सत्यमेव जयते

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

DIN – 20260371MN00005025BC

क	फ़ाइल संख्या FILE NO.	S/49-76/CUS/AHD/2025-26
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) :	AHD-CUSTM-000-APP-765-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No.: 52/AB/ADC/ICD-SACHIN/SRT/2023-24 dt. 22.12.2023/ 29.12.2023 passed by the Additional Commissioner, Customs, Surat.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Savitri Weaving, Shed No.: 06, Doctor ni wadi, Behind Krishna Petrol Pump, Khatodara, Surat- 395 003. Shri Mukesh Agarwal, Proprietor of M/s Savitri Weaving, Block No. 131, Plot No.: 27/A, 27/B-1, 27/B-2, Prakash Cinema Street, GIDC Pipodara, Magrol, Surat-394 110.

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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 (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/-.

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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.	

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Order-In-Appeal

M/s Savitri Weaving, Shed No.: 06, Doctor ni wadi, Behind Krishna Petrol Pump, Khatodara, Surat- 395 003 (hereinafter referred to as "the Appellant") have filed the present appeal against the Order-In-Original No.: 52/AB/ADC/ICD-SACHIN/SRT/2023-24 dt. 22.12.2023/ 29.12.2023 (herein after referred to as "the impugned order") passed by the Additional Commissioner, Customs, Surat (herein after referred to as "the "adjudicating authority").

2. Facts of the case, in brief, are that the Appellant had imported Capital Goods machinery, i.e. 08 sets of Shuttle Less Electronic Rapier Loom with Electronic Jacquard Machine under EPCG Licence No. 5230011803, dated 28.05.2013 by saving Customs Duty amount of Rs. 21,21,904/- (Actual Duty Utilization of Rs. 21,60,991/-) under the cover of the below mentioned Bills of Entry at Zero rate of duty by availing the benefit of exemption available under Notification No. 22/2013-Cus., dated 18.04.2013. The details of import are as per Table – I below:

TABLE – I

Sr. No.	Bill of Entry No. & date	Number of machinery cleared	Duty saved / available as per EPCG Licence (In Rs.)	Total Duty Foregone / Debited at the time of clearance (In Rs.)	Bank Guarantee Amount (In Rs.)
1	2340311 dated 05.06.2013	04	21,21,904/-	10,72,888/-	3,50,000/-
2	2490866 Dated 21.06.2013	04		10,88,103/-	
	Total	08	21,21,904/-	21,60,991/-	3,50,000/-

2.1 Against the said EPCG Licence No. 5230011803, dated 28.05.2013, the Appellant had executed a Bond dated 05.06.2013 before the Deputy/Assistant Commissioner of Customs, ICD – Sachin, Surat for an amount of Rs. 65,00,000/- backed by a Bank Guarantee No.: 1653IGFIN001913 dated 03.06.2013 for Rs. 3,50,000/- issued by the Bank of Baroda, Man Darwaja Branch, Surat. They had undertaken to fulfilll the export obligation as specified in the Notification and the licence.

2.2 The said machinery, imported under the aforesaid EPCG Licence were installed at M/s Savitri Weaving, Block No. 131, Plot No.: 27/A, 27/B-1, 27/B-2, Prakash Cinema Street, GIDC Pipodara, Magrol, Surat-394 110 as per the Installation Certificate

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dated 06.09.2013 issued by the Chartered Engineer, Dr. P.J.Gandhi , Surat, certifying the receipt of the goods imported and its installation.

2.3 As per the conditions of Notification No. 22/2013-Cus., dated 18.04.2013, the Appellant was required to fulfilll the export obligation on FOB basis equivalent to Six times the duty saved on the goods imported as specified on the Licence and Authorization, within a period of Six years from the date of issuance of EPCG Licence. In the instant case, the said EPCG Licence was issued to the Appellant on 28.05.2013 and accordingly, they were required to fulfilll export obligation by 27.05.2019, i.e., within a period of Six years from the date of issuance of Licence or Authorization and submit the Export Obligation Discharge Certificate (EODC) issued by the Regional DGFT Authority before the jurisdictional Customs authorities.

