सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS),अहमदाबाद AHMEDABAD,

चौथी मंज़िल 4th Floor, हडकोभवनHUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250571MN000000B141

क	फ़ाइलसंख्या FILE NO.	S/49-103/CUS/JMN/2023-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-013-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	29.05.2025
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	10/ADC/DBK/2023-24 dated 13.10.2023
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	29.05.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Reliance Industries Ltd, EXIM Cell, CAB, West Wing 1st Floor, Motikhavdi, Jamnagar.

1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.
	This copy is granted free of cost for the private use of the person to whom it is issued.

2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	बैगेज़केरूपमेंआयातितकोईमाल.
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्टफीएक्ट, 1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां, जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्धदस्तावेज़ोंकेअलावासाथमूलआदेशकी 4 प्रतियां, यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/-(रूपएएकहज़ारमात्र), जैसाभीमामलाहो, सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां यदिशुल्क, मांगागयाब्याज, लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बंन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसीमाशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी. ए.-3 मेंसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :

	सीमाशुल्क, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण,पश्चिमीक्षेत्रीयपीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरीमंज़िल,बहुमालीभवन,निकटगिरधरनगरपुल,असारवा,अहमदाबाद-380016	2nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पांचहज़ाररुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं,यादंडके 10%अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएग।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

M/s Reliance Industries Ltd, EXIM Cell, CAB, West Wing 1st Floor, Motikhavdi, Jamnagar (hereinafter referred to as "the appellant") in terms of Section 128 of the Customs Act, 1962 against Order -in- Original No. 10/ADC/DBK/2023-24 dated 13.10.2023 (hereinafter referred to as "the impugned orders") passed by the Additional Commissioner, Customs (Preventive), Jamnagar (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant filed application Ref No. RIL/JMD-DTA/DBK-151 dated 15.01.2021 (received on 21.01.2021) addressed to the Assistant Commissioner of Customs, O/o the Commissioner of Customs, CCP, Jamnagar, wherein they requested for fixation of brand rate of duty drawback for the High Speed Diesel (HSD) exported by them from Sikka Port vide Shipping Bill No. 9744642 dated 18.01.2020, under Rule 6(1)(a) of the Customs and Central Excise Duties Drawback Rules, 2017. The appellant had imported Crude Oil, falling under Customs Tariff Heading No. 2709 00 00 of the First Schedule to the Customs Tariff Act, 1975, at Sikka Port vide Bills of Entry No. 5341822/18.10.2019 & 5007909/23.09.2019 and the same was used as input for further process and manufacture of High Speed Diesel (HSD) which was exported under Shipping Bill No. 3744642 dated 18.01.2020. Imported Crude Oil, falling under Customs Tariff Heading No. 2709 00 00 of the First Schedule to Customs Tariff Act, 1975 is not included in the schedule to the Notifications issued by the Central Government determining the rates of drawback of different items, known as All Industry Rate of Duty Drawback. High Speed Diesel (HSD) falling under Customs Tariff Heading No. 27101944 of the First schedule of the Customs Tariff Act, 1975, was manufactured by them using the imported Petroleum Crude Oil as input and the same was exported by them vide aforesaid Shipping Bill. Shipping Bill was filed under Drawback Scheme as well as Advance Authorization, wherein drawback is being claimed by the applicant, for the duty elements suffered on imported Petroleum Crude Oil which was used as input in the manufacturing of High-Speed Diesel (HSD).

2.1 Application Ref No. RIL/JMD-DTA/DBK-151 dated 15.01.2021 (received on 21.01.2021) of the appellant was forwarded to jurisdictional Assistant Commissioner, Customs House, Sikka for detailed verification vide letter F. No. VIII/20-283/Cus-T/2020-21 dated 09.02.2021 after grant of condonation of delay in filing application for fixation of brand rate by the Principal Commissioner, CCP, Jamnagar on 08.02.2021. The Assistant

Commissioner, Customs House, Sikka vide letter F. No. VIII/20-01/DBK/2020-21 dated 10.03.2021 reported that one of the Bills of Entry bearing No. 5341822 dated 18.10.2019 vide which input i.e, crude oil was imported for manufacturing of export product i.e. High Speed Diesel (HSD) against Shipping Bill No. 9744642 dated 18.01.2020 has not been finally assessed by their office and therefore, detailed verification of drawback application of the appellant was not possible.

