



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

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

DIN - 20250671MN0000888EDD

क	फाइल संख्या FILE NO.	S/49-73/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-086-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	19.06.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. 46/DC/ICD-/IMP/MD Overseas/2022, dated 30.11.2022
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	19.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. M. D. Overseas Private Ltd., 2238, Mahurat Pole, Manek Chowk, G.P.O. Ahmedabad-380 001

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 exported
(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/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां, यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.				
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं				
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :				
	<table border="0"> <tr> <td style="vertical-align: top;">सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td style="vertical-align: top;">Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td style="vertical-align: top;">दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td style="vertical-align: top;">2nd 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	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	<p>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-</p> <p>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 -</p> <p>(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.</p> <p>(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;</p> <p>(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 रूपये पचास लाख से अधिक न हो तो; पांच हजार रुपए</p> <p>(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 ;</p> <p>(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.</p> <p>(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</p> <p>(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।</p> <p>(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.</p>				
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 रूपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.				
	<p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>				



ORDER-IN-APPEAL

Appeal has been filed by M/s. M. D. Overseas Private Ltd., 2238, Mahurat Pole, Manek Chowk, G.P.O., Ahmedabad - 380 001, (hereinafter referred to as 'the Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 46/DC/ICD/IMP/MDOverseas/2022, dated 30.11.2022 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, ICD - Khodiyar, Customs, Ahmedabad (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant had been issued a Special Warehouse License No. SWL/AHM/MDOL/AMD4P/003, dated 01.07.2016 under Section 58 (A) of the Customs Act, 1962. The license was surrendered on 27.09.2017 and accepted by the Principal Commissioner of Customs, Ahmedabad vide letter F. No. VIII/40-2/Cus/T/2016/Pt-II, dated 20.12.2017. A Performance Audit on "Working of Warehouses" was conducted for the period between August-2020 to December-2020 by the officers of CERA Audit and some discrepancies into the function of the 'Special Warehouse' of the Appellant were noticed. Subsequently, an S.O.F. No. CRA/PA/Warehousing & FTWZ/ SOF/ 0.W-232, dated 10.02.2021 was issued to the Office of the Principal Commissioner of Customs, Ahmedabad Commissionerate, Ahmedabad.

2.1 Regulation 10 (4) of the Special Warehouse (Custody and Handling of Goods) Regulations, 2016 stipulates that licensee shall file with the Bond Officer a monthly return of the receipt, storage, operations and removal of the goods in the warehouse, within ten days after the close of the month to which such return relates. As per Para 8.12.1 of the said. S.O.P., the Audit observed that no such return had been filed by the Appellant for the period from 01.07.2016 to 23.09.2017. Earlier, letter was issued vide F. No. VIII/48-17/W.Bond/ICD-KHD/2021/194, dated 22.01.2021 requesting them to file the required returns as per Regulation 11 of the Warehouse (Custody and Handling of Goods) Regulations.

2.2 The Deputy Commissioner, ICD Khodiyar had also issued a letter F. No. VIII/48- 213/ICD/Misc/2019/PtII/367, dated 04.06.2021 for compliance of discrepancies noticed during Audit of Special Warehouses. However, no reply was received from the Appellant. Therefore; it appeared that the Appellant had contravened the provisions of Regulation 10 (4) of the Special Warehouse (Custody and Handling of Goods) Regulations, 2016. In view of the above, it appeared that the Appellant had violated the provisions of Regulation 10 (4) of the Special Warehouse (Custody and Handling of Goods) Regulations, 2016 in as much as they had failed to submit monthly returns. From the above, it appeared that the Appellant has failed to comply with the Rules and Regulations applicable for a licensee of special warehouse under the Customs Act, 1962 and hence has made themselves liable for penalty.

2.3 Therefore, Show Cause Notice was issued to the Appellant proposing as to why:

- a) Penalty should not be imposed upon them under the provisions of Regulation 11 of the Special Warehouse Licensing Regulations, 2016 read with Section 117 of the Customs Act, 1962 for violation of Regulation 10 (4) of the Special Warehouse (Custody and Handling of Goods) Regulations, 2016 for non-submission of monthly returns.

