur (2013 (288) E.L.T. 161 (SC)]

(iv) Continental Foundation Joint Venture vs. Commissioner of Central Excise, Chandigarh 2007 (216) E.L.T. 177 (SC)

(v) M/s Inspira Bio-Pharm Pvt. Ltd vs Commissioner of Customs (Import) [CITATION: 2024 TAXSCAN (CESTAT) 600

(vi) The Delhi High Court in Bharat Hotels Limited vs Commissioner of Central Excise (Adjudication) [2018 (12) GSTL 368 (Del.)] 2017-VIL-667-DEL-ST

(vii) Cosmic Dye Chemical v CCE, Bombay reported in 1995 (75) E.L.T. 721 (S.C.)-1994-VIL-19-SC-CE

(viii) M/s Javeria Impex India Pvt. Ltd Vs Commissioner Of Customs (ICD) New Delhi Tughlakabad, New Delhi (CITATION: 2023 TAXSCAN (CESTAT) 1529)



- Para I of the Audit Observation: The Audit did not disclose the source of information as to from where the amount have been taken by the Audit; when the source of the figures are not disclosed with basis, the duty could not be calculated on the imaginary figures; While filing each of the Bill of Entry the appellant had submitted all the import documents under the circumstances, there is no cause for invoking the extended period of limitation as provided under Section 28(4) of the Customs Act, 1962 and since demand has been confirmed under Section 28(4) Instead of Section 28(8), hence the Demand is not sustainable.
- Para II of the Audit Observation: Copy of Invoice was made available with the Bill of Entry, it is duty of the Officer to assess the Bill of Entry with correct conversion

rate to arrive at the Assessable Value in INR and charged appropriate duty; no case of short payment of Duty, whatever amount of duty was levied and assessed by the proper officer it had been paid by the Importer. No grounds or justification to invoke Section 28(4) of the Customs Act, 1962, hence demand is not sustainable and merits to be dropped.

- Para III: the Invoice raised by the supplier included insurance hence there was no requirement of again adding Insurance as such there is no case of the IGST having been short levied or short paid.
- Para IV: there was a typographical error in the invoice as FOB got mentioned on the Invoice instead of CIF, whereas in shipping documents (Bill of Lading) it has been clearly mentioned that 'Freight Prepaid', and the freight is already included, as such there is no case of short payment of Duty on this count.
- It is a fact on record that all the documents were submitted, while filing each of the Bill of Entry, and none of the Bill of Entry was RMS facilitated, instead all of the impugned Bills of Entry were assessed by the Proper Officer as is evident from the Tracking and Status of the of all of the therefore, in case the Customs Officers failed to verify at material time, the Department cannot invoke extended period of limitation as provided under Section 28(4) of the Customs Act, 1962.
- When the demand of duty is time barred and since the Respondent has failed to confirm demand under Section 28(8), there cannot be any demand of Interest under section 28AA of the Customs Act. 1962, hence it does not sustain.
- It may please be appreciated that no grounds, reasoning or justification for invoking penalty provisions of Section 114A has been brought on record by the Respondent.
- The Respondent Adjudicating Authority has failed to counter the contentions of the Appellant nor has the Respondent recorded any findings, reasoning, grounds or justification for imposing penalty under Section 114A of the Customs Act, 1962. From the facts of the case it is clear that there is no case of " Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, nor there is any allegation nor any findings in order-in-




original that there was any collusion, wilful mis-statement or suppression of facts with any intent to evade payment of any duty, the penal provisions under Section 114A of the Customs Act, 1962 are not attracted.

- The above submissions are in addition to the submissions already made in the Ground of Appeal which may also please be considered while deciding this appeal.
- In view of the above submissions, the Appellate Authority may please appreciate that it is established beyond any doubt that there is no basis, justification or ground for proceeding under Section 28(4) of the Customs Act, and for passing order confirming duty under Section 28(4) instead of Section 28(8) of the Customs Act, as such the impugned order is bad in law and not sustainable in the eyes of law thus deserves to be quashed.

#### **DISCUSSION AND FINDINGS:**

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

5.1 On going through the material on record, I find that the following issues need to be addressed:

- (i) Whether the invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962, is legally sustainable in the absence of explicit, reasoned findings on 'collusion,' 'wilful mis-statement,' or 'suppression of facts.'
- (ii) Whether the Adjudicating Authority erred in relying solely on the importer's responsibility under Section 17 while confirming the demand under Section 28(4).
- (iii) Whether the OIO contains a legally sound finding to justify the imposition of a mandatory penalty under Section 114A of the Customs Act, 1962.

