S/49-316/CUS/AHD/2024-25

सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281
DIN – 20260371MN0000818068

क	फ़ाइल संख्या FILE NO.	S/49-316/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-697-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	16.03.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No.: 85/AB/ADC/ICD-SACHIN/SRT/2024-25 dt. 28.06.2024 passed by the Additional Commissioner, Customs, Surat.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	16.03.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Radha Textiles mills, 16/17, Sai Krupa Ind. Estate, B/H Bhatia Circle, Nr. Sosyo Circle, Bamroli Road, Surat 395210. Shri Kirankumar Chugh, Proprietor of M/s Radha Textiles mills, 903, Amar Swapna Aptt., Near Adarsh Society, Gokulam Dairy, Athwalines, Surat- 395 007.

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

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 है.
	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(	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported on baggage
(ख(	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग (	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
.3	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों 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 मात्र)या रु.1000/-(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित 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

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

<table>
<tr><td></td><td colspan="2">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/-.</td></tr>
<tr><td>4.</td><td colspan="2">मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध 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</td></tr>
<tr><td></td><td colspan="2">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 :</td></tr>
<tr><td></td><td>सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td><td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td></tr>
<tr><td></td><td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td><td>2nd Floor, Bahumali Bhavan,
Nr.Girdhar Nagar Bridge, Asarwa,
Ahmedabad-380 016</td></tr>
<tr><td>5.</td><td colspan="2">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-</td></tr>
<tr><td></td><td colspan="2">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 -</td></tr>
<tr><td>(क)</td><td colspan="2">अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.</td></tr>
<tr><td>(a)</td><td colspan="2">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;</td></tr>
<tr><td>(ख)</td><td colspan="2">अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए</td></tr>
<tr><td>(b)</td><td colspan="2">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 ;</td></tr>
<tr><td>(ग)</td><td colspan="2">अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.</td></tr>
<tr><td>(c)</td><td colspan="2">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</td></tr>
<tr><td>(घ)</td><td colspan="2">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 ।</td></tr>
<tr><td>(d)</td><td colspan="2">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.</td></tr>
<tr><td>6.</td><td colspan="2">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.</td></tr>
<tr><td></td><td colspan="2">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.</td></tr>
</table>

Order-In-Appeal

M/s Radha Textiles mills, 16/17, Sai Krupa Ind. Estate, B/H Bhatia Circle, Nr. Sosyo Circle, Bamroli Road, Surat 395210 (hereinafter referred to as "the Appellant") have filed the present appeal against the Order-In-Original No.: 85/AB/ADC/ICD-SACHIN/SRT/2024-25 dt. 28.06.2024 (herein after referred to as "the impugned order") passed by the Additional Commissioner, Customs, (Incharge- ICD-Sachin) Surat (herein after referred to as "the "adjudicating authority").

2. Facts of the case, in brief, are that the Appellant had imported Capital Goods machinery, i.e. 01 sets of Computerized Embroidery Machine under EPCG Licence No. 5230013809, dated 01.04.2014 by saving Customs Duty amount of Rs. 1,70,391/- (Actual Duty Utilization of Rs. 1,66,162/-) under the cover of the below mentioned Bills of Entry at Zero rate of duty by availing the benefit of exemption available under Notification No. 22/2013-Cus., dated 18.04.2013. The details of import are as per Table – I below:

TABLE – I

Sr. No.	Bill of Entry No. & date	Number of machinery cleared	Duty saved / available as per EPCG Licence (In Rs.)	Total Duty Foregone / Debited at the time of clearance (In Rs.)	Bank Guarantee Amount (In Rs.)
1	5173906 dtd. 11.04.2014	01	1,70,391/-	1,66,162/-	30,000/-
	Total	01	1,70,391/-	1,66,162/-	30,000/-

2.1 Against the said EPCG Licence No. 5230013809, dated 01.04.2014, the Appellant had executed a Bond dated 11.04.2014 before the Deputy/Assistant Commissioner of Customs, ICD – Sachin, Surat for an amount of Rs. 5,00,000/- backed by a Bank Guarantee No.: 2703IFIBG140003 dated 05.04.2014 for Rs. 30,000/- issued by the Bank of India, Surat. They had undertaken to fulfilll the export obligation as specified in the Notification and the licence.

