सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
चौथी मंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.
दूरभाष क्रमांक Tel. No. 079-26589281
DIN-20251071MN0000333C7D

क	फ़ाइल संख्या FILE NO.	F.No. S/49-447/CUS/AHD/2023-24
ख	अपीलआदेश संख्या **ORDER-IN-APPEAL No.** (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	**AHD-CUSTM-000-APP-293-25-26**
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	27.10.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	Letter F.No. CUS/SHED/MISC/767/ICD-UMGN-CUS-COMMRTE-AHMEDABAD dated 02.02.2024 issued by the Deputy Commissioner of Customs, ICD-Tumb.
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	27.10.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Great White Global Pvt. Ltd. Survey No. 32/2, 35/2, 36, 36/1, 38, 39, Village – Gundalv, Taluka – Pardi, Valsad, Gujarat – 396195.

1.	**यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.**
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	**सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.**

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

ORDER-IN-APPEAL

M/s. Great White Global Pvt. Ltd., Survey No. 32/2, 35/2, 36, 36/1, 38, 39, Village – Gundalv, Taluka – Pardi, Valsad, Gujarat – 396195 (hereinafter referred to as 'the appellant') has filed the present appeal against a letter bearing F.No. CUS/SHED/MISC/767/ICD-UMGN-CUS-COMMRTE-AHMEDABAD dated 02.02.2024 issued by the Deputy Commissioner of Customs, ICD-Tumb (hereinafter referred to as 'the impugned letter' or 'the impugned order'). Vide the impugned letter, it has been communicated to the appellant that their application for cancellation of 'Out of Charge' and re-assessment of 55 Bills of Entry has been rejected by the 'competent authority'. As the designation of the 'competent authority' has not been mentioned in the impugned letter, this office has sought clarification in this regard. In reply, vide email dated 10.10.2025, the Deputy Commissioner of Customs, ICD-Tumb, has informed that the designation of 'competent authority' was the Additional Commissioner of Customs, Ahmedabad, who has rejected the request for cancellation of 'Out of Charge' and re-assessment of Bills of Entry.

2. Facts of the case in brief, as per the appellant, are that they had imported copper wires of various diameter for the period January, 2020 to June, 2021 under various Bills of Entry from Metrod Sdn. Bhd., Malaysia. Vide Sr.No.8 of Notification No. 1/2020-Customs (CVD) dated 08.01.2020, Countervailing Duty ('CVD') @2.47% was imposed on Continuous Cast Copper Wire originating from Malaysia and produced by M/s. Metrod Malaysia Sdn. Bhd. The appellant stated that they had paid the said CVD @2.47% and got cleared the goods for home consumption. The foreign producer viz. M/s. Metrod (Malaysia) Sdn. Bhd. and Others had filed Anti Dumping Appeal No. 50987 of 2020 and Others with Hon'ble CESTAT, New Delhi. Vide Final Order No. 51069-51072/2021 dated 08.03.2021 [2021 (3) TMI 404 – CESTAT New Delhi], Hon'ble CESTAT set aside imposition of 2.47% CVD, as mentioned at Sr.No.8 of the Notification dated 08.01.2020 and allowed all the four Anti-Dumping Appeals including Appeal No. 50987 of 2020. The appellant further stated that this order has not been challenged by Customs Department and so, the CVD to the tune of Rs. 2,69,45,156/- paid by them is liable to be refunded.

3. The appellant further submitted that vide letter dated 26.07.2023 they have submitted the relevant details viz. BOEs with all supporting documents, and requested to cancel the out of charge and reassess the subject BOEs. Vide impugned letter dated 02.02.2024, the Deputy Commissioner of Customs, ICD-Tumb communicated that their request for cancellation of 'Out of charge' and Re-assessment of the Bills of Entry has been

rejected by the competent authority. The observations of the competent authority, i.e. Additional Commissioner of Customs, for rejection of the request of the appellant, have been communicated to the appellant through the impugned letter dated 02.02.2024, which are as under:

