



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,
चौथी मंज़िल 4th Floor, हड्कोभवनHUDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281
DIN – 20250771MN0000515115

क	फ़ाइलसंख्या FILE NO.	S/49-55/ CUS/ AHD/2024-25 S/49-56/ CUS/ AHD/2024-25 S/49-57/ CUS/ AHD/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-128 to 130 -2025-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	04.07.2025
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	09/AC/SRT/Refund/2023 dated 13.03.2024 08/AC/SRT/Refund/2023 dated 13.03.2024 07/AC/SRT/Refund/2023 dated 13.03.2024 passed by the Assistant Commissioner of Customs, Surat.
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	04.07.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Garden Silk Mills Pvt. Ltd. (Formerly Garden Silk Mills Ltd.) 7th Floor, Solarium Business Center, VIP Main Road, Vesu Surat-395 007

1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीनिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन),वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकते हैं।

	<p>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.</p> <p>निम्नलिखित सम्बन्धित आदेश/Order relating to :</p> <p>(क) बैगेज के रूपमें आयातित कोई माल.</p> <p>(a) any goods imported on baggage.</p> <p>(ख) भारतमें आयात करने हेतु किसी वाहनमें लादागया लेकिन भारतमें उनके गन्तव्यस्थान पर उतारे न गए मालया उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.</p> <p>(ब) 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.</p> <p>(ग) सीमा शुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.</p> <p>(c) Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.</p>		
3.	<p>पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उसके साथ निम्नलिखित कागजात संलग्न होने चाहिए :</p> <p>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 :</p> <p>(क) कोर्ट फी एक्ट, 1870 के मद्दसं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पंचास पैसे की न्यायालय शुल्क टिकट लगाया जाना चाहिए.</p> <p>(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.</p> <p>(ख) सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो</p> <p>(ब) 4 copies of the Order-in-Original, in addition to relevant documents, if any</p> <p>(ग) पुनरीक्षण के लिए आवेदन की 4 प्रतियां</p> <p>(c) 4 copies of the Application for Revision.</p> <p>(घ) पुनरीक्षण आवेदन दायर करने के लिए सीमा शुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्यरसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) यारू. 1,000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर. 6 की दो प्रतियां। यदि शुल्क, मांग गया व्याज, लगाया गया दंड की राशि और रूपए एकलाख या उससे कम होतो ऐसे की सके रूप में रु. 200/- और यदि एकलाख से अधिक होतो फीस के रूप में रु. 1,000/-</p> <p>(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/-.</p>		
4.	<p>मदसं. 2</p> <p>के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि दिकोई व्यक्ति इस आदेश से आहत महसूस करता होता वे सीमा शुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए. 3 में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क और सेवाकर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं।</p>		
	<p>In respect of cases other than those 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 :</p> <table border="1"> <tr> <td>सीमा शुल्क, केन्द्रीय उत्पाद शुल्क व सेवाकर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> </table>	सीमा शुल्क, केन्द्रीय उत्पाद शुल्क व सेवाकर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
सीमा शुल्क, केन्द्रीय उत्पाद शुल्क व सेवाकर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench		

	दूसरीमंजिल, बहुमालीभवन, निकटगिरधरनगरपुल, असार वा, अहमदाबाद-380016	2 nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-	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)	अपीलसेसम्बन्धितमामलमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएयाउससेकमहोतोएकहजाररुपए.	
(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)	अपीलसेसम्बन्धितमामलमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएसेअधिकहोलेकिनरूपयेपचासलाखसेअधिकनहोतो;पांचहजाररुपए	
(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)	अपीलसेसम्बन्धितमामलमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपचासलाखरूपएसेअधिकहोतो;दसहजाररुपए.	
(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)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंडविवादमेहैं,यादंडके 10% अदाकरनेपर,जहांकेवलदंडविवादमेहै,अपीलरखाजाएगा।	
(व)	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.	उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.	
	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