2.4 A letter F.No.: ICD-SACHIN/633/2013-14 dt. 18.03.2021 and 11.07.2022 were issued to the Appellant requesting them to submit the copy of EODC or any extension issued by the Regional Authority, DGFT, Surat for fulfillment of export obligation. However, the Appellant had not responded to the above correspondence.

2.5 As, no reply was received from the Appellant, a letter F.No.: ICD-Sachin/DGFT/07/2020-21 dated 21.10.2022 was written to the Foreign Trade Development Officer, DGFT, Surat requesting to inform whether the EODC had been issued or any extension granted to the Appellant or any documents showing the fulfillment of the export obligation have been received by their office against the aforesaid EPCG Licence. The Assistant Director, DGFT, Surat, in response, vide letter F.No.: EPCG/MIS/2020-21 dt. 28.10.2022 informed that the appellant had not submitted any documents to their office against the said license.

2.6 In view of the above, it appeared that the Appellant had failed to fulfilll the export obligation as specified in the Licence and did not comply with the mandatory condition of the Notification No. 22/2013-Cus., dated 18.04.2013, the condition of EPCG Licence and also the conditions of the Bond executed and furnished by them. The Appellant neither produced the EODC issued by the DGFT, Surat nor could produce any documents showing extension granted to them for fulfillment of export obligation. Therefore, the Appellant was liable to pay Customs Duty not paid (i.e. saved) by them amounting to Rs. 21,60,991/- at the time of import / clearance along with interest at the applicable rate, in terms of conditions of the said Notification read with condition of the Bond executed by them read with Section 143 of the Customs Act, 1962. Further, said the Bank Guarantee furnished by them against the aforesaid EPCG Licence appeared liable to be encashed and deposited in the Government Exchequer.

2.7 Accordingly, a Show Cause Notice under F.No.: CUS/EPCG/MISC/382/2023-ICD-SRT-CUS dated 23.05.2023 was issued to the Appellant, proposing as to why:

i. The benefit of Zero rate of duty for EPCG Scheme under the said Notification on the imported Computerized Embroidery Machine imported in the name of the appellant should not be denied;

ii. Customs Duty amounting to Rs. 21,60,991/- being the duty foregone at the time of import under EPCG Licence should not be demanded and recovered from them along with interest in terms of the said Notification as amended, read with the conditions of Bond executed and furnished by them in terms of Section 143 of the Customs Act, 1962 by enforcing the terms of the said Bond. Further, why the said Bank Guarantee backed against the Bond, should not be appropriated and adjusted towards the duty liability as mentioned above;

iii. The imported Capital goods should not be held liable for confiscation under Section 111 (o) of the Customs Act, 1962 read with the conditions of Bond executed in terms of Section 143 of the Customs Act, 1962 read with said Customs Notification as amended from time to time;

iv. Penalty should not be imposed on the appellant under Section 112 (a) of the Customs Act, 1962;

v. Penalty should not be imposed on the appellant under Section 117 of the Customs Act, 1962;

2.8 The Adjudicating Authority, vide the impugned order, has passed order as detailed below:

i. He disallowed the benefit of zero rate of duty for EPCG Scheme under the said Notification for subject import of said goods vide subject Bills of Entry;

ii. He confirmed the demand of Customs Duty amounting to Rs. 21,60,991/- being the duty foregone at the time of import of Capital Goods under EPCG Licence in terms of the said Notification as amended, read with the conditions of Bond executed along with interest and ordered the same to be recovered in terms of Section 143 of the Customs Act, 1962 by enforcing the terms of the above mentioned Bond;

