



सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
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DIN-20251171MN000049434A

क	फाइल संख्या FILE NO.	S/49-26/CA-2/CUS/AHD/2024-25
ख	अपीलआदेश संख्या ORDER-IN- APPEAL No. (सीमाशुल्कअधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-321-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	11.11.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	O.I.O. No. 20/AC/ACC/OIO/Light/2024-25, dated 22.07.2024 passed by the Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	11.11.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT/RESPONDENT:	Appellant: The Assistant Commissioner of Customs, Air Cargo Complex, Old Airport, Ahmedabad. Respondent: M/s. Light Inside Pvt. Ltd., FF-1/2, Maruti Arcade, Shivranjani Char Rasta, Satellite, Ahmedabad – 380015.

1.	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है. This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं.



	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.	
	निम्नलिखित सम्बन्धित आदेश/Order relating to :	
(क)	बैगेज के रूप में आयातित कोई माल.	
(a)	any goods imported on baggage.	
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.	
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.	
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.	
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.	
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात सलग होने चाहिए :	
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :	
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.	
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.	
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो	
(b)	4 copies of the Order - In - Original, in addition to relevant documents, if any	
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां	
(c)	4 copies of the Application for Revision.	
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षक अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु.1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क मांगा गया ब्याज लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-	
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs. 200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs. 200/- and if it is more than one lakh rupees, the fee is Rs. 1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय 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	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016



5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.
(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 हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.
(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

1. The Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad, has filed the present application/appeal under Section 129D(4) of the Customs Act, 1962, on the basis of Authorization dated 24.10.2024 issued by the Principal Commissioner of Customs, Ahmedabad, to file appeal against the Order-In-Original No. 20/AC/ACC/OIO/Light/2024-25 dated 22.07.2024 (hereinafter referred to as the 'impugned order') passed by the Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad (hereinafter referred to as the 'appellant' as well as 'adjudicating authority').

2. Facts involved in the appeal, in brief, are that **M/s. Light Inside Pvt. Ltd.** (hereinafter referred to as 'the respondent' or 'the importer') had filed a Bill of Entry No. 5792809 dated 22.11.2019 for import of Light Fixtures without Battery by classifying the goods under CTI 94054090. The importer has got cleared the goods on payment of IGST @12% by availing benefit of Sr. No. 226 of Schedule II of Notification No. 01/2017-IT(R) dated 28.06.2017. Later, it has been observed by Customs Department that the imported goods attract IGST @18% as per Sr. No. 438A of Schedule-III of the said Notification. So, a Show Cause Notice dated 27.12.2023 has been issued containing following proposals (gist):

- The subject goods having total assessable **value of Rs. 70,994/-** should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962.
- Differential **duty** amounting to **Rs. 5,197/-** should not be demanded and recovered under Section 28(4) *ibid*.
- Interest should not be recovered under Section 28AA *ibid*.
- Penalty should not be imposed under Section 112(a)/114A *ibid*.

3. The aforesaid SCN has been adjudicated vide the impugned order dated 22.07.2024, wherein the adjudicating authority has observed, *inter alia*, as under (emphasis supplied):

*"I find that the item imported under concerned Bill of Entry i.e. "Lighting Fixtures without Battery-PRE COM 1A-DR-0103-Matte White-R-41102350-3000K-Alluminium-36XH34MM" is clearly not covered by description mentioned in Sr. No. 226 or 227 of Schedule II. The import goods clearly fall under the ambit of **Luminaires and lighting fittings** covered under Sr. No. 438A of Schedule III. The Importer who is aware of the characteristics of goods should have opted for 438A of Schedule III for levy of IGST. However, the Importer mis-stated wrong Sr. No. 226 of Schedule II with intention to levy IGST at lesser rate. As such provisions of Section 28 (4) of Customs Act 1962 read with*



Section 3 (7) and Section 3 (12) of Customs Tariff Act 1975, are attracted for recovery of duties of Customs (i.e. IGST).