2.2 The said machinery, i.e., 01 sets of Computerized Embroidery Machine imported under the aforesaid EPCG Licence were installed at M/s Radha Textiles mills, 16/17, Sai Krupa Ind. Estate, B/H Bhatia Circle, Nr. Sosyo Circle, Bamroli Road, Surat 395210 as per the Installation Certificate dated 28.05.2014 issued by the Chartered

Engineer, Dr. P.J.Gandhi , Surat, certifying the receipt of the goods imported and its installation.

2.3 As per the conditions of Notification No. 22/2013-Cus., dated 18.04.2013, the Appellant was required to fulfilll the export obligation on FOB basis equivalent to Six times the duty saved on the goods imported as specified on the Licence and Authorization, within a period of Six years from the date of issuance of EPCG Licence. In the instant case, the said EPCG Licence was issued to the Appellant on 01.04.2014 and accordingly, they were required to fulfilll export obligation by 31.03.2020, i.e., within a period of Six years from the date of issuance of Licence or Authorization and submit the Export Obligation Discharge Certificate (EODC) issued by the Regional DGFT Authority before the jurisdictional Customs authorities.

2.4 A letter F.No.: ICD-SACHIN/26/2014-15 dt. 07.03.2022 was issued to the Appellant requesting them to submit the copy of EODC or any extension issued by the Regional Authority, DGFT, Surat for fulfillment of export obligation. However, the Appellant had not responded to the above correspondence.

2.5 As, no reply was received from the Appellant, a letter F.No.: ICD-Sachin/DGFT/07/2020-21 dated 21.10.2022 was written to the Foreign Trade Development Officer, DGFT, Surat requesting to inform whether the EODC had been issued or any extension granted to the Appellant or any documents showing the fulfillment of the export obligation have been received by their office against the aforesaid EPCG Licence. The Assistant Director, DGFT, Surat, in response, vide letter F.No.: EPCG/MIS/2020-21 dt. 28.10.2022 informed that the appellant had not submitted any documents to their office against the said license.

2.6 In view of the above, it appeared that the Appellant had failed to fulfilll the export obligation as specified in the Licence and did not comply with the mandatory condition of the Notification No. 22/2013-Cus., dated 18.04.2013, the condition of EPCG Licence and also the conditions of the Bond executed and furnished by them. The Appellant neither produced the EODC issued by the DGFT, Surat nor could produce any documents showing extension granted to them for fulfillment of export obligation. Therefore, the Appellant was liable to pay Customs Duty not paid (i.e. saved) by them amounting to Rs. 1,66,162/- at the time of import / clearance along with interest at the applicable rate, in terms of conditions of the said Notification read with condition of the Bond executed by them read with Section 143 of the Customs Act, 1962. Further, said the Bank Guarantee issued by the Punjab National Bank, Dumas Road Branch, Surat and furnished by them against the aforesaid EPCG Licence appeared liable to be encashed and deposited in the Government Exchequer.

2.7 Accordingly, a Show Cause Notice under F.No.: CUS/EPCG/MISC/391/2024-ICD-SRT-CUS-COMMRTE-AHMEDABAD dt. 27.03.2024 was issued to the Appellant, proposing as to why:

i. The benefit of Zero rate of duty for EPCG Scheme under the said Notification on the imported Computerized Embroidery Machine imported in the name of the appellant should not be denied;

ii. Customs Duty amounting to Rs. 1,66,162/- being the duty foregone at the time of import under EPCG Licence should not be demanded and recovered from them along with interest in terms of the said Notification as amended, read with the conditions of Bond executed and furnished by them in terms of Section 143 of the Customs Act, 1962 by enforcing the terms of the said Bond. Further, why the said Bank Guarantee backed against the Bond, should not be appropriated and adjusted towards the duty liability as mentioned above;

iii. The imported Capital goods should not be held liable for confiscation under Section 111 (o) of the Customs Act, 1962 read with the conditions of Bond executed in terms of Section 143 of the Customs Act, 1962 read with said Customs Notification as amended from time to time;

iv. Penalty should not be imposed on the appellant under Section 112 (a) of the Customs Act, 1962;

v. Penalty should not be imposed on the appellant under Section 117 of the Customs Act, 1962;

