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 - 20250571MN00000000F8

क	फ़ाइलसंख्या FILE NO.	S/49-167/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-011-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	28.05.2025
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	52/DC/RD/2023-24 dated 21.07.2023
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	28.05.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Reliance Sibur Elastomers Private Limited, Village – Kanalus, Lalpur, Jamnagar - 361280

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)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्य स्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसे कमीहो.
(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,अपीलरखाजाएगा।	
(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 Sibur Elastomers Private Limited, Village – Kanalus, Lalpur, Jamnagar – 361280 (hereinafter referred to as "the appellant") have filed an appeal in terms of Section 128 of the Customs Act, 1962 against the Order-in-Original No. 52/DC/RD/2023-24 dated 21.07.2023 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Customs Division, Jamnagar (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, facts of the case are that the appellant vide letter No. REF: RSEPL/JAMNAGAR/EXPORTDUTY/REFUND-01/2023-24 dated 21.04.2023 (received on 28.04.2023) has filed refund claim in respect of 02 Bills of Export. The refund claim preferred on account of goods supplied to M/s. Reliance Industries Limited., a unit in Reliance Jamnagar, Special Economic Zone, Village - Meghpar / Padana, Tal - Lalpur, Dist - Jamnagar-361 280 under 02 Bills of Export which are listed here under:

Sr No	Bills of Export No and Date	Commodity	Qty in Mts.	FOB Value of Goods (in Rs)	Export Duty	Challan No. & Date
01	5000284/04.10.2022	Sheet/ Plate 72085210	10.418	3,71,426	55,714	2606/04.10.2022
02	5000311/21.10.2022	BAR RND 72142090	8.87	2,96,300	44,445	2798/21.10.2022

2.1 In respect of the said goods falling under Chapter 72 of the Customs Tariff and cleared to RIL, SEZ, Jamnagar, export duty was paid at the rate specified in the 2nd Schedule to the Customs Tariff Act 1975 as amended by Notification No.28/2022-CUS dated 21st May 2022. The export duty at the rates specified in the Second Schedule to the Customs Tariff Act 1975 is levied under Section 12 of the Customs Act 1962 on goods exported from India and export under Section 2 (18) of the Customs Act 1962 is defined as taking out of India to a place outside India. Since the taking of the goods to SEZ from DTA does not amount to taking the goods out of India to a place outside India, the same is not export as so defined and therefore export duty levied under said Section 12 at the rates specified in the said Second Schedule cannot apply to the taking of the goods from DTA to SEZ. Further, in view of Section 26 of the SEZ Act goods which are brought into SEZ from DTA are exempt from any customs duty levied under the Customs Act 1962 or the Customs Tariff Act 1975 or any other law, Consequently, the payment of export duty on the said goods

supplied to the said SEZ unit was clearly untenable in law. The Appellant, therefore, by letter dated 21.04.2023 addressed to the adjudicating authority, applied for refund of said the export duty paid on the said goods, amounting to Rs. 1,00,159/-.

2.2. The Adjudicating Authority vide the impugned order rejected the refund claim of Rs 1,00,159 filed by the appellant under Section 27 of the Customs Act, 1962.

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

- The adjudicating authority seriously erred in rejecting the said refund application without issuing to the appellant any Show Cause Notice proposing such rejection and without granting any opportunity of hearing to the appellant. The impugned Order is therefore passed in gross violation of principles of natural justice.
- Export duty at rates specified in Second Schedule to the Customs Tariff Act 1975 is inapplicable to goods taken to SEZ from DTA. The adjudicating authority erred in not appreciating that export duty at the rates specified in the Second Schedule to the Customs Tariff Act 1975 is levied under Section 12 of the Customs Act 1962 on goods exported from India and export under Section 2 (18) of the Customs Act 1962 is defined as taking out of India to a place outside India. The adjudicating authority erred in not appreciating that taking the goods from DTA to SEZ does not amount to taking goods out of India to a place outside India since SEZ is not a place outside India and therefore the same does not amount to export from India and the same is accordingly not liable to export duty levied under said Section 12 at the rates specified in said Second Schedule. Reliance is placed in this behalf on the following judgments:
  (i) Essar Steel Ltd v UOI-2010 (249) ELT 3 (Guj)
  (ii) CC v Reliance Industries Ltd-2023 (9) TMI 1270
- The adjudicating authority erred in holding in paragraph 9 of his order that Notification No. 28/2022-Cus dated 21.05.2022 under which the Government of India notified that export duty was payable on Iron and Steel intermediates does not emphasize as to the export of goods should be physical export only as in the instant case the goods were cleared to SEZ, thereby a deemed export. The Deputy Commissioner further erred in holding that if the intent of the Government was not to impose export duty on export to SEZs, then either specifically the word 'Physical Exports' would have been mentioned in the Notification for

exports to SEZs, or even a retrospective notification withdrawing export duty on exports made to SEZs, would have been issued, which has not happened in the present case.

