



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद  
सीमा शुल्क भवन, आल इंडीया रेडियो के पास, नवरंगपुरा, अहमदाबाद 380009  
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**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD**  
**CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009**  
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निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./ F. No.: VIII/10-41/Pr. Commr./O&A/2023-24

**DIN- 20250171MN000081866E**

आदेश की तारीख/Date of Order : 20.01.2025  
जारी करने की तारीख/Date of Issue : 20.01.2025

द्वारा पारित :-  
Passed by :-

शिव कुमार शर्मा, प्रधान आयुक्त  
Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

**Order-In-Original No: AHM-CUSTM-000-PR.COMMR-62-2024-25 dtd.20.01.2025** in the case of M/s. Hitech Projects Private Limited, A-1401, Block-A, West Gate Business Bay, Besides Signature-1, S G Highway, Makarba, Ahmedabad, Gujarat-380051.

- जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
- This copy is granted free of charge for private use of the person(s) to whom it is sent.
- इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंजिल, बहुमाली भवन, गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
- 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.
- उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ।

(उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।

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. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)
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. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को 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 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट 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 आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमें विवाद है उसका भुक्तान करके अपील की 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. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय 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/10-41/Pr. Commr./O&A/2023-24 dated 29.07.2024 issued by the Principal Commissioner of Customs, Ahmedabad to M/s. Hitech Projects Private Limited, A-1401, Block-A, West Gate Business Bay, Besides Signature-1, S G Highway, Makarba, Ahmedabad, Gujarat-380051.

## BRIEF FACTS OF THE CASE:-

M/s. Hitech Projects Private Limited, (hereinafter referred to as "the said Noticee"), is a Private Limited Company having GSTIN:- 24AADCH8918G1ZJ and registered address at A-1401, Block-A, West Gate Business Bay, Besides Signature-1, S G Highway, Makarba, Ahmedabad 380051. M/s. Hitech Projects Private Limited, is a supplier of goods viz. TMT Bars and Steel structures falling under CETH 72 to the entities registered in GIFT-SEZ, Gandhinagar for their authorized operation.

**2.** A Special Economic Zone (hereinafter referred to as "SEZ") is deemed as a Foreign Territory for matters that relate to the Trade Tariffs, Duties, and Operations. Government Vide Notification 28/2022 - Customs, Dated: 21st May'2022, notified Export Duty on 11 Iron and Steel Intermediates to Increase local availability of these Goods and to contain raising domestic prices which may affect adversely the downstream industries, real estate industry and other direct consumers.

**2.1** A third Proviso to Rule 27 of SEZ Rules, 2006 was inserted vide Notification 19th Sep'2018, wherein it read as follows:

*"Provided also that supplies from Domestic Tariff Area to Special Economic Zones shall attract Export Duty, in case, export duty is leviable on items attracting export duty."*

Thus, Export Duty on Certain Steel Items was made applicable in case of Supplies from DTA to SEZ.

**2.2** Central Government vide Notifications No. 28/2022-Cus dated 21.05.2022 & 29/2022- Cus dated 21.05.2022 imposed export duty on goods falling under HSN 7208, 7209, 7210, 7213, **7214**, 7219, 7222 and 7227@ 15% with effect from 22.05.2022. Notification Nos. 28/2022-Cus dated 21.05.2022 & 29/2022-Cus dated 21.05.2022 are produced herein below for reference:

**Notification No 28/2022-Cus dated 21.05.2022:** Iron ore and Concentrates, (Non-agglomerated/Agglomerated), Flat-rolled products of iron or non-alloy steel and Flat-rolled products of stainless steel-Export duty revised:

*Whereas, the Central Government is satisfied that export duty should be levied or increased on certain articles and that circumstances exist which render it necessary to take immediate action.*

*Now, therefore, in exercise of the powers conferred by sub-section (1) of section 8 of the Customs Tariff Act, the Central Government, hereby directs that the Second Schedule to the Customs Tariff Act shall be amended in the following manner, namely:-*

*In the Second Schedule to the Customs Tariff Act, -*

- (1) against Sl. No. 21, for the entry in column (4), the entry "50%" shall be substituted;
- (2) against Sl. No. 22, for the entry in column (4), the entry "50%" shall be substituted;
- (3) against Sl. No. 43, for the entry in column (3), the entry "Flat rolled products of iron or non-alloy steel, clad, plated or coated" shall be substituted;
- (4) after Sl. No. 48 and the entries relating thereto, the following Sl. Nos. and entries relating thereto shall be inserted, namely:-

(1)	(2)	(3)	(4)
"48A.	7219	Flat-rolled products of stainless steel, of a width of 600 mm or more	15%
48B.	7222	Other bars and rods of stainless steel; angles,	15%

		<i>shapes and sections of stainless steel</i>	
48C.	7227	<i>Bars and rods, hot-rolled, in irregularly wound coils, of other alloy steel</i>	15%":

2. *This notification shall come into force on the 22<sup>nd</sup> day of May, 2022."*

**Notification No. 29/2022-Customs dated 21.05.2022:** Export duty - Exemption to Iron ore and Other specified goods of Chapter 26 withdrawn - Customs duty on export of Iron ore pellets, Pig iron and spiegeleisen in pigs, Flat rolled products of iron or non-alloy steel, cold rolled (cold-reduced), clad not clad, plated or coated revised w.e.f. 22-5-2022 - Amendment to Notification No. 27 /2011-Cus.:

*In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 27/2011-Customs dated the 1st March, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 153(E), dated the 1st March, 2011, namely:-*

*In the said notification, in the Table,*

- (i) *S. No. 20A and the entries relating thereto shall be omitted;*
- (ii) *against S. No. 23, in column (4), for the entry, the entry "45%" shall be substituted;*
- (iii) *against S. No. 48, in column (4), for the entry, the entry "15%" shall be substituted;*
- (iv) *against S. No. 54, in column (4), for the entry, the entry "15%" shall be substituted;*
- (v) *against S. No. 55, in column (4), for the entry, the entry "15%" shall be substituted;*
- (vi) *for S. No. 56 and the entries relating thereto, the following S. Nos. and entries shall be substituted, namely: -*

(1)	(2)	(3)	(4)
"56.	7210	<i>Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated</i>	15%
56A	7212	<i>Flat rolled products of iron or non-alloy steel, clad, plated or coated</i>	Nil

- (vii) *against S. No. 57, in column (4), for the entry, the entry "15%" shall be substituted;*
- (viii) *against S. No. 58, in column (4), for the entry, the entry "15%" shall be substituted;*

2. *This notification shall come into effect on the 22<sup>nd</sup> day of May, 2022."*

**2.3** It is thus evident from Notifications No. 28/2022-Cus dated 21.05.2022 & 29/2022-Cus dated 21.05.2022 that: "Export duty is leviable on goods falling under HSN 7208, 7209, 7210, 7213, **7214**, 7219, 7222 and 7227 @ 15%".

**3.** Central Government vide Notification No. 58/2022-Customs dated 18.11.2022 (w.e.f. 19.11.2022) has amended the Notification No. 27/2011-Customs dated: 01.03.2011 and substituted the "15%" rate of duty with "NIL". Said Notification is produced herein below for reference:

**Notification No. 58/2022-Customs dated 18.11.2022 (w.e.f. 19.11.2022):**

*In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 27/2011-Customs dated the 1st March, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 153(E), dated the 1st March, 2011, namely:-*

In the said notification, in the Table,

i. after S. No. 20 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)
"20A.	2601 11 21, 2601 11 22, 2601 11 41, 2601 11 42	All Goods	Nil
20C	2601 11	All Goods, other than goods mentioned in S. No. 20A	30%
20D	2601 12	All Goods, other than iron ore pellets	30%"

ii. against S. No. 23, in column (4), for the entry "45%", the entry "Nil" shall be substituted;  
 iii. against S. No. 48, in column (4), for the entry "15%", the entry "Nil" shall be substituted;  
 iv. against S. No. 54, in column (4), for the entry "15%", the entry "Nil" shall be substituted;  
 v. against S. No. 55, in column (4), for the entry "15%", the entry "Nil" shall be substituted;  
 vi. against S. No. 56, in column (4), for the entry "15%", the entry "Nil" shall be substituted;  
 vii. against S. No. 57, in column (4), for the entry "15%", the entry "Nil" shall be substituted;  
 viii. against S. No. 58, in column (4), for the entry "15%", the entry "Nil" shall be substituted;  
 ix. after S. No. 61 and the entries relating thereto, the following S. Nos. and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)
"61A.	7219	Flat-rolled products of stainless steel, of a width of 600 mm or more	Nil
61B.	7222	Other bars and rods of stainless steel; angles, shapes and sections of stainless steel	Nil
61C.	7227	Bars and rods, hot-rolled, in irregularly	Nil"

2. This notification shall come into force on the 19<sup>th</sup> day of November, 2022."

4. It is evident from the above that the Government has with effect from 19 November 2022 rolled back export duty on iron ore pellets and steel products, including pig iron, flat-rolled products of carbon steel and stainless steel, bars, rods and non-alloy steel, vide Notification No. 58/2022-Customs, dated 18 November 2022. Export duty on iron ores with a grade higher than 58% has been reduced from 50% to 30%, while the lower grade iron ores no longer attract export duty restoring back the exemption granted up to 21 May 2022. **In other words, the supply of flat-rolled products of carbon steel and stainless steel, bars, rods and non-alloy steel to SEZ attracted levy of export duty during the period from 22.05.2022 to 18.11.2022.**

