



सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS), अहमदाबाद AHMEDABAD,
चौथीमंजिल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड Ishwar Bhuvan Road,
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DIN- 20250471MN000000B74E

क	फाइलसंख्या FILE NO.	S/49-58/CUS/MUN/2023-24
ख	अपीलआदेश संख्या ORDER-IN-APPEAL NO. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP-009-25-26
ग	पारितकर्ता PASSED BY	SHRI AKHILESH KUMAR Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	11.04.2025
ड	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	OIO No. MCH/ADC/MK/185/2022-23, dated 21.03.2023 issued by the Additional Commissioner, Customs, Mundra.
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	11.04.2025
छ	अपीलकर्ताकानामवपत्ता NAME AND ADDRESS OF THE APPELLANT:	M/s. Rahul Agro Industries, 19/22,1, Jhalkari Nagar, Alwar Gate, Ajmer, Rajasthan-305001
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.
	खेत सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods imported on baggage.
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(ब)	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
(ब)	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 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां। 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, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलियअधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रुपए.	(क) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रुपए	(ख) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रुपए.	(ग) 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।	(घ) An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



ORDER - IN - APPEAL

M/s. Rahul Agro Industries, 19/22, 1, Jhalkari Nagar, Alwar Gate, Ajmer, Rajasthan – 305001 (hereinafter referred to as the 'appellant') have filed the present appeal in terms of Section 128 of the Customs Act, 1962 challenging the Order - In - Original No. MCH/ADC/MK/185/2022-23, dated 21.03.2023 (hereinafter referred to as the 'impugned order') issued by the Additional Commissioner, Customs, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant had attempted to import 414 containers of goods declared as 'Green Moong Beans' through Mundra port. All the containers were destined to APSEZ Unit M/s Kerry Indev Logistics Private Limited (IEC-0408018887). On the basis of specific intelligence regarding violations of the provisions under the Customs Act, 1962, the goods contained in 159 containers were put on hold for examination. The goods were examined in the SEZ unit M/s Kerry Indev Logistics Private Limited under Panchnama dated 07.02.2023. The DTA Bills of Entry for clearance of goods for home consumption had been filed in respect of all the 159 containers lying in M/s Kerry Indev Logistics Private Limited. Later, it was gathered that 140 more containers were lying in M/s Steinweg Sharaf India Pvt Ltd, an SEZ Unit, and 115 containers were lying at Terminals, Adani Port. Warehousing Bills of Entry had been filed in respect of 140 containers lying in M/s Steinweg Sharaf India Pvt Ltd and 115 containers were lying at terminal. The details are given in Table-A, Table-B and Table-C of the impugned order.

2.1 It was found that import of Moong (beans) has been put under restricted category by the Department of Commerce and Industry vide Notification F.No. 14/1/2021-2021-EP (Agri III), dated 11.02.2022. Further, as per Circular issued under F. No. APSEZ/83/Public Notice APSEZ/2019-20, dated 29.06.2021 by the Specified Officer, APSEZ, Mundra, any unit/co-developer/developer of the APSEZ shall obtain permission from Unit Approval Committee for storage and re-export of goods which are restricted by DGFT. In view of the above, the impugned goods were seized vide Seizure Memo dated 07.02.2023, 22.02.2023 and 24.02.2023 under Section 110 of the Customs Act, 1962.

2.2 During investigation, it was found that the importer had attempted to import 10086.1 MTS (414 containers) of "Green Moong Beans" vide DTA Bills of Entry and other containers. On physical examination of the goods carried out by the SIIB officers, the goods were found as

declared i.e. "Green Moong Beans". As per Notification F.No. 14/1/2021 - EP(Agri - III) issued by Ministry of Commerce and Industry, import of "Green Moong Beans" comes under "restricted" category which as per Para 2.08 of the Foreign Trade Policy, 2015-20 can be imported only in accordance with an Authorisation/permission issued in this regard. Advance Authorisation No. 1310049264 dated 22.04.2019 was issued to the appellant and import of 45000 MTS "Green Moong Beans" was allowed with condition that they would re-export 42585 MTS of processed pulses out of the imported goods. However, the appellant obtained "Certificate of supplies from SEZ" (Annexure-B) against advance license issued to them. The certificate of supplies was issued by DGFT and condition of import was that the import item would be supplied by "Producer" in the SEZ.

