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 – 20260371MN000000F4C0

क	फ़ाइल संख्या FILE NO.	S/49-289/CUS/AHD/24-25
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-699-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	16.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	OIO No.: 210/ADC/SRV/O&A/2024-25 dt. 24.12.2024 passed by the Additional Commissioner of Customs (In charge-ICD Khodiyar), Ahmedabad, Gujarat
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	16.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Abhinav Industries, Plot K/4, GIDC, Phase-II, BH Vimal Water Tank, Naroda, Ahmedabad.

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

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/-.

4.	**मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंध 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 है, 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.	

Order-In-Appeal

M/s. Abhinav Industries, Plot K/4, GIDC, Phase-II, BH Vimal Water Tank, Naroda, Ahmedabad (hereinafter referred to as "the Appellant") have filed the present appeal challenging the Order-In-Original No.: 210/ADC/SRV/O&A/2024-25 dt. 24.12.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs (In charge-ICD Khodiyar), Ahmedabad, Gujarat (herein after referred to as "the adjudicating authority").

2. Facts of the case, in brief, are that M/s Mahe Global Impex Ahmedabad (hereinafter referred to as 'the importer') had imported 18000 Kgs of goods declared as Meta Phenylene Diamine 99.5 PCT MIN (MPD) (hereinafter referred to as the imported goods MPD') from China from the supplier M/s Buipo International Shanghai, China. The importer had filed In-Bond Bill of Entry No.: 7460934 dated 16.04.2020 (hereinafter referred to as 'In-Bond Bill of Entry'). The importer had sold 6075 Kgs of warehoused imported goods MPD to the appellant. Thereafter the appellant had filed Ex-bond Bill of Entry No 7816340, dated 03.06 2020 (hereinafter referred to as 'the Ex-Bond Bill of Entry) for clearance of 6075 Kgs. of the imported goods MPD. As per the Notification No. 5/2019-Customs (ADD), dated 24.01.2019 (hereinafter referred to as 'the ADD Notification'), the Anti Dumping Duty is leviable on the imported goods MPD from China falling under Chapter Heading 2921 5120. The appellant at the time of filing Ex-Bond Bill of Entry had claimed and paid Anti Dumping Duty@ US$ 573.92 Per MT as per Sr. No. 2 of the ADD Notification.

2.1 During the course of Audit of records of the appellant, it was observed by the officers of the Customs Revenue audit (CRA) that as per the documents uploaded in e-Sanchit, i.e. Invoice and Certificate of Origin, the Supplier and Producer of the imported goods MPD was M/s. Buipo International Shanghai, China. Hence, Anti Dumping Duty was leviable as per the Sr. No. 3 of the ADD Notification @ USS 1015.44 Per MT Therefore, the officers of the CRA vide LAR No. 08/2020-21, dated 08.02.2021 had raised objection regarding short levy of Anti Dumping Duty and IGST to the tune of Rs. 2,41,651/- due to incorrect application of rate of Anti Dumping Duty

2.2 The query was communicated to the appellant vide letter dated 19.01.2022 with a request to pay the short levied Anti Dumping Duty and IGST amounting to Rs. 2,41,651/ along with interest. However, the appellant did not agree to the objection and not paid any duty. Subsequently, pre-notice consultations were held wherein the appellant did not agree with the audit objection. Further, the appellant vide letter dated 28.04.2022 had submitted that they procured the goods under high seas agreement with the importer M/s Mahe Global Impex, Ahmedabad They had also submitted copies of In-Bond Bill of Entry, Ex-Band Bill of Entry, Invoice, Certificate of analysis etc.

2.3 In view of the above facts, it appeared that the appellant had wilfully mis-declared the manufacturer / producer of the imported goods MPD with an intent to wrongly avail duty benefit under the ADD Notification, which resulted into short payment of differential Anti Dumping Duty and IGST amounting to Rs. 2.41,651/-.

2.4 Thereafter, Show Cause Notice dated 24.05.2022 under F. No. VIII/10-87/ICD-Khod/O&A/HQ/2021-22, was issued to the appellant proposing recovery of short paid Anti Dumping Duty and IGST amounting to Rs. 2,41,651/- under Section 28 (1), along with applicable interest under Section 28AA, confiscation of the goods under Section 111 (m) & Section 111 (o) and imposition of penalties upon the appellant under Section 112 (a) (ii) of the Customs Act, 1962.

