**प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद**
**सीमाशुल्कभवन, आलइंडीयारेडीऑकेबाजुमे, नवरंगपुरा ,अह्मदाबाद** 380009
**दुरभाष** (079) 2754 46 30 **फैक्स** (079) 2754 23 43
**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD**
**CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009**
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**निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.**

फा. सं./ **F.No.GEN/ADJ/COMM/528/2024-TECH**

**DIN- 20241171MN000000E010**

आदेशकीतारीख/Date of Order :6.11.2024

जारीकरनेकीतारीख/Date of Issue : 6.11.2024

द्वारापारित :- **शिव कुमार शर्मा, प्रधान आयुक्त**

**Passed by :- Shiv Kumar Sharma, Principal Commissioner**

मूलआदेशसंख्या : **Order-In-Original No: AHM-CUSTM-000-PR.COM-53-24-25**

**Dated 6.11.2024** in the case of **M/s. P I Industries, Sterling SEZ and Infrastructure Ltd., Plot No. 28, Saroda Jambusar, Bharuch, Gujarat**

1 जिसव्यक्ति(यों) कोयहप्रतिभेजीजातीहै, उसेव्यक्तिगतप्रयोगकेलिएनिःशुल्कप्रदानकीजातीहै।

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेशसे असंतुष्ट कोई भी व्यक्ति इस आदेशकी प्राप्तिसे तीन माहके भीतर सीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीयन्यायाधिकरण, अहमदाबाद पीठको इस आदेशके विरुद्ध अपील कर सकता है। अपील सहायकरजिस्ट्रार, सीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीयन्यायाधिकरण, दुसरी मंज़िल, बहुमालीभवन , गिरिधरनगर पुलके बाजुमे, गिरिधरनगर, असारवा, अह्मदाबाद-380 004 को सम्बोधित होनी चाहिए।

2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, *Ahmedabad* – 380004.

3. उक्तअपीलप्रारुपसं. सी.ए.3 मेंदाखिलकीजानीचाहिए।उसपरसीमाशुल्क (अपील) नियमावली, 1982 के नियम 3 के उपनियम (2) मेंविनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्तअपीलको चार प्रतियोंमें दाखिल किया जाए तथा जिस आदेशके विरुद्ध अपील की गई हो,

उसकीभीउतनीहीप्रतियाँसंलग्नकीजाएँ
(उनमेंसेकमसेकमएकप्रतिप्रमाणितहोनीचाहिए)।अपीलसेसम्बंधितसभीदस्तावेजभीचारप्रतियोँमेंअग्रेषित किएजानेचाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपीलजिसमेंतथ्योंकाविवरणएवंअपीलकेआधारशामिलहैं, चार प्रतियोंमें दाखिल की जाएगी तथा उसके साथ जिस आदेशके विरुद्ध अपील की गईहो, उसकीभी उतनीही प्रतियाँ संलगनकी जाएंगी (उनमेंसेकमसेकमएकप्रमाणितप्रतिहोगी)।

4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपीलका प्रपत्र अंग्रेजी अथवा हिन्दीमें होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरणके बिना अपीलके कारणोंके स्पष्टशीर्षोंके अंतर्गत तैयार करना चाहिए एवं ऐसे कारणोंको क्रमानुसार क्रमांकित करना चाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रिय सीमा शुल्क अधिनियम,1962 की धारा 129 ऐके उपबन्धोंके अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थितहै, वहांके किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरणकी पीठके सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँगड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

6. The prescribed fee under the provisions of Section 129A of the Customs Act,1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेशके विरूद्ध सीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीयन्यायाधिकरणमें शुल्कके 7.5% जहां शुल्क अथवा शुल्क एवं जुरमानाका विवादहै अथवा जुरमाना जहां शीर्फ जुरमानाके बारेमे विवादहै उसका भुकतान करके अपीलकी जा शकती है।

7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".

8. न्यायालयशुल्कअधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेशकी प्रति पर उपयुक्तन्यायालय शुल्क टिकट लगा होना चाहिए।

8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

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Sub: Show Cause Notice No. VIII/13-101/Cus/T/2021 dated 14.12.2021 in view of remand proceedings ordered by CESTAT against OIO No. AHM-CUSTM-000-COM-001-22-23 dtd 08.4.2022 in case of M/s P I Industries, 28, Sterling SEZ and Infrastructure Ltd, Jambusar, Bharuch, Gujarat.

**BRIEF FACTS OF THE CASE-**

**M/s. PI Industries Ltd.,** Plot No. 28, Sterling SEZ and Infrastructure Limited, At. & P.O. Sarod, Taluka-Jambusar, District-Bharuch, Gujarat bearing GST Registration No. 24AABCP2183M2ZA *(hereinafter referred to as* ***"M/s. PI Industries"*** and /or ***"the Noticee"*** *for the sake of brevity)* are engaged in the manufacture of taxable goods viz. PYROXASULFONE TECHNICAL, PCM, ORST, etc., and its formulations under Chapter heading 29 & 38 of ITC (HS). The Noticee had been granted permission to set up units and carry out commercial production in Sterling Special Economic Zone *(hereinafter referred to as* ***"SEZ"*** *for the sake of brevity)* vide LOA No. SSEZ/DC/UA/05/09-10 dated 02.03.2010, as amended and extended from time to time, in terms of Rule 19(4) of Special Economic Zone Rules, 2006. *(hereinafter, referred to as* ***"SEZ Rules, 2006"*** *for the sake of brevity).* The Noticee have executed Bond-cum-Legal Undertaking in Form H, with regard to their obligations regarding proper utilization and accountability of goods, including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty free, and regarding achievement of positive Net Foreign Exchange earnings in terms of provisions of Rule 22 (i) of the SEZ Rules, 2006.

**2.** A Show Cause Notice (*hereinafter referred to as* ***"SCN"*** *for the sake of brevity*) bearing F.NO. VIII/13-101/Cus/T/2021 dated 14.12.2021 was issued to the Noticee on the grounds as discussed in the forthcoming paras.

**2.1** The Noticee vide their email dated 07.01.2020, addressed to Specified Officer, Sterling SEZ, Jambusar, and copy addressed to the Development Commissioner, Sterling SEZ, Jambusar, informed that an explosion had occurred the previous day i.e. on 06.01.2020 in one of the sections of their Plant of Multi-Product Plants (*hereinafter referred to as* ***"MPP"*** *for the sake of brevity*) at their Unit called "SPM-28" in SEZ, Jambusar, which resulted in two fatalities and injuries to nine others. The Noticee claimed in their email that the incident did not result in any fire or hazardous emissions, but was limited to one MPP and had not affected operations of the other MPPs at the site. In the said email, it was also informed that as per company's protocols, investigation had been initiated to determine the root cause of the incident.

**2.2** The Preventive Officer, Sterling SEZ, Jambusar carried out panchnama proceedings on 09.01.2020 in the presence of two independent panchas wherein the Preventive Officer, Sterling SEZ, Jambusar has mentioned about the unit intimating the incident vide their email dated 06.01.2020. The two fatalities and nine injuries too have been mentioned in the panchnama. The Preventive Officer went to the place of the incident but was not allowed to visit the site, as he was told that it could be dangerous and harmful to all of them, as there was still fog due to chemical reaction and some chemical leakages from the tankers at the MPP. The Panchnama had started at 12.00 hours and was concluded at 12.30 hours of 09.01.2020.