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iii. He ordered to appropriate the amount of Rs. 3,50,000/- by encashment of the said Bank Guarantee issued by the Bank of Baroda, Man darwaja Branch, Surat submitted by the Appellant and ordered to adjust the said amount against the duty liability confirmed at (ii) above;

iv. He ordered for confiscation of the subject imported Capital goods imported by the Appellant under Section 111 (o) of the Customs Act, 1962 read with the conditions of Bond executed in terms of Section 143 of the Customs Act, 1962 read with the said Customs Notification. However, he gave an option to redeem the said goods on payment of redemption fine of Rs. 52,06,138/- under Section 125 (i) of the Customs Act, 1962;

v. He imposed penalty of Rs. 2,16,099/- upon the Appellant under Section 112 (a) (ii)of the Customs Act, 1962;

vi. He imposed penalty of Rs. 1,00,000/- upon the Appellant under Section 117 of the Customs Act, 1962;

3. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellant have filed the present appeal on 20.05.2026. The Appellant have, inter-alia, raised various contentions and filed detailed submissions as given below in support of their claims:

<u>1. The Ld. Adjudicating Authority has erred in disallowing the benefit of zero duty for EPCG Scheme under Notification No. 22/2013-Cus dt. 18.04.2013 and confirming the demand of Customs Duty totally amounting to Rs. 21,60,991/-.</u>

The Appellant, holding IEC – 5212003067 along with EPCG license No. 5230011803, has imported capital goods machinery i.e 8 of shuttle less electronic rapier loom with electronic jacquard machine under the said EPCG License dt. 28.05.2013 by saving customs duty of Rs. 21,21,904/- under the cover of bills of entries no. 2340311 dt. 05.06.2013 and 2490866 dt. 21.06.2013 at zero duty by availing the benefit of exemption available under notification No. 22/2013-Cus dt. 18.04.2013. A copy of the EPCG License dt. 28.05.2013 is enclosed as ***<u>Annexure-III.</u>***

The said machinery i.e. 8 of Shuttle Less Electronic Rapier Loom with Electronic Jacquard Machine imported under the above said EPCG License were installed at the Appellant's business premises i.e. Block No. 131, Plot No. 27/A, 27/B-1, 27/B-2, Prakash Cinema Street, GIDC Pipodara, Magrol, Surat-394110, as per the Installation Certificate dated 06.09.2013 issued by Chartered Engineer Dr. P.J. Gandhi, Surat, certifying the receipt of the goods imported and its installation. A copy of the said installation certificate is enclosed as ***<u>Annexure-IV.</u>***

In terms of the conditions of Notification No. 22/2013-Cus dated 18.04.2013, the Appellant was required to fulfil the export obligation on FOB basis equivalent to six times the duty saved on the goods imported as specified on the license or authorization along with the requirement to execute a bond in such form and for such sum and with such surety or security as may be prescribed by the Deputy Commissioner of Customs binding himself to fulfil the said export obligation. 50% of the export obligation was to be completed in the first block i.e within four years and remaining 50% was to be completed by the sixth year.

Thus, against the said EPCG License No. 5230011803 dated 28.05.2013, the Appellant had executed a Bond dated 05.06.2013 before the Deputy/Assistant Commissioner of Customs, ICD-Sachin, Surat for an amount of Rs.65,00,000/- backed by a Bank Guarantee No. 1653IGFIN001913 dated 03.06.2013 for Rs.3,50,000/- issued by the Bank of Baroda, Man Darwaja Branch, Surat. The Appellant had undertaken to fulfil the export obligation as specified in the said Notification and the said license.

Letters dt. ICD-SACHIN/2013-14 dt. 18.03.2021 and letter F No. VIII/6-633/ICD-SACHIN/2013-14 dt. 11.07.2022 were issued to the Appellant requesting them to furnish the copy of EODC Certificate or any extension issued by the regional authority, DGFT, Surat for fulfillment of export obligation. It is alleged in the subject order that the Appellant did not respond to any of these letters.

