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 - 20260271MN000000C735

क	फ़ाइल संख्या FILE NO.	S/49-102/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-876-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	26.02.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Shipping Bill No. 8259953 dated 12.03.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	26.02.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Bagla Polyfilms Limited, Survey No 380, Village Bhardeshwar, Tehsil Mundra, Kachchh, Gujarat 370410

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 Bagla Polyfilms Limited, Survey No 380, Village Bhardeshwar, Tehsil Mundra, Kachchh, Gujarat 370410, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the assessment of Shipping Bill No. 8259953 dated 12.03.2024 issued by the Proper Officer, Customs, Mundra.

2. Facts of the case, in brief, are that the appellant filed Shipping bill No. 8259953 dated 12.03.2024 at Mundra SEZ Port through their Customs Broker, M/s. Sanjeev Kumar Jha, for export of goods declared as 'Polyolefin Shrink Film' to M/s Germac Trading, Unit 3, Prema Park, 12, Engine Avenue, Montague Gardens, Cape Authorised Bown, 7441, South Africa. Export of the said shipment were made against Advance License No. 0511022074 and 0530176049 issued to the Exporter by the DGFT. While filing the above-mentioned shipping bill, the Appellant uploaded all relevant documents, namely Export Invoice No. BPLM/2324/E086 dated 12.03.2024, Packing List etc. through e-sanchit.

2.1 Against shipping bill No. 8259953 dated 12.03.2024, the appellant had not claimed any drawback or any other export incentive while filing the shipping bill. The appellant claims that they intended to claim the RODTEP benefit on the export products covered under above-referred Shipping Bill. Subsequently, the appellant found out that in addition to shipping bill No. 8259953 dated 12.03.2024 mentioned above, the Exporter filed 40 more shipping bills between the period 12.03.2024 and 30.06.2024 at SEZ Port, Mundra, for export of shipments of 'Polyolefin Shrink Film' wherein also, they omitted to claim the benefit under RODTEP scheme.

SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the assessment of above shipping Bill , the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

3.1 It is submitted that the decision of the Proper Officer of Customs to not allow e-assessment of the impugned Shipping Bills, nor issue a Speaking Order rejecting their request, is erroneous, perverse and not in accordance with the extant legal provisions. The Appellant craves leave to challenge the impugned decision on the following amongst other grounds, which are mutually exclusive and may be read in the alternative wherever warranted

3.2 It is submitted that it has been legally held in a catena of judgments that where the appellants are entitled to an export incentive but have not claimed the same due to an inadvertent omission while filing the shipping bills, the said benefit should be extended to them through an amendment in the shipping bills, as this is only a procedural defect. It is important for the Proper Officer to see if the appellant is otherwise entitled to the specified export incentive as per the extant Foreign Trade policy. The above averment has been upheld in the following judgments-

(i) PORTESCAP INDIA PVT. LTD. Versus UNION OF INDIA reported at 2021 (376) E.L.T. 161 (Bom.)

(ii) G.R. Swaminathan, J. ATC TIRES PRIVATE LIMITED Versus ZONAL ADDITIONAL DGFT, CHENNAI reported at 2020 (374) E.L.T. 896 (Mad.)

(iii) K. VinodChandran and T.R. Ravi, JJ. COMMISSIONER OF CUSTOMS, COCHIN Versus N.C. JOHN AND SONS PVT. LTD reported at 2020 (374) E.L.T. 465 (Ker.)

(iv) KANCOR INGREDIENTS LTD. Versus COMMISSIONER OF CUSTOMS reported at 2020 (374) E.L.T. 250 (Tri. - Bang.)

Taking into account the plethora of judgments dealing with the issue of permitting correction of error in the shipping bills to claim export incentives, the Proper Officer should have allowed removal of discrepancy in the shipping bill on the basis of written request made by the Appellant.

3.3 It is submitted that the Proper Officer/D.C. Customs (Export) did not take a proper, justified decision with regard to request for re-assessment by the Appellant to correct the discrepancy in shipping bills so as to enable them to claim benefit of RODTEP which they were entitled to otherwise. The only mistake committed by the Appellant was that in the relevant column of shipping bill/check-list, they had filled up 'Nil' against the RODTEP scheme, instead of filling up the amount of RODTEP benefit admissible to them. Importantly, this was purely a procedural defect and curable too considering the fundamental objective of the RODTEP scheme under Chapter 3 of the FTP 2015-20. The basic objective of the Exports from India Schemes is to reimburse to the exporters the embedded taxes and duties which were previously non-recoverable; the scheme has also been brought with a view to boost exports in areas which were deemed poor in performance. The said scheme has been implemented since 01.01.2021 through paragraph 4.54 of the Foreign Trade Policy. Further, vide notification No.70/2023 dated 8th March, 2024 which amended serial number (vii) of paragraph 4.54 of the Foreign Trade Policy, 2023, the benefit of RODTEP was extended to exports under Advance Authorization. Except for the inadvertent mistake mentioned above, the Appellant vas otherwise eligible and entitled to the benefit under RODTEP. Such a procedural mistake on the part of the Appellant should not deprive them of the benefit of the RODTEP scheme which is an important export incentive compatible with the WTO regulations.