2.2 Further, the said Bill of Entry was finalized by the Deputy Commissioner, Customs House, Sikka vide Final Assessment Order No. 341/FAO/CHS/2021-22 dated 25.02.2022 and accordingly, a letter F. No. VIII/20-283/Cus-T/2022-23 dated 02.05.2023 was issued to the Assistant Commissioner, Customs House, Sikka for detailed verification of drawback application. The Assistant Commissioner, Custom House, Sikka vide Verification report dated 31.07.2023 issued from letter F. No. VIII/20-08/DBK/CHS/2023-24 has reported that the appellant has exported quantity of HSD 64488.884 MT from Sikka port vide aforesaid Shipping Bill. He further reported that gross quantity 107.20 MT of imported Crude Oil has been utilized for manufacture of 100 MT of exported product i.e. High Speed Diesel (HSD) and 7.20 MT of Crude Oil is generated as irrecoverable wastage for manufacture of 100 MT High Speed Diesel (HSD). The DBK-1 statement has been duly certified by the Chartered Engineer. The Assistant Commissioner, Custom House, Sikka vide Verification report dated 31.07.2023 issued from letter F. No. VIII/20-08/DBK/CHS/2023-24 further reported that applicant has utilized 69132.084 MT imported Petroleum Crude Oil having proportionate assessable value of Rs. 1,73,53,03,724/- as raw material for manufacture of 64488.884 MT of export product i.e. High Speed Diesel (HSD) having FOB value of Rs. 2.42.29.31.605/-. Further, DBK-II statement has been duly certified by the Independent Chartered Accountant in terms of Circular No. 54/2016 dated 22.11.2016.

2.3. The Adjudicating Authority vide impugned order rejected the drawback claim for fixation of brand rate of duty of NCCD+BCD+SWS on (NCCD, BCD & CVD) paid on imported Petroleum Crude Oil used in manufacturing of High Speed Diesel (HSD) filed under Rule 6(1) (a) of the Customs and Central Excise Duties Drawback Rules, 2017 as the applicant failed to file application for fixation of brand rate of duty drawback in the Instant case under appropriate rule i.e. Rule 6 (2) (a) of Customs and Central Excise Duty Drawback Rules, 2017.

3. Being aggrieved with the impugned orders, the appellant filed present appeals and contended that;

- The adjudicating authority erred in rejecting the Appellant's application for determination/ fixing of Brand Rate without issuing any Show Cause Notice to the appellant and without giving the appellant an opportunity of being heard in the matter. The adjudicating authority erred in not appreciating that it is a requirement of the principles of natural justice that before passing an Order which is adverse to the appellant, the appellant ought to be put to notice of the grounds on which such adverse order is proposed to be passed and the appellant ought to be given an opportunity to respond to the same and of being heard in the matter. The impugned order having been passed without issuing a Show Cause Notice and without giving the appellant an opportunity of being heard in the matter, the same is passed in gross violation of the principles of natural justice and is therefore liable to be set aside on this ground itself.
- The adjudicating authority erred in rejecting the application for determination of brand rate on the ground that since one of the two Bills of entry relating to import of the duty paid inputs used in the export consignment was provisionally assessed, the application should have been filed under Rule 6 (2)(a) and not under Rule 6 (1)(a) of the said Drawback Rules 2017. He erred in rejecting the application on the ground that it was filed under Rule 6(1) (a) and not under Rule 6 (2) (a). The adjudicating authority erred in not appreciating that a bare reading of Rule 6(1) (a) and 6(2) (a) would show that every application for determination of brand rate of drawback where there is no All Industry Rate, has necessarily to be under Rule 6 (1) (a) and if the applicant desires that drawback be granted provisionally pending determination of the brand rate under Rule 6 (1) (b), then while making the application under Rule 6 (1) (a), the applicant may apply for grant of provisional drawback in accordance with Rule 6 (2) (a) and (b).
- The adjudicating authority erred in not appreciating that if while applying under Rule 6 (1) (a), there is no request for grant of provisional drawback under Rule 6 (2) (a), the only consequence is that the appellant cannot receive any provisional drawback pending final determination after finalization of the provisional assessment of the Bill of Entry and the consequence cannot be that final determination itself will not be made even after finalization of the provisional assessment of the Bill of Entry. Since the Appellant was not seeking any provisional drawback amount pending final determination of the brand rate under Rule 6 (1) (a) and (b), it is entirely irrelevant that there was no request for grant of provisional