17. I find that the importer had knowingly and intentionally short paid the IGST to evade the higher rate of duty which had resulted in short levy of duty to the tune of **Rs. 5,197/-** (Rupees Five Thousand One Hundred Ninety Seven Only) and therefore the importer is liable for penalty under section 114(a) of the Customs Act 1962.

18. I refrain from going into merits of liability of goods to confiscation as the same are not available for confiscation and penalty under Section 112 of Customs Act 1962 for rendering goods liable for confiscation is not imposable in terms of fifth proviso to Section 114A."

After observing as above, the adjudicating authority has passed the following order (gist):

- Confirmed the demand of duty amounting to **Rs. 5,197/-** in terms of Section 28(4) with interest under Section 28AA of the Customs Act, 1962.
- Imposed a penalty of **Rs. 5,197/-** under Section 114A of the Customs Act, 1962.

4. Being aggrieved, to the extent the adjudicating authority has not ordered for confiscation of goods under Section 111(m), the Customs Department has filed the present appeal.

Gist of Grounds of Appeal

5. The appellant, i.e. Assistant Commissioner of Customs, submitted that the importer has wilfully suppressed the facts and had wrongly availed Sr. No. 226 of Schedule II of the IGST Notification No. 01/2017 dated 28.06.2017 instead of Sr. No. 438A of Schedule-III (III-438A) of the IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 for evading IGST Duty at higher rate, therefore, the goods mentioned in Annexure-A to the aforementioned SCN, valued at Rs. 70,994/- imported under the said Bill of Entry were appeared to be liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 inasmuch as the same have been imported by wrong availment of IGST Notification of the said imported goods.

6. In terms of Section 46 (4) of the Customs Act, 1962, Importer was required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of IGST Duty, but they have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have wrongly availed Sr. No. 226 of Schedule II of the IGST



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Notification No. 01/2017 dated 28.06.2017 instead of Sr.No. 438A of Schedule-III (III-438A) of the IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 for evading IGST Duty at higher rate, therefore, the goods mentioned in Annexure-A to the aforementioned SCN, valued at Rs. 70,994/- imported under the said Bill of Entry were appeared to be liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 inasmuch as the same have been imported by wrong availment of IGST Notification of the said imported goods.

7. Further, it is submitted that **where the goods are not physically available for confiscation and in such cases redemption fine is imposable in light of the judgment in the case of M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

"The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods routed for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

8. The appellant further submitted that Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertilchem Ltd Vs. Union of India, reported at 2020 (331) G.S.T.L. 513 (Guj.)**, held that even in the absence of the physical availability of the goods or the conveyance, the authority can proceed to pass an order of confiscation and also pass an order of redemption fine in lieu of the confiscation. In other words, even if the goods or the



conveyance has been released under Section 129 of the Act and, later, confiscation proceedings are initiated, then even in the absence of the goods or the conveyance, the payment of redemption fine in lieu of confiscation can be passed.

9. In the instant case, the subject goods having a total assessable value of Rs. 70,994/- were proposed to be held liable to confiscation under Section 111(m) of the Customs Act, 1962 in para 13(a) of the Show Cause Notice. However, the Adjudicating Authority has not gone into merits of liability of goods to confiscation as the same are not available for confiscation. Consequently, the goods confiscation does not comply with the provisions outlined in the Customs Act, 1962.

10. The Adjudicating Authority has however confirmed the demand of differential duty in terms of provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Custom Act, 1962 and also imposed penalty of Rs. 5,197/- i.e. equivalent to duty, on the importer M/s. Light Inside Private Ltd. under section 114A of the Customs Act, 1962. **However, the adjudicating authority has erred in not ordering the confiscation under Section 111 of the Customs Act, 1962.**

11. With the above contentions, the appellant Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad, has prayed to remand back the matter to decide applicability of confiscation of goods in case where goods are not physically available.

Response from the Respondent

12. The respondent M/s. Light Inside Pvt. Ltd. has not filed any appeal against the impugned order. One set of the appeal memorandum has been sent to the respondent for their comments on the appeal filed by Customs Department, vide this office letter F.No. S/49-26/ CA-2/CUS/AHD/2024-25/74 dated 04.04.2025. But, the respondent has neither filed any reply nor sought personal hearing in this matter.