Three appeals have been filed in terms of Section 128 of the Customs Act, 1962 against Order-in-Original as mentioned in the below Table (hereinafter referred to as "impugned orders") passed by the Assistant Commissioner of Customs, Customs Division, Surat (hereinafter referred to as "adjudicating authority"):-

Sr. No.	Appeal File No	Appellant Name	Order-in -Original	Herein referred to as impugned order
1	S/49-55/ CUS/ AHD/2024-25	M/s Garden Silk Mills Pvt. Ltd. (Formerly Garden Silk Mills Ltd.) 7th Floor, Solarium Business Center, VIP Main Road, Vesu Surat-395 007	09/AC/SRT/Refund/2023 dated 13.03.2024	Impugned Order No. 1
2	S/49-56/ CUS/ AHD/2024-25		08/AC/SRT/Refund/2023 dated 13.03.2024	Impugned Order No. 2
3	S/49-57/ CUS/ AHD/2024-25		07/AC/SRT/Refund/2023 dated 13.03.2024	Impugned Order No. 3

2. Briefly stated, facts of the case are that the appellant was engaged in the manufacture and sale of Polyester Filament-based Yarns, Textile-grade Polyester Chips, Grey Fabrics and Finished Fabrics and in connection with its manufacturing activities, the appellant had imported coal, to be used for power generation at its factory, vide Bill of Entries as detailed below:

Sr. No.	Appeal File No	Bill of Entry
1	S/49-55/ CUS/ AHD/2024-25	Bill of Entry No. 6823902 dated 15.05.2012 and Bill of Entry No. 9025511 dated 15.01.2013
2	S/49-56/ CUS/ AHD/2024-25	Bill of Entry No. 8274939 dated 20.10.2012 and Bill of Entry No. 8491002 dated 15.11.2012,
3	S/49-57/ CUS/ AHD/2024-25	Bill of Entry No. 214/12-13 dated 4.7.2012, Bill of Entry No. 215/12-13 dated 4.7.2012, Bill of Entry No. 175/12-13 dated 11.6.2012 and Bill of Entry No. 177/12-13 dated 11.6.2012.

2.1 Further, at the time of import, the Appellant had classified the imported coal as Steam Coal under Customs Tariff Item 2701 1920 of the First Schedule to the Customs Tariff Act, 1975 and availed the full exemption from Basic Customs Duty and payment of Additional Customs Duty ("CVD") @1% adv vide Sl. No. 123 of Notification No. 12/2012-Cus, dated 17.3.2012 issued under Section 25 of the Customs Act, 1962. Subsequently, Sl. No.123 of Notification No.12/2012-Cus. dated 17.3.2012 was amended vide Notification No.12/2013-Cus. dated 1.3.2013 whereby the rate of CVD on imported steam coal was increased to 2%. Accordingly, the Appellant claimed benefit of Sl. No. 123 of Notification No. 12/2012-Cus dated 17.3.2012 and paid CVD and applicable Cess amounting to Rs.7,91,996/-, Rs.8,22,527/- and Rs.24,68,345/- respectively for the aforesaid imports.

2.2 Further, Directorate of Revenue Intelligence initiated proceedings against the Appellant and issued Show Cause Notices for the aforesaid imports proposing re-classification of imported coal under CTI 2701 1200 as Bituminous Coal and therefore, benefit of Sl. No. 123 of Notification No. 12/2012-Cus should not be available and the imported coal were to be correctly classifiable under CTI 2701 1200 as Bituminous Coal and BCD @ 5% and CVD @ 6% be payable on imported coal in terms of Sl. No. 124 of Notification No. 12/2012-Cus, dated 17.03.2012.

