



सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद  
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD  
 चौथी मंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,  
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.  
 दूरभाष क्रमांक Tel. No. 079-26589281  
 DIN-20251271MN000000DD36

क	फ़ाइल संख्या FILE NO.	(1) S/49-332/CUS/AHD/2011 (2) S/49-331/CUS/AHD/2011  (New Nos. (1) S/49-377/CUS/AHD/DEC/25-26 (2) S/49-378/CUS/AHD/DEC/25-26)
ख	अपीलआदेश संख्या ORDER-IN- APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-472 & 473-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	17. 12.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	(1) Order-In-Original No. 40/JC/ICD-Valvada/O&A/ 2011 dated 19.01.2011 passed by the Joint Commissioner of Customs, Ahmedabad.  (2) Order-In-Original No. 39/JC/ICD-Valvada/O&A/ 2011 dated 18.01.2011 passed by the Joint Commissioner of Customs, Ahmedabad.
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	17.12.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Viscid Plasto Chem, 12/372, Rani Talav, Main Road, Opp. Ankur Apartment, Surat - 395002.
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)	बैगेंज 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 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके 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 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 अपीलिय अधीकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> 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 रूपए.	
(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 रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए	
(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)	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 रूपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10 % अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, या दंड के 10 % अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा 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. Viscid Plasto Chem, 12/372, Rani Talav, Main Road, Opp. Ankur Apartment, Surat - 395002 (hereinafter referred to as 'the appellant') has filed the present appeals against Order-In-Original No. 40/JC/ICD-Valvada/O&A/2011 dated 19.10.2011 and No. 39/JC/ICD-Valvada/O&A/ 2011 dated 18.10.2011 (hereinafter referred to as 'the impugned orders'), both passed by the Joint Commissioner of Customs, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. Facts of the cases in brief are that the appellant had imported of polyester chips semi dull from ICD, Vapi (now known as "ICD, Valvada") and cleared the same by utilizing the duty credit available under DEPB licenses/scrips. The appellant had purchased DEPB scrip from M/s. Srivastava International Limited for the duty credit of Rs. 9,11,753/- of DEPB licence No. 0610009044 dated 04.04.2005. The said credit was utilized against the imports affected by the appellant from ICD, Vapi (Valvada). The said credit was utilized on 28.04.2005, as mentioned below:

**Table-1**

DEPB License No.	Dated	B/E No.	Dated	Goods	Value (on pro rata basis in Rs.)	Duty Debit (Rs.)
610009044	04.04.2005	71	28.04.2005	Polyester Chips Semi Dull Raw White	73663	25401
610009044	04.04.2005	72	28.04.2005		2573360	886352
				<b>Total</b>	<b>2647023</b>	<b>911753</b>

2.1 A Show Cause Notice dated 11.01.2010 was issued to M/s. Srivastava International Limited for denial of duty credit under DEPB licenses on the allegation that it was obtained on account of massive overvaluation by fraud, willful suppression of real facts, mis-statement about the export goods etc.

2.2 The appellant was also served with a Show Cause Notice dated 16.04.2010 for the recovery of Customs duty by invoking extended period under proviso to Section 28 of the Customs Act, 1962 and also proposing penal action and confiscation of the goods etc.

3. Similarly, the appellant has purchased and utilized the credit in respect of another DEPB License issued to M/s. Dipika Overseas, which has been forwarded to them under Release Advice. The details are as under:

**Table-2**

DEPB License No.	Dated	B/E No.	Dated	Goods	Duty Debit (Rs.)
5210016934	11.04.2005	72	28.04.2005	Polyester Chips Semi Dull Raw White	23097
					348347
5210016934	11.04.2005	73	28.04.2005		873788
				<b>Total</b>	<b>1245232</b>



3.1 A Show Cause Notice dated 04.11.2009 was issued to M/s. Dipika Overseas (exporter) for denial of duty credit under DEPB license on the allegation that it was obtained by fraud, willful suppression of real facts, mis-statement about the goods etc.

3.2 The appellant was also served with a Show Cause Notice dated 19.04.2010 for the recovery of Customs duty by invoking extended period under proviso to Section 28 of the Customs Act, 1962 and also proposing penal action and confiscation of the goods etc.