2.5 After following the principles of natural justice, the Show Cause Notice dt. 24.05.2022 was adjudicated vide the OIO dated 11.11.2022, whereby the adjudicating authority confirmed the demand of Anti-Dumping Duty and IGST amounting to Rs. 2,41,651/- along with applicable interest under Section 28AA of the Customs Act, 1962. The imported goods were held liable for confiscation under Sections 111(m) and 111(o) of the Customs Act, 1962. Further, a redemption fine of Rs. 4,25,000/- was imposed in lieu of confiscation under Section 125(1) of the Customs Act, 1962, and a penalty of Rs. 2,00,000/- was imposed on the appellant under Section 112(a)(ii) of the said Act.

2.6 Being aggrieved and dissatisfied by the OIO dt. 11.11.2022, the appellant filed appeal with Commissioner(A), Customs, Ahmedabad who vide OIA No.: AHD-CUSTM-000-APPP-114-24-25 dt. 25.06.2024 set aside the impugned order and remanded the matter to the adjudicating authority for passing fresh order following principles on natural justice.

2.7 In the remand proceedings, the Adjudicating Authority, vide the impugned order dated 24.12.2024, passed the following order:

(i) he denied the benefit of Sr. No. 02 of Notification No. 05/2019-Customs (ADD) dated 24.01.2019 to the imported goods,

(ii) he ordered recovery of differential customs duty amounting to Rs. 2,41,651/- under Section 28(1) of the Customs Act, 1962,

(iii) he ordered confiscation of the imported goods under Sections 111(m) and 111(o) of the Customs Act, 1962, with an option to redeem the same on payment of redemption fine of Rs. 4,25,000/- under Section 125(1) of the Customs Act, 1962,

(iv) he imposed a penalty of Rs. 2,00,000/- on the appellant under Section 112(a)(ii) of the Customs Act, 1962.

3. Being aggrieved by the impugned order, the appellant has filed the present appeal before the Commissioner (Appeals), Customs, Ahmedabad vide appeal memorandum dated 20.02.2025. The appellant has submitted the grounds of appeal by

offering comments on the various findings recorded by the Adjudicating Authority in the impugned order. The same are reproduced as under:

- ***PARA 12.2.2 :***

COMMENTS : *The above finding is appeared to be half hearted so far as neither Adjudicating Authority nor Audit Officer took pain to examine the documents other than documents uploaded in e-Sanchit; though the appellant had submitted all other documents such as bill of lending, invoice dated 14.01.2020, packing list, Certificate of Analysis issued by manufacturer M/s. Zhejiang Amino-Chem Co. , China, Certificate of Analysis issued by the exported M/s. Buipo International, Shanghai, China and Certificate of Country of Origin issued by Competent Authority of China Government with In-Bond Bill of Entry No. 7460934 dated 16.04.2020 therefore, since the Audit Officer as well as Adjudicating Authority has conclude the objection is not sustainable in law.*

- ***Para 12.2.4 :***

COMMENTS *: In this para, the Adjudicating Authority has discussed / elaborated the meaning of the exemption and rate of duty prescribed in aforesaid notification and accepted that the imported goods, originate from China and produced by M/s. Zhejiang Amino-Chem Co. , China, then ADD is applicable at the rate prescribed at Sr.No.2 of the Notification; hence no comments for the reason that the appellant has claimed Sr.No.2 and paid ADD accordingly.*

- ***PARA 12.2.5*** *:*

COMMENTS *: The appellant has observed that the Adjudicating Authority has, during the adjudicating proceedings, do not took pain to examine other documents such as Certificate of Analysis issued by M/s. Buipo International, Shanghai and Certificate of Analysis issued by M/s. Zhejiang Amino-Chem Co. , China wherein the producer M/s. Zhejiang Amino-Chem Co. , China has mentioned B/L No. G0SUSNH20138541 dated 16.03.2020 and certified that " We hereby certify that Meta Phenylene Diamine, lot No. M200301B-22 shipped to M/s. Biupo International were made in Amino Chem Company and in B/L the name of M/s. Buipo International appeared as 'shipper / exporter' ; in above documents NOWHERE the name of M/s. Buipo International is appeared as PRODUCER / MANUFACTURER; therefore, the appellant is of the view that M/s. Buipo International has exported the goods as MERCHANT EXPORTER and not as MANUFACTURER / EXPORTER.*

Moreover, the appellant would like to submit herewith an e-mail dated 27.06.2022 of the Customs Act, 1962 wherein the exporter M/s. Buipo International is not manufacturer but a Trader and copy of Sales Confirmation dated 26.12.2019 wherein both the parties seller and buyer has put their stamp.

