



## सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD  
 चौथी मंजिल 4th Floor, हड्को बिल्डिंग HUDCO Building, ईश्वर भुवन रोड Ishwar Bhuvan Road,  
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.

दूरभाष क्रमांक Tel. No. 079-26589281

DIN-20250771MN000000B68F

| L क्र | फाइल संख्या FILE NO.  | S/49-118/CUS/AHD/24-25  |
|-------|---|---|
| ख     | अपीलआदेश संख्या ORDER-IN-APPEAL<br>No. (सीमाशुल्क अधिनियम, 1962 की धारा<br>128क के अंतर्गत) (UNDER SECTION<br>128A OF THE CUSTOMS ACT, 1962): | AHD-CUSTM-000-APP-135-25-26   |
| ग     | पारितकर्ता PASSED BY  | SHRI AMIT GUPTA<br>Commissioner of Customs (Appeals),<br>AHMEDABAD  |
| घ     | दिनांक DATE   | 09.07.2025  |
| ड     | उद्भूत अपील आदेश की सं. व दिनांक<br>ARISING OUT OF<br>ORDER - IN - ORIGINAL NO.   | O.I.O. No. 30/DC/ICD/IMP//Ref/2024<br>dated 29.05.2024 passed by the Deputy<br>Commissioner of Customs, ICD-Khodiyar,<br>Ahmedabad  |
| छ     | अपील आदेश जारी करने की दिनांक<br>ORDER- IN-APPEAL ISSUED ON:  | 09.07.2025  |
| ★     | अपीलकर्ता का नाम व पता<br>NAME AND ADDRESS OF THE<br>APPELLANT:   | M/s. Vimalachal Print & Pack Pvt. Ltd.,<br>5, Saket Industrial Estate, Survey No. 437,<br>Near Changodar-Bawla Highway,<br>Moraiya – 382213, Tal. Sanand, Dist.<br>Ahmedabad. |

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| 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 (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 हैं.   |
|    | 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 :   |

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| (क)  | बैगेज के रूप में आयातित कोई माल.  |  |  |  |   |
| (a)  | any goods imported on baggage.  |  |  |  |   |
| (ख)  | भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.  |  |  |  |   |
| (b)  | any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.   |  |  |  |   |
| (ग)  | सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.  |  |  |  |   |
| (c)  | Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.  |  |  |  |   |
| 3.   | पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :  |  |  |  |   |
|  | The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :   |  |  |  |   |
| (क)  | कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.   |  |  |  |   |
| (a)  | 4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.   |  |  |  |   |
| (ख)  | सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो  |  |  |  |   |
| (b)  | 4 copies of the Order - In - Original, in addition to relevant documents, if any  |  |  |  |   |
| (ग)  | पुनरीक्षण के लिए आवेदन की 4 प्रतियां  |  |  |  |   |
| (c)  | 4 copies of the Application for Revision.   |  |  |  |   |
| (घ)  | पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मर्दों के शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु.1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां। यदि शुल्क, मांगा गया व्याज, 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 सम्बन्ध 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 :  |  |  |  |   |
|  | <table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2<sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>   | सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ | Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench | दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016 | 2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016 |
| सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ | Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench  |  |  |  |   |
| दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016           | 2 <sup>nd</sup> 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-  |  |  |  |   |



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|     | 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 हजार 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; पाँच हजार 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 हजार 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-<br>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or<br>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees. |



**ORDER-IN-APPEAL**

1. M/s. Vimalachal Print & Pack Pvt. Ltd., 5, Saket Industrial Estate, Survey No. 437, Near Changodar-Bawla Highway, Moraiya - 382213, Tal. Sanand, Dist. Ahmedabad (hereinafter referred to as 'the appellant') has filed the present appeal under Section 128 of the Customs Act, 1962, against the O.I.O. No. 30/DC/ICD/IMP//Ref/2024 dated 29.05.2024 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, ICD-Khodiyar, Ahmedabad (hereinafter referred to as 'the adjudicating authority')

2. Facts involved in the appeal, in brief, are as under:

2.1 The appellants had imported goods i.e. 14000 kg EXCEED 1018EA (LLDPE granules), under Bill of Entry No. 4479313 dated 27-08-2011. Officers of Directorate of Revenue Intelligence, Ahmedabad, searched the factory premises of the appellants and withdrew records pertaining to import consignments under seizure memo dated 29-08-2011. Further, the imported goods valued at Rs.9,63,888=00 were seized under seizure memo dated 29-08-2011.

2.2 Thereafter, a show cause notice bearing F. No. DRI/AZU/INV-26/2011 dated 07-08-2012 was issued to the appellants calling upon them as to why goods imported under Bill of Entry No. 4479313 dated 27-08-2011 should not be reclassified under CTH 39011090 and differential duty amounting to Rs.3,37,073=00 should not be demanded and recovered under Section 28(1) of the Customs Act, 1962.

2.3 The appellant had paid differential customs duty of Rs.3,37,075=00 and interest of Rs.54,901=00 vide TR-6 Challan No. 619 dated 13-8-2012. In adjudication, the Additional Commissioner, Customs, Ahmedabad, vide OIO No. 12/ADC-KVS/ICD-KHOD/O&A/2013 dated 08-04-2013 confirmed the demand among other things.

