सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
चौथी मंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.
दूरभाष क्रमांक Tel. No. 079-26589281

DIN-20260771MN00005CC9FE

क	फ़ाइल संख्या FILE NO.	S/49-347/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-36-2026-27
ग	पारितकर्ता PASSED BY	Shri Vishwajeet Singh Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	29.07.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	145/CUS-REF/24-25 dated 05.06.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	29.07.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	1. M/s K.P.G. Enterprise Recyclers LLP, Plot No. 91/M, Ship Recycling Yard, Sosiya, District, Bhavnagar.

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 है.
	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(	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported
(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 दस्तावेज़ों 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/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित 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 सम्बंन्ध 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, केंद्रीय 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	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 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 हज़ार 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; पांच हज़ार 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 हज़ार 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- (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.

सीमा शुल्क (अपील), अहमदाबाद

ORDER-IN-APPEAL

1. Brief facts of the case

1.1 M/s K.P.G. Enterprise Recyclers LLP, Plot No. 91/M, Ship Recycling Yard, Sosiya, District, Bhavnagar. (herein after referred to as the "Appellant for the sake of brevity) has filed the present appeal against Order-In-Original No. 145/CUS-REF/2024-25 dated 05.06.2024 (herein after referred to as the "impugned order") issued by the Assistant Commissioner, Customs Division, Bhavnagar (herein after referred to as the "Adjudicating Authority).

1.2 The Appellant had imported a vessel MV ALDEN for breaking up/ recycling at Plot No. 91/M, Ship Recycling Yard Alang/Sosiya, Bhavnagar and had filed self-assessed Bill of Entry No. 6502217 dated 23.05.2018 under section 46 of the Customs Act, 1962. They had self-assessed the goods viz. Vessel for breaking (under CTH 8908), Bunkers (CTH 2710) and consumable (under CTH 9805) and paid customs duty of Rs. 4,49,21,195/-. The Bill of Entry was provisionally assessed for want of original documents.

1.3 There were some dispute with regard to assessment of customs duty of the Fuel and Oil (Fuel Oil, Marine Gas Oil, Lub. Oil) contained in Bunker Tanks inside/ outside the engine room of the vessel. Importer claimed that Fuel and Oil contained in Bunker Tanks inside/ outside the engine room of the vessel was to be assessed to duty under CTH 8908 along with the vessel. However, the Department, was of the view that Fuel and Oil contained in Bunker Tanks were to be assessed to duty under respective CTH of Chapter 27 and accordingly the bill of entry was assessed to duty of Rs. 4,49,21,195/-. The Bill of Entry was provisionally assessed for want of original documents.

1.4 Hon'ble CESTAT, Ahmedabad vide its orders A/11792-11851/2022 dated 17.10.2022/01.12.2022 has held that the oil contained in the Bunkers Tanks in the engine room of the vessel is to be assessed to duty under CTH 8908, along with the vessel coming for breaking up. Further, in adherence to aforesaid order of Hon'ble CESTAT, it has been decided by the Assistant Commissioner, Customs Division, Bhavnagar in Final Assessment Order No. 278/2482712/SBY/2023-24 dated 05.12.2023 that Bunker Tanks containing oil are to be treated as part of vessel's machinery and the Oils contained in them are to be classified under CTH 8908 along with the vessel, as covered under para 2(b) of circular no. 37/96-Cus Dated 03.07.1996. The bill of entry was finally assessed to duty of Rs. 4,47,18,239/- vide Final Assessment Order No. 278/2482712/SBY/2023-24 dated 05.12.2023 passed by the Assistant Commissioner Customs Division, Bhavnagar.

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1.5 Consequent to Final Assessment Order No. 278/248217112/SBY/2023-24 dated 05.12.2023 passed by the Assistant Commissioner, Customs Division, Bhavnagar, the Appellant filed a refund claim of Rs. 1,63,522/- under Section 25 of the Customs Act, 1962.

1.6 The Adjudicating Authority observed that the Appellant had failed to prove the incidence of customs duty has not been passed on to any other person and this the Adjudicating Authority vide the impugned order sanctioned the refund of Rs. 1,63,322/- in terms of Section 27 of the Customs Act, and credited the same to Consumer Welfare Fund.

