



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
 चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhavan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
 दूरभाषक्रमांक Tel. No. 079-26589281
 DIN – 20260371MN000000AF93

क	फ़ाइलसंख्या FILE NO.	S/49-459/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमाशुल्क अधिनियम, 1962 कीधारा 128(क)के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP-973-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	31.03.2026
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	MCH/215/DC/ARK/REF/2024-25 dtd. 15.01.2025
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	31.03.2026
	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s. Shah Foils Ltd. B-26, 3rd floor, Galaxy Signature, Science city Road, Sola Ahmedabad-380060



इस प्रति उक्त 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 कीधारा 129 डीडी (1) (यथासंशोधित) 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 imported on baggage.

(ख) भारत में आयात करने हेतु कि सीवाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे 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 उसके 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 कि एगए 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 शीर्षक के 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 दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के 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 :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधि- करण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंजिल, बहुमाली भवन, निकट गिरधर नगर 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 कि सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और ब्याज 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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पाँचहज़ाररुपए
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररुपए.
(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,मांगागएशुल्कके § 10 अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहै,यादंडके § 10अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएगा।
(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.	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

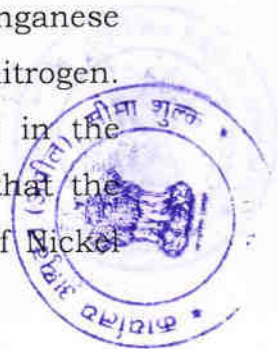
M/s. Shah Foils Limited, B-26, 3rd Floor, Galaxy signature, Science City Road, Sola, Ahmedabad, Gujarat-380060 (hereinafter referred to as the "appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against the OIO No. MCH/215/DC/ARK/REF/2024-25 dated 15.01.2025 (hereinafter referred to as the "impugned order") issued by the Deputy Commissioner of Customs (Refund), Customs House, Mundra (hereinafter referred to as the "adjudicating authority").

2. Briefly stated, facts of the case are that the appellant had filed refund claim of Custom duty paid during investigation amounting to Rs. 60,00,000/- arising out of Hon'ble CESTAT order No. 10979-10982 dated 01.05.2024, vide refund application dated 15.11.2024 received on 20.11.2024.

2.1 The appellant is engaged in manufacturing and import-Export of Cold Rolled Stainless Steel Coils, Stainless Steel Circles and Pipes. They imported Cold Rolled Stainless Steel Coils/Hot Rolled Stainless Steel Coils of having grade 201, 304 & 316 and Stainless Steel Circles used in manufacturing of the finished goods.

2.2 During DRI Investigation, it was found that importing "Cold Rolled Stainless Steel Coils Grade J3" which contained more percentage of Chromium. The J3 grade (200 series) of Stainless Steel Coils was developed by Indian Stainless Steel manufacturers, which is similar to the grade 201 i.e international grade. Later, Chinese manufacturers also started manufacturing J3 grade which is equal to grade 201. J3 Grade is a chromium-manganese austenitic stainless steel with moderate amounts of copper, nickel and nitrogen. Balancing of the alloying elements produces an austenitic structure in the annealed condition classified under CTH 72209022, which specifies that the Flat Rolled products of stainless steel of width of less than 600MM of Nickel chromium austenitic type falls under CTH 72209022

2.3 Test certificate-Inspection Certificates issued by the overseas suppliers, it appeared that the appellant had imported Stainless Steel Cold Rolled Coils Grade J3, which contained more percentage of chromium and magnesium instead of Chromium & Nickel, thus it appeared that the impugned imported goods did not meet the standards of Nickel Chromium Austenitic type coils and falls under the CTH 72209022 in the category of Nickel Chromium Austenitic Type. Thus, it appeared that claimant had wrongly classified the goods under



CTH 72209022 to avail benefit of Notification no. 50/2018-Customs dated 30.06.2018.