**4.1** M/s. Waystar Properties LLP, registered in GIFT-SEZ, Gandhinagar have procured goods which are falling under HSN 7208, 7209, 7210, **7214** & 7219 without payment of export duty during the period between 22.05.2022 and 18.11.2022 from the Noticee. Details of such supplies are tabulated herein below as "Table-A":

**“Table-A”**

Sr. No.	Invoice No	Invoice Date	Details of Item	HSN	Qty	Rate	Per	Value	Details of Supplier	GST Reg No of Supplier	Developer/ Unit
1	29	04-08-2022	HMRF reinforcement Steel TMT Bar FE 500 8 MM	7214	1.02	58136	MT	59238.72			
2	29	04-08-2022	HMRF reinforcement Steel TMT Bar FE 500 10 MM	7214	1	56949	MT	56948			
3	29	04-08-2022	HMRF reinforcement Steel TMT Bar FE 500 12 MM	7214	0.59	56102	MT	33100.18			
4	29	04-08-2022	HMRF reinforcement Steel TMT Bar FE 500 16 MM	7214	2.04	56102	MT	114448.08			
5	105	24-09-2022	TMT Bar 16 mm	7214	9.76	56200	MT	548512			
6	105	24-09-2022	TMT Bar 25 mm	7214	34.61	56200	MT	1945082			
7	111	27-09-2022	HMRF0085-Reinforcement Steel TMT Bar Fe500D 25 MM	7214	29.9	55677.97	MT	1664771	Hitech Project Pvt Ltd	24AADCH8918G1ZJ	Waystar Properties LLP
8	110	27-09-2022	HMRF0085-Reinforcement Steel TMT Bar Fe500D 32 MM	7214	32.77	56441	MT	1849572			
9	113	28-09-2022	HMRF0085-Reinforcement Steel TMT Bar Fe500D 25 MM	7214	31.71	56440.68	MT	1789734			
10	112	28-09-2022	HMRF-0031 Reinforcement Steel TMT Bar Fe500D 25 MM	7214	32.9	55678	MT	1831806			
11	114	29-09-2022	Reinforcement Steel TMT Bar Fe500D 8 MM	7214	10.14	57712	MT	585200			
12	114	29-09-2022	Reinforcement Steel TMT Bar Fe500D 25 MM	7214	25	55789.36	MT	1394734			
13	115	30-09-2022	HMRF0085-Reinforcement Steel TMT Bar Fe500D 25 MM	7214	4.94	55678	MT	275049.32			
14	115	30-09-2022	HMRF0085-Reinforcement Steel TMT Bar Fe500D 32 MM	7214	30	56441	MT	4693230			
15	116	30-09-2022	HMRF0085-Reinforcement Steel TMT Bar Fe500D 25 MM	7214	31.87	57500	MT	1832525			

16	118	01-10-2022	HMRF0085-Reinforcement Steel TMT Bar Fe500D 32 MM	7214	45.04	56441	MT	2542102.64		
17	117	01-10-2022	HMRF0085-Reinforcement Steel TMT Bar Fe500D 32 MM	7214	42.29	56441	MT	2386889.89		
18	130	03-10-2022	HMRF-0030 Reinforcement Steel TMT Bar Fe500D 20 MM	7214	14.92	55339	MT	825657.88		
19	130	03-10-2022	HMRF-0030 Reinforcement Steel TMT Bar Fe500D 25 MM	7214	22.08	55678	MT	1229370.24		
20	129	03-10-2022	HMRF-0030 Reinforcement Steel TMT Bar Fe500D 32 MM	7214	35.51	57100	MT	2027621		
21	132	04-10-2022	Reinforcement Steel TMT Bar Fe500D 25 MM	7214	29.77	55677.97	MT	1657533.167		
22	135	05-10-2022	HMRF-0031 Reinforcement Steel TMT Bar Fe500D 25 MM	7214	29.63	55677.97	MT	1649738.251		
23	136	05-10-2022	HMRF-0031 Reinforcement Steel TMT Bar Fe500D 25 MM	7214	7.79	55677.97	MT	433731.3863		
24	136	05-10-2022	HMRF0085-Reinforcement Steel TMT Bar Fe500D 32 MM	7214	29.79	56440.68	MT	1681367.857		
25	137	05-10-2022	HMRF0083-Reinforcement Steel TMT Bar Fe500D 10 MM	7214	9.82	56525	MT	555075.5		
26	137	05-10-2022	HMRF0085-Reinforcement Steel TMT Bar Fe500D 32 MM	7214	29.75	56441	MT	1679119.75		
27	163	09-10-2022	HMRF0085-Reinforcement Steel TMT Bar Fe500D 32 MM	7214	31.98	57600	MT	1842048		
28	164	09-10-2022	HMRF0085-Reinforcement Steel TMT Bar Fe500D 32 MM	7214	32.71	57600	MT	1884096		
29	179	12-10-2022	Reinforcement Steel TMT Bar Fe500D 12 MM	7214	22.13	57881	MT	1280906.53		
30	191	14-10-2022	Reinforcement Steel TMT	7214	13.07	57881	MT	756504.67		

			Bar Fe500D 12 MM					
31	235	22-10-2022	HMRF0082-Reinforcement Steel TMT Bar Fe500D 8 MM	7214	20.11	57034	MT	1146953.74
32	235	22-10-2022	HMRF0083-Reinforcement Steel TMT Bar Fe500D 10 MM	7214	15	55847	MT	837705
33	236	22-10-2022	HMRF0082-Reinforcement Steel TMT Bar Fe500D 8 MM	7214	10.06	57034	MT	573762.04
34	236	22-10-2022	HMRF0085-Reinforcement Steel TMT Bar Fe500D 32 MM	7214	20.05	55847	MT	1119732.35
35	238	28-10-2022	HMRF0028-Reinforcement Steel TMT Bar Fe500D 12 MM	7214	30.86	55000	MT	1697300
36	271	17-11-2022	HMRF0028-Reinforcement Steel TMT Bar Fe500D 12 MM	7214	10	53898.31	MT	538983.1
37	271	17-11-2022	HMRF0084-Reinforcement Steel TMT Bar Fe500D 16 MM	7214	7.97	53898.31	MT	429569.5307
38	271	17-11-2022	HMRF-030-Reinforcement Steel TMT Bar Fe500D 20 MM	7214	17.07	53559.32	MT	914257.5924
<b>Total Value</b>						<b>48363976</b>		

**5.** Since *M/s. Hitech Projects Private Limited*, have not discharged the duty liability the same is calculated as under:

#### **Duty liability Calculation (TABLE-B)**

Details of Value of Goods & Duty Liability (Amt. in Rs.)	
HSN of Supplied Goods	7214
Total Value of Supplied Goods	Rs.4,83,63,976/-
Export Duty @15%	Rs.72,54,596/-

**6.** Thus, it appeared that *M/s. Hitech Projects Private Limited*, had supplied goods without payment of export duty amounting to Rs. 72,54,569/- and have thereby contravened the provisions under the Customs Notifications 28/2022-Cus dated 21.05.2022 & 29/2022-Cus dated 21.05.2022, suo-motu, which was required to be recovered from them under Section 28(1)(a) of the Customs Act, 1962, along with interest under Section 28AA of the Customs Act, 1962.

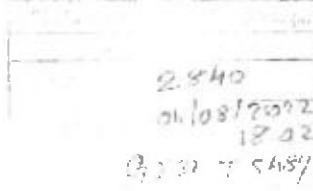
**7.** Further as there is a non-levy and thereafter non-payment of export duty, *M/s. Hitech Projects Private Limited*, is also liable for penalty under Section 114 of the Customs Act, 1962.

**8.** Pre-notice consultation in terms of the provisions of Section 28(1)(a) read with Pre-Notice Consultation Regulations, 2018 was held on 23.7.2024 wherein the Noticee submitted that in their case, it is supply of composite services of works contract for the civil structure. On scrutiny of the documents forwarded by Development Commissioner, GIFT-SEZ, Gandhinagar vide letter dated SO/2O/GIST-SEZ/Iron & Steel Export Duty/2023, it appeared that said Noticee had supplied impugned goods under the document named as 'Delivery Challan' (RUD-1) to M/s. Waystar Properties LLP, a SEZ Developer. The 'Delivery Challan' contains details viz. Description, HSN/SAC, Qty, Unit/Rate and Total Amount. The Noticee had specifically mentioned HSN of goods and No SAC for 'composite works contract' as claimed by the noticee is mentioned. Therefore, the submission made during the pre-notice consultation held on 23.07.2024 that they have provided 'composite works contract' service could not be taken into consideration.