Findings:

13. I have carefully gone through the impugned order and written submissions made by the appellant i.e. Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad, in the Appeal Memorandum submitted with Form No. C.A.-2. I find that the appeal can be decided on the basis of the documents available on record. The issues to be decided in the present appeal are:



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- Issue-1:** Whether any order towards confiscation of goods under Section 111(m) can be passed when the goods were neither seized nor available for confiscation.
- Issue-2:** When the Show Cause Notice proposes to hold the goods '**liable to confiscation**', whether any order towards confiscation of goods can be passed and option to pay redemption fine, in lieu of confiscation, can be given or not.

Findings on Issue-1: Whether any order towards confiscation of goods under Section 111(m) can be passed when the goods were neither seized nor available for confiscation.

14. I find that in the present case, the imported goods were cleared on payment of IGST @12%. The goods were never seized by Customs Department under the provisions of Section 110 of the Customs Act, 1962. So, no Bond towards provisional release of goods is available with Customs Department. It is to be decided that whether in this situation any order towards confiscation of goods under Section 111(m) can be passed and whether option to pay fine in lieu of confiscation can be given under Section 125 of the Customs Act, 1962.

15. I find that in the appeal filed by the Assistant Commissioner, the Judgment dated 11.08.2017 of Hon'ble High of Madras in the case of **Visteon Automotive Systems India Ltd.** [2018 (9) GSTL 142 (Mad.)] has been relied upon. In the said Judgment, it has been held, "The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

16. However, the above Judgment has been distinguished by Hon'ble CESTAT, Mumbai in the case of **SHASHI DHAWAL HYDRAULICS PVT. LTD. Versus C.C. (IMPORT), MUMBAI** [2019 (370) E.L.T. 999 (Tri. - Mumbai)]. Para 6 of the said Final Order is as under:

"6. It is clear from the decision of the Hon'ble High Court of Bombay In Re : Finesse Creation Inc. that redemption fine cannot be imposed on goods that are not available for taking possession of upon confiscation under Section 111 of Customs Act, 1962. There is no dispute that the impugned goods are not available. The decision of the Hon'ble High Court of Madras In Re: Visteon Automotive Systems India Ltd., relied upon by Learned Authorised Representative, has merely observed that the decision of the Hon'ble High Court of Bombay did not apply to the case of the appellant before them.



Hence, we are bound by the decision In Re: Finesse Creation Inc. The imposition of redemption fine under Section 125 of Customs Act, 1962 fails."

17. I have also referred the Judgment dated 25.08.2009 of Hon'ble High Court of Bombay in the case of *COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI Vs. FINESSE CREATION INC.* [2009 (248) E.L.T. 122 (Bom.)]. Para 5 of the said Judgment is as under (underline supplied):

"5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter."

I find that Hon'ble Supreme Court on 12-5-2010 after condoning the delay **dismissed** the Petition for Special Leave to Appeal (Civil) No. CC 7373 of 2010 filed by Commissioner of Customs (Import) against the Judgment and Order dated 25-8-2009 in C.A No. 66 of 2009 of the High Court of Bombay in the case of Commissioner Vs. *Finesse Creation Inc.* The said Order of Hon'ble Supreme Court has been reported as **2010 (255) E.L.T. A120 (S.C.)**. Thus, the Judgment of Hon'ble Bombay High Court has attained finality.

18. I have also referred the Judgment of Hon'ble High Court of Gujarat in the case of *Synergy Fertichem Pvt. Ltd. Vs. UOI* [2019-TIOL-2950-HC-AHM-GST = 2020 (33) G.S.T.L. 513 (Guj.)], which has been relied upon by the appellant Assistant Commissioner. I find that the said case of *Synergy Fertichem Pvt. Ltd.* was regarding contravention of provisions of GST and in that case the goods were detained/seized by GST officer. Whereas, in the case on hand the goods were neither detained nor seized by Customs officer. Therefore, this Judgment is not applicable to the facts of the present case.

