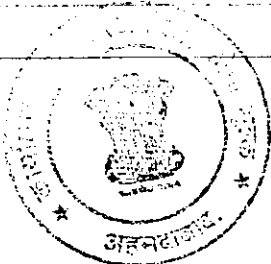




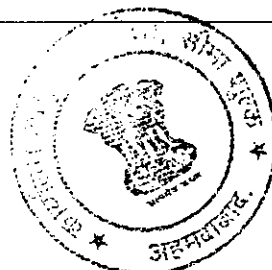
सीमाशुल्क(अपील) आयुक्तकाकार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS),अहमदाबाद AHMEDABAD,
चौथीमंज़िल 4th Floor, हडको बिल्डिंगHUDCO Building, ईश्वर भुवन रोड़ IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad — 380 009
दूरभाषक्रमांक Tel. No. 079-26589281
DIN- 20250571MN0000419444

क	फाइलसंख्या FILE NO.	1) S/49-31/CUS/MUN/2024-25 2) S/49-33/CUS/MUN/2024-25
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 की धारा 128कके अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP-035 to 036-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	30.05.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	1) Bill of Entry No. 2003727 dated 14.02.2024 2) Bill of Entry No. 2003609 dated 13.02.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	30.05.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s. Hindustan Overseas, Ground Floor 61 Kh. No. 11/17/1, 11/24, Arjun Nagar, Nihal Vihar, North West Delhi-110041

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.
	खेत 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 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 मदों के शीर्षके 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 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 अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -



(क)	अपील से सम्बन्धित मामले में जहाँ 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 जहाँ 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 जहाँ 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, जहाँ शुल्क या शुल्क एवं दंड विवाद में है, या दंड के 10 % अदा करने पर, जहाँ 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

M/s. Hindustan Overseas, Ground Floor 61 Kh. No. 11/17/1, 11/24, Arjun Nagar, Nihal Vihar, North West Delhi-110041 (herein after referred to as the "Appellant") have filed two appeals in terms of Section 128 of the Customs Act, 1962, as per details given in Table – I below, challenging the assessment made in the Bills of Entry mentioned therein.

TABLE – I

S.No.	Appeal No.	Bill of Entry No. & Date
1	S/49-31/CUS/MUN/2024-25	2003727 dated 14.02.2024
2	S/49-33/CUS/MUN/2024-25	2003609 dated 13.02.2024

2. As the issue involved is identical in both the appeals, they are taken up simultaneously for disposal. Facts of the case, in brief, as per appeal memorandum, are that the appellant, had filed the Bills of Entry for warehousing through Customs Broker M/S Anon Global Logistics for warehousing the consignment of goods declared as "Iron Screw (Mix Size) falling under CTH 73181500 (herein after referred to as the "Import Consignment the with a declared assessable of Rs. 11,25,870.24 (i.e. Rs. 50.37 per Kg.), imported from China at Fast Track CFS Pvt. Ltd. (Adani Ports and Special Economic Zone , Mundra and the Transshipment was permitted by the Appraiser SEZ, Mundra. As per the Bill of Lading, the date of "ON BOARD" of the consignment is 02.01.2024. But before the consignment could be warehoused, the appellant was instructed to file Bills of entry for the Import Consignment at a minimum assessable value of Rs. 129/- per Kg. in view of notification no. 55/2023 dated 03.01.2024 issued by the DGFT and otherwise the goods cannot be permitted to be warehoused and subsequently cleared to DTA as the import of import for less than a value of Rs. 129/- per kg. for the impugned goods was prohibited in terms of the said DGFT notification no. 55/2023. Thus, the appellant had to file a revised Bill of Entry for the Import Consignment declaring the price in excess of Rs. 129/- per Kg. (i.e. Rs. 129.03 Per Kg.)

2. Subsequently the appellant filed the impugned Bills of entry for home consumption (SEZ to DTA Unit) for the import consignment at the said declared price of Rs. 129.03 Kg.