**9.** Contents of Delivery Challan No. 29 dated 04.08.2022 issued to M/s. Waystar Properties LLP is reproduced as under:

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Scanned image of Delivery Challan No. 29 dated 04.08.2022

HITECH PROJECTS PVT LTD						
14 <sup>th</sup> Floor, A - Block, WEST SIDE BUSINESS BLDG, Opp. 24 <sup>th</sup> Party, Andheri (E), Mumbai, 400059, India Regd. Address: INDIA MOB. NO. +91 9361591200 / 9964288360 GSTIN: 2AAHBBR012A, Gujurat G.S.R. & Stat.						
DELIVERY CHALLAN						
ADDRESSEES PROPERTIES LTD Address - Plot no. 101, Block-15, Near Punganur SEZ, Gudiyalur Tamil Nadu				D.CHO 29 Date - 04.08.2022 Vehicle No. GU-ETT-5485 Nature of work - CIVIL		
SR. No.	Description	HSN/SAC	Qty	Unit	Rate	Total Amount
1	HSS88 0001 - Reinforced Steel Bar (2.50) mm	721420	1.00	M.T	50111	50294.72
2	HSS88 0002 - Reinforced Steel Bar (3.20) mm	721420	1.00	M.T	50111	50294.72
3	HSS88 0003 - Reinforced Steel Bar (4.20) mm	721420	0.50	M.T	50111	25147.35
4	HSS88 0004 - Reinforced Steel Bar (6.20) mm	721420	2.00	M.T	50111	100588.72
				TOTAL AMOUNT 211291.55		
HITECH PROJECTS PVT LTD Authorised Signatory						
						

**10.** On perusal of the aforesaid Delivery challan, it appeared that noticee had supplied the goods covered under HSN 721420 which attract the Export duty as per Notification No. 58/2022-Customs dated 18.11.2022 (w.e.f. 19.11.2022) has amended the Notification No. 27/2011-Customs dated: 01.03.2011. Details of such supplies are tabulated in **Table-A** hereinabove.

**11.** The Noticee had supplied (exported) the impugned goods to SEZ totally valued at Rs.4,83,63,976/- without making payment of Export duty under

Notifications No. 28/2022-Cus dated 21.05.2022 & 29/2022- Cus dated 21.05.2022 and which was required to be recovered under Section 28 (1)(a) of the Customs Act, 1962. The Noticee had not paid the export duty of **Rs.72,54,596/- [Rupees Seventy Two Lakh, Fifty Four Thousand, Five Hundred & Ninety Six only]**, which was otherwise leviable on supply to SEZ and therefore export duty of **Rs.72,54,596/-** appeared to be recoverable from M/s. Hitech Projects Private Limited under Section 28(1)(a) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

**12.** It appeared that supplier M/s. Hitech Projects Private Limited had subscribed to a declaration as to the truthfulness of the contents of the Bill of Export/Invoice meant for supply to SEZ in terms of Section 50(2) of the Customs Act, 1962 in all their SEZ supply consignments. Further, consequent upon the amendment to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' has been introduced in Customs. Section 17 of the Customs Act, 1962 effective from 08.04.2011, provides for self-assessment of Duty on export goods by the exporter by filing a Shipping Bill /Bill of Export. Section 50 of the Customs Act, 1962 makes it mandatory for the Exporter to make entry for the export goods by presenting a S/B/ Bill of Exports to the proper officer. Noticee by not paying the Export duty leviable vide Notification No. 28/2022-Cus dated 21.05.2022 & 29/2022-Cus dated 21.05.2022 have contravened the provision of Section 50 (2) of the Customs Act, 1962 and thereby the supply of impugned goods to SEZ having value of Rs. Rs.4,83,63,976/- is liable for confiscation under Section 113(i) of the Customs Act, 1962. Further, it appeared that for the said act and omission on the part of Noticee, the noticee rendered themselves liable for penalty under Section 114 of the Customs Act, 1962.

**13.** In view of the above, Show Cause Notice No. VIII/10-41/Pr. Commr./O&A/2023-24 dated 29.07.2024 was issued to M/s. Hitech Projects Private Limited having registered address: A-1401, Block-A, West Gate Business Bay, Besides Signature-1, S G Highway, Makarba, Ahmedabad 380051 calling upon to show cause in writing to the Principal Commissioner of Customs, Ahmedabad within 30 days of the receipt of Notice as to why:

- a) Export Duty of **Rs.72,54,596/- [Rupees Seventy Two lakh, Fifty Four Thousand, Five Hundred & Ninety Six only]**, as detailed in Table B of this notice, for the duty free procurement of TMT during the period between 22.05.2022 and 18.11.2022 should not be demanded and recovered from them under Section 28(l)(a) of the Customs Act, 1962.
- b) Interest at applicable rates should not be demanded and recovered from them under Section 28AA of the Customs Act, 1962 on the duty liability mentioned at Sr. No. (a) above.
- c) Impugned goods having assessable value of Rs.4,83,63,976/- (Rs. Four Crore, Eighty Three Lakh, Sixty Three Thousand, Nine Hundred and Seventy Six only) should not be held liable for confiscation under Section 113 (i) of the Customs

Act, 1962.

- d) Penalty under Section 114 should not be imposed and recovered from them.

## DEFENSE SUBMISSIONS

**14.** The Noticee vide letter dated 05.07.2024 submitted their reply to the Show Cause Notice wherein they interalia stated as under:

- The Noticee is a private limited company and is inter-alia engaged in the business of providing construction services, works contract services, etc. The Noticee is registered with the Gujarat GST department vide GSTN 24AADCH8918G1ZJ and is supplying services to various persons located in GIFT-SEZ area, Domestic Tariff Area of India;
- The Noticee entered into the works contract agreement with M/s. Waystar Properties LLP, who was granted the status of a “Co-Developer” in terms of the Department of Commerce’s letter of Approval No. F1/145/2007-SEZ, dated 08.02.2022 for construction, development, maintenance and operation of commercial building within the processing area of GIFT-multi-services-SEZ at Gandhinagar, Gujarat developed by GIFT SEZ Limited. They have submitted copy of works contract agreement dated 22.09.2022 executed between the Noticee and M/s. Waystar Properties LLP;
- As a part of the works contract agreement, the Noticee sent various goods and services to SEZ area for construction of commercial building ‘Flexone’ in the processing area of the GIFT city demarcated for development by Waystar. During the period from 22.05.2022 to 18.11.2022 (hereinafter referred to as “**disputed period**”), the Noticee supplied various TMT bars classifiable under the HSN code 7214 to M/s. Waystar via Delivery Challan. They have also submitted copy of invoice for works contract service to Waystar;
- Section 12 of the Customs Act provides that duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods exported from India. The term “export” has been defined under Section 2(18) of the Customs Act viz. reads as under:

“(18) “export”, with its grammatical variations and cognate expressions, means **taking out of India to a place outside India;**”

- On conjoint reading of section 12 and section 2(18) of the Customs Act, export duty is leviable on the goods which are taken to a place outside India. Section 2(27) of the Customs Act defined the word "**India**" which includes territorial waters of India. Accordingly, definition of India is an inclusive definition which even includes territorial waters of India. For the transaction in dispute, the goods are transferred to SEZ viz. located in Gandhinagar, Gujarat. Gujarat is an undisputed part of India and is not outside India as per the Customs Act. Therefore, the said goods are within the territory of India as per the definition provided under Section 2(27) of the Custom Act;
- Since the goods never left India, it does not qualify as "export" as per the definition provided under Section 2(18) of the Custom Act and therefore, no export duty can be levied under Section 12 of the Custom Act. Further, the provision for levy of export duty is under the Customs Act and levy has been imposed on goods exported from India. Both the SEZ unit and the location of the Noticee are located within the territorial waters of India. Thus, Section 12 of the Customs Act 1962 (which is the charging section for levy of customs duty) is not attracted for supplies made by Noticee to Waystar viz. located within the Special Economic Zone, Gandhinagar;
- The erstwhile Section 76A of the Customs Act provides that the Central Government may, by notification in the Official Gazette, specify special economic zones comprising specifically delineated areas where any goods admitted shall be regarded, in so far as duties of customs are concerned, **as being outside the customs territory of India** as provided in this Chapter. The said section 76A of the Customs Act was repealed w.e.f. 11.05.2007 vide Finance Act, 2007. Therefore, in absence of any charging section under the Customs Act, alleging duty on the goods supplied from a DTA unit to a SEZ unit is beyond the provision of law and the captioned SCN is liable to be quashed on this ground alone;
- Article 265 of the Constitution of India prohibits levy or collection of tax except by authority of law. Section 12 of the Customs Act is a charging section of the Customs Act and the export duty is demanded under Section 28 of the Customs Act. In the case of ***Commissioner of Wealth Tax, Gujarat-III, Ahmedabad v. Ellis Bridge Gymkhana [1998 (1) SCC 384]***, the Hon'ble Supreme Court had held that the rule of construction of a charging section is that before taxing any person, it

must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all. Thus, in absence of any charging section under the Customs Act to levy export duty on the goods supplied from DTA unit to SEZ area, export duty cannot be levied on the goods supplied to SEZ area by a DTA unit i.e. the Noticee;

