

S/49-55/CUS/JMN/2024-25



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 - 20250871MN0000111A50

क	फ़ाइल संख्या FILE NO.	S/49-55/CUS/JMN/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)	JMN-CUSTM-000-APP-240-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	07.08.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	107/DC/RD/23-24, dated 26.02.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	07.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Arth Metallurgical Pvt. Ltd., Plot No. 95/2, Village – Lalpur, Raipur, Chhattisgarh, India – 493211.



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 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 :
(क)	बैगेज 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। 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 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए 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> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td><td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td></tr> <tr> <td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td><td>2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td></tr> </table>	सीमाशुल्क, केन्द्रीय 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	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय 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	2 nd 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 हजार रूपए.				
(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 हजार रूपए				
(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 रूपए.				
(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

The present appeal has been filed by M/s. Arth Metallurgical Pvt. Ltd., Plot No. 95/2, Village – Lalpur, Raipur, Chhattisgarh, India – 493211, (hereinafter referred to as ‘the Appellant’) in terms of Section 128 of the Customs Act, 1962, challenging the Order – in - Original No. 107/DC/RD/23-24, dated 26.02.2024 (hereinafter referred to as ‘the impugned order’) passed by the Deputy Commissioner, Customs Division, Jamnagar (hereinafter referred to as ‘the Adjudicating Authority’).

2. Facts of the case, in brief, are that the Appellant had filed Bill of Entry No. 2005105 dated 28.03.2022 for the import of a used/spent catalyst mixture containing oxides of Tungsten and Nickel from Reliance SEZ, Jamnagar into the Domestic Tariff Area (DTA), and paid customs duty amounting to Rs. 3,82,535/- vide Challan No. 5445 dated 30.03.2022. Subsequently, due to a mismatch in the specifications and description of the goods, the Appellant did not procure the material and requested cancellation of the said Bill of Entry vide letter dated 25.09.2023 addressed to Reliance SEZ, Jamnagar. Upon verification, it was found that no supply was made under the said Bill of Entry, and accordingly, the Appellant canceled the order and Bill of Entry vide communication dated 14.09.2023. Thereafter, the Appellant filed a refund application under Section 27(1)(a) of the Customs Act, 1962 on 06.11.2023 seeking refund of Rs. 3,82,535/- , being the duty paid on the canceled Bill of Entry.

2.1 The Adjudicating Authority vide the impugned order rejected the refund claim on the ground that it was filed beyond the time limit prescribed under Section 27(1)(a) of the Customs Act.

3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeal and mainly contested as under: -

- The Appellant submits that the learned Deputy Commissioner erred in holding that the cause of action for filing the refund claim under Section 27 of the Customs Act, 1962, arose on 14.09.2023 the date of the Appellant’s letter to Reliance SEZ seeking cancellation of the order and Bill of Entry. Based on this acknowledgment, the limitation period under



Section 27 would begin from 14.09.2023, and since the refund application was filed on 06.11.2023, it was well within the statutory period of one year. Therefore, the refund claim cannot be held time-barred.

- The Appellant contends that they are entitled to a refund of Rs. 3,82,535/- , being the customs duty paid on the canceled Bill of Entry No. 2005105 dated 28.03.2022, as the goods were never supplied due to mismatch in description/specifications. Since no import effectively occurred under the said Bill of Entry, the duty collected was without authority of law.
- The Appellant relies on the judgment of the Hon'ble Supreme Court in *Salonah Tea Co. Ltd. & Ors. v. Superintendent of Taxes, Nowgong & Ors.* (Civil Appeal Nos. 3023-3029 of 1979), where it was held that limitation for recovery of money paid by mistake starts from the date of discovery of the mistake. The Court emphasized that once it is established that the realization was without authority of law, the refund must follow as a consequential relief, and limitation must be computed from the date of knowledge of such illegality.
- The Appellant further places reliance on *Hind Agro Industries Ltd. v. Commissioner of Customs & Ors.* [Cus. A.C. No. 7 of 2007], wherein the Delhi High Court held that where a payment is made under a mistake of law, the limitation under Section 27 of the Customs Act would not apply. Instead, the limitation would be governed by Section 18 of the Limitation Act, and a refund claim filed within three years of discovering the mistake is maintainable.
- In light of the above precedents, the Appellant argues that even if Section 27 is applied restrictively, the provisions of the Limitation Act particularly Section 18 provide for a limitation period of three years from the date of written acknowledgment. In the present case, 14.09.2023 constitutes the date of acknowledgment of the mistake (non-supply), and the refund application filed on 06.11.2023 is thus well within the prescribed period.
- The Appellant submits that they were not afforded a reasonable opportunity of being heard. The notice for hearing was either not served properly or not received in time. The Appellant had specifically requested another opportunity, but the learned Deputy Commissioner failed to grant



a fresh hearing and passed the refund rejection order arbitrarily. This procedural impropriety renders the order violative of principles of natural justice and liable to be quashed.