In view of above, it is proved that the exporter M/s. Buipo International is not manufacturer of import goods but being a trader purchased from M/s. Zhejiang Amino-Chem Co., China and exported to the appellant. Therefore, a finding of the Adjudicating Authority is not sustainable in law and impugned order deserves to be set aside.

- ***PARA 12.2.6*** *:*

COMMENTS: - *The Appellant would like to produce records of personal hearing held on 19.12.2024 <u>wherein plea that the copy of photos has been requested by the Appellant vide letter Dated. 05.08.2024 to the Commissioner (Appeals), which till date not provided</u>; this facts has been totally ignored by the adjudicating Authority which shows the prejudice mind of Adjudicating Authority and therefore the impugned order is not sustainable in law.*

- ***PARA 12.2.7:***

COMMENTS: - *The appellant is not accepted the above finding of the Adjudicating Authority and it appears that the conclusion arrived is without Applying mind as well as without having general knowledge and understanding of Universal Practice of Business. As per common parlance of Trading Business / Trade, it is not mandatary* *to disclose the details of person / seller from whom the Goods procured and subsequently sale the same under Invoice, wherein no Law of land provided the mandate to disclosed the details of Manufacturer/ Seller/ Supplier in said Invoice; therefore, M/s. Buipo International has also not mentioned the name of the Manufacturer M/s. Zhejiang Amino- Chem Co. Ltd. In view of above discussion, the finding of Adjudicating Authority discussed in this para is appear to be PREJUDICE MIND and VAGUE.*

***PARA 12.2.9** :*

***COMMENTS: -** The Appellant would like to submit the copy of Invoice No. 19/IV-DCNO10198-1-1 dated. 10.03.2020 (appeared in certificate of analysis) issued by and M/s. Zhejiang Amino- Chem Co. Ltd. to M/s. Buipo International and Invoice No. B200114-MPD dated. 14.01.2020 (appeared in bill of entry) issued by Buipo International to M/s. Mahe Global Impex Ahmedabad therefore, since both the invoices were issued by two different parties/ customer the date and Numbers not match. The finding appear to be prejudice one and not sustainable in Law.*

Para 12.02.10 :-

***COMMENTS :** The above finding of the Adjudicating Authority is not acceptable so far as it does not cover statutory provision of RELEVANT DATE provided under Explanation 1in section 28 of the Customs Act, 1962; which reproduced below :-*

(a) In a case where duty is (not levied or not paid or short levied or short paid) or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.

The appellant is of the view that the Adjudicating Authority has not determined the relevant date, in the present case, as per the Explanation 1 of section 28 of the Customs Act, 1962 therefore the conclusion of the relevant date taken i.e. 01.06.2020 by the Adjudicating Authority is not legal. The appellant has, on going through the Explanation 1 of section 28 of the Customs Act, 1962; view that in the present case the relevant date is required to be determined as per Explanation 1 (a) of the section 28 of the Customs Act, 1962; wherein it is provided that :

*(a) In a case where duty is (not levied or not paid or short levied or short paid) or interest is not charged, **the date on which the proper officer makes an order for the clearance of goods;***

*In the above Explanation-1(a), the legislature has while framing the text of Explanation specifically speak "THE EVENT" i.e. **an order for the clearance of goods;** In the present case, the Proper Officer of Customs has given OUT OF CHARGE ORDER on 28.05.2020 on In Bond Bill of Entry No. 7460934 dated 16.04.2020 for CLEARANCE of import goods for WAREHOUSING. Therefore, in view of above explanation-1(a), in the present case, the relevant date is 28.05.2020 and not 01.06.2020 as determined by the Adjudicating Authority in impugned order.*

As regards, the relevant date prescribed in Explanation 1 (b), (c) & (d), the appellant submit that (b) is not applicable so far as there is no provisional assessment of In Bond Bill of Entry / Ex Bond Bill of Entry under section 18 of the Customs Act, 1962; in respect of Explanation -1(c) it is not applicable as it is not a case of erroneously refund, likewise, Explanation -1(D) it is also not applicable so far as the relevant date is already been present under Explanation-1(a) and not fall under IN ANY OTHER CASE

[Explanation-1(d)] which can only be applied when imported goods not cleared for warehousing under In Bond Bill of Entry.

