



OFFICE OF THE COMMISSIONER

CUSTOM HOUSE, KANDLA

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DIN-20241271ML000022802D

A	File No.	CUS/ASS/REX/76/2024-Export-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KND-CUSTM-000-COM-15-2024-25
C	Passed by	M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla
D	Date of Order	27.12.2024
E	Date of Issue	27.12.2024
F	SCN No. & Date	Waiver of Show Cause Notice
G	Noticee / Party / Importer / Exporter	M/s. ED&F Man Commodities India Private Limited & M/s. Uniworld Sugars Pvt. Ltd

1. This Order - in - Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,

2nd Floor, Bahumali Bhavan Asarwa,

Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004

3. Appeal shall be filed within three months from the date of communication of this order.
4. Appeal should be accompanied by a fee of Rs.1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
5. The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.
8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise penalty alone is in dispute.

**SUB- ADJUDICATION AND RE-EXPORT OF 3137 MTs RAW SUGAR IMPORTED UNDER
ADVANCE AUTHORISATION NO. 0510402686 dt. 24.05.2017 IN PURSUANCE OF ORDER
DATED 05.01.2022 OF THE HON'BLE HIGH COURT OF GUJARAT**

BRIEF FACTS OF THE CASE-

CHRONOLOGY OF EVENTS-

1. Before proceeding further, it is pertinent to reproduce the chronology of events leading upto the adjudication of the instant matter.

Sr. No	Event	Date
1.	Date of filing of Warehouse Bill of Entry No.880347 by M/s. ED&F Man Commodities India Pvt. Ltd	07.03.2017
2.	Sales Contract No. S02105.000	13.06.2017
3.	Date of filing of Ex-Bond Bill of Entry No.2159975 (for 3137 MTs) by M/s. Uniworld Sugars Pvt. Ltd. against Advance Authorisation No. 0510402686 dated 24.05.2017	20.06.2017
4.	The duty amount was debited in the Advance license of M/s. Uniworld Sugars Pvt. Ltd.	21.06.2017
5.	M/s. Uniworld failed to lift the goods from Bonded warehouse and one of the Operational Creditors M/s. Ranasariya Polypack Private Limited approached NCLT for initiating CIRP against M/s. Uniworld sugars. CIRP was initiated vide Order of NCLT Allahabad	29.05.2018
6.	M/s. Uniworld sugars requested the DGFT to extend time period for complying the obligations under the Advance Authorisation	09.10.2018
7.	DRI Hyderabad issued summons under Section 108 of the Customs Act, 1962.	11.12.2018
8.	M/s. ED&F Man Commodities India Pvt. Ltd approached the Hon'ble High Court for claiming ownership and re-export of goods	24.12.2018
9.	DRI sent the Investigation report	17.04.2020
10.	NCLT Allahabad approved the resolution plan	17.03.2021
11.	Hon'ble High Court of Gujarat allowed re-export to M/s. ED&F Man commodities as unpaid seller	05.01.2022
12.	DRI vide letter requested the Kandla Customs to decide the matter on merit	10.02.2022
13.	M/s. Ransariya Polypack and M/s. Simbhaoli Sugars appealed against the NCLT order before the Hon'ble NCLAT. Order of NCLAT	12.04.2022
14.	The Resolution professional appealed against the order of NCLAT and NCT Chandigarh decided the appeal and allowing merger of Shri Dutt India Pvt. Ltd and M/s. Uniworld Sugars Pvt. Ltd.	20.03.2023

2. Intelligence was gathered by the office of DRI Hyderabad that M/s. Uniworld Sugars Private Limited (hereinafter referred to as USPL), A-112, Sector-63, NOIDA, Uttar Pradesh-201307, having IEC No. 0512035911 had imported 6984 Metric Tonnes of Duty Free Raw sugar (falling under Chapter 17) vide two Ex-Bond Bills of Entry Nos. 2087637/14.06.2017 & 2159975/20.06.2017 from M/s. ED & F Man Commodities India Pvt. Ltd under Advance Authorization No. 0510402686 dated 24.05.2017 issued by DGFT with an attached export obligation requiring them to process the same into white sugar and export the corresponding quantity of white sugar. However USPL had failed to discharge the export obligation within the stipulated time, on the 3137 MTs of raw sugar imported under Bill of Entry No. 2159975 dated 20.06.2017 i.e. one of the above mentioned 2 Ex-Bond Bills of Entry.

3. During the inquiry it was found that operational creditors had taken the company to NCLT and M/s. Uniworld Sugars Private Limited was under Corporate Insolvency Resolution Process (CIRP) w.e.f. 29.05.2018 under the provisions of Insolvency and Bankruptcy Code (IBC) of 2016.

4. M/s. USPL vide letter dated 26.11.2018 informed that the company purchased the raw sugar under the said Advance Authorisation from M/s. ED&F Man Commodities India Private Limited, Mumbai, the importer on Ex-Bond basis pursuant to Raw sugar sale contract No. S02105 dated 13.06.2017 entered between them to refine the raw sugar into white refined sugar and thereafter export white sugar to world market. M/s. USPL filed two Ex-Bond bills of entries for import of 6984 MTs of Raw sugar from M/s. ED&F (i.e. (1) 2087637 dated 14.06.2017 & 2159975 dated 20.06.2017 for 3137 MTs); that delivery of 3137 MTs of Raw Sugar under BE No. 2159975 dated 20.06.2017 was not effected on account of financial

difficulties and lack of liquidity and hence could export only 3166.983 MTs of refined sugar during August 2017 under 13 Shipping Bills; that the company incurred heavy losses on account of lower margins between the raw sugar and white sugar prices; that meanwhile the creditors took the company to NCLT and therefore the company was undergoing the insolvency resolution process (CIRP) under the Insolvency and Bankruptcy code (IBC), 2016 vide order of Hon'ble NCLT Allahabad Bench dated 29.05.2018 and the activities of the company continued to shut down.

5. Upon enquiry by DRI Hyderabad regarding 3137 MTs of raw sugar, M/s. ED&F informed that the imported raw sugar was stored in private bonded warehouse in Kandla. On clearance of cargo under Ex-Bond bill of Entry no. 2159975 dated 21.06.2017, the bond status of the warehouse was discharged and the sugar was still lying in the warehouse as it was during imports. Further, informed that M/s. Uniworld Sugars Pvt. Ltd could not make payment against the raw sugar so the company could not allow the delivery of 3137 MTs of raw cane sugar and the same being held by ED&F on which import duties had not been paid.

6. M/s. ED&F Man Commodities India Pvt. Ltd vide letter dated 19.12.2018 approached Commissioner of Customs, Kandla Gujarat for amending of the ex-Bond Bill of Entry No. 2159975 dated 20.06.2017 filed by M/s. Uniworld Sugars Pvt. Ltd to reflect the name of M/s. ED&F Man Commodities India as importer of 3137 MTs of raw sugar instead of M/s. Uniworld Sugars Pvt. Ltd without requiring consent of USPL and /or its insolvency Resolution Professional or alternatively to allow them to re-export of bonded sugar to the world market.

7. Simultaneously, M/s. ED&F Man Commodities India Pvt. Ltd filed a Special Civil Application No. 20727 of 2018 before the High Court of Gujarat at Ahmedabad on 23.12.2018 against Union of India and 4 others with the following prayers-

- (a) Issue a writ of mandamus or any other appropriate writ, order or direction, directing respondent no.4 to extend the period of completion of export obligation in respect of advance license no.0510402686 dated 24.05.2017 issued in favour of respondent no.5 and be further pleased to direct respondent no.4 to relax the condition of 'Actual User' in respect of the said advance license and permit the purchaser or its nominee holding a valid advance license to process and re-export the cargo;*
- (b) Issue a writ of mandamus or any other appropriate writ, order or direction to permit the petitioner to re-export the cargo 'as is'; and direct respondent no.4 to waive requirement of processing and re-export under advance license no.0510402686 dated 24.05.2017;*
- (c) Issue appropriate writ, order or direction to restrain respondent no.3 from seizing the cargo currently lying in a warehouse at Gandhidham or demanding and/or enforcing customs duty in respect of the subject cargo against the petitioner;*
- (d) That pending the hearing and final disposal of this petition, this Hon'ble Court be pleased to restrain the respondent no.3 from taking any coercive measures including taking steps to seize the cargo;*
- (e) That pending the hearing and final disposal of this petition, that this Hon'ble Court be pleased to restrain the respondent no.3 from taking any coercive measures and forcing the petitioner to pay customs duty on the cargo;*
- (f) That pending the hearing and final disposal of this petition, this Hon'ble Court be pleased to direct respondent no.3 to grant a personal hearing to the petitioner;*
- (g) for ad-interim reliefs in terms of prayer clause (d), (e) and (f) above;*
- (h) for costs of this petition and the orders made thereon, and*
- (i) for such further and other reliefs as this Hon'ble Court may deem fit in the facts and circumstances of the case."*

8. The Hon'ble Court vide order dated 05.01.2022 held that the title/ownership of the imported goods is with the M/s. ED&F Man Commodities India Pvt. Ltd as an unpaid seller as the terms of the contract conforms the position that the title to the goods in question would not pass until the buyer has paid the amount for the entirety of the goods. Relevant observation

Paras 47 and 48 of the order dated 05.01.2022 of Hon'ble High Court are reproduced herein below for ready reference-

"47. In view of the aforesaid, we dispose of this writ-application reserving the liberty in favour of the writ-applicant to file an application addressed to the Commissioner seeking re-export of the goods. The Commissioner shall give an opportunity of hearing to the writ-applicant, and upon recording the satisfaction as regards the ownership and title to the goods, may proceed to grant the necessary permission to re-export the goods in accordance with law upon imposing reasonable duty on export of the goods. The Commissioner shall also give an opportunity to the respondent No.5 of hearing if at all the respondent No.5 has to say something as regards the request of the writ applicant for re-export of the goods.