4. The appellant filed a detail reply vide letter dated 06.05.2010 denying the allegations on merits as well as on limitation. On merit, the appellant mainly contended that at the time of purchase of the scrip, it was valid in law and the appellant had paid the full amount of the purchase of the said scrip which includes customs duty. Further, the extended period was not applicable as the department was aware about the said transactions and the DGFT had not cancelled the scrip for license. Further, the appellant was a bonafide buyer of the said scrip and had no connection with the activity of the said M/s. Srivastava International Limited and M/s. Dipika Overseas.

5. In view of this, the appellant had contended that notice was not sustainable on law. The appellant also made several citations on the issue that the extended period was not applicable and on merits the scrip was correctly utilized.

6. The appellant submits that the matter was heard before the adjudicating authority who confirmed the demand of duty with interest and penalty u/s 112(a) as raised in show cause notice on merits as well as by applying extended period of limitation. However, the adjudicating authority considered that the goods are not available for confiscation and therefore no action was to be taken. The adjudicating authority also made finding that - *"I also find that as the case involved omission on the part of the importer, it is not a fit case to impose penalty under Section 114A of the Customs Act, 1962."*

7. Being aggrieved and dissatisfied with that part of the impugned orders confirming the demand of duty with interest and imposing penalty under Section 112(a), the appellant has preferred present appeals.

#### GROUNDS OF APPEAL

8. As the issues involved in both appeals are similar, the gist of the grounds of appeal raised by the appellant in the appeal F.No. S/49-332/CUS/AHD/2011 against O.I.O. No. 40/JC/ICD-Valvada/O&A/2011 dated 19.10.2011 are mentioned below for sake of brevity.

8.1 The appellant submitted that issue involved in the present case is covered by the Hon'ble High Court of Gujarat judgment in the case of COMMISSIONER OF CUSTOMS Versus BINANI CEMENT LTD. reported in 2009 (238) E.L.T. 33 (Guj.), which is not reversed and therefore it is having binding effect in the state of Gujarat. In view of this, the order of the adjudicating authority is not sustainable in law.

8.2 The Hon'ble High Court of Gujarat have upheld the view of the Tribunal to the effect that extended period is not applicable as there was no mis-representation or suppression of facts as on date of clearance of imports inasmuch as licence was valid at the time of import. The ratio of the said judgment is squarely applicable to the facts of the case of the appellant

and the said judgment is binding on the authorities working under the jurisdiction of the High Court of Gujarat. In view of this also, the order of the adjudicating authority is not legal and proper and therefore the said order is required to set aside in the interest of justice.

8.3 The appellant submitted that applying the ratio of the Gujarat High Court and Tribunal in the case of Binani Cement Ltd. reported in 2010 (259) ELT 247 (Tri.-Ahmd.), the demand issued beyond the period of six months under Section 28 is time barred, as the extended period is not applicable in the facts and circumstances of the case. In view of this, the order is not sustainable in law.

8.4 The appellant further submitted that it is a clear finding of the adjudicating authority that the provisions of Section 114A of the Customs Act, 1962 are not applicable, which are applicable only in the case of the allegation of fraud etc. for invoking extended period. Once it is the finding of the adjudicating authority that Section 114A is not applicable, the extended period under Section 28 cannot apply. In view of this also, the demand is time barred as the extended period is not applicable.

8.5 The appellant further submitted that the finding of the adjudicating authority based on the judgment of Friends Trading Co. and others are not relevant when the Gujarat High Court have given clear finding on the issue which is not reversed by the Supreme Court in the case of Binani Cement Ltd. Therefore, the judgment of the Gujarat High Court will prevail being binding effect in the state of Gujarat. In view of this also, the finding of the adjudicating authority is erroneous and therefore the said order is required to set aside.

8.6 The appellant further submitted that the adjudicating authority has erred in considering that the facts of the present case are similar to the facts in the case of Friends Trading Co. In this case, the scrip was directly purchased from the main company; and full payment was made and it had not gone from one hand to another hand; and at the time of utilization it was valid in law; and there was no fraud or suppression on the part of the importer. In view of this, the ratio of the Friend Trading Co. is not applicable to the facts of the present case.

8.7 The appellant further submitted that the order of the Supreme Court on the issue of limitation prevails, which has been decided in the case of Ajay Kumar & Co. reported in 2009 (238) E.L.T. 387 (S.C.), which was followed in the case of COMMISSIONER OF C.EX. & CUSTOMS Versus D.P. SINGH reported in 2011 (270) E.L.T. 321 (Guj.) wherein the judgment of Friends Trading Co. have also been considered. In view of this also, the order of the adjudicating authority confirming the demand on merit and limitation, is not sustainable as the entire demand is time barred.