> *"The subject Bills of entry are dated from January 2020 to July 2021. I find the assessment of Bills of entry is final; and neither provisional nor protest of payment of duties is on record. With the final assessment on record for the subject Bills of entry pertaining to the period January 2020 to July 2021 and none of the assessments which are appealable orders by themselves have been appealed against/ challenged before the Commissioner (Appeals), and the assessment which are appealable orders by themselves, have been accepted by the importer and no appeal was filed within the statutory time limit before Commissioner (Appeals), at this stage in January 2024 to bypass the statutory provisions of law pertaining to Appeals and entertain re-call, appears to dilute the provisions of final assessment attaining finality and bypass the statutory appellate mechanism. After a period of 3-4 years of assessment which attained finality and the position being accepted by the importer and wherein the importer did not choose their statutory right of filing an appeal and is questioning the correctness of the assessment order subsequently; if this position is accepted then the provisions for assessment, the provisions for appeal in the Act will lose their relevance and this exercise will run counter to the scheme of the Act and the entire exercise will introduce an element of uncertainty. The Assessment orders are appealable orders under the Custom Act, 1962 and were not challenged but accepted and attained finality for the 55 Bills of entry 3 to 4 years ago itself. I neither find any of the said 55 assessments orders challenged; nor covered in the cited OIO. The rationale laid down vide the H'ble Apex Court vide ITC Ltd case [2019(368)ELT216(SC)]; Flock(India) Pvt ltd case [2000(120)ELT285(SC)); Priya Blue Industries case [2002(148)ELT809(Tri-Del) and 2004(172)ELT145(SC)] may be applied in subject matter.*

2. The Board vide Circulars, namely Circular 1/90-AU dated 19-3-1990 and Circular 2/85-AU dated 8-1-1985 clarified that the orders of the Tribunal are 'judgements in personem' and not 'judgements in rem'. In the cited H'ble Tribunal Order dated 8-3-2021, M/s Great White is neither an appellant nor a respondent. Further, as per the said Tribunal Order the period of Investigation under consideration of the said Tribunal Order was notified to be from April 2017 to March 2018 and said Tribunal Order at para 3 reads that no appeal has been filed by any other manufacturer/ exporter importer of subject goods; further from para 7(iii) and 8(i) it reads that Vedanta

imported goods during the period of investigation, Vedanta is therefore ineligible to be a part of domestic Industry, Hindalco would constitute the domestic Industry. With reference to the cited Board Circulars dated 19-3-1990 and Circular dated 8-1-1995, M/s Great White is neither an appellant/ respondent in the subject Tribunal Order.

3. In view of said two paras, the request of the importer after 3 to 4 years of assessments which had attained finality and without exercising their statutory right of appeal against the assessment orders and in view of the cited Board Circular which are binding on the Departmental Officers the importer's request appears not in consonance with the scheme of Customs Act and procedure and such a request at this stage after 3 to 4 years of assessment attaining finality introduces an element of uncertainty in the entire process & relevance of prescribed scheme of law and procedure; running counter to the scheme of law and counter to the statutory provisions of appeal available to the importer against the assessment order which the importer failed to exercise, starting way back to the year 2020. In conspectus thereof, importer's request cannot be acceded to."

4. Being aggrieved with the above communication, M/s. Great White Global Pvt. Ltd. has filed the present appeal mainly on the following grounds.

GROUNDS OF APPEAL (gist)

JUDGMENT OF ITC LIMITED [2019 (368) ELT 216 (SC)] NOT APPLICABLE

5. The learned AO has stated that unless the self-assessed BOEs are set-aside in appeal, acceding to request of the appellant would introduce an element of uncertainty. The appellant with utmost respect submits that in the decision of the Supreme Court in ITC Ltd. (supra) while holding that the refund cannot be granted by way of a refund application under Section 27 of the Act until and unless an assessment order is modified and a fresh order of assessment is passed and duty re-determined, the Supreme Court nowhere said that such amendment or modification of an assessment order can only be done in an Appeal under Section 128. In para 47, the Court held categorically:

"47..... we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in

case any person is aggrieved by any order which would include self-assessment, he has to get the ***order modified under Section 128 or under other relevant provisions of the Act.****"*

(emphasis supplied)

That the BOEs can be amended applying sections 149.

6. Section 149 reads as under: -

SECTION 149. Amendment of documents. *- Save as otherwise provided in sections 30 and 41, the proper officer may, in his discretion, authorise any document, after it has been presented in the custom house to be amended [in such form and manner, within such time, subject to such restrictions and conditions, as may be prescribed]:*

Provided that ***no amendment of a bill of entry*** *or a shipping bill or bill of export* ***shall be so authorised to be amended after the imported goods have been cleared for home consumption*** *or deposited in a warehouse, or the export goods have been exported,* ***except on the basis of documentary evidence which was in existence at the time the goods were cleared,*** *deposited or exported, as the case may be.*

[Provided further that such authorisation or amendment may also be done electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

Provided also that such amendments, as may be specified by the Board, may be done by the importer or exporter on the common portal.]