48. We have thought fit to grant the aforesaid relief in favour of the writ-applicant keeping in mind that the terms of the contract conforms the position that the title to the goods in question would not pass until the buyer has paid the amount for the entirety of the goods. The writ-applicant thus assumes the status of an unpaid seller to continue to hold title/ownership to the assets imported. There is one another reason for granting relief to the writ-applicant, and that is, that the goods stand secured in the customs frontier and have not yet entered the domestic market."

INVESTIGATION OF DRI-

9.1 The Deputy Director, DRI, Hyderabad Zonal Unit, Hyderabad vide letter dated 17.04.2020 forwarded the Investigation report in the matter of import of Raw sugar by M/s. Uniworld Sugars Private Limited under Advance Authorization

9.2 The Deputy Director, DRI Hyderabad vide letter dated 17.04.2020 informed that there was no requirement to carry out investigation further in the matter from their end as Bond/BG, if any, in respect of Advance Authorisation were registered at Customs House Kandia.

9.3. Further, the Joint Director, DRI Hyderabad vide letter dated 10.02.2022 intimated that the investigation in this case has been concluded and the report was transferred to the office of Kandia Customs for taking necessary action vide letter dated 17.04.2020. They further suggested this office to take suitable decision as deemed fit based on the merits of Oral Order dated 05.01.2022.

10. The order dated 05.01.2022 of the Hon'ble High Court of Gujarat has been accepted on 06.04.2022.

RECORD OF PERSONAL HEARING-

11. In view of the directions imparted by the Hon'ble High Court vide order dated 05.01.2022, this office vide letter dated 09.10.2024 provided M/s. ED&F Man Commodities India Pvt. Ltd an opportunity of personal hearing on 23.10.2024. In response to the same, Shri Sandeep Kadam, Managing Director, M/s. ED&F Man Commodities India Pvt. Ltd vide an email dated 09.10.2024 requested for postponement of the personal hearing to an earlier date.

12. Accordingly, Shri Sandeep Kadam appeared for personal hearing on 10.10.2024. During the course of personal hearing, he submitted a written submission dated 09.10.2024. Referring to the order dated 05.01.2022 of the Hon'ble High Court he requested to allow the re-export of the goods. He also submitted documents in support of their claim of title/ownership of the goods as submitted before the Hon'ble High Court.

13. Further, as directed by the Hon'ble High Court of Gujarat in its order dated 05.01.2022, this office vide letter dated 14.10.2024 provided the opportunity of personal hearing to Respondent No. 5 i.e. M/s. Uniworld sugars Pvt. Ltd on 22.10.2024.

Shri Dutt India Private limited vide email dated 21.10.2024 informed that M/s. Uniworld Sugars Pvt. Ltd. was undergoing a Corporate Insolvency Resolution Process ("CIRP") under the provisions of the Insolvency and Bankruptcy Code, 2016 ("the Code") in view of the petition filed by M/s. Ranasariya Poly Pack Private Limited which was admitted by the National Company Law Tribunal, Allahabad Bench ("NCLT") vide order dated 29th May, 2018 in C.P. (I.B.) 120/ALD/2017. During CIRP, the Successful Resolution Applicant, submitted a

Resolution Plan to take over the management of the affairs of the Uniworld Sugars Pvt. Ltd. which was approved by 100% voting in favour of the Resolution Plan by the Committee of Creditors on 2nd June, 2022, and subsequently duly approved by the NCLT, Chandigarh Bench vide its order dated 20th March, 2023 as per the provisions of Section 30 and 31 of the Code.

They further informed that the aforementioned Application for approval of Resolution Plan also had in it, the merger of the Corporate Debtor into the Strategic Investor, Shri Dutt India Private Limited which has been accepted by the Hon'ble Chandigarh Bench Chandigarh. Consequently, M/s. Uniworld Sugars Pvt. Ltd. has been amalgamated into M/s. Shri Dutt India Private Limited w.e.f. the Appointed Date i.e. the date of complete implementation of the Resolution Plan viz. 25th March, 2023.

14. During the course of personal hearing, Miss Megha Mehta, Company Secretary looking after the legal department of Shri Dutt India Pvt. Ltd appeared for personal hearing on 22.10.2024. During the course of personal hearing, she informed that M/s. Uniworld Sugars Pvt Ltd. was under Corporate Insolvency Resolution Process (CIRP) under IBC and the company had been taken over by Shri Dutt India Pvt. Ltd after successful completion of the insolvency process. She informed that M/s. Uniworld sugars Pvt. Ltd doesn't exist today.

She submitted that the import of sugar was done under the Advance authorization of the erstwhile company M/s. Uniworld Sugars Pvt. Ltd. She also submitted that Shri Dutt India Pvt. Ltd has no objection if M/s. ED& F Man Commodities India Pvt. Ltd re-exports the sugar. She informed that in case there are charges, Shri Dutt India Pvt. Ltd is not going to bear them as they were never there at that point in time. She submitted that it is a clean slate principle that a new person who has taken over should not be given the liability of the old management. She further informed that the insolvency process was initiated in May-2018 and the order of resolution was passed on 25.03.2023.

15. Both the noticees requested for waiver of Show Cause notice in the matter.

SUBMISSION-

16. M/s. ED& F Man vide submission dated 09.10.2024, interalia, submitted that-

They, ED&F Man Commodities India Pvt. Ltd., filed a writ petition in the High Court of Gujarat praying for re-exporting the sugar currently lying in the warehouse at Gandhidham. On 5th January 2022, Hon'ble Gujarat High Court passed the judgement in their favor as they being unpaid Seller and having holding legitimate title of Sugar. Further on 23rd March 2023 they had received an No objection certificate (NOC) from Respondent No.5 of the Writ Order specifically confirming - "*We (Respondent No.5) have no objection as to re-export the goods*". They have requested for implementing the Hon. High Court order and allow the re-export of goods. They have further requested to pass the necessary order for re-export of sugar without any show cause notice and allow re-export of the warehoused goods as they are without clearance for home consumption.

17. Further post hearing on 10.10.2024, they submitted the documents, vide email dated 11.10.2024, claiming their title/ownership of goods.

17.1 M/s. ED& F Man vide letter dated 03.12.2024 requested for extension of the bond status of the said premises under the provisions of Section 61 of the Customs Act, 1962 in order to facilitate re-export of the cargo. They further submitted that Sugar being perishable in nature, its value is eroding every day on the basis of today's market the recoverable value is less than Rs. 2 crores as they are also incurring heavy costs every month for its storage, finance, supervision, etc.

18. M/s. Uniworld Sugars Pvt. Ltd (now known as M/s. Shri Dutt India Pvt. Ltd) vide their submission dated 24.10.2024, interalia, submitted that-

(i) M/s. Uniworld Sugars Pvt. Ltd was admitted as a Corporate Debtor under the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC 2016) vide order dated 29.05.2018 passed by the National Company Law Tribunal (NCLT), Allahabad Bench.

(ii) During the said CIRP of M/s. Uniworld Sugars Pvt. Ltd, Shri Dutt India Private Limited became the successful Resolution Applicant to take over the Corporate Debtor and its entire management.

(iii) M/s. Uniworld Sugars Pvt. Ltd has been amalgamated into M/s. Shri Dutt India Private Limited w.e.f the appointed date i.e. the date of complete information of the Resolution Plan viz.25.03.2023 as per the order dated 20.03.2023 passed by the Hon'ble NCLT, Chandigarh in the matter of IA No. 175/2022 in CP(1B) No. 120/ALD/2017 under Section 30(6) of IBC, 2016 in the matter of M/s. Ranassariya Poly Pack Private limited Versus M/s. Uniworld Sugars Pvt. Ltd. They have enclosed a copy of the order approving the Resolution plan.

