



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

DIN – 20250571MN0000424024

क	फ़ाइल संख्या FILE NO.	S/49-406/CUS/AHD/2023-24
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-029-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	14.05.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No. 28/MK/JC/SRT/2021-22, dated 24.11.2021
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	14.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Radhey Fashion, Plot No. 344, 3 rd Floor, New GIDC, Fulpada, Katargam, Surat – 395 008



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods 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 दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु.1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां, यदि शुल्क, मांगा गया व्याज, लगाया गया दंड की राशि और रुपए 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 :				
	<table border="0"> <tr> <td style="vertical-align: top;">सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td style="vertical-align: top;">Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td style="vertical-align: top;">दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td style="vertical-align: top;">2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरी मंजिल, 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 रुपए या उससे कम हो तो एक हजार रुपए।				
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;				
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रुपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रुपए।				
(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 ;				
(c)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रुपए से अधिक हो तो; दस हजार रुपए।				
(d)	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 गवां जाएगा।				
(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.	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. Radhey Fashion, Plot No. 344, 3rd Floor, New GIDC, Fulpada, Katargam, Surat – 395 008 (hereinafter referred to as "the Appellant") have filed the present appeal against the Order – In - Original No. 28/MK/JC/SRT/2021-22, dated 24.11.2021 (herein after referred to as "the impugned order") passed by the Joint Commissioner, Customs, 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., 02 sets of i.e., Computerized Embroidery Machine, under EPCG Licence No. 5230007793, dated 29.11.2010 having assessable value of Rs. 52,20,488/- and by saving Customs Duty amount of Rs. 18,28,194/- (Actual Duty Utilization of Rs. 9,31,910/-) under the cover of the below mentioned Bill of Entry at a concessional rate of duty @ 3% by availing the benefit of exemption available under Notification No. 103/2009 - Cus., dated 11.09.2009. 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.	908/10-11, dated 29.12.2010	02	18,28,194/-	9,31,910/-	1,45,000/-

2.1 The Appellant had executed a Bond dated 30.12.2010 for Rs. 46,00,000/- along with Bank Guarantee No. SCB/SUR/11/BG/311/461, dated 29.12.2010 amounting to Rs. 1,45,000/- issued by the Saraswat Co. Op. Bank Ltd, B/101, Yash Plaza, Ground Floor, Opp. Dhanmal Silk Mills, Varachha Main Road, Surat – 395006 for EPCG Licence No. 5230007793, dated 29.11.2010. They had also undertaken to fulfill the conditions of the Bond, EPCG Licence No. 5230007793, dated 29.11.2010 at ICD – Sachin, Surat.

2.2 The said machinery, i.e., 02 sets of Capital goods, i.e., Computerized Embroidery Machine imported under the aforesaid EPCG Licence were installed at House No. P/343, 1st Floor, Backside, GIDC Katargam, Surat and as the Appellant was not registered with the Central Excise department, they produced a copy of Installation Certificate dated 10.02.2011 issued by the Chartered Engineer, Dr. P. J. Gandhi, Surat, who certified the receipt of the goods vide Bill of Entry No. 911/10-11, dated 29.12.2010 on 01.01.2011 and their complete installation on 27.01.2011.

2.3 As per the conditions of Notification No. 103/2009 - Cus., dated 11.09.2009, the Appellant was required to fulfill the export obligation on FOB basis equivalent to Eight times the duty saved on the goods imported as specified on the Licence and Authorization, within a period of Eight years from the date of issuance of EPCG Licence or authorization, i.e., complete 50% export obligation within first block of 1st to 6th years and remaining 50% in second block of 7th to 8th years. The EPCG Licence No.

5230007793, dated 29.11.2010 was issued to the Appellant for a period of 8 years valid upto 28.11.2018 and the Bond dated 30.12.2010 was executed for a period of 10 years. Accordingly, the Appellant was required to fulfill export obligation within a period of 8 years from the date of EPCG Licence as per the condition laid down in the Notification and EPCG Licence itself. The Appellant was also required to produce proof of fulfilment of export obligation within the period as prescribed in the said Notification. Since, the EPCG Licence was issued to the Appellant on 29.11.2020, they were required to fulfill the export obligation by 28.11.2018 and submit the Export Obligation Discharged Certificate issued by the DGFT to Customs department.