2.3 Investigation further revealed that M/s Kerry Indev Logistics Pvt Ltd is a unit registered with GST as service provider for "warehousing and transporting" activities only. They are not "Producer" or "Manufacturer" of any goods. This has been stated by Shri Haresh Chande, Operation Manager and Shri Aresh Goel, General Manager (Special Projects and Consultants-Regulatory & Customs) of M/s Kerry Indev Logistics Pvt Ltd. "Producer" word has not been defined in the SEZ Act, 2005. However, Section 2(za) provides that the words and expressions not defined in the Act shall have the meaning assigned to them in Central Excise Act, 1944. Though the word "producer" has not been defined in Central Excise Act also, at many places starting with Section 3(A) of the Central Excise Act, 1944 words "producer" and "manufacturer" have been invariably used interchangeably. Though the definition of the word "producer" is not strictly defined in the Central Excise Act, connotation of the word "producer" become clear when it is found that "producer" is invariably used interchangeably with "manufacturer".

2.4 During investigation, Shri Rahul Pancholi, Proprietor of appellant in his statement dated 21.02.2023 stated that they are the importer of subject consignment and not M/s. Kerry Indev Logistics Pvt Ltd. He agreed that it was a mistake on their part to import goods through only a warehousing SEZ unit which was not 'producer/manufacturer' of goods, as was mandated vide Certificate of supplies from SEZ. Shri Jaikishan B Kotak, Director, M/s Sri Radhakrishna Shipping Pvt Ltd (CHA) in his statement dated 21.02.2023 stated that on appellant's request, it was planned to clear the goods through SEZ. Further, Shri Hiren Haresh Chande, Operation Manager,

M/s Kerry Indev Logistics Pvt Ltd in his statement dated 08.02.2023 stated that as mandated vide Circular F No. APSEZ/83/Public Notice APSEZ/2019-20, dated 29.06.2021 issued by the Specified Officer, APSEZ, Mundra, they don't have any permission for warehousing of

"restricted" items. He further stated that they are registered under GST as only service provider for "warehousing and transportation" and that they have never made any imports. He also agreed that it was a mistake since as per "Certificate of Supply from SEZ mandated the goods to be procured from "producer" unit while they are not producer/manufacturer of the goods.

From the investigation, it appeared that Shri Rahul Pancholi, Proprietor of appellant, Shri Jaikishan B Kotak, Proprietor of CHA, M/s Sri Radhakrishna Shipping Pvt Ltd and M/s Kerry Indev Logistics Pvt Ltd conspired to clear the goods through SEZ in violation of Foreign Trade Policy, 2015-20 issued by DGFT, Ministry of Commerce and Industry read with SEZ Act, 2005 and Rules made thereunder. Therefore, the goods appeared liable for confiscation under Section 111 (d) & (m) of the Customs Act, 1962. A letter dated 15.03.2023 was received from the appellant requesting to allow re-export of the goods as export contract has been cancelled by the buyer. The appellant also requested to waive SCN in the matter.

2.5 After completion of investigation, the Investigation report was issued by Dy Commissioner of Customs, SIIB, Mundra on 18.03.2023 which proposed as under :

- (i) The appellant attempted to import 10086.1 MTS of "Moong", a restricted commodity valued at Rs. 42.60 Crore in violation of Foreign Trade Policy 2015-20 issued by DGFT, Ministry of Commerce and Industry read with SEZ Act, 2005 and Rules made thereunder. Therefore, the goods valued at Rs 42.60 Crores appeared liable for confiscation under Section 111 (d) & (m) of the Customs Act, 1962.
- (ii) Since goods appeared liable for confiscation under Section 111 (d) & (m) of the Customs Act, 1962, the appellant also appeared liable to pay the penalty under Section 112 of the Customs Act, 1962.