However, the Appellant vide an e-mail dt. 09.04.2021 submitted that they have extended their export obligation from 6 years to 8 years after paying the applicable late fees with file no. 52EHEPC06212AM21 dt. 28.01.2021. Further, it was also submitted that the Appellant's export obligation has also been completed for the said EPCG license and only BRC is yet to be collected. A copy of the License Amendment Sheet dt. 28.01.2021 vide which the extension was provided is enclosed as ***Annexure-V.***

However, under the flawed belief that the Appellant neither submitted the EODC issued by the DGFT, Surat nor could produce any documents showing extension granted to them leading to non-fulfillment of conditions laid down under Notification No. 22/2013-Cus dt. 18.04.2013, the Ld. Adjudicating Authority has disallowed the benefit of zero duty for EPCG Scheme under the said Notification and demanded prompt discharge of Customs Duty totally amounting to Rs. 21,60,991/-.

In this regard, it is submitted that the Ld. Adjudicating Authority has erred in appreciating the fact that the Appellant had already fulfilled their export obligations and have applied for EODC to DGFT, Surat. The EODC is not yet issued by the DGFT, Surat. However, it must be taken into consideration that the Appellant has fulfilled their export obligations and already applied for issuance of the EODC. Copies of the application filed by the Appellant to the DGFT, Surat for issuance of EODC along with relevant supporting documents are enclosed as ***Annexure-VI.***

The Appellant's contention can be substantiated from FORM ANF-5C - Application form for clubbing of EPCG Authorizations wherein the Appellant has provided the following details regarding the fulfillment of their export obligations:

Specified EO endorsed on the Authorisation		Specified EO as per Utilisation		Exports Obligation Fulfilled	
US$	Rs.	US$	Rs.	US$	Rs.
233,604.11	12,731,424.00	237,907.27	12,965,946.00	180,813.83	13,040,623.00

Thus, from the above tables, it can be seen that the Appellant has already fulfilled their export obligations in excess of the requirements as per the EPCG License and consequently, applied for EODC to DGFT, Surat.

Copies of the relevant export documents including statement of bank realization, invoices, shipping bills, etc. are enclosed herewith as ***Annexure-VII****. Thus, the entire premise of the Ld. Adjudicating Authority for demanding the Customs Duty on the imported capital goods and disallowing the benefit of zero duty for EPCG Scheme under the notification No. 22/2013-Cus dt. 18.04.2013 is baseless since the Appellant had initially submitted a copy of the License Amendment Sheet dt. 28.01.2021 vide which the extension from 6 years to 8 years was provided and later applied for EODC to DGFT, Surat.*

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Thus, based on the above submissions, the demand of Customs Duty amounting to Rs. 21,60,991/- is liable to be dropped and the benefit of zero duty for EPCG Scheme under Notification No. 22/2013-Cus dt. 18.04.2013 is liable to be allowed. Further, the bank guarantee must also not be encashed and appropriated against the Customs Duty wrongly demanded.

2. ***The Ld. Adjudicating Authority has erred in confiscating the imported capital goods in terms of the provisions of section 111(o) of the Customs Act, 1962.***

In this regard, the OIO states in para 8 that, "It also appears that the imported capital goods were not used for intended purpose for which the exemption from payment of duty was claimed and therefore, the aforesaid capital goods imported against the above said EPCG License were liable for confiscation under Section 111(o) of the Customs Act, 1962."

In this regard it is submitted that the allegation that the imported capital goods were not used for intended purpose for which the exemption from payment of duty was claimed is baseless since the Appellant has already fulfilled their export obligations in excess of the requirements as per the EPCG License and consequently, applied for EODC to DGFT, Surat as already mentioned in the ground above.

