



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद  
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,  
 चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road  
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009  
 दूरभाष क्रमांक Tel. No. 079-26589281

DIN – 20250671MN000000679E

क	फ़ाइल संख्या FILE NO.	S/49-401/CUS/AHD/2023-24
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-095-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	25.06.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original SRT/CUS/ICD-Sachin/DC/86/2022-23, dated 29.03.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	25.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Parth Creation, 2 <sup>nd</sup> Floor, 1 / E, Vidhata Industrial Estate - 1, National Highway – 48, Haripura, Surat – 394 325



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 संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध 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 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के 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 :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td><td><b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b></td></tr> <tr> <td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td><td>2<sup>nd</sup> Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td></tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>				
दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> 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 है, या दंड के ₹10 अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।				
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.				
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.				
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-				
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or				
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.				





### Order-In-Appeal

M/s. Parth Creation, 2<sup>nd</sup> Floor, 1 / E, Vidhata Industrial Estate – 1, National Highway – 48, Haripura, Surat – 394 325 (hereinafter referred to as "the Appellant") have filed the present appeal against the Order – In - Original No. SRT/CUS/ICD-Sachin/DC/86/2022-23, dated 29.03.2023 (herein after referred to as "the impugned order") passed by the Deputy Commissioner, Customs, ICD – Sachin, Surat (herein after referred to as "the adjudicating authority").

2. Facts of the case, in brief, are that the Appellant had imported Capital Goods machinery, i.e., 04 set of Computerized Embroidery Machine under EPCG Licence No. 5230011116, dated 28.01.2013 by saving Customs Duty amount of Rs. 4,04,960/- (Actual Duty Utilization of Rs. 3,92,133/-) under the cover of the below mentioned Bill of Entry at a concessional rate of duty @ 3% by availing the benefit of exemption available under Notification No. 103/2009 - Cus., dated 11.09.2009. The details of import are as per Table – I below:

**TABLE - I**

Sr. No.	Bill of Entry No. & Date	Number of machinery cleared	Duty saved / available as per EPCG Licence (In Rs.)	Total Duty Foregone / Debited at the time of clearance (In Rs.)	Bank Guarantee Amount (In Rs.)
1.	9318113, dated 14.02.2013	04 Sets	4,04,960/-	3,92,133/-	70,000/-

2.1 Against the said EPCG License No. 5230011116, dated 28.01.2013, the Appellant had executed a Bond dated 13.02.2013 before the Deputy/Assistant Commissioner of Customs, ICD – Sachin, Surat for an amount of Rs. 18,00,000/- backed by a Bank Guarantee No. 1751/GE-1/2012-13, dated 12.02.2013 for Rs. 70,000/- issued by the Canara Bank, Ring Road, Surat. They had undertaken to fulfill the conditions of the Bond, the EPCG License and the relevant Customs Notifications at the time of registration of the said EPCG License.

2.2 The said machinery, i.e., 04 sets of Computerized Embroidery Machine imported under the aforesaid EPCG Licence were installed at their premises at 16-17, New Mohan Nagar, Mata Wadi, L.H. Road, Surat, as per the Installation Certificate dated 02.03.2013 issued by the Chartered Engineer, Shri B. K. Goel, certifying the receipt of the goods imported and its installation.

2.3 As per the conditions of Notification No. 103/2009 - Cus., dated 11.09.2009, the Appellant was required to fulfill the export obligation on FOB basis equivalent to Eight times the duty saved on the goods imported as specified on the Licence and Authorization, within a period of Eight years from the date of issuance of EPCG Licence. In the instant case, the EPCG Licence was issued to the Appellant on 28.01.2013 and

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accordingly, they were required to fulfill export obligation by 27.01.2021, i.e., within a period of Eight years from the date of issuance of Licence or Authorization and submit the Export Obligation Discharge Certificate (EODC) issued by the Regional DGFT Authority before the jurisdictional Customs authorities.

2.4 Letter dated 10.01.2022 and 22.02.2022 were issued to the Appellant to either furnish the EODC issued by the DGFT, Surat or any extension granted by the DGFT, Surat for fulfillment of Export Obligation. However, the Appellant had not responded to any of the above correspondences.