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

i. He disallowed the benefit of zero rate of duty for EPCG Scheme under the said Notification for subject import of said goods vide subject Bills of Entry;

ii. He confirmed the demand of Customs Duty amounting to Rs. 1,66,162/- being the duty foregone at the time of import of Capital Goods under EPCG Licence in terms of the said Notification as amended, read with the conditions of Bond executed along with interest and ordered the same to be recovered in terms of Section 143 of the Customs Act, 1962 by enforcing the terms of the above mentioned Bond;

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

iii. He ordered to appropriate the amount of Rs. 30,000/- by encashment of the said Bank Guarantee issued by the Bank of India, Surat submitted by the Appellant and ordered to adjust the said amount against the duty liability confirmed at (ii) above;

iv. He ordered for confiscation of the subject imported Capital goods imported by the Appellant under Section 111 (o) of the Customs Act, 1962 read with the conditions of Bond executed in terms of Section 143 of the Customs Act, 1962 read with the said Customs Notification. However, he gave an option to redeem the said goods on payment of redemption fine of Rs. 2,01,617/- under Section 125 (i) of the Customs Act, 1962;

v. He imposed penalty of Rs. 16,616/- upon the Appellant under Section 112 (a) of the Customs Act, 1962;

vi. He imposed penalty of Rs. 1,00,000/- upon the Appellant under Section 117 of the Customs Act, 1962;

3. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellant have filed the present appeal on 12.03.2025. The Appellant have, inter-alia, raised various contentions and filed detailed submissions as given below in support of their claims:

1. The present case is filed by M/s. Radha Textile Mills, 16/17 Sai Krupa Ind. Estate, B/H Bhatia Circle, Nr. Sosyo Circle, Bamroli Road, Surat 395210 holding IEC No. 5211017081 (The Appellant) against the against Order In Original F. No. 85/AB/ADC/ICD-SACHIN/SRT/2024-25 Dated 28.06.2024 in F.No. CUS/EPCG/MISC/391/2024-ICD-SRT-CUS-COMMRTE- AHMEDABAD dated 27.03.2024 passed by the Additional Commissioner of Customs, Hazira Port Pvt Ltd., Hazira By-Pass Road, Choriyashi AT & POST-Hazira, Surat 394270 (The Adjudicating Authority). Placed herewith as ***ANNEXURE-A*** *is a copy of the impugned order*

2. The Appellant had imported Capital Goods under EPCG Authorization No. 5230013809 dt. 01.04.2014. Appellant is holding IEC 5211017081 had availed the benefit under notification No. 22/2013 Cus. Dated 18/04/2013. Appellant had imported capital goods under BOE No. 5173906 dated 11/04/2014 and total duty foregone Rs.1,66,162/-.

3. At the time of import, the Appellant had executed Bank Guarantee No. 27031IFIBG140003 dated 05.04.2014 of Rs.30,000/- and Bond No. 2000630941 dt. 11.04.2014 before ICD, SURAT.

4. The Appellant imported 1SET COMPUTERIZED EMBROIDERY MACHINE MODEL NO. 915 (AREA : 400 X 800 X 1200mm) FLAT, SERVO MOTOR WITHOUT CUTTER WITH STANDARD SPARE PARTS & ACCESSORIES and the same was

Installed in the factory on 13.04.2014 (ANNEXURE B). During the stipulated time period of SIX years, the Appellant were able to fulfill 100 % of the export obligation within a period of two years. They were under the impression that since exports was made there is no problem and they were not under any default. They were not aware that they have to submit the documents for EODC to Custom Offices

