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-20261071MN00005DE752

क	फ़ाइल संख्या FILE NO.	S/49-294 to 296/CUS/JMN/JAN/2025-26
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128 क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	JMN-CUSTM-000-APP-84 to 86-2026-27
ग	पारितकर्ता PASSED BY	SHRI VISHWAJEET SINGH Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	22.10.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	(i) 135/2451714/SBY/2025-26 dated 23.09.2023 (ii)134/2451690/SBY/2023-24 dated 23.09.2026 (iii) 274/2479354/SBY/2023-24 dated 30.11.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	22.10.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT/RESPONDENT:	M/s. Mariya Ship Breaking Pvt. Ltd., Plot No. 125, Ship Breaking Yard, Alang, 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 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 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 (यथासंशोधित) में निर्धारित फीस जोअन्य रसीद,फीस,दण्ड,जब्तीऔर विविध मदों के शीर्षके अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र),जैसा भी मामला हो,से सम्बन्धित भुगतान के प्रमाणिक चलान् टी.आर.6 की दोप्रतियां. यदि शुल्क,मांगा गया ब्याज,लगाया गया दंड की राशिऔर 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 अपीलियअधिकरण, 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 के10% 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

Brief facts of the case:-

1.1Present appeals have been filed by M/s. Mariya Ship Breaking Pvt. Ltd., Plot No. 125, Ship Breaking Yard, Alang, Bhavnagar (hereinafter referred to as 'the appellant') in terms of Section 128 of the Customs Act, 1962, on 16.01.2026 against Final Assessment Orders 135/3451714/SBY/2023-24 dated 2309.2023, 134/2451690/SBY/2023-24 dated 23.09.2023 and 274/2479354/SBY/2023-24 dated 30.11.2023. (hereinafter referred to as 'the impugned Orders') passed by the Assistant Commissioner of Customs, Custom Division Bhavnagar (hereinafter referred to as 'the adjudicating authority').

1.2. The Appellant imported following vessels/ship for breaking purpose and filed bills of entry for home consumption under Section 46 of the Customs Act, 1962. The Bills of Entry were assessed provisionally assessed for want of original documents.

Sl.No.	Name of the Ship /Vessel	Bill of Entry No.	Date of Bill of Entry
1	MV NAJDIAH	3600618	11.06.2019
2	MV BALTIC PRIDE	6815846	15.06.2015
3	MV DOLPHIN PRINCESS	8950465	22.11.2018

1.3. There was some dispute with regard to assessment of Customs duty of the Fuel and Oil (Fuel Oil, Marine Oil, Lube Oil) contained in the Bunker tanks inside /outside engine room of the vessel /ship. Importer claimed that Fuel and Oil (Fuel Oil, Marine Oil, Lube Oil) contained in the Bunker tanks inside /outside engine room of the vessel /ship was to be assessed to duty under CTH 8908 along with 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.

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 orders of Hon'ble CESTAT, it has been decided by the Assistant Commissioner, Customs Division, Bhavnagar in Final Assessment Orders No. 135/3451714/SBY/2023-24 dated 2309.2023, 134/2451690/SBY/2023-24 dated 23.09.2023 and

274/2479354/SBY/2023-24 dated 30.11.2023 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. Therefore, in view of the aforementioned judgment of the Hon'ble Tribunal, all the above mentioned Bills of Entry were finally assessed wherein the Adjudicating Authority held that fuel & oil contained in bunker tanks inside/outside engine room are liable to be classified under CTH 8908 align with the vessel as covered under para 2(b) of circular No. 37/96-Cus dated 03.07.1996. The remaining fuel and oil i.e. fuel and oil not contained in Bunker Tanks or Engine Room Tanks are liable to be under its respective heading of chapter 2710.

1.5 Being aggrieved by the impugned orders, the Appellant preferred the present appeals.

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

2.1 The Appellant submitted that It is admitted fact that at the time of presentation of bill of entry there was an issue pending to be decided whether such remaining stock of bunker was to be termed as "integral part of the vessel or not"

2.2 The Appellant further submitted that they came to know the outcome of the genuineness of Classification of disputed stock of bunker has been decided by the Hon'ble Tribunal. Ahmedabad vide their Order dated 01.12.2022, as referred above

2.3 The Appellant further submitted that on perusing of the above referred FAO dated 22.11 2023, it was come to know that the Adjudicating Authority had himself determined that they had paid more customs duty by making genuineness of classification of the above referred disputed stock of bunker under the provisions of Chapter sub Heading No. 8908 of the Customs Tariff Act 1975 "Immaterial the disclosing the name of such vessel imported only for breaking purpose". This submission may kindly be considered boy statutory definition of the Imported Goods as defined under Section 225) of the Customs Act, 1962. If this legal position of the "Imported Goods than the question of such lapse of time taken place in tiling the present appeal may not be come in to picture. However, to meet with the "ends of principle of natural justice", they

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have now decided to file the present Appeal by availing the Settled judicial disciple as settled within the jurisdiction of state of Gujarat.