Further, the said machinery i.e. 8 of Shuttle Less Electronic Rapier Loom with Electronic Jacquard Machine imported under the above said EPCG License were installed at the Appellant's business premises i.e. Block No. 131, Plot No. 27/A, 27/B-1, 27/B-2, Prakash Cinema Street, GIDC Pipodara, Magrol, Surat-394110, as per the Installation Certificate dated 06.09.2013 issued by Chartered Engineer Dr. P.J. Gandhi, Surat, certifying the receipt of the goods imported and its installation. A copy of the said installation certificate is already enclosed as Annexure-IV. It is clearly stated in the said certificate that," we further certify that the firm has installed and taken in use the above mentioned textile machinery (Rapier Looms) at the above-mentioned address and utilizing for the production and using in the process of shuttleless weaving for the purpose of giving a final output to synthetic fibres/yarn through value added process of weaving to have a better productivity, yield and higher value at par with international standards."

The above reiterated para from the Installation Certificate dated 06.09.2013 amply substantiates the Appellant's contention that their export obligation has been discharged. Further, copies of the relevant export documents including statement of bank realization, invoices, shipping bills, etc. are already enclosed as Annexure-VII.

A relevant extract of the Section 111 of the Customs Act, 1962 is reproduced herewith for your honor's ready reference:

"111. Confiscation of improperly imported goods, etc.

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;"

From the above reproduced extract of Section 111, it can be seen that the exempted goods subject to some conditions are liable to confiscation in case of non-observation of the said conditions. However, from the above submissions, it is amply clear that the conditions as per the terms of Notification No. 22/2013-Cus dated 18.04.2013, that the Appellant was required to fulfil the export obligation on FOB basis equivalent to six times the duty saved on the goods imported as specified on the license or authorization has already been fulfilled and the Appellant had already applied for issuance of EODC. The EODC is not yet issued by the DGFT, Surat. However, it must be taken into consideration that the Appellant has fulfilled their export obligations and already applied for issuance of the EODC. Copies of the application filed by the Appellant to the DGFT, Surat for issuance of EODC along with relevant supporting documents are already enclosed as Annexure-VI.

Further, the Ld. Adjudicating Authority has provided the Appellant an option to redeem the said goods on payment of a redemption fine of Rs. 52,06,138/-. However, as per the above arguments, it is amply clear that the present case falls out of the purview of section 111(o) and hence the capital goods are not liable to be confiscated under Section 111(o). Hence, the question of payment of a redemption fine does not arise at all.

3. The Ld. Adjudicating Authority has erred in imposing Penalty u/s 112 of the Customs Act, 1962

Section 112 can only be invoked when the goods are liable to confiscation. In this case where the invocation of Section 111(o) in itself is bad in law and no breach as per Section 111(o) was committed by the Importer then section 112 could not have been invoked. The case of the Importer does not fall in any of the clause (i), (ii), (iii), (iv) or (v) of Section 112 and hence no penalty can be levied on the Importer on the goods.

4. The Ld. Adjudicating Authority has erred in imposing Penalty u/s 117 of the Customs Act, 1962

Your goodself has erred in appreciating the fact that when the demand itself is bad-in-law, the question of imposing penalty does not arise at all. Therefore, the Appellant request your honor to kindly not to confirm interest or penalty upon them.

Thus, based on the above submissions, the Appellant requests your goodself to drop the proceedings in this regard."

PERSONAL HEARING:

4. In pursuance of the principles of natural justice, a personal hearing in the matter was held on 17.03.2026 in physical mode, as requested by the appellant. Shri Nitesh Jain, Chartered Accountant, appeared on behalf of the appellant. During the personal hearing, he reiterated the submissions made in the appeal memorandum. Further, an additional submission dated 17.03.2026 was filed. He also informed that the EODC has been received.