2.5 Since, no response was received from the Appellant, a letter dated 15.11.2022 was written to the Foreign Trade Development Officer, DGFT, Surat requesting to inform whether the EODC against the EPCG License No. 5230011116, dated 28.01.2013 have been issued or any documents showing the fulfillment of the export obligation have been submitted by the said Appellant. In response, the Assistant Director, Directorate General of Foreign Trade, Surat vide letter F. No. EPCG/Mis./2020-21, dated 07.12.2022 informed that the Appellant had not submitted any documents to them, against fulfillment of export obligation.

2.6 In view of the above, it appeared that the Appellant had failed to fulfill the export obligation as specified in the Licence and did not comply with the mandatory condition of the Notification No. 103/2009 - Cus., dated 11.09.2009, the condition of EPCG Licence and also the conditions of the Bond executed and furnished by them. The Appellant neither produced the EODC issued by the DGFT, Surat nor could produce any documents showing extension granted by them for fulfillment of export obligation. Therefore, the Appellant was liable to pay Customs Duty not paid (i.e. saved) by them amounting to Rs. 3,92,133/- at the time of import / clearance along with interest at the applicable rate, in terms of conditions of the said Notification read with condition of the Bond executed by them read with Section 143 of the Customs Act, 1962. Further, the Bank Guarantee No. 1751/GE-1/2012-13, dated 12.02.2013 for Rs. 70,000/- issued by the Canara Bank, Ring Road, Surat furnished by them against the aforesaid EPCG Licence No. 5230011116, dated 28.01.2013 appeared liable to be encashed and deposited in the Government Exchequer.

2.7 Accordingly, a Show Cause Notice under F. No. VIII/6-1330/ICD-Sachin/2012-13, dated 25.01.2023 was issued to the Appellant, proposing as to why:

The benefit of concessional rate of duty @ 3% for EPCG Scheme under Notification No. 103/2009-Cus., dated 11.09.2009 on the imported Computerized Embroidery Machine imported in their name should not be denied; Customs Duty amounting to Rs. 3,92,133/- being the duty foregone at the time of import under EPCG Licence should not be demanded and recovered from them





along with interest in terms of Notification No. 103/2009-Cus., dated 11.09.2009 as amended, read with the conditions of Bond executed and furnished by them in terms of Section 143 of the Customs Act, 1962 by enforcing the terms of the said Bond. Further, why the Bank Guarantee No. 1751/GE-1/2012-13, dated 12.02.2013 for Rs. 70,000/- issued by the Canara Bank, Ring Road, Surat backed against the Bond, should not be appropriated and adjusted towards the duty liability as mentioned above;

- iii. The imported Capital goods should not be held liable for confiscation under Section 111 (o) of the Customs Act, 1962 read with the conditions of Bond executed in terms of Section 143 of the Customs Act, 1962 read with Customs Notification No. 103/2009-Cus., dated 11.09.2009 as amended from time to time;
- iv. Penalty should not be imposed under Section 112 (a) and Section 117 of the Customs Act, 1962;

2.8 The Adjudicating Authority, vide the impugned order, has passed order as detailed below:

- i. He disallowed the benefit of concessional rate of duty @ 3% for EPCG Scheme under Notification No. 103/2009-Cus., dated 11.09.2009 on the subject machinery imported in the name of the Appellant;
- ii. He confirmed the demand of Customs Duty amounting to Rs. 3,92,133/- being the duty foregone at the time of import of Capital Goods under EPCG Licence in terms of Notification No. 103/2009-Cus., dated 11.09.2009 as amended, read with the conditions of Bond executed along with interest and ordered the same to be recovered in terms of Section 143 of the Customs Act, 1962 by enforcing the terms of the above mentioned Bond;
- iii. He ordered to appropriate the amount of Rs. 70,000/- by encashment of the Bank Guarantee No. 1751/GE-1/2012-13, dated 12.02.2013 for Rs. 70,000/- issued by the Canara Bank, Ring Road, Surat submitted by the Appellant, and adjusted towards the liability confirmed at sr. no. (ii) above;
- iv. He confiscated the subject imported Capital goods under Section 111 (o) of the Customs Act, 1962 read with the conditions of Bond executed in terms of Section 143 of the Customs Act, 1962 read with Customs Notification No. 103/2009 - Cus., dated 11.09.2009 as amended from time to time. However, he gave an option to redeem the said goods on payment of redemption fine of Rs. 99,000/- under Section 125 (1) of the Customs Act, 1962;
- v. He imposed penalty of Rs. 39,213/- upon the Appellant under Section 112 (a) of the Customs Act, 1962;
- vi. He imposed penalty of Rs. 39,213/- upon the Appellant under Section 117 of the Customs Act, 1962;

