



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,  
चौथी मंजिल 4th Floor, हड्डो भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009  
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250671MN000000DA70

क	फाइल संख्या FILE NO.	S/49-95/CUS/AHD/2024-25
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-094-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	24.06.2025
ड	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. 05/ADC/VM/ O&A/2024-25 dated 18.04.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	24.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s E-Infochips Pvt.Ltd, 100% EOU, 303, Parishram Building, Mithakhali, Six Road, Navrangpura, Ahmedabad - 380006



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 exported
(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/- (रूपए दो सौ मात्रा) या रु. 1,000/- (रूपए एक हजार मात्रा), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां, यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.



4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>
	दूसरी मण्डिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रुपए या उससे कम हो तो एक हजार रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रुपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रुपए	
(ब)	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 रुपए से अधिक हो तो; दस हजार रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।	
(द)	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

Appeal has been filed by M/s E-Infochips Pvt. Ltd, 100% EOU, 303, Parishram Building, Mithakhali, Six Road, Navrangpura, Ahmedabad-380006, (hereinafter referred to as 'the Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 05/ADC/VM/O&A/2024-25, dated 18.04.2024 read with Corrigendum dated 17.05.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs, Ahmedabad (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant were engaged in import of "plant and machinery, raw materials, components, spares and consumables free of import / Customs Duty". The Joint Development Commissioner, Office of the Development Commissioner, KASEZ, Gandhidham had issued LOP for the EOU to the Appellant vide LOP No. KASEZ/100%EOU/II/113/2004-05, dated 06.12.2004. An audit had been undertaken by the Audit team, Indian Audit and Accounts Department, Ahmedabad, on the subject matter of "Monitoring of EOU & SEZ by the Development Commissioner" under Specific Compliance Audit (SSCA) at Customs, EPC, Paldi covering period from 2017-18 (January, 2018 to 2019-20. During the course of audit, it was observed vide Para, which reads as:

*"HM No. SSCA/Monitoring EOU&SEZ/2020-21 dated 31.12.2020-*

*M/s. e-infochips, 303, Parishram Building, Mithakhali Six Road, Navrangpura, Ahmedabad - holding LOP No. KASEZ/100%EOU/II/113/2004-05, dated 6.12.2004 issued by the Jt. Development Commissioner, O/o the Development Commissioner, KASEZ, Gandhidham, vide letter KASEZ/100%EOU/II/52/ 0102/vol.II-3387, dated. 21.06.2019, has given clarification regarding import of capital goods under para No.6.01 (d) of FTP 2015-20, as under:*

*As per para of APPENDIX- 6E (FORM OF LEGAL AGREEMENT FOR EOU/EHTP/STP/BPT), the unit has been permitted to import/indigenously plant and machinery, raw materials, components, spares and consumables free of import / Central Excise duty as per the details given at ANNEXURE -I:*

*From the above para, it is clear that the permission from the Development Commissioner's (D.C.) office is required for import/ indigenously purchase of Plant and Machinery under Para 6.01(d) of FTP 2015-20.*

*Hence, EOUs are required to take permission from the Development Commissioner's office for import/ indigenous purchase of Capital Goods whenever required. However, after attestation of list in LUT, they may import/procure Capital Goods on self-certification basis.*

*During the test check of records, it was noticed that the importer had filed for procurement certificate vide intimation Nos.128/2017-18 dated 05.02.2018, 129/17-18 dated 05.02.2018, 327/17-18 dated 28.02.2018, 413/17-18 dated 16.03.2018, 462/17-18 dated 23.03.2018, 504/17-18 dated 27.03.2018, 84/18-19*



dated 16.04.2018 and 94/17-18 dated 02.02.2018 for import of EPAC Power Supply Slotted Plates CTH 76061190, Aluminium Plate UDU Unit/UDU Unit with Battery CTH 76061190, Sheet Metal Cover UDU CTH 82057000 and 3rd Eye Cam V4 Unit CTH 85299090 having Assessable Value of Rs. 7,81,54,587/- and duty forgone of Rs. 2,39,41,145/-

The Procurement Certificate was issued by Assistant/Dy. Commissioner, Custom Division, Paldi, Ahmedabad and intimation was sent to the Superintendent of Customs, MEPZ-SEZ, Tambaram, Chennai. On verification of the Procurement Certificate Goods and the CTH was not shown in Annexure-I of Legal Agreement issued by Development Commissioner, KASEZ. As per above said provision that the unit has been permitted to import goods as per given details in Annexure -I of LUT, however, these goods were not mentioned in Annexure -I. This has resulted in irregular issuance of Procurement Certificate having assessable value of Rs.78154587/- and duty forgone of Rs.23941145/-..."

2.1 The 100% EOU scheme is formulated by the Government of India and as detailed in Chapter 6 of Foreign Trade Policy 2015-2020 and Hand Book of Procedures 2015-2020 regarding operations of 100% EOU, wherein it appears that for proper operations of 100% EOU, Central Board of Indirect Taxation (CBIC) has issued Notification No. 52/2003- Customs dated 31.03.2003 for Customs duty free procurement of goods, manufacture and clearances etc. with following conditions:

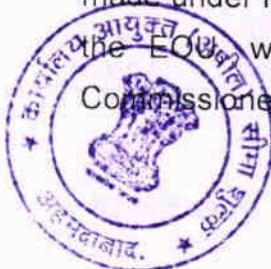
(1) The importer has been authorised by the Development Commissioner to establish the unit for the purposes specified in clauses (a) to (e) of the opening paragraph of this Notification;

(2) The unit carries out the manufacture, production, packaging or job-work or service in Customs bond and subject to such other condition as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs or Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, (hereinafter referred as the said officer) in this behalf;

(3) The unit executes a bond in such form and for such sum and with such authority, as may be specified by the said officer, binding himself,

- (a) to bring the said goods into the unit or and use them for the specified purpose mentioned in clauses (a) to (e) in the opening paragraph of this Notification;
- (b) to maintain proper account of the receipt, storage and utilization of the goods;
- (c) to dispose of the goods or services, the articles produced, manufactured, processed and packaged in the unit or the waste, scrap and remnants arising out of such production, manufacture, processing or packaging in the manner as provided in the Export and Import Policy and in this Notification.

2.2 The permission of the Development Commissioner, is required for the import / indigenous purchase of Plant and Machinery/ raw materials as per the proviso made under Para 6.01 (d) of FTP - 2015-20. As per the said proviso, it is mandatory for the EOU who should first take the necessary permission of the Development Commissioner, and attestation of the list in LUT, prior to import or procurement of raw



materials / capital goods by the EOU. As per provision contained in Para 6.01 (d) of FTP, 2015-20, the Appellant was permitted to import goods as per details mentioned in Annexure-I of the Legal Agreement filed with the Development Commissioner, KASEZ. It appeared that, in terms of Condition No. 3 of the said Notification No. 52/2003-Customs, dated 31.03.2003, EOUs were required to furnish / execute a B-17 Bond (General Surety/ Security) as notified vide Notification No. 6/98-CE (NT), dated 02.03.1998 which was revised and updated with reference to GSTIN, as per present FTP provisions and Notification No. 52/2003-Customs, dated 31.03.2003 vide Notification No. 01/2018-CE (NT), dated 05.12.2018. This is an all-purpose Bond for operations of EOU including duty free import or procurement of imported goods as specified in Annexure-I to the said Notification, Excise duty free domestic procurement, provisional assessment, export without payment of duty, movement of goods for job work and return, temporary clearances etc. It was observed that accordingly, the Appellant, had executed B-17 Bond amounting to Rs. 2,51,20,908/- before the then jurisdictional Assistant Commissioner of Central Excise, Division -VI, Ahmedabad - South, vide their letter dated 28.12.2017 and the same was accepted on 08.01.2018. Another Bond of Rs. 1,98,62,388/- was accepted by the Deputy Commissioner, Customs Division, Paldi, Ahmedabad, vide F. No. VIII/48-110/Cus/Paldi/einfo/T/17-18 on 13.04.2018.

