सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
चौथी मंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road, नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.
दूरभाष क्रमांक Tel. No. 079-26589281
DIN-20260271MN0000318543

क	फ़ाइल संख्या FILE NO.	F.No. S/49-271/CUS/AHD/2024-25
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-560-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	26.02.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	O.I.O. No. 09/AR/ADC/SRT/2024-25 dated 13.11.2024 passed by the Additional Commissioner of Customs, Customs Division Surat, Surat.
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	26.02.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Hy-Tuf Steels Pvt. Ltd. Survey No. 549, Village Mokshi, Tal. Salvi, Dist. Vadodara, Gujarat – 390007.

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.

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	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 (यथासंशोधित) में निर्धारित फीस जोअन्य रसीद,फीस,दण्ड,जब्तीऔर विविध मदों के शीर्षके अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/- (रूपए एक हज़ार मात्र),जैसा भी मामला हो,से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां. यदि शुल्क,मांगा गया ब्याज,लगाया गया दंड की राशिऔर 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:

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	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलियअधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने,मांगे गए शुल्क के 10 % अदा करने पर,जहां शुल्क या शुल्क एवं दंड विवाद में हैं,या दंड के10 % अदा करने पर,जहां केवल दंड विवाद में है,अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute; or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

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ORDER-IN-APPEAL

1. M/s. Hy-Tuf Steels Pvt. Ltd. (hereinafter referred as 'the appellant') has filed the present appeal under Section 128 of the Customs Act, 1962, against an Order-In-Original No. 09/AR/ADC/SRT/2024-25 dated 13.11.2024 (hereinafter referred to as 'the impugned order), passed by the Additional Commissioner of Customs, (In-charge: Customs Division Surat), Surat (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant has supplied TMT Bars falling under Chapter 72 to an SEZ Unit viz. M/s. Mahansaria Tyres Pvt. Ltd. situated within HBS SEZ. The subject goods were attracting export duty @15% during the period of 22.05.2022 to 18.11.2022 as per the provisions of Notification Nos. 28/2022-Customs and 29/2022-Custom, both dated 21.5.2022. As the appellant had not paid export duty on their supply to SEZ Unit, a Show Cause Notice dated 16.05.2024 came to be issued to the appellant towards demand of Export Duty of Rs. 14,86,266/- along with interest under the provisions of Section 28(1) and Section 28AA of the Customs Act, 1962. Vide impugned order dated 13.11.2024, the said demand has been confirmed by the adjudicating authority.

3. Being aggrieved, the appellant has filed the present appeal. Vide email dated 24.02.2026, the Advocate of the appellant has sent following written submissions:

THE FIFTH PROVISO TO RULE 27 SEZ ACT, 2005 IS ULTRA VIRES THE SEZ ACT, 2005 AND VIOLATIVE OF ARTICLE 265 OF THE CONSTITUTION OF INDIA

3.1. At the outset, the Appellant submits that the 5th proviso to Rule 27 of the SEZ Rules, 2006, which seeks to impose export duty on DTA to SEZ supplies, is ultra vires the SEZ Act, 2005 as well as Article 265 of the Constitution of India. The reasons for the same have been detailed in the forthcoming paragraphs. No export duty is payable on supplies from DTA to SEZ

3.2. Export Duty under Section 12 of the Customs Act is leviable only on the 'export' of goods specified in the Second Schedule to the Customs Tariff Act and only when such goods are taken out of India to a place outside India. This is evident from Section 2(18) of the Customs Act, which defines 'export' as taking goods out of India to a place outside India. It is clear that the legislative intent is to levy export duty only when goods

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physically leave India. Supplies from DTA to SEZ do not involve taking goods outside India and therefore, the same do not fall within the scope of export duty under the Customs Act.

3.3. The Appellant submits that any levy of tax must strictly comply with Article 265 of the Constitution which mandates that no tax shall be levied or collected except by authority of law. Hence, only a statute can create a levy, a mere rule cannot. Therefore, the 5th proviso to Rule 27, being a delegated legislation, cannot create a levy by imposing export duty on DTA to SEZ supply in absence of a charging provision in the parent statue.

3.4. Although Section 2(m) of the SEZ Act expands the meaning of 'export' to include supplies from DTA to SEZ, there is no charging section under the SEZ Act that imposes export duty on such transactions. In contrast, Section 30 of the SEZ Act expressly creates a levy of duty on clearance of goods from SEZ to DTA, thereby showing that whenever the legislature intended to impose a duty, it did so through a charging provision. No such provision exists for DTA to SEZ movement. Therefore, the 5th proviso to Rule 27 imposes a levy without statutory backing and is violative of Article 265 of the Indian Constitution.

