



सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद  
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD  
 चौथी मंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,  
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.  
 दूरभाष क्रमांक Tel. No. 079-26589281  
 DIN-20260271MN000000D0E8

|   |                                                                                                                                         |                                                                                                                                                   |
|---|-----------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| क | फ़ाइल संख्या FILE NO.                                                                                                                   | F.No. S/49-09/CUS/AHD/2025-26                                                                                                                     |
| ख | अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)<br>(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962): | AHD-CUSTM-000-APP-561-25-26                                                                                                                       |
| ग | पारितकर्ता PASSED BY                                                                                                                    | SHRI AMIT GUPTA<br>Commissioner of Customs (Appeals),<br>AHMEDABAD                                                                                |
| घ | दिनांक DATE                                                                                                                             | 26.02.2026                                                                                                                                        |
| ङ | उद्भूत अपील आदेश की सं. व दिनांक<br>ARISING OUT OF<br>ORDER - IN - ORIGINAL NO.                                                         | O.I.O. No. 07/AR/ADC/SRT/2024-25 dated<br>12.11.2024 passed by the Additional<br>Commissioner of Customs, Customs Division<br>Surat, Surat.       |
|   | अपील आदेश जारी करने की दिनांक<br>ORDER- IN-APPEAL ISSUED ON:                                                                            | 26.02.2026                                                                                                                                        |
| छ | अपीलकर्ता का नाम व पता<br>NAME AND ADDRESS OF THE<br>APPELLANT:                                                                         | M/s. Madhavi Construction,<br>Bhadkodra Ankleshwar,<br>B 75 Vaibhav Park Society,<br>Kapodara Patiya Valia Road,<br>Ankleshwar, Bharuch - 393002. |



- यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.  
This copy is granted free of cost for the private use of the person to whom it is issued.
- सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं.

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     | Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.                                                                                                                                       |
|     | निम्नलिखित सम्बन्धित आदेश/Order relating to :                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| (क) | बैगेज के रूप में आयातित कोई माल.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| (a) | any goods imported on baggage.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| (ख) | भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.                                                                                                                                                                                                                                                                                    |
| (b) | Any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.                                                                                                                                                                                                 |
| (ग) | सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| (c) | Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 3.  | पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :                                                                                                                                                                                                                                                                                                                                                                |
|     | The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :                                                                                                                                                                                                                                                                                                                                                                         |
| (क) | कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.                                                                                                                                                                                                                                                                                                                                                                   |
| (a) | 4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.                                                                                                                                                                                                                                                                                                                                                                                     |
| (ख) | सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| (b) | 4 copies of the Order - In - Original, in addition to relevant documents, if any                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| (ग) | पुनरीक्षण के लिए आवेदन की 4 प्रतियां                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| (c) | 4 copies of the Application for Revision.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| (घ) | पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु.1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क मांगा गया ब्याज लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-                                                       |
| (d) | The duplicate copy of the T.R.6 challan evidencing payment of Rs. 200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs. 200/- and if it is more than one lakh rupees, the fee is Rs. 1000/-. |
| 4.  | मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं                                                                                                                                                                                                                                          |
|     | In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address:                                                                                                                                                                                                                                                       |



|     |                                                                                                                                                                                                                                                                                                           |                                                                                             |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
|     | सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ                                                                                                                                                                                                                           | Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench                          |
|     | दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016                                                                                                                                                                                                                                     | 2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016 |
| 5.  | सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-                                                                                                                                                      |                                                                                             |
|     | Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -                                                                                                                                                            |                                                                                             |
| (क) | अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.                                                                                                                                             |                                                                                             |
| (a) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;                                                                                                                     |                                                                                             |
| (ख) | अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो: पाँच हजार रूपए                                                                                                            |                                                                                             |
| (b) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;                                                                             |                                                                                             |
| (ग) | अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो: दस हजार रूपए.                                                                                                                                               |                                                                                             |
| (c) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees                                                                                                                   |                                                                                             |
| (घ) | इस आदेश के विरुद्ध अधिकरण के सामने मांगे गए शुल्क के 10 % अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10 % अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।                                                                                                                 |                                                                                             |
| (d) | An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute; or penalty, where penalty alone is in dispute.                                                                                                           |                                                                                             |
| 6.  | उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए. |                                                                                             |
|     | Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-                                                                                                                                                                                                              |                                                                                             |
|     | (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or                                                                                                                                                                                                           |                                                                                             |
|     | (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.                                                                                                                                                                                                  |                                                                                             |