- In ***Govind Saran Ganga Saran v/s. Commissioner of Sales Tax & Ors. [1985 (4) TMI 65 - SC]***, Hon'ble Supreme Court held that the components which enter into the concept of a tax are well known. The first is the **character of the imposition known by its nature which prescribes the taxable event attracting the levy**, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity. Accordingly, Section 12 of the Customs Act does not specify levy of export duty on the goods supplied from DTA unit to SEZ unit as an “export” transaction and therefore, allegation levelled in the captioned SCN fails;
- Further, there is no charging section under the Special Economic Zones Act, 2005 (“**SEZ Act**”) which levies export duty on the supply of goods from a DTA unit to a SEZ unit. The captioned SCN mentioned that fifth proviso of Rule 27 of the SEZ Rules provides that supplies from DTA to SEZ shall attract export duty (as and when applicable). It is a settled principle of law that tax cannot be imposed by delegated legislation. In absence of any provision in the SEZ Act to levy export duty on such supplies by DTA units to SEZ units, the rule seeking to impose export duty will be ultra vires and unconstitutional;
- Section 26 of the SEZ Act provides for exemptions, drawbacks and concessions to every Developer and entrepreneur under the SEZ regime. Section 26(2) of the SEZ Act provides that the Central Government may prescribe the manner in which, and the terms and conditions subject to

which, the exemptions, concessions, drawback or other benefits shall be granted to the Developer or entrepreneur. ;

- The Central Government has prescribed Rule 27 of the SEZ Rules which prescribes terms and conditions for the claiming exemption, concession, drawbacks and other benefits under the SEZ Act. However, the fifth proviso to the said Rule provides as follow:

*“Provided also that supplies from Domestic Tariff Area to Special Economic Zones shall attract export duty, in case, export duty is leviable on items attracting export duty”*

- Accordingly, the said proviso instead of providing the manner of claiming the exemption, concession, drawbacks and other benefits under the SEZ Act, provides for the levy of duty on the goods from DTA unit to SEZ unit. It is submitted that delegated legislation cannot go beyond the power provided under the statute. It is a settled principle of law that levy and collection of tax must be in conformity with the authority conferred by the law as held by the Hon’ble Supreme Court in the case of ***District Mining Officer & Ors. Versus Tata Iron & Steel Co. & Anr. [2001 (7) TMI 1277 - Supreme Court]***;
- It is settled law that rule issued by the sub-legislature should be read as to harmonise with the main section and should not be so construed as to widen the ambit of the Section. Fifth proviso to Rule 27 of SEZ Rules cannot create a levy under the SEZ regime contrary to the power given by the statute for providing the manner for claiming the exemption, concession, drawbacks and other benefits under the SEZ Act. In ***Babaji Kondaji Garad v. Nasik Merchants Co-operative Bank Ltd., (1984) 2 SCC 50***, the Hon’ble Supreme Court observed that if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the bye-law, if not in conformity with the statute in order to give effect to the statutory provision the Rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with;
- Further, the expression “authority of law” as mentioned in Article 265 of the Constitution of India would refer to existence of a lawful enactment, which authorizes the levy or collection of a tax. Article 265 mandates every tax to be imposed by “law” it is to follow that it could only be

imposed by a valid law, otherwise would be declared unconstitutional as held by the Hon'ble Supreme Court in ***Chhotabhai Jethabhai Patel And Co. Versus Union Of India [1961 (12) TMI 1 - SUPREME COURT]***;

- In the following judgments, it was held by various Courts that goods supplied from DTA unit to SEZ unit is not exigible to export duty due to absence of any specific provisions:
  - ***Essar Steel Limited v/s. UOI [2010 (249) E.L.T. 3 (Guj.)] as affirmed by the Hon'ble Supreme Court in [2010 (255) E.L.T. A115 (S.C.)];***
  - ***Advait Steel Rolling Mills Pvt. Ltd v/s. UOI [2012 (286) E.L.T. 535 (Mad.)];***
  - ***Tirupati Udyog Limited v/s. Union of India [2011 (272) ELT 209 (AP)]***
- Accordingly, it is submitted that in absence of any charging provision under the Custom Act on the goods supplied from DTA unit to SEZ unit / developer, demand of duty from the Noticee is beyond the provision of the law and liable to be quashed on this ground alone;
- The goods were supplied to M/s. Waystar Properties LLP, who is a Co-developer under the SEZ area. Further, a Co-developer is considered as a "Developer" as per Section 2(g) of the SEZ Act. Rule 12 of the SEZ Rules provides that the Developer may import or procure goods and services from the Domestic Tariff Area, without payment of duty, taxes and cess for the authorized operations, subject to the provisions contained in sub-rule (2) to (8). In the present case, M/s Waystar has complied with all the conditions mentioned in sub-rule (2) to (8). Therefore, Waystar is eligible to claim duty free materials from the DTA area and the goods sent by the Noticee is not liable for export duty as alleged in the captioned SCN. Further, Section 26(1)(c) of the SEZ Act provides that every Developer shall be entitled to exemption from any duty of excise, under the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 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 authorized operations by the Developer or entrepreneur. Accordingly, the goods sent from DTA area to SEZ area are exempted from any duties or taxes applicable under any law for the time being in force as per Section 26(1)(c) of the SEZ Act and therefore, levying export duty as per Rule 27 of the SEZ Rules is going beyond the provision of the statute;

- It is a well settled position of law that confiscation proceedings are not sustainable when the goods are not available [**Shiva Kripa Ispat Pvt. Limited v. CCE, Nasik [2009 235 ELT 623 (Tri-LB)]**]. Further, confiscation under Section 113 is applicable when the goods are improperly exported. As submitted above, the goods are not exported out of India but sent to a SEZ area located in India and therefore, Section 113 is not applicable in the present case.
- Penalty under Section 114 of the Act is levied on a person for improper export of goods. In the present facts and considering the above submission, goods sent by Noticee to the SEZ area is not qualified as “export” under the Customs Act and therefore, penalty under Section 114 can thereby not be imposed. Further, in terms of Section 114, penalty is attracted only when person omits to do any act which would render such goods liable for confiscation and the Noticee has not done any such act of omission which would result into confiscation of goods and levy of penalty;
- For the reasons set out hereinabove the entire demand itself is unsustainable, as there is no contravention to the provisions of Customs Act. Hence, proposal for imposition of penalty and interest cannot be sustained. In the case of **CC.Ex. Vs HMM Ltd reported in 1995 (76) ELT 497 (SC)**, it is inter-alia held by the Hon’ble Supreme Court that where the demand is unsustainable, the imposition of penalty cannot sustain. It has also been similarly held by the Hon’ble Supreme Court in the case of **C.C.Ex. Aurangabad Vs. Balakrishna Industries (2006 (201) ELT 325 (SC)** and by the Hon’ble Tribunal in the case of **Hyva India Pvt Ltd Vs. C.C.Ex reported in 2008 (226) ELT 264 and Godrej Soaps Vs C.C.Ex reported in 2004 (174) ELT 25 (Tri- LB)**.

#### **PERSONAL HEARING:-**

**15.** Personal hearing was held on 03.01.2025 through video conferencing wherein Shri Arjun Akruwala, Chartered Accountant appeared on behalf of the noticee on 03.01.2025 wherein he reiterated their submission dated 06.09.2024. He also stated that they have already submitted detailed reply vide letter dated 06.09.2024 in this regard and requested to consider the same while passing the adjudication order.

## **DISCUSSION AND FINDINGS:-**

**16.** I have carefully gone through the relevant records, the written submission dated 06.09.2024 made by the Noticee i.e. M/s. Hitech Projects Pvt. Ltd. as well as compilation of statutory provisions and case laws submitted by their Chartered Accountant during personal hearing held on 03.01.2025.

**17.** I find that the noticee M/s. Hitech Projects Pvt. Ltd., a supplier in GIFT-SEZ, Gandhinagar have supplied goods which are falling under HSN **7214** without payment of export duty during the period between 22.05.2022 and 18.11.2022 valued at Rs. 4,83,63,976/- in GIFT-SEZ, Gandhinagar. The Noticee have not discharged their export duty liability to the tune of Rs. 72,54,596/- on their exports to the SEZ. The noticee has contended that export duty is not leviable as they have supplied the goods to the "Developer" in the SEZ and the goods do not fall under the definition of export as it never left "India". Now, therefore, the issues to be decided are:

- (a) Whether the goods supplied by M/s Hitech Project Private Limited to M/s Waystar Properties LLP, qualify as "Export" and Export Duty of **Rs.72,54,596/- [Rupees Seventy Two lakh, Fifty Four Thousand, Five Hundred & Ninety Six only]**, as detailed in Table B to the Show Cause Notice for supply of TMT during the period between 22.05.2022 and 18.11.2022 is liable to be demanded and recovered from them under Section 28(1)(a) of the Customs Act, 1962, along with applicable interest in terms of Section 28AA of the Customs Act, 1962?
- (b) Whether the Impugned goods having assessable value of Rs. 4,83,63,976/- (Rs. Four Crore, Eighty Three Lakh, Sixty Three Thousand, Nine Hundred and Seventy Six only) are to be confiscated under Section 113 (i) of the Customs Act, 1962?
- (c) Whether penalty under Section 114 is imposable on the noticee?

**18.** I find that in the present case the department has alleged that the supply of impugned goods by M/s Hitech Projects Private Limited to M/s Waystar Properties LLP, GIFT SEZ is liable to export duty alongwith applicable interest. In this regard, I note that Duty liability with interest and penal liabilities would be relevant only if the goods supplied by M/s Hitech qualify as export. Thus, the main point is being taken up firstly for examination.

