सीमाशुल्क(अपील) आयुक्तकाकार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद, AHMEDABAD,
चौथी मंज़िल 4th Floor, हडकोभवनHUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281
DIN – 20250571MN0000666AD4

क	फ़ाइलसंख्या FILE NO.	CAPPL/COM/CUSP/1133/2023 CAPPL/COM/CUSD/144/2023
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	KDL-CUS-000-APP-006-007-2025-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.05.2025
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	OIO No. KDL/ADC/RHM/05/2023-24 dated 07.06.2023
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	30.05.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	(i) M/s Aum Solvchem (IEC No. ABPFA5636E), Plot No. 438-B, Sector-IV, KASEZ. (ii) M/s Vivasvanna Export Private Ltd (IEC AAGCV8932P), World Business centre 20 Nr. Parimal Garden, Ahmedabad.

1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन),वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग,नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै.
	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.
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	बैगेज़केरूपमेंआयातितकोईमाल.
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो.
(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)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	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)	कोर्टफीएक्ट,1870केमदसं.6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.
(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)	सम्बद्धदस्तावेज़ोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद,फीस,दण्ड,जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/-(रूपएएकहज़ारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क,मांगागयाब्याज,लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.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/-.
	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बंन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसीमाशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3

	मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण,पश्चिमीक्षेत्रीयपीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरीमंज़िल,बहुमालीभवन,निकटगिरधरनगरपुल,असारवा,अहमदाबाद-380016	2nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-**	
	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)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररुपए.**	
(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)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पांचहज़ाररुपए**	
(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)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररुपए.**	
(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)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं,यादंडके 10% अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएगा।	
(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.	**उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.**	
	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

Two appeals, as per details given in Table below, have been filed in terms of Section 128 of the Customs Act, 1962 against Order-in-Original OIO No. KDL/ADC/RHM/05/2023-24, dated 07.06.2023 (hereinafter referred to as "impugned order") passed by the Additional Commissioner of Customs, Kandla (hereinafter referred to as "adjudicating authority"): -

Sr. No.	Appeal File No	Name of the Appellant	Hereinafter referred to as
1	CAPPL/COM/CUSP /1133/2023	M/s Aum Solvchem (IEC No. ABPFA5636E), Plot No. 438-B, Sector-IV, KASEZ.	Appellant No. 1
2	CAPPL/COM/CUS D/144/2023	M/s Vivasvanna Export Private Ltd (IEC AAGCV8932P), World Business centre 20 Nr. Parimal Garden, Ahmedabad.	Appellant No. 2

2. Briefly stated, facts of the case are that the Appellant No. 1 is a SEZ unit in KASEZ and is involved in the trading business. Letter of Approval (LOA) No. 14/2019-20 dated 19.12.2019 was granted to them vide F.No. KASEZ/IA/AS/27/2019-20-10753 by the Development Commissioner, Kandla SEZ under Section 15(9) of the SEZ Act read with Rule 18 of the SEZ Rules, 2006 to operate as an SEZ unit and carry out authorized operations of "Trading activity". Further, the approval for setting up of a trading unit in KASEZ was given by the Development Commissioner based on UAC meeting dated 17.09.2019, subject to the specific condition that the Appellant No. 1 would make 100% export of the traded goods and nothing will be allowed to be sold into DTA under any circumstances. Further, from the scrutiny of documents like Letter of Approval (LOA) and the data retrieved from the SEZ Online system administered by NSDL, it appeared that the Appellant No. 1 had imported goods vide Bill of Entry No. 1005267 dated 03.06.2020 having assessable value of Rs. 32,18,620/- for export purpose as per conditions stipulated in their LOA and availed duty exemption benefits under Section 26 of the SEZ Act, 2005 read with Rule 27 of SEZ Rules,2006 to the tune of Rs. 8,92,685/-. The details of the imported goods are mentioned below:

Table I

S. No.	Import BE No./ Date	Declared Description of goods	Quantity (in MTs)	Assessable Value (in INR)	CTH	Duty Foregone In INR
1	1005267 dated 03.06.2020	N-Butyl Acrylate (Butyl	46	32,18,620	29161210	8,92,685