PERSONAL HEARING:

4. Personal hearing in the matter was granted to the Appellant on 01.07.2025, following the principles of natural justice wherein Shri Vishal D Davda, Advocate, appeared for the hearing and re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. Before going into the merits of the case, it is observed that the appeal has been filed beyond normal period of 60 days but within the condonable period of 30 days as stipulated under Section 128(1) of the Customs Act, 1962. The appellant has requested for condoning the delay in filing the said appeal on the ground that the delay in filing the appeal was due to bonafide reasons and circumstances beyond their control. Therefore, taking a lenient view and to meet the ends of justice, I allow the appeal as admitted condoning the delay in filing the appeal beyond the normal period of 60 days under proviso to the Section 128(1) of the Customs Act, 1962.

5.1 I have carefully examined the records of the case, the impugned order passed by the Deputy Commissioner, Customs Division, Jamnagar, as well as the submissions made by the Appellant in support of their appeal.

5.2 Upon consideration of the materials on record, the principal issue that arises for determination in the present appeal is:

"Whether the Adjudicating Authority was justified in rejecting the refund claim filed by the Appellant on the ground of limitation under Section 27(1)(a) of the Customs Act, 1962, in the facts and circumstances of the case."

5.3 It is observed that, while calculating the limitation period of one year, the Adjudicating Authority considered the period between the date of duty payment (i.e., 30.03.2022) and the date of filing of the refund application (i.e., 06.11.2023), and accordingly rejected the refund application as being time-barred.



5.4 However, it is observed that the Adjudicating Authority has committed a material error in computing the limitation period. The Adjudicating Authority failed to appreciate that the refund claim in question arose only upon the cancellation of the Bill of Entry. It is an undisputed fact that the said Bill of Entry was cancelled at the Appellant's request, owing to a mismatch in the specifications and description of the goods. Further, documents placed on record by the Appellant clearly show that the Bill of Entry was endorsed with the remark "NIL DISPATCHED" by the Preventive Officer on 04.10.2023.

5.5 In view of the foregoing, it is evident that the right to claim refund accrued only upon the cancellation of the Bill of Entry. As such, the claim falls squarely within the ambit of clause (c) of sub-section (1B) of Section 27 of the Customs Act, 1962, which reads as under:

Section 27 - Claim for refund of duty:

(1) Any person claiming refund of any duty or interest, —

(a) paid by him; or

(b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs before the expiry of one year from the date of payment of such duty or interest:

[...]

(1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely: —

(c) where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or, in the case of reassessment, from the date of such reassessment.

5.6 In the instant case, the Bill of Entry was reassessed as "NIL Dispatched" by the proper officer on 04.10.2023 and was subsequently cancelled. Therefore, the correct date for the commencement of the limitation period under Section 27(1B)(c) would be 04.10.2023. Accordingly, the refund application dated 06.11.2023 was filed well within the prescribed limitation period of one year.



[Handwritten signature]

5.7 Additionally, the Appellant has submitted a Chartered Accountant's Certificate issued by Shri Rohit Gupta bearing UDIN No. 23417611BHAFEE7348. Upon perusal of the said certificate, I am satisfied that the Appellant has successfully discharged the burden of proving that the bar of unjust enrichment is not attracted in the present case.

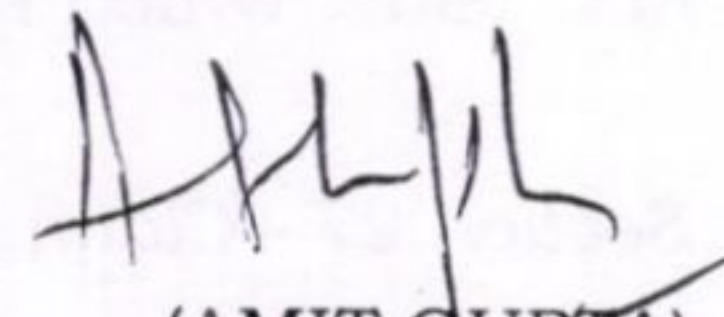
5.8 In light of the above findings, I am of the considered opinion that the Appellant is entitled to a refund of Rs. 3,82,535/- paid in respect of Bill of Entry No. 2005105 dated 28.03.2022.

6. In view of the above, the appeal filed by the Appellant is allowed. The Refund Sanctioning Authority is hereby directed to process and sanction the refund amount of Rs. 3,82,535/- to the Appellant in respect of the aforementioned Bill of Entry.

सत्यापित/ATTESTED

 SUPERINTENDENT
 सीमा शुल्क (अपील), अहमदाबाद.
 CUSTOMS (APPEALS), AHMEDABAD




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

F. No. S/49-55/CUS/JMN/2024-25

Date: 07.08.2025

By Registered post A.D/E-Mail

293°

To,
 M/s Arth Metallurgical Pvt. Ltd.,
 Plot No. 95/2, Village – Lalpur, Raipur, Chhattisgarh, India – 493211.

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs (Preventive), Jamnagar.
3. The Deputy Commissioner, Customs Division, Jamnagar.
4. Guard File.