1.7 Being aggrieved by the impugned order, the Appellant preferred the present appeal.

2. **Ground of Appeal submitted by the Appellant**

2.1. The Appellant submitted that the impugned order of the Assistant Commissioner by which he has sanctioned the refund of the excess duty paid and has ordered the same to be credited to the Consumer Welfare Fund on the ground of unjust enrichment is not tenable in law and is liable to be set aside. He should have ordered the refund to the credit of appellant instead.

2.2 The Appellant submitted that they had sold out the disputed stock of bunkers at very less price prevailing at the time of and sale/removal of disputed bunkers, these all facts and circumstances are well aware by the department and the department has thoroughly verified all such records right from pressing the bill of entry till giving for order for home consumption. After receipt of order for home consumption, the Appellant had at the first instant sold the stock of remaining stock of bunker carrying out hot breaking activities and in accordance with the practice is being followed at Ship Breaking Yard, Alang, Bhavnagar.

2.3 The Appellant further submitted that the whole purchase price of the ship under reference had never been increased /decreased at any stage i.e. either at the time of provisional assessment or making the final assessment on the very ground that the purchase price /transaction value as considered by the department has not either decreased or increased so far as the transaction of the vessel under reference has been made in US Dollar as agreed upon in the MOA. But, wrongfully and without proper interpretation of law, the sanctioned refund claim has been wrongfully credited into the so called welfare fund.

2.4 The Appellant further submitted that the ground for crediting in to the welfare fund appears to have been considered/taken in pursuance of the

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respective assessed to Income Tax Return. This Income Tax Return is not directly connected with the crediting sanctioned refund amount in to the so called welfare fund. Department us well aware that the disputed stock of bunker has been sold out at very low price and the department is well aware that at the time of making provisional assessment of the bill of entry such price of disputed stock of bunker had been consider by looking the wrongful classification made under Chapter sub Heading No. 2710 of the Customs Tariff Act, 1975 instead of Chapter sub Heading No. 8908.

2.5 The Appellant further submitted that the department had also erred in making Provisional Assessment by wrongfully converting such irrelevant value of the bunker in US Dollar at the time of making Provisional Assessment and accordingly "not nexus with the calculation of such refund amount" and this calculation of in Rupees was also inclusive of the purchased price of the ship. This irrelevant price in US Dollar appears to have been wrongfully considered in making credit of the sanction refund amount to the Welfare Fund read with such concept of transaction value. From these submissions, it is clearly established by them that they had not collected the incidence of duty from such purchaser of the disputed stock of bunkers which had been started to sale in to the local market after fulfilling the provisions of Section 46 of the Customs Act, 1962 read with Section 14 of the Customs Act, 1962. Therefore, the act of Adjudicating Authority in crediting the sanctioned refund amount in to the so called Consumer Welfare Fund is not true correct and proper but require to be set aside. On the contrary, the Adjudicating Authority has failed to disclose the material direct corroborative evidences to sustain the genuineness of the making of Final Assessment so far as the issue of wrongful crediting such sanctioned refund amount in to the so called Welfare Fund/Account.

2.6. The Appellant further submitted that in this case, the issue of unjust enrichment does not apply, reliance is placed upon the following well settled case laws:

(i) 2015 (327) ELT 13 (Mad): Commissioner of C. Ex., Chennai - 1,

(ii) 2017 (348) ELT 537 (Tri. Chennai): Mennekes Electric India P. Ltd. v/s Commissioner of Cus., Chennai - II,

(ii) 2018 (360) ELT A204 (Bom.): Commissioner v/s Tata Motors Ltd.,

(iv) 2020 (371) ELT 542 (Chan.) Gaurav Enterprises v/s Commissioner of Customs, Amritsar,

(v) 2022 (60) G.S.T.L. 48 (Del.): Rambagh Palace Hotel Pvt. Ltd. v/s Commissioner of C. Ex. & GST, Jaipur .

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2.7 In addition to the above, settled case laws, the Appellant also relied upon the following case laws.

(i) 2013(294) ELT320 (Tri-Bang) in the case of M/s VXL Instruments Ltd. V/s Commissioner of Customs, Banglore wherein the Tribunal held as under:-

"Refund - Unjust enrichment - Notification No. 6/2006-C.E. - Appellant had agreement with DTA for cum-duty price - Appellant forced to pay duty on higher rate - Burden of Excise duty not passed on Customers - Appellants maintained same contract price before and after dispute - Payment of higher duty was under protest - Refund not barred by unjust enrichment - Refund claim allowed - Section 27 of Customs Act, 1962."