2.3 Further, as per Board's Circular No. 50/2018-Customs, dated 06.12.2018, the work related to EOUs were to be handled by Customs Office, in whose jurisdiction the unit falls. In the instant case, the Appellant had submitted letters regarding procurement and movement of imported goods (as per Sr. No. 3 of Annexure-B of the Show Cause Notice) to the Assistant / Deputy Commissioner, Customs, Division Paldi, Ahmedabad and accordingly, based on the said intimations "Procurement Certificates" were issued by the jurisdictional Deputy Commissioner. It was observed that the Appellant, on the strength of the Procurement Certificates (as mentioned in table below) obtained from the jurisdictional Customs authorities, had imported goods viz. EPAC Power Supply Slotted Plates, Aluminium Plate - UDU Unit / UDU Unit with Battery, Sheet Metal Cover UDU and 3rd Eye Cam V4 Unit falling under CTHs 76061190, 82057000 and 85299090, respectively, valued at Rs. 7,81,54,587/-, without payment of duty to the tune of Rs. 2,39,41,145/-. Further, on receipt of the imported goods in accordance to Procurement Certificates they had submitted letters of intimation along with documents viz. like calculation sheet, proforma invoice etc. The details as per the Procurement Certificates obtained by the Importer are as under:

Description of Goods	Qty. (in units)	Value (in Rs.)	BCD @ (7.5 %/ 10% (in Rs.)	SWS @ (2+1%)/ 10% (in Rs.)	IGST @ 18% Rs.)	Total Duty (in Rs.)
Epac Power Supply slotted plates	1200	171983	12899	387	33348	46634
Steel Metal Cover_UDC	9000	586305	58631	5863	117144	181637
3rd Eye Cam V4 Unit	1000	19060064	1906006	190601	3808201	5904808
Aluminium Plate - UDU Unit and UDU Unit with Battery	3000	583667	43775	4378	113728	161880
3rd Eye Cam V4 Unit	500	9669639	966964	96696	1931994	2995654

EPAC Power Supply Slotted Plates	1000	146208	10966	1097	28489	40551
3rd Eye Cam V4 Unit	1000	19368669	1936867	193687	3669860	6000414
3rd Eye Cam V4 Unit	1500	28568052	2856805	85704	5671901	8614410
<b>Total</b>		<b>7,81,54,587</b>	<b>77,92,913</b>	<b>5,78,413</b>	<b>1,53,74,665</b>	<b>2,39,41,145</b>

However, on the basis of Bills of Entries filed by the Appellant, the description of goods, their values and total customs duty leviable / applicable are as given below:

Description of Goods	Qty. (in units)	Value (in Rs.)	BCD @ (7.5 %)/10% (in Rs.)	SWS @ (2+1%) / 10% (in Rs.)	IGST @ 18% (in Rs.)	Total Duty (in Rs.)
Epac Power Supply slotted plates	1200	173184	12989	1299	33745	48033
Steel Metal Cover UDC	9000	580500	58050	5805	115984	179839
3rd Eye Cam V4 Unit	1000	19177656	2876649	287665	4021554	7185867
Aluminium Plate - UDU Unit and UDU Unit with Battery	3000	588653	44149	4415	114699	163263
3rd Eye Cam V4 Unit	500	9598142	1439721	143972	2012730	3596423
EPAC Power Supply Slotted Plates	1000	148500	11138	1114	28935	41186
3rd Eye Cam V4 Unit	1000	19457656	2918649	291865	4080270	7290783
3rd Eye Cam V4 Unit	1500	28246933	3743402	374340	5825642	9943384
<b>Total</b>		<b>7,79,71,225</b>	<b>1,11,04,745</b>	<b>1,10,475</b>	<b>1,62,33,560</b>	<b>2,84,48,780</b>

2.4 It appeared from the documents viz. LOP, LOA, LUT, Procurement certificates, Invoices, etc. that the Appellant imported the goods as per Procurement Certificates which were not mentioned in the Annexure -I of the Legal Agreement (LUT) issued for the goods permitted to be imported. Since the Procurement Certificates empowers the importer to import the raw materials Duty free, which were also done accordingly vide Bills of Entry, this resulted in irregular availment of Duty forgone to the tune of Rs. 2,84,48,780/- As per Appendix -6 E of Appendices (as per Para - 6.02 (a). 6.03 (a) and 6.11 (a) of HBP - "Legal Agreement", the Appellant, as per Para -2, had accepted the terms and conditions vide their letter dated 23.05.2017 at the time of executing LUT with the DC/ Designated Officer, wherein as per another condition quoted at para -3 of the said Appendix - 6E, the said unit had been permitted to import / purchase goods as per details given at Annexure-I. Further, as per agreement mentioned at Para - 6.11(a) of HBP, the Appellant had to submit quarterly and annual report in Annexure -III and Annexure -IV, respectively, wherein Annual report shall be duly certified by a Chartered Accountant / Cost Accountant. In the instant case, it appeared that the Appellant failed to submit the said reports with jurisdictional Assistant / Deputy Commissioner of Customs, EPC, Division - Paldi, Ahmedabad.

2.5 It was observed that as per condition made under Para 6.06 (c) (i) of HBP, the period of utilization of goods, including Capital Goods, shall be co-terminus with the validity of the LOP. It was found that the Appellant had not submitted the data or quarterly annual report in respect of utilization of the imported goods in manufacture of their finished goods. It was further observed that the Appellant had not submitted Bills of Entry



(as listed in Annexure A of the Show Cause Notice) at the time of submission of intimation letters to the jurisdictional Assistant / Dy. Commissioner, Customs, Division Paldi, regarding receipt of imported goods. The said Bill of Entries were obtained from the Development Commissioner, MEPZ SEZ, Tambaram, Chennai, via email dated 19.05.2023 and 25.05.2023.

2.6 In view of the factual position and evidences brought forth in the foregoing paragraphs, the impugned imported goods, i.e., EPAC Power Supply Slotted Plated, Aluminium Plate - UDU Unit / UDU Unit with Battery, Sheet Metal Cover UDU and 3rd Eye Cam V4 Unit declared CTH/HSN as 76061190, 82057000 and 85299090 was not included in the Annexure - I of the LUT executed before the Development Commissioner. Thereby the Appellant was not eligible for Duty free import of the said goods classified / declared CTH as 76061190, 82057000 and 85299090. Therefore, the Duty forgone on such imports had been wrongly taken and the Appellant, was liable to pay the Customs Duty forgone, as mentioned in the table below:

Quantity of Goods.	Value (Amount in Rs.)	BCD @ 7.5 / 10% (Amount in Rs.)	SWS @ 10% of BCD (Amount Rs.)	IGST @ 18% (Amount in Rs.)	Total Duty (Amount in Rs.) (c+d+e)
(a)	(b)	(c)	(d)	(e)	(f)
18200 units	7,79,71,225	1,11,04,745	11,10,475	1,62,33,560	2,84,48,780

2.7 For the aforementioned reasons, the Appellant was issued a Show Cause Notice vide F. No. VIII/10-61/EPC-Paldi/O&A/HQ/2023-24 dated 08.09.2023 wherein they were called upon to show cause to The Additional Commissioner of Customs, as to why:-

- (a) Imported goods "EPAC Power Supply Slotted Plates, Aluminum Plate UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3rd Eye Cam V4 Unit" valued at Rs. 7,79,71,225/- involving total Customs Duty of Rs. 2,84,48,780/- imported by the Appellant (as mentioned in Annexure-A (attached to the Show Cause Notice) should not be held liable to confiscation under Section 111 (o) of the Customs Act, 1962;
- (b) Duty of Rs.2,84,48,780/- (Rupees Two Crores Eighty Four Lakhs Forty Eight Thousand Seven Hundred and Eighty only) (as mentioned in Annexure-A (attached to this Show Cause Notice) should not be demanded and recovered from them under the provisions of Notification No .52/2003-Customs, read with Section 143 of the Customs Act, 1962 and the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017;
- (c) Interest at an appropriate rate as applicable on the Customs Duty evaded as mentioned in (b) above, should not be recovered from them under the provisions of Notification No. 52/2003-Customs read with Section 143 of the Customs Act, 1962 and the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017;




- (d) Penalty should not be imposed upon them under Section 112 (a) & (b) of the Customs Act, 1962;
- (e) Condition of B-17 Bond should not be enforced to recover the above liabilities.