3. Being aggrieved with the assessment of impugned Bills of Entry the appellant have filed the present appeals and mainly contended the following:

- The appellant has challenged the assessment of Bills of Entry for home consumption (SEZ to DTA Unit) and corresponding bill of entry for warehousing on the ground that the prohibition imposed vide notification no. 55/2023 dated 03.01.2024 issued by the DGFT was not applicable to the import consignment which was already in transit on the date of issue of notification 55/2023 ibid which is evident from the Bill of Lading showing the date of "ON BOARD" of the imported goods in the vessel as 02.01.2024 whereas the impugned DGFT notification has been issued on 03.01 2024. It has been specifically provided under para 2.17 of the "Handbook of Procedures" Chapter 2 "General Provisions regarding Imports and Exports" that date of reckoning of Import is decided with reference to the date of shipment and to the date of arrival. The relevant para 2 17 of the Handbook of Procedures Foreign Trade Policy 2023 as notified on 26.04.2023 reads as under:

"2.17 DATE OF RECKONING OF IMPORT/EXPORT

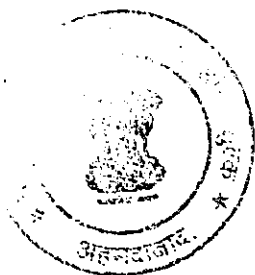
(a) Date of reckoning of import is decided with reference to date of shipment/dispatch of goods from supplying country as given in Paragraph 11.11 of Handbook of Procedures and not the date of arrival of goods at an Indian port.

(b) Date of reckoning of export is decided with reference to date of shipment/dispatch of goods from India as given in Paragraph 11 12 of Handbook of Procedures. However, for benefit under FTP Let Export Order (LEO) date shall be the date of reckoning of export.

- Further as per para 11 11 of the Handbook of Procedures, the date of shipment for imports will be "The date affixed on the Bill of Lading" which is 02.01 2024 in the import consignment as stated above. The relevant para 11 11 is reproduced below -

11 11 Date of shipment/Dispatch in respect of Imports

Date of shipment/dispatch for imports will be reckoned as under-

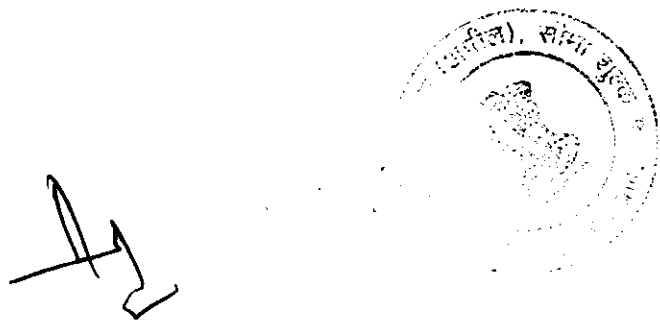


S.No.	Mode of Transportation	Date of Shipment/Dispatch
(i)	By Sea	The date affixed on the Bill of Lading
(ii)	By Air	Date of relevant Airway Bill provided this represents date on which goods left last airport in the country from which the import is effected.
(iii)	From land-Locked Countries	Date of dispatch of goods by rail, road or other recognized mode of transport to consignee in India through consignment basis
(iv)	By Post Parcel	Date stamp of office of dispatch on the packet or dispatch note
(v)	By Registered Courier Service	Date affixed on Courier Receipt/Waybill
(vi)	Multimodal Transport	Date of handing over goods to first carrier in a combined transport Bill of Lading

Therefore, the date of reckoning of import of the Goods as per Foreign Trade Policy was 02.01.2024 and therefore the prohibition imposed vide notification no. 55/2023 dated 03.01.2024 issued by the DGFT was not applicable to the import consignment.

- It may be mentioned that Hon'ble Apex Court in the matter 2019 (368) E.L.T. 216 (S.C.) -ITC LTD. Versus COMMISSIONER OF CENTRAL EXCISE, KOLKATA-IV has held that even self-assessment is an appealable order and appeal can be filed by the aggrieved person ie by the revenue as well as assessee against the self-assessment order
- In view of the above submissions, it is prayed that the assessment of bill of entry at Rs. 129.03 may be annulled and the bill of entry may be ordered to be assessed at the transaction value i.e. Rs. 50.37 per Kg. That, the consequential relief by way of refund of the excess duty paid may be ordered to be refunded.