5.2 The very foundation of the impugned order is the demand and recovery of differential duty under the extended period provided by Section 28(4) of the Customs

Act, 1962. This section unequivocally restricts the extended five-year period to cases where the short-levy is "by reason of, (a) collusion; or (b) any wilful mis-statement; or (c) suppression of facts". The Appellant has emphatically argued that the mandatory ingredients for invoking this proviso are neither alleged in the SCN nor substantiated by a finding in the OIO. The Adjudicating Authority's discussion is confined to the finding that the primary responsibility for 'correct calculation/declaration' lies with the Importer under Section 17 of the Customs Act, 1962, and their failure to do so justifies the demand under Section 28(4) of the Customs Act, 1962. This reasoning is legally flawed and fundamentally misinterprets the distinct roles of Section 17 and Section 28(4) of the Customs Act, 1962. Section 17 of the Customs Act, 1962 places the onus of self-assessment's accuracy on the importer. Any mis-assessment/short-levy discovered within the normal period (now two years) is recoverable under Section 28(1) of the Customs Act, 1962. Section 28(4) of the Customs Act, 1962 is an exception clause and a penal provision that extends the limitation period only when the short-levy is linked to deliberate and mala fide actions (fraud, collusion, wilful mis-statement, or suppression). The Hon'ble Supreme Court of India and various Appellate Tribunals have consistently held that mere failure to declare or omission is insufficient for the extended period. There must be an affirmative, conscious, and deliberate act to evade payment of duty.

5.3 In Pushpam Pharmaceuticals Co. v. CCE reported at 1995 (78) E.L.T. 401 (S.C.), the Hon'ble Supreme Court observed that the term "suppression" is used in company with strong words like "fraud, collusion or wilful default" and "does not mean any omission. The act must be deliberate... that the correct information was not disclosed deliberately to escape from payment of duty". In Uniworth Textiles Ltd. vs. Commissioner of Central Excise, Raipur reported at 2013 (288) E.L.T. 161 (S.C.), the Hon'ble Supreme Court ruled that "The conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts is... untenable" and that finding mere non-payment as willful suppression would effectively render the normal limitation period meaningless.

5.4 The Appellant correctly argued that case laws under Section 11A of the Central Excise Act are pari materia and equally applicable to Section 28(4) of the Customs Act, 1962. Judicial reviews (e.g.,) consistently uphold that the ingredients for extended limitation are identical across these sections and that mere non-payment or a dispute on calculation/classification is insufficient to prove deliberate evasion. By simply stating the cited cases are "not relevant", the Adjudicating Authority has failed

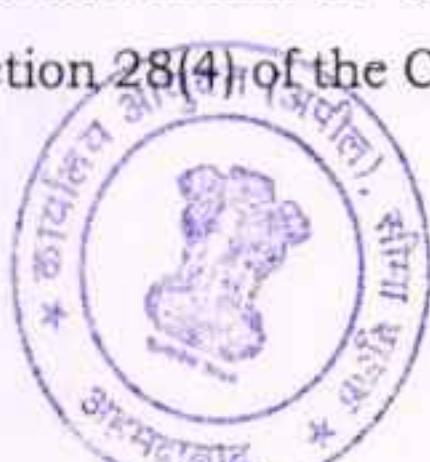


to fulfill its legal obligation to distinguish the facts of the present case from the established superior jurisprudence. This material lapse necessitates a remand.

5.5 The OIO states that the Appellant agreed with the facts regarding short payment of duty but sought to escape liability by claiming the demand should be under Section 28(1) of the Customs Act, 1962. Crucially, agreeing to a mistake in calculation (especially if done by a Customs Broker and subsequently reassessed by the Proper Officer) is fundamentally different from admitting to a wilful mis-statement with intent to evade duty. The Adjudicating Authority conflated these two distinct issues, which is a legal error. The OIO failed to address the Appellant's specific claims, such as the fact that the two Bills of Entry in Para-II and the two in Para-III were already subjected to re-assessment by the Proper Officer under Section 17(4) of the Customs Act, 1962. A demand raised on a matter already scrutinized and decided by the Proper Officer and on which the duty, as reassessed, was paid, generally falls outside the scope of wilful suppression/mis-statement. The Adjudicating Authority must issue a finding on this specific fact.