(emphasis supplied)

7. The appellant further submitted that Hon'ble Apex Court in the case of ITC Ltd. clearly indicated that the modification of the assessment order can be either under Section 128 or under other relevant provisions of the Act - i.e. Section 149 according to them. So, Section 149 is an additional remedy available to the petitioner to seek amendment of the BoEs subject to the condition that such amendment is sought on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be [Dimension Data India Private Ltd. Vs Commissioner of Customs & Anr. 2021 (376) E.L.T. 192 (Bom.)].

8. Further, that the Assessing Authority has failed to consider the fact that Section 149 of the Act does not prescribe any time limit for amending the Bill of Entry filed and assessed. The power to amend under Section 149 of the Act is a discretionary power vested with the authority. Since, at the time of filing the BOEs the said notification was in force, the appellant was compelled to file the BOEs by levying CVD and getting them assessed as such, however now since the levy has been set-aside by Hon'ble CESTAT, no CVD was imposable from 08.01.2020 and the petitioner is compelled to seek amendment of Bill of Entry under Section 149 of the Act.

9. The appellant invited reference to Circular No. 45/2020-Customs dated 12.10.2020 to contend that in respect of re-assessment of Bills of Entry where re-assessment is requested after out of charge has been given under section 47 of the Customs Act, the same shall continue to be done by the Port Assessment Group (PAG) as was done earlier.

10. The appellant further stated that since the levy of CVD is set aside, the CVD paid by the appellant is not a duty, which is required to be assessed and challenged in appeal. That, in absence of any duty the CVD paid by the appellant is nothing but deposit and not duty, and there arises no question of assessment of a deposit and further challenging the same in appeal.

NO TIME LIMIT PRESCRIBED UNDER SECTION 149

11. There is no time limit prescribed under 149 of the Act and hence the request of the appellant ought to have been considered under section 149 of the Act by the learned AO wherein no time limit is prescribed. Reliance has been placed by the appellant on following judgments:

- M/S. Sony India Pvt. Ltd. Vs Union of India & Another - 2022 (379) E.L.T. 588 (Telangana);
- Union of India Vs. M/S Sony India Pvt. Ltd. - Special Leave Petition (Civil) Diary No(s). 2319/2023 [Confirmed the judgment of Hon'ble Telangana High Court];
- Oriental Carbon and Chemicals Limited Vs. Union of India - 2021 (377) E.L.T. 850.

12. The appellant has further stated that since notification itself is set-aside, no new documents were required for the purpose of Section 149 and the learned AO ought to have permitted the reassessment by amending the BOEs.

AMOUNT OF CVD IS REQUIRED TO BE REFUNDED

13. The appellant further contended that since the levy of CVD is set-aside, the question of unjust enrichment does not arise and retaining the CVD would be without authority of law and contrary to Article 265 of the India. That the duty which is paid by mistake of law or sum paid by the taxpayer which is no longer a duty payable under the law is required to be refunded to the petitioner. It is stated under such circumstances time period under section 27 is not applicable.

14. Without prejudice to the submissions that no time limit is mentioned under section 149 and no time limit is applicable for refunding the sum of money collected without authority of law, the order of Hon'ble CESTAT is dated 08.03.2021 and application requesting for re-assessment of bill of entries and issue of consequent refund filed on 26.07.2023 is within 3 years from the date of accrual of right to seek refund and thus the appellant is entitled to refund along with interest.

15. With the above contentions the appellant has requested to set aside the impugned letter dated 02.02.2024 and to direct the Deputy Commissioner of Customs, ICD-Tumb, to cancel Out of Charge and re-assess the Bills of Entry by considering that the goods imported have been exempted from CVD; and to sanction the refund of Rs.2,69,45,156/- with interest.