**2.3** The Noticee vide their second email dated 15.01.2020, submitted a copy of panchnama prepared by the local Police officials in the local language, and the Noticee further informed the Office of the Development Commissioner, SEZ, Jambusar that the detailed report of burnt/destroyed materials had still not been received and would be submitted by the Noticee as and when received from the Surveyor.

**2.4** A second Panchnama dated 11.01.2020, was drawn by the Preventive Officer, Sterling SEZ, Jambusar, in the presence of two panchas, wherein it has been mentioned that the incident which took place on 06.01.2020 at around 10.30 am, was in one section of MPP No.5 located on the 4th floor of the unit of M/s. PI Industries, SPM-28, Sterling SEZ, Jambusar. Thereafter, Shri Karan Kumar Rangwani, Senior Commercial Manager, informed the Preventive Officer that Government Agency (Gujarat Pollution Control Board) had given them closure notice, due to the fatal incident, pending further investigation. He also informed that there still remained some toxic chemicals and leakages from tanks/pipelines in the vicinity. Hence, visiting the affected area could be dangerous and harmful to the health/life of an individual. The panchnama had started at 12.00 hours and concluded at 14.00 hours on 11.01.2020.

**3.** In connection with the said incident, a third panchnama dated 13.01.2020 was drawn by the Preventive Officer, Sterling SEZ, Jambusar, in the presence of two panchas, wherein Shri Karan Kumar Rangwani, Senior Commercial Manager, M/s. PI Industries Ltd., guided them to the place of the incident viz., MPP No. 5. During verification, the Preventive Officer found that about 30 to 35 numbers of equipments were totally damaged due to the incident and the said equipments contained Raw Materials and Intermediates which were also

damaged/lost in the incident. It was estimated that equipment worth Rs. 38-40 crores (approx.) and raw materials and intermediates worth Rs. 18-20 crores (approx.) were lost in the incident. However, the figures were tentative, and the exact amount of loss would be evaluated by Insurance team and submitted to the Department. Since the exact quantification was not ascertainable, Shri Karan Kumar Rangwani informed that a Surveyor appointed by their Insurer would carry out the survey and submit the report. Accordingly, the panchnama which started at 11.30 hours concluded at 14.00 hours on 13.01.2020.

**4. Quantum of goods (Capital Goods/Raw Materials/Work-in-Process) burnt/destroyed and duty involved in the incident dated 06.01.2020:**

The Specified Officer, Sterling SEZ, requested the Noticee to submit details of burnt/destroyed goods during the fire incident vide letters of the Specified Officer, Sterling SEZ, Jambusar issued vide F.No. SSEZ/DC/Accident/PI Industries/Sterling/19-20 dated 08.06.2020 and 11.08.2020. In response, the Noticee's email dated 21.08.2020 was received, seeking some more time. Thereafter, the Specified Officer again sent reminder letters dated 12.10.2020, 24.11.2020, 21.12.2020, 28.01.2021, 19.02.2021 and 23.03.2021. Eventually, the Noticee vide email dated 15.03.2021 assured that they would positively provide the details by 1st week of April-2021. Later on, the Noticee submitted an Annexure vide email dated 19.04.2021, wherein they stated the quantified value of goods (Capital goods, Raw Materials and Work-in-process goods) burnt/destroyed in fire to be **Rs. 7,33,61,701/-**. It was noticed that there appeared to be huge difference between their stated losses of **Rs. 7,33,61,701/-** vis-à-vis losses estimated at the time of third panchnama which was around Rs. 38-40 crores for equipments and Rs. 18-20 crores for raw materials and Intermediate goods. In response to the query raised with them vide email dated 22.04.2021, they replied vide their email dated 04.05.2021, that during the panchnama, the verification of losses was under process and hence, exact amount of losses could not be ascertained at that time and the same was also mentioned in the panchnama. Whatever amount was mentioned was just an estimate. Also, there were deaths of a few workers in the incident and due to toxic chemicals in the air, there was very high risk to the health of persons in the vicinity of the site of fire including the Investigators, so nothing was ascertainable at that point of time.

From the above facts, it appeared that the goods destroyed in the fire incident in the factory premises of the Noticee had not been utilized for the authorized operations as envisaged in the LOA issued to the Noticee and the Noticee had failed to account for the goods so destroyed in the fire in the manner provided in the SEZ Act, 2005.

**5.** The relevant provisions of SEZ Act, 2005 and SEZ Rules, 2006, wherein exemptions of Customs Duty/Taxes extended to a SEZ Unit on import/procurement of all types of the goods including Inputs, Capital Goods, Semi-finished goods, consumables, etc. **for use in the authorized operation**, are reproduced below for ready reference:

A **Section 7 of SEZ Act, 2005**

*7. Any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by, -*

*(i) a Unit in a Special Economic Zone; or*

*(ii) a Developer;*

*shall, subject to such terms, conditions and limitations, as may be prescribed, be* ***exempt from the payment of taxes, duties or cess*** *under all enactments specified in the First Schedule.*

B **Section-26 of SEZ Act, 2005**

*"26. Exemptions, drawbacks and concessions to every Developer and entrepreneur*

*1. Subject to the provisions of* ***sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:-***

***a. exemption from any duty of customs****, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force,* ***on goods imported into, or services provided in, a Special Economic Zone or a Unit, to carry on the authorised operations*** *by the Developer or entrepreneur;*

.....

*c. exemption from any duty of excise, under the Central Excise Act, 1944 (1 of 1944) or the Central Excise Tariff Act, 1985 (5 of 1986) or any other law for the time being in force, on goods brought from Domestic Tariff Area to a Special Economic Zone or Unit, to carry on the authorised operations by the Developer or entrepreneur;*

*...."*

*2. The Central Government may prescribe, the manner in which, and, the terms and conditions subject to which, the exemptions, concessions, draw back or other benefits shall be granted to the Developer or entrepreneur under sub-section (1).*

C **Rule 22 of SEZ Rules, 2006**

*22.* ***Terms and conditions for availing exemptions, drawbacks and concessions*** *to every Developer and entrepreneur for authorized operations*

*(1) Grant of exemption, drawbacks and concession to the entrepreneur or Developer shall be subject to the* ***following conditions,*** *namely:-*

*(i)* ***the Unit shall execute a Bond-cum-Legal Undertaking in Form H,*** *with regard to its obligations regarding proper utilization and accountal of goods, including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty free and regarding achievement of* ***positive net foreign exchange earning;***

*(ii)..;*

*(iii)...*

*Provided that the* ***Bond-cum-Legal Undertaking executed by the Unit or the Developer including Co-developer shall cover one or more of the following activities,*** *namely:-*

*(a) the movement of goods between port of import or export and the Special Economic Zone;*

*(b)* ***the authorized operations****, as applicable to Unit or Developer;*

*(c) temporary removal of goods or goods manufactured in Unit for the purposes of repairs or testing or calibration or display or processing or sub-contracting of production process or production or other temporary removals into Domestic Tariff Area without payment of duty;*