5.6 The Appellant rightly relied upon the judgment in Continental Foundation Joint Venture vs. Commissioner of Central Excise, Chandigarh reported at 2007 (216) ELT 177 (SC) , where it was held that suppression means failure to disclose full information with intention to evade payment of duty. Furthermore, the Adjudicating Authority's assertion that the onus lies solely on the importer under Section 17, thereby validating the extended period, completely ignores the principle of Revenue's Prior Knowledge. The Appellant correctly demonstrated that documents like the Invoice and Bill of Lading, which allegedly contained the necessary information to correct the discrepancies (Incoterms, currency), were on record at the time of assessment or subsequent reassessment by the Proper Officer. The Hon'ble CESTAT in Amway India Enterprises Pvt Ltd. Vs. Commissioner of C. Ex, New Delhi reported at 2018 ACR 157 CESTAT New Delhi/ 2017 (3) G.S.T.L. 69 (Tri. - Del.) held that there is "*No extended period of limitation where Revenue had prior knowledge.*" In the present case, a significant portion of the demand relates to transactions that were either fully assessed by the Proper Officer or were audited (being self-assessed/RMS facilitated). The fact that the omission was only discovered during a later Premises-Based Audit does not automatically convert the omission into wilful suppression.

5.7 The OIO's finding is legally insufficient as it fails to record any positive, reasoned finding of 'wilful mis-statement' or 'suppression of facts' on the part of the Appellant as mandated by Section 28(4) of the Customs Act, 1962. Instead, it attempts



to justify the invocation of the extended period by relying on the general obligation of the importer under Section 17 of the Customs Act, 1962. The OIO has thus failed to discharge the heavy burden of proof required to invoke the penal extended period.

5.8 The penalty under Section 114A of the Customs Act, 1962 is mandatory, but only when duty is short-levied "by reason of collusion or any wilful mis-statement or suppression of facts" and the duty is determined under Section 28(8). Since the core issue of the extended period itself is unaddressed and lacks a reasoned finding of mens rea in the OIO, the imposition of the mandatory penalty under Section 114A of the Customs Act, 1962 is inherently flawed and cannot be sustained. As the Adjudicating Authority has confirmed the entire demand and penalty under the extended period of limitation without a proper and reasoned finding as to how the essential ingredients of Section 28(4) are satisfied, this constitutes a clear failure to follow a mandatory statutory procedure. The OIO merely concludes that the demand under Section 28(4) is "Correct" without a discussion of the Appellant's numerous judicial precedents and submissions that directly address the legal requirement of the extended period. This Appellate Authority, therefore, finds that the matter requires reconsideration at the level of the Adjudicating Authority to ensure that the necessary statutory and judicial mandates for invoking the extended period of limitation are explicitly addressed and supported by evidence in the record.

5.9 Remanding the case back to the Adjudicating Authority is necessary due to the material procedural defect and the lack of a specific, reasoned finding on the crucial issue of the extended period of limitation, which goes to the root of the matter. A reasoned order is a necessary component of natural justice. When an order confirms a demand of significant magnitude by invoking a penal section like Section 28(4) of the Customs Act, 1962, the reasons for rejecting the Appellant's defense against the invocation of that section must be explicitly stated. The absence of detailed, reasoned findings on the core legal challenge to the extended period of limitation renders the entire order, including the consequential demand of duty, interest under Section 28AA of the Customs Act, 1962, and penalty under Section 114A of the Customs Act, 1962, legally unsound.

5.10. In light of the Adjudicating Authority's failure to adequately address the Appellant's substantive legal submissions, particularly those concerning the non-invocability of the extended period of limitation under Section 28(4) of the Customs Act, 1962, the impugned Order-in-Original is not a legally sustainable speaking order.



This amounts to a failure to follow the principles of natural justice by not considering the defense put forth by the Appellant.

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

(i) The appeal is hereby allowed for procedural reasons and the matter is remanded back to the Adjudicating Authority for de novo consideration as discussed in para 5.9 and 5.10 above.

7. The appeal filed by M/s. Singla Timbers Private Limited is hereby allowed by way of remand.



सत्यापित/ATTESTED  
अधीक्षक/SUPERINTENDENT  
सीमा शुल्क (आपेल), अहमदाबाद  
CUSTOMS (APPEALS), AHMEDABAD

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

F. No. S/49-135/CUS/MUN/2023-24  
4334

Date: 11.11.2025

By Speed post / E-Mail

To,  
M/s. Singla Timbers Private Limited,  
B-41, Under Bridge Road,  
Near Hospital Rajpura,  
Dist Patiala, Punjab - 140401

Copy to:

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