2.4 The adjudicating authority vide the impugned order has passed the order as detailed below:-

- a) He imposed penalty of Rs. 25,000/- on the Appellant under Regulation 11 of the Special Warehouse (Customs and Handling of Goods) Regulations, 2016 read with Section 117 of the Customs Act, 1962.

Being aggrieved with the impugned order, the Appellant has filed the present appeal wherein they have submitted grounds which are as under:-

3.1 It is submitted that the Principal Commissioner of Customs accepted the surrender of a license application when he was satisfied that the Appellant had complied with all the provisions of the Act. Suddenly, after approx. 4 years of surrendering the license, a notice was issued for non-compliance; is totally unfair and naturally unjust with them. The Appellant was not a license holder under Section 58A of Special Warehouse during the period for which the Performance Audit was conducted. The Adjudicating Authority mentioned in his order that the Performance Audit was conducted for the period between August - 2020 to December - 2020 and also accepted in Para 1 that the Appellant surrendered his license on 27.09.2017. So, how was the period July 2016 to September 2017 covered in the Audit period August 2020 to December 2020? The same point was mentioned in the letter dated 16.03.2022 by them.

3.2 It was wrong allegation imposed by the adjudicating authority that the Appellant had not responded to the letters issued as well as Show Cause Notice. The Appellant submitted their reply via mail dated 24.02.2021 in response to the notice dated 22.01.2021 received via mail dated 23.02.2021. The notice dated 04.06.2021 issued was not received by them; therefore, no response was submitted in response to the same. The same was also mentioned in their earlier replies too. The SCN dated 28.01.2022 was received via mail on 17.02.2022. In response to the same, the response was submitted vide letter dated 16.03.2022. Subsequently, the notice of personal hearing dated 21.11.2022 was received via e-mail dated 22.11.2022. An email towards requested for



adjournment of personal hearing was sent by them on 30.11.2022. In view of the above, the allegation of non-responding the notices & Show Cause Notice is totally incorrect and unacceptable.

3.3 No proper opportunity of being heard was given and no order was served. The adjudicating authority had not ignored the request of adjournment of personal hearing fixed for 30.11.2022 sent vide e-mail dated 30.11.2022 and passed the order on ex-parte basis. Further, the impugned order was passed on 30.11.2022 and had not been served with the Appellant neither via post nor e-mail. In spite of the facts that the adjudicating authority knew very well that earlier notices were not served to the Appellant via post & returned; therefore, he served the notices / letters/ show cause notices via email. This is totally unfair and bad-in law.

3.4 However, the Appellant received the notice F. No. VIII/10-22/ICD/Arrear/MDO/2023/602 dated 19.04.2024 on 24.04.2024 in which the subject of the notice was "Sub: OIO No. 46/DC/ICD/IMP/MD Overseas/32022 dated 30.11.2022 issued by the Deputy Commissioner, ICD - Khodiyar, Ahmedabad" and also mentioned that "Please refer to this office letter of even no. dated 12.07.2023." In response to the above, the Appellant submitted a request letter dated 26.04.2024 to obtain the copy of order as well as copy of letter dated 12.07.2023. However, the Appellant collected the copy of the aforesaid documents on 26.04.2024 from the Adjudicating Authority's office. Hence, it proves that the Appellant got to know about the order passed when the recovery letter was received on 24.04.2024.

3.5 The adjudicating authority had not informed them regarding the non-compliance (if any). The adjudicating authority had fulfilled all the compliances mentioned in Special Warehouse (Private Bonded Warehouse) under Section 58A of Custom Act 1962 read with Custom notification 66/2016 CUS (N.T.) dated 14.05.2016 & 72/2016 CUS (N.T.) dated 14.05.2016. If the Appellant had not fulfilled any compliance under the aforesaid regulations, then the adjudicating authority had not shared any reason of:

- Not issuing any notice or reminder letter regarding noncompliance of the Regulation 10 (4) of Special Warehouse (Custody and Handling of Goods), Regulations 2016 during the period July 2016 to September, 2017.
- No action was taken against the appellant due to the noncompliance of Regulation 10(4) of Special Warehouse (Custody and Handling of Goods), Regulations 2016 during the aforesaid period.
- No objection was raised by the Principal Commissioner of Customs at the time of acceptance of the application related to surrender of license.
- No objection was raised at the time of the release of Warehouse Bond.