3. Being aggrieved with the impugned order passed by the adjudicating






authority, the Appellant have filed the present appeal. The Appellant have, inter-alia, raised various contentions and filed detailed submissions as given below in support of their claims:

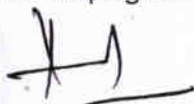
- That the show cause notice should not have been issued at all as it is contrary to the CBEC Circular dated 02.05.2017 directing field formations to issue only letter in such cases and specifically directed not to issue show cause notice;
- That they have already applied for the EODC / Bond waiver vide letter 04.07.2023 to the Joint DGFT, Surat due to which the impugned ex parte order is required to be quashed and set aside with consequential relief of refund of Bank Guarantee amount with interest as per law of the Customs authorities;
- That the impugned order also suffers from the incurable vice of violation of principles of natural justice as without ensuring service of show cause notice and the personal hearing notice;
- That the impugned order seems to have passed with one personal hearing notice fixing three dates of hearing on 13<sup>th</sup> March, 2023, 20<sup>th</sup> March, 2023 and 27<sup>th</sup> March, 2023 vide paragraph 12 of the impugned order. This manner of fixing of all the three personal hearings in one PH notice is not permissible in law vide judgment of Afloat Textiles Pvt. Ltd. vs. CCE – 2007 (215) Excise Law Times 198;
- Further in Regent Overseas Pvt. Ltd. vs. Union of India – 2017 (6) GSTL 15, the jurisdictional High Court held in para 11 of its judgment that in the absence of four dates of personal hearing in the PH notices, assuming that adjournments granted, it would amount to grant of two adjournments and not three adjournments. Therefore, the impugned order suffers from the vice of violations of principles of natural justice and is required to be quashed and set aside;
- That the order confiscating the imported machinery, confirming duty with interest, imposition of penalty, order for enforcing the Bond and Bank Guarantee are ab initio illegal because all documents showing proof of fulfillment of export obligation had been submitted by them to the office of the Joint DGFT, Surat on 04.07.2023;

#### PERSONAL HEARING:-

4. Personal hearing in the matter was held on 18.06.2025 in virtual mode. Shri S. Suriyanarayanan, Advocate appeared for hearing on behalf of the Appellant. He reiterated the submissions made in the appeal memorandum.

#### DISCUSSION & FINDINGS:-

5. I have carefully gone through the appeal memorandum filed by the Appellant, the grounds of appeal well as records of the case. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority





disallowing the benefit of concessional rate of duty under Notification No. 103/2009 - Cus., dated 11.09.2009, confirming the demand of duty along with interest, confiscating the Capital goods under Section 111 (o) of the Customs Act, 1962 and imposing penalty upon the Appellant under Sections 112 (a) and 117 of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

6. Being aggrieved, the Appellant has filed the present appeal on 27.12.2023. In the Form C.A.-1, the date of communication of the Order-In-Original dated 29.03.2023 has been shown as 18.12.2023. Therefore, the appeal has been filed within normal period of 60 days, as stipulated under Section 128 (1) of the Customs Act, 1962. Further, as per C.A. – 1, the Appellant has submitted that the Bank Guarantee of Rs. 70,000/- have been appropriated vide the impugned order, thereby fulfilling the requirement of pre-deposit of filing the appeal as envisaged under the Section 129 E of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and complies with the requirement of Section 129E of the Customs Act, 1962, the appeals has been admitted and being taken up for disposal on merits.