*(d) re-import of exported goods.*

*(iv) The procedure for execution of Bond-cum-Legal Undertaking shall be as under:-*

*(a) ..; to.. (g) ...*

***(2) Every Unit and Developer shall maintain proper accounts, financial yearwise, and such accounts which should clearly indicate in value terms the goods imported or procured from Domestic Tariff Area, consumption or utilization of goods, production of goods, including by-products, waste or scrap or remnants, disposal of goods manufactured or produced, by way of exports, sales or supplies in the domestic tariff area or transfer to Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or Bio-technology Park Unit,*** *as the case may be, and balance in stock*

D **Rule 25 of SEZ Rules, 2006**

***Where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations*** *or unable to duly account for the same, the entrepreneur or the Developer, as the case may be,* ***shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed*** *without prejudice to any other action under the relevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Excise Tariff Act, 1985, the Central Sales Tax Act, 1956, the Foreign Trade (Development and Regulation) Act, 1992 and the Finance Act, 1994 (in respect of service tax) and the enactments specified in the First Schedule to the Act, as the case may be: Provided that if there is a failure to achieve positive net foreign exchange earning, by a Unit, such entrepreneur*

*shall be liable for penal action under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and the rules made there under.*

E **Rule 27 of SEZ Rules, 2006**

*27.* ***Import and Procurement-***

*(1)* ***A Unit or Developer may import or procure from the Domestic Tariff Area without payment of duty, taxes or cess*** *or procure from Domestic Tariff Area after availing export entitlements or procure from other Units in the same or other Special Economic Zone or from Export Oriented Unit or Software Technology Park unit or Electronic Hardware Technology Park Unit or Bio-technology Park Unit, all types of goods, including capital goods (new or second hand), raw materials, semi-finished goods, (including semi-finished Jewellery) component, consumables, spares goods and materials for making capital goods required* ***for authorized operations except prohibited items under the Import Trade Control*** *(Harmonized System) Classifications of Export and Import Items:*

F **Rule 34 of SEZ Rules, 2006**

***"34. Utilization of goods-***

*The goods admitted into a Special Economic Zone shall be used by the Unit or the Developer only for carrying out the authorized operations but* ***if the goods admitted are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to account for the goods as provided under these rules, duty shall be chargeable on such goods as if these goods have been cleared for home consumption***

*Provided that in case a Unit is unable to utilize the goods imported or procured from Domestic Tariff Area, it may export the goods or sell the same to other Unit or to an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit, without payment of duty, or dispose off the same in the Domestic Tariff Area on payment of applicable duties on the basis of an import licence submitted by the Domestic Tariff Area buyer, wherever applicable".*

G **Rule 47 of SEZ Rules, 2006**

***"47. Sales in Domestic Tariff Area-***

*(1) A Unit may sell goods and services including rejects or wastes or scraps or remnants or broken diamonds or by-products arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area on payment of customs duties under section 30,* ***subject to the following conditions,*** *namely:*

*(a) Domestic Tariff Area sale under sub-rule (1), of goods manufactured by a Unit shall be on submission of import licence, as applicable to the import of similar goods into India, under the provisions of the Foreign Trade Policy:*

.....

.....

***(4) Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made thereunder."***

**5.1.** From the provisions of SEZ Act and Rules, it appeared that the benefit of exemptions from the payment of taxes, duties or cess under all enactments specified in the First Schedule are applicable/available to any/all goods or services supplied or provided to the SEZ Developer or SEZ Unit **only if** such goods/services are meant to carry on/are utilized in the Authorized Operations by the Developer or Unit in the SEZ and subject to such terms, conditions and limitations, as may be prescribed. Whereas, in the instant case the goods got destroyed and were not utilized for the intended purpose (authorized operations and export), for which they were procured duty free.

**5.2.** It also appeared that the Noticee had procured Duty-free goods indigenously by availing the benefit of tax exemptions and in terms of provisions of Rule 34 of the SEZ Rules, 2006, but as in this case, if the goods procured for their SEZ Unit are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to account for the goods as provided under Rule 22 of SEZ Rules, 2006, the duty shall be chargeable on such goods as if these

goods had been cleared for home consumption. Further, as per Rule 47 of SEZ Rules, 2006, Valuation and Assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and Rules made thereunder.

**5.3.** Being an SEZ Unit, the Noticee was legally bound by the provisions of Rule 22, 25, 27, 34 and 47 of the SEZ Rules, 2006 in respect of the goods procured Duty-free under the provisions of Section 26 of SEZ Act, 2005. It appeared that the Noticee had failed to utilize the aforesaid goods in their Unit for Authorized Operations and failed to follow the prescribed procedure as provided in Rule 22(2) and Rule 34 of the SEZ Rules, 2006. As the goods procured duty free and burnt/destroyed in the fire incident had neither been utilized in Authorized Operations nor have been accounted for in the manner prescribed in Rule 22(2) read with Rule 25 of SEZ Rules, 2006, resulting into contravention of the aforesaid provisions of the SEZ Act 2005 and SEZ Rules, 2006. The Noticee, therefore, appeared liable to pay an amount equal to duty forgone on the aforesaid goods burnt/destroyed in the fire incident along with interest at the rate as specified in the Notification of the Government of India, Ministry of Finance (Department of Revenue) issued under Section 28AA of the Customs Act, 1962, on the said duty from the date of duty-free import/procurement of the said goods till the date of payment of such duty.

Further, it was seen that the Noticee had not given the relied upon documents like relevant invoices, to substantiate their claim nor claim papers submitted to the Insurance company were given by them. Hence, the Noticee was again pursued vide emails dated. 09.05.2021 and 28.05.2021 to submit the Relied Upon Documents.

The Noticee submitted details of damaged/lost goods on **17.10.2021**, after rigorous persuasion. However, even in this submission, they failed to furnish the details of duty leviable on such goods to the tune of Rs. **1,47,17,157/-** as per the provisions of Section 28(1) of the Customs Act, 1962. Since, the goods imported/ procured duty-free valued at Rs.7,33,61,701/- involving Customs Duty of Rs.**1,47,17,157/-** got burnt/destroyed in the fire incident, it appeared the Noticee was liable to pay the duty amount of Rs.**1,47,17,157/-,** equal to duty leviable on such goods under Section 26 of the SEZ Act, 2005 and Section 28(1) of the Customs Act, 1962, read with Rule 22, 25, 27, 34 and Rule 47 of the SEZ Rules, 2006, since the imported/indigenous goods procured duty-free had not been utilized for Authorized Operations due to fire incident at the plant. It appeared that the Noticee was also liable to pay interest at a rate as notified by Government of India, Ministry of Finance (Department of Revenue) under Section 28AA of the Customs Act, 1962 on the said Duty from the date of Duty-free import of the said goods till the date of payment of such duty. It also appeared that the imported/ indigenous Capital Goods/Work-In-Progress/Raw Materials procured duty-free were not used for intended purpose for which the exemption from payment of Duty was claimed and availed and therefore, the said goods were liable for confiscation under Section 111(o) of the Customs Act, 1962

**6.** The break-up of total Duty on Capital goods, Raw Materials and Intermediate goods, destroyed in the fire incident on 06.01.2020 is as indicated in the Table below: (as given by Specified Officer, Sterling SEZ, Jambusar)

