सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

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

DIN - 20250671MN000000A397

क	फ़ाइल संख्या FILE NO.	S/49-478/CUS/MUN/2024-25
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-100-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	25.06.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Decision vide letter dated 20.01.2025 bearing DIN: 20250171MO000000C229 issued by the Deputy Commissioner of Customs, Gr-III, Customs House, Mundra
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	25.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Mundra Solar Energy Limited, Mundra Solar Technopark Pvt Ltd., Survey No 180P, Village Vandh Mundra- 370435

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 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 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** (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 हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित 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 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 अपीलिय अधिकरण, 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 के 10% 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

Appeal has been filed by M/s. Mundra Solar Energy Limited, Mundra Solar Technopark Pvt Ltd., Survey No 180P, Village Vandh Mundra-370435, (hereinafter referred to as the 'appellant') in terms of Section 128 of the Customs Act, 1962, challenging the decision conveyed vide letter dated 20.01.2025 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner of Customs, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, as per the appeal memorandum are that the appellant had imported goods vide various Bill of Entries detailed as under and cleared on payment of Customs duty.

Sr. No.	BE No.	Date	Description of goods	Customs Tariff Code	Out of Charge given on
1	6669935	14.11.2024	SUPPLY OF SOLAR GLASS FRONT 2 MM AND SOLAR GLASS BACK 2 MM 2.1mm 2272X1128mm,150 PCS,FC,FRONT GLASS	70071900	19.11.2024
2	6670605	14.11.2024	SUPPLY OF SOLAR GLASS FRONT 2 MM AND SOLAR GLASS BACK 2 MM 2.1mm 2272X1128mm,150 PCS,FC,FRONT GLASS	70071900	19.11.2024
3	6677849	14.11.2024	SUPPLY OF SOLAR GLASS FRONT 2 MM AND SOLAR GLASS BACK 2 MM 2.1mm 2272X1128mm,150 PCS,FC,FRONT GLASS	70071900	19.11.2024
4	6680138	14.11.2024	SUPPLY OF SOLAR GLASS FRONT 2 MM AND SOLAR GLASS BACK 2 MM 2.1mm 2272X1128mm,150 PCS,FC,FRONT GLASS	70071900	19.11.2024
5	6677848	14.11.2024	SUPPLY OF SOLAR GLASS FRONT 2 MM AND SOLAR GLASS BACK 2 MM 2.1mm 2272X1128mm,150 PCS,FC,FRONT GLASS	70071900	19.11.2024

2.1 While submitting the Bills of Entry, the appellant selected 15% of Basic Customs duty instead of 10% as applicable to goods notified at Sr.No.342A of Notification No.50/2017-Customs dated 30.06.2017 amended vide Notification No. 2/2021-Cus., dated 1-2-2021. Due to the said mistake in choosing wrong rate of Customs duty, it resulted in to excess payment of Customs duty, SWC and IGST. The appellant vide their letter dated 09.12.2024 mailed on 16.12.2024 requested the Adjudicating Authority to amend all the said Bills of Entry in terms of Section 149 of the Customs Act,1962.

2.2 The adjudicating authority vide letter dtd. 20.01.2025 i.e. impugned

order passed the following order:

" 2) On scrutiny of your request for amendment in the above-mentioned Bills of Entry, it is noticed that the said Bills of Entry are already Out of Charged and duties have been paid. As per your letters, amendment in the Basic Customs Duty (BCD) from 15% (Effective) to 10% in terms of Notification No. 50/2017, Sr No. 342A has been requested. The request is being made to re-assess the Bill of Entry after cancellation of Out of Charge invoking Section 149 of the Customs Act, 1962 to avail the benefit of Customs Notification No. 50/2017, Sr No. 342A.

In this regard, it is intimated that the said Bills of Entry were self-assessed by the Importer under Section 17(1) of the Customs Act, 1962 and the Importer had an option to avail the benefit of the said Notification, however, the Importer did not avail the option and filed the Bill of Entry under Effective Rate of Duty (BCD @15%). Further the responsibility of applicability of correct customs and other duties lies with the Importer. The Importer while filing the said Bills of Entry had verified and checked the applicability of Basic Customs Duty. Subsequently, paid the applicable CUS/APR/ASS/79/2025-Gr 3-O/o Pr Commr-Cus-Mundra 1/2611760/2025 Customs Duty.

