



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- 20260171MN000000AEAA

क	फ़ाइल संख्या FILE NO.	S/49-253/CUS/AHD/2024-25
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-519-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	19.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	194/AR/ADC/ICD-SACHIN/SRT/2024-25 dated 04.10.2024 passed by the Additional Commissioner of Customs, Surat.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	19.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. B. K. Silk Mills Pvt. Ltd. Plot No. F 532 to F 535 and F 628 to F 631, Laxmi Textile Park, Near Sachin GIDC, Surat – 394 230.
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 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु.1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की 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, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar-Nagar Bridge, Asarwa, Ahmedabad-380 016



5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार 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 हैं, 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

1. M/s. B. K. Silk Mills Pvt. Ltd. (hereinafter referred as 'the appellant') has filed the present appeal under Section 128 of the Customs Act, 1962, against an Order-In-Original No. 194/AR/ADC/ICD-SACHIN/SRT/2024-25 dated 04.10.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs, Surat (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant has imported 02 set of Computerised Embroidery Machinery under EPCG Licence No. 5230019166 dated 20.01.2016 by saving Customs duty of Rs.9,55,257/- under cover of a Bill of Entry No. 4537060 dated 10.03.2016 filed with Customs, ICD-Sachin. The appellant had also submitted a Bond and Bank Guarantees as per the prescribed procedure. It appeared that the appellant failed to fulfill the export obligation within the prescribed period and therefore, a Show Cause Notice bearing F.No. VIII/6-3825/ICD-Sachin/2015-16 dated 08.03.2024 was issued to the appellant. The said SCN has been adjudicated vide the impugned order.

3. In the impugned order, it has been observed that the appellant has not fulfilled the export obligation and therefore the conditions stipulated under Notification No. 16/2015-Cus dated 01.04.2015 as well as conditions of the Bond submitted by the appellant had not been fulfilled. So, the adjudicating authority has passed following order (gist):

- Disallowed the benefit of zero duty for EPCG Scheme under Notification No. 16/2015-Cus dated 01.04.2015.
- Confirmed the demand of Customs duty amounting to Rs. 9,55,257/- with interest in terms of Notification No. 16/2015-Cus dated 01.04.2015 read with conditions of Bond and ordered to recover the same in terms of Section 143 of the Customs Act, 1962, by enforcing the Bond.
- Ordered to appropriate the amount of Rs. 9,60,000/- by encashment of Bank Guarantees.
- Held that the subject capital goods are liable to confiscation in terms of Section 111(o) and gave an option to redeem the said goods on payment of fine of Rs. 20,39,796/- in terms of Section 125(1) of the Customs Act, 1962.



- Imposed a penalty of Rs. 95,526/- on the appellant in terms of Section 112(a) of the Customs Act, 1962.
- Imposed a penalty of Rs. 1,00,000/- on the appellant in terms of Section 117 of the Customs Act, 1962.

4. Being aggrieved, the appellant has filed the present appeal. The appellant, inter alia, mentioned that due to some issues they could not give reply to the Show Cause Notice; that they have fulfilled the entire export obligation and submitted an application for redemption of EPCG License on 20.08.2024 to DGFT and also submitted a copy thereof to Customs Office, ICD-Sachin on 21.08.2024; that the learned adjudicating authority has passed the impugned order ignoring their application for EODC, which is pending with DGFT. The appellant further submitted that the delay in obtaining Export Obligation Discharge Certificate ('EODC') cannot result into denial of benefit under EPCG Scheme. In this regard, they rely upon the Order of Hon'ble Telangana High Court in the case of Hetro Labs Ltd. vs. Assistant Commissioner of Customs, Chennai – 2019 (370) ELT 234 (Telangana). Extracts from the said Order are given below:

"17. Significantly, it is not the contention of the customs authorities that the delay in issuance of the redemption certificates was attributable to the petitioner. It was therefore for the authorities themselves to put in place necessary machinery to see that such certificates were issued promptly, so that they could be produced within the time stipulated in Condition (ix) of Notification No. 96 of 2009, dated 11-9-2009. An importer who duly complied with such export obligations in terms of the exemption granted under the Foreign Trade Policy cannot be penalised for delay on the part of the authorities in processing the necessary documentation.