2.8 Consequently the adjudicating authority vide the impugned order passed the order as detailed below:-

- (a) He has held the imported goods viz. "EPAC Power Supply Slotted Plates, Aluminium Plate - UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3rd Eye Cam V4 Unit" valued at Rs. 7,79,71,225/- involving total Customs duty of Rs. 2,84,48,780/- imported by the Appellant liable to confiscation under Section 111 (o) of the Customs Act, 1962. However, he allowed the same to be redeemed on payment of redemption fine of Rs. 28,00,000/-, as provided under Section 125(1) of the Customs Act, 1962;
- (b) He has confirmed the demand and order the recovery of duty of Rs. 2,84,48,780/- under provisions of Notification No.52/2003-Customs read with Section 143 of the Customs Act and Customs (Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017;
- (c) He has ordered recovery of interest on the duty amount at (b) above, under Section 28AA of the Customs Act, 1962 from the Appellant;
- (d) He has imposed penalty of Rs. 28,44,878/- under Section 112 (a) & (b) of the Customs Act, 1962, upon the Appellant;
- (e) He has imposed penalty of Rs. 20,00,000/- under Section 114AA of the Customs Act, 1962, upon the Appellant;
- (f) He has ordered to invoke the Bond furnished by the Appellant for recovery of the above mentioned confirmed dues;

2.8.1 Subsequently, a Corrigendum dated 17.05.2024 was issued by the adjudicating authority, as detailed below:

1. In the Order-In-Original No. 05/ADC/VM/O&A/2024-25, Para 57 may be read as:

"The Notice also proposes to impose penalty on the importer under Section 112 (a) & (b) of the said Act"

Instead of;

The Notice also proposes to impose penalty on the importer under Section 112 (a) & (b) and Section 114 AA of the said Act"

In the Order-In-Original No. 05/ADC/VM/O&A/2024-25, Para 57.3 and Para 57.4 are hereby omitted and;

3. In the Order-In-Original No. 05/ADC/VM/O&A/2024-25, in Order portion, serial no. (v), is hereby omitted.



3. Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

3.1 It is submitted that the Appellant was served with show cause notice on the ground that they had not declared following goods in Annexure - A to Letter of Undertaking / LOP and have not filed Quarterly /Annual report to the respective authorities resulting in to confiscation of the said goods imported, confirmation of demand on the said goods imported and imposition of penalty.

PC No	Date	Description of Goods	Qty. in Units	Value in Rs.	BCD @ 7.5% / 1.0% / 15% in Rs.	SWS @ 1.0% in Rs.	IGST @ 1.0% Rs.	Total Rs.
128/ 17-18	5.02.2018	EPAC Power Supply slotted Plates	1200	173184	12989	1299	33745	48033
129/ 17-18	5.02.2018	Steel Metal Cover UDC	9000	580500	58050	5805	115984	179839
327/ 17-18	28.02.2018	3rd Eye Cam V4 Unit	1000	19177656	2876649	287665	4021554	7185868
413/ 17-18	16.03.2018	Aluminum plate-UDC Unit and UDC Unit with Battery	3000	588653	44149	4415	114699	163263
462/ 17-18	23.03.2018	3rd Eye Cam V4 Unit	500	9598142	1439721	143972	2012730	3596423
504/ 17-18	27.03.2018	EPAC Power Supply Slotted Plates	1000	148500	11138	1114	28935	41187
84/ 18-19	16.04.2018	3rd Eye Cam V4 Unit	1000	19457656	2918649	291865	4080270	7290784
94/ 17-18	02.02.2018	3rd Eye Cam V4 Unit	1500	28246933	3743402	374340	5825642	9943384
				77971224	11104747	1110475	16233559	28448781

3.2 Aforesaid goods were imported after obtaining Procurement Certificate [P.C] from the jurisdictional Deputy/Assistant Commissioner. They submitted that as required under the FTP 201520 read with Notification No.52/2003-Customs as amended, they have obtained Procurement Certificates before import of subject goods. On import of subject goods, the Appellant had submitted following documents at the time of clearance of subject goods.

- Bill of Entry (in quadruplicate);
- Invoice, Packing List and declaration;
- Certificate of Origin;
- A set of information regarding estimated quantity and value of goods as required to be provided under rule 5(a) of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 to the jurisdictional Deputy/Commissioner of Customs;
- Attested copy of Legal Undertaking executed with Development Commissioner;
- Copy of the Green Card and valid LOP.

3.3 As regard to allegation levelled in the show cause notice the appellant has submitted following documents which would amply make it evident that the following goods were part of Letter of undertaking /LOP.



Sr. No.	Description of documents- Collectively enclosed as Exhibit-A	Date	what it includes	HSN
1	Acceptance of legal Undertaking with Annexure-I	24.05.2017	Camera Module	85258090
			Power supply slotted plates	73089090
2	Acceptance of legal Undertaking with Annexure-I	17.12.2019	As above	As above
3	Acceptance of legal Undertaking with Annexure-I	14.03.2022	As above	As above
4	Letter of Permission	10.03.2017		
5	Letter of Permission	11.03.2022		
6	Camera Module Letter of permission	21.05.2018		
7	Other materials Letter of permission	13.05.2021		
8	Product datasheet Camera Module		3rd Eye Camera Unit	
9	Client order		TEC-V4 Unit	
10	End use of Camera			
11	Quarterly/Annual reports for the period under reference			

3.4 From the above it would be evident that they had maintained all the required records as prescribed in Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 and have submitted their quarterly/annual reports regularly to the jurisdictional officer as well as to the DGFT office as required in terms of FTP. Therefore, the allegation that the appellant has not submitted quarterly / Annual report is *prima facie* not correct.

3.5 Perusal of the Notification No.52/2003-Customs would reveal that it allows import of all the goods as specified in the Annexure-I to the said notification for the manufacture of articles for export or for being used in connection with the production or packaging of the goods. The goods imported by the Appellant was meant for production the goods and its subsequent export. The subject goods were not Prohibited goods.

3.6 The Appellant has imported following goods for the manufacture of "TEC-V4 Unit" and thereafter exporting the same to overseas market as per the purchase order received. The import and export are subjected to Foreign Trade Policy and the clearance of the imported goods is governed under the Customs Act, 1962. Therefore, it will be pertinent to have look at the word "Prohibited goods" as defined under all these three Acts / provisions as it was alleged by the department that the sesame seed is a prohibited item. According to the definition, there should be prohibition on the import or export of goods under the Customs Act or any other law for the time being in force. The relevant acts in the context of the import of goods by the Appellant are the Foreign Trade Policy, 2015-20. Therefore, it is relevant to have look at the said two acts defining the prohibited goods. According to para 9.41 of FTP-2015-20 the prohibited goods means: "*Prohibited*" indicates the import/export policy of an item, as appearing in ITC (HS) or elsewhere, whose import or export is not permitted. The Appellant have imported following goods and verification of Import conditions for FTP 2015-20 as displayed on DGFT web site shows that these were not prohibited goods.




3.7 In the case of the Appellant, the goods imported in terms of Notification No.52/2003-Customs is not prohibited good and as they have complied with all the conditions of the said notification as submitted in ensuing para.