Further, the Importer has made a declaration of truthfulness, accuracy, completeness, authenticity and validity while filing the said Bs/E under Section 46(4A) of the Customs Act, 1962. Further, the provisions of Section 149 of the Customs Act, 1962 stipulates to amend the document on the basis of documentary evidences existed at the time of clearance of the goods. In the instant case, the request is being made to re-assess the Bill of Entry with the notification benefit. The request of re-assessment of duty by way of extending the notification benefit No. 050/2017, Sr. No. 342 A appears to be not tenable. Consideration of the request requires action under Section 17(4) of the Customs Act, 1962 and the same cannot be executed as the Bills of Entry have already been given Out of Charge against the self-assessed bills of entry and an Order for clearance has already been passed (reference may be drawn from the Hon'ble Supreme Court's Order in the matter of M/s ITC Ltd Vs. C.C.E Kolkata-IV in Civil Appeal No. 293 & 294 of 2009 dated. 18.09.2019). Hence, the request requires action under Section 17(4) not under 149 of the Customs Act, 1962.

Therefore, the request for amendment, on account of re-assessment by way of extending the Notification Benefit, cannot be considered and the same is rejected for the reasons as elaborated above "

3. 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 It is submitted that the rejection of request for amendment in Bills of Entry is in clear violation of principal of Natural justice without giving any opportunity of being heard. As submitted in the statement of facts in the Bills of Entry filed by the appellant, inadvertent application of Rate of Customs duty of 15% instead of 10% applicable for the described at Sr.No.342A of Notification No.50/2017Customs as amended was occurred. This being the case the appellant has paid excess Customs duty, SWC and IGST. However, it is the law laid down that before refund of excess duty/tax is claimed, it is incumbent upon the assesse to get re-assessment order. Therefore, with this bona-fide belief, the appellant has made an application under Section 149 to the Dy/Assistant Commissioner, for carrying out amendment/rectification in the rate of customs duty in the Bill of entries, however, without issuing any show cause notice for rejecting the application of the appellant and without giving opportunity of being heard the application of the appellant is rejected. The rejection of an application is a order or decision. It cannot be issued in letter form, instead it has to be speaking order following principal of natural justice. However, the said learned Dy/Assistant Commissioner failed to do so. Hence the appellant contend that principal of natural justice is not followed in rejecting the application for rectification of Bill of entries.

3.2 The appellant has rightly claimed amendment in Bills of Entry in terms of Section 149 hence rejection of request for amendment in Bill of Entries is not correct. The appellant has inadvertently mentioned 15% rate of Basic customs duty, instead of 10% as applicable in terms of Sr.No.342A of Notification No.50/2017 Customs dated 30.06.2017. All the said bill of entries was assessed as declared by the appellant and were given out of charge. Subsequently the appellant came to know about their mistake in self-assessed Bills of Entry and immediately vide their letter dated 09.12.2024 requested in terms of Section 149 of the Customs Act, 1962 to the proper officer to rectify the said mistake occurred

in those Bills of Entry. However, their request for amendment in the Bills of Entry were rejected vide letter dated 20.01.2025. While rejecting the request it is observed by the learned Deputy/Assistant Commissioner that;

(i) same cannot be executed as the Bills of Entry have already been given Out of Charge against the self-assessed bills of entry and an Order for clearance has already been passed (reference may be drawn from the Hon'ble Supreme Court's Order in the matter of M/s ITC Ltd Vs. C.C.E Kolkata-IV in Civil Appeal No. 293 & 294 of 2009 dated 18.09.2019);

(ii) the request requires action under Section 17(4) not under 149 of the Customs Act, 1962

3.3 The observation of the learned adjudicating authority is not correct in as much as the facts of the case law of M/s ITC Ltd Vs. C.C.E Kolkata-IV in Civil Appeal No. 293 & 294 of 2009 dated, 18.09.2019 [2019 (368) E.L.T. 216 (S.C.)] and the facts of the appellant's case were different as submitted herein below. In this regard the appellant would like to submit that while disposing the Civil Appeal No. 293 & 294 of 2009 filed by ITC Ltd, the Hon'ble Supreme Court has at concluding para 47 and 48 the order passed as under.

