



### सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंजिल 4th Floor, हड्को भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009  
दूरभाष क्रमांक Tel. No. 079-26589281

DIN = 20250671MN000000ABAC

क	फाइल संख्या FILE NO.	S/49-58/CUS/AHD/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) :	AHD-CUSTM-000-APP-078-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	16.06.2025
ड	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No. 140/AB/ADC/ICD-SACHIN/SRT/2023-24, dated 19.03.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	16.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Om Fashion, A – 7/8, Shiv Krupa Building, B/h. Vaishali Cinema, Umiyadham Road, Surat – 395 003

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods imported on baggage
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो।
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
.3	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र)या रु.1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां, यदि शुल्क, मांगा गया व्याज, लगाया गया दंड की राशि और रुपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the



	fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.				
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं				
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td><td><b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b></td></tr> <tr> <td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td><td>2<sup>nd</sup> Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td></tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>				
दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> 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 हजार 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; पाँच हजार 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 हजार 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 १० अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के १० 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- <ul style="list-style-type: none"> <li>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</li> <li>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</li> </ul>				



Order-In-Appeal

M/s. Om Fashion, A – 7/8, Shiv Krupa Building, B/h. Vaishali Cinema, Umiyadham Road, Surat – 395 003 (hereinafter referred to as "the Appellant") have filed the present appeal against the Order-In-Original No. 140/AB/ADC/ICD-SACHIN/SRT/2023-24, dated 19.03.2024 (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 Computerized Embroidery Machine under EPCG Licence No. 5230012015, dated 27.06.2013 by saving Customs Duty amount of Rs. 10,41,839/- (Actual Duty Utilization of Rs. 11,23,155/-) under the cover of the below mentioned Bills of Entry at zero 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	Qty. machinery cleared	Assessable Value (Rs.)	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.	3230932, dated 10.09.2013	04	24,84,877/-	10,41,839/-	5,67,872/-	1,60,000/-
2.	3231416, dated 10.09.2013	02	12,42,438/-		2,83,836/-	
3.	4530430, dated 03.02.2014	02	11,87352/-		2,71,347/-	
<b>TOTAL</b>		<b>08 Sets</b>	<b>49,14,667/-</b>	<b>10,41,839/-</b>	<b>11,23,155/-</b>	
As per para 5.10 of Handbook of Procedures, 10% enhancement in CIF value of duty saved amount is admissible.						

2.1 Against the said EPCG Licence No. 5230012015, dated 27.06.2013, the Appellant had executed a Bond dated 10.09.2013 before the Deputy/Assistant Commissioner of Customs, ICD – Sachin, Surat for an amount of Rs. 32,00,000/- backed by a Bank Guarantee No. 4053613BG0000003, dated 30.07.2013 for Rs. 1,60,000/- issued by the State Bank of Mysore, Ashwinikumar Road, Surat and paid Rs. 9,000/- vide TR – 6 Challan No. 130/13-14, dated 11.03.2014. They had undertaken to fulfill the export obligation as specified in the said Notification and the said license.

2.2 The said machinery, i.e., 08 sets of Computerized Embroidery Machine imported under the aforesaid EPCG Licence were installed at their factory premises, i.e., A – 7/8, Shiv Krupa Building, B/h. Vaishali Cinema, Umiyadham Road, Surat – 395 003 as per the Installation Certificate dated 05.12.2013 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 fulfill the export obligation on FOB basis equivalent to Six times the duty saved on the goods imported as specified on the Licence or Authorization, or for such higher sum as may be fixed or endorsed by the licensing Authority or Regional Authority, within a period of Six years from the date of issuance of EPCG Licence, i.e., complete 50% export obligation within first block of 1<sup>st</sup> to 4<sup>th</sup> years and remaining 50% in second block of 5<sup>th</sup> and 6<sup>th</sup> years. In the instant case, the EPCG Licence was issued to the Appellant on 27.06.2013 and accordingly, they were required to fulfill export obligation by 26.06.2019, 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 Letter F. No. VIII/6-1785/ICD-SACHIN/2013-14, dated 11.07.2017 was issued to the Appellant requesting them to furnish the copy of EODC or any extension issued by the Regional Authority, DGFT, Surat for fulfilment of Export Obligation. However, the Appellant had not responded to any of the above correspondences.

2.5 Since, no response 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 No. 5230012015, dated 27.06.2013. In response, the Assistant Director, Directorate General of Foreign Trade, Surat vide letter F. No. EPCG/Mis./2020-21, dated 28.10.2022 informed that the Appellant had not submitted the documents to them against the aforesaid EPCG License in the matter.