**ORDER-IN-APPEAL**

1. M/s. Madhavi Construction (hereinafter referred as 'the appellant') has filed the present appeal under Section 128 of the Customs Act, 1962, against an Order-In-Original No. 07/AR/ADC/SRT/2024-25 dated 12.11.2024 (hereinafter referred to as 'the impugned order'), passed by the Additional Commissioner of Customs, (In-charge: Customs Division Surat), Surat (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant has supplied TMT Bars falling under Chapter 72 to an SEZ Unit viz. Jubilant Ingrevia Ltd. situated within Jubilant SEZ. The subject goods were attracting export duty @15% during the period of 22.05.2022 to 18.11.2022 as per the provisions of Notification Nos. 28/2022-Customs and 29/2022-Custom, both dated 21.5.2022. As the appellant had not paid export duty on their supply to SEZ Unit, a Show Cause Notice dated 16.05.2024 came to be issued to the appellant towards demand of Export Duty of Rs. 5,93,715/- along with interest under the provisions of Section 28(1) and Section 28AA of the Customs Act, 1962. Vide impugned order dated 12.11.2024, the said demand has been confirmed by the adjudicating authority.

3. Being aggrieved, the appellant has filed the present appeal, mainly, on the following **GROUND OF APPEAL**:

Ground 01: Liability of Export duty has been already paid by the Importer on behalf of the appellant.

a.) Appellant enclosed the details of iron and steel supplied by the appellant to the SEZ unit in relevant period for the construction services along with copies of challan for the export duty paid by the SEZ unit. Thus, Export Duty stands discharged / paid on the transactions.

b.) It is settled proposition of law that there cannot be double taxation on the same transactions. Some of the rulings in support of these proposition have been cited.

Ground 02 and 03: The Fifth proviso to Rule 27 of the SEZ Rules, 2006 is ultra vires the SEZ Act, 2005 and violate of Article 265 of the Constitution of India and contrary to decisions of Hon'ble Supreme Court since no tax be levied or collected except by authority of law.

✓



- a.) The 5th proviso to Rule 27 of the SEZ Rules seeks to impose Export Duty on such goods supplied from DTA to SEZ Unit, which attract Export Duty under section 12 of the Customs Act read with the Second Schedule to the Customs Tariff Act ('Export Schedule'), when exported from India to a place outside India.
- b.) The Appellant submitted that Export Duty under section 12 of the Customs Act is leviable only on 'export' of goods notified in the Second Schedule to the Customs Tariff Act, to a place outside India. That this is evident from the definition of the term 'export' under section 2(18) of the Customs Act which defines 'export' as 'taking out of India to a place outside India'. Therefore, Export Duty under the Customs Act can be levied only if the notified goods are taken out of India to a place outside India.
- c.) The Appellant submitted that any levy of tax must be in accordance with the provisions of Article 265 of the Constitution of India, which is as follows:
- "265. Taxes not to be imposed save by authority of law. - No tax shall be levied or collected except by authority of law."*
- d.) The Appellant further submitted that the levy of Export Duty through the 5<sup>th</sup> proviso to Rule 27 is violate of Article 265 since a 'tax' is sought to be levied by way of delegated legislation i.e., the SEZ Rules, 2006, which is unconstitutional.
- e.) The levy of Export Duty through the 5th proviso to Rule 27 is violative of Article 265 of the Constitution of India inasmuch as there is no 'law' which provides for levy of Export Duty on supply of goods from DTA to SEZ. The expression 'authority of law' used in Article 265 denotes a valid law enacted by the Parliament or the State Legislature in exercise of legislative powers conferred under Article 245 and 246 of the Constitution; and not Rules framed by the Executive. The appellant has cited upon various case law in this regard.
- f.) The appellant further submitted that in contradistinction to the procurement of goods by the SEZ Unit, Section 30 of the SEZ Act, 2005 creates a levy on clearance of goods from SEZ to DTA and provides for payment of duty as leviable on such goods when imported. Thus, while a specific duty has been levied on clearance of