2.4 The appellant had availed benefit of Notification no. 50/2018-Customs dated 30.06.2018 goods imported and benefit of duty amounting to Rs.2,40,54,338/- was availed. Accordingly, Show Cause Notice dated 19.04.2023 was issued to the appellant vide F.No.GEN/ADJ/COMM/83/2023-Adjn which was adjudicated vide Order-In-Original No.MUN-CUSTM-000-COM-025-23-24 dated 27.02.2024 and adjudicating authority vide said order upheld SCN and appropriated Rs.85,00,000/-(already paid by the claimant) paid during the course of investigation. Differential Custom duty amounting to Rs.85,00,000/-was paid vide challan No.SFL/03/2022 dated 30.03.2022 from amounting to Rs.60,00,000/-(claimed as refund) having DD Nos.000633 dated 30.03.2022) having inward no.2655 in Customs House Mundra. Two TR-6 challan No. SFL/02/2021 dated 15.09.2021 for amounting to Rs. 10,00,000/ and SFL/01/2021 dated 22.07.2021 for amounting to Rs.15,00,000/-both the challan paid to Pr. Commissioner of Customs, Ahmedabad. Further vide above mentioned Order-In-Original MUN-CUSTM-000-COM-025-23-24 dtd. 27.02.2024 , the adjudicating authority ordered as under :-

"(i) I reject the declared classification of the impugned goods imported by M/s Shah Foils Limited (IEC-0804004501) covered under Bills of Entry as detailed vide Annexures to impugned show cause notice; and order to re-classify the Hot-rolled stainless steel coils under CTH 7220 1229(Other) i.e. residuary entries separated by quadruple dash (---) of respective CTH of the First Schedule to the Customs Tariff Act, 1975 and re-assess the Subject Bills of Entry.



I reject the declared classification of the impugned goods imported by M/s Shah Foils Limited (IEC-0804004501) covered under Bills of Entry as detailed vide Annexures to impugned show cause notice; and order to re-classify Cold rolled stainless steel coils under CTH 7220 2029 (Other) i.e. residuary entries separated by quadruple dash (----) of respective CTH of the First Schedule to the Customs Tariff Act, 1975 and re-assess the Subject Bills of Entry;

(iii). I reject the benefit of Notification No. 50/2018-Customs dated 30.06.2018 availed by the Importer on the strength of invalid Certificate of origin certificates issued by China based manufacturers in the name of the importer, whereas invoices were issued by other suppliers based at Hong Kong i.e. M/s. Comet International Ltd., Hong Kong and M/s. Intexport Steel, Hong Kong (as detailed vide Table-1 of Para 31.5 hereinabove), contravening the Rules of Determination of Origin of Goods under the Asia-Pacific Trade

Agreement, (formerly known as the Bangkok Agreement) Rules, 2006 [Notification No. 94/2006-Cus. (N.T.) dated 31.08.2006 as amended]

(iv) I order to confiscate the impugned goods valued at Rs. 46,83,99,348/ (Rupees Forty Six Crore Eighty Three Lacs Ninety Nine Thousand Three Hundred Forty Eight only) under the provisions of Section 111(m) of the Customs Act, 1962; however the impugned goods have been cleared and are not physically available for confiscation, therefore, I refrain from imposing redemption fine in lieu of confiscation.

(v) I confirm demand of differential/Short paid Customs duty amounting to Rs.1,80,22,668/ (Rupees One Crore Eighty Lacs Twenty Two Thousand Six Hundred Sixty Eight Only) (as detailed vide Table-1, 2 & 3 hereinabove), and order to recover the same from M/s Shah Foils Limited (IEC-0804004501) in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962,

(vi) I drop the demand of duty of Rs.60,31,670/- (Rupees Sixty Lacs Thirty One Thousand Six Hundred Seventy only) for the reasons discussed vide Para 35.3. hereinabove.