It is totally proved that all the compliances of the Appellant were fulfilled.



3.6 It is totally injustice to reopen the case & levy the penalty of the offense after so many years from surrendering the license. Further, the Principal Commissioner of Customs verified all the compliances before accepting surrender of license. Another notice was served on 06.02.2024 on the different issues, the basis of Performance Audit conducted for August 2020 to December 2020. The adjudicating authority is also not aware about the discrepancies shared by the officers of the CERA Audit. Earlier notice dated 22.01.2021 shared on the issue of non-filing of monthly returns and for which the impugned order belonged to.

3.7 The Appellant received another Show Cause Notice F. No. VIII/ 2203/ICD-KHD/ PAR-19 of 2022/2024/194 dated 01.02.2024 received on 06.02.2024 on the basis of different discrepancies reported in Performance Audit conducted by the officer of CERA Audit i.e., non-submission of solvency certificate as well as insurance cover. The Adjudicating Authority issued the notices on the different time gap on the basis of the same Audit report that is totally unfair and against the principle of natural justice. Further, it shows a total lack of knowledge and ignorance of the adjudicating authority towards discrepancies reported in the CERA performance report.

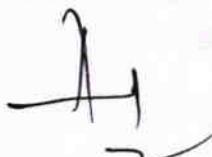
PERSONAL HEARING:

Personal hearing in the matter was held on 29.05.2025 in virtual mode, following the principles of natural justice. Shri Amit Mittal, GM-Trade & Finance and Ms. Neha Arora, Sr. Manager-Taxation appeared for the hearing and they re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the adjudicating authority and the defense put forth by the Appellant in their appeal memorandum. On going through the material on record, I find that the following issues are required to be decided in the present appeal which are as follows:

- i. Whether the impugned order suffers from a violation of natural justice due to non-communication and denial of effective hearing.
- ii. Whether the Special Warehouse Regulations, 2016, are applicable to the Appellant for the period in question, given the surrender of their license.
- iii. Whether the adjudicating authority properly considered all the submissions and responses filed by the Appellant.



5.1 Being aggrieved, the Appellant has filed the present appeal on 10.06.2024. In the Form C.A.-1, the date of communication of the Order-In-Original dated 30.11.2022 has been shown as 26.04.2024. Thus, the appeal has been filed within normal period of 60 days, as stipulated under Section 128 (1) of the Customs Act, 1962. The Appellant has submitted self-certified copy of the T.R.6 Challan No. 928, dated 30.05.2024 for Rs. 1,875/- towards payment of pre-deposit calculated @ 7.5% of the disputed amount of penalty of Rs. 25,000/-, under the provisions of Section 129 E of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and with the mandatory pre-deposit, it has been admitted and being taken up for disposal on merits.

5.2 The Appellant's contention regarding the non-communication of the impugned order and the ex-parte decision is a serious procedural infirmity. Natural justice dictates that a party must be given a fair opportunity to be heard and that any order passed must be duly communicated to the affected party. There is a plethora of judgments, which has consistently emphasized the importance of communication of orders. The fact that the Appellant only became aware of the order nearly a year and a half later through a recovery notice is a clear indication of a failure in proper communication.

5.3 Furthermore, ignoring a request for adjournment without proper reasons and proceeding ex-parte also amounts to a denial of a fair hearing. While adjournments are not to be granted as a matter of course, a reasonable request, especially when the party has been engaging in correspondence, warrants consideration. The absence of proper communication of the final order is itself a sufficient ground for remand.

5.4 The Appellant surrendered their license on 27.09.2017, and this surrender was accepted by the Principal Commissioner of Customs on 20.12.2017. Regulation 8(2)(c) of the Special Warehousing Licensing Regulations, 2016, states that a license may be cancelled if "no proceedings are pending against the licensee under the Act or the rules or regulations made thereunder." The acceptance of surrender by a superior authority, along with the release of the bank guarantee, strongly implies that, at the time of surrender, the department was satisfied that all compliances were met and no proceedings were pending.