3.5. In this regard, the Appellant submits that the present issue stands settled by the decision of the Hon'ble Gujarat High Court in *Essar Steel Ltd. v. Union of India [2010 (249) E.L.T. 3 (Guj.)]*, wherein the Hon'ble High Court held that export duty is leviable only on movement of goods from India to any other place outside India. Movement of goods from a DTA unit to SEZ unit is not considered as export and therefore, no export duty was leviable. Further reliance in this regard is placed on the various decisions.

3.6. The Impugned Order has disregarded the judgments cited by the Appellant in the reply to SCN, by stating that the same were passed prior to the insertion of the fifth (5th) proviso to Rule 27. However, the Appellant submits that the proviso itself is ultra vires as explained in the forthcoming paragraphs. The fifth (5th) Proviso to Rule 27 has already been struck down by the Hon'ble Andhra Pradesh High Court

3.7. Recently, the Hon'ble Andhra Pradesh High Court in the case of ***M/s. TUF Metallurgical Private Limited v. Union of India, 2025 (9) TMI 1171***, has categorically held **that the 5th proviso to Rule 27(1) of the SEZ Rules, 2006 is ultra vires the SEZ Act, 2005 and has struck it down. The Hon'ble High Court has held that as per Article 265 of the** Constitution, any levy of tax or duty is required to be backed by a valid law enacted by the legislature. It was further held that "law" in the context of Article 265 meant an Act of legislature and not an executive order or Rule without express statutory authority. In this regard, the Hon'ble High Court has categorically held that there is no provision in the SEZ Act which makes removal of goods from DTA to SEZ susceptible to levy of Customs Duty.

3.8. In light of the abovementioned decision, the issue raised in the present case is no longer res integra and the very Rule i.e., 5th proviso to Rule 27, under which the Department has relied upon to demand export duty from the Appellant has already been declared unconstitutional and struck down. Consequently, no export duty can be demanded on supplies from DTA to SEZ, as there is no statutory charging provision either under the Customs Act or the SEZ Act to support such a levy.

3.9. Furthermore, the Hon'ble Apex court in the case of *Adani Power Ltd. vs Union of India, 2026 (1) TMI 224*, while deciding on the levy of customs duty on supply from an SEZ to DTA, has emphasized on the importance of judicial discipline. The Hon'ble Apex Court has held that it is the obligation of the State to give full effect to judicial pronouncements and has specifically held that judgments are not "one-time indulgences" and continued enforcement of a levy which is already struck down undermines the rule of law and finality in litigation.

3.10. Therefore, in light of the above submissions, the Appellant submits that the 5th proviso to Rule 27 is ultra vires the SEZ Act and Article 265 of the Constitution. Further, export duty has already been paid by the SEZ unit and demanding it again from the Appellant results in clear double taxation. Therefore, the impugned order is devoid of merit and is liable to be set aside in its entirety.

3.11. Without prejudice, the Appellant submits that the SEZ unit, MTPL has already paid export duty under protest vide TR-6 Challans dated 29.09.2022, 03.10.2022 and 20.10.2022. The payment has not been disputed and the same was done in response to the letter dated 20.09.2022 issued by the Specified Officer. Therefore, demanding export duty again from the Appellant amounts to double taxation, which is impermissible in law. Since the duty has already been paid by the SEZ unit, there is no basis for a second demand from the Appellant.

4. In view of the above submissions, the appellant requested that the impugned

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order is required to be set aside.

ADMISSION OF APPEAL

5. One set of the appeal memorandum has been forwarded to the adjudicating authority for comments vide this office letter No. S/49-271/CUS/AHD/2024-25/5759 dated 25.03.2025. In the said letter, it has been requested, inter alia, to inform the date of receipt of the impugned order by the appellant along with evidence, but no reply/comments has been received. So, I proceed to decide the appeal on the basis of documents submitted by the appellant.

6. Along with the appeal memorandum, the appellant had submitted a copy of TR-6 Challan No. 001 dated 10.01.2025 for Rs. 1,11,470/- towards payment of pre-deposit calculated @7.5% of the duty amount under the provisions of Section 129E of the Customs Act, 1962.