2.6 In view of the above, it appeared that the Appellant had failed to fulfill 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 by them for fulfilment of export obligation. Therefore, the Appellant was liable to pay Customs Duty not paid (i.e. saved) by them amounting to Rs. 11,23,155/- 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, the Bank Guarantee No. 4053613BG000003, dated 30.07.2013 for Rs. 1,60,000/- issued by the State Bank of Mysore, Ashwinikumar Road, Surat and paid Rs. 9,000/- vide TR – 6 Challan No. 130/13-14, dated 11.03.2014, furnished by them against the aforesaid EPCG Licence No. 5230012015, dated 27.06.2013 appeared liable to be encashed and deposited in the Government Exchequer.

2.7 Accordingly, a Show Cause Notice under F. No. VIII/6-1783/ICD-SACHIN/2013-14, dated 27.07.2023 was issued to the Appellant, proposing as to why:

- i. The benefit of Zero Duty for EPCG Scheme under Notification No. 22/2013-Cus., dated 18.04.2013 on the imported Computerized Embroidery Machine imported in the name of M/s. Om Fashion, not be denied;
- ii. Customs Duty amounting to Rs. 11,23,155/- 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 Notification No. 22/2013-Cus., dated 18.04.2013 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 Bank Guarantee No. 4053613BG0000003, dated 30.07.2013 for Rs. 1,60,000/- issued by the State Bank of Mysore, Ashwinikumar Road, Surat and paid Rs. 9,000/- vide TR – 6 Challan No. 130/13-14, dated 11.03.2014 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 Customs Notification No. 22/2013-Cus., dated 18.04.2013 as amended from time to time;
- iv. Penalty should not be imposed under Section 112 (a) and 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 duty for EPCG Scheme under Notification No. 22/2013 - Cus., dated 18.04.2013 on Machines under reference imported in the name of M/s. Om Fashion;
- ii. He confirmed the demand of Customs Duty amounting to Rs. 11,23,155/- being the duty foregone at the time of import of Capital Goods under EPCG Licence in terms of Notification No. 22/2013- Cus., dated 18.04.2013 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;
- iii. He ordered to appropriate the amount of Rs. 71,60,000/- by encashment of the Bank Guarantee No. 4053613BG0000003, dated 30.07.2013 for Rs. 1,60,000/- issued by the State Bank of Mysore, Ashwinikumar Road, Surat and paid Rs. 9,000/- vide TR – 6 Challan No. 130/13-14, dated 11.03.2014 submitted by the Appellant. He ordered the same to be encashed and the amount of Rs. 1,60,000/-




to be deposited in Government Exchequer and adjusted against the duty liability confirmed at (ii) above;

- iv. He confiscated 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 Customs Notification No. 22/2013-Cus., dated 18.04.2013. However, he gave an option to redeem the said goods on payment of redemption fine of Rs. 12,28,667/- under Section 125 (i) of the Customs Act, 1962;
- v. He imposed penalty of Rs. 1,12,315/- upon the Appellant under Section 112 (a) 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. The Appellant have, inter-alia, raised various contentions and filed detailed submissions as given below in support of their claims:

- The adjudicating authority has erred in denying the benefit of zero rate of duty for EPCG scheme under Notification No. 22/2013-Cus dated 18-04-2013;
- The adjudicating authority has erred both in law and in fact while passing the order;
  - i. There is inherent provision in Revenue notifications to keep action of Customs pending till EODC is issued by DGFT;
  - ii. Therefore, the impugned order is against the facts, illegal and arbitrary;
  - iii. They have imported certain capital goods under authorisation under EPCG Scheme for which export obligation in terms of said authorisation was to be fulfilled within stipulated time frame;
  - iv. Admittedly exports obligation thereof has been fulfilled in year 2018. Delay issuance of EODC from the office of DGFT should not be ground to penalise the Appellant;
- The delay in obtaining Export Obligation Discharge Certificate (EODC) cannot result in denial of benefit under the EPCG Scheme, which itself has been formulated to promote export and earn foreign exchange;
- They relied upon the decision of the Final order of the Hon'ble Telangana High Court in Hetro Lab Ltd. vs. Assistant Commr. of Customs, Chennai - 2019 (370) ELT 23 (Telangana) in support of their claim;
- The impugned order has been passed without providing opportunity of being heard and hence liable to be set aside;
- They submitted the proof of their application having been submitted to DGFT, hence, the matter may be kept in abeyance till the same is decided by DGFT as per the Circular No. 16/2017 – Customs;

- The adjudicating authority has erred in levying penalties under Section 112 (a) and Section 117 of the Customs Act, 1962 as well as redemption fine under Section 125 (1) of the Customs Act, 1962 on highly disputed issues and that too in absence of any malafide, since they have fulfilled the export obligation and applied for EODC.

**PERSONAL HEARING:-**

4. Personal hearing in the matter was held on 21.05.2025 in virtual mode. Shri Ishwar Jivani, Chartered Accountant, Advocate, appeared for hearing on behalf of the Appellant. He reiterated the submissions made in the appeal memorandum.