		Acrylate Monomer)				

2.1 Further, during the scrutiny of the documents by CERA, for the period 2019-2021, it appeared that the same goods were subsequently removed/cleared vide DTA Bill of Entry No. 2007157 dated 11.09.2020, which was filed on self-assessment basis for the clearance of subject goods into DTA by Appellant No. 1 to Appellant No. 2 under Rule 48 (1) of the SEZ Rules, 2006 on payment of Custom duty in contravention to Condition No. XVII which expressly states that *the SEZ Unit "shall undertake 100 percent export of the traded goods and nothing shall be allowed to be sold into DTA under any circumstances."* The details of the goods cleared into DTA under Section 30 of the SEZ Act, 2005 are mentioned below:

Table III

Sr. No.	DTA BE No./ Date	Declared Description of goods	Quantity (in MTs)	Assessable Value (in INR)	CTH	Duty Paid in INR
1	2007157 dated 11.09.2020	BAM-(Butyl Acrylate Monomer)	45.6	41,70,348	29161210	11,56,646

2.2 Further, it appeared that goods imported under Bill of Entry No. 1005267 dated 03.06.2020 were cleared into the DTA through Bill of Entry No. 2007157 dated 11.09.2020. However, it appeared that the Appellant No.1 did not disclose that these goods were meant for re-export, as per the conditions of the LOA. Further, Section 17 of the Customs Act, 1962 and Rule 75 of the SEZ Rules, 2006 mandate self-assessment and self-declaration for import/export and SEZ transactions. Therefore, it also appeared that Appellant No. 1 and Appellant No. 2 were responsible for accurate declarations while clearing goods into the DTA. Since the Appellant No. 1 was involved in the relevant business, they were fully aware of the conditions and approvals applicable, however, it appeared that they deliberately suppressed the fact that they lacked permission to clear these goods into the DTA, thereby engaging in an unauthorized and malafide transaction and taking undue benefits on the import, amounting to Rs.41,70,348/-.

2.3 After, the completion of the investigation, SCN was issued to both the Appellants as to why:

In case of Appellant No. 1

(i) The goods declared as "Butyl Acrylate Monomer" cleared by Appellant No. 1 to Appellant No. 2 having declared assessable value of

Rs. 41,70,348 /- should not be held liable for confiscation under Section 111(d) of the Custom Tariff Act, 1962.

(ii) Exemption availed by Appellant No. 1 on the subject Import associated with goods cleared into DTA by means of unauthorized operations should not be denied and the Custom Duty to the tune of **Rs. 8,92,685/-** above should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with interest under Sec 28 AA ibid.

(iii) Penalty under Section 112, 114A and 114AA of the Customs Act, 1962 should not be imposed on Appellant No. 1.

(iv) Bond-cum-Legal Undertaking in Form-H furnished by the Appellant No. 1 should not be enforced towards the duty and other liabilities arising out of subject goods removed into DTA.

In case of Appellant No. 2

(i) The goods declared as "Butyl Acrylate Monomer" cleared to them into Domestic Tariff Area as detailed in having declared assessable value of Rs.41,70,348 /- should not be held liable for confiscation under Section 111(d) of the Custom Tariff Act, 1962.

(ii) Penalty under Section 112, 114A and 114AA of the Customs Act, 1962 should not be imposed on Appellant No. 2.

3. Thereafter, adjudicating authority vide the impugned order passed the orders as:

Order in respect of Appellant No. 1:

(i) Held the goods quantity of 46 MTS declared as "Butyl Acrylate Monomer" cleared by Appellant No. 1 to Appellant No. 2 having declared assessable value of Rs. 41,70,348 /- liable for confiscation under Section 111(d) of the Custom Act, 1962. Since the goods are not available for confiscation, redemption fine cannot be imposed under Section 125 of the Customs Act, 1962.

(ii) Exemption availed by Appellant No. 1 on the subject Import associated with goods cleared into DTA by means of unauthorized operations to the tune of Rs. 8,92,685/- be recovered from them under Section 28(4) of the Customs Act, 1962 along with interest under Sec 28 AA ibid.