5.5 The SCN, however, relates to a performance audit covering August 2020 to December 2020, a period long after the surrender of the license. It is a fundamental principle that an individual or entity can only be held accountable for obligations under a license or regulation during the period they hold that license or are subject to that regulation. To initiate proceedings for non-compliance of a license condition (monthly returns) for a period when the entity was demonstrably not a licensee, and where the surrender was accepted by the department after due diligence (as per Regulation 8), appears legally untenable.

5.6 The adjudicating authority's finding that the Appellant failed to file returns for the "period mentioned herein above" (referring to the SCN period of August 2020 to December 2020) without explicitly addressing the impact of the license surrender on this period is a significant oversight. The department cannot, on one hand, accept the surrender of a license after verifying compliance and, on the other hand, proceed with penal action for non-compliance for a subsequent period when the license was no longer in force.

5.7 The Appellant has provided documentary evidence of their responses to earlier notices and the SCN, rebutting the adjudicating authority's finding that they "neither responded... nor defended the S.C.N. issued to them." This indicates that the adjudicating authority may not have fully considered or appreciated the submissions made by the Appellant prior to passing the impugned order. Furthermore, the Appellant's point about subsequent SCNs being issued based on the same audit for different alleged discrepancies (e.g., non-submission of solvency certificate and insurance cover) strengthens the argument that the entire process leading to the impugned order lacked a comprehensive and consolidated approach. This fragmented approach, particularly when dealing with an already surrendered license, suggests that a thorough re-examination of all facts and submissions is necessary.

5.8 Based on the foregoing discussions, the following grounds warrant remanding the appeal back to the adjudicating authority:


Violation of Natural Justice: The primary reason for remand is the serious allegation of non-communication of the impugned order and the ex-parte decision. A fair hearing and communication of the order are cornerstones of natural justice. When an order is not communicated, the affected party is deprived of their right to appeal or seek further remedies.

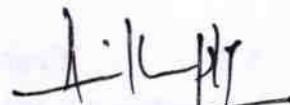
- Non-Consideration of Material Facts: The adjudicating authority appears to have failed to adequately consider the crucial fact of the Appellant's warehouse license surrender and its acceptance by the Principal Commissioner prior to the audit period in question. This is a fundamental factual aspect that directly impacts the applicability of the regulations and the very basis of the SCN.
- Adequate Opportunity of Hearing: The apparent failure to consider the Appellant's request for adjournment and their prior replies suggests a lack of adequate opportunity for hearing. Remand would provide an opportunity for the adjudicating authority to re-examine all submissions comprehensively. The principle established in *Kashinath Dikshita v. Union of India* [1986 (24) ELT 521 (SC)] and similar cases, highlights that non-consideration of material and relevant evidence by the adjudicating authority vitiates the order, necessitating a remand.



- Need for Fresh Examination: The overlapping SCNs based on the same audit, yet for different issues, further underscores the need for the adjudicating authority to comprehensively re-examine the entire matter, taking a holistic view of the audit findings, the license surrender, and all the Appellant's responses.

6. In view of the detailed discussions and findings above, I find that remitting the entire matter to the adjudicating authority with the specific direction to conduct a de-novo adjudication, after thoroughly considering all the submissions, replies, and documents filed by the Appellant, including those submitted prior to the passing of the impugned order, 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 and legal provisions. 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.

7. Accordingly, I set aside the impugned order and allow the appeal filed by the Appellant by way of remand to the adjudicating authority.



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

F. No. S/49-73/CUS/AHD/2024-25
1616

Date: 19.06.2025

By Registered post A.D/E-Mail

To,
M/s. M. D. Overseas Pvt. Ltd.
2238, Mahurat Pole,
Manek Chowk, GPO,
Ahmedabad-380001.

सन्दर्भित/ATTESTED
R. P. Mehta
अधीक्षक (SUPERINTENDENT)
सीमा शुल्क (अपील), अहमदाबाद
CUSTOMS (APPEALS), AHMEDABAD

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Ahmedabad.
3. The Deputy Commissioner of Customs, ICD – Khodiyar, Ahmedabad.
4. Guard File.