PERSONAL HEARING:

16. Opportunities for Personal Hearing through video conference were granted to the appellant on 13.05.2025, 18.06.2025 and 10.09.2025. Vide email dated 10.09.2025, the appellant sought adjournment and requested to reschedule the PH after 15 days. In order to follow the principles of natural justice, a common Personal Hearing was fixed on 15.10.2025 in respect of three appeals filed by the appellant, which was attended by Ms. Ananya Maitin, Advocate of M/s. TLC Legal, on behalf of the appellant. She reiterated the written submissions made at the time of filing of appeal. Further, she submitted a copy of an ***Order dated 26.07.2024 of Hon'ble High Court of Gujarat in SCA No. 10814/2024*** in appellant's own case. She also relied upon the decision Hon'ble Bombay High Court in the matter of ***Dimension Data India Pvt. Ltd. Vs. Commissioner of Customs*** – 2021 (376) ELT 192 (Bom.)

and stated that Section 149 of the Customs Act empowers the proper officer to amend the Bill of Entry at any future point of time, so as to enable sanction of excess duties paid by them.

Admission of Appeal:

17. As this appeal has been filed against rejection of request for cancellation of 'Out of charge' and re-assessment of Bills of Entry, Pre-Deposit under the provisions of Section 129E of the Customs Act, 1962, does not require. In the Appeal Memorandum filed with this office, the Date of communication of the impugned letter dated 02.02.2024 has been shown as "02.02.2024". Whereas, the present appeal has been filed on 15.03.2024. As the appeal has been filed within normal period of 60 days from the date of receipt of impugned letter, as stipulated under Section 128(1) ibid, it has been admitted and being taken up for disposal on merits.

FINDINGS:

18. I have carefully gone through the facts of the case and written as well as oral submissions made by, or on behalf of the appellant M/s. Great White Global Pvt. Ltd. The issue, which is to be decided in the present appeal, is whether the Bills of Entry, which have been cleared during the period of January, 2020 to June, 2021 on payment of CVD without any protest, be re-assessed without levying CVD by way of cancellation of 'Out of charge' and amendment under the provisions of Section 149 after a period of about 3 years to 4 years, particularly when no appeal has been filed against assessment of Bills of Entry under the provisions of Section 128 of the Customs Act, 1962.

19. One set of the appeal memorandum has been sent to the Deputy Commissioner, ICD-Tumb, vide this office letter F.No. S/49-447/CUS/AHD/2023-24/858 dated 19.06.2024 for comments on this appeal. However, no reply thereof has been received. So, I proceed to the decide the appeal on the basis of documents submitted by the appellant.

20. I have seen the Final Order No. 51069-51072/2021 dated 08.03.2021 passed by Hon'ble CESTAT, New Delhi, in respect of Anti Dumping Appeal No. 50897 of 2020 and Others filed by Metrod (Malaysia) Sdn. Bhd. and Others [2021 (3) TMI 404 – CESTAT New Delhi]. The concluding portion of the said Order is as follows:

> *"66. Thus, for all the reasons stated above, it is not possible to sustain the CVD levied for "other program" and if this program is excluded from the subsidy margin*

determination, the appellant would fall below the de minimis level. The imposition of 2.47% CVD on the appellant at serial no. 8 of the notification dated January 8, 2020 is, therefore, liable to be set aside.

67. Such being the position, it would not be necessary to examine the submission raised on behalf of the appellant that the drawn "Copper Wire" manufactured by the appellant is not akin to "Continuous Cast Copper Wire Rods".

68. In the result, the imposition of 2.47% CVD on the appellant at serial no. 8 of the notification dated January 8, 2020 is set aside and all the four Anti-Dumping Appeals, bearing numbers 50897 of 2020, 50894 of 2020, 50895 of 2020 and 50896 of 2020 are allowed."

From the above Final Order, it can be seen that the 2.47% CVD imposed on the subject goods produced by M/s. Metrod Malaysia Sdn. Bhd. and imported from Malaysia has been set aside by Hon'ble CESTAT, New Delhi. However, I observe that Section 9C of the Customs Tariff Act, 1975, has been amended retrospectively w.e.f. 01.01.1995 by Finance Act, 2023. Thus, the provisions regarding jurisdiction of Hon'ble CESTAT in entertaining appeals against Decision/Order/Notification in respect of imposition or non-imposition of CVD, have been amended retrospectively after issuance of the Final Order No. 51069-51072/2021 dated 08.03.2021 passed by Hon'ble CESTAT, New Delhi. However, there is nothing on record to show that whether Union of India / Customs Department has filed any appeal with higher forum against the said Final Order dated 08.03.2021 passed by Hon'ble CESTAT, New Delhi.