2.4 The appellants filed an appeal against the said OIO dated 08-04-2013. The Commissioner (Appeals), vide OIA No. 88 to 93/2014-Cus/Commissioner



(A)/Ahmedabad dated 12-02-2014 set aside the said OIO and allowed the appeal with consequential relief, if any.

2.5 The matter was carried by the department before the Honourable Tribunal by filing Customs Appeal No. 11927 of 2014. Honourable Tribunal, vide Final Order No. A/10341/2023 dated 22-02-2023, dismissed the appeal filed by the department due to low monetary effect (i.e. amount involved is below Rs.50 lakh). No appeal has been filed by Department against the said Final Order of the Tribunal.

2.6 Thereafter, the appellants submitted a letter dated 27-03-2023 (which has been received in ICD-Khodiyar on 12-04-2023) for refund of the amount of Rs.3,91,776=00. In response, vide letter F. No. VIII/20-08/ICD/ Ref/2023 dated 24-04-2023 issued by the Deputy Commissioner of Customs, ICD-Khodiyar, the appellant was asked to clarify as to whether amount was paid as pre-deposit or it was a payment of duty. Further, if it was a pre-deposit, appellant was asked to submit proof/order issued by Department for pre-deposit.

2.7 A show cause notice bearing F. No. VIII/20-10/ICD/REF/2024 dated 29-04-2024 was issued to the appellant calling upon them as to why their claim for refund for an amount of Rs.3,91,776=00 should not be rejected under Section 27 of the Customs Act, 1962.

2.8 The appellants under their letter dated 14-05-2024 filed a detailed reply to the show cause notice inter alia submitted that deposit made under Section 129E of Customs Act is not a payment of duty; that in respect of deposit, provisions of Section 11B are not applicable; that as per CBEC Circular dated 08-12-2004 pre-deposits shall be returned within a period of three months of the disposal of the appeals; that pre-deposit for filing appeal is not payment of duty and that it is well settled law that amount deposited during investigation or pending litigation is *ipso facto* pre-deposit. Further, appellants relied on relevant decisions of Honourable Tribunal and CBEC circulars.

2.9 However, the Deputy Commissioner, Customs, ICD, Khodiyar, rejected the refund claim of Rs.3,91,776=00 under the provisions of Section 27 of Customs Act, vide impugned OIO No. 30/DC/ICD/IMP/REF/2024 dated 29-05-2024.



3. Being aggrieved, the appellant has filed the present appeal. As the appeal has been filed against rejection of refund claim, pre-deposit under the provisions of Section 129E for filing appeal is not required. In the Form C.A.-1, the date of communication of the impugned Order-In-Original dated 29.05.2024 has been shown as 31.05.2024, whereas, the appeal has been filed on 18.07.2024. As the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962, it has been admitted and being taken up for disposal on merits.

4. Main **grounds of appeal** submitted by the appellant are mentioned below:

4.1 It is the case of the department that appellants claimed refund of duty of customs, as such claim filed on 09-02-2024 in respect of order of Commissioner (Appeals) dated 12-02-2014 is beyond the prescribed time limit of one year as stipulated under Section 27 of Customs Act. Whereas, appellants claimed that refund was filed in respect of pre-deposit made during the litigation and for availing the right of appeal.

4.2 Since appellants challenged the order of Additional Commissioner towards confirming differential duty and imposition of penalty, it clearly establishes that amount paid by the appellants was a pre-deposit. It is not necessary that the pre-deposit is made only on communication from the appellate authority. In this connection reliance is placed on the decision of Honourable Tribunal in the case of **CCE, Aurangabad V/s. Enzo Chem Laboratories P. Ltd. cited at 1996 (83) ELT 434 (Tribunal)**. The Honourable Tribunal in para 5 of their decision has held as under:

*5. After hearing both the sides, we are unable to agree with the contention raised by Shri K.M. Mondal, the ld. SDR. Any demand confirmed by the lower adjudicating authority, if challenged by way of appeal, as provided under the law, the appeal itself could be construed to be a protest against demand. Moreover, as per the statutory requirements, if the amount is required to be deposited, so that the appeal could be heard on merits, that payment cannot be construed to be a voluntary payment and has to be construed only as a payment for*



*fulfilling the statutory obligations. When the assessee succeeds in the appeal and the amount paid in fulfilling the statutory requirements under Section 35F of the Act becomes refundable to them, the question of bringing in the time limit prescribed under Section 11B or insisting on a separate letter of protest before payment, does not arise. We therefore see no merit in the appeal. Hence we dismiss the appeal and the stay application may also be treated as disposed of accordingly.*

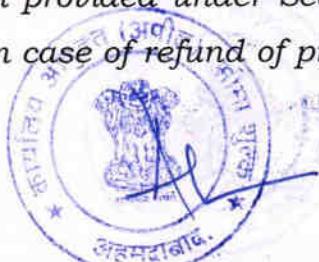
From the above decision of Honourable Tribunal, it establishes that if any order of lower authority is challenged by way of appeal, the appeal itself could be construed to be a protest against demand and if the payment is made in fulfilling statutory requirements, the question of time limit would not arise. In the present case also appellant had paid the amount to meet with statutory requirement and filing of appeal against the confirmation of demand is an evidence of protest against the demand. Therefore, order of Deputy Commissioner, rejecting refund of pre-deposit, may please be quashed and set aside.