- The adjudicating authority erred in relying on the Fifth Proviso (wrongly mentioned as Third Proviso in the Order) to Rule 27 of SEZ Rules, 2006 which provides that supplies from Domestic Tariff Area to Special Economic Zones shall attract export duty, in case, export duty is leviable on items attracting export duty. He erred in not appreciating that the export duty referred to in the said Proviso cannot mean Export duty levied under Section 12 of the Customs Act 1962 at the rate specified in Second Schedule of the Customs Tariff Act 1975 for the following reasons:

  (i) Firstly, because "export" as defined in Section 2 (m) of the SEZ Act does not have the same meaning as "export" as defined in Section 2(18) of the Customs Act 1962.

  (ii) Secondly, because in view of Section 26 of the SEZ Act, goods which are brought into SEZ from DTA are exempt from any customs duty levied under the Customs Act 1962 or the Customs Tariff Act 1975 or any other law. Since the SEZ Rules are subordinate and subservient to the SEZ Act the said Proviso in the SEZ Rules cannot go beyond Section 26 in the SEZ Act and cannot be said to cover export duty levied under the Customs Act 1962. The said Proviso will come into play only if an export duty is levied by the SEZ Act on export as defined in the SEZ Act, which is not the case.

- The adjudicating authority also failed to appreciate that Rules are subservient to a Statue. The SEZ Rules is merely a procedural document that enables the implementation of the SEZ Act. The procedural law is always subservient to and is in aid to justice.
- The adjudicating authority erred in not appreciating that SEZ Act does not contain a charging provision for levying export duty on movement of goods from the Domestic Tariff Area to the Special Economic Zone and the said Act does not contain any provisions for recovery of such duty either.
- The Deputy Commissioner failed to appreciate that Export as defined under section 2(18) of the Customs Act, 1962 means taking out of India to a place outside India. Further as per section 12 of the Customs Act, duties of customs shall be levied at such rates which may be specified under the Customs Tariff Act or any other law for the time being in force, on goods imported into, or exported from, India. Export duty being a duty of Customs can be levied only on those goods which are

being exported out of India. The supply of goods from a DTA unit to a SEZ unit being supply of goods within the territory of India, no export duty can be leviable under the provisions of Section 12 of the Customs Act, 1962 since such duty can only be imposed in respect of goods which are to be taken out of India to a place outside India. Since SEZ is located within India, the supplies to the SEZ cannot be considered as goods exported from India.

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. They further relied upon the decision of the Hon'ble Gujarat High Court in the case of Essar Steel Ltd v UOI-2010 (249) ELT 3, which is followed by the Tribunal in case of Reliance Industries Ltd- Final Order No. 12155-12158/2023 dated 27-9-2023.

5. I have gone through the impugned orders and observe that no personal hearing was granted before issuance of the impugned order. I am of the considered view that a reasonable opportunity of being heard is required to be provided. The appellant has also submitted that they had not been provided with an opportunity of hearing before passing of the impugned order. Therefore, requirement of natural justice was not satisfied. Thus, the impugned order was issued in violation of the principles of natural justice. Since no personal hearing was given to the appellant there is no finding of the adjudicating authority on the contentions raised by the appellant as well as the case laws relied upon by them. Therefore, I find that remitting of the case for passing speaking orders after providing the appellant with an opportunity for personal hearing becomes *sine qua non* to meet the ends of justice. Accordingly, the case is required to be remanded back, in terms of sub-section of (3) of Section 128A of the Customs Act, 1962, for passing speaking order by the adjudicating authority 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 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-128 A (3) of the Customs Act, 1962.

6. In view of the foregoing, the appeal is allowed by way of remand to the adjudicating authority for passing a reasoned and speaking order, after affording the appellant an adequate opportunity of personal hearing. The adjudicating authority is directed to examine all relevant facts, documents, and submissions placed on record during the appeal proceedings. Based on such examination, appropriate action shall be taken and fresh orders shall be issued expeditiously, strictly in accordance with the principles of natural justice and the applicable legal provisions. It is clarified that, while passing this order, no findings or views have been expressed on the merits of the case or on the submissions made by the appellant. These shall be independently examined and considered by the adjudicating authority in accordance with law.

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

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

By Registered Post A.D.

F.Nos. S/49-167/CUS/JMN/2023-24/941 Dated –28.05.2025

To,

1. M/s Reliance Sibur Elastomers Private Limited,
CAB, East Wing, Ground Floor, Motikhavadi, Jamnagar - 361280

Copy to:

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs, Jamnagar.
3. The Deputy Commissioner of Customs, Customs Division, Jamnagar
4. Guard File