goods from SEZ to DTA, there is no charging provision under SEZ Act to levy any duty on supply of goods from DTA to SEZ.

- g.) The Appellant further submitted that the 5<sup>th</sup> proviso to Rule 27 inasmuch as it provides for a levy of Export Duty on goods supplied from DTA to SEZ in the absence of any charging section under the SEZ Act, Customs Act or any other law, is violative of Article 265 of the Constitution and must therefore be struck down as unconstitutional. A rule is subordinate legislation and it cannot override the provisions of the Act.

Ground 04: The issue of levy of export duty on supplies to SEZ is no longer res integra and stands settled in favour of the assessee.

- a.) The appellant submitted that issue of legality of levy of Export Duty on supplies from DTA to SEZ came up for consideration for the first time before Hon'ble High Court in Essar Steel Limited v. Union of India [2010 (249) E.L.T. 3 (Guj.)]. In Essar Steel (Supra), the Department demanded Export Duty from DTA suppliers on supply of steel products to SEZ by invoking Section 12 of the Customs Act, 1962 read with Section 2 and the Second Schedule to the Customs Tariff Act, 1975.
- b.) That the Hon'ble Court after considering the provisions of the Customs Act and the SEZ Act held that export duty is leviable only on export of goods from India to a place outside India and that in the absence of any amendment of the definitions of the terms "Export" and "India" in the Customs Act, 1962, or any amendment in the charging section i.e. Section 12 or insertion of a charging provision contemplating movement of goods from the Domestic Tariff Area to the Special Economic Zone as a taxable event entailing a levy of Export Duty as in the case of export, the levy of Export Duty could not be justified under the provisions of the Customs Act, 1962.
- c.) That the Hon'ble Court held that the levy of export duty on goods supplied from the Domestic Tariff Area to the Special Economic Zone was not justified.
- d.) The appellant further submitted that in Advait Steel Rolling Mills Pvt. Ltd. v. UOI [2012 (286) E.L.T. 535 (Mad.)], the Hon'ble Madras High Court held that if levy of duties of customs are to be made applicable to goods supplied from DTA to SEZ,



it could only be by way of appropriate amendments introduced in the Customs Act, 1962, as well as in the Special Economic Zones Act, 2005.

4. In view of the above submissions, the appellant requested that the impugned order is required to be set aside with consequential relief.

#### ADMISSION OF APPEAL

5. One set of the appeal memorandum has been forwarded to the adjudicating authority for comments vide this office letter No. S/49-09/CUS/AHD/2025-26/2258 dated 04.07.2025. In the said letter, it has been requested, inter alia, to inform the date of receipt of the impugned order by the appellant along with evidence, but no reply/comments has been received. So, I proceed to decide the appeal on the basis of documents submitted by the appellant.

6. Along with the appeal memorandum, the appellant had submitted copies of TR-6 Challan No. JSEZ/049/22-23 dated 01.11.2022 for Rs. 6,40,565/- and Challan No. JSEZ/50/22-23 dated 01.11.2022 for Rs. 3,42,658/- deposited by M/s. Jubilant Ingrevia Ltd. (SEZ Unit-1 and Unit-2 respectively) towards Export Duty and Interest. However, it appeared that the said Challans cannot be treated as Pre-deposit under the provisions of Section 129E of the Customs Act, 1962, for filing the present appeal by M/s. Madhavi Construction. So, the appellant has further submitted a copy of T.R.-6 Challan dated 13.02.2026 towards payment of Rs. 44,530/- as pre-deposit calculated @7.5% of the duty amount under the provisions of Section 129E of the Customs Act, 1962.