(ii) 2015 (317) ELT 637(Tri. Delhi) in the case of Business Overseas Corporation V/s C.C.(Import & General) New Delhi wherein the Tribunal held as under:-

Refund - Unjust enrichment - Bar of - Goods sold at loss, i.e., cost price was more than sale price during period in dispute - Retail sale price decreased during the period in dispute - Higher cost of goods imported when taken into consideration, manufacturing cost of final product increased whereas retail sale price decreased - Chartered Accountant certified that differential duty not recovered from customers - Importer discharged burden of proof by producing Chartered Accountant's certificate, burden shifted to Revenue to prove recovery of extra duty paid from customers by producing positive evidence - Revenue failed to advance any evidence to rebut Chartered Accountant's certificate - Department not disputed cost data about manufacturing cost of goods and average selling price during period in dispute - Department's contention that no businessman would sale their goods at loss, not supported by any evidence - Incidence of duty not passed on to customers - However, appellants already availed Cenvat credit of ` 25,28,755, not entitled to cash refund of remaining ` 10,63,065 - Section 27 of Customs Act, 1962.

(iii) 2017(48) STR 298(Del) in the case of Munch Food Prodcuts Ltd. V/s Commissioner wherein it has been held that:-

"Writ jurisdiction - Alternative remedy - Refund - Old matter with several rounds of litigation - CESTAT dismissed appeal against rejection of refund on ground that order was passed by Deputy Commissioner of Central Excise, and there was no wilful disobedience of its order allowing refund - Department did not adjudicate matter till 2007 in spite assessee having filed refund application in 2003, and there

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was no explanation for delay of five years - Commissioner (Appeals) found to have incorrectly rejected refund on ground that prices were inclusive of duty when gate passes had shown element of duty 'nil', payable on ad valorem basis on invoice prices - Assessee unable to produce gate passes and photocopy thereof as matter was very old, pertaining to years 1992-94 - In that view, Department's plea that assessee should have taken alternative remedy of filing appeal against order of Deputy Commissioner of Central Excise, rejected - Refund allowed - Section 11B of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994 - Article 226 of Constitution of India.

Refund - Grant of - Gate passes showing element of duty 'nil', payable on ad valorem basis on invoice prices - However, refund rejected on ground that prices were inclusive of duty - *HELD :* Rejection of refund was incorrect - Section 11B of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994."

2.8. The Appellant also submitted Certificate dated 06.03.2024 from Chartered Accountant Confirming that the Custom Duty was not passed onto any buyer or third party. Certificate dated 06.03.2024 issued by Chartered Accountant M/s. Jayesh Mehta & & Associates, verified the Appellant had paid total Customs Duty of Rs. 4,49,2,195/- (Including IGST of Rs. 3,89,21,398/-) vide challan no.2022740238 dated 25.05.2018. The said certificate further certified that out of total customs duty of Rs. 4,49,21,195/-, the Appellant has taken input tax credit of IGST amounting to Rs. 3,89,21,398/- and charged total amount of customs duty of Rs. 59,99,797/- to profit and loss account as expenditure and an amount of Rs. Nil has been shown as receivable from customs department in balance sheet for the financial year ended 31st March 2019. Also verified that customs duty receivable amount of Rs. Nil has been carried forward in the audit reports in the subsequent financial years till date. The Certificate further mentions that the Chartered Accountant have checked the sales invoices as well as financial ledger accounts and other records. On the basis of verification of said invoices, in the said sales invoices, no custom duty has been separately charged / collected from the buyers or any other person in respect of Customs duty paid as above.

2.9. In view of the above, the Appellant submitted that it is clearly established that in the present case the question of invoking the concept of unjust enrichment does not arise. Therefore, the sanctioned refund amount has

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wrongfully credited into the so called Consumer Welfare Fund/Account. Therefore, the Appellant prayed to

(i) To set aside the impugned order and prayed to order to pay them the sanctioned refund amount in cash.

(ii) To grant consequential relief, as deemed fit.