(vii) I order to recover the interest from M/s Shah Foils Limited (IEC-0804004501) at appropriate rate under Section 28AA of the Customs Act, 1962 on the above confirmed demand of duty at Sr No. (v),

(viii) I order to appropriate the Customs Duty amounting of Rs. 85,00,000/- (Rupees Eighty Five Lacs Only) already paid by M/s Shah Foils Limited (IEC-0804004501), towards their Duty Liabilities mentioned at (v) above,

(ix) I impose penalty of Rs. 1,80,22,668/- (Rupees One Crore Eighty Lacs Twenty Two Thousand Six Hundred Sixty Eight Only) plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at (v) above upon M/s Shah Foils Limited (IEC-0804004501) in terms of Section 114A of the Customs Act, 1962;

(x) I refrain from imposing penalty upon M/s Shah Foils Limited (IEC-0804004501) under Section of Section 112(a) and 112(b) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive, hence, when penalty under section 114A is imposed, penalty under section 112 is not imposable.



(xi) I refrain from imposing penalty in terms of Section 114AA and Section 117 of the Customs Act, 1962 upon M/s Shah Foils Limited (IEC-0804004501), for the reasons discussed hereinabove.

(xii) I impose penalty of Rs 10,00,000/- (Rupees Ten Lac only) upon Shri Kartik Ramesh Shah, Director of M/s Shah Foils Limited (IEC-0804004501) in terms of Section 112(a)(ii) of the Customs Act, 1962,

(xiii) I refrain from imposing penalty upon Shri Kartik Ramesh Shah, Director of M/s Shah Foils Limited (IEC-0804004501) in terms of Section 112(b), Section 114AA and Section 117 of the Customs Act, 1962, for reasons discussed vide Para 37.2 hereinabove.

(xiv) I refrain from imposing penalty upon M/s Shri Balaji Logistics; M/s RR Logistics; M/s. Airlift (India) Pvt Ltd; M/s Transmarine Corporation, Shri Jitender Kumar Proprietor of M/s Shri Balaji Logistics, Shri Deepak Sawlani- Authorized signatory and G-card holder of M/s RR Logistics, Shri Pritesh D Shah-Authorized signatory of M/s. Airlift (India) Pvt Ltd, and Shri John Koshy- Authorized signatory and G-card holder of M/s Transmarine Corporation, in terms of Section 112(a), Section 112(b), and Section 114AA of the Customs Act, 1962 for the reasons discussed hereinabove.

(xv) I refrain from imposing penalty upon M/s OWS Warehouse Services LLP, and its manager and authorized signatory Shri Asadullah Siddique; in terms of Section 112(a), Section 112(b), and Section 114AA of the Customs Act, 1962 for the reasons discussed hereinabove.

2.5 Being aggrieved with the OIO No. MUN-CUSTOM-000-COM-025-23-24 dated 27.02.2024, issued by the Commissioner of Customs, Custom House, Mumbai, the appellant filed an appeal before the Hon'ble CESTAT. Hon'ble CESTAT vide order No. 10979-10982/2024 dated 01.05.2024 held that.

"In as per our discussion and finding made herein above, the impugned orders are not sustainable, hence the same are set aside and appeal is allowed "

2.6 Consequently, the appellant filed the refund claim for Rs.60,00,000/-. The refund sanctioning/ adjudicating authority sanctioned refund of Rs. 60,00,000/- (Rupees Sixty Lakhs only) under Section under Section 27 of the Customs Act, 1962 vide impugned order.

SUBMISSIONS OF APPELLANT

3. Being aggrieved with the impugned order to the extent of not granting interest on the refund , the Appellant have filed the present appeal and mainly contended the following:

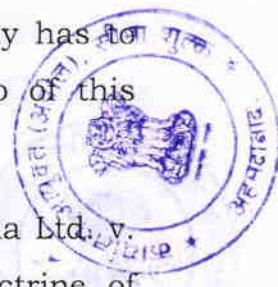
3.1 The Appellant at the very outset states that they are entitled to receive interest, in respect of the refund sanctioned to them. This is to compensate the Appellant for the loss suffered by them, as they were unjustly deprived of use of their own money. Thus, it is only reasonable and justifiable that the Appellant be granted interest on the delayed refund given to them. In support of the claim, the Appellant places reliance on the decision of the High Court of Bombay in *Jai Bhagwati Impex Pvt. Ltd. v. Union of India* reported at 2009 (234) E.L.T 45 (Bom.). The Petitioner therein had paid an excess amount during provisional assessment (in the year 1998) and sought refund of the same with interest.