**TABLE -1 BREAK-UP OF DUTY FOREGONE** ***(Amount in actual Rs.)***

| **Value of Goods destroyed in explosion** | **Duty foregone details** | | | | |
|---|---|---|---|---|---|
| | **Basic Customs Duty** | **SWS** | **IGST/Ex. Duty** | **Total duty foregone** | **Remarks** |
| 7,33,61,701/- | 7,38,909/- | 73,891/- | 1,39,04,357/- | 1,47,17,157/- | **As detailed in Annexure 'G' & 'H' of the SCN]** |

Therefore, it appeared that the total amount of duty involved in the goods burnt/destroyed in the fire incident came to Rs. 1,47,17,157/- (Rupees One Crore Forty Seven Lakhs Seventeen Thousand One Hundred and Fifty Seven Only)

**6.1**. The Noticee had failed to produce copies of Insurance Survey Report and FSL Report ascertaining the exact cause of the fire incident. They had also failed to produce any other corroborative evidences regarding natural cause of fire incident. Thus, it appeared that the fire incident was caused because of human failure and because the Noticee failed to undertake the required safety measures in the licensed premises of the Developer.

**6.2** It appeared that being an SEZ Unit, the Noticee was under statutory obligations laid down under various Notifications/Circulars and LUT etc. which were required to be fulfilled by them. Since, the Noticee, failed to fulfill such statutory obligations and violated the foregoing provisions, they rendered themselves liable to payment of Customs Duty on such goods along with Interest and consequential Penalty under the relevant sections of the Customs Act, 1962. Further, the failure to pay such duty, Interest and Penalty by them, rendered the Bond–cum – Legal Undertaking executed by them, liable to be enforced/invoked.

**7.** It appeared that the Noticee had contravened the following provisions:

a) Conditions of the Bond-Cum-Legal Undertaking in Form H executed by them from time to time, in as much as they failed to observe all the provisions of Customs Act, 1962, IGST Act, 2017, Central Excise Act, 1944 and the Rules and Regulations made thereunder, in respect of procurement of goods.

b) Section 7 and Section 26 of SEZ Act, 2005, in as much as the said Noticee did not comply with the prescribed terms, conditions and limitations of the Act which allowed them to avail exemption from payment of duties and/or cess.

c) Provisions contained in Rule 22, 25, 27, 34 & 47 of SEZ Rules, 2006, which provides for exemption from duty on goods imported into, or services provided in, a Special Economic Zone or a Unit, to carry on the Authorised Operations by the Developer or entrepreneur by failing to utilize such goods and/or services to carry on the Authorized Operations.

**8.** The Noticee appeared to have contravened the above provisions and for all such acts of omission /commission on their part, they appeared to have committed an offence of a nature as described in Section 112 of the Customs Act, 1962, thereby rendered themselves liable for penalty under Section 112 (a) of the Customs Act, 1962.

**9.** Accordingly, a Show Cause Notice was issued to the Noticee bearing F.No.VII1/13-101/Cus/T/2021 dated 14.12.2021 calling upon them to show cause to the Commissioner of Customs, Customs House, Near Akashwani, Navrangpura Ahmedabad-380009, as to why;

a) the Customs Duty amounting to Rs. **1,47,17,157/-** (Rupees One Crore, Forty Seven Lakh, Seventeen Thousand, One Hundred and Fifty-seven only) equal to duty leviable/foregone on the goods burnt/destroyed in the fire incident, should not be demanded and recovered from them under Section 26 of the SEZ Act, 2005 and Section 28(1) of the Customs Act,1962 read with Rule 22, 25,27,34 and 47 of the SEZ Rules, 2006;

b) interest at appropriate rate, on the total duty demanded at Sr. No.(a) above should not be demanded and recovered from them, under Section 28AA of the Customs Act, 1962;

c) the imported/indigenous Capital Goods /Work-In-Progress/Raw Materials should not be held liable for confiscation under Section 111 (o) of the Customs Act, 1962 read with conditions of Bond executed in terms of Rule 22 of the SEZ Rules 2006 as amended from time-to time;

d) penalty should not be imposed upon them under Section 112 (a) of the Customs Act, 1962;

e) Bond-Cum-Legal Undertaking in Form H furnished by the Noticee should not be enforced towards recovery of their liabilities.

**10.** The SCN dated 14.12.2021 was adjudicated vide OIO No. AHM-CUSTM-000-COM-001-22-23 dated 08.04.2022 and the demand of duties of Customs amounting to Rs. 1,47,17,157/- were confirmed alongwith interest at applicable rate. Further the then Adjudicating authority ordered for confiscation of the said goods and imposed a fine of Rs. 14,72,000/- in lieu of confiscation under Section 125 of the Customs Act, 1962. The then Adjudicating Authority also imposed a penalty of Rs. 14,71,000/- under Section 112(a) of the Customs Act, 1962.

**11.** Being aggrieved by the OIO dated 08.04.2022, the SEZ unit preferred an appeal before the Hon'ble CESTAT, Ahmedabad vide Custom Appeal No. 10357 of 2022. The Hon'ble CESTAT vide Order dated 19.04.2024 remanded the matter to the adjudicating authority with a direction to decide the matter afresh after examining the order of the Hon'ble Tribunal in the case of ONGC Petro Additions Ltd. Vs. CC-2023 (12) TMI 530.

**12.** The Order dated 19.04.2024 of CESTAT has been accepted by the department on 13.6.2024.

**PERSONAL HEARING-**

**13.** Vide mail dated 2.9.2024 and 10.9.2024, Shri Ashok Dhingra, Advocate and Ms. Sonia Gupta, Advocate requested for remand proceedings in view of CESTAT Order dated 19.4.2024.appeared for personal hearing on 15.10.2024. During the course of personal hearing, they reiterated the submission dated 11.10.2024. They were asked to submit the survey report to which they said they would require some time. They further submitted that they would be filing additional submission by 25.10.2024 and sought further time vide e mail dated 24.10.2024 for collating and submitting insurance claim papers, which is yet to be received.

**SUBMISSION-**

**14.** The noticee in their submission dated 11.10.2024, interalia, submitted that the Notice was adjudicated vide Order-in-Original No. AHM-CUSTM-000-COM-001-22-23 dated April 8, 2022 (**"the OIO"**), wherein request for remission of Duty on the goods destroyed in explosion at the SEZ Unit, was disallowed and interalia demand of Customs Duty along with interest was confirmed. Aggrieved, by the OIO PI Industries filed the Appeal before the Hon'ble Tribunal. The Hon'ble Tribunal allowed the Appeal and remanded the matter to the learned Authority, relevant portion of which reads:

> *"4. We have carefully considered the submission made by both the sides and perused the records. We find that subsequent to the passing of impugned order by the Adjudicating authority, in number of cases, it has been held that if the goods are destroyed in SEZ the duty involved on such destroyed goods can be remitted under the Customs Act. In the case of* ***ONGC Petro Additions Ltd. Vs. CC- 2023 (12) TMI 530****, this Tribunal on the same legal issue that whether the goods destroyed in SEZ is eligible for remission of duty or otherwise, the following judgment has been passed:-*
>
> > *"4 We have carefully considered the submission made by both the sides and perused the records. We find that there is no dispute that the fire incident has taken place in the appellant's factory located in SEZ units As per survey report, it is clear that there is no negligence on the part of the appellant as the lire broken out suddenly beyond the control of the appellant. Therefore, the allegation that the appellant have not taken the proper precaution to avoid fire incident is absolutely baseless and imaginary. Moreover, is the appellant who has to be most careful about their goods as it is not only the duty but the huge stake of value of the goods is involved. Therefore, It cannot be imagined that the appellant was careless and negligent due to which fire incidence has taken place, It is also fact that the extensive survey was conducted by the survey officer for the insurance purpose However there is no such inspection or analysis done by the Customs department to arrive at a conclusion that the appellant have not taken the proper precaution.*
> >
> > *4.1 We find that once after carrying out thorough inspection and survey, the insurance company has satisfactorily granted the insurance claim that itself is evidence to establish that the fire incidence was beyond the control of the appellant. Therefore, the ground that the appellant was negligent in the matter of fire incident cannot be accepted*
> >
> > *4.2 As regard, the contention of the Learned Commissioner that the Section 23 shall not apply for remission of duty in the SEZ unit. We find that since the entire assessment of customs duty is done under the Customs Act. The provision for remission of custom duty shall automatically apply. We agree with the submission of the learned counsel that only those provisions of other Act shall not apply, which are inconsistence with the provision of the SEZ Act. In the present case the grant of remission in respect of customs duty in terms of Section 23 does not*

*contradict any of the provision of the SEZ Act. Therefore, the contention of the Adjudicating Authority about non-applicability of the Section 23 of the Customs Act. is not sustainable.*

*4.3 As regard the contention that the appellant have not insured the customs duty along with the value of the goods, we find that it is obvious that only the value of the goods is liable to be insured, which is appearing in the invoices, If the invoice contain any taxes or duties, obviously the gross value inclusive of all these elements shall be taken for the purpose of insurance. However, in the case of SEZ, when the goods are imported and entered into SEZ, the value of goods remain the only principle value and since no duty was payable, question of inclusion of duty does not arise. However, this cannot be the reason for denying the remission of duty. The judgment relied upon by the learned counsel directly applies to the effect that in SEZ unit the remission of customs duty is applicable in terms of Section 23 of the Customs Act. Therefore, we are of the view that appellant has made out very strong case of remission of customs duty in respect of the destroyed goods in fire.*

*5. Accordingly, we set aside the impugned order and allow the appeal with consequential relief."*

*In view of the above decision, the Tribunal has held that the goods destroyed in the SEZ is eligible for remission of duty in terms of Customs Act. However, the Adjudicating authority had no occasion to come across the aforesaid decision. Therefore, the matter needs to be remanded to decide a fresh.*

*5. Considering above judgment as well as the fact of the present case, the impugned order is set aside. Appeal is allowed by way of remand to the adjudicating authority."*

*(emphasis supplied*

14.2 Further, in a subsequent decision in Appeal No. 10631 of 2021 against demand of Customs Duty on duty free goods brought to and destroyed in explosion in the SEZ Unit of PI Industries confirmed vide your Order-in- Original No. AHM-CUSTM-000-COM-017-20-21 dated March 3, 2021 (**"the earlier OIO"**), the Hon'ble Tribunal vide Final Order No. 11146/2024 dated June 5, 2024 (**"the Fire Tribunal Order"**), copy enclosed as **Exhibit – 1**,has held that remission of Customs Duty is to be allowed and set aside the earlier OIO.

**14.3** Accordingly, since in identical facts in the case of PI Industries, remission of Customs Duty on the goods destroyed in fire in the SEZ Unit has been granted, the same principle and decision will be applicable here.

**14.4** Hence, the Company prays the learned Authority for granting remission of Customs Duty amounting to INR 1,47,17,157 made in the Notice on goods destroyed in explosion in the SEZ Unit in compliance to decisions of the Hon'ble Tribunal in the Fire Tribunal Order and the Remand Order.

**DISCUSSION AND FINDINGS-**

**15.** I have carefully gone through the Show Cause Notice dated 14.12.2021, written submission dated 15.10.2024, record of personal hearing held on 15.10.2024, CESTAT order dated 19.04.2024 and all the documents available on record.

**16.** The issues to be decided before me are:-

(a) Whether the Order of Hon'ble CESTAT in the case of ONGC Petro Additions Ltd. Vs CC-2023(12) TMI 530 is squarely applicable in the instant case;

(b) Whether the noticee is liable to pay duties of Customs amounting to Rs Rs.1,47,17,157/- equal to the duty foregone on the goods burnt/destroyed in the fire, alongwith interest and penalties;

(c) Whether the noticee is liable for remission of duties of Customs as argued by the noticee.

**17.** I find that the Noticee, being an SEZ unit, was granted permission to establish a unit and carry out commercial production vide LOA No. SSEZ/DC/UA/05/09-10 dated 02.03.2010, in terms of Rule 19(4) of SEZ Rules, 2006, for undertaking Authorized Operations viz.

*manufacture of products viz. PYROXASULFONE TECHNICAL, PCM, ORCT etc. and its formulations under CTH 29 and 38 of ITC(HS).*

**18.** I find that there was a fire incident in the factory premises of the Noticee in one of the sections of their Plant of Multi-Product Plant at their unit in "SPM-28" in SEZ, Jambusar, on 06.01.2020, which was duly intimated to the Specified Officer, Sterling SEZ, Jambusar the next day i.e. 07.01.2020 by e-mail.

**19.** From the details submitted by the Noticee, it is evident that the goods viz. Capital goods, Raw Materials and Work-in-progress (WIP), valued at Rs.7,33,61,701/-, were destroyed during the fire incident, involving customs duty of Rs.1,47,17,157/. Futher, it not disputed that the duties of Customs amounting to Rs.1,47,17,157/- were forgone on the goods while importing them into SEZ unit for authorized operations and the same has been demanded on account of non-utilization of the said goods for Authorized Operations and failure to account for the said goods as prescribed under Rule 34 and Rule 22 of the SEZ Rules, 2006, respectively.