DISCUSSION AND FINDINGS:

5. Before proceeding to examine the merits of the case, it is observed from Form CA-1 and the appeal memorandum dated 10.05.2025 that the appellant has mentioned 25.02.2025 as the date of communication of the impugned order dated 22.12.2023 / 29.12.2023. As there was a considerable gap between the issuance of the impugned order and its receipt by the appellant, an email dated 09.03.2026 was issued to the appellant seeking reasons for the delayed receipt of the impugned order and submission of copy of payment of pre-deposit. Simultaneously, an email dated 09.03.2026 was also issued to the Deputy Commissioner of Customs, ICD-Sachin, Surat, requesting to intimate the date of service of the impugned order and to furnish evidence of its service upon the appellant.

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5.1 It is observed that a reply dated 10.03.2026 was received via email from ICD-Sachin, Customs, Surat. As per their office records, i.e. the "Despatch Register for Postal Dak dated 12.01.2024", the impugned order bearing No. 52/AB/ADC/ICD-SACHIN/SRT/2023-24 dated 22.12.2023 / 29.12.2023 was dispatched through Speed Post vide Dispatch Serial Nos. 3428, 3429 and 3430 to (i) the appellant, M/s Savitri Weaving, Shed No. 06, Doctor ni Wadi, Behind Krishna Petrol Pump, Khatodara, Surat–395003; (ii) Shri Mukesh Agarwal, Proprietor of M/s Savitri Weaving, Block No. 131, Plot No. 27/A, 27/B-1, 27/B-2, Prakash Cinema Street, GIDC Popodara, Mangrol, Surat–394110; and (iii) the Commissioner of Customs, Ahmedabad, Customs House, Near All India Radio, Navrangpura, Ahmedabad–380009, respectively, in terms of Section 153 of the Customs Act, 1962. It is further evident from the records that the impugned orders so dispatched were not returned undelivered to ICD-Sachin, Customs, Surat.

It is also observed that the appellant, vide letter dated 28.01.2025, requested the Assistant Commissioner of Customs, ICD-Sachin, Surat, to provide a copy of the impugned order, which was subsequently provided to the appellant vide letter dated 25.02.2025 by hand delivery.

5.2 In the interest of natural justice, and in order to seek the appellant's views, an email dated 16.03.2026 was issued to the appellant enclosing the documents submitted by ICD-Sachin, Customs, Surat, vide email dated 10.03.2026. The appellant, in response, vide letter dated 17.03.2026, submitted that as per email dated 10.03.2026 of the ICD-Sachin, Customs, Surat, the impugned order was dispatched to them by post; however, it is not clear whether the Order-in-Original was dispatched through the mode of "Registered Post with Acknowledgement Due" or "Speed Post".

The appellant further submitted that Section 153 of the Customs only provides serving of order through the mode of "Registered Post with Acknowledgement Due". The appellant has contended that where an order is sent by post, the same has to be with Acknowledgement Due mode. Further, in the present case, it is submitted that the documents furnished by ICD-Sachin, Customs, Surat are only towards dispatch of the impugned order and do not have any acknowledgment evidencing receipt of the same by the appellant. The appellant has relied upon the following case laws: (i) New Drug & Chemicals Co. v. Union of India and (ii) Deepak Natwarlal Soni v. Union of India.

In view of this, the appellant submitted that the impugned order was not served upon them in the manner prescribed under law and that the reply given by the ICD-Sachin does not evidence that the OIO received by the appellant. The appellant has further submitted that their letter dated 28.01.2025, requesting a copy of the Order-in-Original, itself demonstrates that they were not aware of the such impugned order until a copy thereof was provided to them by ICD-Sachin. Accordingly, the appeals filed by them within prescribed timeline of the Customs Act.

6. I have carefully gone through the impugned order, Form CA-1, the appeal memorandum, additional submissions, and the records available on file. It is observed that the appeal has been filed on 20.05.2025 against the impugned order dated 29.12.2023, resulting in an inordinate delay of more than 16 months. Such delay is clearly beyond the period prescribed under Section 128 of the Customs Act, 1962. The appeal is, therefore, not maintainable on account of limitation and cannot be entertained.