3.8 The adjudicating authority in para 53 of impugned order while justifying confiscation of the goods imported has observed the Appellant knowingly and intentionally failed to make correct declaration in the Bill of Entries and thereby wrongly availed benefit of Notification No.52/2003-Customs in contravention of the provisions of Section 46 (4) of the Customs Act,1962. All these acts of on the part of the Appellant have rendered the imported goods liable for confiscation in terms of Section 111 (o) of the Customs Act, 1962. Since the goods were not available for confiscation, however while justifying redemption fine in terms of Section 125 of the Customs Act, 1962 relied on the case law of Weston Components Ltd Vs Commissioner of Customs, New Delhi reported at 2000(115) ELT 278(SC) wherein it was held that;

3.9 The Appellant have submitted that primarily it is the case of the department that the goods imported by the them is not appearing in the Annexure-I of Letter of Undertaking and thereby conditions of Para 6 of the FTP 2015-120 read with Notification No.52/2003-Customs is violated and therefore the subject goods were liable for confiscation in terms of Section 111 (o) of the customs Act, 1962. However, in this regard the Appellant categorically contended that perusal of Notification No.52/2003-Customs reveals that in the said notification nowhere such condition is laid down which state that the name of the imported goods has to be in the Annexure-I of Letter of undertaking. The Appellant while submitting all the Bill of Entries for clearance of goods have submitted following documents: (i) Bill of Entry (in quadruplicate); (ii) Invoice, Packing List and declaration; (iii) Certificate of Origin; (iv) A set of information regarding estimated quantity and value of goods as required to be provided under rule 5(a) of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 to the jurisdictional Deputy/Commissioner of Customs; [Procurement Certificate. (v) Attested copy of Legal Undertaking executed with Development Commissioner, (vi) Copy of the Green Card and valid LOP available always with the department on the basis of which Procurement Certificates were issued by the jurisdictional Deputy/Assistant Commissioner.

3.10 Further the meaning of Letter of Permission (LOP) is provided in Explanation (xv) provided in the Notification No.52/2003-Customs provides that:

*(xv) "Letter of Permission (LOP)" has the same meaning as assigned in chapter 6 of the Foreign Trade Policy, 2023 notified by the Government of India in the Ministry of Commerce and Industry, published in the Gazette of India, Extraordinary, Part-II, Section 3, sub section (ii) vide Notification No.1/2023-dated 31.03.2023*

3.11 Para 6.05 Applications & Approvals/Letter of Permission / Letter of Intent



and Legal Undertaking is as under:

(a)

(i) Application for setting up an EOU shall be considered by Unit Approval Committee (UAC)/ Board of Approval (BoA) as the case may be, as detailed in the Hand Book of Procedure. The powers of DC are defined in para 6.34 of HBP.

(ii) In case of units under EHTP / STP schemes, necessary approval / permission under relevant paras of this Chapter shall be granted by officer designated by Ministry of Electronics & Information Technology, instead of DC, and by Inter Ministerial Standing Committee (IMSC) instead of BOA;

(iii) Bio-Technology Parks (BTP) would be notified by DGFT on recommendations of Department of Biotechnology. In case of units in BTP, necessary approval / permission under relevant provisions of this chapter will be granted by designated officer of Department of Biotechnology

(iv) On approval, a Letter of Permission (LoP) / Letter of Intent (LoI) shall be issued by DC / Designated officer to EOU/EHTP/STP/BTP unit. The validity of LoP/LoI shall be given in the Hand Book of Procedures

(b) LoP/LoI issued to EOU/EHTP/STP/BTP units by concerned authority, subject to compliance of provision in Para 6.01 above, would be construed as an Authorization for all purposes.

3.12 Further the description mentioned as per Letter of Approval and its synonymous name mentioned in the Procurement Certificate, the use of the said imported goods is as under:-

Sr. No.	Name as per List of Permitted item as per LA	Name as per procurement certificate	Usage of the Product in Manufacturing Process
1	Power Supply Slotted Plates	EPAC Power supply slotted plates	The EPAC power supply board is being used in ATC (Advanced Traffic Controller) which is deployed at crossroad as part of intelligent traffic system in US market
2	Enclosure & Parts	Sheet Metal Cover UDC	The Sheet Metal Cover and Aluminum Plates are used for 3rd Eye Cam V4 units which is standalone DVR being used for recording capabilities through our built -in-5D card. It is the best fleet management system to observe your driver's behavior, reduce accident costs. It gives you unmatched awareness of what's happening with your vehicles and drivers at all times in US Market.
3	Enclosure & Parts	Aluminum Plate - UDC	
4	Camera Module	3rd Eye Cam V4 Unit	

3.12 Therefore, the Appellant would contend that the allegations of the department that the goods imported under Procurement Certificate is not mentioned in Letter of Approval is not correct as is evident from the Letter of undertaking / Agreement. In view of above the conditions as laid down in para 6.01 of the Hand Book of Procedure has been fulfilled as they have provided Procurement Certificate issued on the basis of Letter of Approval. Further letter of approval contains the details of all the materials which the Appellant required for the intended manufacture of goods for export. Additionally, the Appellant would clarify that they have no DTA clearance. They had imported following goods which were declared in the Bill of Entries enclosing there with all the documents including procurement Certificates.



P.C No	Date	Description of Goods	Qty. in Units	Value in Rs.	BCD @ 7.5% / 1.10% / 15% in Rs.	SWS @ (2+1% / 10% in Rs.	IGST @ 18% in Rs.	Total duty in Rs.
128/ 17-18	5.02.2018	EPAC Power Supply slotted Plates	1200	173184	12989	1299	33745	48033
129/ 17-18	5.02.2018	Steel Metal Cover UDC	9000	580500	58050	5805	115984	179839
327/ 17-18	28.02.2018	3rd Eye Cam V4 Unit	1000	19177656	2876649	287665	4021554	7185868
413/ 17-18	16.03.2018	Aluminum plate-UDC Unit and UDC Unit with Battery	3000	585553	44149	4415	114699	163263
462/ 17-18	23.03.2018	3rd Eye Cam V4 Unit	500	9598142	1439721	143972	2012730	3596423
504/ 17-18	27.03.2018	EPAC Power Supply Slotted Plates	1000	148500	11138	1114	28935	41187
84/ 18-19	16.04.2018	3rd Eye Cam V4 Unit	1000	19457656	2918649	291865	4080270	7290784
94/ 17-18	02.02.2018	3rd Eye Cam V4 Unit	1500	28246933	3743402	374340	5825642	9943384
				77971224	11104747	1110475	16233559	28448781

3.13 The Appellant has categorically submitted that there is no condition which is alleged to be violated is prescribed in the Notification No.52/2003- Customs, that the description of goods declared in Letter of Approval and mentioned in the Procurement Certificate were synonymous; that on items which were not included in LOA was immediately included therein. Here in this regard the Appellant would like to clarify that though Camera Module is included in the LUT which is synonymous to 3<sup>rd</sup> Camera V4 Unit imported was also added on 21.05.2018 in the Letter of permission. That the Appellant have fulfilled all the substantial conditions in term of FTP 2015-20, HBP and Notification No.52/2003-Customs. Assuming without admitting, it was submitted that the discrepancy observed by the Audit team is of procedural in nature and cited various case laws wherein it was held that substantial benefit cannot be withdrawn merely on procedural laps. However, from the findings recorded in para 53 in this regard it could be seen that the adjudicating authority has not taken cognizance of various case laws cited by the them and simply ruled out by stating that the said case laws are not relevant in their case. Such findings is arrived at without analyzing those case laws. It could be inferred from the above facts that they have not violated any of the provisions as alleged, not mis-declared anything in the Bills of Entry. This being the case they would like to contend that the confiscation of aforesaid goods valued at Rs.7,79,71,224/- involving Customs duty of Rs.2,84,48781/- forgone is factually and legally not correct but erroneous. This being the case the Appellant contend that the confiscation of the subject goods being erroneous and required to be lifted unconditionally.

3.14 They have rightly relied upon the various case laws, however, the adjudicating authority repeated the verbatim of the show cause notice only. While confirming the demand the learned adjudicating authority at para 46 observed that from the documents viz. LOP, LOA, LUT, Procurement Certificate, Invoice etc. it comes to




force that the said unit – M/s. e-Infochips imported the goods as per the Procurement Certificate which are not mentioned in Annexure-I of the Legal Agreement (LUT) issued for the goods permitted to be imported. In para 47 it is mentioned by the learned adjudicating authority that as per the agreement mentioned at Para 6.11 (a) of HBP, the unit has to submit quarterly and annual report in Annexure-III and Annexure -IV respectively wherein Annual report shall be duly certified by a Chartered Accountant / Cost Accountant, however in the instant case the said unit failed to submit the said reports with jurisdictional Assistant / Deputy Commissioner of Customs, EPC, Division - Paldi, Ahmedabad. In this regard they have contended that the findings of the learned adjudicating authority is factually not correct in light of what has been submitted herein below.