drawback under Rule 6 (2) (a). That however cannot mean that final determination itself should not be made under Rule 6 (1) (a) and (b) even after the finalization of the provisional bill of entry.

- The adjudicating authority erred in not appreciating that the verification and determination of brand rate was kept on hold while the second Bill of Entry was provisional and once the second Bill of Entry was also finalized, the verification was carried out by the Assistant Commissioner who by Verification Report dated 31-7-2023 reported that the appellant had utilized the duty paid imported input, Petroleum Crude Oil imported under the said two Bills of Entry for manufacture of the said export consignment and that there was positive value addition. It was thereafter incumbent on the Additional Commissioner to determine the Brand rate in terms of the said verification report and he could not have declined to do so on the ground that no request for provisional drawback had been made under Rule 6 (2) (a), which is entirely irrelevant to the final determination. Since the Appellant did not desire that it be granted provisional drawback pending final determination under Rule 6 (1) (a) and (b), there was no question of applying under Rule 6 (2) (a) and (b), which in any event, is entirely irrelevant to the final determination to be made under Rule 6 (1) (a) and (b).

4. Shri Jaydeep Patel, Advocate, Ms Shilpa Balani, Advocate and Shri Alok Prasad, Senior G.M., appeared for personal hearing on 23.05.2025 through virtual mode. They reiterated the submissions made at the time of filing appeal. During personal hearing also they submitted what has already been submitted in the grounds of appeal.

5. I have carefully gone through the appeal memorandum, the grounds of appeals as well as records of the case. The issue to be decided in the present appeals are whether the impugned order rejecting the drawback claim for fixation of brand rate of duty of NCCD+BCD+SWS on (NCCD, BCD & CVD) paid on imported Petroleum Crude Oil used in manufacturing of High Speed Diesel (HSD) filed under Rule 6(1) (a) of the Customs and Central Excise Duties Drawback Rules, 2017 as the applicant failed to file application for fixation of brand rate of duty drawback under appropriate rule i.e. Rule 6 (2) (a) of Customs and Central Excise Duty Drawback Rules, 2017, in the facts and circumstances of the case, is legal and proper or otherwise.

6. It is observed that appellant filed application Ref No. RIL/JMD-DTA/DBK-151 dated 15.01.2021 (received on 21.01.2021) addressed to the Assistant Commissioner of Customs, Jamnagar, wherein they requested for fixation of brand rate of duty drawback for the High Speed