21. I have seen a copy of the **Order dated 26.07.2024 passed by Hon'ble High Court of Gujarat in SCA No. 10814 of 2024 filed by M/s. Great White Global Pvt. Ltd. and Anr.** In the said Order, Minutes of Meeting of National Assessment Centre – 4/4A (Metal Products) held on 04.04.2024 have been reproduced. In the said Minutes, it has been inter alia mentioned, *"It has been decided that until the Notification No. 1/2020-Cus (CVD), dated 08.01.2020; is amended, the CVD is to be levied on imports of "Continuous Cast Copper Wire Rods" from Malaysia, as provided under the subject Notification."* After perusing the Minutes, Hon'ble High Court has observed and directed as under:

"3. On perusal of the above Minutes, it is apparent that the National Assessment Centre has shown total disregard to the judicial pronouncement of the CESTAT vide final order No. 51069-51072/2021 dated 8th March, 2021 whereby, the CVD imposed on

Malaysian exporter i.e. Metrod (Malaysia) Sdn. Bhd. was set aside and the Notification No.1/2020 dated 08.01.2020 was modified by the CESTAT to that effect.

4. Though it is recorded in the aforesaid Minutes that the Ministry of Finance has not filed an appeal against the decision of the Tribunal, the imports of Copper Wire exported by Metrod Malaysia have since been assessed at various ports without levy of CVD. It was decided that until Notification No.1/2020- Custom (CVD) dated 08.01.2020 is amended, the CVD is to be levied on imports of "Continuous Cast Copper Wire Rods" from Malaysia as provided under the subject Notification.

5. In our opinion, such decision is nothing but in clear contempt of the decision of the CESTAT dated 8th March, 2021.

6. In view of the above, issue Notice, returnable on 2nd August, 2024. By way of ad-interim relief, the impugned Minutes of Meeting dated 04.04.2024 issued by the respondent No.3-National Assessment Centre as well as the letter issued by the Deputy Commissioner of Customs are hereby stayed till further orders."

I find that the above-mentioned SCA No. 10814/2024 filed by the appellant is still pending before Hon'ble High Court of Gujarat. However, pendency of the said SCA has no bearing on the present appeal and so, it can be decided on merits.

Findings on the main issue i.e. re-assessment by way of amendment

22. Now, coming to the main issue involved in the present case, I examine as to whether the request of the appellant to cancel the 'Out of Charge' and to re-assess the past Bills of Entry under the provisions of Section 149 by way of amendment, is legal and proper in absence of filing appeal against assessment under Section 128.

23. I refer the definition of the term "assessment", as given at Section 2(22) of the Customs Act, 1962, as substituted by the Finance Act, 2018, w.e.f. 29.03.2018, which is as follows (underline supplied):

"(2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to

as the Customs Tariff Act) or under any other law for the time being in force, with reference to—

(a) *the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;*

(b) *the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;*

(c) *exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;*

(d) *the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;*

(e) *the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;*

(f) *any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,*

and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;"

In view of the above-mentioned statutory definition, it is clear that the process of determination of CVD leviable under Section 9 of the Customs Tariff Act, 1975, squarely falls under the definition of the term 'assessment'.

24. In view of the Judgment dated 18.09.2019 of Hon'ble Supreme Court in the case of ***ITC Ltd. Vs. CCE, Kolkata-IV*** [2019 (368) E.L.T. 216 (S.C.)], it is settled position of law that the order of self-assessment is nonetheless an assessment order passed under the Act and it would be appealable by any person aggrieved thereby. Para 43 and 47 of the said Judgment are as under (underline supplied):

*"**43.** As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in Escorts (supra)."*

... ...

*"**47.** When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act."*

In the above-mentioned Judgment, it is specifically held that the order of assessment, including self-assessment, is appealable under Section 128; but, it is nowhere specifically held that the order of assessment can be modified by amending Bill of Entry under Section 149 of the Customs Act, 1962.

25. I find that the appellant has sought re-assessment of Bills of Entry by way of amendment under the provisions of Section 149 of the Customs Act, 1962. The appellant has heavily relied upon the Judgment of Hon'ble Bombay High Court in the case of ***Dimension Data India Pvt. Ltd. Vs. Commissioner of Customs***, reported at 2021 (376) ELT 192 (Bom.). The points for consideration, as mentioned in Para 14 of the said Judgment, were as under:

"14. Short point for consideration was that whether request of the petitioner for correction of inadvertent mistake or error in the self-assessed Bills of Entry and consequential passing of orders for reassessment is legal and valid ? Corollary to the above is the question as to whether even in a case of this nature, petitioner is required to be relegated to the remedy of appeal?"