8.8 The appellant further submitted that it is fact on record that M/s. Srivastava International Limited themselves had informed the Central Excise Department by letter dated 20.04.2005 that they had learnt that the existent of certain suppliers was doubtful and therefore they had suo moto reversed the Cenvat Credit of Rs. 2,07,01,155/- and the said party had gone into Settlement Commission and had deposited the Central Excise duty Rs. 3,00,40,824/- + Rs. 45,83,139/-. Thus, the entire amount of duty was paid and therefore there was revenue neutral as the entire amount for obtaining the scrip was paid by the said company and therefore there was no cause for demanding the duty under the provisions of



Customs Act; and further the department was aware from the date of payment on 20.04.2005 and therefore the extended period was not applicable.

8.9 The appellant further submitted that the finding of the adjudicating authority that the importer had made goods liable for confiscation under Section 111 of the Act and therefore the importer is liable to penalty under Section 112 (a) of the Act, is not correct as at the time of import the license was valid and it was not fraudulently obtained. Thus, the charges leveled against the appellant are not proved and therefore the penalty imposed under Section 112 (a) is required to set aside.

8.10 The appellant further submitted that when the demand is time barred, the penalty and interest is also not liable to pay.

**Time-limit in filing of appeal and Pre-deposit**

9. The appellant has filed the present appeals on 16.12.2011. In the Form C.A.-1, the date of communication of the impugned Order dated 19.10.2011 has been shown as 24.10.2011. Thus, the appeal has been filed within normal period of 60 days as stipulated under Section 128(1) of the Customs Act, 1962.

10.1 The provisions regarding mandatory pre-deposit for filing appeals have been introduced under Section 129E of the Customs Act, 1962, vide Finance (No.2) Act, 2014, with effect from 06.08.2014. As per the Second Proviso to Section 129E, the amended provisions shall not apply to the stay applications and appeals pending before any appellate authority prior to commencement of the Finance (No.2) Act, 2014. The appellant had filed a Stay Application dated 16.12.2011 on the ground that the issue involved is covered by various judgments in favour of them. The appellant has stated that they are facing acute financial hardship as the appellant firm is closed since several years. On this ground the appellant has requested to dispense the pre-deposit.

10.2 After going through file, I find that no decision on the Stay Application dated 16.12.2011 has been taken till date. Further, the A.C., Customs, ICD Valvada, vide letter dated 16.03.2012 had reported that the business of the appellant is closed since long and there is no taxable income for filing income tax return.

10.3 In view of the above position, I dispense the requirement of pre-deposit under the proviso to erstwhile Section 129E (as prevailed prior to 06.08.2014), dispose of stay applications, and take up the appeals for final disposal.

**Personal Hearing**

11.1 Personal Hearing in this matter was fixed on 09.02.2012 and 06.03.2012, but no one appeared. The Assistant Commissioner of Customs, ICD-Valvada, vide letter dated 16.03.2012 has already reported that the business of the appellant unit is closed since long.

11.2 I find that the unit of the appellant, viz. M/s. Viscid Plasto Chem reported to have been closed since long time. However, in order to fulfill the requirement of principles of natural justice, another Personal Hearing in this matter was fixed on 02.09.2025 and a

communication of the same has been sent to the appellant vide letter dated 12.08.2025. However, the said letter has been returned by the Postal Department with remarks "No such person". Particulars of the appellant firm, viz. M/s. Viscid Plasto Chem, is presently not available in public domain. Therefore, no purpose will be served by granting opportunity of further hearings by sending communications to the same address. Therefore, I proceed to decide the appeals on merits on the basis of documents available on record.

**Discussion and Findings**

12. I have carefully gone through the impugned orders and written submissions made by the appellant. The common issues involved in both appeals are whether demand of Customs duty from the appellant importer is sustainable on the ground that duty was paid through DEPB scrips, which were obtained fraudulently by other exporters (not appellant); and whether extended period of limitation under the erstwhile Proviso of Section 28(1) is invocable or not.