However, for the ease of understanding of terms CLEARANCE OF GOODS UDNER THE CUSTOMS ACT, 1962, the appellant would like to submit that :-

- *The Expression is used in Customs Clearance (Bill of Entry) only in contrast to the expression 'for warehousing'. – M.J. Exports V. CEGAT – 1992 (60) E.L.T. 161 (S.C.) Para 16.*
- *The Goods which enter the Indian Territory can be classified as (1) Goods for Home Consumption (2) Goods for Warehousing (3) Goods in Transit, and (4) Goods for Transshipment. For goods in transit or for transshipment, the duty is not required to be paid subject to fulfilling the conditions prescribed by Section 53 to 56 of the Customs Act. For the purpose of levy of Customs Duty, in order to determine whether any imported goods are 'goods for Home Consumption', the primary intended use of the goods is required to be found out when the goods are brought into Indian territorial waters. If the goods are intended to be primarily used in India, they are goods for home consumption notwithstanding that they may also be used for the same or other purposes outside India. The predominant purpose or use of the goods is required to be seen, Bill of Entry is necessary for goods for Home Consumption or warehousing – Chowgule & Co. V. U.O.I. – 1987 (28) E.L.T. 39 (S.C.) [Amership Management V. U.O.I. – 1996 (65) ECR 41 (Bom-DB).*
- *The presentation of a Bill of Entry for Home Consumption only means that the importer does not intend to warehouse the goods. The form of Bill of Entry prescribed under the Customs Act does not require any declaration from the importer as to the purpose for which the imported goods are required or that they will be used or sold only in India. The expression 'Home Consumption' has also, in this context, no clear or definite meaning. It cannot be interpreted to mean that the imported goods cannot be at all exported. – M.J. Exports V. CEGAT – 1992 (60) E.L.T. 161 (S.C.), Para 16. (Also see under 'Good').*

The word 'clearance' would cover within its scope clearance of goods for home consumption as well as removal for warehousing. The word 'Clearance' in Explanation 1(a) in respect of goods to be warehoused would be synonymous with the expression 'actual removal from the docks' appearing in the Bill of Entry form warehousing. It means that the relevant date is required to be determined under Explanation -1(a) it covers all clearances for which, the Proper Officer of Customs issued Out of Charge Order on Bill of Entry either for Warehousing or Home consumption.

The appellant would like to further submit that for the purpose of clearance of imported goods as per the provisions of Customs Act, 1962, the importer (the appellant) needs to submit the bill of entry, either it In Bond Bill of Entry and Ex Bond Bill of Entry; in respect of In Bond Bill of Entry, the Proper Officer of Customs after due verification of documents, issued Out of Charge Order on In Bond Bill of Entry and allowed the clearance of goods from Custom Dock / Port for warehousing without payment of customs duty; whereas the Ex Bond Bill of Entry, the importer shall pay the duty and submit the proof of payment of duty to the Proper Officer of Customs, who issued Out of Charge Order for clearance of goods for home consumption. In view of above discussion, it is clear that the relevant date for the above clearances are the date on which Out of Charge Order issued by the Proper Officer of Customs on In Bond Bill of Entry when goods cleared for warehousing and which Out of Charge Order issued by the Proper Officer of Customs on Ex Bond Bill of Entry when goods cleared for home consumption. The appellant is humbly pray to the Hon'ble Commissioner (Appeals) to determine the relevant date in the present case as per above discussion and set aside the impugned order on the ground of limitation in the interest of TRUE JUSTICE.

In view of above discussion, the appellant is of the view that the Adjudicating Authority has discussed the section 68 and section 15 of the Customs Act, 1962; in this para, have no relevance for determination of relevant date for the purpose of limitation provided under section 28 of the Customs Act, 1962.