(iv) Once such Resolution Plan attains finality, the same is applicable to all stakeholders. Section 31 of the IBC 2016 reads as under:

Quote

"Section 31:

If the Adjudicating authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of Section 30 meets the requirements as referred to in sub-section (2) of Section 30, it shall by order approve the resolution plan **which shall be binding on the corporate debtor and its employees, members, creditors, 1[including the Central Government, any state government or any authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan"**

Unquote

(v) Further, they had not breached any law that they should be liable for the acts of the erstwhile management of the Corporate debtor. Section 32A of the IBC 2016 "liability for prior offences, etc." holds that the Resolution Applicant shall not be liable for any past dues and the erstwhile management shall be responsible for any past dues and offences committed before the CIRP.

(vi) In this regard, they have relied upon various judgements-

- (a) Ghanshyam Mishra and Sons Private Limited Vs Edelweiss Asset Reconstruction Company Limited
- (b) Sundaresh Bhatt, Liquidator of ABG Shipyard vs CBIC.

(vii) They have referred to Section 238 of the IBC, 2016 to state that IBC has overriding effect over other laws.

DISCUSSION AND FINDINGS-

19. I have carefully gone through the DRI's Investigation Report dated 17.04.2020, subsequent letter of DRI dated 10.02.2022, Order dated 05.01.2022 of the Hon'ble High Court of Gujarat, written submissions dated 09.10.2024, 10.10.2024, 24.10.2024 and 03.12.2024, record of personal hearings held on 10.10.2024 and 22.10.2024 and all the documents available on record.

20. Before proceeding further, it is pertinent to reproduce directions enumerated in Para no. 47 and 48 of the order dated 05.01.2022 of the Hon'ble High Court of Gujarat-

"47. In view of the aforesaid, we dispose of this writ-application reserving the liberty in favour of the writ-applicant to file an application addressed to the Commissioner seeking re-export of the goods. The Commissioner shall give an opportunity of hearing to the writ-applicant, and upon recording the satisfaction as regards the ownership and title to the goods, may proceed to grant the necessary permission to re-export the goods in accordance with law upon imposing reasonable duty on export of the goods. The Commissioner shall also give an opportunity to the respondent No.5 of hearing if at all the respondent No.5 has to say something as regards the request of the writ applicant for re-export of the goods.

48. We have thought fit to grant the aforesaid relief in favour of the writ-applicant keeping in mind that the terms of the contract conforms the position that the title to the goods in question would not pass until the buyer has paid the amount for the entirety of the goods. The writ-applicant thus assumes the status of an unpaid seller to continue to hold title/ownership to the assets imported. There is one

another reason for granting relief to the writ-applicant, and that is, that the goods stand secured in the customs frontier and have not yet entered the domestic market."

21. In view of the Investigation report dated 17.04.2020 and directions imparted by the Hon'ble High Court of Gujarat and chronology of events stated in Para 1 above, the issues to be decided before me are:-

- (a) Whether the ownership and title of the impugned goods are with M/s. ED&F Man Commodities India Pvt. Ltd.;
- (b) Whether the impugned goods are to be released, for re-export as is.
- (c) Whether the impugned goods are liable for confiscation under Section 111 of the Customs Act, 1962 and can be released on payment of redemption fine, and who is liable to pay such redemption fine?
- (d) Whether import duty liability arises on goods in question;
- (e) Court's direction to allow re-export in accordance with law upon imposing reasonable duty;
- (f) Whether M/s. Uniworld Sugars Private limited or M/s. ED&F Man Commodities India Pvt. Ltd. are liable to pay penalty under Section 112/114A or 114AA of the Customs Act, 1962;

22. I find that an intelligence was gathered by the office of DRI Hyderabad that M/s. Uniworld Sugars Private Limited (USPL), A-112, Sector-63, NOIDA, Uttar Pradesh-201307, having IEC No. 0512035911 had imported 6984 Metric Tonnes of Duty Free Raw sugar (falling under Chapter 17) vide two Ex-Bond Bills of Entry Nos. 2087637/14.06.2017 & 2159975/20.06.2017 from M/s. ED&F Man Commodities India Pvt. Ltd under Advance Authorization No. 0510402686 dated 24.05.2017 issued by DGFT with an attached export obligation requiring them to process the same into white sugar and export the corresponding quantity of white sugar.

However M/s. USPL had failed to discharge the export obligation within the stipulated time, on the 3137 MTs of raw sugar imported under one of the two Bills of Entry.

PROCEEDINGS BEFORE NCLT-

23. I find that the delivery of 3137 MTs of Raw Sugar under Ex-Bond BE No. 2159975 dated 20.06.2017 was not effected on account of financial difficulties faced by M/s. USPL hence the impugned goods i.e. 3137 MTs of Raw sugar is still lying in the Private Bonded warehouse.

23.1 I find that the creditors took the company (M/s. USPL) to NCLT and therefore the company underwent the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy code (IBC), 2016.

23.2 I find that M/s. Ranasariya Polypack Private Limited, being an operational creditor approached the Hon'ble NCLT for initiating proceedings against the Operational Debtor M/s. Uniworld Sugars Pvt. Ltd. The Hon'ble NCLT, Allahabad vide order dated 29.05.2018 initiated the CIRP proceedings under the IBC, 2016. The Hon'ble NCLT, Allahabad vide order dated 17.03.2021 approved the resolution plan by 100% voting rights in accordance with Rule 31(1) of IBC. Being aggrieved by the order dated 17.03.2021, M/s. Ranasariya Polypack Private Limited and M/s. Simbhaoli Sugars appealed against the order dated 17.03.2021 before the Hon'ble NCLAT. The Hon'ble NCLAT vide order dated 12.04.2022 disposed the appeals. Being aggrieved by the order dated 12.04.2022, the Resolution professional filed an appeal before the Hon'ble NCLT, Chandigarh (as the matter was transferred to NCLT, Chandigarh from NCLT Allahabad). The Hon'ble NCLT vide order dated 20.03.2023, interalia, allowed the merger of M/s. Uniworld Sugars Pvt. Ltd with the strategic investor Shri Dutt India Pvt. Ltd.

23.3 I find that during the said CIRP of M/s. Uniworld Sugars Pvt. Ltd, Shri Dutt India Private Limited became the successful Resolution Applicant to take over the Corporate Debtor and its entire management vide orders dated 17.03.2021 of Hon'ble NCLT, Allahabad and 20.03.2023 of Hon'ble NCLT, Chandigarh.

23.4 M/s. ED&F Man Commodities India Pvt. Ltd approached the Hon'ble High Court vide SCA 20727/2018 for claiming ownership and re-export of goods as unpaid seller. The Hon'ble High Court of Gujarat vide order dated 05.01.2022 allowed the relief of ownership to M/s. ED&F Man as an unpaid seller and consequently re-export of goods.

CONTENTIONS OF DRI HZU-

24. DRI HZU, Hyderabad vide letter dated 24.01.2019 forwarded the Para-wise comments wherein the main contentions are as follows:-

- (a) The sale of sugar was on credit basis. Hence the non-payment of sale consideration by M/s. Uniworld sugar to M/s. ED&F Man is purely commercial accommodation as parent company of M/s. ED&F Man is also a shareholder in M/s. Uniworld sugar.
- (b) M/s. ED&F Man had alongwith M/s. Uniworld sugar created certain documents like 'transfer of ownership agreement' referred to above, with the sole intention of facilitating M/s. Uniworld sugar to clear the impugned sugar without payment of applicable Customs duties, using the advance licence held by M/s. Uniworld sugar, that they (M/s. ED&F Man) are the title owners and possessors of the impugned sugar since M/s. Uniworld sugar had not paid the sale consideration. It is to submit that notwithstanding all such documentation and their legal effect on the title of the goods and its transition, it would and shall remain a fact that, the impugned sugar cleared duty free under an advance authorization held by M/s. Uniworld sugar, on the basis of documentation created by M/s. ED&F Man and M/s. Uniworld sugar, is inseparably fastened with the consequences of being liable for confiscation in terms of Section 111(o) of the Customs Act, 1962 and such other consequences that may befall in terms of other provisions of the Customs Act, 1962, in as much as the export obligation in terms of the advance licence under which the same was imported duty free, had not been fulfilled.
- (c) The advance licence used by M/s. Uniworld sugar to import raw sugar duty free, was issued by DGFT to M/s. Uniworld sugar, **with an attached export obligation requiring them to process the same into white sugar and export the corresponding quantity of white sugar.**
- (d) It remained a fact that M/s. Uniworld sugar had abjectly failed in discharge of export obligation and it is admitted by the petitioners themselves that such non-observance had NOT been sanctioned by the competent authority.
- (e) The entire quantity of 3137 MTs of sugar imported duty free by M/s. Uniworld sugar and being held in physical custody by M/s. ED&F Man is automatically rendered liable for confiscation, in terms of Section 111(o) of the Customs Act, 1962.
- (f) the responsibility to payback the duties of customs involved in the duty free import of the impugned sugar alongwith interest, vests on M/s. Uniworld sugar, as he is the importer and confiscation of the sugar is an additional consequence and not an alternate consequence.
- (g) The goods are liable for confiscation in terms of Section 111(o) of the Customs Act, 1962 regardless of facts like ownership, possession etc.