(iii) Imposed penalty equal to duty confirmed at para (ii) above plus interest, under Section 114A of the Customs Act, 1962.

(iv) Imposed penalty of Rs. 10,00,000/- under Section 114AA of the Customs Act, 1962.

(v) Enforced Bond-cum-Legal Undertaking in Form-H furnished by the Appellant No. 1 towards the duty and other liabilities confirmed at above paras.

Order in respect of Appellant No. 2

(i) Held the goods "Butyl Acrylate Monomer" quantity of 45.6 MTs cleared into Domestic Tariff Area having declared assessable value of Rs.41,70,348 /- liable for confiscation under Section 111(d) of the Custom Act, 1962. Since the goods are not available for confiscation, redemption fine cannot be imposed under Section 125 of the Customs Act, 1962

(ii) Imposed the penalty of Rs. 89,268/- under Section 112(a)(ii) of the Customs Act, 1962.

(iii) Imposed the penalty of Rs.10,00,000/- under Section 114AA of the Customs Act, 1962.

4. Being aggrieved with the impugned order, both the Appellants have filed the present appeals on the following grounds:

- That the Appellants No. 1 and 2 requested an extension to file submissions, but no response was received and department failed to prove that personal hearing notices were served via prescribed modes under Section 153 of the Customs Act.
- That Appellant No. 1 had a valid Letter of Approval (LOA) and Bond-cum-Legal Undertaking (Form-H), both of which explicitly permitted them to sell goods in the Domestic Tariff Area (DTA) on payment of applicable duties.
- That The CERA audit relied only on condition (xvii) of the LOA (100% export clause), ignoring the permitting clauses whereas LOA condition (v) and Bond Clause 9 specifically permit DTA sales on payment of applicable duty.
- The DTA Bill of Entry was duly assessed by the SEZ Authorized Officer through the SEZ Online system administered by NSDL, and was not self-assessed by the appellant. All relevant documents, including the KYC of the DTA buyer and the applicable import license, were duly uploaded and verified by the SEZ authorities during the course of assessment.
- That the penalty under Section 114A is not applicable as there was no willful misstatement or suppression—customs duty was paid at the time

of DTA clearance under valid SEZ permissions. Even if duty is re demanded, it would result in revenue neutrality, making extended limitation and penalty unjustified, as held in *Reliance Industries Ltd. v. CCE*. Section 114AA is also inapplicable since no false or incorrect documents were submitted—everything was genuine and verified. Hence, both penalties are legally untenable and must be set aside.

- That Appellant No. 2, as a DTA buyer, is not responsible for the SEZ unit's export obligations and any violation by the SEZ unit does not render the Appellant No. 2 liable. Further, DTA Bill of Entry was duly assessed by the Authorized Officer of KASEZ, and all relevant documents (sale invoice, KYC) were submitted.
- That since the goods were assessed and duty paid by Appellant No. 2, no suppression can be alleged and hence there was no breach of Rule 47 of SEZ Rules or other customs laws by the Appellant No. 2.
- That Appellant No. 2 reiterates that no suppression or mis-declaration was committed and all actions were in accordance with law and there is no evidence that the Appellant No. 2 knowingly committed any violation and had submitted genuine documents, and there was no intent to mislead.

- They have relied upon the following cases:
  - Schiller Healthcare India Pvt. Ltd. v. Assistant Commissioner of Customs (Drawback-Air), Chennai VII Commissionerate *2021 (378) E.L.T. 742 (Madras).*
  - Pushpam Pharmaceuticals Co. vs. Collector of Central Excise *1995 (78) E.L.T. 401 (SC)*
  - Reliance Industries Ltd. vs. Commissioner of Central Excise, Rajkot *2014 (311) E.L.T. 401 (Tri. - Ahmd.)*
  - Adani Power Ltd. v. Union of India *2020 (372) E.L.T. 60 (Gujarat)*
  - MEIRS PHARMA (INDIA) PVT. LTD. Versus COMMISSIONER OF CUSTOMS, CHENNAI [2004 (167) E.L.T. 53 (Tri. - Chennai)]

PERSONAL HEARING

4. Shri Vijay N Thakkar, authorized representative appeared on 06.05.2025 for both the Appellants and reiterated the submissions made in the appeal memorandum.