4.3 It is submitted that appellants while contesting show cause notice specifically relied on the decision of Honourable Tribunal in the case of **Emmar Mfg. Construction Pvt. Ltd.** In this connection para 9 of the reply to the show cause notice is reproduced herein below:

*9. It is well settled law that amount deposited during investigation and / or pending litigation is ipso facto pre-deposit. Inasmuch as the amount paid during pendency of litigation serves pre-deposit for filing the appeal. In this connection reliance is placed on the decision of Honourable Tribunal in the case of **Pr. Commr. of CGST, New Delhi V/s. Emmar Mgf Construction Pvt. Ltd. cited at 2021 (55) GSTL-311 (Tri.-Del.)**. As such show cause notice does not hold the ground.*

However, learned adjudicating authority in para 13 of the order discarded the judgment by holding as under:

*13. The claimant has cited various Circulars and judgments in supports of its contention that period of limitation provided under Section 27 of the Customs Act, 1962 is not applicable in case of refund of pre-deposit. As I*



have already held that the amount of Rs.3,37,075=00 paid by the claimant was towards duty and not pre-deposit, I do not propose to examine and discuss those circulars and judgments.

With respect to above finding, it is submitted that learned adjudicating authority has discarded the submissions and specifically the decision of Honourable Tribunal without comprehending the same. Inasmuch as the issue as to whether amount paid during the investigation is to be considered as deposit has been decided in catena of decisions and accordingly appellants placed reliance on the decision of Honourable Tribunal in the case of **Emmar Mfg. Construction Pvt. Ltd.**, wherein it has been affirmed that amount deposited during investigation and or pending litigation is *ipso facto* pre-deposit. Therefore, when it has been held that amount paid during the investigation or pending litigation is to be construed pre-deposit, the order passed by learned Deputy Commissioner, discarding the decision of Honourable Tribunal, may please be quashed and set aside.

4.4 It is submitted that issue as to whether amount paid during the pendency of litigation is to be construed pre-deposit, has been decided in catena of decisions. In this connection reliance is placed on the decision of **Parle Agro Pvt. Ltd. V/s. CCE, Noida cited at 2018 (360) ELT 1005 (Tri.-All.)**. The Honourable Tribunal in para 6 of their decision has held as under:

*Having considered the rival contentions, we find that as held by Hon'ble Punjab and Haryana High Court and as earlier held by this Tribunal, the amounts, which are deposited during the pendency of investigation and proceedings, if the same are not adjudged as duty, fine or penalty then the amount that is not adjudged as duty, fine and penalty is to be treated as revenue deposit and the provisions of refund of duty shall not be applicable to the same.*

4.5 Similarly, Honourable High Court of Madras in the case of **CCE, Coimbatore V/s. Pricol Ltd. cited at 2015 (39) STR 190 (Mad.)** in para 7 of their judgment has held as under:



*In this regard, it has to be noticed that it has been the consistent view taken by the Courts that any amount, that is deposited during the pendency of adjudication proceedings or investigation is in the nature of deposit made under protest and, therefore, the principles of unjust enrichment does not apply. The above said view has been reiterated by the High Court of Bombay in *Suvidhe Ltd. v. Union of India* - 1996 (82) E.L.T. 177 (Bom.), and by the Gujarat High Court in *Commissioner of Customs v. Mahalaxmi Exports* - 2010 (258) E.L.T. 217 (Guj.), which has been followed in various cases in *Summerking Electricals (P) Ltd. v. CEGAT* - 1998 (102) E.L.T. 522 (All.), *Parle International Ltd. v. Union of India* - 2001 (127) E.L.T. 329 (Guj.) and *Commissioner of Central Excise, Chennai v. Calcutta Chemical Company Ltd.* - 2001 (133) E.L.T. 278 (Mad.) and the said view has also been maintained by the Supreme Court in *Union of India v. Suvidhe Ltd.* - 1997 (94) E.L.T. A159 (S.C.). There are also very many judgments of various Courts, which have also reiterated the same principles that in case any amount is deposited during the pendency of adjudication proceedings or investigation, the said amount would be in the nature of deposit under protest and, therefore, the principles of unjust enrichment would not apply.*

4.6 The Honourable High Court of Gujarat in the case of **Principal Commissioner of Customs V/s. H. V. Ceramics cited at 2019 (365) ELT 390 (Guj.)** dealt with the question as to whether the refund claim be held as time barred though the refund claim was filed after the expiry of one year invoking Section 27(1) of the Customs Act. The Honourable High Court while dismissing the appeal of the department has held that the amount paid by the respondent was deposited by way of pre-deposit pending investigation. Reliance is also placed on the decision of Honourable Tribunal in the case of **Cosmic Textiles V/s. CC, Ahmedabad cited at 2006 (204) ELT 340 (Tri.-Mumbai)** wherein it has been held as under:

3. *After hearing the submissions made by both sides, I find that the amount originally deposited by the assessee was in the nature of pre-deposit and was not in the nature of confirmed amount of duty. As such, limitation will not apply to refund of such excess deposit. As regards the claim being pre-mature, it is seen that when the show cause notice itself demands the lower amount of duty, the adjudicating authority cannot*



confirm an amount higher than that. As such, the excess amount deposited by the appellants prior to issuance of show cause notice is in any case, liable to be refunded to them. Accordingly, I set aside the impugned order and allow the appeal with consequential relief to the appellants in accordance with the law.