Whereas, in the case on hand, it is not the claim of the appellant that they had paid CVD for the 55 Bills of Entry on account of inadvertent mistake or error. The appellant has consciously paid the CVD, which was levied at the time of import as per Notification No. 1/2020-Customs (CVD) dated 08.01.2020. Therefore, prior to pronouncement of the Final Order No. 51069-51072/2021 dated 08.03.2021 passed by the CESTAT, New Delhi, there cannot be said to be any mistake or error in the Bills of Entry, which can be corrected under the provisions of Section 149 of the Customs Act, 1962.

26. Further, in the case of ***Dimension Data India Pvt. Ltd. (supra)***, the importer had filed Bills of Entry, which had been self-assessed under Section 17 by claiming wrong classification of imported goods. In that case, the request for re-assessment u/s 17(4) and amendment u/s 149 was made by the importer within reasonable time of 2-3 months. As the issue was regarding determination of proper classification i.e. Tariff Heading, and the request for re-assessment/amendment was made within reasonable time, Hon'ble Bombay High Court has held that the proper officer is empowered to amend such Bills of Entry by correct Tariff Heading in terms of Section 149 and 154 and thereafter pass an appropriate order under Section 17(4) of the Customs Act, 1962. Whereas, in the case on hand, the appellant has made request for cancellation of 'Out of charge' and re-assessment of Bills of Entry after a period of 3 years to 4 years. I do not find any provision of law under which the order towards 'Out of charge' can be cancelled after clearance of goods and Bill of Entry can be reassessed under Section 149 without filing appeal against assessment under Section 128 of the Customs Act, 1962.

27. I find that as the limitation period of filing appeal against assessment, as prescribed under Section 128 was over, the appellant has sought re-assessment by way of amendment under Section 149, for which no time-limit has been prescribed under that Section. It is the contention of the appellant that the Countervailing Duty assessed for the past Bills of Entry can be modified by way of amendment under Section 149. If this contention is accepted, it can be inferred in opposite situation that Customs Department can also raise demand of duty by way of amending Bill of Entry under Section 149. However, raising of demand by way of

amendment and without issuance of show cause notice under Section 28 would not be proper and legal. If any duty has been short paid or not paid, Customs Department has to raise demand under Section 28 and such demand cannot be raised by amendment under Section 149. Similarly, if any duty found to be assessed in excess, the importer is required to file appeal against assessment under Section 128, but the duty assessed cannot be reduced by way of amendment under Section 149 unless there was clerical/arithmetical mistake or error arising from accidental slip or omission, which are correctable under Section 154 of the Customs Act, 1962.

28. In view of the above position of law, I am of the view that in the present case, the appellant has consciously chosen to pay CVD without protest and without seeking speaking order of assessment; and the appellant has not filed any appeal under Section 129D against the assessment of Bills of Entry. Therefore, after a passage of long time of 3 years to 4 years, the appellant is not entitled to seek re-assessment in guise of amendment under Section 149 of the Customs Act, 1962.

Findings regarding non-existence of documentary evidence at the time of clearance – First Proviso to Section 149

29. Further, I find that as per the first Proviso to Section 149, no amendment of a Bill of Entry can be done after the imported goods have been cleared for home consumption, except on the basis of **documentary evidence which was in existence at the time when the goods were cleared**. In the case on hand, the Final Order No. 51069-51072/2021 dated 08.03.2021 passed by Hon'ble CESTAT, New Delhi, was came in existence only from the date **08.03.2021**. Whereas, the appellant stated that they had filed 55 Bills of Entry during the period of **January, 2020 to June, 2021**. Therefore, I am of the view that Bills of Entry cleared prior to the date 08.03.2021 cannot be amended under Section 149 on the basis of the Final Order dated 08.03.2021 passed by Hon'ble CESTAT. Therefore, the appeal filed by the appellant, to the extent it relates to Bill of Entry, which have been cleared prior to 08.03.2021, is liable to be rejected due to this reason also.