3.2 It is submitted that the Hon'ble High Court granted interest to the Petitioner even when there was no specific provision for grant of interest in the Customs Act at that time. The Hon'ble High Court based its decision on the judicial principle that the Appellant should be compensated for the loss suffered due to non-availability of funds. This principle has also been recognized in *Kuil Fireworks Industries v. Collector of Central Excise* reported at 1997 (95) ELT 3 (SC). The Hon'ble Supreme Court relied on the decision of *Priyanka Overseas Pvt. Ltd. v. Union of India* /1991 (51) ELT 185 (SC)/ and held that pre-deposit made was to be refunded with interest in acknowledgement of the principle that the Appellant should not be made to suffer for illegal or wrongful acts of the revenue authorities.

3.3 The larger Bench of the CESTAT in the case of *Caprihans India Ltd. v. CCE* reported in 2001 (129) ELT 162 held that when money of the importer was wrongly retained by the Government and was utilized for its own purpose, the principle underlying quasi-contract or restitution must apply and the Government having retained money belonging to the importer illegally has to pay interest to compensate the importer. It is submitted that ratio of this decision is to be applied in the present context.

3.4 The Hon'ble High Court of Delhi in the case of *Sprint RPG India Ltd. v. CCE* reported in 2002 (140) E.L.T. 73 has also held that the doctrine of restitution must be applied in such circumstances. Thus, the ratio emerging from the decisions of the High Courts is clearly to the effect that the doctrine of restitution is to be applied and not only the amount is to be refunded but also interest is to be paid to the Appellant.

3.5 Similarly, Hon'ble Supreme Court in the case of *Sandvik Asia Ltd. Vs. CIT-I, Pune* reported in 2006 (196) ELT 257 (SC) has held that Department is liable to pay interest for period after date of refund of tax as it cannot take benefit of Appellant funds by delaying payment of interest on refunds.



3.6 The Appellant further submits that the Hon'ble Supreme Court in the case of Unichem Laboratories v. CCE reported in 2002 (145) ELT 502 held that the Revenue Authorities are duty bound to protect the interest of the Revenue by levying and collecting the duty in accordance with law - no less and also no more. It is not the duty of the Revenue to deprive the Appellant of the benefit available to them in law with a view to augment the quantum of revenue. The Hon'ble Apex Court clearly directed that the authorities must act reasonably and fairly

3.7 The Appellant is entitled to interest for such wrongful deprivation. It was also submitted that even in absence of statutory provision for interest, the Petitioner is entitled to interest on principles of compensation for wrongful loss caused to the Petitioner on account of the conduct of the department. Reliance is made on the judgement of ONGC v. CC 2007 (215) ELT 166 (SC). The Hon'ble Apex Court held that the Petitioner is entitled for interest on the amount deposited both on merits as well as on equity

3.8 Further reliance is also placed on the decision of Hon'ble Supreme Court in the matter of UOI v. Tata Chemicals Ltd. 2014 TIOL 27 SC IT, wherein the Hon'ble Apex Court held that no express statutory provision for payment of interest on the refund of the excess tax collected by the department, cannot waive the obligation of the department for payment of accrued interest from the date of payment of tax

3.9 This accords with the well known principle that interest is compensatory and is to be paid by the person who has withheld the money due to another person for the period it was so withheld.

3.10 The Appellant submits that they are entitled to interest for such wrongful deprivation. The Appellant also submits that the Revenue cannot enrich itself at the cost of the others. The Appellant is entitled for the compensation for wrongful deprivation. In support of the above submissions, the Appellant places reliance on:

a) D.J. Works v. Deputy Commissioner of Income-tax- (1992) 195 ITR 227 (Guj.).

b) Sandvik Asia Ltd. v. Commissioner of Income-tax, Pune - (2006) 280 ITR 643 (SC) = 2006 (196) ELT. 257 (S.C.) 2007 (8) ST.R. 193 (S.C.)

c) Surinder Singh v. Union of India 2006 (204) ELT 534 (Del.),

d) Commissioner of Central Excise v. M/s. Rajalakshmi Textile Processors (P) Ltd. 2008 (221) ELT 38 (Mad.).