4.7 Further reliance is placed on the decision of Honourable Tribunal in the case of **Safal Food Products Pvt. Ltd. V/s. CC, CE and CGST, Jabalpur cited at (2023) 4 Centax-9 (Tri.-Del.)**. The Honourable Tribunal has held that when the duty demanded has been set aside, the amount paid during the stage of investigation cannot be construed as duty. In this connection para 13 of the decision is reproduced herein below:

*13. Coming to the issue of invoking time bar of section 11(B) of Central Excise Act, 1994, it is observed that amount, the refund whereof was claimed, is an amount which was deposited by the appellant during the stage of investigation when impugned demand was proposed. Once the said proposal has failed to attain finality i.e. when the duty demand has been set aside, the aforesaid was not the deposit with reference to duty but was deposit under protest. Since it is not the amount of duty Section 11(B) of CEA, 1944 and the time bar therein cannot be invoked. Law is no more res-integra in this respect as is apparent from decision of Hon'ble Apex Court in Sandvik Asia Ltd. v. Commissioner of Income Tax-I, Pune reported in 2007 (8) S.T.R. 193/[2006] 150 Taxman 591 (S.C.). Even this Tribunal in the case Parle Agro (P.) Ltd. v. CCE, Noida reported as 2018 (360) E.L.T. 1005 (Tri.- All.) and in the case of Instrument Transformers v. Commissioner, CGST reported as 2021 (378) E.L.T. 238 (Tri. Delhi) / [2021] 130 taxmann.com 103 (New Delhi - CESTAT) has already held that a deposit made at the stage of investigation is the deposit made to which section 11 B does not apply. Time bar therein is repeatedly been held to be non-invokable to such deposits.*

4.8 The appellant submitted that in light of the above decisions of Honourable High Court and Honourable Tribunals, it clearly establishes that amount paid during pendency of adjudication proceedings or investigation cannot be construed as duty, but the said amount would be in nature of pre-deposit under



protest. In the present case appellant paid the amount during the investigation and the demand was contested at the stage of first appellate authority. Therefore, in light of the above decisions, the amount paid was in nature of deposit under protest and cannot be construed as duty. Consequently, order passed by learned Deputy Commissioner may please be quashed and set aside.

4.9 The appellant also submitted that Honourable Tribunal in the case of **Instrument Transformers V/s. Commr. (Appeals), CGST&CEX, Indore cited at 2021 (378) ELT 238 (Tri.-Del.)** scrutinized the issue of refund and held that any deposit made at the time investigation is settled to be an amount to be called as pre-deposit under protest. Further, Honourable Tribunal has held that period of one year had to be reckoned from the relevant date; and the relevant date shall be the date of the final order. In this connection relevant portion of the decision is reproduced herein below:

*7. After hearing both the parties and perusing the record, I observe and hold as follows:-*

*There is no denial for the fact that Rs. 10,30,000/- was deposited by the appellant at the stage of investigation itself. Any deposit made at the time of investigation is settled to be an amount to be called as pre-deposit under protest. I place my reliance on the decision of Hon'ble High Court of Madras in the case of Commissioner of Central Excise, Coimbatore v. Precol Ltd. reported as 2015 (39) S.T.R. 190 (Mad.). This is sufficient to show that Section 11B is not applicable to the given facts and circumstances.*

*9. Coming to the chronology of date-wise events as has been impressed upon by Ld. D.R., it is clear that the entitlement of appellant to claim this refund got finalized after the order of this Tribunal on 10 November, 2017. The period of one year if at all would have been applicable, it had to reckon from the relevant date and not from the date of deposit as has been submitted by Learned D.R. The relevant date in terms of 11B(ec) shall be the date of the final order which is 10 November, 2017.*



5. The appellant further submitted the chronology of events in this case as under:

|                                       |            |
|---------------------------------------|------------|
| Bill of Entry filed on                | 27-08-2011 |
| Search and investigation conducted on | 29-08-2011 |
| Statement of Director recorded on     | 31-07-2012 |
| Show cause notice issued on           | 07-08-2012 |
| Amount deposited on                   | 13-08-2012 |
| Order-in-Original issued on           | 08-04-2013 |
| Order-in-Appeal issued on             | 12-02-2014 |
| Order of Honourable Tribunal on       | 22-02-2023 |
| Refund application / letter filed on  | 27-03-2023 |
| Refund application filed on as per    |            |
| Adjudicating authority                | 15-12-2023 |