**19. Whether the goods supplied by the DTA unit i.e. M/s Hitech Project Private Limited to M/s Waystar Properties LLP, GIFT SEZ co-developer, qualify as "Export" and "Export Duty" is liable to be paid by them?**

**19.1.** I find that M/s Hitech Project Private Limited is a private limited company and engaged in supply of goods viz. TMT Bars and Steel structures falling under Chapter 72 to the entities registered in GIFT-SEZ, Gandhinagar for their authorized operation., The Noticee is registered with the Gujarat GST department vide GSTN 24AADCH8918G1ZJ.

**19.2.** A Special Economic Zone is deemed as a Foreign Territory for matters that relate to the Trade Tariffs, Duties, and Operations. Government Vide Notification 28/2022 - Customs, Dated: 21st May'2022, notified Export Duty on 11 Iron and Steel Intermediates to Increase local availability of these Goods and to contain raising domestic prices which may affect adversely the downstream industries, real estate industry and other direct consumers.

**19.3.** I find that Proviso to Rule 27 of the SEZ Rules, 2006 was inserted vide Notification 19th Sep'2018, which read as follows:

*"Provided also that supplies from Domestic Tariff Area to Special Economic Zones shall attract Export Duty, in case, export duty is leviable on items attracting export duty."*

Further, Export Duty on Certain Steel Items was made applicable in case of Supplies from DTA to SEZ.

**19.4.** I find that the Government Vide Notification No. 28/2022 – Customs dated 21.05.2022 and 29/2022-Customs dated 21.05.2022 notified Export Duty on goods falling under HSN 7208, 7209, 7210, 7213, **7214**, 7219, 7222 and 7227@ 15% with effect from 22.05.2022, i.e. 11 Iron and Steel Intermediates to increase local availability of these Goods and to contain raising domestic prices which may affect adversely the downstream industries, real estate industry and other direct consumers. For better understanding of the facts, Notification Nos. 28/2022-Cus dated 21.05.2022 & 29/2022-Cus dated 21.05.2022 are reproduced hereunder:

***"Notification No. 28/2022-Customs***

*New Delhi, the 21<sup>st</sup> May, 2022*

*G.S.R. (E).- Whereas, the Central Government is satisfied that export duty should be levied or increased on certain articles and that circumstances exist which render it necessary to take immediate action.*

*Now, therefore, in exercise of the powers conferred by sub-section (1) of section 8 of the Customs Tariff Act, the Central Government, hereby directs that the Second Schedule to the Customs Tariff Act shall be amended in the following manner, namely:-*

*In the Second Schedule to the Customs Tariff Act, -*

- (1) against Sl. No. 21, for the entry in column (4), the entry "50%" shall be substituted;
- (2) against Sl. No. 22, for the entry in column (4), the entry "50%" shall be substituted;
- (3) against Sl. No. 43, for the entry in column (3), the entry "Flat rolled products of iron or non-alloy steel, clad, plated or coated" shall be substituted;
- (4) after Sl. No. 48 and the entries relating thereto, the following Sl. Nos. and entries relating thereto shall be inserted, namely:-

(1)	(2)	(3)	(4)
"48A.	7219	Flat-rolled products of stainless steel, of a width of 600 mm or more	15%
48B.	7222	Other bars and rods of stainless steel; angles, shapes and sections of stainless steel	15%
48C.	7227	Bars and rods, hot-rolled, in irregularly wound coils, of other alloy steel	15%

2. *This notification shall come into force on the 22<sup>nd</sup> day of May, 2022.*

Also,

**Notification No. 29/2022-Customs**

*New Delhi, the 21st May, 2022*

*G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 27/201 I- Customs dated the 1st March, 2011, published in the Gazette of India, Extraordinary, Part IL Section 3, Sub-section (i), vide number G.S.R. 153(E), dated the 1st March, 2011, namely:-*

*In the said notification, in the Table,*

- (i) S. No. 20A and the entries relating thereto shall be omitted;
- (ii) against S. No. 23, in column (4), for the entry, the entry "45%" shall be substituted;
- (iii) against S. No. 48, in column (4), for the entry, the entry "15%" shall be substituted;
- (iv) against S. No. 54, in column (4), for the entry, the entry "15%" shall be substituted;
- (v) against S. No. 55, in column (4), for the entry, the entry "15%" shall be substituted;
- (vi) for S. No. 56 and the entries relating thereto, the following S. Nos. and entries shall be substituted, namely:-

(1)	(2)	(3)	(4)
"56.	7210	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated	15%
56A	7212	Flat rolled products of iron or non-alloy steel, clad, plated or coated	Nil

- (vii) against S. No. 57, in column (4), for the entry, the entry "15%" shall be substituted;
- (viii) against S. No. 58, in column (4), for the entry, the entry "15%" shall be substituted;

2. *This notification shall come into effect on the 22<sup>nd</sup> day of May, 2022.*

**19.5.** I find that the Government, vide Notification No. 58/2022-Customs dated 18.11.2022, has amended the export duty applicable to the above said items, reducing it from 15% to NIL. On a combined reading of Notification No. 28/2022-

Customs dated 21.05.2022, Notification No. 29/2022-Customs dated 21.05.2022, and Notification No. 58/2022-Customs dated 18.11.2022, it is evident that the Government imposed an export duty on the supply of flat-rolled products of carbon steel and stainless steel, as well as bars, rods, and non-alloy steel, to Special Economic Zones (SEZs) for a limited period of approximately six months, i.e., from 22.05.2022 to 18.11.2022.

**19.6.** I find that the SCN proposes to levy export duty on the supply of flat-rolled products of carbon steel and stainless steel, bars, rods and non-alloy steel to SEZ during the period from 22.05.2022 to 18.11.2022. The Noticee has contended that, as per Section 2(18) of the Customs Act, 1962, export duty is applicable only on goods that are taken to a place outside India. Further, as per Section 2(27) of the Customs Act, the definition of "India" includes its territorial waters, but SEZs such as GIFT SEZ are located within the geographical territory of India. Since the goods in question were supplied to an SEZ and did not leave the territory of India, the transaction does not qualify as "export" under the definition provided in Section 2(18) of the Customs Act, 1962 and no export duty can be levied under Section 12 of the Customs Act, 1962. In this regard, I find that the term "export" is defined under Section 2(m) of the SEZ Act, 2005, as follows:

**"(m) "Export" means:-**

- (i) *taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or*
- (ii) ***supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or***
- (iii) *supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone;"*

**19.6.1** I also find that Section 2 (e) of the Foreign Trade (Development and Regulation) Act, 1992 as amended, reads out that:-

**(e) "import" and "export" means, —**

**(I)...**

**(II)...**

*Provided that "import" and "export" in relation to the goods, services and technology regarding Special Economic Zone or between two Special Economic Zones shall be governed in accordance with the provisions contained in the **Special Economic Zones Act, 2005** (28 of 2005)."*

**19.6.2** I also find that under the SEZ Rules, export documents, such as shipping bills, are required to be filed and processed only in two scenarios: (i) when goods are consigned outside India, or (ii) when goods are brought from the Domestic Tariff Area (DTA) into an SEZ under drawback or for availing benefits under the Foreign Trade Policy (FTP). In order to give effect to this system without recourse to amendments in the Customs Act or Central Excise Act, the SEZ Act by Section 53 deems Special Economic Zones to be territories outside the customs territory of India for undertaking authorized operations. For better understanding of the facts, Section 53 of the SEZ Act, 2005 is reproduced hereunder:

*“SECTION 53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc. in certain cases. - A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations”.*

Upon a conjoint reading of Section 53 of the SEZ Act, 2005, and the relevant provisions of the Customs Act, 1962, I find that, for customs purposes, SEZs are deemed to be outside the customs territory of India. The SEZs therefore, operate under the SEZ Act, for the purpose of exemptions from the tariffs imposed by the Union Government as well for clearance into the domestic tariff area on payment of applicable duty. I further find that the goods supplied to SEZ units or developers are treated as physical exports under the SEZ Act. The deeming fiction established under Section 2(m) and Section 53 of the SEZ Act, 2005, must be given its full legal effect. To support this principle, reliance can be placed on the judgments of the Hon'ble Supreme Court in:

- **Clariant International Ltd. & Anr. v. Securities & Exchange Board of India, (2004) 8 SCC 524**, where it was held that deeming provisions must be given full effect for the purposes for which they are enacted;
- **Commissioner of Commercial Taxes v. Swarn Rekha Cokes and Coals (P) Ltd. & Ors., (2004) 6 SCC 689**, where the Hon'ble Court reiterated that deeming fictions are created by the legislature to achieve specific purposes and must be interpreted accordingly.

In light of these judgments and the legal fiction created by Section 53 of the SEZ Act, 2005, I find that it is categorically established that SEZs are outside the customs territory of India. Further, Section 2(m) of the SEZ Act defines “export” to include the supply of goods from the DTA to an SEZ unit or developer, thereby treating such transactions as exports. In view of the above, I find that SEZs are deemed to be outside the customs territory of India, and goods supplied to SEZ units or developers qualify as “exports.” Therefore, the contention of the noticee

that such supplies do not qualify as exports under the Customs Act, 1962, is devoid of merit and is accordingly rejected.

