सीमाशुल्क(अपील) आयुक्तकाकार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS),अहमदाबाद AHMEDABAD,
चौथीमंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281
DIN- **20250971MN000000D1D5**

क	फ़ाइलसंख्या FILE NO.	S/49-303/CUS/MUN/2024-25
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्कअधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP-171-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	01.09.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Bill of Entry No. 5584194 dated 13.09.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	01.09.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Shreeji Trading Company, Ward No. 21, Near Shyam Mandir, Pilani Road, Mandrella, Jhunjhunu, Rajasthan, 333025

1.	**यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.**
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	**सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.**
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	लिखित सम्बन्धित आदेश/Order relating to :

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद.

(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported on baggage.
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule I item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जोअन्य रसीद,फीस,दण्ड,जब्तीऔर विविध मदों के शीर्षके अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र),जैसा भी मामला हो,से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां. यदि शुल्क,मांगा गया ब्याज,लगाया गया दंड की राशिऔर रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :

	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलियअधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल,बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	

	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.**
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए**
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.**
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने,मांगे गए शुल्क के 10 % अदा करने पर,जहां शुल्क या शुल्क एवं दंड विवाद में हैं,या दंड के10 % अदा करने पर,जहां केवल दंड विवाद में है,अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	**उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.**
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.

कार्यालय आयुक्त (अपील) सीमा शुल्क अहमदाबाद

ORDER-IN-APPEAL

M/s. Shreeji Trading Company, Ward No. 21. Near Shyam Mandir, Pilani Road, Mandrella, Jhunjhunu, Rajasthan- 333025 (hereinafter referred to as the 'appellant') have filed the present appeal under Section 128 of the Customs Act, 1962 challenging the assessment made in Bill of Entry No. 5584194 dated 13.09.2024 (hereinafter referred to as the 'impugned BE') filed at Mundra Port.

2. Facts of the case, in brief, as per appeal memorandum are that the appellant have imported "HDPE REGRIND falling under HSN 39012000 by filling Bill of entry No. 5584194 dated 13.09.2024. This was re-assessed by the FAG (Faceless Assessment Group) on 21.09.2024 and enhanced the value of the imported goods and the same was given Out of charge on 30.09.2024.

2.1 During the re-assessment of the impugned BE by the FAG, queries were raised to Upload the test report alonwgwith PLATT rate calculation sheet. Test report was uploaded, however PLATT rate could not be produced as the same was not available. The FAG has enhanced the value of the goods, details are as under:

HDPE REGRIND		
	Actual Value as per Appellant	Enhanced Value as per Impugned Order
Unit Price (USD)	0.48	0.80
Qty in KGS	24452	24452
Total Value in (INR) Exchange Rate @ Rs. 84.90)	9,96,467.90/-	16,60,779.84/-
BCD @ 7.5%	74,735.09/-	1,24,558.48/-
SWS @ 10%	7473.50/-	12,455.84/-
IGST @ 18%	1,79,364.22/-	2,98,940.37/-
Difference (Disputed Duty) in Rs.	1,74,381.88/-	

2.3 The appellant lodged protest against the said re-assessed BE through letter dt. 25.09.2024 requesting to pass Speaking Order in the matter. The appellant also paid Customs duty on enhanced value through Challan dated 30.09.2024.

3. Being aggrieved by the re-assessment of the impugned Bill of Entry No. 5584194 dated 13.09.2024—particularly the arbitrary enhancement of the assessable value of the imported goods and the failure to issue a speaking order—the appellant has filed the present appeal, raising the following key contentions:

3.1 Failure to provide an opportunity for personal hearing prior to the passing of the order constitutes a clear violation of the principles of natural justice.

3.2 Failure to issue a speaking order within fifteen days from the date of re-assessment of the Bill of Entry, as mandated under Section 17(5) of the Customs Act, 1962.

3.3 Enhancement of the assessable value of the goods without following the procedure prescribed under Section 14 of the Customs Act, 1962, read with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2017.