**Examination of judgement of the Hon'ble CESTAT in the case of ONGC Petro Additions Ltd Vs. CC-2023-**

**20.** I find that the Hon'ble CESTAT in its order dated 19.04.2024 has remanded the matter to decide the matter afresh after examining the order of the Tribunal in the case of ***ONGC Petro Additions Ltd. Vs. CC- 2023 (12) TMI 530***, wherein the following judgment has been passed:-

*"4. We have carefully considered the submission made by both the sides and perused the records. We find that subsequent to the passing of impugned order by the Adjudicating authority, in number of cases, it has been held that if the goods are destroyed in SEZ the duty involved on such destroyed goods* ***can be remitted under the Customs Act****. In the case of* ***ONGC Petro Additions Ltd. Vs. CC- 2023 (12) TMI 530,*** *this Tribunal on the same legal issue that whether the goods destroyed in SEZ is eligible for remission of duty or otherwise, the following judgment has been passed:-*

> *"4 We have carefully considered the submission made by both the sides and perused the records. We find that there is no dispute that the fire incident has taken place in the appellant's factory located in SEZ units As per survey report, it is clear that there is no negligence on the part of the appellant as the lire broken out suddenly beyond the control of the appellant. Therefore, the allegation that the appellant have not taken the proper precaution to avoid fire incident is absolutely baseless and imaginary. Moreover, is the appellant who has to be most careful about their goods as it is not only the duty but the huge stake of value of the goods is involved. Therefore, It cannot be imagined that the appellant was careless and negligent due to which fire incidence has taken place, It is also fact that the extensive survey was conducted by the survey officer for the insurance purpose However there is no such inspection or analysis done by the Customs department to arrive at a conclusion that the appellant have not taken the proper precaution.*
>
> *4.1 We find that once after carrying out thorough inspection and survey, the insurance company has satisfactorily granted the insurance claim that itself is evidence to establish that the fire incidence was beyond the control of the appellant. Therefore, the ground that the appellant was negligent in the matter of fire incident cannot be accepted*
>
> *4.2 As regard, the contention of the Learned Commissioner that the Section 23 shall not apply for remission of duty in the SEZ unit. We find that since the entire assessment of customs duty is done under the Customs Act. The provision for remission of custom duty shall automatically apply. We agree with the submission of the learned counsel that only those provisions of other Act shall not apply, which are inconsistence with the provision of the SEZ Act. In the present case the grant of remission in respect of customs duty in terms of Section 23 does not contradict any of the provision of the SEZ Act. Therefore, the contention of the Adjudicating Authority about non-applicability of the Section 23 of the Customs Act. is not sustainable.*
>
> *4.3 As regard the contention that the appellant have not insured the customs duty along with the value of the goods, we find that it is obvious that only the value of the goods is liable to be insured, which is appearing in the invoices, If the invoice*

*contain any taxes or duties, obviously the gross value inclusive of all these elements shall be taken for the purpose of insurance. However, in the case of SEZ, when the goods are imported and entered into SEZ, the value of goods remain the only principle value and since no duty was payable, question of inclusion of duty does not arise. However, this cannot be the reason for denying the remission of duty. The judgment relied upon by the learned counsel directly applies to the effect that in SEZ unit the remission of customs duty is applicable in terms of Section 23 of the Customs Act. Therefore, we are of the view that appellant has made out very strong case of remission of customs duty in respect of the destroyed goods in fire.*

*5. Accordingly, we set aside the impugned order and allow the appeal with consequential relief."*

*In view of the above decision, the Tribunal has held that the goods destroyed in the SEZ is eligible for remission of duty in terms of Customs Act. However, the Adjudicating authority had no occasion to come across the aforesaid decision. Therefore, the matter needs to be remanded to decide a fresh.*

*5. Considering above judgment as well as the fact of the present case, the impugned order is set aside. Appeal is allowed by way of remand to the adjudicating authority.*

**21.** On perusal of the judgement of the Hon'ble Tribunal in the case of ONGC Petro Additions Ltd Vs CC, I find that the following findings are important:-

(i) *In number of cases, it has been held that if the goods are destroyed in SEZ, the duty involved on such destroyed goods* ***can be remitted*** *under the Customs Act.*

This implies that the remission of duty under the Customs Act is not a right in itself and will depend on the facts and circumstances of the case.

(ii) *As per survey report, it is clear that there is no negligence on the part of the appellant as the fire broken out suddenly beyond the control of the appellant. Therefore, the allegation that the appellant have not taken the proper precaution to avoid fire incident is absolutely baseless and imaginary.....Therefore, it cannot be imagined that the appellant was careless and negligent due to which fire incidence has taken place, It is also fact that the extensive survey was conducted by the survey officer for the insurance purpose.*

This implies that in the case of ONGC Petro Additions Ltd Vs CC, there was a detailed survey report which could establish that there was no negligence on the part of the ONGC Petro in the fire incident. Further, it is evident that the extensive survey carried out by the survey officer of the insurance department established the appellant was not careless and negligient.

**22.** Considering the above findings, I find that in the instant case, it is on record that this office before issuance of show cause notice requested the noticee to provide a copy of Insurance Survey report and FSL report, which they failed to provide. Further during the earlier adjudication proceeding also, they failed to provide these documents. However, even after the matter has been remanded to the undersigned by the Hon'ble CESTAT to decide the matter afresh, the noticee, during the record of personal hearing on 15.10.2024, undertook to provide the copy of Insurance survey report by 25.10.2024. Despite providing them sufficient time, they have failed to provide the copy of Insurance survey report which could establish the exact cause of fire incident.

**23.** In view of the above discussion and with due respect to the directions of the Hon'ble CESTAT, Ahmedabad, I am of the view that the ratio of the judgement of the Hon'ble CESTAT in the case of ***ONGC Petro Additions Ltd. Vs. CC- 2023 (12) TMI 530*** is not applicable in the instant case as both the cases are distinguishable from each other.

**24.** I further find that the noticee has also relied upon order dated 05.06.2024 of the Hon'ble CESTAT in their own case in respect of the fire incident which took place on 05.06.2018 on account of which certain indigenous and imported raw material procured duty free and some semi-finished goods were destroyed. The moot question before the tribunal was-

"A show cause notice was issued to the appellant on 06.06.2020 wherein demand of customs duty on the loss of goods on account of fire accident was made, in respect of entire quantity in stock of material time valued at Rs. 16,54,77,557/- which was lying in their factory on the day of fire. The value of actual loss reported by the appellant amounting to Rs. 7,95,76,996/- was ignored. The said demand was confirmed by the Principal Commissioner vide order dated 03.03.2021.

.....

The Hon'ble CESTAT held that demand of entire stock was without any basis as the there was no evidence on record to suggest entire stock of raw material, in process goods and finished goods were destroyed."

Clearly, facts of the said case are different from the facts in the instant case. In the said case the demand was made on entire stock and not on the value of lost goods reported by the appellant. However, in the instant case, the value reported by the noticee has been taken for the demand of duties of customs.

**Whether the noticee is liable to pay duties of Customs amounting to Rs.1,47,17,157/- equal to the duty forgone on the goods burnt/destroyed in the fire-**

**25.** Before proceeding further, the relevant provisions of SEZ Act and Rules applicable in this case are reproduced herein below to understand the legal position as under:

(i) *As per Section 7 of SEZ Act, 2005, any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by a unit in a SEZ shall be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.*

(ii) *Rule 22 of the SEZ Rules, 2006 specifies the terms and conditions for availing exemptions. As per sub rule (2) of Rule 22 every unit and Developer shall maintain proper accounts, financial year-wise, and such accounts which should clearly indicate in value terms the goods imported or procured from Domestic Tariff Area, consumption or utilization of goods, production of goods, including by-products, waste or scrap or remnants, disposal of goods manufactured or produced, by way of exports, sales or supplies in the domestic tariff area or transfer to Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or Bio-technology Park Unit, as the case may be, and balance in stock.*

(iii) *Rule 25 of SEZ Rules, 2006 specifies that where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case may be, shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed.*

(iv) *As per Section 26 of SEZ Act, 2005, exemption from any duty of customs under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act,1975 (51 of 1975) on goods imported into, or services provided in, a SEZ or a Unit and any duty of excise, under the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 (5 of 1986) or any other law for the time being in force, is granted on goods brought from Domestic Tariff Area to a SEZ or Unit, to carry on the authorized operation by the developer or entrepreneur subject to observance to procedure prescribed in the section.*

(v) *Rule 27 of SEZ Rules, 2006 specifies that the unit may import or procure from Domestic Tariff Area without payment of duty, taxes or cess, all types of goods required for authorized operations except prohibited items.*

(vi) *Rule 34 of SEZ Rules, 2006 specifies that the goods admitted in SEZ shall be used by the unit for carrying out the authorized operations*

(vii)Rule 47 of SEZ Rules, 2006 specifies that *a Unit may sell goods and services, in the Domestic Tariff Area on payment of customs duties under section 30, subject to the following conditions, namely:*

.....