- ***PARA 12.3** :-*

<u>Comments :-</u>

No comments, but the vital fact, which totally ignored by the Adjudicating Authority and CERA Audit Officer, the supplier M/s. Buipo International, China is not a manufacturer, as, while third party verification with the supplier (M/s. Buipo International) for supply of MPD, it has been informed vide e-mail dated 27.06.2022 that they are not MANUFACTURER but a TRADER moreover, the appellant has already putforth the photographs of drum during the personal hearing before the Hon'ble Commissioner (Appeals) and therefore the appeal is allowed by way of remand the matter back to the Adjudicating Authority vide OIA dated 21.06.2024 but though during the personal hearing before the Adjudicating Authority on 19.12.2024, the appellant has specifically informed that the photos of drum has been urged to return vide letter dated 05.08.2024 but not returned; even though the Adjudicating Authority has not took the pain to verify this vital documents from the office of Hon'ble Commissioner (Appeals)and therefore it is not understood why the Adjudicating Authority has issued order within a week i.e. 24.12.2024; to this extent, the prejudice mind of the Adjudicating Authority is EXPOSED.

आयुक्त (अपील), सीमा शुल्क कार्यालय अहमदाबाद

Para 12.3.1 & 12.3.2 :

COMMENTS :

The appellant is of the view that the finding of the Adjudicating Authority discussed in this para is not sustainable in law so far as the Proper Officer of Customs has allowed In Bond Clearance under In Bond Bill of Entry No. 7460934 dated 16.04.2020 after due verification of all the records related to import of goods and issued OUT OF CHARGE ORDER on 28.05.2020 therefore it believe that the Proper Officer of Customs has also verified the PACKING (DRUM) of import goods on which MANUFACTURER NAME i.e. M/s. Zhejiang Amino- Chem Co. Ltd., China; and allowed the CLEARANCE of import goods for warehouse. In view of above facts, the appellant has correctly claimed the clearance under serial number 2 of Notification No. 5/1029-Customs(ADD) dated 24.01.2019 and the import goods is not liable to confiscation under section 111(m) and 111(o) of Customs Act, 1962; as it can be seen from the above facts that there is no willful mis-declaration of import to evade duty by claiming serial number 2 of Notification No. 5/1029-Customs(ADD) dated 24.01.2019.

Para 12.3.3 & 12.3.4:

COMMENTS :

The appellant is not accepted the above finding on the ground that the confiscation under section 111(m) and 111(o) is not sustainable in law as discussed in COMMENTS of foregoing para, the judgement discussed in finding at para 12.3.3 and 12.3.4. are not applicable.

PARA 12.4 (12.4.1, 12.4.2, 12.4.3., 12.4.4,12.4.5 12.4.6 & 12.4.7)

COMMENTS :

In view of the comments discussed in foregoing para, the finding and conclusion are not accepted by the appellant.

In view of above discussion, the appellant is of the view that since the demand itself is hit by law of limitation as well as on merits discussed hereinabove, the ADD paid by the appellant as prescribed at Sr. No.2 of Notification No. 5/2019-Customs(ADD) dated 24.01.2019 is appropriate and no interest under section 28AA of the Customs Act, 1962 as well as no penalty is imposable under section 112(a)(ii) of the Customs Act, 1962; the order of confiscation under section 111(m) and 111(o) of the Customs Act, 1962 is not sustainable in law.

3. Over and above, the Appellant would like to submit that the Adjudicating Authority has, at para 12.2.10 of impugned order, travel beyond the scope of Show cause Notice (the referred the para 8 & 9 of SCN) wherein the provisions of relevant provisions of Customs Act,1962 i.e. section 110, section 111(m), section 111(o), section 112(a) & (b), section 3 of CTA , 1975 and section 3(7) of CTA, 1975 and section 5 of IGST Act, 2017 as well as section 46(4) of Customs Act, 1962 and section 17(1) of Customs Act, 1962 has been discussed but not discussed section 68 and section 15 of the Customs Act, 1962 and determined the relevant date i.e. 01.06.2020 without having discussing the Explanation-1 of section 28 of the Customs Act, 1962; it shows the prejudice mind of the Adjudicating Authority and therefore the order issued with prejudice mind have no place in law and deserves to be set aside.

4. Similarly, the Adjudicating Authority has also travelled beyond the scope of para-9 of SCN pertains to contravention and violation of law, wherein the section 68 & section 15 are not discussed but in this para the Adjudicating Authority has, for the purpose of determining the relevant date, relied on these two sections hence the relevant date determined in this para is appeared to be prejudice one and not sustainable in law.

5. The appellant would like to highlight the vital fact that in respect of clearance made by the appellant under Bill of Entry No. 7816340 dated 03.02.2020, neither CERA Audit Officer nor the Adjudicating Authority has examined that in aforesaid Bill of Entry the appellant has specifically provided the details of advance authorization No. 810145566 dated 26.06.2019 and No. 810147408 dated 05.03.2020 with the debit entry of value therefore, as per Notification No. 75/99-CUS dated 11.06.1999, no ADD is leviable on import goods imported against advance authorization therefore, it appears that the Adjudicating Authority has made an error while issuing impugned order.