CONTENTIONS OF DRI AND ORDER DATED 05.01.2022 OF THE HON'BLE HIGH COURT OF GUJARAT-

25. In this regard, I find that the contentions of DRI as stated in the Investigation Report dated 17.04.2020 have been taken into account by the Hon'ble High Court of Gujarat in the following paras-

"35. We go to the extent of observing that if the export obligation period of 18 months from the date of issue of the authorization has elapsed and no extension has been granted in the favour of the respondent no. 5 (M/s. USPL) being the authorization holder then the stance of the department that as exemption from duty was granted at the time of the import of the goods subject to the conditions of the Custom Notification No. 79/2017-Cus and the condition of fulfillment of export obligation within the period specified in the authorization not being complied with, the goods are liable to be confiscated under Section 111(o) of the Customs Act, 1962, also appears to be well justified.

36. The fact that the exporter i.e. the writ-applicant, has not been paid the price of the goods and that his goods are liable to be confiscated because of a lapse or any irregularity on the part of the respondent no.5, the same would have no impact on the legal position as regards the goods being liable to be confiscated under Section 111(o) of the Act, 1962.*

26. The Hon'ble High Court has observed that non-fulfillment of export obligation within a period of 18 months from the date of issue of authorization and violation of conditions of Notification No. 79/2017-Cus have rendered the goods liable for confiscation even while considering the fact that the writ applicant (M/s. ED&F Man) had not been paid the price of the goods and his goods were liable to be confiscated because of a lapse on the part of M/s. Uniworld sugars.

27. Further as regards the ownership & title to the goods and re-export of goods, having considered the law laid down in Sampath Raj Dugar, reported in 1992(58) ELT 163 (SC), the Hon'ble High Court has observed the following:-

"42. At this stage, we would like to clarify something important. In Dugar's case (supra), the Supreme Court has held that if the bill of entry is not filed by the importer and the importer has abandoned the goods, the title in the goods would not pass to the importer and the exporter may be entitled to re-export or return of the goods. Section 68 of the Customs Act, 1962, requires the filing of a bill of entry (ex-bond bill of entry) for clearance of any warehoused goods for home consumption. We were given to understand that over a period of time the ex-bond bills of entry are being filed with the Commissionerates having jurisdiction over the warehouses and in large number of cases, manually. The filing of ex-bond bills of entry on ICES would provide the benefits of automation to the importers availing the warehousing facility and lend efficiency to the process of clearance of the warehoused goods. The importer or owner of the warehoused goods seeking to clear the goods for home consumption under Section 68 is expected to file the ex-bond bills of entry on ICES and the customs station of import would have to assess the bill of entry for clearance of the warehoused goods for home consumption. Upon the importer or owner producing the ex-bond bill of entry for home consumption, the bond officer shall - (i) verify the bill of entry particulars; and (ii) permit the removal of goods from the warehouse for home consumption in terms of regulation 8 of the Warehouse (Custody and Handling of Goods) Regulations, 2016, by affixing his dated signature on the copy of the ex-bond bill of entry. It appears that the Board has issued a circular providing that the bonds to be executed by the importer while filing a bill of entry for warehousing shall be executed at the customs station of import itself. The only reason highlight the above is that, in the case on hand it appears that the bill of entry (ex-bond bill of entry) was filed, but thereafter, the importer failed to clear the goods. Therefore, the Supreme Court decision in Dugar's case (supra) should be understood keeping in mind that in the said case the bill of entry was not filed by the importer and the importer had abandoned the goods. In such circumstances, the Supreme Court took the view that the title in the goods would not pass to the importer and the exporter would be entitled to re-export. We are of the view that mere filing of the ex-bond bill of entry, by itself, would not vest the title of the goods into the importer if ultimately such goods are not cleared by the importer, or in other words, if such goods are abandoned. In such circumstances also, the title over the imported goods would remain with the exporter and the exporter may, in peculiar facts and circumstances of the case like the one on hand, request the Commissioner to permit him to re-export the goods as an unpaid seller."

28. The Hon'ble High Court of Gujarat has observed that the Ex-Bond Bills of entry were filed manually and later on the filing of ex-bond bills of entry on ICES would provide the benefits of automation to the importers availing the warehousing facility and lend efficiency to the process of clearance of the warehoused goods. The importer or owner of the warehoused goods seeking to clear the goods for home consumption under Section 68 is expected to file the ex-bond bills of entry on ICES and the customs station of import would have to assess the bill of entry for clearance of the warehoused goods for home consumption. Further the Hon'ble High Court noted that the bill of entry was filed but thereafter the importer failed to clear the goods and mere filing of Bill of Entry would not vest the title of the goods into the importer if ultimately such goods are not cleared by the importer. In this regard, the Hon'ble High Court of Gujarat refers to regulation 8 of the Warehouse (Custody and Handling of Goods) Regulations, 2016 as given below:-

"Upon the importer or owner producing the ex-bond bill of entry for home consumption, the bond officer shall - (i) verify the bill of entry particulars; and (ii) permit the removal of goods from the warehouse for home consumption in terms of regulation 8 of the Warehouse (Custody and Handling of Goods) Regulations, 2016, by affixing his dated signature on the copy of the ex-bond bill of entry"

In view of the same, the Hon'ble Court has noted that the title over the imported goods would remain with the exporter and the exporter may, in peculiar facts and circumstances of the case like the one on hand, request the Commissioner to permit him to re-export the goods as an unpaid seller.

29. Further, it is to state that the contention of the DRI with regard to demand of duty on import of goods is discussed in Para 56 below.

29.1 The Hon'ble High Court has allowed the benefit of ownership and title to the goods while clearly noting that the goods stand secured in the custom frontier and have not yet entered the domestic market.

29.2 In view of the above, it is seen that the contentions of the DRI raised vide letter dated 24.01.2019 were duly taken into account and addressed by the Hon'ble High Court of Gujarat vide its order dated 05.01.2022.

OWNERSHIP AND TITLE OF THE IMPUGNED GOODS

30. Further to above discussion w.r.t Para 42 of their lordships order, I find that the Hon'ble Court in Para 48 of the order dated 05.01.2022 has granted the status of an unpaid seller to M/s. ED&F Man commodities India Pvt. Ltd to continue to hold title/ownership to the goods imported in their favour. The relevant para is reproduced below-

"48. We have thought fit to grant the aforesaid relief in favour of the writ-applicant keeping in mind that the terms of the contract conforms the position that the title to the goods in question would not pass until the buyer has paid the amount for the entirety of the goods. The writ-applicant thus assumes the status of the unpaid seller to continue to hold title/ownership to the assets imported. There is another reason for granting relief to the writ-applicant, and that is, that the goods stand secured in the customs frontier and have not yet entered the domestic market."

31. Though the Hon'ble High Court has granted the title/ownership of the imported goods i.e. 3137 MTs to M/s. ED&F Man Commodities India Pvt. Ltd however, the Hon'ble High Court has also directed the undersigned (Commissioner, Kandla), vide Para 47 of the order dated 05.01.2022, to allow re-export of goods upon recording the satisfaction as regards the ownership and title to the goods. The findings of Para 47 are reproduced below-

"47. In view of the aforesaid, we dispose of this writ-application reserving the liberty in favour of the writ-applicant to file an application addressed to the Commissioner seeking re-export of the goods. The Commissioner shall give an opportunity of hearing to the writ-applicant, and upon recording the satisfaction as regards the ownership and title to the goods, may proceed to grant the necessary permission to re-export the goods in accordance with law upon imposing reasonable duty on export of the goods. The Commissioner shall also give an opportunity to the respondent No.5 of hearing if at all the respondent No.5 has to say something as regards the request of the writ applicant for re-export of the goods."