**DISCUSSION & FINDINGS:-**

5. I have carefully gone through the appeal memorandum filed by the Appellant, the grounds of appeal, as well as records of the case. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority disallowing the benefit of concessional rate of duty under Notification No. 103/2009-Cus., dated 11.09.2009, confirming the demand of duty along with interest, confiscating the Capital goods under Section 111 (o) of the Customs Act, 1962 and imposing penalties upon the Appellant under Sections 112 (a) (ii) and Section 117 of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 Being aggrieved, the Appellant has filed the present appeal on 13.05.2024. The date of communication of the Order-In-Original dated 19.03.2024 has been shown as 27.03.2024. Therefore, the appeal has been filed within normal period of 60 days, as stipulated under Section 128 (1) of the Customs Act, 1962. Further, the Appellant has paid Rs. 85,000/- as payment of 7.5% of pre-deposit of filing the appeal as envisaged under the Section 129 E of the Customs Act, 1962 vide TR-6 Challan No. 04/24-25, dated 22.04.2024. As the appeal has been filed within the stipulated time-limit and complies with the requirement of Section 129E of the Customs Act, 1962, the appeal has been admitted and being taken up for disposal on merits.

6. It is observed that the Appellant have in the present appeal contended that they have submitted the proof of their application having submitted to the DGFT and the matter may be kept in abeyance in view of the Circular No. 16/2017 – Customs. In this regard, the relevant para of the CBEC Circular No. 16/2017 – Customs, dated 02.05.2017 is reproduced below for ease of reference:

*"5. In view of the above, the field formations may issue simple notice to the licence/authorization holders for submission of proof of discharge of export obligation. In case where the licence/authorization holder submits proof of their application having been submitted to DGFT, the matter may be kept in*



abeyance till the same is decided by DGFT. Institutional mechanism set up in terms of Instruction F. No. 609/119/2010-DBK dated 18-1-2011 for regular interaction with RA's of DGFT should be used to pursue such cases. However, in cases where the licence/authorization holder fails to submit proof of their application for EODC/Redemption Certificate, extension/clubbing etc., action for recovery may be initiated by enforcement of Bond/Bank Guarantee. In cases of fraud, outright evasion, etc., field formations shall continue to take necessary action in terms of the relevant provisions."

6.1 On perusal of the above clarification given by the CBEC, it is observed that in case the authorization holder does not submit the EODC/Redemption Letter within the period prescribed in the relevant notification, a simple notice may be issued to the authorization holder. In case where the license/authorization holder submits proof of their application having been submitted to DGFT, the matter may be kept in abeyance till the same is decided by the DGFT.

6.2 In the instant case, it is observed that the Appellant vide letter dated 09.04.2025 had applied for Redemption of EPCG License No. 5230012015, dated 27.06.2013 to the Joint Director General of Foreign Trade, DGFT, Surat by conveying that they have fulfilled the export obligation and requested for issuance of EODC in the matter. However, it is observed that this contention have been raised for the first time before the appellate authority. The adjudicating authority had no occasion to consider the same. Moreover, the appeal was sent to the jurisdictional authority for his comments on the grounds raised in the appeal, but there have been no response. Therefore, I am constraint to remand the matter to the adjudicating authority to pass fresh order in light of the CBEC Circular dated 02.05.2017 taking into account the outcome of the decision from the DGFT authority in this regard.

7. In view of above, I find that remitting the present appeal to adjudicating authority for passing fresh order, after taking the submissions made by the Appellant and pass fresh order after following principles of natural justice, has become sine qua non to meet the ends of justice. Accordingly, the case is remanded back to the adjudicating authority, in terms of sub-section (3) of Section 128A of the Customs Act, 1962, for passing a fresh order by following the principles of natural justice. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs- 2004 (173) ELT 117 (Guj.), Judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and Judgments of Hon'ble Tribunals in case of Prem Steels Pvt. Ltd. [2012-TIOL-1317-CESTAT-DEL] and Hawkins Cookers Ltd. [2012 (284) E.L.T. 677 (Tri.-Del)] holding that Commissioner (Appeals) has power to remand the case under Section – 35A (3) of the Central Excise Act, 1944 and Section – 128A (3) of the Customs Act, 1962.



8. In view of above, I set aside the impugned order and allow the appeal filed by the Appellant by way of remand to the adjudicating authority for passing fresh order after considering the submissions made by the Appellant. The Adjudicating Authority shall examine the available facts, documents, submissions and issue speaking order afresh following principles of natural justice and legal provisions.

9. The appeal preferred by the Appellant is allowed by way of remand.



F. No. S/49-58/CUS/AHD/2024-25

सत्यापित/ATTTESTED

अधीक्षक/SUPERINTENDENT

सीमा खुल्क (आपील्स), अहमदाबाद.

CUSTOMS (APPEALS), AHMEDABAD

11/4/25  
(Amit Kumar)

Commissioner (Appeals),  
Customs, Ahmedabad

Date: 16.06.2025

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