6. The appellant is humbly requested to the Hon'ble Commissioner (Appeal) to kindly consider the Ground of Appeal submitted in the first appeal against OIO No. 41/ADC/VM/O&A/2022-23 dated 11.11.2022; as well as the plea and documents put-forth (photograph of drums) during the hearing, while deciding the present appeal against impugned order."

आयुक्त (अपील), सीमा शुल्क, कार्यालय, अहमदाबाद

PERSONAL HEARING:

4. In pursuance of the principles of natural justice, an opportunity of personal hearing was granted to the appellant. Accordingly, personal hearing in the matter was held on 09.12.2025, wherein Shri R. R. Dave, Consultant, appeared on behalf of the appellant and presented the case in person. During the course of personal hearing, he reiterated the grounds of appeal and made submissions in support of the appeal.

DISCUSSION & FINDINGS:

5. Before going into the merits of the case, it is observed from the Form C.A.-1 that the impugned order dated 24.12.2024 is shown to have been received on 27.12.2024 and that the present appeal has been filed on 20.02.2025. Accordingly, the present appeal has been filed within the normal period of 60 days prescribed for filing an appeal under Section 128(1) of the Customs Act, 1962.

5.1 It is further observed that the appellant, with respect to the payment of mandatary pre-deposit for filing appeal, submitted that in the first round of appeal proceedings, they have deposited an amount of Rs.18,124/- towards pre deposit vide challan no. 610 dated 11.11.2023 in compliance to the provisions of Section 129E of the Customs Act, 1962.

5.2 As the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal. One set of the appeal memorandum has forwarded to the adjudicating authority for comments vide this office letter dated 25.03.2025, but no reply thereof has been received. So, I proceed to decide the appeal on the basis of documents submitted by the appellant.

6. I have carefully examined the Impugned Order, the Appeal Memorandum filed by the Appellant, the written and oral submissions made during the course of hearing, as well as the documents and evidence available on record. The primary issue for consideration in the present appeal is whether the goods imported by the appellant are liable to Anti-Dumping Duty in terms of Sr. No. 02 of Notification No. 05/2019-Cus. (ADD) dated 24.01.2019, as contended by the appellant, or under Sr. No. 03 of the said Notification, as determined by the Adjudicating Authority, and whether the impugned finding is legally sustainable in the facts and circumstances of the case.

6.1 It is observed from the records that the importer M/s. Mahe Global Impex, Ahmedabad had imported 18000 Kgs. of goods declared as 'Meta Phenylerie Diamine 99.5 PCT MIN (MPD) from China from the supplier M/s. Buipo International Shanghai, China. The importer had filed In-Bond Bill of Entry No. 7460934, dated 16.04 2020 . The importer had sold 6075 Kgs of warehoused imported goods MPD to the appellant. Thereafter. the appellant had filed Ex-bond Bill of Entry No. 7816340, dated 03.06 2020 for clearance of 6075 Kgs. of the imported goods MPD and paid Anti Dumping Duty @

USS 573.92 Per MT as per Sr. No. 2 of the ADD Notification No.: 05/2019-Customs (ADD) dated 24.01.2019.

6.2 It is further observed that the Audit officers of the CRA raised objection that as per the documents uploaded in e-Sanchit i.e. Invoice and Certificate of Origin, the Supplier and Producer of the imported goods MPD was M/s. Buipo International Shanghai, China. Hence, Anti Dumping Duty appeared leviable @ US$ 1015 44 Per MT as per the Sr. No. 3 of the ADD Notification No.: 05/2019-Customs (ADD) dated 24.01.2019. Therefore, the officers of the CRA vide LAR No. 08/2020-21, dated 08.02.2021 had raised objection regarding short levy of Anti Dumping Duty and IGST to the tune of Rs. 2,41,651/- due to incorrect application of rate of Anti Dumping Duty. The query was communicated to the appellant with request to pay the short levied Anti Dumping Duty and IGST, but they did not agree with the audit objection. Accordingly, a Show Cause Notice dated 24.05.2022 was issued to the appellant. The said notice was adjudicated vide Order-in-Original dated 11.11.2022, whereby the proposals made in the Show Cause Notice were confirmed. Aggrieved by the said order, the appellant preferred an appeal before the Commissioner (Appeals), Customs, Ahmedabad. Vide Order-in-Appeal dated 25.06.2024, the Commissioner (Appeals) remanded the matter to the Adjudicating Authority for fresh adjudication after considering the submissions made by the appellant. In the remand proceedings, the Adjudicating Authority, vide the impugned Order-in-Original, confirmed the demand of differential Customs duty along with applicable interest and also imposed penalty, ordered confiscation of the goods with option for redemption on payment of fine, and imposed penalty on the appellant. Aggrieved by the said impugned order, the appellant has filed the present appeal.