2.6 Thereafter, the adjudicating authority has vide impugned order passed order as detailed below:

- (i) It has been held that the impugned goods imported vide the 14 DTA Bills of Entry and 8 Warehouse Bills of Entry having total assessable value of Rs. 42.60 Crore as mentioned in Table-A, Table-B and Table-C of impugned order, are "prohibited" under Customs Act, 1962.

- (ii) It was ordered to confiscate the impugned goods imported vide the 14 DTA Bills of Entry and 8 Warehouse Bills of Entry as mentioned in as mentioned in Table-A, Table-B and Table-C of impugned order having total assessable value of Rs. 42.60 Crore under Section 111(d) & 111 (m) of the Customs Act 1962. He gave an option to redeem the same for re-export purpose only as requested on payment of redemption fine of Rs. 65,00,000/- under Section 125(1) of Customs Act, 1962.
- (iii) Penalty of Rs. 30,00,000/- was imposed on the appellant under Section 112(a) of the Customs Act, 1962.

3. Being aggrieved with the impugned order, the appellant have filed the present appeal wherein they have, interalia, contended as under :-

- The Adjudicating Authority has erred in imposing fine and penalty qua goods meant for re-export pursuant to Certificate of Supplies from SEZ issued by the office of DGFT on Application clearly mentioning the name of Supplier as M/s. Kerry Indev Logistics Private Limited. Even otherwise, it is a settled law that redemption fine is not applicable on goods meant for re-export.

4. Personal hearing in the matter was held on 08.01.2025. Shri Vikas Mehta, Consultant, appeared for the hearing on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He also filed additional submissions wherein it has been contended as under :-

- There is nothing in the impugned order to suggest that goods did not correspond in respect of value, quantity, claim for benefit/exemption or in any other particular with the details declared in the bills of entry. Hence, Section 111 (m) is wrongly invoked.
- Section 111 (d) is wrongly invoked in as much as the procurement of 159 containers with 3884.85 MT valued at Rs. 16,39,70,768/- from M/s. Kerry Indev Logistics Private Limited, Mundra is duly covered by "Certificate of Supplies from SEZ" dated 13.01.2023 for 11,300 MT having value of Rs. 51,97,77,000/- issued by FTDO, Jaipur under Policy Circular No. 21/2015-20 dated 11.03.2019 which has been enclosed in the appeal memo. As per allegation narrated in "Summary of investigation" of impugned order that M/s. Kerry Indev Logistics Pvt Ltd is not "producer" or "manufacturer". However, the impugned order does not take into account the fact that the Certificate of FTDO is valid

& issued by DGFT in consonance with the FTP & HBP provisions laid down for imports and holds the field even today. The "Summary of investigation" does not contain any allegation qua goods covered by Table-B of impugned order (goods stored in the SEZ warehouse of M/s. Steinweg Sharaf India Pvt. Ltd.) and Table-C of impugned order (goods lying at the port duly covered by warehousing bills of entry).

- The goods stored in the SEZ warehouse of M/s. Steinweg Sharaf India Pvt. Ltd. are duly covered by permission bearing F. No. MPSEZ/Kerry-Rahul Agro/71/2022-23, dated 01.02.2023 issued by Specific Officer, APSEZ, Mundra .
- The goods lying at terminal (Table-C of impugned order) are covered by warehousing bills of entry that were filed by making specific mention of M/s. Kerry Indev Logistics Private Limited, Mundra that is duly covered by "Certificate of Supplies from SEZ" dated 13.01.2023 issued by FTDO, Jaipur. As such, these goods were meant for procurement from the above SEZ unit.
- It is a settled law that interpretation of DGFT authority prevails over Customs authority in the matters involving import policy. Hence, the impugned order, in the face of valid licence (Certificate of Supplies from SEZ) and Permission dated 01.02.2023 issued by DGFT is not tenable in the eyes of law.
- Reliance is placed on the following amongst other decisions to support the above view

(i) Titan Medical Systems Pvt. Ltd. v/s Collector of Customs, New Delhi, 2002 (11) TMI-Supreme Court.

(ii) Amar Cold Storage v/s C.C., Jamnagar (Prev.)-2022 (11) TMI 267-CESTAT AHMEDABAD

- Even with reference to demand of duty under Section 28AAA of Customs Act, 1962, kind attention is invited to Circular No. 334/1/2012-TRU dated 01.06.2012 (Copy enclosed herewith), wherein, it is specifically clarified that:

"II.2 Recovery of duty in case of instrument issued under Foreign Trade (Development and Regulation) Act.