13. I find that the impugned orders heavily rely upon the Order dated 03.10.2008 of Hon'ble Punjab & Haryana High Court in the case of *Friends Trading Co. Vs. Union of India* in Customs Appeal No. 2 of 2008 [2010 (254) E.L.T. 652 (P & H)]. The said Order has been maintained in Supreme Court in favour of Customs Department. However, I find that in the said case of *Friends Trading Co.* (supra), the DEPB scrips, which were obtained by forged documents, had been cancelled by competent authority. Whereas, in the cases on hand, there is nothing on record to the effect that the DEPB scrips utilized by the appellant have been cancelled by DGFT.

14. I find that earlier a similar issue, was decided by the then Commissioner of Customs (Appeals), Ahmedabad, vide various orders including Order-In-Appeal No. 247/2010/CUS/COMMR-A/KDL dated 22.06.2010 and others in favour of appellants in the cases of *M/s. Mantora Agro Industries and others*. The said Orders-In-Appeal have been reviewed by Customs Department and so, the Commissioner of Customs, Kandla, had filed appeal No. C/387/2010-DB and other ten appeals with Hon'ble CESTAT, Ahmedabad. As the appeals filed by Customs Department were pending before Hon'ble CESTAT, the present appeals involving similar issue had been kept in abeyance under reference to the Chief Commissioner of Customs, Ahmedabad, vide this office letter F.No. S/49-331 & 332/CUS/AHD/2011 dated 11.08.2012. Later, it has been observed that Hon'ble CESTAT, Ahmedabad, vide Final Order No. A/11391-11401/2018 dated 11.07.2018 in Customs Appeal No. C/387/2010-DB and Others, upheld the said Orders-In-Appeal passed by the Commissioner (Appeals), Customs, Ahmedabad, and dismissed the appeals filed by Revenue [*C.C. - Kandla Vs. Mantora Agro Industries and Others - 2018 (7) TMI 926 CESTAT AHMEDABAD*]. As the appeals filed by Revenue are no longer pending with the CESTAT, the present appeals have been taken up for disposal.

15. I find that the present appeals had been kept pending only due to the reason that Department's appeals on similar issue were pending with Hon'ble CESTAT, Ahmedabad. Since, the said appeals have been dismissed by Hon'ble CESTAT vide Order dated 11.07.2018, it is important to note findings of Hon'ble CESTAT in the said Final Order. Findings of Hon'ble CESTAT, Ahmedabad, in the case of *C.C. - Kandla Vs. Mantora Agro Industries and Others* (supra) are as follows:



"4. We have carefully considered the submissions made by both the sides and perused the records. We find that the Ld. Commissioner (Appeals) not only dropped the demand on merit but also on limitation. Ld. Commissioner (Appeals) on limitation considering the overall facts, given the following findings:

"At the outset I find that the period of import involved is March 2003 whereas the SCN was issued to the appellant in April 2007. There are no findings in the impugned order to attribute any mala fide intention to the appellant or any suppression by the appellant with intent to evade payment of duty. The notice under Section 28 of the Act stood already expired on the date of issuance of the SCN. Proviso to sub-section (1) of section 28 of the Act provides that where any duty has not been levied or has been short levied or the interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful misstatement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of sub section shall have effect as if for the words "one year" and "six months", the words 'five years' were substituted. In the present case, I find that there is no allegation that the appellant has not paid the duty by reason of collusion or any willful misstatement or suppression of facts, therefore, the demand of duty invoking proviso to sub section (1) of section 28 of the Act is not sustainable. There are no grounds to invoke the extended period of limitation because the appellants could not be accused of misrepresentation, collusion or suppression of facts within the meaning of proviso postulated by section 28 of the Act. The appellant being a transferee of the DEPB-Ras, the ratio of the judgment and order of the Hon'ble Supreme Court in the case of Ajay Kumar & CO. (supra) and many other judgments relied upon by the appellant in support of their contentions on limitation is applicable to the facts of the present case and following the same, I hold that the demand in question is barred by limitation and accordingly, the appeal cannot be disposed in favour of the appellant on the ground of the demand being barred by limitation under Section 28 of the Act itself."

5. Though the above findings was extracted from the order in appeal in appeal No. E/387/2010, however, in all the impugned orders, the findings is verbatim, therefore, we need not record every impugned order. From the above findings which is reinforced by the Hon'ble Supreme Court judgment in the case of Ajay Kumar & Co. (supra) it is clear that the malafide and suppression of fact, misdeclaration, fraud etc. cannot be alleged against the transferee, against the DEPB licence, therefore, demand for the extended period cannot be raised against the transferee of the licensee. Exactly same issue under the same set of facts was considered by the Hon'ble jurisdictional Gujarat High Court in the case of CCE vs India Acrylics Ltd. (supra) passed the following order.