6.3 It is observed from the submissions made in the Grounds of Appeal that the appellant had filed Ex-Bill of Entry No. 7816340 dated 03.06.2020 for clearance of the imported goods. The appellant has contended that neither the CERA Audit Officer nor the Adjudicating Authority examined the fact that in the aforesaid Bill of Entry they had specifically declared the details of Advance Authorisation No. 810145566 dated 25.06.2019 and Advance Authorisation No. 810147408 dated 05.03.2020, along with the debit entry of value.

The appellant has further submitted that, in terms of Notification No. 75/99-Cus. dated 11.06.1999, Anti-Dumping Duty (ADD) is not leviable on goods imported against a valid Advance Authorisation. However, it is observed that the Adjudicating Authority has not examined and discussed the aforesaid contention regarding import of goods under the said Advance Authorisations and the applicability of Notification No.

75/99-Cus. dated 11.06.1999, which provides exemption from levy of ADD on such imports.

6.4 It is further observed that the appellant has contended on various counts that the photographs of the drums and other supporting documents submitted before the appellate authority during the first round of appeal were not considered by the Adjudicating Authority while passing the impugned order. The appellant has submitted that the non-consideration of the submissions and documentary evidence placed on record amounts to violation of the principles of natural justice. It is their contention that the impugned order has been passed without proper appreciation of the material available on record.

6.5 In view of the observations made in paras 6.3 and 6.4 above, it is observed that the contentions raised by the appellant regarding import of the goods under the aforesaid Advance Authorisations and the applicability of Notification No. 75/99-Cus. dated 11.06.1999 have not been properly examined by the Adjudicating Authority. It is also noticed that the submissions and documentary evidences, including photographs of the drums and other supporting documents placed on record by the appellant, have not been duly considered while passing the impugned order.

Non-consideration of the relevant submissions and evidences amounts to violation of the principles of natural justice. Therefore, the impugned order cannot be sustained in its present form. Accordingly, the matter is remanded to the Adjudicating Authority for fresh adjudication with a direction to examine the submissions and evidences of the appellant and thereafter pass a speaking order in accordance with law after providing reasonable opportunity of personal hearing to the appellant.

6.6 In this regard, I 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 P. Ltd. [2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677(Tri. – Del)] wherein it was held 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. Accordingly, the present remand of the matter to the Adjudicating Authority is in consonance with the above judicial pronouncements.

7. In view of the discussions and findings recorded above, the impugned Order-in-Original is set aside and the matter is remanded to the Adjudicating Authority for fresh adjudication in terms of the observations made in this order. The Adjudicating Authority shall examine the submissions and evidences placed on record by the appellant and thereafter pass a speaking and reasoned order in accordance with law, after granting reasonable opportunity of personal hearing to the appellant. The appeal, therefore, is allowed by way of remand.

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

F. No. S/49-289/CUS/AHD/2024-25 Date: 16.03.2026

By email (as per Section 153(1)(c) of the Customs Act, 1962)

By Speed post.

M/s. Abhinav Industries,
Plot K/4, GIDC, Phase-II,
BH Vimal Water Tank,
Naroda, Ahmedabad.

abhinavdyes@yahoo.co.in info@abhinavdyes.com

आयुक्त (अपील), सीमा शुल्क, कार्यालय अहमदाबाद

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, In charge of ICD Khodiyarr, Ahmedabad (cus-ahmd-adj@gov.in)
4. The Assistant Commissioner of Customs, ICD- Khodiyaar, Ahmedabad (icdkhd-ahd@gov.in icd_ahd@yahoo.co.in)
5. Shri R R Dave , Consultant of M/s. Abhinav Industries, Naroda, Ahmedabad (imalogistic@gmail.com)
6.Guard File.