**19.7.** The Noticee further contended that there is no charging provision under the SEZ Act, 2005, for levying export duty on the supply of goods from a Domestic Tariff Area (DTA) unit to a SEZ unit. It was further argued that Section 12 of the Customs Act, 1962, serves as the charging section for customs duty under the Customs Act, and in the present case, the demand for export duty has been raised under Section 28 of the Customs Act. The noticee has asserted that Section 12 of the Customs Act does not specifically provide for the levy of export duty on goods supplied from a DTA unit to an SEZ unit as an "export" transaction and, therefore, the allegations in the show cause notice fail. The noticee further argued that, in the absence of any specific charging provision under the Customs Act to levy export duty on such supplies, no export duty can be imposed on goods supplied from a DTA unit to an SEZ unit. In this regard, I find that Section 12 of the Customs Act, 1962, provides for imposition of customs duties on goods imported into or exported from India. For ease of reference, Section 12 of the Customs Act, 1962, is reproduced below:

**Section 12.** Dutiable goods. –

*(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under <sup>1</sup>[the Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India.*

*(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.]*

[Emphasis supplied.....]

Further, to understand the scope of customs duty, it is imperative to comprehend the definitions of key terms used in the charging section, such as "Duty," "Goods," and "Export," as defined under Sections 2(15), 2(22), and 2(18) of the Customs Act, 1962, respectively. These are reproduced below for ease of reference:

**Section 2(15)** "Duty" which reads as "duty" means a duty of customs leviable under this Act;

**Section 2(18)** "Export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

**Section 2(22)** "Goods" includes – (a) vessels, aircrafts and vehicles; (b) stores; (c) baggage; (d) currency and negotiable instruments; and (e) any other kind of movable property.

[Emphasis supplied.....]

I find that an examination of the relevant statutory definitions makes it evident that customs duties are applicable when a transaction involves goods and incorporates an element of import or export, as defined under the Customs Act, 1962, with corresponding duties prescribed under the Customs Tariff Act, 1975. In the present case, it is observed that the noticee has supplied goods to M/s Waystar through delivery challans. As I have already established that such transactions qualify as "exports" within the meaning of Section 2(18) of the Customs Act, 1962, and are further supported by the deeming fiction under Section 2(m) and Section 53 of the SEZ Act, 2005, these transactions meet the criteria for the applicability of Section 12 of the Customs Act, 1962. I note that once a transaction is established as an export, it becomes subject to the export duties prescribed under the Customs Tariff Act, 1975.

Further, **Section 2(zd) of SEZ Act, 2005** reads as follows:-

**"(zd) all other words and expressions used and not defined in this Act but defined in the Central Excise Act, 1944 (1 of 1944), the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Income-tax Act, 1961 (43 of 1961), the Customs Act, 1962 (52 of 1962) and the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) shall have the meanings respectively assigned to them in those Acts."**

Further, **Section 5 of the Foreign Trade (Development and Regulation) Act, 1992** as amended, stipulates about the announcement and amendment of the Foreign Trade Policy. For ease of reference, extract of the same is reproduced hereunder:

**"SECTION 5. Foreign Trade Policy. — The Central Government may, from time to time, formulate and announce, by notification in the Official Gazette, the foreign trade policy and may also, in like manner, amend that policy :**

*Provided that the Central Government may direct that, in respect of the Special Economic Zones, the foreign trade policy shall apply to the goods, services and technology with such exceptions, modifications and adaptations, as may be specified by it by notification in the Official Gazette."/*

I further find that the Government has issued Instruction No. 06/2006 dated 03.08.2006 from F. No. 5/1/2006-SEZ. Relevant portion of the same is reproduced hereunder:

***"by virtue of Section 51 of the SEZ Act, the provisions of the SEZ Act and the Rules will have overriding effect over the provisions contained in any other Act.***

*"(iii) Ministry of Commerce & Industry vide a notification issued on 10th of February, 2006 has made operative Section 51 as well as Section 52 of the SEZ Act. Accordingly, Chapter X-A of the Customs Act, 1962, the Special Economic Zones Rules, 2003, and the Special Economic Zones (Customs Procedures) Regulations, 2003 have become in operative w.e.f. 10th February, 2006.*

*(iv) In view of the above stated facts it is clarified that w.e.f. 10th February, 2006 the activities relating to SEZs are guided by the provisions contained in the SEZ Act, 2005 and the SEZ Rules, 2006. Chapter X-A of the Customs Act, the Special Economic Zones Rules, 2003, and the Special Economic Zones (Customs Procedures) Regulations, 2003 are not in operation."*

In view of the above, the exemption from the Export Duty will be governed by Section 26 of the SEZ Act, 2005. Section 26 (2), reads as under:

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

I also note that in earlier cases also the Department of Commerce (SEZ) Section, Ministry of Commerce and Industry, Government of India issued a circular Bearing F. No. 6/2/2008-SEZ (pt), dated 30-6-2008, clarifying that supply of goods by the units in Domestic Tariff Areas, to the Special Economic Zones, would be permitted only after payment of the prescribed amount of export duty. I further find that central Government has cleared its intent to levy of export duty on certain items and made charging provisions for imposition of Export Duty vide notification no. G.S.R. 909(E) dated 19.09.2018, wherein a proviso to Rule 27 of SEZ Rules, 2006 was inserted, which reads as follows:

*"Provided also that supplies from Domestic Tariff Area to Special Economic Zones shall attract Export Duty, in case, export duty is leviable on items attracting export duty."*

In view of conjoint readings of above provisions, it can be construed that the definition of the “export duty” not expressively defined in the SEZ Act, 2005 has to be taken from the Customs Act, 1962 as both the statutes i.e. the SEZ Act and the Customs Act deals ‘Export Duty’ in *pari materia*. Further the supply of impugned goods qualifies as “exports” within the meaning of Section 2(18) of the Customs Act, 1962, read with Section 2(m) and Section 53 of the SEZ Act, 2005 and these transactions meet the criteria for the applicability of Section 12 of the Customs Act, 1962. I further find that once the transaction is established as an export, it becomes subject to the export duties prescribed under the Customs Tariff Act, 1975. In view of above discussions and provisions specifically as per proviso to Rule 27 of SEZ Rules, 2006, I find the contention of the noticee is not tenable in the eyes of law and therefore I reject the same. I further hold that export duty is leviable on the impugned goods supplied by M/s Hitech Projects Private Limited to M/s Waystar Properties LLP.

**19.8.** I further find that the noticee has contended that several High Courts have held that there is no levy of export duty on SEZ supplies by the DTA units, however all these judgments are prior to amendment of the SEZ Rules vide notification dated 19.09.2018 and these judgments have been Challenged by the department in Hon’ble Supreme Court of India.

**19.8.1.** I find that in Special Leave Petition No. 11091-11094 of 2011, wherein the Hon’ble Supreme Court Bench comprising Hon’ble Mr. Justice Dr. D.Y. Chandrachud, Hon’ble Mr. Justice R. Subhash Reddy and Hon’ble Mr. Justice S. Ravindra Bhat on 29-6-2021 issued notice in the Petition filed by Union of India against the Judgment and Order dated 30-7-2010 of Andhra Pradesh High Court in Writ Petition Nos. 16932, 16902, 15778, 11219, 21059, 21224 of 2008 and 1315, 6025 & 18618 of 2009 as reported in 2011 (272) E.L.T. 209 (A.P.) (Tirupati Udyog Ltd. v. Union of India). While issuing notice, the Supreme Court passed the following order:

- “1. *On 15 July, 2021, the present Special Leave Petitions were directed to be listed once Review Petition (C) No. 1848 of 2010 in Special Leave Petition (C) No. 19498 of 2010 was disposed of.*
2. *The Review Petition has been allowed on 10 February, 2020 and Special Leave Petition (C) No. 19498 of 2010 has been restored to file.*
3. *Issue notice.*
4. *Tag with Special Leave Petition (C) No. 19498 of 2010.”*

**19.8.2.** I also find that in Review Petition (C) No. 1848 of 2010 in Special Leave Petition (C) No. 19498 of 2010, the Hon'ble SC recalled its order dated 12.07.2010 and restored review petition filed by the Union of India against the High Court of Gujarat Order reported at 2010 (249) E.L.T. 3 (Guj.).