2.4 The Appellant further submitted that in the present office had erred in massing the disputed stock of bunker by considering the assessable value is "US Dollar read with the assessable value determined in "US Dollar, but, in fort, the Appellant had not exclusively imported the disputed stock of bunker. But, the importation of such disputed stock of bunker was nothing but "integral part of the vessel", imported only for breaking purpose. It is settled policy of the Central Government that no any person/party may "Import such quantity of bunker/" but only being agent in to India by "Canalized Agencies", IOC, BPCL etc. This is the heart of making proper interpretation of the interpretation of definition of imported goods". Therefore, it appears that such settled benefit as oriented in the above referred settled case law dated 01.12.2022 should also be extended to the appellant in the present case.

2.5 The Appellant further submitted that from the above submissions, for such Technical lapse cum time bound factor taken place in initiation of filing of such Appeal is condonable in the eyes of settled case laws

2.6 The Appellant further submitted that they pray to remand the case back to the Adjudicating Authority so as to settled principle of law as settled in the case of Ms. Navyug Ship Breaking Co. v/s Commissioner of Customs Jamnagar (Prev) may be availed involving 'common dispute.

2.7 Accordingly, the Appellant prayed for the following :-

2.7.1 Set aside the impugned orders and

2.7.2 Pray to remand back the case to the Adjudicating Authority i.e. Assistant /Deputy Commissioner of Customs, Customs Division, Bhavnagar with giving direction to decide the issued after giving an opportunity to be heard in person.

3.Personal Hearing

Opportunity of personal hearing was granted to the Appellant. Shri N K Maru, Consultant of the Appellant appeared for personal hearing on 06.10.2026 through virtual mode and re-iterated the written submission filed during the course of filing appeal.

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4. DISCUSSION AND FINDINGS:

4.1 The date of the impugned order and the date of filing appeal by the Appellant is tabulated below.

Impugned Order No.	Date of Order	Date of Filing appeal	Remark
134/2451690/SBY/2023-24	23.09.2023	16.01.2026.	Not filed within the period of 60 days
135/3451714/SBY/2023-24	23.09.2023	16.01.2026.	Not filed within the period of 60 days
274/2479354/SBY/2023-24	30.11.2023	16.01.2026.	Not filed within the period of 60 days

Thus, based on the above, I find that the Appellant had not filed the appeal within the time period of 60 days prescribed under the provisions of Section 128 of the Customs Act, 1962.

4.2 From the submission made by the Appellant, the date of receipt of orders are tabulated below.

Impugned Order No.	Date of Order	Date of receipt of order	Date of Filing appeal	Difference in days
134/2451690/SBY/2023-24	23.09.2023	23.09.2023	16.01.2026.	847
135/3451714/SBY/2023-24	23.09.2023	23.09.2023	16.01.2026.	847
274/2479354/SBY/2023-24	30.11.2023	30.11.2023	16.01.2026.	779

4.3 This, from the above it can be seen that the there is a huge amount of difference in the number of days the Appellant received the orders and filed the appeal.

4.4 Therefore, I find that the Appellant has filed the appeals after a period of more than 787 and 719 days, from the date ending the period of 60 days as prescribed for filing appeal under Section 128(1) of the Customs Act, 1962.

4.5 It is observed that the appellant has applied for condonation of delay in their appeal memorandums. 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

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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.]

4.6 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.

4.7 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

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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."

4.8 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 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.

4.9 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.

4.10 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 appeals have been filed by the Appellant after a period of 757 and 689 days from the date ending the period of 90 days. I am not empowered to condone the delay in filing

Vishwajeet Singh

the appeal beyond the period specified in Section 128 of the Customs Act, 1962. Hence, the same is held to be time barred.

5. In view of the discussion made above, I do not admit the appeal filed by the Appellant on the grounds of limitation without going into the merits of the case.

Vishwajeet Singh
22.10.2026.

(Vishwajeet Singh)
Commissioner (Appeals),
Customs, Ahmedabad

F.No. S/49-294 to 296/CUS/JMN/JAN/2025-26

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