3.4 Failure to produce any evidence of additional payment made by the appellant to the foreign supplier. The appellant paid only the invoiced amount, as supported by the remittance documents. Hence, the enhancement of value is without any basis and is unjustified.

3.5 Failure to record valid reasons for rejecting the declared transaction value. As per the valuation provisions, the transaction value—i.e., the price actually paid or payable—is to be accepted when the buyer and seller are not related, and the price is the sole consideration. No such reasons were recorded before revaluation and enhancement in the present case.

3.6 Erroneous rejection of transaction value and re-fixation of value by the FAG without examining contemporaneous imports of identical or similar goods. The assessment lacks cogent evidence and is legally unsustainable. Hence, the re-assessment by the FAG is liable to be set aside in toto.

PERSONAL HEARING

4. Personal hearing in the matter was held on 07.08.2025 in virtual mode. Shri Manish Kumar Khetan, CA, appeared for hearing on behalf of the Appellant. He reiterated the submissions made at the time of filing of appeal.

DISCUSSION AND FINDINGS

5. I have carefully gone through the facts of the case and submissions made by the appellant in their appeal memorandum as well as submissions made at the time of personal hearing. I find that the appeal has been filed against re-assessment of Bill of Entry. It is observed that the Hon'ble Supreme Court in case of ITC Ltd Vs CCE Kolkata [2019 (368) ELT216] has held that any person aggrieved by any order which would include self-assessment, has to get the order modified under Section 128 or under relevant provisions of the Customs Act, 1962. Hence, the appeal preferred by the appellant against assessment made in the aforesaid Bill of Entry is maintainable as per the judgment of the Supreme Court in ITC case supra.

5.1 However, before going into the merits of the case, I find that the appellant have filed the present appeal on 11.12.2024. In the Appeal Memorandum, the date of communication of the decision or order appealed against is mentioned as 30.09.2024, which is mentioned as the Out of Charge date. In the Bill of Entry, the date of re-assessment and Out of Charge date are mentioned as 21.09.2024 and 30.09.2024 respectively. Hence, the date of re-assessment mentioned in the Bill of Entry No. 5584194 dated 13.09.2024 is 21.09.2024 which is the actual date of communication of decision or order appealed against. In this regard, I place reliance on the case law of JINDAL DRILLING & INDUSTRIES LTD Versus C.C. (IMPORT), NHAVA SHEVA 2014 (314) E.L.T. 457 (Tri. - Mumbai) wherein the Hon'ble Tribunal held as under :-

> *" 5. We have carefully considered the rival submissions. There is no dispute about the fact that the goods have been assessed to duty on 9-6-2009 and the assessment order was passed on that date. It is an entirely different matter that the appellant paid the duty subsequently and got the goods cleared after examination by the Customs and out of charge order was issued on 17-6-2009. As per Section 128 of the Customs Act, "any person aggrieved by any decision or order passed under this Act by an officer of Customs lower in rank than a Commissioner of Customs, may appeal to the Commissioner (Appeals) within 60 days from the date of communication to him of such decision or order provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, allow to be presented within a further period of 30 days". From the provisions of law stated above, it is clear that the appeal has to be filed within 60 days from the communication of the assessment order. In the present case it is not in dispute that the assessment order was passed and communicated on 9-6-*

2009. Therefore, the time limit for computing the appeal period has to be counted from 9-6-2009 which is the date of communication of the assessment order and not from 17-6-2009 when the out of charge order was passed.

5.2 In view of the above, I find that there is delay of 21 days in filing of appeal beyond the prescribed time limit of 60 days as stipulated under Section 128(1) of the Customs Act, 1962. The relevant legal provisions governing filing an appeal before the Commissioner (Appeals) and his powers to condone the delay in filing appeals beyond 60 days as contained in Section 128 of the Customs Act, 1962 are reproduced below for ease of reference:

SECTION 128. Appeals to [Commissioner (Appeals)]. — (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order.

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

Section 128 of the Customs Act, 1962 makes it clear that the appeal has to be filed within 60 days from the date of communication of order. Further, if the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days.