19. Further, in the case of *Weston Components Ltd.* [2002-TIOL-176-SC-CUS = 2000 (115) E.L.T. 278 (S.C.)], the goods were released on executing a bond and so, it was held by Hon'ble Supreme Court that if subsequently it is found that the import was not valid or that



there was any other irregularity which would entitle the Customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the Customs authorities to levy redemption fine. Whereas, in the case on hand, the goods had neither seized nor released on bond.

20. I rely upon the decisions of Larger Bench of Hon'ble CESTAT in the case of **Shiv Kripa Ispat Pvt. Ltd.** [2009-TIOL-388-CESTAT-MUMB-LB = 2009 (235) E.L.T. 623 (Tri-LB)], wherein it has held to the effect that when the goods are allowed to be cleared without execution of Bond/Undertaking, redemption fine is not imposable. This Order of Larger Bench has been upheld by Bombay High Court in the case of **Commissioner vs. Rishi Ship Breakers** [2015 (318) ELT A259 (Bom.)].

21. I also rely upon the Final Order passed by Hon'ble CESTAT, New Delhi in the case of **ATUL KAUSHIK vs. COMMISSIONER OF CUSTOMS (EXPORT), NEW DELHI** [2015 (330) E.L.T. 417 (Tri. - Del.)]. Relevant portion of the said Final Order is as under (emphasis supplied):

*"15. Coming to OIPL's contention that no redemption fine can be imposed when the goods have been cleared without any bond and are not available for confiscation, we find force in this contention. On the first principles, redemption fine this imposed in lieu of confiscation. In other words, the assessee is given an option to redeem the goods confiscated on payment of redemption fine. Thus even when the goods are available and are confiscated, redemption on payment of redemption fine is an option and not an obligation, of the assessee. Thus imposition of redemption fine in lieu of confiscation when the goods cannot be confiscated on account of not being available for confiscation is an empty, non-executable and meaningless exercise (except when there had been provisional release of goods on execution of bond). Confiscation of goods requires physical presence thereof. In the case of **CC, Amritsar v. Raja Impex** [2008 (229) E.L.T. 185 (P & H)], Punjab and Haryana High Court held that Section 125 of Customs Act, 1962 is applicable only in those cases where goods have been cleared subject to furnishing undertaking/bond etc. The High Court set aside the redemption fine in respect of goods which were cleared without execution of any bond/undertaking. The Bombay High Court in case of **CC v. Sudarshan Cargo Pvt. Ltd.** [2010 (258) E.L.T. 197 (Bom.)] observed that the order of confiscation and redemption fine can be passed only if goods are available for confiscation and consequently redemption. The Supreme Court has also held the view that confiscation and redemption fine are not imposable when goods are not available for seizure [Commissioner v. Finesse Creation Inc. {2010 (255) E.L.T. A120 (S.C.)}]. Accordingly, we hold that redemption fine cannot be imposed*



in respect of goods which had already been cleared and were not available for seizure/confiscation. In any case, the show cause notice did not propose any redemption fine on goods already cleared and it is settled law that adjudicating authority cannot travel beyond the show cause notice."

Against the above-mentioned Order of Hon'ble CESTAT, Custom Department had filed a Civil Appeal No. D 14366 of 2016 with Hon'ble Supreme Court. Vide Order dated 29.07.2016, **Hon'ble Supreme Court has dismissed the appeal** by observing that they find no reason to interfere with the impugned judgment [*Commissioner v. Oracle India Pvt. Ltd. - 2016 (342) E.L.T. A40 (S.C.)*]. In view of this position, the issue attained finality. In the present case, the goods were never seized by Customs Department. The goods are not available for confiscation and no Bond towards provisional release of the goods has been filed by the importer. Therefore, I hold that no order towards confiscation of goods can be passed in this case.

Findings on Issue-2: When the Show Cause Notice proposes to hold the goods 'liable to confiscation', whether any order towards confiscation of goods can be passed and option to pay redemption fine, in lieu of confiscation, can be given or not.