7. In the Form No. C.A.-1, the appellant has shown the date of communication of the impugned order dated 13.11.2024, as "21.11.2024". The appellant submitted a photocopy of the Speed Post envelope booked on 20.11.2024, which has been received by them on 21.11.2024. Whereas, the appeal has been received in this office on 17.01.2026. Thus, this appeal has been filed within normal period of 60 days, as prescribed for filing appeal under Section 128(1) of the Customs Act, 1962.

8. In view of the above position, the appeal has been admitted and being taken up for disposal on merits.

PERSONAL HEARING

9. Personal Hearing in respect of the appeal was fixed on 02.12.2025. However, the appellant, vide letter dated 28.11.2025, sought an extension of 60 days for attending the hearing and so, the said PH was adjourned. The Personal Hearing in this matter was held on held on 24.02.2026, which has been attended by Mr. Ganesh Aravindh, Advocate, on behalf of the appellant. He reiterated the written submissions and compilation filed by him. He further submitted that the 5th proviso to Rule 27 of the SEZ Rules has been declared ultra-vires by the Hon'ble Andhra Pradesh High Court in *TUF Metallurgical Private Ltd. Vs. Union of India, 2025 (9) TMI 1171* and therefore, export duty cannot be demanded on the goods supplied from Domestic Tariff Area to Special Economic Zones.

DISCUSSION AND FINDINGS

10. I have carefully gone through the written as well as oral submissions made by or on behalf of the appellant viz. M/s. Hy-Tuf Steels Pvt. Ltd.

11. I have seen photocopies of T.R.6 Challans towards Export Duty deposited by M/s. M/s. Mahansaria Tyres Pvt. Ltd. ('M/s. MTPL' for short) in their own name as assessee/importer/exporter. Any particulars like Invoice Nos. & Date, SCN/OIO No. & Date in respect of M/s. "M/s. Hy-Tuf Steels Pvt. Ltd." have not been mentioned in the said T.R.6 Challans. Further, it has been mentioned by the appellant that M/s. MTPL discharged export duty under protest; that subsequently M/s. MTPL approached to Hon'ble Gujarat High Court challenging constitutional validity of the fifth proviso to Rule 27 of the SEZ Rules with consequential relief of refund of duty paid by them under protest and the said proceedings are pending before Hon'ble Gujarat High Court.

12. If the liability to pay export duty on supplies made from DTA to SEZ arises, such liability to pay export duty is on the DTA supplier, not on SEZ unit; and so, the export duty is required to be assessed and paid by the DTA supplier, if required. Therefore, I am of the view that copies of TR-6 Challans deposited by M/s. Mahansaria Tyres Pvt. Ltd. are not relevant to the present matter. So, the present appeal filed by M/s. Hy-Tuf Steels Pvt Ltd. in respect of demand of export duty from them is required to be decided on merits.

13. The issue involved in the appeal is whether export duty on the goods supplied by the appellant to SEZ Unit is leviable or not.

14. In the Judgment dated 04.11.2009 in the case of ***Essar Steel Limited and Adani Power Ltd. Vs. Union of India*** [2010 (249) E.L.T. 3 (Guj.) = 2009 (11) TMI 141 - GUJARAT HIGH COURT], Hon'ble High Court of Gujarat has held that the levy of export duty on the goods supplied from Domestic Tariff Area to Special Economic Zone is not justified; that the petitioners not to be called upon to pay export duty on movement of goods from DTA to SEZ units or developers. I note that Special Leave to Appeal (Civil) No. 5698 of 2010 with SLP (C) Nos. 6204, 6307, 7818, 7931, 9243 and 10118 of 2010 filed by Union of India against the aforesaid Judgment dated 04.11.2009 has been dismissed by Hon'ble Supreme Court on 12.07.2010 [Union of India v. Essar Steel Ltd. - 2010 (255) E.L.T. A115 (S.C.)]. However, the said Order dated 12.07.2010 has been recalled by Hon'ble Supreme Court vide Order dated 10.02.2020 reported as ***Union of India Vs. Essar Steel India Ltd.***

[2022 (380) ELT 403 (SC)] and the SLPs had been restored. Now, Hon'ble Supreme Court has decided this issue vide Order dated 28.08.2025, which has been reported as *Union of India Vs. Adani Power Ltd.* [(2025) 36 Centax 257 (S.C.)]. In the said latest Order, it has been observed and held by the Apex Court as under:

> *"4.3 Similarly, the third question has been considered by the High Court in paragraph 41.3 and after discussion, the answer to the said question has been given in paragraph 41.3.4 of the impugned judgment. Consequently, the High Court has held in paragraph 42 as under:*
>
> > *"42. In view of the above discussion and findings arrived at as well as conclusion drawn, the levy of export duty on goods supplied from the Domestic Tariff Area to the Special Economic Zone is not justified. The petitioners are, therefore, not to be called upon to pay export duty on movement of goods from Domestic Tariff Area to Special Economic Zone units or developments.""*
>
> *... ... ...*
>
> *"6. We find that the High Court has rightly arrived at the conclusions in the aforesaid paragraphs on a correct interpretation of the provisions of the aforesaid two Acts. In the circumstance, we do not find any reason to interfere with the impugned judgment. Hence, the appeals are dismissed.*
>
> *7. On a conjoint reading of the aforesaid provisions, we find that Section 12 of the Customs Act, 1962 is the charging Section. However, under Section 26 of the SEZ Act, power is reserved to grant an exemption or a concession if under the provisions of the Customs Act, 1962, a duty is leviable as per the charging Sections.*
>
> *8. It is also necessary to observe as submitted by the learned senior counsel for the respondent(s) that the Madras High Court as well as the Andhra Pradesh High Court have also taken a similar view as discussed in the aforesaid impugned judgment. In the circumstances, all appeals arising therefrom are also dismissed."*

15. However, I find that the above Order/Judgment relates to the period prior to the amendment of Rule 27 of the SEZ Rules, 2006, vide Notification No. GSR 909(E) dated

19.09.2018 issued by the Ministry of Commerce and Industry. Vide the said amendment, fifth Proviso to Sub-Rule (1) of Rule 27 of the SEZ Rules, 2006, has been inserted, which is as under:

> *"Provided also that supplies from Domestic Tariff Area to Special Economic Zones shall attract export duty, in case, export duty is leviable on items attracting export duty."*

16. Therefore, it has to be examined as to whether export duty in this case can be demanded wherein the period involved is from 22.05.2022 to 18.11.2022 i.e. after insertion of the above-mentioned Proviso.

17. I find that above-mentioned fifth Proviso to Sub-Rule 27(1) has been stuck down by Hon'ble High Court of Andhra Pradesh in Writ Petition No. 15528 of 2024 in the case of *TUF Metallurgical Pvt. Ltd. vs. Union of India* reported as 2025 (9) TMI 1171 - ANDHRA PRADESH HIGH COURT = (2025) 35 Centax 280 (A.P.) [18-09-2025]. Para 27 of the said Order is as follows:

> *"27. Be that as it may, we set aside the decision dated 26.04.2024 and hold that 5th proviso to sub-rule (1) of Rule 27 of the Special Economic Zone Rules, 2006, as ultra vires the Special Economic Zone Act, 2005 and is accordingly, struck down. This writ petition is accordingly allowed."*

17.1. Further, I find that the even after insertion of the fifth Proviso in Sub-Rule 27(1) of the SEZ Rules, 2006, vide Notification dated 19.09.2018, there are no corresponding amendments in the provisions of Section 2(18) and 2(19) of the Customs Act, 1962, which define the terms "export" and "export goods" respectively. The said definitions are as under:

> *(18) "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;*
>
> *(19) "export goods" means any goods which are to be taken out of India to a place outside India;*

17.2. Further, the definition of the term "India", as given in Section 2(27) ibid, says that "India" includes the territorial waters of India. In absence of amendment in any statutory provision of the Customs Act, 1962, I am of view that Export duty cannot be levied merely by virtue of amendment in Rule 27(1) of the SEZ Rules, 2006 vide Notification dated 19.09.2018. Further, the said amendment, i.e. fifth Proviso to Rule 27(1), has already been held as ultra vires to the SEZ Act, 2005 and stuck down by Hon'ble High Court of Andhra Pradesh in the case of ***TUF Metallurgical Pvt. Ltd. vs. Union of India*** (supra).