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e) In the case of Hello Minerals Water (P) Ltd. v. Union of India-2004 (174) ELT. 422 (All)

3.11 The Appellant also places reliance on Hindustan Coco Cola Beverages Pvt. Ltd. V. Union of India 2015 (324) ELT 299 Guj., where the Petitioner was allowed the interest on refund, on the wrongful retention of the amount by the department.

3.12 It is submitted that the Revenue has completely ignored the fact that the Appellant is entitled to interest for wrongful deprivation caused by it for an extended period of time, and that even in the absence of statutory provision for interest, the Appellant is entitled to interest on principles of compensation for wrongful loss caused to the Appellant.

3.13 Therefore, the Appellant should be compensated for the period for which the funds were with the Customs Department which was more than a decade. In light of the same, the Appellant is entitled for payment of interest. On this ground alone. the Impugned Order passed by Ld. Deputy Commissioner is liable to be set aside.

3.14 It is submitted that the demand for differential payment on the imported goods was raised by the Department vide the Show Cause Notice dated 19.04.2023. However, the Hon'ble CESTAT Ahmedabad vide the Final Order dated 01.05.2024 dropped the demand of duty and set aside the OIO dated 27.02.2024 vide which the demand of duty was confirmed. Therefore, the amount paid by the Appellant was not in the nature of duty but in the nature of a deposit. In view of the same, the Department is duty bound to pay the amount with interest. Reliance in this regard is placed on the decision of Toyota Kirloskar Auto Parts Pvt. Ltd. v. Commr. Of Cus., Bangalore reported in 2009 (24) E.L.T. 124 (Tri.-Bang.)

3.15 Further, in the case of Parle Agro Pvt. Ltd. v. Commissioner of Central Excise, Noida reported in 2018 (360) E.L.T 1005 (Tri.-All.), it was held that the amount which was deposited during investigation if ultimately found not sustainable is to be treated as revenue deposit and refund provisions would not be applicable to such amount. On this ground, it was held that retention by Revenue is without authority of law and same to be refunded with interest

3.16 Reliance is placed on the decision of Hon'ble CESTAT. Allahabad in the decision of Parle Agro Pvt. Ltd. v. Commissioner, CGST, Noida 2022 (380) E.L.T. 219 (Tri.-All.) wherein, it was observed that the Appellants were not claiming refund of duty, rather refund of revenue deposit for the amount deposited during investigation. Thereafter, interest at rate of 12% on refund of amount deposited during investigation was granted.



3.17. The Appellant submits that they have deposited tax, as per the instructions of the Revenue, however Appellant was under belief that, they had strong case on merits. It is highlighted that the Appellant under the pressure of the Revenue has deposited tax along with the interest and penalty, under protest

3.18 In reference to the above submissions, the Appellant places reliance on the decision National Organic Chemical Industries Ltd. V. Union of India 2009 (16) STR 107 (Bom.), wherein the petitioners were allowed for the refund of payment along with the interest on the same.

3.19. Further in the case of Kesar Enterprises v. Commissioner of CGST, Noida reported in 2022 (380) E.L.T. 319 (Tri.-All.), the Appellants argued that they are eligible for interest from the period when the department retained the amount which was paid under protest. Relying on the decision of Parle Agro Pvt. Ltd. (supra), the tribunal directed the Adjudicating Authority to grant interest @12% p.a. from the date of deposit till the date of refund.

3.20 In the case of Goldstone Engineering Ltd. v. Union of India reported in 2005 (181) E.L.T. 11 (A.P.), wherein the issue was with respect to granting refund of duty paid under protest, the High Court of Andhra Pradesh held that the Petitioner was entitled to interest on the amount from the date of payment to the department.

3.21 In the light of the above decisions, it is humbly submitted by the Appellant that they are entitled to interest from the date of payment made under protest along with the refund sanctioned to them

3.22 The Impugned Order passed by the Adjudicating Authority is liable to be quashed and set aside on this ground alone to the extent interest on the sanctioned has not been granted to them.