32. In pursuance of the direction of the Hon'ble High Court, the undersigned, during the personal hearing held on 10.10.2024, requested Shri Sandeep Kadam, Managing Director, M/s. ED&F Man Commodities to provide the relevant documents in respect of their claim over title/ownership to the goods. Accordingly, they submitted the following documents-

- (i) Sales Contract No. S02105.000 dated 13.06.2017
- (ii) Amendment to Contract No. S02105.000 dated 16.06.2017
- (iii) Contract for Bond to Bond Transfer

33. Having perused all the above mentioned documents, I find that M/s. ED&F Man Commodities Pvt. Ltd (seller of goods) entered into a sale contract bearing no. S02105.000 dated 13.06.2017 for sale of 4200 MTs of raw sugar (hereinafter referred to as "the cargo") on credit basis. It was expressly understood by the parties that the said cargo was being purchased by M/s. USPL in terms of the Advance Authorization held by M/s. USPL. The relevant clause of the Contract is being reproduced herein below-

"Special Conditions:

a) *It is expressly understood that the sugar being purchased against ALS (Advanced Licence scheme) clearance."*

34. I find that as and when M/s. USPL intimated M/s. ED& F Man that it was ready to lift specific quantities of the cargo, a Bond to Bond Contract was executed for the specific quantities between them. The payment schedule is given at Clause 7 of the Bond to Bond Contract as given below-

***Clause 7- Payment**

The buyer agrees that 100% of the final contract value shall be paid to the Seller's nominated bank by BANK TRANSFER as per a copy of the seller's invoice without any offset and deductions, within 4 weeks against the lifting of cargo."

35. Further provisions of Clause 12: General Conditions of Bond to Bond contract is reproduced herein below-

a) Any amendments and supplements to the contract are valid only if they are agreed upon by the parties in writing and signed by authorized representative of both parties and delivered to the parties.

b) The risk in goods shall pass to the buyer upon the same having been cleared by customs. Buyer shall be responsible for covering insurance after De-bonding of the cargo or as soon as the cargo has been lifted on to the trucks for shifting to the refineries.

c) *It is understood that the transfer of ownership agreement is being executed solely for customs purposes. In the event of any conflict between the terms of this contract and the transfer of ownership agreement, the terms of this contract shall prevail.*

d) *The title of goods shall not pass to the buyers unless the sellers are in receipt of 100% payment for the quantity to be lifted without any offset and deduction.*

Clearly the sub-clause d) mandates that the title and ownership of the impugned goods shall remain with the seller i.e. M/s. ED & F Man Commodities India Pvt. Ltd unless they receive 100% payment for the quantity to be lifted. Further the sub-clause c) states that in case of conflict between the terms of this contract and the transfer of ownership agreement, the terms of Bond to Bond contract shall prevail. Thus, sub- clause d) of clause 12 of Bond to Bond contract shall prevail over any other terms of Sales contract.

36. M/s. USPL filed Ex-Bond Bill of Entry No. 2159975 dated 20.06.2017, in respect of 3137 MTs of the cargo before Kandla Customs which was cleared on 21.06.2017 by way of a debit in the advance license of M/s. USPL. Subsequently due to M/s. USPL's financial difficulties they did not lift 3137 MTs of raw sugar and did not take the delivery of the cargo after de-bonding. Further, due to severe financial duress, Corporate insolvency resolution process was initiated in the month of May, 2018 under the IBC, 2016. Pursuant to the order of the Hon'ble NCLT, Allahabad moratorium was imposed and the management of M/s. USPL was brought under the supervision of the Resolution professional.

37. Now I proceed to examine the provisions of Sections 45 and 46(2) of the Sale of Goods Act, 1930-

Section 45 in the Sale of Goods Act, 1930

45. "Unpaid seller" defined.—

(1) *The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act—*

(a) when the whole of the price has not been paid or tendered;

(b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) *In this Chapter, the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.*

46. Unpaid seller's rights.—

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

38. On conjoint reading of clause 12 of Bond to Bond Contract and Section 45 and 46 of the sale of Goods Act, 1930, I hold that the title/ownership of the goods rests with the unpaid seller i.e. M/s. ED & F Man India and they have **the right of lien**, as in terms of their application before Hon'ble Court, they had exercised the right to withhold the delivery, being co-extensive with their right of lien, which gives an unpaid seller the right to keep possession of goods until the buyer pays for them. In view of the same, I find that M/s. ED&F Man commodities India Pvt. Ltd, being an unpaid seller and rightful owner of the goods is eligible for re-exporting the goods as allowed by the Hon'ble High Court of Gujarat vide order dated 05.01.2022. This understanding is consistent with respect of Regulation 8 of the Warehouse Regulations 2016 and Hon'ble Court's finding that goods are secured in Customs area, and that M/s. Uniworld Sugars abandoned the goods and were not removed.

PERMISSION TO RE-EXPORT THE GOODS.

39. I find that as per the directions of Hon'ble High Court of Gujarat vide order dated 05.01.2022, this office granted personal hearings to unpaid seller i.e. M/s. ED & F Man commodities India Pvt. Ltd. and importer i.e. M/s. Uniworld Sugars Pvt. Ltd (now known as Shri Dutt India Pvt. Ltd) vide their submission intimated that they had no objection if the goods are re-exported by M/s. ED & F India Pvt. Ltd.

40. M/s. ED&F Man commodities India Pvt. Ltd vide letters dated 09.10.2024 and 03.12.2024 requested for re-export of the goods, as is, without clearing the same in domestic market.

41. I find that the Hon'ble High Court in Para 40 of the order referred to the judgement of Hon'ble Supreme Court in the matter of UNION OF INDIA Versus SAMPAT RAJ DUGAR, 1992 (58) E.L.T. 163 (S.C.) wherein the Apex Court held that-

"19. The exporter is outside the country, while the importer, i.e., the licensee is in India. It is at the instance of the licensee that the goods are imported into this country. Whether or not he is the owner of such goods in law, the Imports (Control) Order creates a fiction that he shall be deemed to be the owner of the such goods from the time of their import till they are cleared through Customs. This fiction is created for the proper and effective implementation of the said order and the Imports and Exports (Control) Act. The fiction however cannot be carried beyond that. It cannot be employed to attribute ownership of the imported goods to the importer even in a case where he abandons them, that is, in a situation where he does not pay for and receive the documents of title. It may be that for such act of abandonment, action may be taken against him for suspension/cancellation of licence. May be, some other proceedings can also be taken against him. But certainly he cannot be treated as the owner of the goods even in such a case. Holding otherwise would place the exporter in a very difficult position; he loses the goods without receiving the payment and his only remedy is to sue the importer for the price of goods and for such damage as he may have suffered. This would not be conducive to international trade. We can well imagine situations where for one or other reason, an importer chooses or fails to pay for and take delivery of the imported goods. He just abandons them. (We may reiterate that we are speaking of a case where the import is not contrary to law). It is only with such a situation that we are concerned in this case and our decision is also confined only to such a situation. Condition (ii) in sub-clause (3) of Clause 5, in our opinion, does not operate to deprive the exporter of his title to said goods in such a situation.

20. At this stage, it may be appropriate to clarify one aspect. There may be cases, where the importer opens a letter of credit and makes some other arrangement ensuring/guaranteeing payment of price of imported goods. In such a case, it will be open to the exporter, in case of non-payment of price or abandonment by the importer, to collect the price by invoking such arrangement. In such a case, it is obvious, the exporter will not be allowed to claim title to and/or to re-export the goods. (Indeed, it is unlikely that in such a case, the importer abandons the goods ordinarily speaking.) It is therefore necessary that in all such cases, the authority should issue a notice to the importer and/or his agent before allowing the exporter to deal with or seek to re-export the goods. So far as this case is concerned, both the importer and exporter (R2 and 1 respectively) were present before the Collector (Customs) as well as before the High Court. R2 did not plead any such arrangement."

42. The Hon'ble High Court of Gujarat in the instant case in Para 43 of the order dated 05.01.2022 further noted that-

"43. In the case on hand, it is not the case of the department that the goods were either mis-declared or wrongly classified or valued. The importer (respondent no.5) like in Dugar's case (supra) went under liquidation and was not able to clear the goods. There is nothing on record indicative of misdeclaration or suppression or wrongly valuation of the goods at the time they were brought in."

43. Further, I find that the Hon'ble High Court of Gujarat in Para 45 referred to the judgement of Hon'ble High Court of Madras in the case of M/s. Pacific (HK) Limited vs. The Commissioner of Customs (Airport and Air Cargo Complex), reported in (2012)281 ELT 522, wherein the Hon'ble Court held that-

"4. The learned counsel appearing on behalf of the petitioner had submitted that the petitioner continues to be the owner of the goods in question, when the importer or the consignee concerned abandons the goods imported on their behalf, as held by the Supreme Court, in Union of India v. Sampath Raj Dugar, reported in 1992 (58) E.L.T. 163 (S.C.).