4. Personal hearing in the matter was granted following the principles of natural justice held on 20.05.2025 . Shri Ravindra Pal Jindal, Advocate , appeared for hearing



on behalf of the Appellant. He reiterated the submissions made at the time of filing of appeals.

5. Before going into the merits of the case, I find that as per appeal memorandum, both the appeals have not been filed within statutory time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962. The details of the date of communication of the order appealed against and date of filing of the present appeals as per appeal memorandum are mentioned against each, as under:-

TABLE-II

Sr. No.	Appeal No.	Date of Communication of order appealed against	Date of filing Appeal	Delay in filing appeal beyond the 60 days period
1	S/49-31/CUS/MUN/2024-25	20.02.2024	30.04.2024	10
2	S/49-33/CUS/MUN/2024-25	20.02.2024	30.04.2024	10

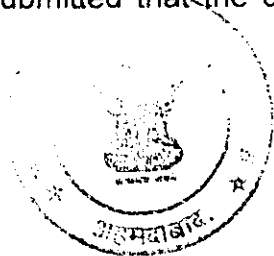
5.1 The relevant legal provisions governing filing an appeal before the Commissioner (Appeals) and his powers to condone the delay in filing appeals beyond 60 days as contained in Section 128 of the Customs Act, 1962 are reproduced below for ease of reference:

SECTION 128. Appeals to [Commissioner (Appeals)]. — (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order.

[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

Section 128 of the Customs Act, 1962 makes it clear that the appeal has to be filed within 60 days from the date of communication of order. Further, if the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days.

5.2 It is observed that in both the appeals in Table-II above, there is delay of 10 days in filing of appeals. In their applications for condonation for delay, the appellant have submitted that the delay was caused due to the reason that the appellant's aunt had



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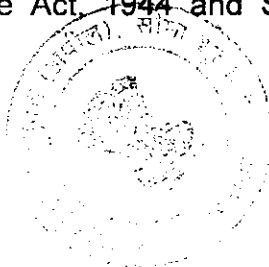
expired on 05.04.2024 and hence the appellant could not file the appeals in normal period.

5.3 The delay upto 30 days in filing of appeal beyond the time limit of 60 days is condonable as stipulated under Section 128(1) of the Customs Act, 1962. Therefore, in the interest of justice, I take a lenient view and allow the both the appeals filed by the appellant as admitted by condoning the delay of 10 days in filing appeal under the proviso to the Section 128(1) of the Customs Act, 1962.

5.4 Now coming to the merits of the case, the issue to be decided in the present appeals is whether the assessment made in the Bills of Entry mentioned at Table - I above at a higher rate in view of Notification No. 55/2023 dtd 03.01.2024 issued by DGFT, in the facts and circumstances of the case, is legal and proper or otherwise.

5.5 I find that the appeals have been filed against assessment of Bills of Entry. It is observed that the Hon'ble Supreme Court in case of ITC Ltd Vs CCE Kolkata [2019 (368) ELT216] has held that any person aggrieved by any order which would include self-assessment, has to get the order modified under Section 128 or under relevant provisions of the Customs Act, 1962. Hence, the appeals preferred by the appellant against assessment in the impugned Bills of Entry are maintainable as per the judgment of the Supreme Court in ITC case supra.

5.6 It is further observed that no speaking order by the proper officer in the matter is available. Hence, I find that entire facts are not available on records to verify the claims made by the appellant. Copies of appeal memorandum were also sent to the jurisdictional officer for comments. However, no response have been received from the jurisdictional office. Therefore, I find that remitting the case to the proper officer for passing speaking orders in each case becomes sine qua non to meet the ends of justice. Accordingly, the case is required to be remanded back, in terms of sub-section (3) of Section 128A of the Customs Act, 1962, for passing speaking order by the proper officer of the Customs Act, 1962 by following the principles of natural justice. While passing the speaking order, the proper officer shall also consider the submissions made in present appeals on merits. 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. Accordingly, both the appeals filed by the appellant are allowed by way of remand.



(AMIT GUPTA)
Commissioner (Appeals)
Customs, Ahmedabad

Date: 30.05.2025

F.No. S/49-31/CUS/MUN/2024-25

F.No. S/49-33/CUS/MUN/2024-25
1196

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