3.4 It is seen that the Proper Officer/D.C. (Customs), while not acceding to the Exporter's request for cancellation of Let Export Order (LEO) of various Shipping Bills and correction of the error with respect to claim of RODTEP benefit, had not considered the factual position, nor the provisions of Section 149 of the Customs Act, 1962 were taken into consideration. Section 149 of the Customs Act, 1962 is a specific provision which permits amendment of documents such as Shipping Bill or Bill of Entry by the Proper Officer and such amendment can be permitted to be carried out even after export of the shipment from the Customs Area. Only condition attached is that any amendment under Section 149 of the Customs Act, 1962 post-export/clearance of goods is allowed only on the basis of documentary evidence in existence at the of export/clearance of the goods.

3.5 In the instant case, while filing check-lists for the Shipping Bills listed in Annexure A, all relevant particulars had been properly mentioned. However, due to an accidental omission, the Appellant omitted to claim benefit of RODTEP scheme and filled up 'Nil' instead of mentioning the actual amount of RODTEP benefit admissible in the relevant column in the check- list, meant for claim of scheme benefit. The said discrepancy can clearly be seen in the

Shipping Bills.

3.6 In case where relevant documents are available on record, re-assessment under Section 149 was justified. The averment that in case where relevant documents are available on record or in the EDI System before generation of final print-out of shipping bill, even if the subject shipment had been given Let Export Order (LEO), re-assessment under Section 149 is justified, is supported by the following specific judgment-

GABRIEL INDIA LTD. Versus COMMISSIONER OF CUSTOMS (IMPORT), NHAVA SHEVA reported at 2014 (314) E.L.T. 387 (Tri. - Mumbai)

3.7 In the instant matter, there was only a small omission in the relevant shipping bills in as much as the Exporter had filled up 'Nil' instead of filling up the actual amount of RODTEP benefit admissible to them in the relevant column in the check-list, meant for claim of scheme benefit. Hence, there was no legal difficulty in permitting recall of the shipping bill and correction of the error in terms of Section 149 of the Customs Act, 1962.

3.8 Re-assessment required to be done under Section 149/154 of the Customs Act, 1962 without filing appeal. Further, the legal position is that re-assessment of a Shipping Bill/Bill of Entry in terms of Section 149 of the Customs Act, 1962 can be allowed without having to challenge the original assessment under appellate procedure or by filing appeal. The above averment has been recently affirmed by Hon'ble Bombay High Court while passing judgment in the case of M/s Dimension Data India Pvt. Limited. Gist of the same is given below-

Dimension Data India Private Ltd. Vs Commissioner of Customs And Anr.
(Bombay High Court) dated 18th January, 2021
(WRIT PETITION (L) NO. 249 OF 2020)

" The expression "mistake" appearing in section 154 of the Customs Act may be defined as something done unintendedly or through inadvertence. The section itself says that the error in any decision or order should be due to any accidental slip or omission. Moreover, it can be a mistake of law or a mistake of fact. In all cases it need not be an arithmetical error alone. It may connote errors which can be discerned upon due verification. Having said so, we may also indicate that power to amend documents available under

section 149 of the Customs Act read with correction of clerical or arithmetical mistakes or errors in orders due to accidental slip or omission under section 154 thereof is different and distinct from the appellate power exercised under section 128 of the Customs Act. The power of amendment or correction, as the case may be, is vested on the same officer who had passed the initial order or an officer of equivalent rank. On the other hand, appellate jurisdiction is directed to correct decisions or orders passed by an inferior or lower authority. By its very nature an appellate authority is superior to the authority which had passed the order appealed against.

In the light of the above, we are of the view that has made out a case for issuance of a direction to the respondents for correction of the mistake or error in classification of the goods from CTH '85176990 to '85176930' and thereby for amendment of the Bills of Entry. Refusal of the respondents to look into the aforesaid grievance of the respondents is therefore not justified.