2.4 On completion of First Block of 1 – 6 years, a letter dated 12.02.2018 was issued to the Appellant requesting them to submit evidences regarding export to the extent of 50% of the total export obligation. The Appellant vide letter dated 08.03.2018 informed that they have fulfilled 59466.60\$ export obligation and going to fulfill the balance as soon as possible and will complete the export obligation and submit the same. However, no reply was received from the Appellant. Subsequently, letters dated 07.02.2020, 21.02.2020 and 28.07.2020 were issued to the Appellant requesting them to furnish the copy of EODC or any extension issued by the DGFT, Surat for fulfillment of export obligation. However, the letters were returned undelivered.

2.5 Letters dated 29.01.2020 and 20.07.2020 were issued to the Foreign Trade Development Officer, DGFT, Surat requesting to provide the present status of the Licence and inform whether the Appellant had approached their office for granting further extension for fulfillment of export obligation. In response, the Joint Director, Directorate General of Foreign Trade, Surat vide letter dated 31.07.2020 informed that the Appellant had been issued Refusal Order. The DGFT clarified vide their email dated 21.08.2020 that when the firms do not submit export documents, they issue Refusal Orders, i.e., they were put under defaulters list.

2.6 In view of the above, it appeared that the Appellant had failed to fulfill the export obligation as specified in the Licence and did not comply with the mandatory condition of the Notification No. 103/2009 - Cus., dated 11.09.2009, 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 by them for fulfillment of export obligation. Therefore, the Appellant was liable to pay Customs Duty of Rs. 9,31,910/- in respect of the said imported goods read with the conditions of the said Notification read with condition of the Bond executed by them read with Section 143 of the Customs Act, 1962. Further, the Bank Guarantee No. SCB/SUR/11/BG/311/461, dated 29.12.2010 amounting to Rs. 1,48,000/- issued by the Saraswat Co. Op. Bank Ltd, B/101, Yash Plaza, Ground Floor, Opp. Dhanmal Silk Mills, Varachha Main Road, Surat – 395006 had been encashed for Rs. 2,82,240/- (along with FD Interest) and deposited to Government Exchequer account vide TR-6 Challan No. 31/20-21, dated 02.06.2020. This amount was liable to be appropriated against the recovery of the Appellant.

2.7 Accordingly, a Show Cause Notice was issued to the Appellant, proposing as to why:

- i. Customs Duty amounting to Rs. 9,31,910/- 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 Notification No. 103/2009-Cus., dated 11.09.2009 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 amount of Rs. 2,82,240/- (along with FD Interest) received by encashing Bank Guarantee No. SCB/SUR/11/BG/311/461, dated 29.12.2010 issued by the Saraswat Co. Op. Bank Ltd, Surat and deposited in Government Exchequer account vide TR-6 Challan No. 31/20-21, dated 02.06.2020, should not be appropriated and adjusted towards the duty liability as mentioned above;
- ii. 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 Customs Notification No. 103/2009-Cus., dated 11.09.2009 as amended from time to time;
- iii. The benefit of concessional rate of duty @ 3% for EPCG Scheme under Notification No. 103/2009, dated 11.09.2009 on the imported Computerized Embroidery Machine imported in their name should not be denied;
- iv. Penalty should not be imposed under Section 112 (a) and Section 117 of the Customs Act, 1962;

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

- i. He confirmed the demand of Customs Duty amounting to Rs. 9,31,910/- being the duty foregone at the time of import of Capital Goods under EPCG Licence in terms of Notification No. 103/2009-Cus., dated 11.09.2009 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. Further, he ordered that the Bank Guarantee No. SCB/SUR/11/BG/ 311/461, dated 29.12.2010 issued by the Saraswat Co. Op. Bank Ltd, Surat be encashed and appropriated and adjusted towards the duty liability as mentioned above;
- ii. He confiscated the subject imported Capital goods 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 Customs Notification No. 103/2009 - Cus., dated 11.09.2009, as amended from time to time;
- iii. He denied the benefit of concessional rate of duty @ 3% for EPCG Scheme under Notification No. 103/2009-Cus., dated 11.09.2009 on the imported Computerized Embroidery Machine;

iv. He imposed penalty of Rs. 9,31,910/- upon the Appellant under Section 112 (a) of the Customs Act, 1962;

v. 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. The Appellant have, inter-alia, raised various contentions and filed detailed submissions as given below in support of their claims:

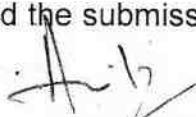
- That they had imported Capital goods under EPCG Licence No. 5230007793, dated 29.11.2010. Since, they could not export the goods within the EO period, they got the EO period extended upto 10 years after paying all the required composition fees and further requested to grant two more years by paying 50% of the duty saved value of Rs. 4,65,955/- as per Para 5.11 of the Hand Book 2009-14.;
- No interest and penalty should be demanded since they have followed all the rules and regulations by obtaining necessary EO extension from the DGFT, Surat;
- Since, they were able to export only 34.68% they applied under the Amnesty Scheme as per PN No. 2/2023, dated 01.04.2023 and had submitted the request to the DGFT, Surat on 28.12.2023;


 The Appellant vide letter dated 28.04.2025 (received on 02.05.2025) have submitted that they have submitted prescribed documents for EODC against EPCG Authorization No. 5230007793, dated 29.11.2020 to the DGFT, Surat and they have issued the EODC letter dated 27.02.2025. The Appellant have further submitted that their case was regularized as per PN 2, dated 01.04.2025 under Amnesty Scheme. The Appellant also submitted copy of letter dated 27.02.2025 issued the FTDO, DGFT, Surat stating that "*EPCG EODC regularized under Amnesty Scheme as per P.N. 02/2023 dtd. 01.04.2023 for one time settlement default in EO with payment of CD+Int. Rs. 748195/- (465955+282240)*"

3.2 The Advocate vide his email dated 13.05.2025 has informed that since he was not well and due to unavoidable circumstances, the appeal was not filed within statutory time limit of 60 days as prescribed under Section 128 (1) of the Customs Act, 1962. Hence, the Advocate has been requested to condone the delay of 01 (one) day in filing the present appeal sympathetically.

PERSONAL HEARING:

4. Personal hearing in the matter was held on 07.05.2025 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



the EODC have been regularized under Amnesty Scheme issued from the Office of the Joint DGFT, Surat on 27.02.2025. The copy of the same was submitted to Appellate Authority and ICD – Sachin on 02.05.2025 and 05.05.2025 respectively.

DISCUSSION & FINDINGS:

5. I have carefully gone through the appeal memorandum as well as records of the case and the submission made on behalf of the Appellant during the course of hearing. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority disallowing the benefit of concessional rate of duty under Notification No. 103/2009 - Cus., dated 11.09.2009, confirming the demand of duty along with interest, confiscating the Capital goods under Section 111 (o) of the Customs Act, 1962 and imposing penalty upon the Appellant under Sections 112 (a) and 117 of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

6.1 It is observed that the Appellant has paid an amount of Rs. 4,65,000/- and further the Bank Guarantee Amount of Rs. 2,82,240/- have been encashed, thereby fulfilling the requirement of pre-deposit of filing the appeal as envisaged under the Section 129 E of the Customs Act, 1962.

6.2 It is further observed that there is a delay of 01 (one) day in filing the present appeal. 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.]

6.2.2 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.

6.2.3 In light of the above provisions of law and considering the submissions of the Appellant and also considering the fact that the appeal has been filed within a further

period of 30 days, I allow the condonation of delay in filing the appeal, taking a lenient view in the interest of justice in the present appeal.

7. It is observed that the Appellant have during the personal hearing submitted that the Office of the Joint Directorate General of Foreign Trade, Surat vide letter dated 27.02.2025 have regularized the EPCG EODC in respect of Licence No. 5230007793, dated 29.11.2010 under Amnesty Scheme as per P.N 2, dated 01.04.2024 and the copy of the same was submitted to the appellate authority and ICD – Sachin on 02.05.2025 and 05.05.2025 respectively. 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 eligibility of the Appellant to Amnesty Scheme needs verification from the original case records.

8. 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 following principles of natural justice, 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.

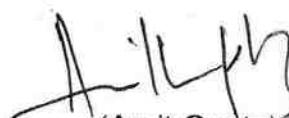
9. In view of above, I set aside the impugned order and allow the appeal filed by the Appellant by way of remand to the adjudicating authority for passing fresh order after considering the submissions made by the Appellant. The Adjudicating Authority shall examine the available facts, documents, submissions and issue speaking order afresh following principles of natural justice and legal provisions.

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



सत्यापित/ATTESTED

Commissioner (Appeals),
Customs, Ahmedabad


(Amit Gupta)

F. No. S/49-406/CUS/AHD/2023-24

अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद
CUSTOMS (APPEALS), AHMEDABAD

Date: 14.05.2025

By Registered Post A.D

RSK

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Copy to:

✓ 1. The Chief Commissioner of Customs Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
3. The Joint Commissioner of Customs, Customs House, Surat.
4. Guard File.