"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.

48. Resultantly, we find that the order(s) passed by Customs, Excise, and Service Tax Appellate Tribunal is to be upheld and that passed by the High Courts of Delhi and Madras to the contrary, deserves to be and are hereby set aside. We order accordingly. We hold that the applications for refund were not maintainable. The appeals are accordingly disposed of. Parties to bear their own costs as incurred."

3.4 Thus in the case law referred by the authority in rejecting request for modification in the Bills of Entry is not correct in as much as in the said para 47 of the Hon'ble Supreme Court has observed that before claiming refund claim self-assessment has order has to get modified under Section 128 or Under other relevant provisions of the act. Therefore, in the said case law the Hon'ble court has not confined only to Section 128, however categorically stated that self-assessment order alternatively can also be got modified under other relevant provisions. Other provisions where under self-assessed Bill of entry can be modified are Section 140,154 and also Section 17(4).

3.5 Further, in the case of Kirloskar Ferrous Industries Ltd Versus Commr. Of Cus., Mangalore reported at 2021 (377) E.L.T. 878 (Tri.-Bang.), the facts of the matter was that the Commissioner(A) vide the impugned order has rejected the appeal of the appellant mainly relying upon the judgment of the Hon'ble Supreme Court in the case of ITC Limited v. CCE, Kolkata reported in 2019 (368) E.L.T. 216 (S.C.) for the proposition that the refund claim cannot be entertained unless the order of assessment including self-assessment is challenged and modified. Hence, the present appeal. The Hon'ble Tribunal while deciding the said appeal in their Final Order No. 20115/2021, dated 26-4-2021 in Appeal No. C/20192/2020 at para 6.1 as ordered finally as under.

> *" 6.1 Further, I find that an identical issue has been considered by two Division Benches of this Tribunal in the case of Calisons Fibres Pvt. Ltd. cited supra and CC, Tuticorin v. Sakthi Sugars Ltd. - 2020 (372) E.L.T. 577 (Tri.-Chennai). In para 5 in the case of Calisons Fibres Pvt. Ltd., the Division Bench directed that the request for reassessment be treated as application under Section 149 of Customs Act, 1962 for amendment of Bill of Entry and accordingly, directed the proper officer to consider the said application and pass appropriate order in accordance with law after granting opportunity of hearing to the appellant. Since the issue is clearly covered by the Division Bench judgment of this Tribunal, hence, by following the ratio of the said decision I am of the considered view that the impugned order is not sustainable in law and is set aside by allowing the appeal of the appellant with the direction to the original authority that the request of the appellant for reassessment be treated as an application under Section 149 of the Customs Act. 1962 for amendment of Bill of Entry and appropriate order be passed in accordance with law after giving an opportunity of hearing to the appellant.*

[emphasis supplied]"

3.6 In the case Of Valeo India Pvt. Ltd. Versus Commissioner Of Customs, Chennai reported at (2024) 18 Centax 301 (Tri.-Mad) Final Order No. 40393 of 2023 in Appeal No. C/40233 of 2023, decided on 10-4-2024 wherein section 17 vis a vis section 149/154 was analyzed by the Hon'ble Traibunal and while analyzing Apex Court's judgment in ITC Ltd. (supra) at para 9.1 held as under.