18. Given the aforesaid admitted facts, we find that the first respondent adopted a tediously hidebound approach in dealing with the matter. According to the petitioner, the fact that it had discharged its export obligations would have been well within the knowledge of the customs authorities themselves and all that the first respondent had to do was to cross verify the factum of such compliance even if the petitioner failed to appear before him. We find merits in this submission."

5. In view of the above submissions, the appellant has requested to set aside the



impugned order.

6. The appellant has submitted a copy of the T.R.6 Challan No. 55/24-25 dated 04.12.2024 evidencing payment of pre-deposit of Rs. 71,650/- under the provisions of Section 129E of the Customs Act, 1962.

7. In the Form No. C.A.-1, the appellant has shown the date of communication of the impugned order dated 04.10.2024, as '30.10.2024'. Whereas, the appeal has been received in this office on 26.12.2024. Thus, this appeal has been filed within the normal period of 60 days, as prescribed for filing appeal under Section 128 of the Customs Act, 1962.

8. In view of the above position, the appeal has been admitted and being taken up for disposal.

9. One set of the appeal memorandum has forwarded to the adjudicating authority for comments vide this office letter dated 30.12.2024, but no reply thereof has been received. So, I proceed to decide the appeal on the basis of documents submitted by the appellant.

PERSONAL HEARING

10. Personal Hearing in respect of the appeal was held in virtual mode on 24.12.2025, which has been attended by Mr. Ishwar Jivani, Chartered Accountant, on behalf of the appellant. He reiterated the submissions made at the time of filing of appeal.

DISCUSSION AND FINDINGS

11. I have carefully gone through the written as well as oral submissions made by or on behalf of the appellant viz. M/s. B. K. Silk Mills Pvt. Ltd. The issue involved in the appeal is regarding sustainability of demand of duty, interest, penalties and redemption fine on account of non-submission of Redemption Certificate / Export Obligation Discharge Certificate ('EODC') towards fulfillment of export obligation under EPCG Scheme.

12. I find that in the appeal memorandum, the appellant has submitted a copy of their letter addressed to the Jt. DGFT, Surat, requesting to issue Redemption Certificate / EODC for EPCG Licence No. 5230019166 dated 20.01.2016. The said letter has been



submitted to the office of the Jt. DGFT, Surat on 20.08.2024 and also to the office of Customs, ICD-Sachin, Surat, on 21.08.2024. However, the appellant has not submitted any Redemption Certificate or Export Obligation Discharge Certificate issued by the competent authority of DGFT. In the impugned order, there is no discussion about pendency of the appellant's application for EODC with the office of the DGFT.

13. On this issue, I refer the Circular No. 16/2017-Customs dated 02.05.2017 issued by CBEC (now known as CBIC), which is as under:

"Subject: Monitoring of export obligation fulfillment under EPCG and Advance Authorization Schemes - Regarding.

I am directed to invite your attention to para 2(d) of Circular No. 5/2010-Cus. dated 16-3-2010 [2010 (251) E.L.T. (T47)] directing initiation of action to safeguard revenue in case of non-submission of Export Obligation Discharge Certificate within the time period stipulated in the relevant Customs notifications. These directions have been reiterated in para 7(iii) of Instruction dated 18th January, 2011.

2. Some field formations have expressed difficulty in implementing these instructions stating that when a notice issued (as per time lines prescribed in Customs notifications) to exporter for enforcement of Bond/BG is taken up for decision, the exporters plead that they have submitted documents to DGFT for issuance of EODC and that adjudication process of their SCN may be kept in abeyance till the time EODC is issued to them by DGFT. However, the proceedings cannot be kept pending in Call Book as they do not fulfill criteria prescribed in Circular No. 162/73/95-CX., dated 14-12-1995. This leads to confirmation of demand and further litigation. This is avoidable if the time period prescribed in Customs notifications is aligned with time period for issuance of EODC as per FTP/HBP.

3. The matter has been examined. It is noted that during the Chief Commissioner's Conference dated 08-09/01/2016, it has been decided that a simple notice will suffice to the licence/authorization holder who does not submit the EODC/Redemption letter within the period prescribed in the relevant Customs notifications. In these cases also, the principles of natural justice should be



followed. Further, this was reiterated during the Chief Commissioner's Conference dated 3-1-2017 wherein it was agreed that in view of time taken by DGFT in issuance of EODC, the practice of issuance of SCN at the first stage itself may be replaced by issuance of a simple notice to defaulters.