*(4) Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made thereunder."*

**26.** It is pertinent to mention that SEZ units have been granted special privileges such as exemption from Duty of Customs on imported goods, exemption from Central Excise Duty on goods which are brought into SEZ from DTA, exemption from Service Tax on the services received by them, etc. The rationale to advance such privileges is forthcoming from the provisions of Section 5 of the SEZ Act, 2005 which reads as under:

*The Central Government, while notifying any area as a Special Economic Zone or an additional area to be included in the Special Economic Zone and discharging its functions under this Act, shall be guided by the following, namely:*

*(a) generation of additional economic activity;*

*(b) promotion of exports of goods and services;*

*(c) promotion of investment from domestic and foreign sources;*

*(d) creation of employment opportunities;*

*(e) development of infrastructure facilities; and*

*(f) maintenance of sovereignty and integrity of India, the security of the State and friendly relations with foreign States.*

The above provisions clearly indicate that one of the objectives behind the SEZ scheme is promotion of exports of goods and services. Thus, export of goods or services by utilizing the Duty-free goods/ services procured either from indigenous or overseas market becomes an integral part of the obligation cast upon the SEZ in lieu of the exemptions granted to them. It is a well-accepted principle that privileges walk hand-in-hand with obligations/ responsibilities. This phenomenon is well-explained by the 'two sided coin' principle. As each coin has two sides, obligation/ responsibility is the other side of accrued privilege. In the event that the obligation cast upon the SEZ unit is not fulfilled the entire rationale behind grant of exemptions is defeated.

**27.** The exemption of Duty of Customs has been granted to SEZ unit in terms of the provisions of Section 26 of the SEZ Act, 2005, the relevant text of which reads as under:

***SECTION 26-***

*(1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:-*

*(a) exemption from any duty of customs, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods imported into, or services provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur*

Further Rule 25 of the SEZ Rules, 2006 mandates refund of benefit of exemption/concession availed on imported goods, if the goods are not put to use in authorized operations, as given below-

**Rule 25 of SEZ Rules, 2006**

***Where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and***

***concessions have been availed for the authorized operations*** *or unable to duly account for the same, the entrepreneur or the Developer, as the case may be,* ***shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed*** *without prejudice to any other action under the relevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Excise Tariff Act, 1985, the Central Sales Tax Act, 1956, the Foreign Trade (Development and Regulation) Act, 1992 and the Finance Act, 1994 (in respect of service tax) and the enactments specified in the First Schedule to the Act, as the case may be: Provided that if there is a failure to achieve positive net foreign exchange earning, by a Unit, such entrepreneur shall be liable for penal action under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and the rules made there under.*

On conjoint reading of the above provisions of Section 26 of the SEZ Act, 2005 and Rule 25 of the SEZ Rules, 2006 it is evident that the exemption has been granted subject to the condition that the imported goods are put to use or utilized in carrying out the *'Authorised Operations'*. In the instant case, the goods under consideration have not been used or put to use for such 'Authorised Operations' i.e. manufacture of taxable goods as listed in the LoA, in as much as the goods have been destroyed. In such circumstances, the exemption availed by the Noticee is required to be paid back in terms of the Rule 25 of SEZ Rules. In other words, the exemption in respect of the goods under consideration has to be relinquished which in turn implies that the duty, which was foregone at the material time, has to be demanded in terms of the provisions of Section 28(1) of the Customs Act, 1962. Thus, I find that the Customs Duty amounting to Rs. 1,47,17,157/- is to be demanded and recovered from the Noticee in terms of the provisions of Section 28(1) of the Customs Act, 1962 read with the relevant provisions of SEZ Act and the rules made thereunder alongwith interest in terms of the provisions of Section 28AA of the Customs Act, 1962.

**Whether remission of duty under Section 23 of the Customs Act, 1962 is applicable to the goods destroyed or burnt in SEZ on account of fire-**

**28.** In this regard, before proceeding further, it is necessary to reproduce Section 13 and Section 23 of the Customs Act, 1962.

*"13. Duty on pilfered goods.—If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.*

*23.* ***Remission of duty on lost, destroyed or abandoned goods.****—(1) 1 [Without prejudice to the provisions of section 13, where it is shown] to the satisfaction of the 2 [Assistant Commissioner of Customs or Deputy Commissioner of Customs] that any imported goods have been lost 3 [(otherwise than as a result of pilferage)] or destroyed, at any time before clearance for home consumption, the 2 [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall remit the duty on such goods. 4 [(2) The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon;] 5 [Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.]"*

Clearly the provisions of Section 23 talks about remission of duty on lost, destroyed or abandoned goods before such goods are cleared for home consumption.

**29.** As far as goods imported and destroyed in SEZ are concerned, they are to be dealt under SEZ Act, 2005 and rules made there under. SEZ Act, 2005 and SEZ

Rules, 2006 have clearly provided for importation of various sections of the Customs Act, 1962 in order to make them applicable to units operating in SEZ.

Certain provisions of the SEZ Act, 2005 and SEZ Rules, 2006 are reproduced here for better appreciation of the facts-

(i) **Section 30. Domestic clearance by Units.—**

Subject to the conditions specified in the rules made by the Central Government in this behalf:—

(a)any goods removed from a Special Economic Zone to the Domestic Tariff Area **shall be chargeable to duties of customs** including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 (51 of 1975), where applicable, as leviable on such goods when imported; and

(b)the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.

**(ii) Rule 47 of SEZ rules, 2006-**

(4) **Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act** and rules made there under.

(5) **Refund, Demand, Adjudication, Review and Appeal** with regard to matters relating to authorised operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, the Central Excise Act, 1944, and the Finance Act, 1994 and the rules made there under or the notifications issued there under.

Clearly the above mentioned provisions of SEZ Act, 2005 and SEZ Rules, 2006 provide for assessment, valuation, levy of Custom duty, demand, refund and appeal in respect of authorized operations.

**30.** Further, the Ministry of Commerce and Industry vide Notification S.O 2665(E) issued in exercise of power under Section 21(1) of the SEZ act, 2005, has notified, interalia, the offences contained in Sections 28, 28AA, 111, 124 of the Customs Act, 1962 as the offences in the SEZ Act, 2005. However, there is no such provision for remission of duty on lost goods in the SEZ Act, 2005 as provided in Section 23 of the Customs Act, 1962. SEZ Act is a separate legislation and does not specifically import section 23 of the Customs Act, 1962 as there are other parallel provisions within the SEZ Act which allow assessment, valuation, refund etc. under Customs Act, 1962.