3.15 The Appellant in their submission have categorically submitted that being 100% EOU they have imported subject goods in terms of Notification No.52/2003- Customs for the manufacture of finished goods viz. 'TEC-V4 Unit' in their premises. That they have followed all the Rules of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017; that in terms of Para 6 of FTP 2015-20 and HBP of 2015-20 they have obtained Letter of Approval containing Annexure-I for their requirement of inputs for the manufacture of finished goods for export only. This being the case the Appellant has substantially complied all the relevant conditions as laid down in the said Notification. The difference in the nomenclature of the goods imported mentioned in the Letter of Approval and Procurement Certificate is of no relevance as both the descriptions are synonymous to each other. But for this procedural discrepancy the import of goods is otherwise in compliance of substantial conditions stipulated in the said notification and the Foreign Trade Policy. Therefore, the Appellant have submitted that "Substantive benefit should not be taken away due to mere procedural lapses"; that said principle is evolved with the rudimentary idea that when there are trivial lapses then because of that trivial lapses the substantive benefit which otherwise is allowable shouldn't be deprived off.

3.16 The Appellant has submitted that every legislation provides substantive provisions as well as procedural provisions. There is distinction that can be drawn between the two, in terms of implications of law. The former lays down rights, duties and responsibilities that are established against individuals, whereas the latter prescribes the manner in which such rights and responsibilities may be exercised and enforced in a court. They have placed reliance on the decision of Apex Court in the case of Commissioner of C. Ex., New Delhi Vs. Hari Chand Shri Gopal reported at [2010 (260) E.L.T. 3 (S.C.)] wherein the Hon'ble Supreme Court has occasioned to deal the doctrine of substantial compliance. The relevant extract of the decision is reproduced hereunder:

*"24. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequential aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or*



otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation.....

Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed. Fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance of an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance."

3.17 It is submitted that in light of the above submissions, there is a difference in substantive and procedural provisions stipulated in legislations and mere procedural infraction cannot result into denial of substantive benefit granted under the statute and hence Appellant has submitted that assuming but without admitting the fact that the addition of items of raw material is required to be done in LA from time to time then also the same is merely a procedural requirement and substantive benefit of duty should not be denied to them. The Appellant submit that the procedure to add the items of raw materials and capital goods are on self-declaration basis and does not require any approval from BOA. They further submit that it is undisputed fact that all such alleged as irregularly imported goods have been utilized for manufacture and production of permitted export of goods by them and hence proposing to recover duty on same would amount to denial of substantive duty benefit for which scheme of EOU is put in operation because of merely a trivial procedural infraction.

3.18 The Appellant submitted that there is plethora of decisions wherein it is time and again reiterated that the substantive benefits should not be denied because of trivial and technical procedural infractions. For the sake of brevity Appellants have discussed

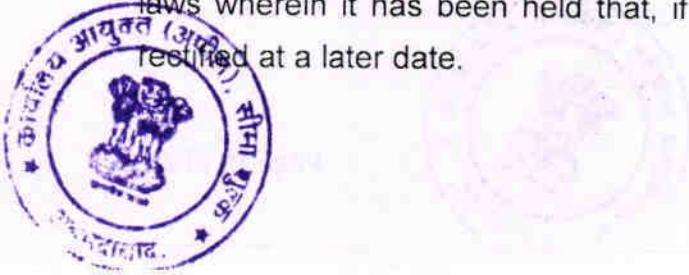



some of them hereunder. Appellant has submitted that procedure has been prescribed to facilitate verification of substantive requirement. As long as a fundamental requirement is met other procedural deviation can be condoned. Appellant has referred and rely on decision in case of Mangalore Chemicals and Fertilizers Limited vs. Deputy Commissioner - 1991(8) TMI 3 - (SC) wherein it was held that procedural infraction of Notification, Circular etc... are to be condoned if exports have already taken place and the law is settled now that substantive benefit could not be denied for procedural lapse.

3.19 The Appellant has drawn attention to the decision in Re "Lalubhai Amichand Limited - 2011 (7) TMI 1094 - Government of India wherein the assessee has filed declaration as required under Notification No. 21/2004-CE (NT), dated 06.09.2004 as amended, for Aluminum sheets for which the input - output ratio was approved by the Assistant Commissioner, Central Excise, Division-II, Ahmedabad - I. However, the assesee didn't use Aluminum sheets instead had used Aluminum circles, for which neither any declaration was filed nor was any permission taken. As the assessee has not complied with the conditions, it was held that the rebate under Rule 18 of Central Excise Rules is not admissible. However, the Government held that since the respondent has followed the laid down procedures except the lapse pointed out above the input output ratio in respect of input Aluminum circles can be worked out based on the relevant data. Moreover, the SION norms notified in terms of EXIM Policy also guide about input-output ratio of particular items. The Government held that rebate can be allowed in terms of SION norms unless there are specific reasons for variation as stated in para 3.2 of Para V of Chapter 8 of CBE & C Central Excise Manual of supplementary instructions.

3.20 The Appellant has drawn kind attention to similar issue in Re Cipla Limited - 2013 (9) TMI 996 - Government of India wherein the rebate claim of duty paid on exported goods pertaining to 2 Central Excise Invoices was disallowed since the applicant failed to submit duplicate copy of the invoice. The Government notes that the export of duty paid goods is not disputed by the Department in this case. As per para 8.3 of Part I of Chapter 8 of CBE & C Excise Manual of supplementary instructions one of the documents required to be enclosed with rebate claim is Invoice issued under Rule 11 of Central Excise Rule, 2002. It doesn't specify that only duplicate copy of invoice is to be produced as notified in the Mumbai-III Committee Trade Notice No.2/2006, dated 22.03.2006. In this case the applicant has submitted original invoice since duplicate copy is misplaced. It was held that the substantial benefit of rebate claim cannot be denied for mere minor procedural lapses. This lapse can be condoned. The Government set aside the impugned order and remanded the case back to the original authority for fresh consideration of rebate claim in accordance with law by taking into account the above observations.

3.21 Apart from above Appellant has also placed reliance on the following cases laws wherein it has been held that, if issue is of procedural lapse, the defect can be rectified at a later date.



- (a) In the case of Swiss Glasscoat Equipment's Ltd. v/s Commissioner of Central Excise, Ahmedabad (2012-275-ELT468) it was held that delay in filling of declaration condonable if declaration filed within two months from the date of registration;
- (b) In the case of Union of India v. Grasim Industries Ltd (2006204-ELT-230) the Division Bench of the Rajasthan High Court, while considering the delay in filing the declarations, with reference to the receipt of capital goods, as contemplated under the provisions of the Central Excise Act and the Rules, it was held that filing of declaration is necessary, but the limitation prescribed is not mandatory. Conditions for availing credit are payment of duty as evidenced by the documents and the receipt and use in the manufacture of the capital goods credit cannot be denied on procedural lapses in making declaration or furnishing incomplete particulars, dismissed the appeal filed by the Union of India in respect of the grant of relief under the provisions of the Central Excise Act;
- (c) In the case of Om Textiles v. CCE, New Delhi [2006-199-ELT-47] the invoice was showing wrong address but address subsequently got corrected from supplier to indicate correct address, the tribunal held that minor procedural lapse to be ignored;
- (d) In the case of CCE Belgaum v. India Sugars And Refineries Ltd [2002-149-ELT-173] the Tribunal held that "we find that the Tribunal has been consistently taking the view that procedural lapse, if any, should not come in the way of denial of substantial justice;
- (e) In the case of Maxcare Laboratories Ltd v. CCE Bhubaneswar [2001-138-ELT-1185] the Tribunal held that "It is well settled principles of law that substantial benefit of law otherwise flowing to the assessee should not be denied on the basis of some technical procedural lapses";
- (f) In the case of Collector of C. Ex., Bombay v. Kopran Chemicals Co. Ltd [1996-88-ELT-487] the Tribunal held that "The procedural requirements laid down in Rule 173L of Rules are basically to provide subjective satisfaction to the concerned officer against misuse of the facility extended and if the record available is sufficient to satisfy the officer concerned, some minor procedural lapse should not be over emphasized to deny otherwise eligible dues.";