5. It had also been stated that the seller of the goods is deemed to be an 'unpaid seller', as per the terms of Section 45 of the Sale Goods Act, 1930, when the whole of the price had not been paid or tendered. Under Section 46 of the said Act it is stated that, notwithstanding the fact that the property in the goods may have passed to the buyer, the unpaid seller of the goods has a lien on the goods concerned, for the price, by implication of law. As such, the petitioner, who is an unpaid seller, has the right in respect of the goods in question. Therefore, he has the right to make a request to the respondents to re-ship or to re-export the goods in question. As per the decision of the Delhi High Court, in Agrim Sampada Ltd. v. Union of India, reported in 2004 (168) E.L.T. 15 (Delhi), the title in respect of the goods abandoned by the importer would vest with the petitioner.

6. In the counter affidavit filed on behalf of the first respondent it has been stated that the importer has not abandoned the goods, even though he had chosen not to file the bill of entry, in order to escape from the clutches of law and in order to avoid detection of its mode of operation by the investigating agency. During the examination, it had been found that the goods had been mis-declared as imitation stones, in order to evade payment of a higher duty. Therefore, a show cause notice had been issued to the importer for the violation of the provisions of the Customs Act, 1962. Hence, the request of the petitioner for re-shipment or re-export of the goods would not arise.

7. In fact, a show cause notice, dated 8-7-2011, had been issued to M/s. Sky Way Corporation, Jaipur, and certain others, proposing confiscation of the goods, under Section 111(d) of the Customs Act, 1962, read with Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, as the goods in question are under investigation by the authorities concerned. While so, the request of the petitioner cannot be considered, at this stage.

8. In the counter affidavit filed on behalf of the third respondent it has been stated that the amount due to be paid to the petitioner, by the third respondent, for the goods in question, could not be paid due to severe financial constraints. Therefore, the goods could not be cleared and taken by the third respondent. It had also been stated that the value of the imported goods had not been paid, till date. As such, the petitioner continues to be the owner of the goods in question, as the third respondent, being the importer of the goods, had abandoned the goods in question.

9. In view of the above contentions, raised on behalf of the petitioner, as well as the respondents, and on a perusal of the records available, it is clear that the petitioner has the right to request the respondents for the necessary permission, to re-ship or to re-export the goods in question. Further, as the third respondent does not have any serious objection for the re-export of the goods in question, the respondents are directed to permit the petitioner to re-export the goods in question, as prayed for by the petitioner, in the present writ petition. However, it is made clear that it is open to the authorities concerned, to pass an appropriate order, with the view to initiate the necessary action against the parties concerned, if it is deemed to be necessary, in respect of the alleged infringement of the relevant provisions of law, if any, as expeditiously as possible, as the petitioner, has been incurring heavy demurrage charges. Further, it is made clear that the respondents are directed to consider the request of the petitioner, for the re-shipment and re-export of the goods in question, in view of the above observations made by this Court, in this order, unless there are other legal impediments, for granting such permission, as prayed for by the petitioner. The writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

44. In view of the above findings and directions of the Hon'ble High Court of Gujarat, I hold that the subject goods i.e. 3137 MTs of raw sugar are allowed to be re-exported, as is, without clearing the same for Home consumption as requested by the unpaid seller i.e. M/s. ED& F Man India Pvt. Ltd.

CONFISCATION OF THE SAID GOODS:

45. I find that it is an admitted fact on record that the 3137 MTs of raw sugar had been imported and related debits were made in Advance licence issued to M/s. Uniworld Sugars Pvt. Ltd. at the time Ex-Bond Bill of entry was presented for the purpose of clearance. It is also an admitted fact that the advance licence used by M/s. USPL to import raw sugar duty free was issued by Directorate General of Foreign Trade (DGFT) to M/s. USPL with an attached Export obligation requiring them to process the same into white Sugar and export the corresponding quantity of white sugar.

46. Further, the Hon'ble High Court in Para 35 and 36 of the order dated 05.01.2022 also held that the goods are liable to be confiscated under Section 111(o) of the Customs Act, 1962. The findings in para 35 are reproduced hereunder:-

**35. We go to the extent of observing that if the export obligation period of 18 months from the date of issue of the authorization has elapsed and no extension has been granted in the favour of the respondent no. 5 (M/s. USPL) being the authorization holder then the stance of the department that as exemption from duty was granted at the time of the import of the goods subject to the conditions of the Custom Notification No. 79/2017-Cus and the condition of fulfillment of export obligation within the period specified in the authorization not being complied with, the goods are liable to be confiscated under Section 111(o) of the Customs Act, 1962, also appears to be well justified.*

36. The fact that the exporter i.e. the writ-applicant, has not been paid the price of the goods and that his goods are liable to be confiscated because of a lapse or any irregularity on the part of the respondent no.5, the same would have no impact on the legal position as regards the goods being liable to be confiscated under Section 111(o) of the Act, 1962."

47. On perusal of Para 10 & 11 of the Order dated 05.01.2022 of the Hon'ble High Court of Gujarat, I find that the office of DGFT has submitted before the Hon'ble Court that the Advance Authorisation Licence was issued in the name of M/s. USPL on 24.05.2017 and in October 2018, M/s. USPL had prayed for extension of the time period to complete the export obligations as they (M/s. USPL) was undergoing corporate insolvency resolution proceedings before the NCLT at Allahabad. Further the DGFT has submitted that the policy relaxation could not be claimed as a matter of right. Clearly, it is on record that no such extension has been granted by the office of DGFT.

48. I find, on going through the Para 2.14 of the Order dated 05.01.2022 of the Hon'ble Court that M/s. USPL had failed in discharge of export obligation within 6 months from the date of the ex-bond clearance and the request made by them for the extension of time limit to comply with its obligations under the Advance Authorisation in relation to the process of re-export of cargo within a period of six months had also been rejected by the Directorate General of Foreign Trade (DGFT) concerned.

49. In view of the above, it is amply clear that the importer M/s. USPL has failed to discharge its export obligation within stipulated time of 18 months from the date of issue of Advance Authorisation. As regard the conditions of the Notification No. 79/2017-Cus in as much as they could not export any finished goods manufactured out of the imported duty free raw materials, it is already stated above that such condition will take effect from the date of clearance and the Hon'ble High Court recorded a finding that the goods were not cleared and were secured in the Customs area.

50. Therefore, as discussed in the paras above, M/s. USPL has failed to use the goods for the specified purposes for which they were exempted and could not complete the export within 18 months of issue of Advance Authorisation and are liable to confiscation in terms of Section 111 of the Customs Act, 1962 read with Notification No. 79/2017. The relevant text of the Section 111(o) of the Customs Act, 1962 is reproduced under:

Section 111(o) of the Customs Act, 1962

The following goods brought from a place outside India shall be liable to confiscation:

(a) ----

(b) _____

(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;

51. In view of the above discussion and findings of the Hon'ble High Court of Gujarat, I hold that the said goods i.e. 3137 MTs raw sugar are liable to be confiscated under Section 111(o) of the Customs Act, 1962 for non-observance of conditions of Para 4.03 of the FTP 2015-2020 pertaining to Advance Authorisation.

REDEMPTION OF GOODS-

52. I find that the subject goods have been held liable for confiscation under Section 111(o) of the Customs Act, 1962 for contravention of the Customs Act. Further the goods are allowed to be re-exported, as is, without clearing the same for Home Consumption.

53. It is pertinent to note that once the goods are confiscated, the title of the goods is held by the government and to get back the possession of the goods, redemption fine is needed to be paid. Releasing confiscated goods without imposing a fine is not a valid option. In this regard, I rely on the judgement of the Hon'ble CESTAT Chennai in the matter of Scania Commercial Vehicles India (P) Ltd. v. Commr. of Customs, 2024 SCC OnLine CESTAT 587, Order dated 07-06-2024 (Customs Appeal No.40256 of 2023) arising out of Order-in-Appeal Seaport C. Cus. II No. 118/2023 dated 2.3.2023 passed by the Commissioner of Customs (Appeals - II), Chennai. The relevant Paras of the said judgement is reproduced herein below-

"12. The question raised by the appellant that when the goods have been re-exported, the question of confiscation of goods under Section 111(d) of the CA 1962 does not arise, is like putting the cart before the horse. Confiscation of offending goods under section 111(d) is an action precedent to allowing the same to be redeemed under section 125 of the CA 1962. The permission for export of prohibited goods that have been confiscated and redeemed, is an administrative order emanating from the importers request for re-export of the goods and is not flowing from Section 125 of the CA 1962. It comes into operation only after the importer gets back title to the confiscated goods on paying the redemption fine. That the permission for re-export has been bundled and passed in a quasi-judicial order pertaining to the confiscation and redemption of goods is only for administrative convenience. Further it gives certainty to the action the importer is permitted to take post redemption of the goods.