"9.1 I now examine the host of judgments cited by the Appellant above in taking forward its interpretation of the Apex Court's judgment in ITC Ltd. (supra). The Appellant has stated that in Sony India Pvt. Ltd. v. Union of India [2021 (8) TMI 622 - TELANGANA HIGH COURT = 2022 (379) E.L.T. 588 (Telangana)] the Hon'ble Telangana High Court has observed that even "the Supreme Court 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". They further stated that the decision of the Hon'ble High Court in Sony (supra) has been affirmed by the Hon'ble Supreme Court in Union of India v. Sony India Pvt. Ltd. [2023 (4) TMI 1086 - SC ORDER] = 2023 (385) E.L.T. 93 (S.C.) = (2023) 5 Centax 234 (S.C.). The facts of the case were that the petitioner in the said case imported mobile phones and paid Countervailing Duty (C.V.D.) under section 3(1) of the Customs Act at the rate of 6% as per SI. No. 263A(i) of Notification No. 12/2012-C.E., dated 17-3-2012 (Exemption Notification). The petitioner could not claim exemption under SI. No. 263A(ii) of the Exemption Notification which allowed a payment of C.V.D. at 1%, as the Department had taken a stand that such exemption is available only when the assessee has not taken credit in respect of the inputs and capitals goods under the Cenvat Credit Rules, 2004 for the manufacture of mobile phones and during the relevant period, the EDI system did not permit availment of the lower rate of tax as per the Exemption Notification. A Writ of Mandamus was issued by the Hon'ble High Court to the department to amend the subject Bills of Entry under Section 149 of the Customs Act so as to enable the importer/petitioner to seek refund of excess duty paid under Section 27 of CA'62.

[emphasis supplied]"

3.7 Therefore, it is the contention of the appellant that unless their Bills of Entry rectified, they could not file refund claim. In other words, the filing of

rectification/amendment request of the appellant is also in conformity with the aforesaid case law of Kirloskar Ferrous Industries Ltd Versus Commr. Of Cus., Mangalore reported at 2021 (377) E.L.T. 878 (Tri.Bang.) and Valeo India Pvt. Ltd. Versus Commissioner of Customs, Chennai reported at (2024) 18 Centax 301 (Tri.-Mad) wherein the case of ITC Ltd. [referred in rejection letter] analyzed and distinguished.

3.8 Therefore, the appellant contend that they have rightly has preferred to first go for rectification of Bills of Entry in terms of Section 149 and its rejection without giving opportunity to be heard is also in gross violation of principal of natural justice.

3.9 The appellant inadvertently by bona-fide mistake applied wrong rate of Customs duty of 15% instead of 10% applicable to the goods enlisted at Sr. No. 342A of Notification No.50/2017-Customs. It is incumbent upon the proper officer to assess correct rate of duty. Excess payment of duty and tax liable to be refunded to the appellant subject to amendment in Bill of Entry. The appellant would contend that they have imported following goods vide subject Bills of Entry

Description of goods	Customs Tariff Code
SUPPLY OF SOLAR GLASS FRONT 2 MM AND SOLAR GLASS BACK 2 MM 2.1mm 2272X1128mm,150PCS,FC,FRONT GLASS	70071900

3.10 The correct and effective rate of Customs duty applicable to the said goods in terms of Sr.No.342A of Notification No.50/2017-Customs as amended vide Notification No. dated is @ 10% as against the appellant has inadvertently applied @ 15% which is otherwise tariff rate where as 10% is the effective rate of duty prescribed vide Notification No.50/2017-Customs. This has resulted in to excess payment of Customs duty, SWC and IGST. The said excess collection is collection of tax without authority of law. Government cannot retain excess collection of tax/duty. No man of ordinary prudence would have applied higher rate of customs duty instead of actual lower rate of duty applicable to them. It is therefore contended that the appellant has committed bona-fide mistake in applying correct rate of Customs duty.

3.11 The incorrect rate of Customs duty ought to have been detected by EDI system of customs or by the proper officer who assessed the bill of entries.

However, in the instant case the appellant made application for rectification/amendment in the Bills of Entry under Section 149 which ought to have been considered instead of rejecting the same and instead of compelling the appellant to file appeal in terms of Section 128.

3.12 In the case of Sony India Pvt. Ltd. Versus Union of India writ petition No. 4793 of 2021 decided on 12.08.2021 reported at 2022(379)ELT588(Telangana) wherein facts of the matter and what has been held are as under.