2.3 Thereafter, the said Show Cause Notices were adjudicated by the then common adjudicating authority wherein he allowed the impugned goods to be cleared on the execution of PD Bond, held the goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and ordered for the recovery of differential duty in terms of Section 28 of the Customs Act, 1962 along with interest in terms of Section 28AA of the Customs Act, 1962 and imposed redemption fine in terms of Section 125 of the Customs Act, 1962 and imposed penalty under Section 112(a) of the Customs Act, 1962 as follows:

Order No.	Differential Duty (Interest thereon)	Redemption fine under Section 125	Penalty under Section 112(a)
06/JC/SRT/O&A/20 14 dated 29.05.2014	Rs.33,83,503/-	Rs.5,10,000/-	Rs.5,00,000/-
65/JC/SRT/O&A/20 15 dated 09.01.2015	Rs.31,67,530/-	Rs.38,80,000/-	Rs.4,75,000/-
32/Addl. Commr/ 2014 dated 26.06.2014	Rs.1,26,93,154/-	Rs.1,50,00,000/-	Rs. 50,00,000/-

2.4 Being aggrieved, the Appellant filed the 03 appeals before the Commissioner (Appeals) challenging the aforesaid all 03 Order-in-Originals dated 29.05.2014, dated 09.01.2015 and dated 26.06.2014 respectively. Thereafter, Commissioner (Appeals) vide his orders rejected all the 03 appeals and upheld the aforesaid 03 Order-in-Originals dated 29.05.2014, dated 09.01.2015 and dated 26.06.2014, which were further challenged before the Hon'ble CESTAT, Ahmedabad. The Hon'ble CESTAT disposed of the appeals as the dispute relating to classification of imported coal was pending before the Hon'ble Supreme Court. The details are as follows:

Order No.	OIA issued by Hon'ble Commissioner Appeals	Appeal No. in CESTAT Ahmedabad	Final Order No.
06/JC/SRT/ O&A/2014 dated 29.05.2014	AHD-CUSTM-000-APP- 368-369-14-15 dated 23.12.2014	C/10584/2015	A/11019- 11195/2017 dated 19.5.2017
65/JC/SRT/ O&A/2015 dated 09.01.2015	AHD-000-APP-116-117- 14-15 dated 07.09.2015	C/11957/2015	A/11019- 11195/2017 dated 19.5.2017
32/Addl. Commr/ 2014 dated 26.06.2014	AHD-CUSTM-000-APP- 368-369-14-15 dated 23.12.2014	C/10583/2015	A/11019- 11195/2017 dated 19.5.2017

3. Thereafter, the appellant encountered financial stress and an application was filed by one of the financial creditors of the appellant under Section 7 of the IBC for recovery of debts owed by the appellant and NCLT admitted the application under Section 7(5) of the IBC and issued Order dated 24.6.2020 for initiating Corporate Insolvency Resolution Process ("CIRP") in respect of the appellant under Section 13 of the IBC. Pursuant to invitation of claims by Resolution Professional from all creditors of the Appellant, the Assistant Commissioner of Customs filed its claim which included the differential customs duty demand confirmed vide aforesaid all 03 Order-in-Originals dated 29.05.2014, dated 09.01.2015 and dated 26.06.2014. Further, Hon'ble NCLT approved the Resolution Plan vide its Order dated 01.01.2021 and settled the statutory dues and claims of the tax department, including customs department, at Nil.



3.1 Further, being aggrieved, the Assistant Commissioner of CGST & Central Excise, Division - I, Commissionerate - Surat filed the appeal before the Hon'ble National Company Law Appellate Tribunal ("NCLAT") challenging the approved Resolution Plan. Thereafter, the Hon'ble NCLAT dismissed the appeal and upheld the order of NCLT vide Order dated 27.07.2021 and stated that considering the amounts claimed by various Creditors, it is difficult to find fault with the Resolution Plan and had also made reference to Resolution Plan that the liquidation value is insufficient to meet the dues of even secured financial creditors, thus minimum statutory discharge payable is NIL.

3.2 Further, the appellant for restoration and abatement of 03 appeals filed 03 Customs Miscellaneous Applications before Hon'ble CESTAT Ahmedabad. The Hon'ble CESTAT vide Miscellaneous Order No. M/10369-10375/2021 dated 26.11.2021 held that all the 03 appeals stood abated. Relevant paragraph from the said order is extracted below:

"6. As regard the applications for abatement of appeals made by the appellant we find that the NCLT has approved the resolution plan. In terms of Section 31 of IBC 2016, after approval of resolution plan by NCLT, all the other proceedings shall stand abated. Accordingly, these appeals stand abated and disposed accordingly. Misc. application (Ors) also stands disposed of accordingly."