**31.** In view of the above discussion and giving utmost respect to the directions and findings of the Hon'ble CESTAT, I hold that the remission of duties of customs is not allowed under the provisions of SEZ Act, 2005 and rules made thereunder.

**BOND CUM LEGAL UNDERTAKING:**

**32.** The Noticee, in terms of Rule 22 of the SEZ Rules, 2006 had executed Bond-cum-Legal Undertaking in Form H, whereby they had undertaken for proper utilization and accountal of goods procured Duty-free and to pay duty, interest, penalty etc. in case of violation of any of the conditions mentioned therein. I find that by not ensuring proper safeguard of the goods imported/procured Duty free the Noticee has breached the said Bond-cum-Legal Undertaking and made themselves liable for payment of applicable duties on goods, which were burnt/destroyed in the fire incident and hence, the same were not utilized for Authorized Operations and were not accounted for in terms of SEZ Rules, 2006. Therefore, I find that the Noticee is liable to pay an amount equal to Duty foregone on the aforesaid goods burnt/destroyed in the fire incident alongwith interest in terms of the provisions of

Section 28AA of the Customs Act, 1962 from the date of duty free import/procurement of the said goods till the date of payment of such duty. In view of the above, I find that dues such as duty, interest and penalty etc. is recoverable by enforcing the Bond executed by them.

**CONFISCATION OF THE GOODS AND REDEMPTION FINE:**

**33.** The SCN has proposed confiscation of the imported /indigenous Capital Goods/Work-In-Progress/Raw Materials procured Duty-free, under Section 111(o) of the Customs Act, 1962.

I find that the imported goods were exempted by virtue of Section 26 of the SEZ Act, 2005 and were subjected to fulfilment of use for the specific purpose as stipulated in SEZ Act and Rules made thereunder. However, as discussed in the paras above, the Noticee has failed to use the goods for the specified purposes for which they were exempted. The relevant text of the Section 111(o) of the Customs Act, 1962 and Section 26 of the SEZ Act are reproduced under:

**Section 111(o) of the Customs Act, 1962**

*The following goods brought from a place outside India* ***shall be liable to confiscation:***

*(a) ----*

*(b) ____*

***(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;***

***Section 26 in The Special Economic Zones Act, 2005***

*26. Exemptions, drawbacks and concessions to every Developer and entrepreneur.—*

*(1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:—*

*(a) exemption from any duty of customs, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods imported into, or service provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur;*

Since, the Noticee has violated and not fulfilled the conditions of Section 26 of the SEZ Act, 2005, I find the said goods are liable to confiscation in terms of the provisions of Section 111(o) of the Customs Act, 1962.

However, the goods are not physically available for confiscation and in such cases Redemption Fine is imposable in light of the judgment in the case of **M/s Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

> *"The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-sec(ion (2) of Section 125, fetches relief for the goods from getting confiscated, By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated.* ***Hence, the availability of the goods is not necessary for imposing the redemption fine****. The opening words of Secfion 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Secfion 111 of the Act.* ***When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of***

***the opinion that the physical availability of goods is not so much relevant.*** *The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated.* ***Hence. their phvsical availabilitv does not have anv siqnificance for imposition of redemption fine under Section 125 of the Act.*** *We accordingly answer question No. (iii).*

Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.),** has held interalia as under:-

" .....

.....

***174.*** ..... *In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;*

*"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."*

***175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above."***

Therefore, I hold that Redemption Fine is imposable in the instant case under Section 125(1) of the Customs Act, 1962.

**PENALTY-**

**34.** I find that the duty free imported goods have not been used in Authorized Operations by the SEZ units. Due to contravention of the aforesaid provisions of law, the goods are to be treated as improperly imported/procured by the Noticee and such an act on their part constitutes offence as described under Section 112 of the Customs Act, 1962. Therefore, the Noticee has rendered themselves liable for penalty under Section 112 of the Customs Act, 1962. I hold that penalty is imposable on the Noticee under Section 112 of the Customs Act, 1962.

**35.** Accordingly, I pass the following order:

**ORDER**

(i) I confirm demand of Customs Duty of **Rs. 1,47,17,157/- (Rupees One Crore Forty Seven Lakhs Seventeen Thousand One Hundred and Fifty Seven only)** (including Cesses) [As detailed in Annexure-G & H to the SCN] equal to duty leviable/foregone on the goods burnt/ lost/ destroyed in the fire incident under Section 26 of the SEZ Act, 2005 and Section 28(1) of the Customs Act,1962 read with Rule 22, 25, 27, 34 and 47 of the SEZ Rules, 2006 and order to recover the

same from them under Section 26 of the SEZ Act, 2005 and Section 28(1) of the Customs Act,1962 read with Rule 22, 25, 34 and 47 of the SEZ Rules, 2006;

(ii) I order the Noticee to pay Interest at the appropriate rate, on the total duty confirmed at Sr. No.(i) above, under Section 28AA of the Customs Act, 1962 and order to recover the same from the Noticee under Section 28AA of the Customs Act, 1962;

(iii) I order confiscation of the Imported/Indigenous Capital Goods /Work–in-Progress/Raw Materials valued at Rs.7,33,61,701/-( Rupees Seven crore, thirty three lakhs, sixty one thousand, seven hundred and one only) under Section 111(o) of the Customs Act, 1962. However, since these goods are not available for confiscation, I impose a Redemption Fine of Rs. 25,00,000/- (Rupees Twenty five lakhs only) in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

(iii) I impose penalty of Rs.**10,00,000/-** (Rupees Ten Lakhs Only) upon M/s PI Industries Ltd., Plot No. 28, Sterling SEZ & Infrastructure Ltd., At. & P.O. Sarod, Taluka-Jambusar, District-Bharuch, Gujarat under Section 112 (a) of the Customs Act, 1962;

(iv) I order to enforce Bond-Cum Legal Undertaking in Form-H furnished by the Noticee to recover duty, interest & penalty from the Noticee.

**36.** This order is issued without prejudice to any other action that may be taken against the importers/SEZ unit or any other person under the Customs Act, 1962 or any other law for the time being in force.

6.11.2024

(Shiv Kumar Sharma)
Principal Commissioner
Ahmedabad Customs

**BY Speed Post AD/Hand Delivery**

F. No. GEN/ADJ/COMM/528/2024-Tech Date: 6.11.2024

**DIN-20241171MN000000E010**

**To,**

M/s PI Industries Ltd.,
Plot No. 28, Sterling SEZ & Infrastructure Ltd.,
At. & P.O. Sarod, Taluka-Jambusar,
District-Bharuch, Gujarat

**Copy to : -**

1. The Chief Commissioner, Customs, Gujarat Zone, Ahmedabad.
2. The Development Commissioner, Sterling SEZ, Sandesara Estate, Atladra, Padra Road, Vadodara-390012.
3. The Specified Officer, Sterling SEZ, Sandesara Estate, Atladra, Padra Road, Vadodara-390012, with a direction to recover duty, interest and penalty by enforcing Bond cum legal undertaking given by the Noticee.
4. The Superintendent (Systems), Customs, Ahmedabad to upload the same on website.
5. Guard File