Accordingly, we direct respondent No.2 to consider the prayer of the petitioner for amendment of the Bills of Entry Nos. 2434172, 2436049, 2522910, 2805152 and 2968920 (annexed as Annexure B colly to the writ petition) by exercising power under section 149 read with section 154 of the Customs Act and thereafter pass an appropriate order under section 17(4) of the Customs Act after giving due opportunity of hearing to the petitioner."

Importantly, the above judgment has been delivered after pronouncement of judgment in the case of ITC Ltd. by Hon'ble Supreme Court and it clearly mentions and considers the judgment in the case of ITC Limited.

3.9 In the instant matter, as explained above, the D.C. (Export) had failed to take into consideration provisions of Section 149 of the Customs Act, 1962 while taking the impugned decision to not allow re-assessment of the impugned shipping bills. However, there is another parallel provision in the Customs Act, 1962 allowing correction of any error, slip or omission n assessment. While taking the impugned decision of not allowing re- assessment of the Shipping Bills, the Proper Officer also ignored the provisions of Section 154 of the Customs Act, 1962. Section 154 of the Customs Act, 1962 provides for correction of any clerical error, accidental slip or omission at any stage.

3.10 Further, if the view often taken by the Customs Authorities that any re-assessment/correction can only be permitted consequent to order of the Appellate Authority, is accepted, this will make the provisions of Section 149 and

Section 154 of the Customs Act, 1962 otiose as these sections provide for amendment of documents such as bill of entry and shipping bills without the need of filing an appeal against the original assessment.

3.11 It has been held in a catena of judgments and orders issued by the Hon'ble Courts and Tribunals that re- d assessment/rectification of assessment is to be allowed by the proper officer in case of a clerical error, an accidental slip or omission. Some of such judgments and orders are given below-

(i) INDIAN OIL CORPN. LTD. Versus COMMR. OF C. EX., CUS. (ADJ.), VADODARA-II reported at 2015 (321) E.L.T. 292 (Tri. - Ahmd.)

(ii) Commissioner v. Muneer Enterprises reported at 2015 (319) E.L.T. A226 (S.C.)

(iii) SESA GOA LTD. Versus COMMISSIONER OF CENTRAL EXCISE & CUSTOMS, GOA reported at 2014 (314) E.L.T. 674 (Tri. - Mumbai)

(iv) INA BEARINGS (INDIA) PVT. LTD. Versus COMMR. OF CUS. (IMPORT), NHAVA SHEVA reported at 2014 (313) E.L.T. 815 (Tri. - Mumbai)

3.12 It is well established judicially that any clerical error of Exporter/Importer can be corrected by re-assessment under Section 154 of Customs Act, 1962 and even consequential benefit can be extended. In this regard, any plea by the Department that only errors of revenue officers can be so corrected under Section 154 or that it can be done only by appeal against the assessment have been rejected. The above averment is supported by the following judgment-

SYMRISE PVT. LTD. Versus COMMISSIONER OF CUSTOMS, CHENNAI reported at 2009 (248) E.L.T. 418 (Tri. - Chennai)

3.13 The Board vide Circular No. 45/2020-Customs, dated 12-10- 2020 issued on the subject "Faceless Assessment - Measures for timely assessment of Bills of Entry and clarification on defacement of physical documents" has mentioned inter alia, that re-assessment of the Bills of Entry in terms of Section 149 of the Customs Act, 1962 can be allowed by the Proper Officer in both the scenarios- where the Out of Charge order has been granted and where such order has not been granted. There is a clear provision in the law and relevant procedural regulations, providing for re-assessment of the Bill of Entry under Section 149 of the Customs Act, 1962 which should have been followed by the Proper Officer in the instant matter. However, by not following the legal procedure expressly provided by the Board, the Proper Officer has acted in contravention of the laid down procedure and therefore, decision of the Proper Officer is erroneous.

3.14 In terms of Section 17(5) of the Customs Act, 1962, where the final assessment is contrary to self-assessment or the Importer is aggrieved by the assessment and asks for an assessment order, the Assessing Officer is under obligation to issue a proper speaking order/Assessment Order within 15 days of the assessment. In the instant matter, the Appellant had requested the Assessing Officer vide letter dated 5th July, 2024 and an e-mail dated 12th July, 2024 for recall and re-assessment of the shipping bills or to issue an Assessment Order. However, the said pleas were ignored by the Assessing Authority and no Assessment Order was issued. This is completely contrary to the legal provisions. The above averment is supported by the following decisions Courts and Tribunals-

(i) SIGMA POWER PRODUCTS PVT. LTD. Versus COMMISSIONER OF CUSTOMS (PORT) reported at 2017 (350) E.L.T. 510 (Cal.)