3.23 The Appellant submits that they are rightly entitled to the amount of interest regardless of the fact that the refund was granted to them within the period of 3 months from the date of filing of the refund application. In this regard, reliance is placed on the case of M/s J.K. Cement Works v. Commissioner of CE & CGST, Udaipur, 2021 (3) TMI 123-CESTAT NEW DELHI, wherein the same issue came up before the Hon'ble CESTAT. In the said case too, the Appellant was sanctioned refund amount within 3 months from the date of filing of the refund application: however, it had claimed interest on the such refund under Section 35F of the Central excise Act. The Hon'ble CESTAT in this case accepted the contentions of the Appellant that the amount paid by the Appellant was paid by it under protest and that irrespective of the fact that



the refund was granted to them within the period of 3 months from the date of filing of refund application, the Appellant was entitled to the amount of interest. The Hon'ble CESTAT in light of the case of Sandvik Asia Ltd. v. CIT, 2006 (1) TMI 55, further went on to observe that if an assessee fails to pay the amount of demand duty, then the same is charged with interest. therefore, such principle needs to be followed even in such cases where any amount has been retained and utilised by the Revenue till the date of reimbursement of such amount to the assessee. The Hon'ble CESTAT observed that when the assessee is deprived of the amount of demand for no fault of its own, then in such cases the assessee should be compensated for the loss suffered by it by way of interest. Therefore, the Hon'ble CESTAT held that the Appellant was required to compensated by way of interest calculated from the date of its initial payment till the date the refund was sanctioned. Relying on the above cited decision, it is submitted that the amount of duty was paid by the Appellant (under protest) way back in the year 2011 and for the same, refund has been granted to him 12 years later in the year 2023. The Appellant without any fault of their own was made to suffer financially and for the same they are required to be compensated by way of interest. Therefore, the Appellants are entitled to receive interest on the amount of refund calculated from the date of its initial payment till the date the refund was sanctioned

3.24 The Appellant. further finds it pertinent to place reliance on the decision of Ratnamani Metals and Tubes Ltd. v. CC. Ahmedabad, Final Order No. A/11673/2023 wherein the Hon'ble CESTAT Ahmedabad ruled that relevant date from which the amount is required to be computed is the date of appropriation of the amount of duty

3.25 Therefore, in the light of the above decisions, the amount of interest should be allowed to the Appellants and the same should be computed from the date it had paid the duty under protest till the date, the refund was actually sanctioned.

PERSONAL HEARING

4. Ms. Raksha Bhandari, Advocate, attended the personal hearing on 05.02.2026 in virtual mode on their behalf. She reiterated the submission made in the appeal memorandum.

DISCUSSION & FINDINGS

5. I have gone through the appeal memorandum filed by the appellant, records of the case and submissions made during personal hearing. The main issue to be decided in the appeal is whether the impugned order passed by the adjudicating authority without payment of interest on the refund sanctioned, is legal and proper, or otherwise.



5.1 The appellant has submitted that they have filed application of refund wherein they have also requested for payment of interest on the refund. As per the copy of their Refund application dtd. 15.11.2024 attached with the appeal memorandum, it is observed that the appellant had claimed interest on the refund before the issue of impugned order. However, from the records available, it is observed that the adjudicating authority has neither considered their submission regarding claim of interest, nor given any finding for not considering the same in impugned order. In view of the same, I find it appropriate to remand back to the adjudicating authority for considering the submissions regarding claim of interest made by the appellant. Accordingly, the matter is remanded back to the adjudicating authority for considering the request of interest and pass a speaking order by following the principles of natural justice in terms of sub-section (3) of Section 128A of the Customs Act, 1962. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs – 2004 (173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels P. Ltd. [2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677(Tri. – Del)] wherein it was held that Commissioner (Appeals) has power to remand the case under Section-35A(3) of the Central Excise Act, 1944 and Section-128A(3) of the Customs Act, 1962.

6. The appeal is allowed by way of remand.



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(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD

F. Nos. S/49-459/CUS/MUN/24-25 *278 10279*

Date- 31.03.2026

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વેલ: ૧૦/૦૬/૨૦૨૪