It is observed that ICD-Sachin, Customs, Surat, vide email dated 10.03.2026, confirmed that the impugned order bearing No. 52/AB/ADC/ICD-SACHIN/SRT/2023-24 dated 22.12.2023 / 29.12.2023 was dispatched on 12.01.2024 through Speed Post vide Dispatch Serial Nos. 3428, 3429 and 3430 to the appellant, its proprietor, and the office of the Customs House, Ahmedabad. These details have been duly recorded in the "Despatch Register for Postal Dak". It is further observed that such dispatch of the impugned order is in terms of Section 153 of the Customs Act, 1962. It is also evident from the records that the impugned orders so dispatched were not returned undelivered to ICD-Sachin, Customs, Surat.

6.1 I find from the records that, in view of the inordinate delay in receipt of the impugned order, an email dated 09.03.2026 was written to the appellant seeking reasons for such delay. Further, in the interest of natural justice and to seek the appellant's views, an email dated 16.03.2026 was also issued to the appellant enclosing the documents submitted by ICD-Sachin, Customs, Surat, vide email dated 10.03.2026.

I have gone through the reply dated 17.03.2026 submitted by the appellant and find that the contentions raised by the appellant are not tenable in law. It is observed from the records that the impugned order was duly dispatched through Speed Post to the appellant and its proprietor vide Dispatch Serial Nos. 3428 and 3429, both dated 12.01.2024. It is further observed that the said postal articles were not returned undelivered to ICD-Sachin, Customs, Surat, which confirms proper and effective delivery of the impugned order upon the appellant. Such dispatch through Speed Post is in consonance with the provisions of Section 153 of the Customs Act, 1962.

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As regards the case laws relied upon by the appellant, it is observed that the same pertain to the period prior to the substitution of Section 153 of the Customs Act, 1962 by the Finance Act, 2018 (No. 18 of 2018) dated 28.03.2018. The amended provisions of Section 153, which are applicable to the present case, expressly recognize service through Speed Post and provide for deemed service. Therefore, the reliance placed by the appellant on the said judgments is misplaced and not applicable to the facts of the present case. The relevant provisions of Section 153 of the Customs Act, 1962 are reproduced below:

"153. (1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:—

(a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;

(b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;

(c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;

(d) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or

(e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice boardof the office or uploading on the official website, if any.

(2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).

(3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.".

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Therefore, it is evident in the present case that the impugned order was duly dispatched through Speed Post and was not returned undelivered to ICD-Sachin, Customs, Surat, in terms of the provisions of Section 153 of the Customs Act, 1962. Further, in terms of Section 153(3) of the Customs Act, 1962, where an order is sent by Registered Post or Speed Post, it is deemed to have been received by the addressee within the normal period of postal transit, unless the contrary is proved. In the present case, it is an admitted fact on record that the impugned order was dispatched to the appellant through Speed Post on 12.01.2024 and was not returned undelivered. Accordingly, the impugned order is deemed to have been served upon the appellant within the normal transit period, i.e., on or around 19.01.2024, reckoned from the date of dispatch on 12.01.2024, in terms of Section 153(3) of the Customs Act, 1962.

6.2 The appellant's contention that they had not received impugned order and they had applied in writing vide letter dt. 25.02.2025 for copy of the impugned order. This contention is not true and far from the facts and proof available on record.

6.2.1 It is on record that the impugned order dispatched, was not returned undelivered to ICD-Sachin, Customs, Surat. In this regard, attention is invited to the appeal memorandum dated 10.05.2025, wherein the appellant has annexed a copy of the impugned order as Annexure-1. On careful perusal of the said document, particularly its last page, it is evident that the annexed copy is the very copy (i.e. Noticee' copy) of the impugned order intended for service upon the noticee–appellant. This fact clearly establishes that the appellant was already received and in possession of the impugned order, despite their categorical denial of having received the same. The plea of non-receipt, therefore, is not only contrary to the material available on record but also appears to be misleading and devoid of merit.