Section 28AAA has been inserted in the Customs Act through Section 122 of the Finance Act, 2012 to provide for recovery of duties from the person to whom an instrument such as credit duty scrips was issued where such instrument was obtained by means of collusion or willful misstatement or suppression of facts. Since the provision now has the force of law, action for recovery of duty can be initiated under the said provision. Field formations are advised to issue demands as soon as DGFT/concerned regional Authority initiates action for cancellation of an instrument but the matter may be decided only after the instrument has been cancelled by DGFT."

(Underline Supplied)

- Applying the ratio, it is a matter of record that DGFT has not initiated any action for cancellation of the Certificate of Supplies from SEZ as well as permission of warehousing supra. Also, there's no reference of taking up the matter with DGFT Hence, the action taken by the lower authority in adjudging the goods to be prohibited is premature, being contrary to Board's Circular
- Owing to above, the aforesaid goods cannot be considered "Prohibited".
- Notwithstanding above, Ld. Adjudicating Authority has duly observed that:



"I find that the importer obviously has not derived any benefits from the import of impugned goods as no part of the imported goods have been allowed clearance Also, the impugned goods have been lying in warehouse for almost two months. Therefore, claim of the importer that they have incurred heavy expenses has merits."

- It is held by Hon'ble Tribunal in the case of Opus Asia Technologies Pvt. Ltd., v/s Commissioner of Cus. (Sea), Chennai, 2004 (168) ELT 72 (Tri.-Chennai) that if the margin of profit is wiped out, then the question of imposing redemption fine may not arise in the matter.
- The matter of re-export of goods has come up for deliberation before various appellate forums as detailed below:

(i) M/s. Selvam Industries Ltd. v/s Commissioner of Customs, Tuticorin, 2021 (377) ELT 458 (Tri.-Chennai).

(ii) M/s. SDS Ramcides Crop Science Pvt. Ltd. v/s Commr. of Customs, Chennai-II, 2018 (359) ELT 239 (Tri.-Chennai)

(iii) M/s. Kenda Farben India Pvt. Ltd. v/s Commissioner of Customs, Noida, 2019 (369) ELT 1225 (Tri.-All.)

In the decisions cited above, the appellate forums have taken a view that imposition of redemption fine is not justified while permitting re-export of the goods.

- Also, in this case, the Adjudicating Authority has duly noted that no profit has accrued to the appellant. Hence, it is prayed to quash and set aside the redemption fine imposed by the lower authority.
- Further, it is prayed that penalty may be fixed commensurate to the offence taking into consideration the extenuating circumstances, as duly held by Hon'ble Tribunal in the matter of Opus Asia Technologies Pvt. Ltd. supra. It may be kindly appreciated that entire dispute has arisen owing to conflicting interpretation between Customs and DGFT. The importer has no control on the interpretational aspect, whatsoever, but has duly followed the due process laid down for the said imports. Hence, it is prayed to take a lenient view and quash and set aside penalty imposed on the appellant or reduce it to a token amount, if at all penalty appears to be imposable.
- It is submitted that as per the information provided by the appellant, Custom House, Mundra (SIIB) had made a reference to DGFT regarding eligibility of M/s. Rahul Agro Industries to procure the goods under consideration from warehousing unit i.e. M/s. Kerry Indev Private Limited, Mundra, a warehousing unit. To this, the Joint Director General of Foreign Trade. Jaipur vide email dated 09.03.2023 addressed to SIIB, Mundra had clarified that Policy Circular No. 21/2015-20 dated 11.03.2019 does not distinguish between a supplier unit into warehousing unit and/or producer/manufacturer unit in SEZ.



- Thus, it is submitted that Ld. Adjudicating Authority could not have overrode the clarification of DGFT to pass adverse order against the appellant for procuring the goods from M/s. Kerry Indev Private Limited in terms of Certificate of Supply from SEZ issued by FTDO, Jaipur.