The appellant submitted that they have filed refund letter on 27-03-2023 however, learned adjudicating authority has held that refund application was filed on 15-12-2023. In this connection letter F. No. VIII/20-08/ICD/Ref/2023 dated 24-04-2023 issued by Deputy Commissioner, Customs, Gandhinagar in response to appellants' refund letter dated 27-03-2023 enclosed. From the letter it establishes that refund application letter was received by department on 12-04-2023. As such learned adjudicating authority has wrongly shown the date of refund application as 15-12-2023. Then, applying the ratio of the decision of Honourable Tribunal referred to above in **Instrument Transformers** case cited Supra in respect of above chronology of the events, the entitlement of appellants to claim the refund got finalized after the order of Honourable Tribunal on 22-02-2023. Since appellants filed the refund claim on 27-03-2023, the refund claim was filed within stipulated time. Here reliance is also placed on the decision of Honourable Tribunal in the case of **Hindalco Industries Ltd. V/s. CCE&ST, Vadodara-II cited at 2022 (380) ELT 622 (Tri.-Ahmd.)**. The Honourable Tribunal in para 4.1 of their decision has held as under:

*Moreover, there is a reason for filing \*appeal on 25-5-2018 by the appellant that the department's appeal before the CESTAT was pending and appellant had filed the refund claim immediately after the Tribunal's order dismissing the department's appeal on 26-4-2018 for this reason also the refund cannot be rejected on time bar.*



(\*sic - ought to be 'refund claim')

Since appellants also filed the refund on 27-03-2023, immediately after the order of Honourable Tribunal dated 22-02-2023, the learned adjudicating authority has wrongly reached to conclusion that refund is beyond the period of limitation. As such order impugned may please be quashed and set aside.

6.1 The learned adjudicating authority in para 11.1 referring to Order-in-Appeal has held that amount paid by appellant was not pre-deposit. The relevant text of the order of learned Deputy Commissioner reads as under:

*Thus, as per the order of the Commissioner of Customs (Appeals), the amount of pre-deposit required to be paid under Section 129E of the Customs Act, 1962 for filing appeal, had been waived. It is therefore apparent that the said amount of Rs.3,37,075=00 and interest of Rs.54,701=00 (Total Rs.3,91,776=00) paid by the claimant was not pre-deposit under Section 129E of the Customs Act, 1962.*

With respect to above finding, at first place it is submitted that appellants paid the amount during the investigation and before adjudication of the matter. In fact, appellants challenged the order of lower authority before the appellate authority, evidencing amount paid was pre-deposit during the litigation. In connection with waiving of amount of pre-deposit by Honourable Commissioner of Customs (Appeals), it is submitted that the nature of amount paid by the appellants does not change by waiving of pre-deposit amount. Inasmuch as Honourable High Courts and Honourable Tribunals have consistently held that during the pendency of litigation amount paid is a pre-deposit. Therefore, merely because Commissioner (Appeals) has waived the condition of pre-deposit after appellants having made pre-deposit, the nature of pre-deposit does not change.

6.2 Similarly, learned adjudicating authority in para 11.2 has held as under:

*11.2 I find that the claimant has paid the differential duty of Rs.3,37,075=00 and interest of Rs.54,701=00 (Total of Rs.3,91,776=00) vide challan No. 319/13-08-2012 i.e. within 06 days from the date of issuance of the said show cause notice dated 07-08-2012 and well before*



*the adjudication of the said show cause notice. Therefore, the contention of the claimant that the said amount was paid for filing of appeal before the Commissioner of the Customs (Appeals) is not found correct.*

From the above finding, it clearly establishes that learned adjudicating authority has grossly failed to comprehend the provision of law and the precedent decisions. Inasmuch as the amount paid during the pendency of litigation is consistently held as pre-deposit. Further, it appears that learned adjudicating authority considers amount paid as pre-deposit only when the amount is paid on direction of appellate authority. Therefore, order passed by learned Deputy Commissioner may please be quashed and set aside.

6.3 In para 11.3 of the order learned Deputy Commissioner has referred the description shown on the challan for making payment and held that appellant has treated payment of Rs.3,37,075=00 towards payment of duty and not as pre-deposit. With respect to above finding, the appellant submitted that if the amount was paid towards duty, the appellants would not have contested the demand and further they would not have preferred appeal against the order of lower authority. Since the amount was paid during the pendency of litigation, the amount paid cannot be construed as payment of duty.

6.4 Further, learned Deputy Commissioner in para 17 of OIO has misplaced reliance on the judgment of Honourable Supreme Court in the case of Madras Rubber Factory Ltd. and Escorts Ltd. inasmuch as the issue before the Honourable Apex Court was refund of duty and not of pre-deposit. In fact, learned Deputy Commissioner has already taken stand before discussing the submissions of the appellant that amount paid by the appellants was towards duty and not pre-deposit. In this connection relevant text of para 13 reads as under:

*As I have already held that the amount of Rs.3,37,075=00 paid by the claimant was towards duty and not pre-deposit, I do not propose to examine and discuss those circulars and judgments.*

Since refund claim of pre-deposit has been construed as refund claim of duty, the learned Deputy Commissioner has misplaced reliance on the judgment of



Honourable Supreme Court. Therefore, order passed by learned Deputy Commissioner may please be quashed and set aside.