7. It is observed that the Appellant has contended that the impugned order has been issued in violation of principle of natural justice inasmuch by granting them one personal hearing notice fixing three dates of hearing. In this regard, it is relevant to refer to Para 14.3 of the Master Circular No. 1053/2/2017-CX., dated 10.03.2017, which is reproduced for ease of reference:

*"14.3 **Personal hearing** : After having given a fair opportunity to the noticee for replying to the show cause notice, the adjudicating authority may proceed to fix a date and time for personal hearing in the case and request the assessee to appear before him for a personal hearing by himself or through an authorised representative. At least three opportunities of personal hearing should be given with sufficient interval of time so that the noticee may avail opportunity of being heard. Separate communications should be made to the noticee for each opportunity of personal hearing. In fact separate letter for each hearing/extension should be issued at sufficient interval. The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding adjourn the hearing for reasons to be recorded in writing. However, no such adjournment shall be granted more than three times to a noticee."*

7.1 On plain reading of the above Circular, it clearly emerges that the adjudicating authority shall after having given a fair opportunity to the noticee for replying to the show cause notice, may proceed to fix a date and time for personal hearing in the case and request the assessee to appear before him for a personal hearing by himself or through an authorized representative. Furthermore, it also provides that at least three opportunities of personal hearing should be given with sufficient interval of time so that the noticee may avail opportunity of being heard.





7.2 In this regard, I rely upon the judgement of Hon'ble High Court of Calcutta in case of Rajkumar Singh Vs. Assistant Commr., Asansol Charge, [W.B. GST 2022 (64) G.S.T.L. 40 (Cal.)], which is reproduced as below:-

*"2. In this writ petition, petitioners have challenged the impugned adjudication order dated 9th May, 2021 passed by the Adjudicating Authority concerned, on the ground that the same has been passed in violation of principle of natural justice by not affording opportunity of personal hearing to the petitioners in spite of specific request from the petitioners in their reply to the show cause notice dated 13th April, 2021 as appears at Page 33 of the writ petition.*

*3. On perusal of the impugned adjudication order it appears that though the Adjudicating Authority concerned has recorded that the impugned order has been passed after considering the reply filed by the petitioners but nowhere it appears that the petitioners' request for personal hearing was either considered or rejected.*

*4. Mr. Siddiqui, Learned Additional Government Pleader is not in a position to contradict the aforesaid admitted position which appears from record that no personal hearing was afforded to the petitioners in spite of their request and that neither such request of the petitioner was considered nor rejected.*

*5. Considering the facts and circumstances of the case as appears from record and submission of the parties, the aforesaid impugned order dated 9th May, 2021 is set aside and the matter is remanded back to the Adjudicating Officer concerned to pass a fresh order after giving an opportunity of hearing to the petitioners or their authorised representative within eight weeks from the date of communication of this order.*

*6. With these directions and observations, this writ petition being W.P.A. 9561 of 2022 is disposed of."*

7.3 Further, I also rely upon the judgment of Hon'ble High Court of Madras in case of Amman Match Company Vs. Assistant Commr. Of GST & C.Ex, Madurai {2018 (363) E.L.T. 120 (Mad.)}. Relevant paras of the judgment of the Hon'ble High Court are reproduced below:

*"25. Insofar as the impugned order-in-original passed by the first respondent dated 29-7-2016 is concerned, it is passed without affording any opportunity of personal hearing, in contravention of the statutory provision, circular issued by the department as well as contrary to Paragraph No. 15 of the show cause notice. The impugned order passed within two days from the date of lapse of the time granted in the show cause notice is certainly in violation of principles of natural justice and, therefore, it is liable to be set aside.*



*[Handwritten signature]*



26. In the result, the writ petition is allowed and the impugned order in original dated 29-7-2016 passed by the first respondent is set aside and the matter is remanded back to the first respondent for consideration afresh. The petitioner shall file all his objections, within a period of one month from the date of receipt of a copy of this order. On receipt of objections from the petitioner, the first respondent shall afford an opportunity of personal hearing at least three times, as mandated in the Master Circular with sufficient intervals and thereafter, pass orders on merits and in accordance with law, as expeditiously as possible. No costs."

