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 – 20250571MN00005075D4

क	फ़ाइल संख्या FILE NO.	S/49-337/CUS/AHD/23-24
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-062-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.05.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No. 29/AB/ADC/ICD-SACHIN/SRT/2023-24, dated 29.09.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Shree Textiles, H 165, Shree Ram Indust. Co. Op. Society Ltd., Udhna – Magdala Road, Surat, Gujarat – 395 005

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 सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और ब्याज 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 ब्याज 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 ब्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

Order-In-Appeal

M/s. Shree Textiles, H 165, Shree Ram Indust. Co. Op. Society Ltd., Udhna – Magdala Road, Surat, Gujarat – 395 005 (hereinafter referred to as "the Appellant") have filed the present appeal against the Order – In - Original No. 29/AB/ADC/ICD-SACHIN/SRT/2023-24, dated 29.09.2023 (herein after referred to as "the impugned order") passed by the Additional Commissioner, Customs, Surat (herein after referred to as "the "adjudicating authority").

2. Facts of the case, in brief, are that the Appellant had imported Capital Goods machinery, i.e., 02 sets of Capital goods, i.e., Computerized Embroidery Machine, under EPCG Licence No. 5230011304, dated 28.02.2013 by saving Customs Duty amount of Rs. 6,48,730/- (Actual Duty Utilization of Rs. 6,56,509/-) under the cover of the below mentioned Bill of Entry at a concessional rate of duty @ 3% by availing the benefit of exemption available under Notification No. 103/2009 - Cus., dated 11.09.2009. The details of import are as per Table – I below:

TABLE - I

Sr. No.	Bill of Entry No. & Date	Number of machinery cleared	Duty saved / available as per EPCG Licence (In Rs.)	Total Duty Foregone / Debited at the time of clearance (In Rs.)	Bank Guarantee Amount (In Rs.)
1.	9802271, dated 09.04.2013	01	6,48,730/-	2,55,797/-	1,07,000/-
2.	9976056, dated 27.04.2013	01		4,00,712/-	
	TOTAL	**02 Sets**	**6,48,730/-**	**6,56,509/-**	

2.1 Against the said EPCG Licence No. 5230011304, dated 28.02.2013, the Appellant had executed a Bond dated 05.04.2013 before the Deputy/Assistant Commissioner of Customs, ICD – Sachin, Surat for an amount of Rs. 20,00,000/- backed by a Bank Guarantee No. SPCBL/2013-14/92/1, dated 03.04.2013 for Rs. 1,07,000/- issued by the Surat Peoples Co-Op Bank Ltd., Navapura, Surat. They had undertaken to fulfillll the export obligation as specified in the Notification and the licence.

2.2 The said machinery, i.e., 02 sets of Computerized Embroidery Machines imported under the aforesaid EPCG Licence were installed at their premises, as per the Installation Certificate dated 07.06.2013 issued by the Chartered Engineer, Dr. P. J. Gandhi, Surat, Surat certifying the receipt of the goods imported and its installation.

2.3 As per the conditions of Notification No. 103/2009 - Cus., dated 11.09.2009, the Appellant was required to fulfillll the export obligation on FOB basis equivalent to Eight times the duty saved on the goods imported as specified on the Licence and Authorization, within a period of Eight years from the date of issuance of EPCG Licence In the instant case, the EPCG Licence was issued to the Appellant on 28.02.2013 and accordingly, they were required to fulfillll export obligation by 27.02.2021, i.e., within a period of Eight 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 Letters from F. No. ICD-Sachin/48/2013-14, dated 18.03.2021 and F. No. VIII/6-48/ICD-SACHIN/2013-14, dated 11.07.2022 wer issued to the Appellant requesting them to submit the copy of EODC or any extension issue 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 dated 21.10.2022 vide letter F. No. ICD-Sachin/DGFT/07/2020-21 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 fulfilment of the export obligation have been received by their office against the aforesaid EPCG Licence No. 5230011304, dated 28.02.2013. 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 any documents to them, against EPCG License No. 5230011304, dated 28.02.2013 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. 103/2009 - Cus., dated 11.09.2009, 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. 6,56,509/- 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. SPCBL/2013-14/92/1, dated 03.04.2013 for Rs. 1,07,000/- issued by the Surat Peoples Co-Op Bank Ltd., Navapura, Surat furnished by them against the aforesaid EPCG Licence No. 5230011304, dated 28.02.2013 appeared liable to be encashed and deposited in the Government Exchequer.