(ii) A.M. Shaffique, J. JOHN JACOB Versus ASSTT. COMMR. OF CUS. (IMPORTS), ICD, KOTTAYAM reported at 2017 (347) E.L.T. 403 (Ker.) IN THE HIGH COURT OF KERALA AT ERNAKULAM

3.15 The entire submissions of the Appellant in the foregoing paragraphs are summarized below for the benefit of the learned Appellate Authority-

(i) There are several specific judgments on the issue of permitting correction of entry in the shipping bills for claiming an export incentive;
(ii) Discrepancy in the shipping bills was clearly discernible by documentary evidence. Hence, re- assessment under Section 149 of the Customs Act, 1962 should have been permitted;
(iii) Section 154 of the Customs Act, 1962 provides for correction of any clerical error, accidental slip or omission at any stage;
(iv) Section 154 allows correction of errors made by the Customs officers as well as by the exporter/ importer;

(v) Board's Circular on faceless assessment permits re- assessment under Section 149 by FAG/PAG;

(vi) The proper officer was under obligation to issue assessment order at the request of the exporter, under section 17(5) of the Customs Act, 1962.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 28.05.2025, following the principles of natural justice wherein Shri B. L. Garg, Advocate appeared for the hearing and 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 and the defense put forth by the Appellant in their appeal.

5.1 Section 128(1) of the Customs Act, 1962, mandates that an appeal to the Commissioner (Appeals) must be presented within sixty days from the date of communication of the order. The proviso allows the Commissioner (Appeals) to condone the delay for a further period of thirty days if sufficient cause is shown. The combined period of ninety days (60 + 30) is an absolute maximum period and cannot be extended. This establishes a maximum permissible delay period. The nature of the appeal is against a procedural default/omission related to the non-claim of RODTEP on Shipping Bill No. 8259953 dated 12.03.2024. The fundamental cause of action arises from the original assessment of the Shipping Bills when the benefit was not claimed. This is the date of the original action appealed against. In the instant case, the date of filing of Shipping Bill No. 8259953 is12.03.2024 whereas the date of Let Export Order is 14.03.2024. The date of assessment is not appearing on the Shipping Bill but considering both the dates i.e date of filing of Shipping Bill i.e 12.03.2024 as well as the Let Export Order date i.e 14.03.2024, as well as date of filing the Appeal i.e 30.07.2024, the delay in filing is more than 90 days (60 + 30).

5.2 The appeal has been filed beyond the statutory 60-day period and also beyond the maximum 30-day condonable period. It is an established and settled position of law that the Commissioner (Appeals) is a creature of statute and possesses no inherent powers beyond those explicitly conferred by the parent Act. The statutory language in the proviso to Section 128(1) is an exclusionary one, clearly delineating the maximum extent to which delay can be condoned, which is "a further period of thirty days". It is a settled law that where a special statute prescribes a period of limitation and further prescribes a time frame within which the delay can be condoned, the provisions of the Limitation Act, 1963, including Section 5, are not applicable. Once the appeal is presented beyond this absolute period of ninety days, the authority becomes functus officio and loses the jurisdiction to entertain or decide the appeal.

5.3 The issue of the appellate authority's power to condone delay beyond the statutory limit is conclusively settled by the Hon'ble Supreme Court of India in the case of Singh Enterprises v. Commissioner of Central Excise, Jamshedpur [2008 (221) E.L.T. 163 (S.C.)]. The Supreme Court examined the pari materia provisions of Section 35 of the Central Excise Act, 1944, which is structurally identical to Section 128 of the Customs Act, 1962. The Court categorically held that the appellate authorities, being creatures of statute, are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The language of the proviso clearly shows that the Appellate Authority has no power to allow the appeal to be presented beyond the extended period.

5.4 In exercise of the powers conferred under Section 128A of the Customs Act, 1962, and for the reasons set forth in the findings above, I pass the following order:

(i) The appeal filed by M/s Bagla Polyfilms Limited is held to be time-barred, and hence I reject the appeal without going into the merits of the case

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

F. No. S/49-102/CUS/MUN/2024-25 Date:26.02.2026

By Speed post /E-Mail

To,
M/s. Bagla Polyfilms Limited,
Survey No.380, Village Bhardeshwar,
Tehsil Mundra, Kachchh, Gujarat - 370410

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