"6. As can be seen from the impugned order passed by the Tribunal, the Tribunal has recorded that there is no dispute as regards the fact that the importer purchased DEPB scrips from the open market on 25th August, 2000 and imported chemicals from Kandla Port without payment of duty in September,



2000. During the investigation, it was found that the exporter M/s. Supreme Castings Limited had manipulated the export document to facilitate the extra benefit under the DEPB scheme and accordingly, the licence was cancelled by the DGFT authorities in November, 2004 thereafter a show cause notice came to be issued to the importer. The Tribunal took note of the fact that the adjudicating authority had not given any finding that the importer had not paid the duty by reason of any collusion or any wilful misstatement or suppression of facts. Before the Tribunal, strong reliance was placed on behalf of the Revenue on the above referred decision of the Calcutta High Court wherein it was held that one may not be held liable for collusion or fraud and exposed to other penalties but would still be liable to pay duty and interest and other statutory consequences which one cannot avoid. The Tribunal, noted that there was no dispute that the importer had availed credit on the basis of the DEPB scrips which were issued by the DGFT authorities. At the time of import of goods, the DEPB scrips were not forged. That subsequently, upon finding that the exporter had manipulated the export document to avail the extra benefit, the DGFT cancelled the DEPB scrips in 2004. The Tribunal observed that there was no dispute that the importer imported the goods on the basis of the documents which were valid at the time of importation and, therefore, such document was valid till it was not set aside. Relying upon the decision of the Jurisdictional High Court in the case of M/s. Prayagraj Dyeing and Printing Mills Pvt. Ltd. v. Union of India, 2013 (290) E.L.T. 61 (Guj.), wherein the Court had held that where the appellants did not have any role in the fraud and no fraud had been practised by said person, the Revenue cannot get the benefit of extended period of limitation when such person is not party to the fraud, the Tribunal held that the extended period of limitation cannot be invoked and that the demand of duty with interest was not sustainable as barred by limitation and consequently, the imposition of penalty was not warranted.

7. From the facts noted hereinabove, it is apparent that the impugned order passed by the Tribunal is based upon findings of fact recorded by it upon appreciation of the evidence on record. The Tribunal has thereafter merely applied the decision of the Jurisdictional High Court to the facts of the case by holding that the extended period of limitation could not be invoked in the facts of the present case. The conclusion of the Tribunal being based upon findings of fact recorded by it does not give rise to any question of law much less, a substantial question of law so as to warrant interference. The appeal, therefore, fails and is accordingly rejected."

6. In view of the above findings of the Hon'ble High Court, being same set of facts in the present cases, the demand of extended period is not sustainable. Since in all these cases the demand was raised beyond the normal period of one year, the same set aside by the Ld. Commissioner (Appeals) on the ground of limitation which deserve to be upheld. Since we are deciding these appeals only on the ground of limitation, we do not incline to address the merit of the case. Accordingly, all the impugned orders are upheld and Revenue's appeals are dismissed. Cross Objection also stands disposed of."




16. As mentioned in the above Final Order in case of *Mantora Agro Industries and others (supra)*, Hon'ble CESTAT has upheld the Orders of Commissioner (Appeals) to the extent the demand has been set aside on the ground of limitation. Hon'ble CESTAT has not inclined to address merits of those cases i.e. Mantora Agro Industries and others. Under this situation, firstly I proceed to decide the present two appeals on the issue of limitation by ascertaining that whether full or part demand in these appeals fall within normal period of limitation or the entire demands fall under extended period of limitation.

17.1 I find that the Show Cause Notice for demand of duty of Rs. 9,11,753/- for the Bills of Entry Nos. 71 and 72, both dated 28.04.2005 was issued on 16.04.2010. Thus, the full or part demand covered under the O.I.O. No. 40/JC/ICD-Valvada/O&A/2011 dated 19.10.2011 does not fall under normal period of limitation, but the entire demand falls under the extended period of limitation as prescribed under Section 28 of the Customs Act, 1962.

17.2 Similarly, the Show Cause Notice for demand of duty of Rs. 12,45,232/- for the Bills of Entry Nos. 72 and 73, both dated 28.04.2005 was also issued on 19.04.2010. Thus, the full or part demand covered under the O.I.O. No. 39/JC/ICD-Valvada/O&A/2011 dated 18.10.2011 does not fall under normal period of limitation, but the entire demand falls under the extended period of limitation as prescribed under Section 28 of the Customs Act, 1962.