2.7 Accordingly, a Show Cause Notice under F. No. CUS/EPCG/MISC/ 260/2023-SRT-CUS-COMMRTE-AHMEDABAD, dated 21.03.2023 was issued to the Appellant, proposing as to why:

i. The benefit of concessional rate of duty @ 3% for EPCG Scheme under Notification No. 103/2009-Cus., dated 11.09.2009 on the imported Computerized Embroidery Machine imported in their name should not be denied;

ii. Customs Duty amounting to Rs. 6,56,509/- 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. 103/2009-Cus., dated 11.09.2009

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. SPCBL/2013-14/92/1, dated 03.04.2013 for Rs. 1,07,000/- issued by the Surat Peoples Co-Op Bank Ltd., Navapura, Surat 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. 103/2009-Cus., dated 11.09.2009 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 concessional rate of duty @ 3% for EPCG Scheme under Notification No. 103/2009-Cus., dated 11.09.2009 on the subject machinery imported in the name of the Appellant;

ii. He confirmed the demand of Customs Duty amounting to Rs. 6,56,509/- being the duty foregone at the time of import of Capital Goods under EPCG Licence in terms of Notification No. 103/2009-Cus., dated 11.09.2009 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. 1,07,000/- by encashment of the Bank Guarantee No. SPCBL/2013-14/92/1, dated 03.04.2013 for Rs. 1,07,000/- issued by the Surat Peoples Co-Op Bank Ltd., Navapura, Surat. The same already encashed and deposited in the Government Exchequer vide TR-6 Challan No. 04/2023-24, dated 17.04.2023 may be adjusted against the duty liability at Sr. No. (ii) above;

iv. He confiscated the subject imported Capital goods 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. 103/2009 - Cus., dated 11.09.2009. However, he gave an option to redeem the said goods on payment of redemption fine of Rs. 3,32,189/- under Section 125 (i) of the Customs Act, 1962;

v. He imposed penalty of Rs. 65,650/- upon the Appellant under Section 112 (a) (ii) of the Customs Act, 1962;

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

3. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellant have filed the present appeal. The Appellant have, inter-alia,

raised various contentions and filed detailed submissions as given below in support of their claims:

- That so far recovery of Customs duty on account of non-fulfillment of export obligation is concerned, there is a mechanism for recovery of duty not paid or short paid or erroneously refunded in the said Bond executed by them on 05.04.2013 before the Ld. Lower authority. In the circumstances, the Bond had to be enforced and the recovery proceedings would have been initiated in terms and conditions of the Bond executed. They relied upon the decision of the the Hon'ble CESTAT, Regional Bench, Hydrabad in case of S. Balasubramanian, DIR. (Operations), Surana Telecom & Power Ltd. Vs C.C.E., C. & S.T., HYDERABAD-III reported at 2019(370) ELT 1412 (Tri-Hyd) in support of their claim;
- As per provision of Notification No. 103/2009-Customs dated 11.09.2099 read with provisions of Foreign Trade Policy-2009-2014, if there is any violation on part of the EPCG authorization holder, it does provide only recovery of duty saved amount with interest. It does not provide levy of redemption fine in lieu of confiscation of the imported goods and levy of penalty under any provision of the Customs Act, 1962;
- As per the terms and conditions of the aforesaid provision, the adjudicating authority would have proceeded for recovery as per the provision of Section 142 (2) of the Customs Act, 1962. There was no need to issue Show Cause Notice under the provision of the Customs Act, 1962. It appears that the Show Cause Notice is issued with mind-set to levy redemption fine in lieu of confiscation and penalties under Section 112 (a) (ii) and Section 117 of the Customs Act, 1962;
- As per provision of Notification No. 103/2009-Customs, dated 11.09.2009 read with the FTP – 2009–2014, if there is any violation on part of the EPCG authorisation holder, it does provide only recovery of duty saved amount with interest but not does not provide levy of redemption fine in lieu of confiscation of the imported goods and penalties under the provisions of Customs Act, 1962;
- The adjudicating authority has wrongly confiscated the goods and wrongly imposed redemption fine under Section 125 (1) of the Customs Act, 1962;
- That they had fulfilled all the conditions of the import and thereafter the imported capital goods was cleared for home consumption. The material fact was that at the time of importation, the goods was not of offending in nature and not required to be confiscated as per provision of Section 111 (o) of the Customs Act, 1962;
- As per the Bond conditions, no Show Cause Notice was to be issued, no confiscation of goods would have been arisen, and as such no redemption fine and multiple penalties under Section 112 and 117 of the Customs Act, 1962 would have been entailed. Hence, the impugned order is not sustainable and is required to be set aside;

PERSONAL HEARING:

4. Personal hearing in the matter was held on 08.05.2025. Shri R. D. Jadav, Consultant 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 as well as records of the case and the submission made on behalf of the Appellant during the course of hearing. 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 penalty upon the Appellant under Sections 112 (a) (ii) and 117 of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

6. Being aggrieved, the Appellant has filed the present appeal on 10.11.2023. In the Form C.A.-1, the date of communication of the Order-In-Original dated 29.09.2023 has been shown as 07.10.2023. 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 the duty along with interest, thereby fulfilling the requirement of pre-deposit of filing the appeal as envisaged under the Section 129 E of the Customs Act, 1962. 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 appeals has been admitted and being taken up for disposal on merits.

7. Considering the facts of the case, it is observed that it is not in dispute that the proceedings have arisen on account of the fact that the Appellant had failed to fulfilll the export obligation as specified in the Licence and did not comply with the mandatory condition of the Notification No. 103/2009 - Cus., dated 11.09.2009. It is not under dispute that the Appellant have not fulfilled their export obligation inasmuch as they have not submitted the Export Obligation Discharge Certificate evidencing the fulfillment of the export obligation in respect of the EPCG License No. 5230011304, dated 28.02.2013 issued by the DGFT. It is further observed from the records of the case that the Appellant have not been able to submit the EODC before the appellate authority as well. It is pertinent to mention that in view of non-submission of the EODC, the Appellant is not entitled to the benefit of the Notification *ibid*. Since, the export obligation have not been fulfilled under the Notification *ibid*, the resulting proceeding clearly fall under the provisions of Customs Act, 1962. In view of the above, I agree with the observations and findings of the adjudicating authority and do not find any justification to interfere with the findings in the impugned order passed by the adjudicating authority.

8. As regard the issue of confiscation of the subject Capital Goods, the adjudicating authority in the impugned order has held that:

> *"19. Regarding the issue of liability of subject Capital Goods to confiscation, I find that the Capital Goods were imported by availing the benefit of exemption under Notification No. 103/2009-Cus dated 11.09.2009. One of the conditions laid down in the said exemption Notification is that the Noticee was required to export goods valued at Eight times the amount of Duty so saved within a period of Eight years. Thus, the exemption was admissible subject to fulfillment of the conditions laid down in the exemption Notification. In the instant case, the condition stipulated under the exemption Notification has not been fulfilled and thereby I find that the said Capital Goods are liableto confiscation in terms of the provisions of Section 111 (o) of the Customs Act, 1962....."*

8.1 In this regard, it is relevant to refer to the Section 111 (o) of the Customs Act, 1962, which is reproduced below for ease of reference:

> ***"111. Confiscation of improperly imported goods, etc.***
>
> *The following goods brought from a place outside India shall be liable to confiscation:*
>
> *(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;"*

8.2 On perusal of the above legal provision, it is observed that this sub-clause is applicable in respect of any goods which were exempted subject to certain condition and upon violation of such condition, the said goods shall be liable for confiscation.