**Personal Hearing:**

7. Personal Hearing in this case was held in virtual mode on 18-06-2025, which was attended by Shri. P. G. Mehta, Advocate, on behalf of the appellant. He reiterated the written submissions. He also submitted Synopsis by email dated 04-07-2025.

**Findings:**

8. I have carefully gone through the facts of the case and written as well as oral submissions made by or on behalf of the appellant. The issue which is to be decided in the present appeal is whether the amount of Rs.3,91,776/- deposited/paid by the appellant was in nature of 'pre-deposit', 'deposit' or 'duty'; and whether the refund claim filed by the appellant is time-barred or not.

9. Before starting discussion, I would like to note here that the provisions of Section 129E of the Customs Act, 1962, regarding pre-deposit have been substantially changed by the Finance (No.2) Act, 2014, w.e.f. 06-08-2014. As per the amended provisions, the appellants are mandatorily required to pre-deposit 7.5% amount of disputed duty or penalty for filing of first appeal. Whereas, as the provisions of Section 129E, as prevailed prior to 06-08-2014, the appellants were required to pre-deposit duty or to file application for waiver of pre-deposit, and in case of application for full or partial waiver, Commissioner (Appeals) was to require to pass an Order for specific amount to be deposited as pre-deposit or for waiver of pre-deposit. As mentioned in Para 1.2 of Circular No. 984/8/2014-CX dated 16-09-2014, as modified vide Para 4 of Circular No. 993/17/2014-CX dated 05-01-2015, the amended provisions apply to all appeals filed on or after 06-08-2014, whereas all pending appeals/stay applications filed before 06-08-2014 should be governed by the erstwhile provisions. Therefore, the un-amended provisions of Section 129E, as prevailed prior to 06-08-2014, are applicable to the present case. Further, the provisions regarding granting interest on delayed refund of pre-deposit, as per Section 129EE are not applicable to the present case, even if the amount deposited by the appellant is treated as 'pre-deposit', inasmuch as in the present case, the



appellant has deposited duty on 13-08-2012 and filed appeal before Commissioner (Appeal) in the year 2013, i.e. much before the date 06-08-2014.

10.1 I find that the appellant has heavily relied upon the Board's Circular/Letter F.No. 275/37/2K-CX.8A dated 02-01-2002. In the said Circular, it has been inter alia mentioned that that since the practice in the Department had all along been to consider such deposits as other than duty, such deposits should be returned in the event the appellant succeeds in appeal or the matter is remanded for fresh adjudication. In order to attain uniformity and to regulate such refunds, the Board has clarified that refund applications under Section 11B(1) of the Central Excise Act, 1944 or under Section 27(1) of the Customs Act, 1962 need not be insisted upon, but a simple letter would be suffice.

10.2 However, in a subsequent letter F.No. 275/37/2K-CX.8A dated 20-06-2003, it has been further clarified as under:

*"Kind attention is invited to the circular of even number dated 2nd January, 2002 [2002 (139) E.L.T. T38] on the captioned subject.*

*2. It has been brought to the notice of the Board that the wordings in para 4 of the Circular, namely, "any deviation and resultant liability to interest on delayed refunds shall be viewed strictly" convey the impression that interest is liable to be granted for refund of pre-deposits even when there is no corresponding provision in the Central Excise Act, 1944. The matter has been examined and the sentence is re-worded as under :-*

*"Any deviation from the procedure explained hereinabove shall be viewed strictly."*

*3. The field formations and the Trade Associations may be informed accordingly."*

10.3 In view of the above, I am of the view that the Deposit made by the appellant during the litigation was required to be returned by Customs Department without applying the time-limit for claiming refund as one year from the date of Order-In-Appeal, as per Section 27(1B)(b) of the Customs Act, 1962.

11. I find that the appellant has cited various Judgments and Circulars before the adjudicating authority in support of their contention that the limitation



period of one year, as provided in Section 27 would not be applicable in their case on the ground that they had claimed refund of pre-deposit. However, the adjudicating authority observed and held that the amount of Rs.3,37,075/- paid by the claimant was towards duty and not pre-deposit and so he did not examine the Circulars and Judgments. While holding so, the adjudicating authority has placed reliance on the following:

- As per the Order-In-Appeal No. 88 to 93/2014-Cus/Commissioner (A)/ Ahmedabad dated 12-02-2014, the requirement of pre-deposit has been waived by the Commissioner (Appeals). So, the amount paid by the appellant was not pre-deposit.
- The claimant has paid duty and interest on 13-08-2012, i.e. within 06 days from the date of issuance of SCN dated 07-08-2012, and well before adjudication of the SCN. Therefore, the contention of the claimant that the said amount was for filing of appeal before Commissioner (Appeals) is not correct.
- In the Challan No. 319 dated 13-08-2012, the claimant has mentioned that "*Payment of Customs duty against Show Cause Notice No. DRI/AZU/INV-26/2012 dated 07.08.2012*". Thus, the claimant has treated the payment towards duty, not as pre-deposit under Section 129E.