Diesel (HSD) exported by them from Sikka Port vide Shipping Bill No. 9744642 dated 18.01.2020, under Rule 6(1)(a) of the Customs and Central Excise Duties Drawback Rules, 2017. The appellant had imported Crude Oil, falling under Customs Tariff Heading No. 2709 00 00 of the First Schedule to the Customs Tariff Act, 1975, at Sikka Port vide Bills of Entry No. 5341822/18.10.2019 & 5007909/23.09.2019 and the same was used as input for further process and manufacture of High Speed Diesel (HSD) which was exported under Shipping Bill No. 3744642 dated 18.01.2020. Imported Crude Oil, falling under Customs Tariff Heading No. 2709 00 00 of the First Schedule to Customs Tariff Act, 1975 is not included in the schedule to the Notifications issued by the Central Government determining the rates of drawback of different items, known as All Industry Rate of Duty Drawback. High Speed Diesel (HSD) falling under Customs Tariff Heading No. 27101944 of the First schedule of the Customs Tariff Act, 1975, was manufactured by them using the imported Petroleum Crude Oil as input and the same was exported by them vide aforesaid Shipping Bill. Shipping Bill was filed under Drawback Scheme as well as Advance Authorization, wherein drawback is being claimed by the applicant, for the duty elements suffered on imported Petroleum Crude Oil which was used as input in the manufacturing of High-Speed Diesel (HSD). The Assistant Commissioner, Customs House, Sikka vide letter F. No. VIII/20-01/DBK/2020-21 dated 10.03.2021 reported that one of the Bills of Entry bearing No. 5341822 dated 18.10.2019 vide which input i.e., crude oil was imported for manufacturing of export product i.e. High Speed Diesel (HSD) against Shipping Bill No. 9744642 dated 18.01.2020 has not been finally assessed by their office and therefore, detailed verification of drawback application of the appellant was not possible. Further, the said Bill of Entry was finalized by the Deputy Commissioner, Customs House, Sikka vide Final Assessment Order No. 341/FAO/CHS/2021-22 dated 25.02.2022 and accordingly, a letter F. No. VIII/20-283/Cus-T/2022-23 dated 02.05.2023 was issued to the Assistant Commissioner, Customs House, Sikka for detailed verification of drawback application.

6.1 It is observed that the adjudicating authority has rejected the drawback claim of the appellant for fixation of brand rate of duty of NCCD+BCD+SWS on (NCCD, BCD & CVD) paid on imported Petroleum Crude Oil used in manufacturing of High Speed Diesel (HSD) filed under Rule 6(1) (a) of the Customs and Central Excise Duties Drawback Rules, 2017 as the applicant failed to file application for fixation of brand rate of duty drawback under appropriate rule i.e. Rule 6 (2) (a) of Customs and Central Excise Duty Drawback Rules, 2017.

6.2 It is observed that the appellant in the grounds of appeal has contended that the adjudicating authority erred in rejecting the application for determination of brand rate on the ground that since one of the two Bills of entry relating to import of the duty paid inputs used in the export consignment was provisionally assessed, the application should have been filed under Rule 6 (2)(a) and not under Rule 6 (1)(a) of the said Drawback Rules 2017. The appellant further contended that the adjudicating authority has erred in rejecting the application on the ground that it was filed under Rule 6(1) (a) and not under Rule 6 (2) (a). The adjudicating authority erred in not appreciating that a bare reading of Rule 6 (1)(a) and 6 (2)(a) would show that every application for determination of brand rate of drawback where there is no All Industry Rate, has necessarily to be under Rule 6 (1)(a) and if the applicant desires that drawback be granted provisionally pending determination of the brand rate under Rule 6 (1)(b), then while making the application under Rule 6 (1)(a), the applicant may apply for grant of provisional drawback in accordance with Rule 6 (2)(a) and (b). The appellant further contended that if while applying under Rule 6 (1) (a), there is no request for grant of provisional drawback under Rule 6 (2) (a), the only consequence is that the appellant cannot receive any provisional drawback pending final determination after finalization of the provisional assessment of the Bill of Entry and the consequence cannot be that final determination itself will not be made even after finalization of the provisional assessment of the Bill of Entry. Since the Appellant was not seeking any provisional drawback amount pending final determination of the brand rate under Rule 6 (1) (a) and (b), it is entirely irrelevant that there was no request for grant of provisional drawback under Rule 6 (2) (a). That however cannot mean that final determination itself should not be made under Rule 6 (1) (a) and (b) even after the finalization of the provisional bill of entry.