Findings on relevant case law

30. In the case on hand, admittedly no appeal has been filed by the appellant against assessment of 55 Bills of Entry and the time-limit for filing appeals, as prescribed under Section 128 of the Customs Act, 1962, is over. As regard the issue, whether the Bill of Entry can be reassessed by way of amendment under Section 149 without filing appeal under Section 128 of the Customs Act, 1962, I rely upon following Orders:

31. I rely upon the Final Order No. 76380-76384/2025 dated 23.05.2025 passed by Hon'ble CESTAT, Kolkata, in Customs Appeal No. 75899 of 2022 and Others in the case of ***Commissioner of Customs (Port), Kolkata Vs. M/s. Krish Fabrics India Pvt. Ltd. and Others***, which is reported as 2025 (6) TMI 205 – CESTAT KOLKATA. The said Final Order has been passed by Hon'ble CESTAT, Kolkata, after discussing the decision of Hon'ble Bombay High Court in the case of ***Dimension Data India Pvt. Ltd. Vs. Commissioner of Customs*** [2021 (376) E.L.T. 192 (Bom.)]. After detailed discussion on the issue involved, Hon'ble CESTAT, Kolkata, has observed and held that the three terms Amendment, Assessment and Appeal, imply altogether different facets and aspects of working. It has been further observed and held as under (underline supplied):

> *"31. In view of our findings aforesaid, we are of the view that the case law of Manik Sandhu [Final Order No.75563/2025] as enclosed with the written submissions filed by the appellant, is on a different facto-legal premise. We have elaborately discussed the present matter in earlier paras. Amendment is no substitute to assessment/re-assessment and cannot replace it, as the two terms apply in different context, have distinct overtones and outcomes in law. Amendment alone of import/export documents may not be sufficient in seeking the desired results. The two terms are not interchangeable. To derive the intended objective, the amended document, if any, would be required to be re-assessed in the light of such an amendment which alone can be done, once the assessment order is set aside by a direction from the superior authority. Suo moto of one's own accord, the authority cannot in itself undertake any re-assessment, having been rendered as functus officio. This logic and discourse also seeks to not only bring about the assigned objective and give a meaning to the different provisions of the statute like Section 17 (Assessment/Reassessment related), Section 128/Section 129 (Appeal related), Section 149 (Amendment related) and Section 154 (Correction of clerical errors related), it also defines the individuality and relevance of each of the provisions without reducing any of such a provision to dead wood. Also any interpretation outsmarting one provision against the other is bound to create chaos and confusion.*
>
> *32. In view of our findings above, we are of the view that the route sought to be adopted by the Ld. Counsel by seeking amendment in terms of Section 149, that too after a prolonged period of several years for an omission made by them cannot be justified. As discussed above amendment and assessment/re-assessment signify two clearly*

distinct connotations importing distinct and separate meanings and encompassing different areas of action. We are thus not able to appreciate any merit in the view as canvassed by the Ld. Counsel.

33. An amendment simplicitor cannot lead to the consequence of demand of duty or a claim for refund, for which the original assessment done is required to be reversed by a process as known to law, as also held by the hon'ble apex court in the ***ITC Ltd. case****, we also would like to put it on record, that the ld. Commissioner has thus completely erred in directing the lower authority to "consider the amendment of the Bill of Entries .....". There is nothing for consideration of the amendment, as merely carrying out the amendment is of no consequence unless the Bills of Entry are re-assessed. None of the earlier assessments have been appealed at all; the outcome of such an amendment continues to hold fort, till such time it is set aside by the appropriate authority and a fresh assessment done revisiting the earlier assessment.*

34. In view of our discussions above, we are of the view that the order of the ld. Commissioner(Appeals) is not in accordance with law and is therefore set aside. The appeals filed by the department are allowed."

The above-mentioned Order passed by Hon'ble CESTAT, Kolkata, is squarely applicable to the present appeal.

32. I also rely upon the Final Order No. 50480-50483/2023 dated 13.04.2023 in Customs Appeal No. 50904 of 2019 and Others passed by Hon'ble CESTAT, New Delhi in the case of ***M/s. Samyak Metals Pvt. Ltd. and M/s. Surya Alumex Vs. Commissioner,*** which is reported as 2023 (4) TMI 671 – CESTAT NEW DELHI. Concluding portion of the said Final Order is as under (underline supplied):

"23. To sum up,

a) Once an order permitting clearance of imported goods for home consumption is issued, they cease to be imported goods and dutiable goods.

b) Since they are no longer dutiable goods, the question of determining the dutiability or the amount of duty, etc. under section 17, i.e., assessment or re-assessment, ends. The proper officer has no power to re-assess any Bill of Entry after this date.

c) The date on which the order permitting clearance of goods for home consumption is issued will be the relevant date for issuing a Show Cause Notice under section 28.

d) That date will also be relevant to calculate the limitation for filing an appeal before Commissioner (Appeals) under section 128.