5. The Adjudicating Authority has alleged that the Appellant failed to comply with the mandatory conditions of the said Notifications and conditions of the Bond. In view of the same, the Adjudicating Authority has held that the Appellant is liable to pay the duty forgone of Rs. 1,66,162/- in respect of the imports of capital goods made along with applicable interest in terms of the condition of the Bond furnished under Section 143 of the Act. The Adjudicating Authority has also held that the said capital goods were not used for the intended purpose therefore the same were liable for confiscation under Section 111(o) of the Act. In addition, the Appellant were liable to pay penalty under Section 112(a) of the Act for the acts of omission and commission by the Appellant. The Impugned order mentions that the Adjudicating Authority granted opportunity of personal hearing to the Appellant on 10.06.2024, 19.06.2024 and 25.06.2024 but no one appeared for the personal hearing. Further, the impugned order alleges that the Appellant has not used the capital goods for the purpose for which the same were imported. However, the Adjudicating Authority has failed to provide any reasonable ground for making such allegation. The fact remains that the Appellant has achieved its export obligation within a period of 2 years and have also applied for EODC to O/o Jt.DGFT, Surat. There is no proof regarding the allegation that the Appellant has diverted the said capital goods to uses other than the specified use, nor there is any evidence to suggest that the Appellant has violated any condition of the Authorisation. Since there was no opportunity provided to the Appellant to put across it say in the present proceedings, the Adjudicating Authority has made some unsubstantiated assumptions and presumptions and based on the same, proceeded to adjudicate the matter to the adversity of the Applicant. However, it informed that the Appellant has not received any intimation from the Adjudicating Authority except letter dated 10.06.2024 (Annexure C). The Appellant received a letter No. VIII/6-26/ICD-Sachin/2014-15/1125 dt. 10.06.2024 for Personal Hearing which was replied vide letter dt. 19.07.2024 (ANNEXURE D) informing the Customs Authorities that they have made the exports and have applied for EODC to O/o Jt.DGFT, Surat. To the utter surprise the Appellant received a OIO No. 85/AB/ADC/ICD-SACHIN/SRT/2024-25 Dated 28.06.2024 (ANNEXURE A). It's a fact that the Appellant did not reply to the OIO in time. It was due to the fact that the Appellant's younger brother Jitender Chugh was suffering from Cancer since 2009 and further treatment was extremely done during the period 2024 due to which the Appellant could not concentrate on his business and there was no one to look after the day to day work of the business and other Government formalities. Medical reports under which treatment was done is at Annexure-E.

6. It is further submitted that there are no grounds for confiscation of the said goods under Section 111(o) of the Act. The Appellant has fulfilled the export obligation and had

कार्यालय आयुक्त (अपील), सीमा शुल्क
अहमदाबाद.

submitted the prescribed documents to O/O Jt.DGFT, Surat and also received EODC letter dt 12.08.2024. (ANNEXURE F)

7. It is also submitted that imposition of penalty under Section 112(a) of the Act is also without authority of law as there is not ground of confiscation of the said capital goods. Penalty under Section 112 (a) of the Act can be imposed in case the imported goods become liable to confiscation under Section 111(o)of the Act. However, there are no grounds for confiscation of the said capital goods under Section 111 (o) of the Act. Therefore, there cannot be any penalty under Section 112(a) of the Act. Further, no penalty under Section 114 AA of the Custom Act, 1962 can be imposed as the Appellant has not prepared any documents which are false or fabricated to attract penal provisions of Section 114 AA of the Customs Act, 1962.

8. As per the impugned order, the same has been passed in adjudication of Show cause Notice No. CUS/EPCG/MISC/391/2024-ICD-SRT-CUS-COMMRTE-AHMEDABAD dated 27.03.2024 issued by the Additional Commissioner of Customs, Surat. However, the Appellant has not received any such SCN not it has received any notices or summons or any other kind of intimation/ letter from the Customs Department except letter dated 4.6.2024. Therefore, the investigation part of the present proceedings, if any have remained unrepresented by the Appellant. The Appellant received the impugned order without any other communication between the period from the time of import till the impugned order was received.

9. No other appeal or application proceedings have been initiated by the Appellant in respect of the issues/ matter covered by the present appeal before any judicial authority, quasi-judicial authority or Court or before any other forum. Hence, the Commissioner of Customs (Appeals), 4th Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad 38009 has the exclusive jurisdiction to deal with the present appeal.

10. In the impugned OIO para 7 it is mentioned that the Appellant had not submitted any written submission in response to the letters issued by ICD, Sachin. But it is informed that the Appellant had informed the Custom authorities vide letter dated 19.07.2024 that they have fulfilled the EO.