8.3 It has been already held in the above paragraph that the Appellant have failed to fulfill the exemption condition as envisaged under Notification No. 103/2009 – Cus., dated 11.09.2009. Hence, I am of the considered view that the violation which has been alleged and upheld by the adjudicating authority in the impugned order is correct inasmuch as the conditions laid down in the Notification *ibid* have not been fulfilled by the Appellant. Accordingly, the confiscation ordered by the adjudicating authority for the violation of the Notification No. 103/2009 – Cus., dated 11.09.2009 is correct and in accordance with the law. In view of the above, I do not find any infirmity in the findings of the adjudicating authority with regard to the confiscation of the subject goods under Section 111 (o) of the Customs Act, 1962.

9. As regards the penalty under Section 112 (a) of the Customs Act, 1962, it is observed on perusal of the plain text of the Section 112 (a) of the Customs Act, 1962, that any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, shall be liable

to penalty. It has been already held in above paragraph that the subject goods are liable for confiscation under Section 111 (o) of the Customs Act, 1962. In this context, it is relevant to refer to the judgment of Hon'ble Tribunal, Mumbai in the case of Vijaybhai Vs. Commissioner of Customs, Airport, Mumbai - 2014 (313) E.L.T. 506 (Tri. - Mumbai), wherein the Hon'ble Tribunal has held that once the goods are found liable to confiscation under Section 111, penalty under Section 112 is consequential. The relevant para of the order is reproduced below: -

> ***"9.27*** *The last issue for consideration is regarding the penalties to be imposed on the appellants. Once the goods are found liable to confiscation under Section 111, penalty under Section 112(a) is consequential. It is a settled position in law that for imposition of penalty under Section 112(a), there is no requirement of mens rea. In the present case mens rea is clearly evident from the documentary evidences available on record and also from the statements of the appellants. Penalties of Rs. 70 lakhs and Rs. one crore has been imposed on the appellants M/s. Vijaybhav and M/s Deepali Exports respectively. Considering the fact that all these frauds have been committed to save the premium on REP licences which is on an average 3% of the value of the licences and also considering the fact that 3% of the face value of the forged licences far exceeds the penalties imposed, we do not find it necessary or appropriate to interfere with the penalties imposed on these two appellants. In the facts and circumstances of the case, the penalties imposed cannot be said to be harsh or excessive. As regards the penalties of Rs. 80 lakhs and Rs. 1 crore imposed on M/s. Vaibhav Exports and M/s. Pushpak Impex, 3% of the value of imports on the basis of forged licences works out to Rs. 42 lakhs and Rs. 36 lakhs. Therefore, in respect of these two appellants, we reduce the penalties from Rs. 80 lakhs and Rs. 1 crore to Rs. 42 lakhs and Rs. 36 lakhs respectively. Since all the firms are proprietary firms, there is no need to impose separate penalties on the firm as well as their proprietors. Therefore, we set aside the penalties imposed on Gyanchand Jain, Rajesh Jain, Hiralal Uttamchand Jain and Kamlesh Khicha"*

9.1 Further, it is pertinent to mention that mens rea is not a pre-requisite for imposition of the penalty under Section 112 (a) of the Customs Act, 1962. It is relevant to refer to the observation of the Hon'ble CESTAT, Mumbai Bench in case of Shipping Corporation of India [2014 (312) E.L.T. 305 (Tri.-Mumbai)] wherein, it is held that :