Customs: Benefit of Exemption Notification which could not be claimed due to non-availability of Exemption Notification in EDI systems could not be denied by giving untenable reason that relevant Supreme Court judgment, which was applicable, was delivered after dates of clearance of goods

Bill of Entry - Amendment of Bill of Entry sought to claim benefit of Exemption Notification which could not be claimed due to non-availability of Exemption Notification in EDI systems Department's plea that only reassessment under Section 128 of Customs Act, 1962 is remedy available to petitioner, not tenable. Department claimed that cited judgment of Supreme Court in M/s. SRF Ltd. was delivered on 26-3-2015 [2015 (318) E.L.T. 607 (S.C.)] and same was not available/in existence when goods pertaining to relevant BOEs were cleared - Department taken the decision of Supreme Court as "documentary evidence" which was not in existence at the time of clearance of goods - HELD: Law declared by Supreme Court, unless made prospective in operation in its judgment is always deemed to be the law of land - It cannot be construed as applicable only after the date of pronouncement of judgment of the Supreme Court - That apart, the term "documentary evidence" used in Section 149 ibid, in context of amendment to BOEs or like documents, cannot include decisions of Courts - Adjudicating authority admits principle laid down in M/s. SRF Ltd, but in impugned order he denied benefit of same by giving untenable reason that judgment was delivered after dates of clearance of goods - Moreover, Adjudicating authority cannot refuse to follow a decision of Supreme Court on the ground that Commissioner (Appeals) did not grant relief to petitioner for different period - Also adjudicating authority failed to consider the fact that Section 149 ibid does not prescribe any time limit for amending the Bill of Entry filed and assessed - Importer/petitioner cannot be penalized for what the

authority ought to have done correctly by himself - Impugned order violative of Articles 14, 19(1)(g) and 265 of Constitution of India and Customs Act, 1962, hence set aside, [paras 36 to 51]

3.13 The relevant para of the said case law are as under.

47. He cannot refuse to follow it on the ground that the Commissioner (Appeals) did not grant relief to the petitioner for the different period. In fact, if the said decision in M/s. ITC Ltd. (supra) had been rendered before the decision in the appeal was given by the Commissioner (Appeals), even the said officer would have followed it.

48. Further, it is the duty and responsibility of the Assessing Officer/Assistant Commissioner to correctly determine the duty leviable in accordance with law before clearing the goods for home consumption. The assessing officer instead, having failed in correctly determining the duty payable, has caused serious prejudice to the importer/petitioner at the first instance. Thereafter, in refusing to amend the Bill of Entry under Section 149 of the Act, to enable the importer/petitioner to claim refund of the excess duty paid, the Assessing Authority/Assistant Commissioner caused further great injustice to petitioner.

49. Also, the Assessing Authority has failed to consider the fact that Section 149 of the Customs 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, it is due to incorrect determination of duty by the assessing authority initially, the petitioner is compelled to seek amendment of Bill of Entry under Section 149 of the Act. Thus, the importer/petitioner cannot be penalized for what the authority ought to have done correctly by himself.

50. For the above reasons, we hold that the impugned order dated 7-2-2020 passed in C. No. 5/26/MISC/122-2020-ACC by the 2nd respondent cannot be sustained and is violative of Articles 14, 19(1)(g), 265 and 300A of the Constitution of India and also the Customs Act, 1962, and it is accordingly set aside.

51. A Writ of Mandamus is issued to 2nd respondent to amend the subject

Bills of Entry under Section 149 of the Customs Act to reflect the rate of tax as 1% as per SI. No. 263A(i) of Notification No. 12/2012-C.E., dated 17-3-2012 within four (04) weeks from the date of receipt of copy of this order to enable the importer/petitioner to seek refund of excess duty paid under Section 27 of Customs Act, 1962.

52. Upon the petitioner making such application for refund of excess duty levied and paid, it is for the concerned authority to further look into the refund application and pass orders in the light of ratio laid down by the Supreme Court in Mafatlal Industries Ltd. v. Union of India [(1997) 5 S.C.C. 536 = 1997 (89) E.L.T. 247 (S.C.)] [the principle which is followed in relation to imports for captive consumption in Union of India v. Solar Pesticide (P) Ltd. - (2000) 2 S.C.C. 705 = 2000 (116) E.L.T. 401 (S.C.)].