11. The Appellant is aggrieved by the impugned order as it has not been heard and the impugned order has been passed in ex parte manner resulting in denial of natural justice. Further grave injustice has been done to the Appellant by imposing penalty, fine and confiscation of the said goods. Since the Appellant has not been provided any opportunity to defend its case, the impugned order suffers from grace errors which need to be addressed in judicious manner, and further as the Appellant has fulfilled the export obligation within a period of 2 years, and hence this appeal.

(A) GOVT. DUES PENDING AS ON DATE

At the outset, it is submitted that the impugned order has been passed in ex parte manner without affording any opportunity for Personal Hearing. Although, the impugned order *mentions that a SCN was issued and personal hearing granted on certain dates, the Appellant has not received any communication from the Adjudicating Authority except letter dated 10.06.2024 which was replied vide letter dated 19.07.2021. In view of the same, the present proceedings are vitiated, unsustainable and illegal and order passed in pursuance of the same merits may be set aside. The Appellant M/s. Radha Textile Mills, 16/17 Sai Krupa Ind. Estate, B/H Bhatia Circle, Nr. Sosyo Circle, Bamroli Road, Surat 395210 is holding IEC No. 5211017081-(hereinafter called as 'Appellant' for the sake of brevity) had imported Capital Goods under EPCG Authorisation No. 5230013809 dt. 01.04.2014. Since the Appellant had fulfilled the export obligation, no govt dues are pending as on date.*

(B) NO INTEREST AND PENALTY SHOULD BE DEMANDED

NO INTEREST AND PENALTY SHOULD BE DEMANDED since they have fulfilled the export obligation within a period of two years.

1. The Appellant imported 1SET COMPUTERIZED EMBROIDERY MACHINE MODEL NO. 915 (AREA : 400 X 800 X 1200mm) FLAT, SERVO MOTOR WITHOUT CUTTER WITH STANDARD SPARE PARTS & ACCESSORIES and the same was Installed in the factory on 13.04.2014 (***ANNEXURE B*** *). During the stipulated time period of SIX years, the Appellant were able to fulfill 100 % of the export obligation within a period of two years. The Appellant were under the impression that since exports was made there is no problem and they were not under any default. They were not aware that they have to submit the documents for EODC to DGFT and Custom Offices. The Appellant received a letter No. VIII/6-26/ICD-Sachin/2014-15/1125 dt. 10.06.2024 for Personal Hearing which was replied vide letter dt. 19.07.2024 (ANNEXURE D) informing the customs autho rities that they have made the exports and have applied for EODC to O/o Jt.DGFT, Surat. To the utter surprise the Appellant received a OIO No. 85/AB/ADC/ICD-SACHIN/SRT/2024-25 Dated 28.06.2024 (ANNEXURE – A).). It's a fact that the Appellant did not reply to the OIO in time. It was due to the fact that the Appellant's younger brother Jitender Chugh was suffering from Cancer since 2009 and further treatment was extremely done during the period 2024 due to which the Appellant could not concentrate on his business and there was no one to look after the day-to-day work of the business and other Government formalities. Medical reports under which treatment was done is at Annexure-E*

The Applicant submitted that as per Finance Act 2014 w.e.f. 06/08/2014, Section129 E is being substituted with new Section for a mandatory deposit of 7.5% of the duty demanded or penalty imposed for filing appeal at the first stage. In our case, this is our first stage appeal. The Addl Commissioner of Customs HAZIRA Port Pvt Ltd., Hazira By-Pass Road, Choriyashi, AT & Post-Hazira, Surat 394270 has demanded Customs Duty amounting to Rs. 1,66,162/-, redemption fine of Rs. 2,01,617/-, imposed penalty on the Firm Rs.16,616/- u/s 112 (a) of Customs Act, 1962, penalty of Rs. 1,00,000/-under Section

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

117 of the Custom Act, 1962, Bank guarantee for Rs. 30,000/-. Here, we are not liable to deposit 7.5% of Customs Duty Demanded as pre-deposit required under Section 129 E of the Customs Act,1962 since the Appellant had already fulfilled the EO. Further, Bank Guarantee No. 27031IFIBG140003 dated 05.04.2014 of Rs.30,000/- and Bond No. 2000630941 dt. 11.04.2014 before ICD, SURAT. 0281IGFIN004312 dated 19.11.2012 of Rs.30,000/- has been ordered for appropriation towards Duty, Interest and penalty. Hence total deposit we have made is sufficient to comply the provision of Section 129E of the Customs Act, 1962 for filing Appeal at the First stage."