**19.9.** The Noticee in their defence contended that in the SEZ Act, there is no provision regarding charging of Customs duty and the goods does not qualify for export, therefore, the demand is without authority of law. In this regard, I find that I have already established that goods supplied by M/s Hitech Projects Private Limited to M/s Waystar Properties LLP qualify as "exports" within the meaning of Section 2(18) of the Customs Act, 1962, and are further supported by the deeming fiction under Section 2(m) and Section 53 of the SEZ Act, 2005, these transactions meet the criteria for the applicability of Section 12 of the Customs Act, 1962. I further find that once the transaction is established as an export, it becomes subject to the export duties prescribed under the Customs Tariff Act, 1975. I further find that **Section 8 of the Customs Tariff Act, 1975**, empowers the Central Government to increase or levy export duties under specific circumstances. For better understanding of the facts, the same is reproduced hereunder:

**Section 8. Emergency power of Central Government to increase or levy export duties—**

(1) *Where in respect of any article, whether included in the Second Schedule or not, the Central Government is satisfied that the export duty leviable thereon should be increased or that an export duty should be levied, and that circumstances exist which render it necessary to take immediate action, the Central Government may, by notification in the Official Gazette, direct an amendment of the Second Schedule to be made so as to provide for an increase in the export duty leviable or, as the case may be, for the levy of an export duty, on that article.*

(2) *The provisions of sub-sections (3) and (4) of Section 7 shall apply to any notification issued under sub-section (1) as they apply in relation to any notification increasing duty issued under sub-section (2) of Section 7.*

The above provision empowers the Central Government to impose or enhance export duties in cases where it deems necessary in the public interest. I find that in the present case, the Government, in exercise of its powers, issued Notification No. 28/2022-Cus and 29/2022-Cus, both dated 21.05.2022, imposing an export duty of 15% on selected products, including pig iron, flat-rolled products of iron or non-alloyed steel, bars and rods, and various flat-rolled products of stainless steel. Additionally, 45% export duty was imposed on iron ore pellets and other

specified items. It is also pertinent to mention that countries sometimes restrict exports to protect domestic industries, ensure the availability of adequate supplies of goods, raw materials, and commodities, and mitigate shortages or scarcity within the country. Such restrictions also enable the Government to control inflation and encourage value addition within the country. Export duties, in this context, act as a crucial policy measure to discourage exports, protect domestic industries, and regulate input prices. In the instant case, to rein in input prices and control runaway inflation, the Government imposed export duty on certain steel products under HSN codes 7208, 7209, 7210, 7213, 7214, 7219, 7222, and 7227 for a limited period from 22.05.2022 to 18.11.2022, as per the notifications mentioned above. This imposition was validly executed under the authority granted by Section 8 of the Customs Tariff Act, 1975. In view of the above legal framework, I find that the goods supplied by the noticee to M/s Waystar meet the conditions for the levy of customs duty under Section 12 of the Customs Act, 1962. Moreover, the imposition of export duties on such goods during the specified period was validly notified under Section 8 of the Customs Tariff Act, 1975. Hence, the applicability of customs duties to the said transactions is legally justified and in accordance with the provisions of the law. Therefore, I find that the contention of the noticee that the applicability of Section 12 of the Customs Act, 1962, is without authority of law is not legally sustainable. Furthermore, ratio of the case laws cited by the noticee are not squarely applicable to the present case being different circumstances and facts.

**19.10.** The Noticee further contended that they have supplied the goods to M/s. Waystar Properties LLP, Co-developer under the SEZ area and as per Rule 12 of the SEZ Rules, 2006 read with Section 2(g) & Section 26 (1) (c) of the SEZ Act, the co-developer is eligible to claim duty free materials from the DTA area and the goods sent by the Noticee is not liable for export duty as alleged in the captioned SCN. I note that Rule 12 of the SEZ Rules, 2006, allows co-developers to procure goods without payment of duty for authorized operations in SEZs. However, this provision does not absolve the supplier (i.e., the DTA unit) from complying with the provisions of the Customs Act, 1962, including the levy of export duty under Section 12 and related notifications issued by the Central Government. I further find that in terms of Section 2(m) of the SEZ Act, 2005, the transaction of supplying goods from a Domestic Tariff Area unit to a co-developer in an SEZ qualifies as an "export" for the purposes of the SEZ Act. I find that Section 26 (1) (c) of the SEZ Act, grants specific exemption from various duties on procurement of goods from DTA. For ease of reference Section 26 (1) (c) of the SEZ Act is reproduced hereunder:

*(c) exemption from any duty of excise, under the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 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;*

Further, I find that Section 26 (2), of the SEZ Act, stipulates that :

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

From the above, I note that the exemptions under Section 26(1)(c) of the SEZ Act, 2005, are available subject to specific terms and conditions as imposed by the Government. I further find that the Government, vide Notification G.S.R. 909(E) dated 19.09.2018, inserted a proviso to Rule 27 of the SEZ Rules, 2006, which explicitly states: "**Supplies from Domestic Tariff Area to Special Economic Zones shall attract Export Duty, in case export duty is leviable on items attracting export duty.**" Additionally, Rule 30 of the SEZ Rules, 2006, clarifies that when goods are supplied from a DTA to an SEZ (or to its units or co-developers), such transactions are treated akin to exports to a foreign country for the purpose of levying customs duties, including export duty, unless exempted by a specific notification. Further, as per Rule 23 of the SEZ Rules, 2006, I find that the "export benefits" are benefits available to SEZ Units/Developers insofar as supplies from the DTA to SEZ Units/Developers are deemed to be exports made by the latter. It is pertinent to note that rules are subsidiary to the sections of the parent Act and cannot form the basis of interpretation of the parent legislation. The deeming provisions under the SEZ Act and the SEZ Rules are intended exclusively for the benefit of SEZ Units/Developers. A DTA unit, by the mere act of supplying goods to an SEZ Unit or Developer, cannot claim any complementary benefit solely based on the deeming provisions of the SEZ Act or the Rules thereunder. It is also pertinent to note that it was never the policy of the Government to grant export duty exemptions or other benefits to DTA units supplying goods to SEZ Units or Developers unless expressly provided for under the Customs Act, 1962, or any Rules or notifications issued thereunder. In the present case, the goods in question, falling under specific HSN 7214, were subject to export duty during the relevant period (22.05.2022 to 18.11.2022) as per Notification Nos. 28/2022-Cus and 29/2022-Cus, both dated 21.05.2022. Accordingly, I find that the contention of the Noticee that the supply of goods to the SEZ Developer exempts them from the levy of export duty is legally unsustainable and devoid of merit.

**19.11.** I find that the Noticee has quoted and relied on various case laws/judgments in their defence submission to support their contention on some issues raised in the Show Cause Notice. I am of the view that conclusions in those cases may be correct, but they cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were made in different contexts, with different facts and circumstances, and the ratio cannot apply here directly. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of *CCE, Calcutta Vs Alnoori Tobacco Products [2004 (170) ELT 135(SC)]* has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of *Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)]* wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of *CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(SC)]*, it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from.

**19.12.** As regard proposal in the show cause notice for demand of Export Duty along with applicable interest, I have already discussed in para supra and held that the goods supplied by the Noticee is qualified as export and export duty is leviable on these supplies from Domestic Tariff Area to the Special Economic Zone as the impugned goods attract export duty @ 15%. In view of the discussion in above paras, I, therefore, find and hold that the aforementioned Export Duty of Rs. 72,54,596/- is recoverable from M/s. Hitech Projects Private Limited under the provisions of Section 28(1) of the Customs Act, 1962.

**19.13.** The importer has contended that when the demand for duty is unsustainable in law, the question of imposing interest does not arise. In this regard, I find that, as elaborated in the preceding paragraphs, I have already held that the duty in the present case is recoverable from the importer under the provisions of Section 28(1) of the Customs Act, 1962. Further, Section 28AA of the Customs Act, 1962, provides that where a person is liable to pay duty in accordance with the provisions of Section 28, such person shall, in addition to the duty, be liable to pay interest at the applicable rate. The said section

mandates automatic payment of interest along with the duty confirmed or determined under Section 28. In light of the foregoing paras, I have already held that the Export duty amounting to Rs. 72,54,596/- [Rupees Seventy Two Lakh, Fifty Four Thousand, Five Hundred & Ninety Six only) is recoverable under Section 28(1) of the Customs Act, 1962. Therefore, I hold that Export duty of Rs. 72,54,596/- is to be demanded and recovered as determined under Section 28(8) of the Customs Act, 1962, along with applicable interest, as provided under Section 28AA of the Customs Act, 1962.

**20. Whether the goods valued at Rs. 4,83,63,976/- supplied by M/s Hitech Projects Private Limited are liable for confiscation under Section 113 (i) of the Customs Act, 1962?**

**20.1.** The present Show Cause Notice also proposes for the confiscation of the exported goods valued at Rs. 4,83,63,976/- under the provisions of Sections 113(i) of the Customs Act, 1962.