15. The appellant has stated that it is a settled position of law that no redemption fine is imposable on the goods that are re-exported. We find that once goods are imported in contravention of any provisions of the CA 1962 they are liable for confiscation. Any breach of a statutory obligation under the Customs Act is a blameworthy conduct by the assessee. In case the goods involved are 'prohibited goods' it is within the discretion of the Proper Officer to absolutely confiscate the goods or to allow it to be redeemed on payment of a fine. To release prohibited goods without imposing a fine is not a valid option. After the appellant informed the Proper Officer that they were not in a position to fulfill the conditions of EPR 1986, it was incumbent on the Officer to confiscate the prohibited goods imported in violation of the said Rules. Once the offending goods are confiscated the title of the goods comes to be held by government and the mechanism for the importer to get C/40256/2023 back possession of the goods is by paying a redemption fine as decided by the Proper Officer. Hence the goods can only be taken repossessions of with title by the importer, if he pays a fine.

16. The appellant has stated that it is a settled position of law that no redemption fine is imposable on the goods that are to be re-exported. We have earlier seen that for the Proper Officer to allow the redemption of prohibited goods is part of his discretionary jurisdiction. No court has laid down the law that prohibited goods, imported without authorization, are to be released for re-export without payment of redemption fine. Such a stance would only encourage importers smuggling / making improper import of goods, to take a chance with the law and if caught request for re-export of the offending goods without a fine. It would also be discriminatory that for the same offence the intended nature of clearance of the confiscated goods would determine the imposition of fine i.e. if the offending goods are cleared for home consumption fine is to be imposed and if the importer requests for its export, no fine can be imposed. The position is legally untenable. The offence does not get cured by the intended destination of the goods. Confiscated goods can be redeemed either for home consumption / warehousing or for export only on payment of a fine."

54. In view of the above, it is clear that the confiscated goods can be released to the unpaid seller i.e. M/s. ED&F Man commodities India Pvt. Ltd only on payment of redemption fine as they are holding the ownership and title to the goods under Section 125 of the goods as the section 125 allows redemption of goods to the owner and not to the importer.

55. Further, as observed by the Hon'ble High Court as well as evidences placed on record, I find that the goods have been held liable for confiscation for no lapse on part of M/s. ED&F Man commodities India Pvt. Ltd, being the seller and not the importer. The contravention of the Customs Act, 1962 has been done by the importer i.e. M/s. Uniworld sugars Pvt. Ltd. Thus, I will be taking a lenient view while imposing redemption fine upon M/s. ED&F Man India Pvt. Ltd under Section 125 of the Customs Act, 1962.

IMPORT DUTY LIABILITY-

56. The Investigation report dated 17.04.2020 of DRI refers to import duty liability for the reason that Advance Authorisation was debited, the bond was discharged and the goods were cleared.

The Hon'ble Court interalia makes following findings regarding above issues-

56.1 In Para 42, Hon'ble Court refers to earlier system of manual Bill of Entry, subsequent introduction of ICES, provisions of Regulation 8 of Warehouse (Custody and Handling of goods) Regulations 2016. Having recorded findings in this regard, Hon'ble Court notes that-

"We are of the view that mere filing of the ex-bond bill of entry, by itself, would not vest the title of the goods into the importer if ultimately such goods are not cleared by the importer, or in other words, if such goods are abandoned. In such circumstances also, the title over the imported goods would remain with the exporter and the exporter may, in peculiar facts and circumstances of the case like the one on hand, request the Commissioner to permit him to reexport the goods as an unpaid seller."

56.2 In Para 43 and 48, Hon'ble Court notes that goods were not cleared. The said finding is contrary to the view of DRI that goods were cleared as debitings were made in Advance Authorisation and bond was discharged. While recording this finding, Hon'ble Court has taken note of import of Regulation 8 of the Warehouse (Custody and Handling of Goods) Regulations, 2016 to state that the goods were permitted to be removed but were not removed, and were secured in Customs Area.

56.3 Further to above finding, Hon'ble Court records the reasoning underlying their decision to consider re export claim of M/s. ED&F Man as below:-

"We have thought fit to grant the aforesaid relief in favour of the writ-applicant keeping in mind that the terms of the contract conforms the position that the title to the goods in question would not pass until the buyer has paid the amount for the entirety of the goods."

56.4 To answer the present question, I find the observations of Hon'ble Court in Para 35 and also 36 of utmost importance.

Para 35 of High Court refers to following facts of the case-

- (i) DGFT refused to extend export obligation period of 18 months from the date of issue of Authorisation.
- (ii) In view of such non-compliance with condition attached to issue of authorization, goods are found by Hon'ble Court liable to confiscation.
- (iii) Exemption was granted at the time of import, in terms of Revenue Notification No. 79/2017-Cus on the strength of Authorisation issued by DGFT.

Above observation of Hon'ble Court requires to be read w.r.t wordings of Notification 79/2017-Cus and also the judgement as a whole.

The benefit of Notification 79/2017-Cus (read with Notification No. 18/2015-Cus w.r.t conditions attached to it come into effect on clearance of the goods.

"(i) that the said authorisation is produced before the proper officer of customs at the time of clearance for debit;

(iv) that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials*

In the present case, the Hon'ble Court has recorded a finding that the goods were not cleared and were secured in Customs Area.

56.5 Further to the above, it is pertinent to note that the physical removal of goods is different from the order of clearance for Home consumption. Physical removal of the goods which is the clearance for home consumption can only take place after such order is passed. Such clearance therefore is an event distinct and has been separate from the order permitting clearance. In this regard, I rely on the judgement of the Hon'ble Tribunal in the matter of COMMISSIONER OF CUSTOMS, KANDLA Versus SAW PIPES LTD. 2001 (137) E.L.T. 244 (Tri - Mumbai) IN THE CEGAT, WEST ZONAL BENCH, MUMBAI wherein the Hon'ble Tribunal held that-

"6. Nor are we able to agree the terms "clearance for home consumption" is to be equated with passing of an order of clearance for home consumption. Section 47(1) refers to a order of the proper officer permitting clearance of goods for home consumption. Physical removal of the goods which is the clearance for home consumption can only take place after such order is passed. Such clearance therefore is an event distinct and has been separate from the order permitting clearance. This facts would be self-evident on reading the facts of the law. Authority is given by the Tribunal's decision in Hindustan Petroleum Corporation Ltd v. CC, Bombay - 1984 (18) E.L.T. 358 and Taj Mahal Hotel v. CC, Bombay - 1995 (80) E.L.T. 588."

In view of the above, it is clear that the goods have not been cleared in the domestic market as physical removal of goods has not taken place, even though the Ex-Bond Bill of Entry has been filed and duty has been debited.

DUTY LIABILITY ON RE-EXPORT OF GOODS-

57. I find that the Hon'ble Court vide Para 48 of the order dated 05.01.2022 has allowed the undersigned to give permission to re-export the goods in accordance with law upon imposing reasonable duty on export of the goods as given below-

*"47. In view of the aforesaid, we dispose of this writ-application reserving the liberty in favour of the writ-applicant to file an application addressed to the Commissioner seeking re-export of the goods. The Commissioner shall give an opportunity of hearing to the writ-applicant, and upon recording the satisfaction as regards the ownership and title to the goods, may proceed to grant the necessary permission to re-export the goods in accordance with law upon **imposing reasonable duty** on export of the goods. The Commissioner shall also give an opportunity to the respondent No.5 of hearing if at all the respondent No.5 has to say something as regards the request of the writ applicant for re-export of the goods."*

58. In this regard, the Hon'ble Court has allowed re-export of goods, once the claim of M/s. ED&F Man commodities India Pvt. Ltd regarding the ownership and title to the goods is satisfactory to the Commissioner, Kandla. Further, it is seen that the Hon'ble Court has ordered to allow re-export upon imposing reasonable duty on the export of the goods. In this regard, it is important to note that the Hon'ble High Court has held in Para 48 of the order dated 05.01.2022 that the goods stand secured in the customs frontier and have not yet entered the domestic market. As stated earlier, the ownership/title to goods rests with M/s. ED&F Man, who originally imported goods and filed Warehouse Bill of Entry.

59. In the instant case, the goods i.e. Raw sugar is not of Indian Origin and the same has been kept in Bonded warehouse under supervision of Customs. Further, as discussed above, the goods have not been cleared for home consumption. Therefore, the goods shall be re-exported in terms of Section 69 of the Customs Act, 1962.