2.10. The Appellant also filed application of condonation of delay dated 14.09.2024 wherein the Appellant submitted that the Adjudicating Authority has started to finalize such Bills of Entry by classifying the disputed stock of bunker under chapter no. 8908, therefore, the Appellant started to stress out of the old records pertaining to assessment of Bills of Entry which had been handed over to their legal advisor. But the legal advisor has lastly prepared the required appeal. But at that stage there was delay of 25 days in filing the present appeal. Therefore, based on the above, the Appellant requested to condone the delay. The Appellant further submitted that omission taken place in filling the appeal is on due to a bonafide and not malafied intention looking to the legal common litigation initiated by the Customs Department.

3. PERSONAL HEARING:

Opportunity of personal hearing was granted to the Appellant. Shri Rahul Gajera appeared for personal hearing in virtual mode on 02.07.2026 wherein he re-iterated written submission filed during the appeal. He also submitted that the issue is no longer res-integra and is covered by the decision of Hon'ble Tribunal in the case of M/s. Dynamic Ship Breakers Pvt Ltd – Customs Appeal No. 10511 of 2025.

4. DISCUSSION AND FINDINGS:

4.1 On perusal of the appeal filed by the Appellant, it is observed that the Appellant has filed the form CA-1 on 30.09.2024. The date of OIO is 05.06.2024 and the Appellant has mentioned the date of receipt of OIO as 15.09.2024. Therefore, there seems to be considerable delay between the date of OIO and the date of receipt of OIO as mentioned by the Appellant. Therefore, an email dated 15.07.2026 was sent to the Custom Division, Bhavnagar to submit the date of dispatch of OIO or the date of receipt of OIO as available with their office. The Customs Division office vide email dated 15.07.20256 enclosed the signed receipt of the OIO wherein the authorized signatory has received the OIO on 10.06.2024. Therefore, for the purpose of limitation, it is held that the impugned Order-in-Original dated 05.06.2024 was received by the appellant on 10.06.2024. Whereas, the appeal has been received in this office on 30.09.2024.

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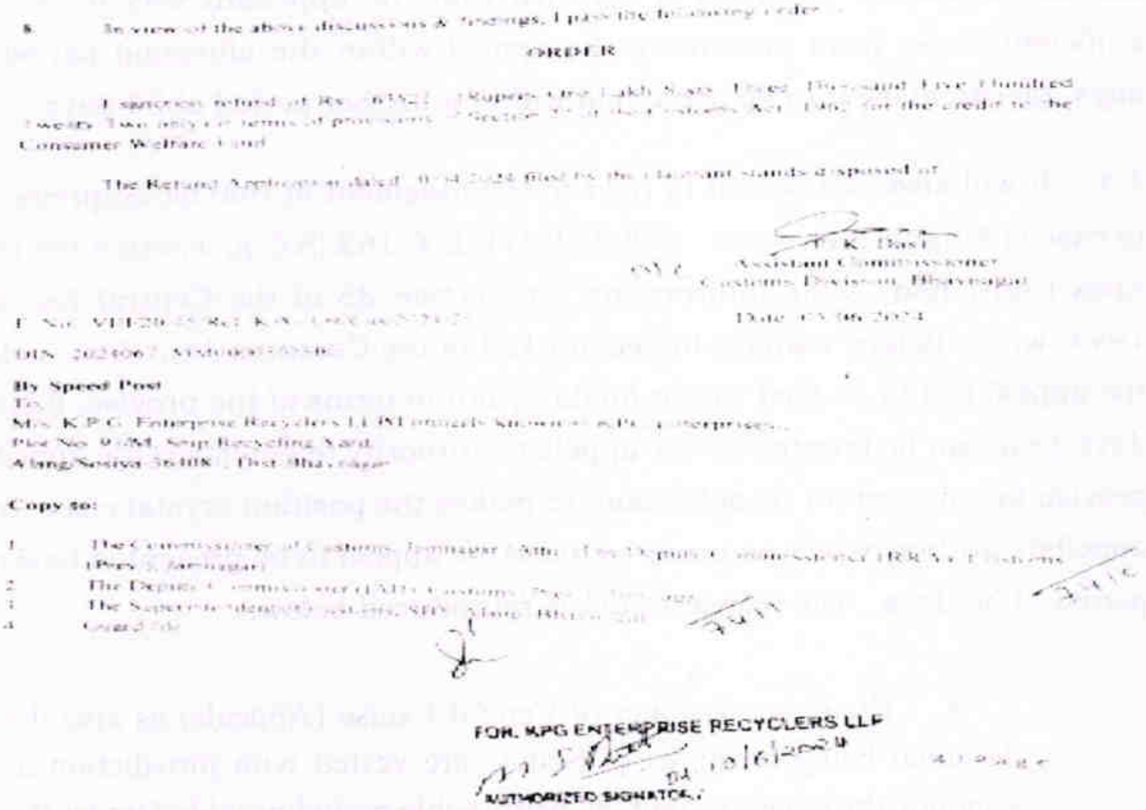
Screenshot of the receipt of OIO is produced below for ready reference.