Thereafter, the appellant vide its letter dated 10.01.2022 filed the 03 application for refund of the amount deposited during the investigation and as pre-deposits amounting to Rs. 2,53,763/-, Rs.5,54,320/and Rs.63,51,961/-, which were rejected vide Show Cause Notices dated 31.01.2022 proposing as to why their refund should not be rejected. Thereafter, the adjudicating authority, vide 03 OIO No. 19/DC/SRT/Refund/ 2021 dated 31.03.2022, 20/DC/SRT/Refund/2021 dated 31.03.2022 and 18/DC/SRT/Refund/2021 dated 28.03.2022 respectively also rejected the claim filed by the appellant.

3.3 Being aggrieved with the rejection of refund, the appellant again filed the 03 appeals before the Commissioner(Appeals), Ahmedabad, who vide OIA No. AHD-CUSTM-000-APP-329 TO 331-23-24 dated 11.12.2023 set aside the original orders and remanded the appeals back to the adjudicating authority mainly on the grounds that all 03 OIOs dated 28.03.22 were passed without granting personal hearing and without considering the representation in defense of the appellant and asked to pass a speaking order by following the principles of natural justice after examining the available facts and submissions made by the appellant. In the remand proceedings, the adjudicating authority,

after granting sufficient personal hearings in all the 03 cases decided the matter and vide impugned order No.1, impugned order No.2 and impugned order No. 3 wherein he rejected all the 03 refund claims amounting to Rs.2,53,763/-, Rs.5,54,320/- and Rs.63,51,961/- respectively.

4. Being aggrieved with the impugned orders, the Appellant have filed the present appeals and mainly contended the following:

- That the impugned orders rejecting the refund claim are erroneous, arbitrary, and contrary to the settled legal position. The Assistant Commissioner failed to appreciate that the demand of duty stood extinguished under the approved Resolution Plan. Therefore, the orders are liable to be set aside in its entirety.
- That the present appeals are filed within the time limit of 60 days as prescribed under Section 128(1) of the Customs Act, 1962. As the impugned orders were communicated on 15.03.2024, and the appeals are filed within the statutory time.
- That the customs duty demand confirmed vide original OIOS, were admitted as a claim during the CIRP and were ultimately settled at 'Nil' under the Resolution Plan approved by NCLT on 01.01.2021. The same was affirmed by the NCLAT on 27.07.2021. Hence, the demands no longer survive and are not enforceable in law.
- That the amount deposited as pre-deposit and under protest were made under Section 129E of the Customs Act, 1962, was in compliance with the statutory requirement for filing the appeal and was not payment towards any confirmed or adjudicated dues. Since the underlying demand has been extinguished, the appellant is entitled to refund of the pre-deposit as a consequential relief.
- That the circulars cited by the department (CBIC Circular Nos. 984/08/2014-CX and 1053/02/2017-CX) relate to refunds when appeals are decided on merits. However, in the present case, the appeals were abated due to approval of the Resolution Plan under the IBC. Therefore, the departmental interpretation that refund arises only when an appeal is "allowed" is flawed and inapplicable here.
- That the department's objection that its claim was "admitted" in CIRP is irrelevant. Even admitted claims were settled at 'Nil' in the approved Resolution Plan. The approval of the plan binds all creditors, including tax authorities, and extinguishes all such claims.
- That in addition to the refund, the appellant is entitled to interest from the date of deposit till the date of refund, as the department had retained the money without any enforceable legal basis.