7.4 It is observed that the adjudicating authority has passed the impugned order in violation of principles of natural justice inasmuch as it has been passed by granting them one personal hearing notice and without considering the representation in defense of the Appellant. It is further observed that the Appellant have in the present appeal contended that the SCN have been issued contrary to the CBEC Circular No. 16/2017 - Customs, dated 02.05.2017, directing the field formations to issue only letter in such cases and specifically directing not to issue Show Cause Notice. In this regard, the relevant para of the CBEC Circular No. 16/2017 – Customs, dated 02.05.2017 is reproduced below for ease of reference:

"5. In view of the above, the field formations may issue simple notice to the licence/authorization holders for submission of proof of discharge of export obligation. In case where the licence/authorization holder submits proof of their application having been submitted to DGFT, the matter may be kept in abeyance till the same is decided by DGFT. Institutional mechanism set up in terms of Instruction F. No. 609/119/2010-DBK dated 18-1-2011 for regular interaction with RA's of DGFT should be used to pursue such cases. However, in cases where the licence/authorization holder fails to submit proof of their application for EODC/Redemption Certificate, extension/clubbing etc., action for recovery may be initiated by enforcement of Bond/Bank Guarantee. In cases of fraud, outright evasion, etc., field formations shall continue to take necessary action in terms of the relevant provisions."

7.5 On perusal of the above clarification given by the CBEC, it is observed that in case the authorization holder does not submit the EODC/ Redemption Letter within the period prescribed in the relevant notification, a simple notice may be issued to the authorization holder. In case where the license/authorization holder submits proof of their application having been submitted to DGFT, the matter may be kept in abeyance till the same is decided by the DGFT.

7.6 In the instant case, the Appellant had already applied for the EODC / Bond waiver letter on 04.07.2023 to the Joint DGFT, Surat. However, it is observed that these facts have been brought before the appellate authority for the first time and the adjudicating authority had no occasion to consider the same. Moreover, the appeals were sent to the adjudicating authority for his comments on the grounds raised in the appeal, however, no response have been received. Hence, I am constraint to remand the matter





to the adjudicating authority to pass fresh order in light of the CBEC Circular dated 02.05.2017 taking into account the outcome of the decision from the DGFT authority in this regard.

8. Therefore, I find that remitting the present appeal to adjudicating authority for passing fresh order, after taking the submissions made by the Appellant in the present appeal on record, and pass fresh order after following principles of natural justice, has become sine qua non to meet the ends of justice. Accordingly, the case is remanded back to the adjudicating authority, in terms of sub- section 3 (b) of Section 128A of the Customs Act, 1962, for passing a fresh order by following the principles of natural justice. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs- 2004 (173) ELT 117 (Guj.), Judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and Judgments of Hon'ble Tribunals in case of Prem Steels Pvt. Ltd. [2012-TIOL-1317-CESTAT-DEL] and Hawkins Cookers Ltd. [2012 (284) E.L.T. 677 (Tri.-Del)] holding that Commissioner (Appeals) has power to remand the case under Section – 35A (3) of the Central Excise Act, 1944 and Section – 128A (3) of the Customs Act, 1962.

9 In view of above, I set aside the impugned order and allow the appeal filed by the Appellant by way of remand to the adjudicating authority for passing fresh order after considering the submissions made by the Appellant in the present appeal on record. The Adjudicating Authority shall examine the available facts, documents, submissions and issue speaking order afresh following principles of natural justice and legal provisions. No views on merits has been expressed on this order.

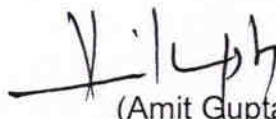
10. The appeal preferred by the Appellant is allowed by way of remand.



F. No. S/49-401/CUS/AHD/2023-24

सत्यापित/ATTESTED  
अधीक्षक/SUPERINTENDENT  
सीमा शुल्क (अपील), अहमदाबाद.  
CUSTOMS (APPEALS), AHMEDABAD.

1779

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

Date: 25.06.2025

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