6.2.2 Further, if the appellant had, in fact, received the impugned order through hand delivery vide letter dated 25.02.2025 from ICD-Sachin, Customs, Surat, they ought to have annexed the very same copy along with their appeal memorandum. However, the copy annexed as Annexure-1 is evidently different. It is noteworthy that the copy allegedly received on 25.02.2025 bears Dispatch Serial Nos. 3428, 3429, and 3430 on its last page, which do not correspond with the copy annexed to the appeal memorandum. This material discrepancy creates serious doubt regarding the appellant's claim and significantly discredits their version.

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6.2.3 In view of the foregoing facts and findings, the contention of the appellant that they had not received the impugned order earlier and came into possession of the same only on 25.02.2025 through hand delivery is found to be factually incorrect and unsupported by the records. The evidence on record clearly demonstrates that the appellant was already in possession of the impugned order prior to the said date. The inconsistent and contradictory stand taken by the appellant, coupled with the mismatch in the copies relied upon, renders their plea unreliable and devoid of credibility. Accordingly, the claim of delayed receipt of the impugned order is rejected, and the same cannot be accepted for any legal benefit, including computation of limitation.

6.3 In the present case, in view of the facts and evidence available on record, the appeal has been filed on 20.05.2025 against the impugned order dated 22.12.2023 / 29.12.2023, which is much beyond the statutory period of 60 days prescribed for filing an appeal, as well as the further condonable period of 30 days under Section 128 of the Customs Act, 1962. The delay of more than 16 months is inordinate and far beyond the condonable limit prescribed under law. Accordingly, the appeal has been filed much beyond the maximum permissible period prescribed under Section 128 of the Customs Act, 1962, the same is clearly barred by limitation and is not maintainable in law and liable to be rejected on this ground alone without going into the merits of the case.

6.4 In this regard, the provisions of limitations for filing an appeal is 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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6.5 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.

6.6 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."*

6.7 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.

6.8 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.

6.9 In light of the above situation, facts and observations, it is found that the appeal has been filed after the expiry of ninety (90) days. As per Section 128 of the Customs Act, 1962, the appellate authority is empowered to condone delay only up to the prescribed extended period, and no further. Since the appeal has been filed beyond the maximum period permissible under the said provision, the delay is not condonable in law. Accordingly, the appeal is held to be time-barred.

7. In view of the discussion made above, the appeal filed by the Appellant , is hereby rejected , on the grounds of limitation without going into the merits of the case.

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(Amit Gupta)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-76/CUS/AHD/25-26

Date: 30.03.2026

<u>By E-mail / Through Speed Post:</u>
<u>(As per Section 153(1) of the Customs Act, 1962)</u>

M/s Savitri Weaving,
Shed No.: 06, Doctor ni wadi,
Behind Krishna Petrol Pump,
Khatodara, Surat- 395 003.

Shri Mukesh Agarwal,
Proprietor of M/s Savitri Weaving,
Block No. 131, Plot No.: 27/A, 27/B-1, 27/B-2,
Prakash Cinema Street,
GIDC Popodara, Magrol,
Surat-394 110.

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Copy to:

1.The Chief Commissioner of Customs Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in)

2.The Principal Commissioner of Customs, Custom House, Ahmedabad. (email: cus-ahmd-guj@nic.in rra-customsahd@gov.in).

3. The Additional Commissioner of Customs, ICD – Sachin, Surat. (Email: adjcus-surat@gov.in / cus-ahmd-adj@gov.in)

4.The Deputy Commissioner, Customs, ICD – Sachin, Surat. (icd-sachin@gov.in).

5. Shri Nilesh Jain, CA behalf of M/s Savitri Weaving, Surat.
(nitesh@niteshjain.co.in anish@goyalrathi.com litigation@goyalrathi.com)

6. Guard File.