In this regard, I observe that the appellant has neither self-assessed the differential duty of Rs.3,37,075/- nor it has been paid against assessment of the impugned Bill of Entry No. 4479313 dated 27-08-2011. It is undisputed that the said amount, along with interest, was paid by the appellant within 6 days from issuance of SCN by DRI and much before passing the Order-In-Original passed by the adjudicating authority. Therefore, I am of the view that the amount deposited vide Challan dated 13-08-2012 was not in nature of duty. However, I agree with the view of the adjudicating authority that it was not in nature of 'pre-deposit' under the provisions of Section 129E of the Customs Act, 1962. If the appellant had paid the said amount after issuance of the OIO but before filing of appeal, it can be treated as 'pre-deposit' for filing of appeal. But, in the present case, the appellant has paid the amount immediately after issuance of SCN with a possible intention to minimise the liability of paying interest and penalties. Thus, this amount deposited on 13-08-2012 was neither paid during the investigation nor paid for filing appeal, because as on 13-08-



2012 the investigation was over and the OIO was not in existence. So, I am of the view that it cannot be termed as 'pre-deposit' for filing appeal.

12. As per the Provisions of Section 129E, as prevailed prior to its amendment w.e.f. 06-08-2014, the appellants were required to deposit duty as pre-deposit or to file application for waiver of pre-deposit before Commissioner (Appeals). In the present case, the appellant has deposited amount of duty on 13-08-2012, the OIO towards confirmation of demand has been passed on 08-04-2013 and thereafter the appellant had filed appeal before Commissioner (Appeals), which had been decided on 12-02-2014. As the appellant has deposited the amount much before passing of the OIO dated 08-04-2013, it cannot be said that the amount paid on 13-08-2012 was 'pre-deposit' for filing appeal as per Section 129E. However, in my view, the said amount can be treated as 'Deposit', which was appropriated vide OIO dated 08-04-2013. However, after setting aside the OIO by Commissioner (Appeal) vide OIA dated 12-02-2014, the said amount again became 'Deposit', which was refundable to the appellant, when the appellant applies for refund, irrespective of fact that the Customs Department had filed appeal before CESTAT and it was pending. The appellant has chosen to not file refund claim after issuance of OIA dated 12-02-2014, but waited for almost 9 years till outcome of the appeal filed by Customs Department before Hon'ble CESTAT. Vide Final Order dated 22-02-2023, Hon'ble CESTAT has dismissed the Customs Department's appeal No. 11927 of 2014 and thereafter, the appellant has filed refund claim vide their letter dated 27-03-2023, which has been received in ICD-Khodiyar on 12-04-2023 (as mentioned in the letter F.No. VIII/20-08/ICD/Ref/2023 dated 24-04-2023 issued by the D.C., Customs, ICD-Khodiyar). The adjudicating authority has rejected the refund claim on account of time-bar under the provisions of Section 27, as it has been filed beyond the period of one year from the date of Order-In-Appeal, which was in favour of the appellant.

13. I find that the in the following case of **M/s. Petronet LNG Ltd.**, similar situation has been discussed:

13.1 In the case of **Petronet LNG Ltd. Vs. Commissioner of Customs, Ahmedabad [2019 (369) ELT 791 (Tri-Ahmd)]**, vide Final Order dated 01.08.2018, Hon'ble CESTAT, Ahmedabad, had observed that the entire amount



paid by the assessee was nothing but Customs duty irrespective of the fact that certain portion of duty was not payable; that any amount refundable must pass test u/s 27 and the refund claim became time-barred on account of failure to file refund claim within one year from the date of Commissioner (Appeals) order in favour of assessee. It was further held by Hon'ble CESTAT that the period of one year to be reckoned from the date of receipt of Commissioner (Appeals) favourable order, not the date of receipt of Tribunal's order. Thus, Hon'ble CESTAT had dismissed the appeal filed by M/s. Petronet LNG Ltd.

13.2 However, M/s. Petronet LNG Ltd. had filed SCA No. 5190 of 2019 before Hon'ble High Court of Gujarat and it was decided vide Judgment dated 26.12.2019, which has been reported as **Petronet LNG Ltd. Vs. Assistant Commr. of Cus., Customs Division - 2021 (377) ELT 229 (Guj.)**. Vide the said Judgment, Hon'ble High Court has held that the Appellate Commissioner rendered its decision in favour of assessee on 4-12-2013 and assessee-importer was entitled to seek refund based thereupon; however, Department preferred appeal before CESTAT challenging said order. Further, CESTAT passed order of 8-9-2014 in favour of assessee which was received by importer on 29-9-2014. Under this situation, Hon'ble High Court has rejected Department's plea that the refund claim should have been filed within one year from date of order of Commissioner (Appeals) dated 4-12-2013, and held that the assessee was entitled to receive the refund, which was filed within one year from the date of receipt of the order passed by the CESTAT.

13.3 Further, I find that Customs Department has filed a Petition for Special Leave Appeal (C) No. 9298 of 2020 before Hon'ble Supreme Court against the aforesaid Judgment of Hon'ble High Court. Vide Judgment and Order dated 12.01.2021 reported as **Assistant Commissioner v. Petronet LNG Ltd. - 2021 (378) E.L.T. A16 (S.C.)** Hon'ble Supreme Court has passed the following Order:

*"Leave granted.*

*As short question of law is involved, list this appeal for hearing in the first week of April, 2021.*

*In the meantime, the operation of the impugned judgment shall remain stayed.*

*Liberty to file counter affidavit, as prayed, is granted."*

I find that the aforesaid SLP filed by Customs Department is still pending with Hon'ble Supreme Court.