22. I find that in Para 13(a) of the Show Cause Notice, there is a proposal for holding the subject goods liable to confiscation under Section 111(m) of the Customs Act, 1962. There is no proposal for actual confiscation of goods in the SCN. In the present case, the goods were never seized and also not available for confiscation. The importer has not submitted any Bond towards provisional release of seized goods. So, there is no proposal to actually confiscate the goods in the Show Cause Notice. I am of the view that holding of goods '*liable for confiscation*' is different from ordering confiscation of goods. In first situation, after holding the goods '*liable for confiscation*' under Section 111, penalty under Section 112 can be imposed. Whereas, for imposing redemption fine under Section 125, there must be order towards confiscation of goods. In the case on hand, the goods were neither seized under Section 110 nor there is any proposal in the SCN for actual confiscation of goods. In this situation, no order towards confiscation of goods can be passed and no option to pay fine in lieu of confiscation can be given under Section 125 of the Customs Act, 1962.

23. On this issue, I rely upon the Order of Hon'ble CESTAT, Ahmedabad, in the case of ***Asia Motor Works*** [2019-TIOL-3268-CESTAT-AHM = 2020 (371) E.L.T. 729 (Tri. - Ahmd.)], wherein it has been observed and held as under (underline supplied):



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"8. The next issue relates to confiscation of the goods already cleared by the AMW. The impugned order does not order confiscation and does not impose any redemption fine. Revenue has filed appeal against the said order for failure to confiscation the goods, AMW has also filed cross objection. Both sides relied on the decision of Hon'ble Apex Court in case of **Weston Components Ltd.** - 2000 (115) E.L.T. 278 (S.C.) = 2002-TIOL-176-SC-CUS. In the said case the goods were released against a bond and therefore, the Hon'ble Apex Court held that confiscation can be ordered. In the instant case the goods have been cleared in regular course. The bond executed by the AMW is not for production of goods but for fulfilment of export obligation and to pay duty in case of failure to fulfill export obligation. Therefore, the ratio of decision in case of **Weston Components Ltd.** (supra) is not applicable to the instant case. The goods cannot be confiscated, even if, the same are liable for confiscation."


24. In view of the above position, in the present case, I hold that when there is no proposal in the SCN for confiscation of goods, the adjudicating authority cannot go beyond the proposals made in the SCN and thus cannot order for confiscation of goods and impose redemption fine.

25. In view of the above findings, I find no fault in the impugned order. Thus, the appeal filed by the Customs Department is liable to be rejected. As the appeal filed by Customs Department is not sustainable on merit, there is no requirement to grant opportunity of personal hearing to the respondent importer, who has not filed appeal against the impugned order, not sought personal hearing and he will not be aggrieved against rejection of the present appeal filed by Customs Department. Accordingly, I pass the following order.

Order:

26. In view of the above discussion and findings, I reject the appeal filed by the Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad, against the Order-In-Original No. 20/AC/ACC/OIO/Light/2024-25 dated 22.07.2024 to the extent it does not order for confiscation of goods imported made by M/s. Light Inside Pvt. Ltd.




(AMIT GUPTA)
Commissioner (Appeals)
Customs, Ahmedabad

Date: 11.11.2025

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

To

The Deputy/Assistant Commissioner of Customs,
Air Cargo Complex, Old Airport, Ahmedabad - 380003.
(email: aircargo-amd@gov.in accusacc@gmail.com)



M/s. Light Inside Pvt. Ltd.,
FF-1/2, Maruti Arcade, Shivranjani Char Rasta,
Satellite, Ahmedabad - 380015.
(email: dhaval@lightinside.in marketing@prishaillumination.com)

Copy to:

1. The Chief Commissioner of Customs, Ahmedabad Zone, Customs House, Ahmedabad. (email: ccoahm-guj@nic.in)
2. The Pr. Commissioner of Customs, Ahmedabad.
(email: cus-ahmd-guj@nic.in rra-customsahd@gov.in)
3. Guard File.