5. I have carefully gone through the facts of the case and submissions made by the appellant in their appeal memorandum as well as those made during the personal hearing. I find that the appellant has in the appeal memorandum and additional submissions contested the impugned order holding the impugned goods as 'prohibited' and also their confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. Further, the appellant has contested the imposition of redemption fine on the ground that the goods have been permitted for re-export. The appellant has further contested penalty imposed under Section 112(a) of the Customs Act, 1962 and prayed for quashing the same or reducing it to a token amount, if at all imposable. Therefore, the issue to be decided in the present appeal is as under :-

- (i) Whether the impugned order passed by the adjudicating authority wherein the impugned goods have been held as 'prohibited' in the facts and circumstances of the case, is legal and proper or otherwise.
- (ii) Whether the impugned order holding the goods liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962 and imposing Redemption under Section 125(1) of Customs Act, 1962 on the appellant while permitting re-export of the goods, in the facts and circumstances of the case, is legal and proper or otherwise.
- (iii) Whether penalty imposed on the appellant under Section 112(a) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise

5.1 Before going into the merits of the case, I find that as per appeal memorandum, the present appeal has not been filed within statutory time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962. In this regard, it is relevant to refer the legal provisions governing filing an appeal before the Commissioner (Appeals) and his powers to condone the delay in filing appeals beyond 60 days. Extracts of relevant Section 128 of the Customs Act, 1962 are reproduced below for ease of reference:

SECTION 128. Appeals to [Commissioner (Appeals)]. — (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the

[Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order.

[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

Section 128 of the Customs Act, 1962 makes it clear that the appeal has to be filed within 60 days from the date of communication of order. Further, if the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days.

It is observed from the Appeal Memorandum that the date of communication of order appealed against is mentioned as 21.03.2023 and the appeal has been filed on 13.06.2023. Therefore, I find that there is delay of 24 days in filing of Appeal beyond the appeal period of 60 days. In their application for condonation for delay, the appellant have submitted that the appeal has been filed with a delay of 23 days which is factually incorrect as the actual delay is 24 days. The appellant has submitted that the delay has been caused due to change in legal counsel. It is submitted that the earlier counsel expressed his inability to draft the appeal citing health reasons and it took few more days to collect papers from him and hand over the same to new counsel. The delay upto 30 days in filing of appeal beyond the time limit of 60 days is condonable as stipulated under Section 128(1) of the Customs Act, 1962. Therefore, in the interest of justice, I take a lenient view and allow the said appeal filed by the appellant as admitted by condoning the delay of 24 days in filing under the proviso to the Section 128(1) of the Custom Act, 1962.

5.2 It is observed that an intelligence received by the jurisdictional officers of Customs, Mundra indicated that the appellant attempted to import 414 containers of 'Green Moong Beans'. All the containers were destined to APSEZ unit M/s Kerry Indev Logistics Private Limited. On examination, it was found that import of Moong (beans) has been restricted by the Department of Commerce and Industry vide Notification F.No. 14/1/2021-2021-EP (Agri III) dated 11.02.2022. Further, as per circular F. No. APSEZ/83/Public Notice APSEZ/2019-20 dated 29.06.2021 issued by Specified Officer, APSEZ, Mundra, any unit/co-developer/developer of the APSEZ shall obtain permission from Unit Approval Committee for storage and re-export goods which are restricted by DGFT. Advance Authorisation No 1310049264 dated 22.04.2019 was issued to the appellant and import of 45000 MTS "Green Moong Beans" was allowed with condition that they would re-export 42585 MTS of processed pulses out of the imported goods. However, the appellant obtained "Certificate of supplies from SEZ" (Annexure-B) against advance license issued to them. The certificate of supplies was issued by DGFT and condition of import was that

the import item would be supplied by "Producer" in the SEZ. Investigation further revealed that M/s Kerry Indev Logistics Pvt Ltd is a unit registered with GST as service provider for "warehousing and transporting" activities only. They are not "Producer" or "Manufacturer" of any goods. In view of the same, the impugned goods were seized vide seizure memo dated 07.02.2023, 22.02.2023 and 24.02.2023 under Section 110 of the Customs Act, 1962 and matter was further investigated.