3.22 The Appellant has submitted that their unit is 100% EOU, that in terms of FTP 2015-20 which is statute books wherein under the Appellant was granted Letter of Approval, Letter of Permission by the proper officer, for import of raw material without payment of duty for use in the manufacture of the goods for subsequent export. Whereas Procurement Certificate has been prescribed in terms of Circular No.50/--- Customs. LOA allow all the raw materials / inputs which are required for use in the manufacture of the goods and its export. Therefore, even if assuming without admitting some discrepancy occurred in Procurement Certificate; may have occurred little bit delay for inclusion of items which may not have earlier included in the Letter of Approval. However, Circular cannot override the right granted to the Appellant in terms of FTP which is statute book. They have relied upon the case of Union of India vs. Intercontinental Consultants and Technocrats Pvt. Ltd. reported as 2018(10) GSTL 401(SC), wherein the Hon'ble Supreme Court of India has held that:

*"Interpretation of statutes - Statutory rules - They cannot go beyond statute -In case of conflict with main enactment, rule has to give way. [paras 26, 27]*  
*Interpretation of statutes - Statutory rules - They are framed for achieving purpose behind statute. [paras 27, 28]*




The relevant para 26, 27 and 28 of the said decision is reproduced as under:

26. *It is trite that rules cannot go beyond the statute. In Babaji Kondaji Garad, this rule was enunciated in the following manner:*

*"Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the byelaw, if not in conformity with the statute in order to give effect to the statutory provision the Rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with."*

27. *The aforesaid principle is reiterated in Chenniappa Mudaliar holding that a rule which comes in conflict with the main enactment has to give way to the provisions of the Act.*

28. *It is also well established principle that Rules are framed for achieving the purpose behind the provisions of the Act, as held in TajMahal Hotel :*

*"the Rules were meant only for the purpose of carrying out the provisions of the Act and they could not take away what was conferred by the Act or whittle down its effect."*

3.23 The Appellant has fulfilled all the conditions stipulated in the Notification No. 52/2003-Customs. Further there is no condition in Notification No. 52/2003-Cus. dated 31.03.2003 as amended from time to time, which requires for mentioning of each final product in the LOP. The exemption of duty free procurement of the inputs is allowed to "an EOU" and there is no requirement in the Notifications above that the EOU shall get the prior permission of the Development Commissioner. The Appellant submit that they had followed entire process of the Notifications. Thus, there is no violation of any condition of exemption notification. To support this contention, they refer and rely on the decision of Chandigarh Tribunal in the case of *Dendyal Magaswargiya Sahakari Soot Frini Ltd. vs. CCE, Kolhapur cited as 2014T1OL-1527-CESTAT, Mum*, wherein it has been held that accrued vested right cannot be taken away merely because there is a delay in issuing the letter of permission by the Development Commissioner. The Appellant also refer and rely on the decision of Chandigarh Tribunal in the case of *Commissioner of C.Ex., Thanel Vs. Global Wool Alliance P. Ltd. reported in 2012 (278) ELT 249 (Tri. Mum.)* and *Commissioner of Cus. & C. EX., Guntur Vs. Vijaya Shrimp Farms Ltd. reported in 2014 (300) ELT 564 (Tri. Bang.)* and *Arjun Industries Ltd. Vs. Commissioner of Central Excise, Jaipur reported in 2005 (183) ELT 446 (Tri. Del.)* to say that duty free import of capital goods and inputs allowed in terms of EOUs Scheme and when validity of Letter of Permission (LOP) was extended by export promoting authorities namely, Assistant Development Commissioner, Noida, Revenue authorities also required to grant permission to appellant for harmonious functioning of EOU Scheme and duty demand in respect of imported machinery not sustainable.

The Appellant submitted that duty can be demanded in impugned case when there is any violation of the condition of Exemption Notification under which goods



have been procured Duty Free i.e. Notification No. 52/2003-Cus., dated 31.03.2003. The Appellant submitted that it is abundantly clear that there is no violation of any of the condition of Notification No. 52/2003-Cus., dated 31.03.2003 and hence no duty can be demanded for alleged irregular procurement of goods. However, the learned adjudicating authority has not analyzed the issue raised and various case laws relied upon by the Appellant. The learned adjudicating authority relied on the following case laws, which are not relevant to the facts and circumstances of the appellant's case.

- (i) *Ganesh Metal Processors Industries vs UOI [2003(151)ELT21(SC) wherein it has held that 'the notification has to be read as whole. If any of the condition laid down in the Notification is not filled, the party is not entitled to the benefit of that notification;*
- (ii) *Godrej & Boyce Mft. Co. LTd Vs Commissioner of Customs (Export), Mumbai [2013(293)ELT46 wherein it was held that 'since it is the appellant who has claimed the benefit of duty exemption, the onus of leading evidence to prove eligibility to exemption lies on the appellant and not on the Revenue. As held by the Apex Court in the case of Mysore Metal Industries [1998(36) ELT369(SC)] "the burden" is on the party who claims exemption, to prove the facts that entitled to him exemption" Suffice to say that the appellant has miserably failed to discharge this onus.'*

3.25 In the case of the Appellant the allegation levelled against them is that they have violated the provisions of Notification No. 52/2003-Customs, however as submitted elaborately in earlier part, there is no such condition in the said notification which the appellant alleged to have been violated. Therefore, aforesaid case laws are not relevant to the present case and distinguished accordingly.

3.26 The Appellant submitted that without prejudice to whatever submitted hereinabove the alleged demand of duty is time barred. They would like to draw kind attention to Section 28 of the Customs Act, 1962. They submitted that subject demand of duty is barred by limitation as alleged demand of duty pertains to period from 05.02.2018 to 16.04.2018 for which the time limit to demand the duty under Section 28 of the Customs Act, 1962 has already lapsed. They submitted that they had procured all the inputs on the strength of Procurement Certificates and all the procurement of their inputs are in the knowledge of your good office. To support their contentions, they refer and rely on the decision of *Moserbaer India Ltd. Vs. CC reported in 2015 (325) ELT 236 (SC)* and *CCE, Vs. Emcure Pharmaceuticals Ltd. reported in 2014 (307) ELT 180 (Tri)*. They also refer and rely on the decision of the Apex Court in the case of *Blue Star Ltd. reported in 2015 (318) ELT 11 (SC)*. The Appellant has referred to the fact that the office of the adjudicating authority in the instant case had been in possession of all the details about the type of goods procured by them and under physical control. The imported duty free inputs were procured by them under Notification No. 52/2003-CUS dated 31.03.2003 which were allowed by Customs Office for issuance of Procurement Certificate. After import, the said goods were entered in the records and receipt was intimated to their good office. All the process was carried out under cover of bond and Customs office was having physical



control of them. The Appellant has submitted that said inputs were used by them for manufacture of their final product and the final product were exported under bond. These facts are not in dispute. Needless to say that the legality of the subject demand based on the facts, figures and incidences happened before 30-34 months itself is in question. Looking to the facts and allegations narrated in notice that doesn't appear to any complication and difficulties for Customs Office to take such a long time for demand of alleged duty.

3.27 The Appellant has drawn attention to the fact that the point that it is not the case of the department to sustain the demand mentioned in the impugned notice since the department itself in the initial stage couldn't find the merits in the allegations to demand the duty within the stipulated time limit of 2 years but however on objections raised by CERA audit team department has taken up the matter and demanded the duty. During the personal hearing held on 19.03.2024 the authorized representative of the Appellant appeared and submitted that the apparent discrepancy pointed out in the Show Cause Notice is due to generic name of the Items. In annexure to the LUT, generic names of the equipment were used instead of the specific names i.e. "Power Supply Slotted Plates" instead of "EPCA Power Supply", "Camera Module" instead of 3rd Eye Cam V4 Unit", "Enclosure and Parts" instead of "Sheet Metal Core UDC" and "Aluminum Plate UDC". There was no intention on the part of the Appellant to evade duties by way of mis-declaration on their Parts. However, the adjudicating authority has not refuted the contention of the Appellant but recorded in their findings that the Appellant have knowingly and intentionally not declared correct description / HSN, imported the goods which were not declared in Annexure-I of the LUT, Procurement Certificate etc. and justified the demand under extended period of limitation. The said findings are not correct as could be seen from the previous all the grounds of this appeal.