*24. We are of the considered view that the Commissioner (Appeals) had rightly observed that the Deputy Commissioner had no jurisdiction to review its own order and reassess the bill of entry once again after the goods were cleared on payment of duty and the same was bad in view of the decision of the Apex Court in **Priya Blue** (supra) and in **ITC** (supra). We find no justification to interfere with the said order and we accordingly, affirm the view taken by the Commissioner."*

33. **In view of the above-mentioned Orders of Hon'ble CESTAT, Kolkata and Hon'ble CESTAT, New Delhi, I hold that the appellant cannot claim re-assessment and refund by way of amendment of Bills of Entry under Section 149, particularly when no appeal against assessment has been filed under Section 128 of the Customs Act, 1962. In addition, I hold that Bills of Entry cleared prior to the date 08.03.2021 cannot be amended under Section 149 on the basis of the Final Order dated 08.03.2021 passed by Hon'ble CESTAT in view of the First Proviso to Section 149 of the Customs Act, 1962. Thus, I find no error in the impugned letter dated 02.02.2024 through which the appellant request for cancellation of Out of Charge and Re-assessment of Bills of Entry has been rejected.**

Findings on the contentions regarding refund

34. I find that the appellant has mixed their contentions regarding amendment, re-assessment and refund. The appellant has also prayed to sanction the refund of Rs.2,69,45,156/- along with interest. In this regard, I find that the appellant has neither submitted a copy of their application for refund nor their claim for refund (if any) has been rejected vide the impugned letter dated 02.02.2024. Therefore, I find that their request of refund in the present appeal proceedings is not tenable. I note that the appellant has paid CVD as per the assessment. So, claim of refund thereof does not arise in absence of modification of assessment. In this regard, I rely upon the Judgment of Hon'ble Supreme Court in the case of ***ITC Ltd. Vs. CCE, Kolkata-IV*** [2019 (368) ELT 216 (SC)], wherein it has held that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-

assessment and reassess the duty for making refund. Therefore, the appellant's request to sanction refund of CVD with interest is required to be rejected.

35. In view of the above facts, discussion and findings, I am of the view that impugned letter dated 02.02.2024 issued by the Deputy Commissioner of Customs, ICD-Tumb, is legal and proper and therefore, the appeal filed by M/s. Great White Global Pvt. Ltd. is not sustainable.

36. This order has been passed without expressing any views on the issue as to whether Countervailing Duty is leviable or not on the goods imported by the appellant, because it is not the issue which required to be considered in the present appeal proceedings.

37. In view of the above discussion and findings, I pass the following order:

ORDER

I reject the appeal filed by M/s. Great White Global Pvt. Ltd. and uphold the communication made vide the impugned letter bearing F.No. CUS/SHED/MISC/767/ICD-UMGN-CUS-COMMRTE-AHMEDABAD dated 02.02.2024 issued by the Deputy Commissioner of Customs, ICD-Tumb.

(Amit Gupta)
Commissioner (Appeals),
Customs, Ahmedabad

F.No. S/49-447/CUS/AHD/2023-24 Date: 27.10.2025

By E-mail (As per Section 153(1)(c) of the Customs Act, 1962)

To
M/s. Great White Global Pvt. Ltd.
Survey No. 32/2, 35/2, 36, 36/1, 38, 39,
Village – Gundalv, Taluka – Pardi,
Valsad, Gujarat – 396195.
(email: export@great-white.in)

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
(email: ccoahm-guj@nic.in)

2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
(email: cus-ahmd-guj@nic.in rra-customsahd@gov.in)

3. The Deputy/Assistant Commissioner of Customs, ICD-Tumb.
(email: cusicd-tumb@gov.in)

4. Ms. Ananya Maitin, Advocate, M/s. TLC Legal, Mumbai
(email: ananya@tlclegal.in info@tlclegal.in)

5. Guard File.

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