18. I find that there is no allegation in the impugned orders against the appellant that they were involved in any kind of suppression of facts or wilful mis-statement or fraud in connivance with the exporters viz. M/s. Srivastava International Ltd. and M/s. Dipika Overseas. There are charges against these exporters to the effect that they had obtained DEPB scrips by massive overvaluation and indulging into fraud, mis-statement etc. But, there is no allegation against the appellant importer that they were indulged in such fraudulent activity. It is undisputed that the appellant had purchased the DEPB scrips from the exporters and paid amounts towards the said scrips, which was legally permissible at that time. If the exporters have obtained DEPB scrips by massive overvaluation, such scrips may not be treated as forged or fabricated. There is no allegation in the impugned order to the effect that the DEPB scrips utilized by the appellant were non-existent or had been cancelled by DGFT. Thus, the DEPB scrips, against which the imports have been effected, had been valid and utilized by the appellant.

19. As regards imposition of penalty under Section 114A, the adjudicating authority has observed in Para 25.9 of both orders that these cases involve omission on the part of importer, these cases are not fit to impose penalty under Section 114A of the Customs Act, 1962. I find that the ingredients to impose penalty under Section 114A and also to invoke extended period of limitation of demand under Section 28, both are similar. Both these provisions can be invoked only when there is collusion or wilful mis-statement or suppression of facts on part of the importer. Having held that Section 114A is not invocable for imposing penalty in the present cases, it is not proper on the part of adjudicating authority to invoke extended period under Section 28 for demand of duty.

20. I find that following case laws cover situation, which is similar to the situation in the present appeals:



20.1 COMMISSIONER OF CUSTOMS Versus BINANI CEMENT LTD., Tax Appeal No. 1592 of 2007, decided on 10-7-2008 [2009 (238) E.L.T. 33 (Guj.)]

In the above case, Hon'ble High Court of Gujarat has held as under:

*"5. In the present case admittedly, respondent assessee is an importer who imported the goods vide Bill of Entry No. 02978, dated 3-10-2000 on the basis of license dated 22-8-2000 which was transferred by the exporter in favour of respondent assessee. The said license came to be cancelled by the Director General of Foreign Trade vide order dated 24-10-2001. In light of these facts, both Commissioner (Appeals) and the Tribunal have concurrently found that there was no misrepresentation or suppression of facts as on the date of clearance of the imports in as much as the license was valid at the time of import. Accordingly, the demand based on an exercise within the larger period of limitation was not permissible as the same was barred by limitation."*

Whereas, in the case on hand, there is nothing on record to suggest that the DEPB scrips have been cancelled by DGFT. Therefore, I am of the view that the demand in respect of imports made by debit into valid DEPB scrips, is barred by limitation.

20.2 COMMISSIONER OF CUSTOMS, AMRITSAR Versus AJAY KUMAR & CO., Civil Appeal No. 645 of 2008, decided on 8-5-2009 [2009 (238) E.L.T. 387 (S.C.)]

The aforesaid judgment of Hon'ble Supreme Court is as under:

*"Challenge in this appeal is to the order passed by the Punjab & Haryana High Court upholding the order of the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (in short 'CESTAT') dismissing the appeal filed by the appellant.*

2. *Background facts in a nutshell are as follows :*

*Appellant acquired and/or purchased transferable Duty Entitlement Pass Book (in short the 'DEPB') including licenses dated 6-11-2000 and 20-11-2000 issued in the name of M/s. Parker Industries. By show cause notices dated 30-5-2002, 12-6-2002 and 26-7-2002 appellant was called upon to show cause why an amount of Rs. 12,45,174/- could not be recovered and demanded in terms of proviso to Section 28(1) of the Customs Act, 1962 (in short the 'Act'). Noticee denied the allegations.*

*However, Commissioner of Customs, Amritsar confirmed the demand along with interest and penalty. Same was held to be jointly payable by the original license holder and licensee. It was held that goods were liable in confiscation under Section 111 of the Act.*

*The Tribunal allowed the appeal by respondent holding the demand to be barred by limitation. The High Court upheld the view.*

3. *In this appeal challenge is to the aforesaid conclusions. Learned counsel for the respondent pointed out that no role was ascribed to it in the show cause notice.*



4. It is seen that in view of the fact that in the show cause notices, there was no reference to the alleged infraction of M/s. Parker Industries, the transferor of the license in question. The judgments of the CESTAT and the High Court do not suffer from any infirmity to warrant interference. It is to be noted that in Commissioner of Customs (Import) Bombay v. M/s. HICO Enterprises [2008 (11) SCC 720] similar view was taken. The appeal is dismissed."