3.28 The adjudicating authority while justifying penalty in terms of Section 112 (a) at para 57 of the impugned order reiterated to the allegations levelled against the Appellant in the show cause notice, without appreciating the contention of the Appellant have mentioned that the impugned goods is liable for confiscation in terms of Section 111 (o) of the Customs Act, 1962, and held that the Appellant is liable to penalty in terms of Section 112 (a) and (b) of the Customs Act, 1962. In the impugned order penalty in terms of Section 112 (a) and (b) of the Customs Act, 1962 and under Section 114AA is imposed, however by way of corrigendum dated 17.05.2024 issued from F. No. VIII/16-61/EPC-Paldi/O&A/HQ/2023-24, penalty in terms of Section 114AA is omitted. As regard to penalty in terms of Section 112 (a) & (b) the Appellant submit that as contended in detail in the grounds of appeal the Appellant submit herein above that confiscation of the goods imported by the Appellant is erroneous; that they were not in any way concerned in relation to the import of subject goods in the manner as described in section 111 (o) of the Customs Act, 1962 i.e. they have not done or omitted to do any act which act or omission would render such goods liable to confiscation under Section 111 (o), or abated the doing or omission of such an act, or selling or purchasing, or in any other manner



dealing with any goods which the appellant knows or has reason to believe are liable to confiscation under Section 111 (o) of the Customs Act, 1962 nor acquired possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which the appellant knows or has reason to believe are liable to confiscation under Section 111 (o) of the Customs Act, 1962 thereby the Appellant is not liable to penalty of Rs. 28,44,878/- as imposed in terms of Section 112 (a) & (b) of the Customs Act, 1962.

#### **PERSONAL HEARING:**

4. Personal hearing in the matter was held on 29.05.2025, following the principles of natural justice. Shri Vijay N. Thakkar, Consultant appeared for the hearing on behalf of the Appellant and he re-iterated the submission made at the time of filing the appeal. Further, he submitted as under, by way of additional submission that:

- In Annexure to the LUT, generic names of the equipment were used instead of the specific names, i.e, "Camera Module" instead of 3rd Eye Cam V4 Unit". The description Camera Module mentioned as per Letter of Approval and its synonymous name 3rd Eye Camera mentioned in the Procurement Certificate. Further the meaning of Letter of Permission (LOP) is provided in Explanation (xv) provided in the Notification No. 52/2003-Customs provides that, (xv) "Letter of Permission (LOP)" has the same meaning as assigned in chapter 6 of the Foreign Trade Policy, 2023 notified by the Government of India in the Ministry of Commerce and Industry published in the Gazette of India, Extraordinary, Part-II, Section 3, sub section (1) vide Notification No.1/2023-dated 31.03.2023

Para 6.05 Applications & Approvals / Letter of Permission / Letter of Intent and Legal Undertaking is as under:

- (a) (i) On approval, a Letter of Permission (LoP) / Letter of Intent (LoI) shall be issued by DC / Designated officer to EOU/EHTP/STP/BTP unit. The validity of LoP / LoI shall be given in the Hand Book of Procedures.
- (b) LoP / LoI issued to EOU/EHTP/STP/BTP units by concerned authority, subject to compliance of provision in Para 6.01 above, would be construed as an Authorization for all purposes.

Therefore, allegation of non-declaration of 3rd Eye Camera in Permission letter is not correct and accordingly demand confirmed is not sustainable.

#### **DISCUSSION AND FINDINGS:**

5. I have carefully gone through the case records, impugned order passed by the adjudicating authority and the defense put forth by the Appellant in their appeal memorandum. On going through the material on record, I find that following issues required to be decided in the present appeals which are as follows:



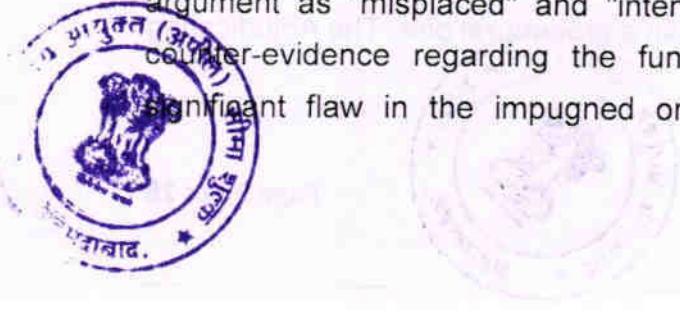
- (i) Whether the failure to include imported goods in Annexure-I of the Legal Undertaking (LUT) and the alleged non-submission of prescribed reports constitute a fundamental violation of the EOU Scheme conditions warranting demand of duty, confiscation, and penalties, or if they are procedural lapses that can be condoned.
- (ii) Whether the adjudicating authority correctly rejected the Appellant's reliance on judicial precedents which advocate against denying substantive benefits for procedural lapses, by merely stating that such case laws are "not relevant" without proper analysis.

5.1 Being aggrieved, the Appellant has filed the present appeal on 18.06.2024. In the Form C.A.-1, the date of communication of the impugned Order-In-Original dated 18.04.2024 has been shown as 11.05.2024. Thus, the appeal has been filed within normal period of 60 days, as stipulated under Section 128 (1) of the Customs Act, 1962. The Appellant has submitted copy of T.R.6 Challan No. 2451, dated 03.06.2024 for Rs. 21,35,000/- towards payment of pre-deposit calculated @7.5% of the disputed amount of duty, under the provisions of Section 129E of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and with the mandatory pre-deposit, it has been admitted and being taken up for disposal on merits.

5.2 The essence of the EOU scheme is to promote exports by facilitating Duty-Free import of inputs for export production. The dispute here appears to revolve around documentation and reporting rather than the actual use of goods for export production. The Appellant received Procurement Certificates from the Customs Department itself for the imported goods. If the goods were not included in Annexure-I of the LUT, the question arises whether the error lies with the Appellant, the Development Commissioner, or the Customs authority that issued the Procurement Certificates.

5.3 The core of the Show Cause Notice and the Impugned Order is the allegation that the imported goods were "not mentioned in the Annexure I of the Legal Agreement (LUT)". The Appellant's primary defense is that this is an "apparent discrepancy... due to generic name of the Items". They provided specific examples, such as "Power Supply Slotted Plates" being the generic term for "EPAC Power Supply Slotted Plates," and "Camera Module" being the generic term for "3rd Eye Cam V4 Unit". The Appellant also presented a table demonstrating the synonymous nature of these items and their consistent end-use for export production. Furthermore, the Appellant stated that the "3rd Eye Cam V4 unit" was formally added to the Legal Agreement on 28.03.2018, acknowledging that its procurement had occurred prior to this formal inclusion.

5.4 The Adjudicating Authority's rejection of the "generic vs. specific" name argument as "misplaced" and "intentional" without a detailed factual inquiry or any counter-evidence regarding the functional equivalence of the items represents a significant flaw in the impugned order. The Adjudicating Authority merely asserts



"intentional" discrepancy without substantiating why the Appellant's explanation is incorrect or how the items are fundamentally different from those permitted. In the context of EOU schemes, the intended use and functional equivalence of imported inputs for export production are often paramount. If "Power Supply Slotted Plates" is indeed the generic term for "EPAC Power Supply Slotted Plates" and both serve the same approved purpose, then the discrepancy is administrative rather than a substantive breach. The Adjudicating Authority's failure to adequately investigate or provide reasoned findings on this crucial factual claim (synonymous names, functional equivalence, and the impact of subsequent regularization) means the core allegation of non-compliance is not fully established. This necessitates a remand for proper factual determination.