5.3 On completion of investigation, it appeared that Shri Rahul Pancholi, Proprietor of appellant, Shri Jaikishan B Kotak, Proprietor of CHA, M/s Sri Radhakrishna Shipping Pvt Ltd and M/s Kerry Indev Logistics Pvt Ltd conspired to clear the goods through SEZ in violation of Foreign Trade Policy, 2015-20 issued by DGFT, Ministry of Commerce and Industry read with SEZ Act, 2005 and Rules made thereunder. Therefore, the impugned goods appeared liable for confiscation under Section 111 (d) & (m) of the Customs Act, 1962. A letter dated 15.03.2023 was received from the appellant requesting to allow re-export of the goods as export contract has been cancelled by the buyer.

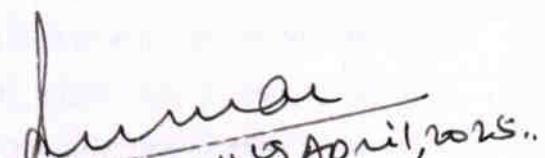
5.4 On the basis of Investigation report, the adjudicating authority has adjudicated the matter wherein it has been held that the impugned goods are 'prohibited' in nature as the same are restricted goods and have been imported without proper authorization in as much as the condition of Certificate of supply was violated while importing the said goods. It is the contention of the appellant that it is a settled law that interpretation of DGFT authority prevails over Customs authority in the matters involving import policy. It is also contended that DGFT has not initiated any action for cancellation of the certificate of supplies from SEZ as well as permission of warehousing. It is further submitted by the appellant that there is no reference of taking up the matter with DGFT and hence action taken by the lower authority in considering the goods to be prohibited is contrary to the Board's Circular dated 01.06.2012 cited above.

5.5 Further vide additional submission dated 07.02.2025, the appellant has submitted that as per the information provided by them, Custom House, Mundra (SIIB) had made a reference to the DGFT regarding eligibility of M/s. Rahul Agro Industries to procure the goods under consideration from warehousing unit i.e. M/s. Kerry Indev Logistics Private Limited, Mundra, a warehousing unit. It is further submitted that the Joint Director General of Foreign Trade, Jaipur vide email dated 09.03.2023 addressed to SIIB, Mundra had clarified that Policy Circular No. 21/2015-20 dated 11.03.2019 does not distinguish between a supplier unit into warehousing unit and/or producer/manufacturer unit in SEZ. It is contended by the appellant that the adjudicating

authority could not have overrode the clarification of DGFT to pass adverse order against the appellant for procuring the goods from M/s. Kerry Indev Logistics Private Limited in terms of Certificate of Supply from SEZ issued by FTDO, Jaipur. However, I find that these submissions have been filed in appeal before me for the first time. The appellant had waived the SCN as well as PH and also did not file any written submission before the adjudicating authority. Hence, the adjudicating authority had no occasion to consider these submissions during adjudicating proceedings. Hence, I find that entire facts are not available on records to verify the claims made by the appellant. Copy of appeal memorandum was also sent to the jurisdictional officer for comments. However, no response have been received from the jurisdictional office. Therefore, I find that remitting the case to the adjudicating authority for passing speaking order becomes sine qua non to meet the ends of justice. Accordingly, the case is required to be remanded back to the adjudicating authority, in terms of sub-section (3) of Section 128A of the Customs Act, 1962, for passing speaking order on the submissions made by the appellant as above 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 P. Ltd. [2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677(Tri. – Del)] wherein it was held 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.

6. Accordingly, the appeal filed by the appellant is allowed by way of remand.




 (AKHILESH KUMAR)
 Commissioner (Appeals)
 Customs, Ahmedabad

Date: 11.04.2025

F.No. S/49-58/CUS/MUN/2023-24

By Registered Post A.D.

To,
 M/s. Rahul Agro Industries,
 19/22, 1, Jhalkari Nagar, Alwar Gate, Ajmer,
 Rajasthan-305001



Copy to :-

1. The Chief Commissioner of Customs, Ahmedabad Zone, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs House, Mundra.
3. The Additional Commissioner of Customs, Customs House, Mundra.
4. Guard File.