4. Personal hearing in the matter was held on 11.12.2025 in virtual mode. Shri Nikhil Jacob Parapurathu, Advocate, appeared for hearing on behalf of the Appellant. He reiterated the submissions made in the appeal memorandum. He further submitted that in their case, the EODC has been issued by the Jt. DGFT, Surat on 12.08.2024 and copy of the same submitted to this officer.

5. Before going into the merits of the case, it is observed from Form C.A.-1 and the appeal memorandum that the impugned order is dated 28.06.2024. The appellant has submitted that the said order was received by them on 08.02.2025 and the present appeal has been filed on 12.03.2025. Therefore, as per the submission of the appellant, the appeal has been filed within the normal period of 60 days prescribed under Section 128(1) of the Customs Act, 1962, reckoned from the date of receipt of the impugned order. In this regard, it is put on record that one set of the appeal memorandum along with the relevant documents was forwarded to the adjudicating authority for comments vide this office letter dated 03.04.2025 on the grounds of appeal and also with reference to the date of service of the impugned order along with the evidence. However, no reply or comments have been received from the adjudicating authority till date. In the absence of any contrary evidence or clarification from the adjudicating authority regarding the actual date of service of the impugned order and the comments, the submission of the appellant that the impugned order was received on 08.02.2025 is taken on record. Accordingly, reckoning the limitation period from the said date of receipt, the present appeal filed on 12.03.2025 is treated as having been filed within the statutory time limit prescribed under Section 128(1) of the Customs Act, 1962, and is therefore admitted for decision on merits. Therefore, the facts and submissions made by the appellant are taken on record as true and acceptable, and the appeal is being decided on the basis of the documents and submissions furnished by the appellant.

आयुक्त (अपील), सीमा शुल्क, कार्यालय, अहमदाबाद

5.1 It is further observed that, the appellant, with respect to the payment of mandatary pre-deposit for filing appeal, has submitted that they have already fulfilled the EO and the Bank Guarantee No.: 27031IFIBG140003 dated 05.04.2014 of Rs.30,000/- and Bond No.: 2000630941 dt. 11.04.2014 submitted before the ICD, Surat and same has been ordered for appropriation towards, duty, interest and penalty, hence, total deposit they have made sufficient to comply to the provision of section 129E of the Customs Act, 1962.

5.2 In view of above, as the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and fulfilling the criteria of pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

6. I have carefully examined the Impugned Order, the Appeal Memorandum filed by the Appellant, the written and oral submissions made during the course of hearing, as well as the documents and evidence available on record. The main issue to be decided in the present appeal is whether the adjudicating authority, in the impugned order, was justified in denying the benefit of Notification No. 22/2013-Cus., dated 18.04.2013 on the ground of non-submission of the EODC and Redemption Letter from the DGFT, and whether such denial is legal and proper in the facts and circumstances of the case.

6.1 It is observed that the Appellant had imported Capital Goods machinery, i.e., 01 sets of Computerized Embroidery Machine under EPCG Licence No. 5230013809, dated 01.04.2014 by saving Customs Duty amount of Rs. 1,66,162/- under the cover of the Bill of Entry mentioned above at Table-I at zero duty by availing the benefit of exemption available under Notification No. 22/2013 -Cus., dated 18.04.2013 as per the details mentioned at Table – I above.