5.5 The Appellant's core legal argument is the doctrine of "Substantial Compliance," asserting that "Substantive benefit should not be taken away due to mere procedural lapses". They extensively cited Supreme Court decisions, notably Commissioner of C. Ex., New Delhi vs. Hari Chand Shri Gopal, which elaborates on this doctrine, and Mangalore Chemicals and Fertilizers Limited vs. Deputy Commissioner, which held that procedural infractions can be condoned if exports have occurred. They also cited Re Cipla Limited where a rebate claim was remanded despite a procedural lapse. The Adjudicating Authority's response was a blanket rejection that "*I find that the ratio of case laws cited by them in their submissions are not squarely applicable in this case*". The Adjudicating Authority's summary dismissal of a plethora of Supreme Court and Government of India decisions on "substantial compliance" without providing specific reasoning for why they are inapplicable to the present facts (especially given the Appellant's detailed arguments on end-use and subsequent regularization) is a clear ground for remand. This suggests a pre-determined conclusion rather than a reasoned adjudication, failing to engage with established legal principles. An appellate authority cannot properly review an order where the adjudicating authority has failed to engage with and distinguish binding precedents. Remand is necessary for the Adjudicating Authority to provide a reasoned analysis of why the substantial compliance doctrine is inapplicable in this specific context, or how the Appellant's actions constitute a substantive, rather than procedural, breach.

5.6 The Adjudicating Authority relied on M/s. Ganesh Metal Processors Industries vs. U.O.I., for the principle that "The Notification had to be read as whole. If any of the condition laid down in the Notification is not fulfilled, the party is not entitled to the benefit of that notification." The Adjudicating Authority also cited Godrej & Boyce Mfg. Co. Ltd. vs. the Commissioner of Customs (Export), Mumbai to emphasize that the "onus of leading evidence to prove eligibility to exemption lies on the Appellant." While these cases indeed advocate for strict adherence to exemption conditions and place the onus of proof on the claimant, their applicability hinges on whether a genuine breach of a substantive condition actually occurred. The Adjudicating Authority's application of these cases is premature and circular without first conclusively establishing that the Appellant's actions constituted a substantive violation, rather than a procedural one. The Adjudicating



Authority failed to demonstrate how the Appellant failed to meet a substantive condition of Notification No. 52/2003, beyond merely pointing to a name discrepancy. The Adjudicating Authority's order lacks a clear, reasoned finding on which specific substantive condition of Notification No. 52/2003 was violated, and how the Appellant's explanation (synonymous names, end-use) fails to satisfy the spirit of the exemption. This requires remand for a more thorough analysis.

5.7 The Appellant explicitly argued that the Foreign Trade Policy (FTP) is a statutory framework, while the procedure for Procurement Certificates is prescribed by a circular. They cited Union of India vs. Intercontinental Consultants and Technocrats Pvt. Ltd., to support the fundamental legal principle that rules or circulars cannot override the provisions of a parent statute. The Adjudicating Authority did not explicitly address or provide any findings on this crucial legal argument in its "Discussion and Findings" section. The Adjudicating Authority's silence on the Appellant's argument regarding circulars not overriding statutes is another instance of inadequate reasoning. If the FTP (a statute) allows for flexibility in EOU operations (e.g., "Import of capital goods will be on a self-certification basis" as per Para 6.01 (d) (i) ), then a circular-prescribed procedure (like specific Annexure-I listing) cannot impose stricter conditions that undermine the statutory intent or flexibility. The Adjudicating Authority's failure to address this fundamental legal argument means the order is incomplete and unreasoned on a material legal point. This requires remand for proper consideration and a speaking order on this aspect.

5.8 The Appellant's submissions indicate that they imported goods as per valid Procurement Certificates issued by the proper officer of Customs. If there was a mismatch between these certificates and the LUT Annexure-I, it points towards an administrative oversight rather than a deliberate contravention by the Appellant aimed at duty evasion. Similarly, the alleged non-submission of quarterly / annual reports and utilization data, while procedural obligations, may not, in themselves, justify the demand for duty, confiscation, and penalties if the goods were indeed used for the approved EOU activity. The purpose of these reports is primarily for monitoring and verification, not as a condition precedent for the duty exemption itself, provided the goods are actually used for the intended purpose. The case of Re Cipla Limited [2013 (9) TMI 996 - Government of India] clearly held that substantive benefit (rebate claim) cannot be denied for minor procedural lapses like not submitting a duplicate invoice copy, especially when the export itself is not disputed. Therefore, a deeper examination is required to ascertain if these are indeed mere procedural lapses or if they point to a fundamental non-compliance with the EOU scheme with an intention to evade duty.

5.9 A speaking order must demonstrate that the adjudicating authority has applied its mind to all material contentions and legal arguments, including judicial precedents. Dismissing binding or persuasive precedents without adequate reasoning is a failure to pass a speaking order. The principle of stare decisis and judicial discipline



requires that lower authorities follow the pronouncements of higher courts or tribunals, or provide clear reasons for distinguishing them. The failure to do so implies a non-application of mind and makes the order legally unsustainable.

5.10 Confiscation under Section 111 (o) of the Customs Act, 1962, is warranted when any goods are imported without payment of duty or in contravention of any restriction or prohibition. Similarly, penalties under Section 112 and Section 114AA are for acts or omissions that render goods liable to confiscation or for knowingly/intentionally making false declarations. If the alleged non-compliance is indeed purely procedural and there was no deliberate intention to evade duty, then the imposition of such stringent measures (confiscation and penalties) would be disproportionate and unjustified. The element of *mens rea* (culpable mental state) is often considered, especially for penalties, though for some violations under Customs Act, it may not be strictly required. However, in cases of procedural non-compliance, courts have often taken a lenient view if the core benefit was genuinely availed for the intended purpose.

5.11 The finding in the impugned order that the Appellant "wrongly declaring the product not included in the LUT" directly contradicts the fact that Procurement Certificates were issued. This suggests a need for re-evaluation.

5.12 As discussed above, the impugned order's treatment of the Appellant's reliance on judicial precedents is insufficient. It fails to engage with the core argument that substantive benefits should not be denied due to procedural lapses, a principle well-established by the Supreme Court and other appellate forums. This lack of detailed reasoning and proper consideration of arguments renders the impugned order non-speaking and procedurally flawed. A detailed analysis of each alleged violation and its impact (procedural vs. substantive) is required.

6. The impugned order suffers from several infirmities. Firstly, it fails to adequately distinguish between substantive violations and procedural lapses within the EOU scheme, a distinction that has significant implications for duty demand, confiscation, and penalties. Secondly, and more critically, it dismisses the Appellant's reliance on binding judicial precedents concerning procedural condonation without proper analysis or reasoned justification, thereby rendering it non-speaking on a material issue. These failures suggest that the adjudicating authority has not fully applied its mind to all relevant facts and legal principles. A proper re-adjudication is necessary to ensure a fair and reasoned decision.

7. In view of the detailed discussions and findings above, I am constrained to remand the matter to the adjudicating authority for *de novo* adjudication with specific directions to:



- Re-examine thoroughly whether the alleged non-compliance (non-inclusion in LUT Annexure-I, non-submission of reports) constitutes substantive violations of the EOU scheme conditions or are merely procedural lapses that can be condoned, taking into account the fact that Procurement Certificates were issued by the Customs Department itself;
- Provide a detailed and reasoned analysis of the judicial precedents cited by the Appellant, particularly those advocating against denying substantive benefits for procedural lapses, and specifically distinguish their applicability to the facts of this case;
- Re-evaluate the applicability of confiscation under Section 111 (o) and penalties under Sections 112(a) & (b) of the Customs Act, 1962, based on the findings regarding the nature of the alleged contraventions (procedural vs. substantive) and the element of *mens rea* or intent to evade duty;
- Afford the Appellant a fresh opportunity of being heard and consider any further submissions or evidence they may wish to provide.

8. Accordingly, the case is remanded back to the adjudicating authority, in terms of sub-section of (3) (b) of Section 128A of the Customs Act, 1962, for passing a fresh order by following the principles of natural justice and legal provisions. 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.

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



F. No. S/49-95/CUS/AHD/2024-25

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

1755

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

Date: 20.06.2025

By Registered post A.D/E-Mail

To,

M/s. E-Infochips Pvt. Ltd., 100% EOU,  
303, Parishram Building,  
Mithakhali Six Road,  
Navrangpura,  
Ahmedabad – 380 006

M/s. E-Infochips Pvt. Ltd., 100% EOU,  
AB Chandra Colony,  
B/H. Cargo Motors,  
Off. C. G. Road,  
Ellisbridge,  
Ahmedabad – 380 006



Copy to:

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