6.3 In this regard, I have perused Rule 6 (1)(a) and rule 6 (2)(a) of CUSTOMS and CENTRAL EXCISE DUTIES DRAWBACK RULES, 2017 and the same is reproduced as under:

RULE 6. Cases where amount or rate of drawback has not been determined. -

(1)(a) Where no amount or rate of drawback has been determined in respect of any goods, any exporter of such goods may, within three months from the date relevant for the applicability of the amount or rate of drawback in terms of sub-rule (3) of rule 5, apply to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, having jurisdiction over the place of export, for determination of the amount or rate of drawback thereof stating all the relevant facts including the proportion in which the

materials or components are used in the production or manufacture of goods and the duties paid on such materials or components.
.....

(2)(a) Where an exporter desires that he may be granted drawback provisionally, he may, while making an application under clause (a) of sub-rule (1) apply to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, that a provisional amount be granted to him towards drawback on the export of such goods pending determination of the amount or rate of drawback under clause (b) of that sub-rule.

6.4 From plain reading of Rule 6 (1)(a) and rule 6 (2)(a) of CUSTOMS and CENTRAL EXCISE DUTIES DRAWBACK RULES, 2017, it is evident that for determination of the amount or rate of drawback where no amount or rate of drawback has been determined in respect of any goods, the exporter of such goods may, within three months from the date relevant for the applicability of the amount or rate of drawback in terms of sub-rule (3) of rule 5, apply to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, having jurisdiction over the place of export. Further where the exporter desires that he may be granted drawback provisionally, he may, while making an application under clause (a) of sub-rule (1) apply to the Principal Commissioner of Customs or Commissioner of Customs, that a provisional amount be granted to him towards drawback on the export of such goods pending determination of the amount or rate of drawback in terms of 6 (2)(a) of CUSTOMS and CENTRAL EXCISE DUTIES DRAWBACK RULES, 2017.

6.5 In light of the foregoing, it is evident that every application for determination of the Brand Rate of drawback, in cases where no All Industry Rate exists, must necessarily be filed under Rule 6(1)(a) of the Drawback Rules. If the applicant seeks the grant of provisional drawback pending final determination of the Brand Rate, such a request may be made simultaneously under Rule 6(2)(a) and (b), while filing the primary application under Rule 6(1)(a). Therefore, the rejection of the appellant's drawback claim filed under Rule 6(1)(a) on the ground that no separate application was submitted under Rule 6(2)(a), is legally untenable and cannot be sustained.

6.6 Therefore, in my considered view, the adjudicating authority ought to have decided the appellant's claim on merits after affording a proper opportunity for a personal hearing. Accordingly, the matter is required to be remanded, in terms of sub-section (3) of Section 128A of the Customs Act, 1962, to the adjudicating authority for passing a reasoned and speaking order, in accordance with law and after duly observing 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 Bombay Hon'ble 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)] holding that Commissioner(Appeals) has power to remand the case under Section-35 A(3) of the Central Excise Act, 1944 and Section-128A(3) of the Customs Act, 1962.

7. In view of the above, the appeal is allowed by way of remand to the adjudicating authority for de novo consideration. The adjudicating authority is directed to decide the drawback claim of the appellant and pass a reasoned and speaking order after affording the appellant an opportunity for a personal hearing. The authority shall examine all relevant facts, documents, and submissions on record, and take appropriate action in accordance with law. The proceedings must be conducted in strict adherence to the principles of natural justice and applicable legal provisions. It is clarified that, while passing this remand order, no views have been expressed on the merits of the case or the submissions made by the appellant. These shall be independently evaluated by the adjudicating authority during re-adjudication.

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

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

By Registered Post A.D.
F. No. S/49-103/CUS/JMN/2023-24/951

Dated – 29.05.2025

To,

1. M/s Reliance Industries Ltd,
   EXIM Cell, CAB, West Wing 1st Floor,
   Motikhavdi, Jamnagar

Copy to:

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs, Jamnagar.
3. The Additional Commissioner of Customs, Customs (Preventive), Jamnagar
4. Guard File