DISCUSSION & FINDINGS

5. I have gone through the appeal memorandum filed by the Appellants No. 1 and 2, records of the case and submissions made during personal hearing. The main contention of the appeals is that the goods cleared from SEZ to DTA is within the legal framework and without suppression. However, the Department states that the goods cleared were in contravention to the SEZ rules and provisions of Customs Act, 1962. Therefore, the main issue to be decided in the present appeal are whether the impugned order confiscating the goods, confirming the Customs duty and imposing penalty on the Appellants No. 1 and 2 in terms of provisions of the Customs Act, 1962 read with SEZ Act, 2005 read with SEZ Rules, 2006 in the facts and circumstances of the case, is legal and proper or otherwise.

6. Before going into the merits of the case, I find that as per CA-1 Form of the Appellants No. 1 and 2, the present appeals have been filed on 24.07.2023 and 07.08.2023 respectively against the impugned order dated 07.06.2023 which is within the statutory time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit, it has been admitted and being taken up for disposal in terms of Section 128A of the Customs Act, 1962.

6.1 It is observed that the during the scrutiny of the documents, CERA raised an objection that the Appellant No. 1 had imported the goods in their SEZ unit, set up for trading activity, by availing the exemption benefit of Customs duty and further cleared the goods to DTA, i.e. Appellant No. 2 in the contravention of Sr. No. xvii the LOA and availed the double duty benefits. In this regard, the Appellant No. 1 has contended that the observations made in the CERA audit are vitiated by a gross misinterpretation and selective application of the provisions of the SEZ Rules, 2006 and the conditions stipulated in the Letter of Approval (LOA). They had relied solely upon Condition No. (xvii) of the LOA, pertaining to the 100% export obligation, while deliberately ignoring Condition No. (v), which expressly permits sales into the Domestic Tariff Area (DTA) on payment of applicable duties and had further failed to consider the entirety of the LOA conditions (i.e., Conditions No. (i) to (xix)) and the Bond-cum-Legal Undertaking (Form-H), which was duly accepted and approved by the Approval Committee. As per LOA there are two conditions mentioned at Sr. No. (v) and (xvii) which reads as under:

"(v) You may supply/ sell goods or services in Domestic Tariff Area in terms of the provisions of the Special Economic Zones Act, 2005 and Rules and orders made there-under."

"(xvii) You shall undertake 100% export of the traded goods and nothing will be allowed to be sold into DTA under any circumstances."

Further, Appellant No. 1 has contended that they have cleared the goods into DTA with declarations made vide DTA Bill of entry and there was no mis-declaration and suppression of the facts as the goods were cleared on the payment of customs duty duly assessed by the proper officer.

In view of the above, it is observed the condition (xvii) of the LOA restricts the Appellant No. 1 to sell the goods to DTA, however, at the same time, condition (v) of the same LOA allows the Appellant No. 1 to sell the goods to DTA. Further, it is also observed from the Para 14 and 15 of the impugned order that the impugned goods were cleared to DTA vide DTA Bill of Entry dated 11.09.2020 filed by the Appellant No. 2 on the self-assessment basis and was subjected to levy of Customs duty of Rs.11,56,646/- under Section 30 of the SEZ Act, 2005.

In view of the above, I am of the considered view that Appellant No. 1 has cleared the goods to DTA from their SEZ unit is not in complete contravention of the conditions of the LOA since the plain reading of the condition (v) permits the Appellant No. 1 to clear the goods and at the same time Appellant No. 2 has also paid the applicable customs duties while filing the DTA Bill of entry. Furthermore, since the removal of goods from the SEZ unit was carried out under the supervision and assessment of the Customs authorities in accordance with the prescribed procedures, the said clearance cannot be construed as an unauthorized operation. Since the customs duty amounting to Rs. 8,92,685/-, which was initially forgone at the time of import by Appellant No. 1, has already been compensated by Appellant No. 2 through payment of applicable customs duties at the time of DTA clearance via duly assessed DTA Bill of Entry, there is no question of Appellant No. 1 having availed any double benefit. Further, since the Appellant No. 2 is not responsible for ensuring whether the SEZ unit has fulfilled its export obligations or complied with all conditions of its Letter of Approval (LOA) or Bond, Appellant No. 2 has not violated any provisions of Customs Act, 1962 or SEZ Act, 2005 and has paid the applicable Customs duty in terms of Under Rule 48 of the SEZ Rules, 2006. Since, there is no suppression of facts in the present case, invocation of Section 28(4) is not applicable, therefore, the impugned order confirming the customs

duty along with interest from the Appellant No. 1 is not legally sustainable and is liable to be set aside.