Section 69 of the Customs Act, 1962 is reproduced below:-

69. Clearance of warehoused goods for exportation.

(1) Any warehoused goods may be exported to a place outside India without payment of import duty if-

(a) [a shipping bill or a bill of export or the form as prescribed under section 84 has been presented in respect of such goods;]

(b) the export duty, penalties, rent, interest and other charges payable in respect of such goods have been paid; and

(c) an order for clearance of such goods for exportation has been made by the proper officer.

60. Whereas requirement of sub section 1(a) and (c) of Section 69 will be addressed by operative portion of this order, the question of export duty under Section S.69(1)(b) requires to be examined as Hon'ble High Court had directed in Para 47 extracted in Para 57 above.

61. In this regard, Section 16 determining rate of duty and tariff valuation of export goods is reproduced herein below:-

16. Date for determination of rate of duty and tariff valuation of export goods.

(1) The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force,-

(a) in the case of goods entered for export under section 50, on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51;

(b) in the case of any other goods, on the date of payment of duty.

(2) The provisions of this section shall not apply to baggage and goods exported by post.

62. I find that currently the export of Raw sugar is restricted and rate of duty is "Nil". The chronology of duty exemption on export of Raw sugar is given below:-

Notification No. and date	Date or period of effect	Effect of the Notification
-----	Prior to 01.03.2013	Export duty @20% was leviable
15/2013-Cus dated 01.03.2013	From 01.03.2013 (upto 15.06.2016)	The export duty was exempted
37/2016-Cus dated 16.06.2016	On and after 16.06.2016 (upto 05.07.2016)	The exemption was removed. Export duty @ 20 was leviable.
30/2018-Cus dated 20.03.2018	From 20.03.2018	The export duty was exempted

63. Further, it is pertinent to note that the export of raw sugar has been "Restricted" vide Notification No. 10/2015-20 dated 24.05.2022, as amended, vide Notification No. 40/2015-20 dated 28.10.2022 and 36/2023 dated 18.10.2023. However, considering the provisions of para 2.46 of FTP below, I find that the present case overcomes the restriction on export.

64. Further, Para 2.46 (I)(e) of FTP-2023 allows re-export of goods in such cases. The same is reproduced below:-

2.46 Import for Export

*(e) Notwithstanding the above, goods which are freely importable may be re-exported except items as in the Prohibited or SCOMET List of exports, in same or substantially same form even though such goods are under "**Restricted list**" for export, subject to the following conditions:*

(i) Goods are not of Indian Origin;

- (ii) Goods imported shall be kept in bonded warehouse under supervision of Customs;
- (iii) Goods to be exported have never been cleared for home consumption;
- (iv) Export of goods shall be subjected to Section 69 of Customs Act, 1962.

65. In view of the Para 2.46 (I) (e) of FTP-2023, Section 69 of the Customs Act, 1962 and various notifications enumerated above, I find that export duty doesn't arise in the instant case.

PENALTY UNDER SECTION 112, 114A AND/OR 114AA OF THE CUSTOMS ACT, 1962 UPON M/S. UNIWORLD SUGARS PRIVATE LIMITED AND/OR M/S. ED&F MAN COMMODITIES INDIA PVT. LTD.;

66. With regard to penal provisions under Section 112(a)/112(b), 114A and 114AA of the Customs Act, 1962

112. Penalty for improper importation of goods, etc.

Any person,-

(a) 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, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees] whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty [not exceeding the duty sought to be evaded on such goods or five thousand rupees,] whichever is the greater;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereinafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees] , [whichever is the greater];

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees], [whichever is the highest];

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], [whichever is the highest.]

114A. [Penalty for short-levy or non-levy of duty in certain cases.

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:]

114AA. [Penalty for use of false and incorrect material.

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]

66.1 With regard to the penalties under Section 114A and/or 112 of the Customs Act, 1962, I find that both the sections 112 and 114A attract penalties for evasion of duty.

66.2 In this regard, I find that the importer i.e. M/s. USPL have rendered the goods liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 as discussed in the foregoing paras. It is clear that the instant goods are dutiable in nature, therefore the penalty under Section 112(a)(ii) is attracted.

66.3 I further find that Section 114A attracts penalty for non/short payment of duty by way of collusion/willful mis-statement/fraud.

Section 114A reads as below:-

114A. [Penalty for short-levy or non-levy of duty in certain cases]

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:]-

In the instant case, as discussed above, I find that recovery of duty does not arise on account of non-clearance of goods though on account of non-fulfillment of export obligation within stipulated time as the goods were imported duty free under Advance Authorisation, however, I also do not find any element of collusion or any wilful mis-statement or suppression of facts. Further, as per the direction of the Hon'ble High Court the goods have to be considered for re-export and the party has requested for re-export of goods as is without clearing the same into domestic market, therefore, recovery of duty does not arise in such case, if their request is allowed. Therefore, the penalty under Section 114A of the Customs Act, 1962 is not attracted upon M/s. USPL as well as M/s. ED & F Man commodities India Pvt. Ltd.

66.4 With regard to penalty under Section 114AA of the Customs Act, 1962, I find that there is no evidence available on record to establish that penalty under Section 114AA is attracted.

67. With regard to the request of the M/s. ED& F Man for extension of the bond status of the said premises under provisions of Section 61, till date to implement the court order so they can re-export the sugar, I find that the Bond No. 2001186280 dated 07.03.2017 got expired on 07.03.2018 however, as the Ex-Bond Bill of Entry had already been filed for clearance of the goods, the Bond had been discharged. Further, it is pertinent to note that the goods were not removed from the Custom bonded warehouse as the importer M/s. Uniworld Sugars who filed the Ex-Bond Bill of Entry went into liquidation under IBC, 2016 and the unpaid seller i.e. M/s. ED&F Man approached the Hon'ble High Court of Gujarat for re-export of goods. Therefore, I extend the period, for which the goods may remain in the warehouse, till the date goods are re-exported, not exceeding 180 days from the date of issue of this order.

68. Accordingly in view of the above discussion and findings and in pursuance of the directions of Hon'ble High Court of Gujarat, I hereby pass the following order:

ORDER

- (i) I order the competent authority to cancel the Ex-Bond Bill of Entry filed by M/s. Uniworld Sugars Pvt. Ltd and allow M/s. ED&F Man commodities India pvt. Ltd to file a free shipping Bill for the purpose of re-export of goods, after following the due procedure.
- (ii) I order to confiscate 3137 MTs of raw sugar, imported under Advance Authorisation No.0510402686 dated 24.05.2017, by M/s. Uniworld Sugars

Pvt. Ltd against an Ex-Bond Bill of Entry No. 2159975 dated 20.06.2017 under Section 111(o) of the Customs Act, 1962.

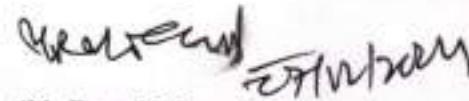
However, I allow M/s. ED&F Man commodities India Pvt. Ltd to re-export the said goods, as is, without clearing the goods for Home Consumption on payment of redemption fine of Rs.15,00,000/- (Rupees Fifteen lakhs only) under Section 125(1) of the Customs Act, 1962 in lieu of confiscation.

- (iii) I impose penalty of Rs.1,00,000/- (Rupees One Lakh only) upon M/s. Uniworld sugars Pvt. Ltd under Sections 112(a) of the Customs Act, 1962 as discussed in the foregoing paras.

I do not impose penalty upon M/s. Uniworld sugars Pvt. Ltd under Section 114A and 114AA of the Customs Act, 1962.

- (iv) I do not impose any penalty upon M/s. ED&F Man commodities India Pvt. Ltd under Sections 112, 114A, 114AA of the Customs Act, 1962 as discussed in the foregoing paras.

69. This order is issued without prejudice to any other action that may be taken against them or any other person under the Customs Act, 1962 or any other law for the time being in force.



(M. Ram Mohan Rao)
Commissioner

F.No. CUS/ASS/REX/76/2024-Export-O/o Commr-Cus-Kandla

DIN-20241271ML000022802D

To,

- (i) M/s. Uniworld Sugars Private Limited (now known as Shri Dutt India Pvt. Ltd), A-112, Sector-63, NOIDA, Uttar Pradesh-201307
- (ii) M/s. ED&F Man commodities India pvt. Ltd, 601, 275/A/1/2, Malhotra Chambers, Govandi Station road, Deonar, Govandi(East), Mumbai-400088

Copy to :-

1. The Chief Commissioner, Customs, Gujarat Zone, Ahmedabad.
2. The Additional Director General, HZU, Hyderabad.
3. The Superintendent (TRC/EDI/Bond/Export), Kandla for necessary action.