53. Accordingly, the writ petition is allowed as above. No order as to costs.

PERSONAL HEARING:

4. Personal hearing was granted to the appellant on 18.06.2025, following the principles of natural justice wherein Shri Vijay N Thakkar, Consultant, appeared for the hearing in virtual mode. He re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Deputy Commissioner of Customs, 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 following issues required to be decided in the present appeal:

(i) Whether the impugned communication in the form of a letter, rejecting the Appellant's request for amendment, is a proper and legal "order" under the Customs Act, 1962, and if the rejection without a Show Cause Notice and personal hearing violates principles of natural justice.

(ii) Whether the request for amendment of Bills of Entry to avail a concessional rate of duty, inadvertently not claimed at the time of self-assessment, is permissible under Section 149 of the Customs Act, 1962.

(iii) Whether the reliance by the adjudicating authority on the Hon'ble Supreme Court's judgment in M/s ITC Ltd Vs. C.C.E Kolkata-IV is appropriate and correctly interpreted in this context.

(iv) Whether the government can retain excess duty collected due to a bona fide mistake by the importer.

5.2 The impugned communication is a simple letter conveying the rejection of the appellant's request for amendment. Any decision by a quasi-judicial authority that adversely affects the rights or interests of a party must be a proper "speaking order," containing reasons for the decision, and must be passed after adhering to the principles of natural justice, including providing a Show Cause Notice and an opportunity of personal hearing. The rejection of an application for amendment, especially one that leads to the denial of a substantial benefit (refund of excess duty), is an adjudicatory act. The Hon'ble Supreme Court in S.K. Singh v. CCE, Jamshedpur [2008 (228) ELT 485 (SC)] emphasized the necessity of a reasoned order. Passing such a decision through a mere letter without following these procedural safeguards is a fundamental flaw and renders the impugned communication unsustainable. The Delhi High Court in Kanji Shavji Parekh (Cal) P. Ltd. Versus Appraiser, Cus., Postal Appraising Dept. [2010 (262) E.L.T. 83 (Cal.)] has held that an order passed without an SCN and opportunity of hearing is a violation of natural justice.

5.3 Section 149 of the Customs Act, 1962, allows for the amendment of documents, including a Bill of Entry, "on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or removed." The appellant's claim is that they inadvertently applied a higher duty rate (15%) instead of a lower, applicable rate (10%) under a valid notification. The notification and the facts making the goods eligible for the lower rate were in existence at the time of clearance. The error was one of selection or entry, not a change in facts or law post-clearance. The appellant's reliance on Kirloskar Ferrous Industries Ltd Versus Commr. Of Cus., Mangalore [2021 (377) E.L.T.

878 (Tri.-Bang.)] is highly pertinent. In this case, the Tribunal specifically directed the revenue to treat a request for reassessment as an application under Section 149 for amendment of the Bill of Entry. This clearly indicates that Section 149 can be used to correct such bona fide errors. Similarly, the Sony India Pvt. Ltd. case, affirmed by the Supreme Court (2023 (385) E.L.T. 93 (S.C.)), explicitly held that Section 149 can be invoked to amend Bills of Entry for claiming exemptions not availed due to EDI issues, and that "documentary evidence" does not include court judgments but refers to existing facts. This directly supports the appellant's position that Section 149 is the appropriate route for such corrections.

5.4 The argument that self-assessment under Section 17(1) is final and cannot be modified under Section 149 is not entirely correct in view of the interpretation of the ITC Ltd. judgment by subsequent courts.