5.3 It is observed that there is delay of 21 days in filing of appeal beyond the statutory time limit of 60 days. The appellant vide their submission dated 09.12.2024 submitted that 10 days delay, as per his statement, occurred as the appellant had considered the date 30.09.2024 which is of Out of Charge Order as relevant date, however, if the relevant date 21.09.2024 is considered which is date of assessment then delay of 21 days occurred. It is further submitted that the appellant had waited for speaking order to be passed by the FAG assessment group which was not passed till date, therefore, delay in filing of appeal was taken place and requested to condone the delay of 21 days. In the interest of justice, I take a lenient view and allow the said appeal filed by the appellant as admitted by condoning the delay of 21 days in filing appeal under the proviso to Section 128(1) of the Custom Act, 1962.

5.4 In the matter, a copy of appeal memorandum dt. 09/12/2024 submitted by the appellant was forwarded to the Assistant Commissioner of Customs, Mundra vide letter dated 02.01.2025 for submitting their comments on the grounds of appeal raised by the appellant . However, no reply was received in the matter.

5.5 As regards the merits of the case, it is observed that the Appellant imported goods under Bill of Entry No. 5584194 dated 13.09.2024, which was subsequently re-assessed by the FAG (Faceless Assessment Group). During this re-assessment, the declared transaction value was arbitrarily enhanced without adhering to the provisions of Section 14 and Section 17 of the Customs Act, 1962. The FAG did not provide any evidence to suggest that the appellant made any payment to the foreign supplier over and above the invoiced amount. The appellant has submitted proof of payment through remittance documents, which clearly establish that the amount paid matched with the invoice. Moreover, no valid reasons were recorded by the FAG for rejecting the declared transaction value. Under the valuation provisions, the transaction value—i.e., the price actually paid or payable—is to be accepted if the buyer and seller are not related and the price is the sole consideration. In this case, no such exceptions or doubts were substantiated before proceeding with revaluation. Additionally, the FAG failed to examine contemporaneous imports of identical or similar goods, which is a necessary step before re-fixing the value. The assessment, therefore, lacks any cogent basis or supporting evidence and is thus legally unsustainable. Therefore, the issue to be decided in the present appeal is whether the re-assessment made by the proper officer in the impugned Bill of Entry, in the facts and circumstances of the case, is legal and proper or otherwise.

5.6 It is observed that that no speaking order has been passed for the re-assessment of impugned Bill of Entry. Hence, I find that entire facts are not available on records to verify the claims made by the appellant. Copy of appeal memorandum was also sent to the jurisdictional officer for comments.

However, no response have been received from the jurisdictional office. Therefore, I find that remitting of the case to the proper officer for passing speaking order becomes sine qua non to meet the ends of justice. Accordingly, the case is required to be remanded back, in terms of sub-section (3) of Section 128A of the Customs Act, 1962, for passing speaking order by the proper officer by following the principles of natural justice. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs - 2004(173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels P. Ltd. – [2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677 (Tri. – Del)] holding that Commissioner (Appeals) has power to remand the case under Section-35A (3) of the Central Excise Act, 1944 and Section-128A (3) of the Customs Act, 1962.

6. In view of the above, I allow the appeal by way of remand and remit the matter pertaining to this appeal to the proper officer of the FAG, who shall ascertain the facts, examine the documents, submissions made by the appellant including the submissions made in the present appeal proceedings and pass speaking order under Section 17(5) of the Customs Act, 1962, after following principles of natural justice as per the legal provisions. While passing this order, no opinion or views have been expressed on the merits of the dispute or the submissions by the appellant in this regard, which shall be independently examined by the proper officer.

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

(Amit Gupta)
Commissioner (Appeals)
Customs, Ahmedabad

F.No. : S/49-303/CUS/MUN/2024-25 3167

Date: 01.09.2025

By Registered Post A.D.

To,

M/s Shreeji Trading Company,
Ward No. 21, Near Shyam Mandir ,
Pilani Road, Mandrella,
Jhunjhunu, Rajasthan, 333025

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

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

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1. The Chief Commissioner of Customs, Ahmedabad zone, Customs House, Ahmedabad.
2. The Pr. Commissioner of Customs, Customs House, Mundra
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