6.2 The Appellant was required to fulfil the export obligation within a period of Six years from the date of issuance of EPCG Licence in terms of the conditions laid down in the Notification and in the EPCG Licence itself. However, the Appellant appeared to have failed to fulfil the conditions laid down under the said Notification inasmuch as they failed to fulfil export obligations against the goods imported by using the aforesaid EPCG Licence. The Appellant neither produced the EODC issued by the DGFT, Surat nor could produce any documents showing extension granted to them for fulfilment of export obligation. Therefore, the Appellant appeared liable to pay Customs Duty not paid (i.e. saved) by them amounting to Rs. 1,66,162/- at the time of import / clearance along with interest at the applicable rate, in terms of conditions of the said Notification read with condition of the Bond executed by them read with Section 143 of the Customs Act, 1962. Accordingly, a Show Cause Notice was issued, which was adjudicated vide the impugned order, disallowing the benefit of concessional rate of duty under said Notification, confirming the demand of Customs duty along with interest, confiscating the goods under Section 111 (o) of the Customs Act, 1962 and imposing penalties upon the Appellant under Sections 112 (a) (ii) and Section 117 of the Customs Act, 1962.

6.3 I find that during the personal hearing conducted in virtual mode on 11.12.2025, attended by Shri Nikhil Jacob Parapurthu, the appellant submitted that the EODC in the present matter has been issued by the Joint DGFT, Surat on 12.08.2024, and a copy of the same was also enclosed. It is observed from the Redemption Letter dated 12.08.2024 issued by the Joint DGFT, Surat that the same has been issued towards the fulfilment of the export obligation in respect of the EPCG License No. 5230013809 dated 01.04.2014. However, it is observed that these facts have been brought before the appellate authority for the first time and the adjudicating authority had no occasion to consider the same. Hence, the veracity of the Redemption Letter dated 12.08.2024 issued by the Joint DGFT, Surat in respect of the 5230013809 dated 01.04.2014 needs verification from the original case records.

7. In view of the above, I find that remitting the present appeal to adjudicating authority for passing fresh order, after taking the submissions made by the Appellant in the present appeal on record, and pass fresh order after examining the Redemption Letter dated 12.08.2024 issued by the Joint DGFT, Surat in respect of the 5230013809 dated 01.04.2014, has become sine qua non to meet the ends of justice. Accordingly, the case is remanded back to the adjudicating authority, in terms of sub-section (3) of Section 128A of the Customs Act, 1962, for passing a fresh order by following the principles of natural justice. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs- 2004 (173) ELT 117 (Guj.), Judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and Judgments of Hon'ble Tribunals in case of Prem Steels Pvt. Ltd. [2012-TIOL-1317-CESTAT-DEL] and Hawkins Cookers ltd. [2012 (284) E.L.T. 677 (Tri.-Del)] holding that Commissioner (Appeals) has power to remand the case under Section – 35A (3) of the Central Excise Act, 1944 and Section – 128A (3) of the Customs Act, 1962.

8. In view of above, I set aside the impugned order and allow the appeal filed by the Appellant by way of remand to the adjudicating authority for passing fresh orders

after considering the submissions made by the Appellant in the present appeal on record. The Adjudicating Authority shall examine the available facts, documents, submissions and issue speaking order afresh following principles of natural justice and legal provisions.

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

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

F. No. S/49-316/CUS/AHD/24-25 Date: 16.03.2026

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

Through Speed Post:

M/s Radha Textiles mills,
16/17, Sai Krupa Ind. Estate,
B/H Bhatia Circle, Nr. Sosyo Circle,
Bamroli Road, Surat 395210.

Shri Kirankumar Chugh,
Proprietor of M/s Radha Textiles mills,
903, Amar Swapna Aptt.,
Near Adarsh Society, Gokulam Dairy,
Athwa lines, Surat- 395 007.

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

Copy to:

1.The Chief Commissioner of Customs Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in)

2.The Principal Commissioner of Customs, Custom House, Ahmedabad. (email: cus-ahmd-guj@nic.in rra-customsahd@gov.in).

3. The Additional Commissioner of Customs, ICD – Sachin, Surat. (Email: adjcus-surat@gov.in / cus-ahmd-adj@gov.in)

4.The Deputy Commissioner, Customs, ICD – Sachin, Surat. (icd-sachin@gov.in).

5. Shri Nikhil Jacob Parapurthu, Advocate on behalf of M/s Radha Textiles mills, Surat. (nikhiljacobexim@gmail.com)

6. Guard File.