I find that the aforesaid Judgment of Hon'ble Supreme Court is squarely applicable to the facts of the present case and therefore, duty cannot be demanded from the transferee appellant by invoking extended period of limitation.

20.3 COMMISSIONER OF CUSTOMS, KANDLA Versus INDIAN ACRYLICS LTD., Tax Appeal No. 22 of 2016, decided on 11-2-2016 [2016 (336) E.L.T. 474 (Guj.)]

In the above-mentioned Order, Hon'ble High Court of Gujarat has held as under:

"6. ... .. At the time of import of goods, the DEPB scrips were not forged. That subsequently, upon finding that the exporter had manipulated the export document to avail the extra benefit, the DGFT cancelled the DEPB scrips in 2004. The Tribunal observed that there was no dispute that the importer imported the goods on the basis of the documents which were valid at the time of importation and, therefore, such document was valid till it was not set aside. Relying upon the decision of the Jurisdictional High Court in the case of M/s. Prayagraj Dyeing and Printing Mills Pvt. Ltd. v. Union of India, 2013 (290) E.L.T. 61 (Guj.), wherein the Court had held that where the appellants did not have any role in the fraud and no fraud had been practised by said person, the Revenue cannot get the benefit of extended period of limitation when such person is not party to the fraud, the Tribunal held that the extended period of limitation cannot be invoked and that the demand of duty with interest was not sustainable as barred by limitation and consequently, the imposition of penalty was not warranted."

In the present appeals also, there is no allegation to the effect that the appellant is a party to the fraud. The allegations of fraud are against exporters, not against the appellant. Therefore, demand of duty with interest and penalty are not sustainable under the extended period of limitation.

21. In view of the above orders of Hon'ble Supreme Court, Hon'ble High Court of Gujarat and Hon'ble CESTAT, Ahmedabad, including the Final Order in case of *Mantora Agro Industries and Others (supra)*, I am of the view that extended period of limitation for demand of duty under the provisions of Section 28 cannot be invoked against the appellant importer in these cases.

22. In view of the above discussion and findings, I am of the view that the present appeals are required to be allowed on the grounds of limitation. As the appeals are allowable on the grounds of non-applicability of extended period of limitation, I do not go into determining duty liability on merits.



23. In view of the above facts, discussion and findings, I pass the following order:

**Order**

I set aside the Order-In-Original No. 40/JC/ICD-Valvada/O&A/2011 dated 19.10.2011 and Order-In-Original No. 39/JC/ICD-Valvada/O&A/2011 dated 18.10.2011 both passed by the Joint Commissioner of Customs, Ahmedabad, and allow the appeals.



*Amit Gupta*  
(Amit Gupta)

Commissioner (Appeals),  
Customs, Ahmedabad

F.Nos. S/49-332/CUS/AHD/2011  
S/49-331/CUS/AHD/2011  
(New Nos. S/49-377/CUS/AHD/DEC/25-26  
S/49-378/CUS/AHD/DEC/25-26)

Date: 17.12.2025

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Surat - 395002.  
(email: [viralgajjar01@gmail.com](mailto:viralgajjar01@gmail.com))

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.  
(email: [ccoahm-guj@nic.in](mailto:ccoahm-guj@nic.in))
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.  
(email: [cus-ahmd-guj@nic.in](mailto:cus-ahmd-guj@nic.in) [rra-customsahd@gov.in](mailto:rra-customsahd@gov.in))
3. The Joint/Additional Commissioner of Customs (in-charge ICD-Valvada), Ahmedabad. (email: [cus-ahmd-adj@gov.in](mailto:cus-ahmd-adj@gov.in) [adjcus-surat@gov.in](mailto:adjcus-surat@gov.in))
4. The Deputy/Assistant Commissioner of Customs, ICD-Valvada,  
(email: [acicdval-custahd@nic.in](mailto:acicdval-custahd@nic.in)) with reference to his letters F.No. VIII/48-111 & 112/ICD-Valvada/Viscid/09-10/Pt.II dated 17.07.2025 and 18.09.2025.
5. Guard File.

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