6.2 Further, the Appellants No. 1 and 2 have contended that SCN seeks confiscation of goods under Section 111(d) *ibid* and the adjudicating authority has hold goods liable for confiscation under Section 111(m) *ibid* in the findings (Para 19) of the OIO. Further, in Order portion again the adjudicating authority holds confiscation of goods under Section 111(d) *ibid*. Thus, proposal of confiscation of goods is not sustainable under law. In this regard, it is observed that the adjudicating authority has erred in giving the clear findings on confiscation of the goods by discussing the confiscation under Section 111(m) of the customs Act, 1962 and at the same time, confiscated the goods under Section 111(d) of the Customs Act, 1962.

In this regard, it is relevant to peruse the Section 111(d) of the Customs Act, 1962 which reads as under:

> *"Section 111(d) – Goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, shall be liable to confiscation."*

In view of the above, Section 111(d) applies to the condition where the goods imported or attempted to be imported in violation of any legal prohibition imposed under the Customs Act or any other law in force. However, impugned order has failed to establish or elaborate how the goods in question were "prohibited" goods under any provision of law. Mere procedural lapse or alleged non-compliance with certain conditions of the Letter of Approval (LOA) or SEZ Rules does not render the goods as "prohibited" within the meaning of Section 111(d) of the Customs Act, 1962. It is a settled legal position that confiscation under Section 111(d) can only be sustained when there exists a clear and express legal prohibition on the import or clearance of the goods, which has not been demonstrated in the present case. Accordingly, the invocation of Section 111(d) is liable to be set aside.

6.3 Further, Appellants No. 1 and 2 have contended that the penalties imposed under Sections 114A and 114AA of the Customs Act, 1962 are not justified, as the required conditions—such as collusion, willful misstatement, or suppression of facts—are absent in this case. Further, the goods were cleared into the Domestic Tariff Area (DTA) with proper authorization from SEZ authorities in accordance with the LOA and Bond conditions, and customs

duties were duly paid at the time of clearance. The adjudicating authority's inconsistent reference to confiscation provisions (Section 111(d) and 111(m)) further undermines the legal basis of the order. Additionally, since there is no revenue loss and the situation is revenue neutral, the extended period under Section 28(4) and penalties under Section 114A are not applicable. Accordingly, the penalties are liable to be set aside.

In view of the above, I am of the considered view that confiscation of the imported goods in the impugned order is not legally sustainable due to adjudicating authority's inconsistent reference to confiscation provisions, i.e. Section 111(d) and 111(m) of the Customs Act, 1962. Since the primary condition, i.e. confiscation of goods, to impose penalties under provisions of the Customs Act, 1962, is not sustained, therefore, the impugned order imposing penalty under Section 114A and Section 114AA on the Appellant No. 1 and penalty under Section 112(a)(ii) and Section 114AA on the Appellant No. 2 of the Customs Act, 1962 are also liable to be set aside.

7. In view of the above discussion, I set aside the impugned order and appeals of the Appellants No. 1 and 2 are allowed with consequential relief, if any.

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

(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD.

F.Nos. CAPPL/COM/CUSP/1133/2023
CAPPL/COM/CUSD/144/2023

Dated :30.05.2025

By Registered Post A.D.

To,

(i) M/s Aum Solvchem, Plot No. 438-B, Sector-IV, KASEZ.

(ii) M/s Vivasvanna Export Private Ltd, World Business Centre 20 Nr. Parimal Garden, Ahmedabad.

Copy to:

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Commissioner of Customs, Customs, Kandla.
3. The Additional Commissioner of Customs, Customs House, Kandla.
4. Guard File.