- They have relied upon the various case laws, few of which are as under:
 - Ghanashyam Mishra & Sons Pvt. Ltd. [2021 SCC OnLine SC 313]
 - Ruchi Soya Industries Ltd. [2022 (3) TMI 60 - SC]
 - UltraTech Nathdwara Cement Ltd. vs. Assistant Commissioner by Rajasthan High Court

PERSONAL HEARING

5. Shri Ananad Nainwati along with Shri Sanket Gupta both advocates, attended personal hearing for all the 03 Appeals on 21.05.2025 in virtual mode on behalf of the Appellant. They reiterated the submission made in the appeal memorandums and submitted an additional submission dated 21.05.2025. Further, the appellant was asked to submit the complete resolution plan and was given another hearing dated 17.06.2025. They have neither attended the Personal hearing nor submitted the complete resolution plan.



DISCUSSION & FINDINGS

6. I have gone through the appeal memorandum filed by the appellant, records of the case and submissions made during personal hearing. The main contention in the appeals is that the appellant is seeking for the refund of the amount deposited with the Department during the investigation and as pre deposit before undergoing CIRP (Corporate Insolvency Resolution Process) under the Insolvency and Bankruptcy Code, 2016 and was subsequently resolved vide NCLT's Order dated 01.01.2021 wherein the Department's claim was settled as NIL. The Department's contention is that the appellant is not entitled for refund in the matter since the resolution plan does not narrates that appellant is eligible for the refund of pre deposits and the amount deposited with the Central Govt. authorities under dispute. Therefore, the main issues to be decided in present appeal is whether the adjudicating authority rejecting the refund claims vide 03 impugned orders, in the facts and circumstances of the case, is legal and proper or otherwise.

6.1 Before going into the merits of the case, I find that as per CA-1 Form of the Appellant, the present appeals have been filed on 09.05.2024 against the 03 impugned orders, all dated 13.03.2023 which is within the statutory time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit, it has

been admitted and being taken up for disposal in terms of Section 128A of the Customs Act, 1962.

6.2 It is observed that the appellant has contended that they underwent Corporate Insolvency Resolution Process (CIRP) under Section 7 of the Insolvency and Bankruptcy Code, 2016, the resolution plan submitted by appellant was approved by the Hon'ble NCLT, Ahmedabad on 01.01.2021 and the claims filed by the Department stood to NIL which led the appellant to file the claim for refund of the amount deposited with the Department before solvency. The appellant stated that the pre-deposits and deposits made under Section 129E of the Customs Act, 1962, is liable to be refunded as a natural consequence of the extinguishment of the underlying demand. The confirmed customs duty was settled at "Nil" under the Resolution Plan approved by the Hon'ble NCLT and upheld by the NCLAT, which has attained finality. As a result, the appeal before CESTAT stood abated, and the adjudicated demand ceased to exist. In such circumstances, the refund of pre-deposit and deposits cannot be denied merely on the ground that the appeal was not allowed on merits. Further, the appellant has relied upon the various Judgments cited by Hon'ble Supreme Court in the matter of M/s. Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss ARC (2021) 9 SCC 657, Hon'ble Supreme Court in Ruchi Soya Industries Ltd. Vs. Union of India – 2022 (3) TMI 60 and Rajasthan High Court in case of UltraTech Nathdwara Cement Ltd. Vs. Assistant Commissioner, Commercial Tax Department – 2022-VIL-276-RAJ.

In view of the above, it is observed that if a company has completed the Corporate Insolvency Resolution Process (CIRP) and a resolution plan is approved under Section 31 of the IBC, all past claims, including tax and customs dues, whether known, unknown, admitted, or contingent, stand extinguished unless specifically provided for in the resolution plan. Further, it is also observed that the IBC law prevails over Customs Act, 1962 as per Section 238 of IBC which is reproduced as under:

Section 238 – Provisions of this Code to override other laws

"The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

Once the Resolution Plan is approved by the NCLT, all claims not included therein stand extinguished, and no further recovery or proceeding can continue under any other statute, including the Customs Act, 1962. This legal position has been affirmed by the Hon'ble Supreme Court in *Ghanshyam Mishra and Sons Pvt. Ltd. v. Edelweiss ARC (2021) 9 SCC 657*, which held that such

approved plans are binding on all stakeholders, including tax authorities, and override inconsistent provisions of any other law. Since the Resolution Plan determines all liabilities and entitlements of the new management, a review of the partial Resolution Plan submitted by the appellant reveals no provision authorizing or directing the refund of deposits or pre-deposits made prior to the commencement of insolvency proceedings. Despite having been provided an opportunity via personal hearing letter dated 17.06.2025, the appellant neither appeared nor submitted the complete Resolution Plan to establish that such refund was permitted. In the absence of any express provision or documentary evidence indicating that refund of pre-deposit was contemplated or approved under the Resolution Plan, the appellant's claim lacks merit. It is a settled principle that unless the Resolution Plan explicitly provides for a refund or continuation of any pre-existing claim or right, the same cannot be presumed. Since the appellant has not submitted the complete copy of resolution plan, therefore, the appellant's contention is unsupported and is therefore liable to be rejected.

6.3. Further, it is relevant to mention the Judgment cited by Hon'ble Jharkhand High Court in the matter of **M/s Essel Steel Limited vs Principal Commissioner, CGST, Ranchi vide order dated 11.07.2023** wherein the Hon'ble High Court has stated that any tax liability prior to the approval of the Resolution Plan, dated 17.04.2018 under the Insolvency and Bankruptcy Code (IBC) cannot be fastened on the new management. This is consistent with the Supreme Court's decision in *Ghanshyam Mishra & Sons Pvt. Ltd. vs Edelweiss ARC (2021) 9 SCC 657* and also while protecting the new management from past liabilities, the Hon'ble Court also held that Input Tax Credit (ITC) accumulated under the previous management is not available to the new management since they were not taxpayers during that period. The relevant portion is reproduced as under:

"....

It also emerges that as per the judgment of Hon'ble Apex Court in the case of Ghanshyam Mishra and Sons Private Ltd. (supra), no recovery and or proceeding can be continued against the Petitioner, for any dues prior to 17.04.2018 (Annexure-1) i.e., the date on which the National Company Law Tribunal has approved the resolution plan of the Petitioner. From perusal of the aforesaid Judgment, it is crystal clear that it is only the past obligation of the past period gets extinguished once the new management has taken over the Company as part of the Resolution Plan.

6. At the outset it is clarified that the contention of the Petitioner-Company that there is nothing in the said judgment which says that the past credit due to the company gets expunged; is misconceived. As a matter of fact, the liability of the earlier management may not be shifted to the current management but at the same time, the credit available to the earlier management will also not be available to the current management as the current management was not a taxpayer during the period of

procurement of inputs or capital goods as availed in the TRAN-1 filed on 30.11.2022.

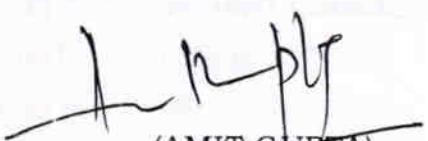
...."

I find that the above judgment of the Hon'ble High Court is squarely applicable to the present case, as the deposits and pre-deposits were made by the erstwhile management of M/s Garden Silk Mills Limited. Upon completion of the insolvency resolution process, all unadmitted claims and demands stood extinguished for the corporate debtor. Consequently, just as the liabilities of the earlier management cannot be enforced against the appellant, the appellant, in turn, cannot claim entitlement to refunds of deposits or pre-deposits made by the previous management.

7. In view of the above discussion, I do not find infirmity with the impugned orders, therefore, I upheld the 03 impugned orders and reject all the 03 appeals filed by the appellant.

8. Accordingly, the 03 (three) appeals filed by the appellant stood disposed of in above terms.




 (AMIT GUPTA)
 COMMISSIONER (APPEALS)
 CUSTOMS, AHMEDABAD

F.Nos. S/49-55 to 57 / CUS/ AHD/24-25
 2091

Dated – 04.07.2025

By Registered Post A.D.

To,
 M/s Garden Silk Mills Pvt. Ltd.
 7th Floor, Solarium Business Center,
 VIP Main Road, Vesu
 Surat-395007

सत्यापित/ATTESTED
 अधीक्षक/SUPERINTENDENT
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