ORDER

Consumer Welfare Fund

Assistant Commissioner

Customs Division, Bhavnagar

By Speed Post

To,

Copy to:

FOR. KPG ENTERPRISE RECYCLERS LLP

AUTHORIZED SIGNATORY

Thus, this appeal has been filed after a delay of 111 days from the date of receipt of OIO. Therefore, I find that the Appellant has filed the appeal after a period of more than 51 days, from the date ending the period of 60 days as prescribed for filing appeal under Section 128(1) of the Customs Act, 1962.

4.2 It is observed that the appellant has applied for condonation of delay in filing of appeal vide her request letter dated 14.09.20254. In this regard, I have gone through the provisions of limitations for filing an appeal as specified under Section 128 (1) of the Customs Act, 1962. Thus, it is relevant to refer the legal provisions governing filing an appeal before the Commissioner (Appeals) and his powers to condone the delay in filing appeals beyond 60 days. Extracts of relevant 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.]

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4.3 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.

4.4 It will also be relevant to refer to the judgment of Hon'ble Supreme Court in case of Singh Enterprises - [2008 (221) E.L.T. 163 (S.C.)], wherein the Hon'ble Apex Court had, while interpreting the Section 35 of the Central Excise Act, 1944, which is pari materia to Section 128 of the Customs Act, 1962, held that the appeal has to be filed within 60 days, but in terms of the proviso, further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The relevant para is reproduced below:

> "8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner 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. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."

4.5 The above view was reiterated by the Hon'ble Supreme Court in Amchong Tea Estate [2010 (257) E.L.T. 3 (S.C.)]. Further, the Hon'ble High Court of

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Gujarat in case of Ramesh Vasantbhai Bhojani – [2017 (357) E.L.T. 63 (Guj.)] and Hon'ble Tribunal Bangalore in the case of Shri Abdul Gafoor Vs Commissioner of Customs (Appeals) [2024-TIOL-565-CESTAT-BANG] have taken a similar view while dealing with Section 128 of the Customs Act, 1962.

4.6 . In terms of legal provisions under Section 128 of the Customs Act, 1962 and in light of the judicial pronouncements by the Hon'ble Supreme Court, Hon'ble High Court and Hon'ble Tribunal Bangalore, it is settled proposition of law that the appeals before first appellate authority are required to be filed within 90 days, including the condonable period of 30 days as provided in the statute, and the Commissioner (Appeals) is not empowered to condone any delay beyond 30 days.

4.7 In light of the above observation, I find that the appeal has been filed after 90 days from the date of receipt of the impugned order. I find that the appeal has been filed by the Appellant after a period of 21 days from the date ending the period of 90 days. I am not empowered to condone the delay in filing the appeal beyond the period specified in Section 128 of the Customs Act, 1962. Hence, the same is held to be time barred.

4.8 Further, an email dated 20.07.2026 was also send to the Appellant to submit clarification regarding the date of receipt of OIO as claimed by them and the date of receipt of OIO as reported by the Custom Division, Alang, Bhavnagar. However, no reply was received from the Appellant.

5. In view of the discussion made above, I reject the appeal filed by the Appellant on the grounds of limitation without going into the merits of the case.

सत्यापित/ATTESTED
अधीक्षक/SUPRERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

Vishwajeet Singh
29.07.2026

(Vishwajeet Singh)
Commissioner (Appeals),
Customs, Ahmedabad
Date: 07.2026

F. No. S/49-347/CUS/JMN/2024-25

By Registered post A.D

To,

M/s KPG Enterprise Recyclers LLP, Plot No. 91/M, Ship Recycling Yard, Sosiya, District, Bhavnagar

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in).
2. The Commissioner, Customs (Prev), Jamnagar.
3. The Deputy/Assistant Commissioner, Custom Division, Alang, Bhavnagar.
4. Guard File