> *"6.17 .....However penalty under Section 112(a) is sustainable as the said section does not require any mens rea on the part of the appellants and mere violation of the statutory provisions would suffice. The decisions of the Hon'ble Apex Court in the case of Gujarat Travancore Agency v. CIT [(1989) 177 ITR 455 (S.C.) = 1989 (42) E.L.T. 350 (S.C.)] and Chairman, SEBI v. Sriram Mutual Fund & Anr. [2006-TIOL-72-SC-SEBI] refer and ratio of the same would apply. ....."*
>
> (emphasis supplied)

9.2 Similarly, in case of Imperial Trading LLC [2005 (181) E.L.T. 29 (Tri.-Mumbai)], it is held that :

> **"11.** The Commissioner imposed a penalty of Rs. 2.00 lakhs on the importing

firm under Section 112(a) of the Customs Act. The appellant, M/s. Impex Enterprises, caused the import of goods which are liable to confiscation under Section 111. Mens rea is not a necessary ingredient for imposing a penalty under Section 112(a) of the said Act. However, having regard to the circumstances of the case, we reduce the penalty to Rs. 1.00 lakh."

(emphasis supplied)

9.3 In view of the above, I am of the considered view that the Appellant is liable to penalty under Section 112 (a) (ii) of the Customs Act, 1962. Accordingly, I agree with the observations and findings of the adjudicating authority and I uphold the impugned order imposing penalty upon the Appellant under Section 112 (a) (ii) of the Customs Act, 1962 and reject the contention of the Appellant.

10. As regards penalty under Section 117 of the Customs Act, the same is reproduced below for ease of reference:-

"117. Penalties for contravention, etc., not expressly mentioned. — Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees."

10.1 On perusal of the above legal provision, it emerges that the penalty under this act can be imposed on any person for contravention of any provision of the Act or abetting any such contravention or failing to comply with any provision of the Act with which it was his duty to comply for which no express penalty is provided.

10.2 In the instant case, it is observed that the adjudicating has imposed penalty upon the Appellant under Section 112 of the Customs Act for violations of the conditions of the Notification No. 103/2009 - Cus., dated 11.09.2009, as they had failed to submit the EODC in respect of EPCG License No. 5230011304, dated 28.02.2013. No other contravention has been mentioned in the impugned order. As penalty has already been imposed under the Section 112 of the Customs Act, 1962 for this contravention, in my considered view no penalty under Section 117 of the Customs Act, 1962 can be imposed. In view of the above, the penalty imposed upon the Appellant under Section 117 of the Customs Act, 1962 is legally not sustainable, and is liable to be set aside.

11. In view of the discussions made above, the appeal filed by the Appellant is disposed off in below terms:

i. The impugned order disallowing the benefit of concessional rate of duty @ 3% for EPCG Scheme under Notification No. 103/2009-Cus., dated 11.09.2009 on the subject machinery imported in the name of the Appellant is upheld;

ii. The impugned order confirming the demand of Customs Duty amounting to Rs. 6,56,509/- being the duty foregone at the time of import of Capital Goods under

EPCG Licence in terms of Notification No. 103/2009-Cus., dated 11.09.2009, along with interest is upheld;

iii. The impugned order appropriating the amount of Rs. 1,07,000/- by encashment of the Bank Guarantee No. SPCBL/2013-14/92/1, dated 03.04.2013 issued by the Surat Peoples Co-Op Bank Ltd., Surat towards the duty liability at Sr. No. (ii) above is upheld;

iv. The impugned order confiscating the subject imported Capital goods under Section 111 (o) of the Customs Act, 1962 and subsequently imposing redemption fine under Section 125 (1) of the Customs Act, 1962 is upheld;

v. The impugned order imposing penalty of Rs. 65,650/- under Section 112 (a) (ii) of the Customs Act, 1962 is upheld;

vi. The impugned order imposing penalty of Rs. 1,00,000/- under Section 117 of the Customs Act, 1962 is set aside;

12. Accordingly, the appeal filed by the Appellant is disposed off in above terms.

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

F. No. S/49-337/CUS/AHD/2023-24/1957

Date: 30.05.2025

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