18. It is a settled principle of administrative law that a Rule (subordinate legislation) cannot override or expand the scope of the Parent Act (Customs Act, 1962). The power to levy Customs Duty flows from Section 12 of the Customs Act. If the Charging Section (Section 12) does not cover DTA-to-SEZ supplies (as they are not "exports" out of India), a Rule made under the SEZ Act cannot independently create a charge of Customs Duty. The SEZ Act treats DTA-to-SEZ supplies as "exports" primarily for the purpose of granting benefits (exemptions, drawbacks) to authorized operations. This "deeming fiction" cannot be extrapolated to levy a tax (Export Duty) under the Customs Act when the Customs Act itself defines export strictly as "taking out of India". Since Section 12 of the Customs Act was not amended to include DTA-to-SEZ supplies as a taxable event, the proviso to Rule 27 of SEZ Rules is insufficient to fasten a duty liability that the parent Act does not impose. This view is supported by the Hon'ble AP High Court in *Tirupati Udyog Ltd. v. Union of India* [2011 (272) E.L.T. 209 (A.P.) = 2010 (7) TMI 768 - ANDHRA PRADESH HIGH COURT], wherein the Hon'ble High Court has held that the SEZ Act does not authorize the levy of Customs Duty on goods supplied from DTA to SEZ, as such goods are not "exported" beyond the territorial waters of India.

19. As regards the requirement of amendments in the provisions of the Customs Act, 1962, to levy export duty on supply of goods from DTA to SEZ, I also rely upon the Order dated 27.04.2012 of Hon'ble Madras High Court in the case of ***Advait Steel Rolling Mills Pvt. Ltd. Vs. Union of India*** [2012 (286) E.L.T. 535 (Mad.)]. The last Para of the said order is as follows (underline supplied):

"30. As there is no movement of goods from India to a place outside India, export duty cannot be levied. In fact, there is no 'export' of goods, as per the relevant provisions of the Customs Act, 1962. When the Special Economic Zones Act, 2005, is a separate Code, it would not be open to the respondents to levy duties of customs on goods moved from Domestic Tariff Areas into Special Economic Zones, as per the definition found in Section 2 of the Customs Act, 1962. Further, when the definition of term 'export' in Section 2(m) of the Special Economic Zones Act, 2005, is clear and specific, the definition of 'export', found in

Section 2(18) of the Customs Act, 1962, cannot be made applicable for the levy of duties of customs on goods supplied from the Domestic Tariff Areas to the Special Economic Zones. As such, it would not be proper on the part of the respondents to levy duties of customs on goods supplied from the Domestic Tariff Areas to the units situated in the Special Economic Zones. If levy of duties of customs are to be made applicable to such goods it could only be by way of appropriate amendments introduced in the Customs Act, 1962, as well as in the Special Economic Zones Act, 2005. As such it is clear that it would not be open to the respondents to levy duties of customs on such goods, by way of Notifications or Circulars. The writ petitions are ordered accordingly. No costs."

20. In view of the above provisions and orders, the legal position prevailed during the period involved in the present appeal, does not authorise levy of export duty on supply of goods from DTA to SEZ Unit. Therefore, I am of the considered view that the decisions of Hon'ble Supreme Court in the case of ***Union of India Vs. Adani Power Ltd.*** [(2025) 36 Centax 257 (S.C.)] and Hon'ble High Court of Andhra Pradesh in the case of ***TUF Metallurgical Pvt. Ltd. vs. Union of India*** [(2025) 35 Centax 280 (A.P.)] are squarely applicable to the facts of the present appeal; and therefore, demand of export duty on supply of the goods by the appellant to the SEZ unit is not sustainable. Since the demand for the export duty is set aside, the demand for interest under Section 28AA of the Customs Act, 1962, cannot survive. The principle *sublato fundamento cadit opus* (when the foundation is removed, the superstructure falls) applies. Therefore, the impugned order passed by the adjudicating authority is required to be set aside.

21. In view of the above facts, discussion and findings, I pass the following order:

ORDER

I set aside the Order-In-Original No. 09/AR/ADC/SRT/2024-25 dated 13.11.2024 passed by the Additional Commissioner of Customs, (In-charge: Customs Division Surat), Surat, and allow the appeal with consequential relief, in accordance with law.

आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad.
Date: 26.02.2026

F.No. S/49-271/CUS/AHD/2024-25

By E-mail (As per Section 153(1)(c) of the Customs Act, 1962)

To

M/s. Hy-Tuf Steels Pvt. Ltd.
Survey No. 549, Village Mokshi, Tal. Salvi,
Dist. Vadodara, Gujarat – 390007.
(email: marketing@hytuf.com)

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: Custom Division Surat, Surat/Ahmedabad. (email: patoadc-srtcust@gov.in adjcus-surat@gov.in cus-ahmd-adj@gov.in Custech.surat@gov.in)

4. Shri. Ganesh Aravindh, Advocate, Lakshmikumaran Sridharan Attorneys, Chennai. (email: ganesh.aravindh@lakshmisri.com)

5. Guard File.

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