**20.2.** As discussed in para supra, the Noticee has exported the impugned goods i.e. Steel TMT Bars to M/s. Waystar Properties LLP, a co-developer within GIFT SEZ, without payment of applicable export duty. Further, as discussed in the preceding paragraphs, the supply of impugned goods qualifies as "exports" within the meaning of Section 2(18) of the Customs Act, 1962, read with Section 2(m) & Section 53 of the SEZ Act, 2005 and these transactions meet the criteria for the applicability of Section 12 of the Customs Act, 1962. Once the supply of goods from the DTA to the SEZ is established as an export, it becomes subject to the export duties prescribed under the Customs Tariff Act, 1975. I note that in the present case, the impugned goods fall under the category of items on which export duty was applicable during the relevant period. By failing to pay the applicable export duty, the Noticee contravened the provisions of the Customs Act, 1962. Furthermore, I note that the Noticee subscribed to a declaration as to the truthfulness of the contents of the Bill of Export/Invoice in terms of Section 50(2) of the Customs Act, 1962, in respect of their SEZ supply consignments. It is pertinent to mention that, consequent to the amendment of Section 17 of the Customs Act, 1962, vide the Finance Act, 2011, the system of "Self-Assessment" was introduced, effective from 08.04.2011. Under this system, the exporter is required to self-assess the duty liability on export goods by filing Bill of Export with the proper officer. Section 50 of the Customs Act, 1962, makes it mandatory for exporters to file the Shipping Bill/Bill of Export to facilitate the proper assessment of customs duties. I find that in the present case, the Noticee failed

to fulfill their statutory obligation by not filing a Shipping Bill or Bill of Export for the impugned goods supplied to M/s. Waystar Properties LLP, GIFT SEZ. This failure constitutes a deliberate evasion of export duty that was otherwise payable under the Customs Act, 1962, and the Customs Tariff Act, 1975. As a result, the Noticee has violated the provisions of Section 50(2) of the Customs Act, 1962, as well as the self-assessment regime prescribed under Section 17 of the Customs Act, 1962. I further find that the provisions of Section 113(i) of the Customs Act, 1962, clearly stipulate that any goods that are attempted to be exported contrary to the provisions of the Act or any other law for the time being in force are liable for confiscation. I find that the Noticee in the present case, willfully attempted to evade the payment of export duty on the goods supplied to GIFT SEZ, thereby attracting the provisions of Section 113(i) of the Customs Act, 1962. I thus find that non payment of export duty by M/s Hitech Projects Private Limited has rendered the impugned goods liable for confiscation under Section 113(i) of the Customs Act, 1962. I, therefore, hold the goods valued at **Rs.4,83,63,976/- (Rs. Four Crore, Eighty Three Lakh, Sixty Three Thousand, Nine Hundred and Seventy Six only)** liable to confiscation under the provisions of Sections 113(i) ibid. Further, the aforementioned 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-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).*

**20.3** 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.”**

**20.4** The Noticee, M/s. Hitech Projects Private Limited, has contended that the impugned goods are not liable for confiscation under Section 113(i) of the Customs Act, 1962, arguing that confiscation proceedings are unsustainable as the goods are no longer available for confiscation. Additionally, the Noticee has claimed that the goods in question were not exported out of India but were sent to GIFT SEZ located within India, and therefore, Section 113 of the Customs Act, 1962, does not apply to the present case. The Noticee has also relied on judicial decisions to substantiate their claims. In this regard, as discussed in the preceding paragraphs, the supply made by the Noticee to M/s Waystar Properties LLP, GIFT SEZ, qualifies as “Export”. Further, once the supply of goods from the DTA to the SEZ is established as an export, it becomes subject to the export duties prescribed under the Customs Tariff Act, 1975. I find that Rule 30 of the SEZ Rules, 2006, clarifies that when goods are supplied from a DTA to an SEZ (or to its units or co-developers), such transactions are treated akin to exports

to a foreign country for the purpose of levying customs duties, including export duty, unless exempted by a specific notification. I further find that the statutory framework, as defined under the SEZ Act, 2005, SEZ Rules, 2006 and the Customs Act, 1962, explicitly clarifies that for customs purposes, SEZs are deemed to be outside the customs territory of India. Therefore, the argument that the goods were sent to an SEZ located within India is legally unsustainable. I further find that the provisions of Section 113(i) of the Customs Act, 1962, clearly stipulate that any goods that are attempted to be exported contrary to the provisions of the Act or any other law for the time being in force are liable for confiscation. As elaborated earlier, Section 113(i) of the Customs Act, 1962, is rightly applicable in this case as M/s Hitech Projects Private Limited has willfully attempted to evade the payment of export duty on the goods supplied to GIFT SEZ. In view of the foregoing, I find that the contentions raised by M/s. Hitech Projects Private Limited are devoid of legal merit, and the judicial precedent relied upon by them is not applicable to the facts and circumstances of the present case.

**21. Whether M/s. Hitech Projects Private Limited is liable for penalty under Section 114 of the Customs Act, 1962 ?**

The Show Cause Notice proposes penalty under the provisions of Section 114 of the Customs Act, 1962 on M/s. Hitech Projects Private Limited. The Noticee contended that they are not liable for penalty under Section 114 of the Customs Act, 1962, as the goods sent by them to the SEZ area do not qualify as "Export" and they have not done any act which would render the goods liable for confiscation. I find that as per Section 114 of the Customs Act, 1962, any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 113, or abets the doing or omission of such an act, shall be liable for penalty under Section 114. As discussed in the preceding paragraphs, I have already held that the supply of TMT Bars by the Noticee to M/s. Waystar Properties LLP, GIFT SEZ, qualifies as "exports" under the provisions of Section 2(18) of the Customs Act, 1962, read with Section 2(m) and Section 53 of the SEZ Act, 2005. Further, I find that M/s. Hitech Projects Private Limited willfully attempted to evade the payment of export duty on the goods exported to M/s. Waystar Properties LLP, GIFT SEZ, which was otherwise payable. I find that it has already been established that the impugned goods, valued at **Rs. 4,83,63,976/- (Rupees Four Crore, Eighty-Three Lakh, Sixty-Three Thousand, Nine Hundred and Seventy-Six only)**, are liable to confiscation under the provisions of Section 113(i) of the Customs Act, 1962. Additionally, I have also held that export duty amounting to **Rs.**

**72,54,596/- (Rupees Seventy-Two Lakh, Fifty-Four Thousand, Five Hundred and Ninety-Six only)** is to be demanded and recovered from M/s. Hitech Projects Private Limited under the provisions of Section 28(1) of the Customs Act, 1962. It is evident that the acts and omissions committed by M/s. Hitech Projects Private Limited in relation to the improper export of the goods, which are liable to confiscation, render them culpable under the provisions of Section 114 of the Customs Act, 1962. The contention of the Noticee that the goods do not qualify as "exports" and are not liable for penalty is devoid of legal merit and is therefore rejected. In view of the foregoing, I find and hold that for this act on the part of M/s. Hitech Projects Private Limited, they are liable for penalty in terms of the provisions of Section 114 of the Customs Act, 1962.

**22.** In view of my findings in paras supra, I pass the following order:

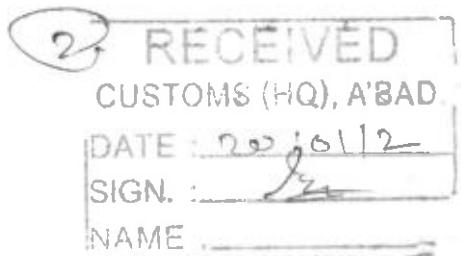
**:ORDER:**

- (a) I confirm the demand of Export Duty of Rs. **72,54,596/- [Rupees Seventy Two Lakh, Fifty Four Thousand, Five Hundred & Ninety Six Only]**, for the supplies of TMT Bars made to the GIFT-SEZ by M/s. Hitech Projects Pvt. Ltd. during the period between 22.05.2022 and 18.11.2022 and order recovery of the same from M/s. Hitech Projects Pvt. Ltd under Section 28 (1)(a) of the Customs Act, 1962;
- (b) I order to recover the interest on the aforesaid demand of Duty confirmed at 22 (a) above as applicable in terms of Section 28AA of the Customs Act, 1962;
- (c) I hold the impugned goods valued at Rs.4,83,63,976/- (Rs. Four Crore, Eighty Three Lakh, Sixty Three Thousand, Nine Hundred and Seventy Six only) liable to confiscation under the provisions of Section 113(i) of the Customs Act, 1962. However, as the goods are not physically available for confiscation, I impose redemption fine of **Rs. 25,00,000/- (Rupees Twenty Five Lakh only)** in lieu of confiscation under Section 125 of the Customs Act, 1962;
- (d) I impose penalty of **Rs. 7,00,000/- [Rupees Seven Lakh Only]** on M/s. Hitech Projects Pvt. Ltd. under Section 114 of the Customs Act, 1962. However, in view of the first proviso to Section 114 of the Customs Act, 1962, if the amount of

Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty.

**23.** This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

**24.** The Show-cause notice bearing no. VIII/10-41/Pr. Commr/O&A/2023-24 dated 29.07.2024 is disposed of in terms of the para above.



*SL* *20/01/2025*

**(Shiv Kumar Sharma)**  
Principal Commissioner,  
Customs, Ahmedabad

**DIN- 20250171MN000081866E**

F.No. VIII/10-41/Pr. Commr/O&A/2023-24

Date: 20.01.2025

To,  
M/s. Hitech Projects Private Limited,  
A-1401, Block-A, West Gate Business Bay, Besides Signature-1,  
S G Highway, Makarba, Ahmedabad, Gujarat-380051

**Copy to:**

- (1) The Chief Commissioner of Customs, Gujarat Customs Zone, Ahmedabad.
- (2) The Development Commissioner, GIFT SEZ, Gandhinagar.
- (3) The Additional Commissioner, Customs, TRC, HQ, Ahmedabad.
- (4) The Superintendent of Customs (Systems) in PDF format for uploading on the website of Customs Commissionerate, Ahmedabad.
- (5) The RRA, HQ, Ahmedabad Customs.
- (6) Guard File.