4. In all Advance Authorization and EPCG notifications, the Deputy/Assistant Commissioners of Customs have power to extend the period to submit proof of fulfillment of EO without any limit. Thus there is inherent provision in Revenue notifications to keep action of Customs pending till EODC is issued by DGFT. Moreover, the process of issuance of EODC by DGFT itself is linked to submission of BRC by the licence holder. The BRC itself can be submitted as per the period allowed by RBI in terms of the Foreign Exchange Management Act, 1999. The licence/authorization is also subject to extension, if any, by DGFT. Hence, alignment of the time period given in Customs notifications with that given in FTP/HBP may not be required.

5. In view of the above, the field formations may issue simple notice to the licence/authorization holders for submission of proof of discharge of export obligation. In case where the licence/authorization holder submits proof of their application having been submitted to DGFT, the matter may be kept in abeyance till the same is decided by DGFT. Institutional mechanism set up in terms of Instruction F. No. 609/119/2010-DBK dated 18-1-2011 for regular interaction with RA's of DGFT should be used to pursue such cases. However, in cases where the licence/authorization holder fails to submit proof of their application for EODC/Redemption Certificate, extension/clubbing etc., action for recovery may be initiated by enforcement of Bond/Bank Guarantee. In cases of fraud, outright evasion, etc., field formations shall continue to take necessary action in terms of the relevant provisions.

6. Difficulties in implementation, if any, may be brought to the notice of the Board."

14. In view of the above Circular issued by Board, the adjudicating authority should have kept the notice in abeyance till the application for EODC has been decided by DGFT. Therefore, I am of the view that the impugned order passed by the adjudicating authority



is pre-mature and in violation of the guidelines issued by CBIC vide Circular No. 16/2017-Cus dated 02.05.2017.

15. Therefore, I the matter is remanded to the adjudicating authority with direction to follow the guideline issued vide Circular No. 16/2017-Cus dated 02.05.2017. It is expected that the appellant as well as the adjudicating authority, both, should take up the matter with the office of the DGFT for taking early decision on the application made by the appellant for issuance of Redemption Certificate / EODC in respect of EPCG license issued to them.

16. As regards powers of Commissioner (Appeals) to remand cases, I 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 orders of Hon'ble Tribunal in case of Prem Steels P. Ltd. [2012-TIOL-1317-CESTAT-DEL] and Hawkins Cookers Ltd. [2012 (284) E.L.T. 677 (Tri. - Del)], wherein it has been held that Commissioner (Appeals) has power to remand the case under Section 35A(3) of the Central Excise Act, 1944 and Section 128A(3) of the Customs Act, 1962.

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


Order

I set aside the Order-In-Original No. 194/AR/ADC/ICD-SACHIN/SRT/2024-25 dated 04.10.2024 and remand the matter for de-novo adjudication to the adjudicating authority, i.e. The Additional Commissioner of Customs (in-charge: ICD-Sachin), Surat/Ahmedabad.

The appeal is allowed by remand without expressing any view on merits.



F.No. S/49-253/CUS/AHD/2024-25


(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

Date: 19.01.2026

By E-mail (As per Section 153(1)(c) of the Customs Act, 1962)

To

M/s. B. K. Silk Mills Pvt. Ltd.
Plot No. F 532 to F 535 and F 628 to F 631,
Laxmi Textile Park, Near Sachin GIDC,
Surat - 394 230.
(email: bksilkmill@drdcs.net bksarees@gmail.com)



Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
(email: ccoahm-guj@nic.in)
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
(email: cus-ahmd-guj@nic.in rra-customsahd@gov.in)
3. The Additional Commissioner of Customs (in-charge: ICD-Sachin),
Surat/Ahmedabad (email: icd-sachin@gov.in cus-ahmd-adj@gov.in).
4. The Deputy/Assistant Commissioner of Customs, ICD-Sachin.
(email: icd-sachin@gov.in)
5. Shri. Ishwar Jivani, Chartered Accountant (email: irjivani87@gmail.com)
6. Guard File.