13.4 As Hon'ble Supreme Court has stayed the operation of the Judgment of Hon'ble Gujarat High Court, but not set aside or overruled the said Judgment, I am of the view that the ratio of the Judgment passed by Hon'ble Gujarat High Court is still binding on me. In this regard, I rely upon the judgment of Hon'ble Supreme Court in case of **Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association reported in (1992) 3 SCC 1**, wherein it has been made clear that the stay of operation of order does not lead to consider that such order is quashed, it only means that the order which has been stayed could not be operative from the date of passing stay order and it does not mean that the said order is wiped out from existence.

13.5 By relying upon the above-mentioned Judgment in the case of **Shree Chamundi Mopeds Ltd. (supra)**, Hon'ble CESTAT, New Delhi, in the case of **INSTITUTE OF AERONAUTICS & ENGINEERING Versus COMMR. OF C. EX., BHOPAL [2018 (10) G.S.T.L. 267 (Tri.-Del) [21-11-2017]]**, inter alia observed as under:

*"We note that the order of the Delhi High Court in the said case has been stayed by the Hon'ble Supreme Court. However, it is to be noted that such stay, as held by the Hon'ble Supreme Court in Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association - AIR 1992 SC 1439, 1992 ACR (2) 999 will be to the effect that the order, which has been stayed would not be operative from the date of passing of the stay order and it does not mean that the said order has been wiped out from existence. We note that the Hon'ble Supreme Court made a distinction between quashing of an order and stay operation of an order. In the present case, admittedly, there is an interim stay of the order of Delhi High Court. The ratio of Delhi High Court is available."*

So, even though the said matter is pending with Hon'ble Supreme Court, the ratio of a Judgment of jurisdictional High Court is still valid and it can be followed.



14. Further, I find that Hon'ble Tribunal in the case of **Instrument Transformers V/s. Commr. (Appeals), CGST&CEX, Indore cited at 2021 (378) ELT 238 (Tri.-Del.)** held that any amount, that is deposited during pendency of adjudication proceedings or investigation, is in nature of deposit made under protest and time-bar under Section 11B of Central Excise Act, 1944 not invokable.

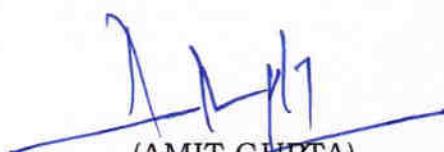
15. I also rely upon the decision of the jurisdictional CESTAT, in the case of **Hindalco Industries Ltd. V/s. CCE&ST, Vadodara-II cited at 2022 (380) ELT 622 (Tri.-Ahmd.)**, wherein it has been observed that there is a reason for filing appeal (sic – refund claim) on 25-5-2018 by the appellant that the department's appeal before the CESTAT was pending and appellant had filed the refund claim immediately after the Tribunal's order dismissing the department's appeal on 26-4-2018, that for this reason also the refund cannot be rejected on time bar.

16. In view of the above position of law, I hold that rejection of refund claim of Deposit of Rs.3,37,075/- and Interest of Rs.54,701/- (Total Rs.3,91,776/-) on the ground of time-bar vide the impugned order is not legal and proper and therefore, the impugned order is required to be set aside.

**Order:**

17. In view of the above findings, I set aside the O.I.O. No. 30/DC/ICD/IMP/Ref/2024 dated 29-05-2024 passed by the Deputy Commissioner of Customs, ICD-Khodiyar, Ahmedabad, and I allow the appeal filed by M/s. Vimalachal Print & Pack Pvt. Ltd., with consequential relief, in accordance with law.



  
(AMIT GUPTA)  
Commissioner (Appeals)  
Customs, Ahmedabad

**By e-mail** [As per Section 153(1)(c) of the Customs Act, 1962]

To

M/s. Vimalachal Print & Pack Pvt. Ltd.,  
5, Saket Industrial Estate, Survey No. 437,  
Near Changodar-Bawla Highway, Moraiya – 382213,  
Tal. Sanand, Dist. Ahmedabad  
(email [vimalachal@vimalachal.com](mailto:vimalachal@vimalachal.com) )



**Copy to:**

1. The Chief Commissioner of Customs, Ahmedabad Zone, Customs House, Ahmedabad. (email: [ccoaahm-guj@nic.in](mailto:ccoaahm-guj@nic.in) )
2. The Pr. Commissioner of Customs, Ahmedabad.  
(email: [kus-ahmd-guj@nic.in](mailto:kus-ahmd-guj@nic.in) ; [rra-customsahd@gov.in](mailto:rra-customsahd@gov.in) )
3. The Deputy/Assistant Commissioner of Customs, ICD-Khodiyar, Ahmedabad (email: [icdkhd-ahd@gov.in](mailto:icdkhd-ahd@gov.in) )
4. Shri. P. G. Mehta, Advocate, M/s. Khatri Consultants, Ahmedabad  
(email: [khatriconsultants4@gmail.com](mailto:khatriconsultants4@gmail.com) )
5. Guard File.

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