5.5 The adjudicating authority's primary ground for rejection is based on the ITC Ltd. judgment (2019 (368) E.L.T. 216 (S.C.)), asserting that once goods are "Out of Charge" after self-assessment, amendment for notification benefit requires action under Section 17(4) and not 149. However, the Appellant has correctly highlighted the interpretation of this judgment by subsequent higher courts. As noted in the case of Valeo India Pvt. Ltd. Versus Commissioner Of Customs, Chennai [(2024) 18 Centax 301 (Tri.-Mad)] and Sony India Pvt. Ltd. v. Union of India cases, the Supreme Court in ITC Ltd. observed that a self-assessment order can be modified under Section 128 or " under other relevant provisions of the Act." Both the Madras Tribunal and Telangana High Court (affirmed by SC) interpreted "other relevant provisions" to specifically include Section 149 of the Customs Act, 1962. This clarifies that Section 149 is indeed a valid mechanism for amending Bills of Entry even post-self-assessment, provided the conditions of the section are met (i.e., based on documentary evidence existing at the time of clearance). The Respondent's narrow interpretation of the ITC Ltd. judgment is therefore not in line with the broader judicial pronouncements.

5.6 Furthermore, the ITC Ltd. judgment primarily dealt with refund claims filed directly under Section 27 without seeking amendment/modification of the self-assessment. In the present case, the Appellant is specifically seeking amendment under Section 149 prior to filing a refund claim, which is in line with

the spirit of the ITC Ltd. judgment that modification of assessment is a prerequisite for refund of excess duty.

5.7 It is a well-established constitutional principle, as enshrined in Article 265 of the Constitution of India, that "no tax shall be levied or collected except by authority of law." If an importer, due to a bona fide clerical or operational mistake, pays duty at a higher rate than legally applicable under a valid notification, the collection of such excess duty is without the authority of law. The government cannot unjustly enrich itself by retaining such excess payment. The Hon'ble Supreme Court in Mafatlal Industries Ltd. v. Union of India [1997 (89) E.L.T. 247 (S.C.)] has extensively dealt with the principle of unjust enrichment, and in cases of demonstrable excess payment due to clear error, the refund is generally allowable, subject to procedures. The appellant's claim that no man of ordinary prudence would pay a higher rate of duty if a lower rate is available reinforces the bona fide nature of the mistake.

5.8 The argument that the EDI system or proper officer should have detected the error also places some responsibility on the departmental mechanisms. While final responsibility for correct duty lies with the importer, the self-assessment system does not absolve the department of its role in ensuring correct duty collection. Therefore, denying the amendment request, which is a necessary step before seeking refund of excess duty paid, would amount to allowing the government to retain excess collection of tax, which is against the fundamental principles of taxation.

6. In view of the detailed discussions and findings above, I find that the impugned letter/order dated 20.01.2025 is legally unsustainable. The Appellant's request for amendment under Section 149 of the Customs Act, 1962, to correct a bona fide error in duty rate, is permissible under law and supported by various judicial pronouncements.

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

(i) I hereby set aside the impugned order i.e communication in the form of a Letter dated 20.01.2025 having DIN: 20250171MO000000C229 issued by the adjudicating authority i.e Deputy Commissioner of Customs, Gr-III, Mundra.

(ii) I hold that the appellant's request for amendment in the Bills of Entry to avail the benefit of Notification No. 50/2017-Customs (Sr. No. 342A) from 15% BCD to 10% BCD is permissible under Section 149 of the Customs Act, 1962.

(iii) I direct the adjudicating authority to entertain the appellant's application for amendment/rectification of the subject Bills of Entry and carry out the necessary amendments to reflect the correct Basic Customs Duty rate of 10% as applicable under Notification No. 50/2017-Customs (Sr. No. 342A), along with consequential adjustments in SWC and IGST.

(iv) The adjudicating authority shall pass a fresh speaking order allowing such amendment/rectification, after granting the Appellant a proper opportunity of being heard, within a reasonable timeframe.

8. The appeal filed by M/s. Mundra Solar Energy Limited is hereby allowed.

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

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

Date: 25.06.2025

F. No. S/49-478/CUS/MUN/2024-25 1710

By Registered post A.D/E-Mail

To,
M/s. Mundra Solar Energy Limited,
Mundra Solar Technopark Pvt Ltd,
Survey No 180P, Village Vandh,
Mundra-370435

Copy to:
1. The Chief Commissioner of Customs, Ahmedabad zone, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Mundra.
3. The Deputy/Assistant Commissioner of Customs, Gr-III, Custom House, Mundra.
4. Guard File.