7. In the Form No. C.A.-1, the appellant has shown the date of communication of the impugned order dated 12.11.2024, as "05<sup>th</sup> February 2025 through mail". The appellant has also submitted a print out of the said email dated 05.02.2025 sent by Customs Division Surat. Whereas, the appeal has been received in this office on 03.04.2025. Thus, this appeal has been filed within normal period of 60 days, as prescribed for filing appeal under Section 128(1) of the Customs Act, 1962.

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



PERSONAL HEARING

9. Personal Hearing in respect of the appeal was held on 27.01.2026, which has been attended by Mr. Aman Rathi, Chartered Accountant, on behalf of the appellant. He reiterated the submissions made at the time of filing of appeals. He further mentioned in that Hon'ble Andhra Pradesh High Court, in the case of *TUF Metallurgical Pvt. Ltd. Vs. Union of India* in September 2025 having Writ Petition number as 15528/2024 struck down the relevant proviso to Rule 27 of the Special Economic Zones Rules, 2006. He furnished a copy of the said Order of Hon'ble Andhra Pradesh High Court.

DISCUSSION AND FINDINGS

10. I have carefully gone through the written as well as oral submissions made by or on behalf of the appellant viz. M/s. Madhavi Construction.

11. I have seen photocopies of T.R.6 Challans dated 01.11.2022 towards Export Duty deposited by M/s. Jubilant Ingrevia Ltd. in their own name as assessee/importer/exporter. Any particulars like Invoice Nos. & Date, SCN/OIO No. & Date in respect of M/s. "Madhavi Construction" have not been mentioned in the said T.R.6 Challans. Further, it has been observed that some SEZ Units have approached to Hon'ble High Court in respect of levy of export duty on supplies made from DTA to SEZ and they have paid duty under protest.

12. If the liability to pay export duty on supplies made from DTA to SEZ arises, such liability to pay export duty is on the DTA supplier, not on SEZ unit; and so, the export duty is required to be assessed and paid by the DTA supplier, if required. Therefore, I am of the view that copies of TR-6 Challan No. JSEZ/049/22-23 dated 01.11.2022 for Rs. 6,40,565/- and No. JSEZ/50/22-23 dated 01.11.2022 for Rs. 3,42,658/- deposited by M/s. Jubilant Ingrevia Ltd. (SEZ Unit-1 and Unit-2 respectively) are not relevant to the present matter. So, the present appeal filed by M/s. Madhavi Construction in respect of demand of export duty from them is required to be decided on merits.

13. The issue involved in the appeal is whether export duty on the goods supplied by the appellant to SEZ Unit is leviable or not.

14. In the Judgment dated 04.11.2009 in the case of *Essar Steel Limited and Adani Power Ltd. Vs. Union of India* [2010 (249) E.L.T. 3 (Guj.) = 2009 (11) TMI 141 - GUJARAT



HIGH COURT], Hon'ble High Court of Gujarat has held that the levy of export duty on the goods supplied from Domestic Tariff Area to Special Economic Zone is not justified; that the petitioners not to be called upon to pay export duty on movement of goods from DTA to SEZ units or developers. I note that Special Leave to Appeal (Civil) No. 5698 of 2010 with SLP (C) Nos. 6204, 6307, 7818, 7931, 9243 and 10118 of 2010 filed by Union of India against the aforesaid Judgment dated 04.11.2009 has been dismissed by Hon'ble Supreme Court on 12.07.2010 [Union of India v. Essar Steel Ltd. - 2010 (255) E.L.T. A115 (S.C.)]. However, the said Order dated 12.07.2010 has been recalled by Hon'ble Supreme Court vide Order dated 10.02.2020 reported as Union of India Vs. Essar Steel India Ltd. [2022 (380) ELT 403 (SC)] and the SLPs had been restored. Now, Hon'ble Supreme Court has decided this issue vide Order dated 28.08.2025, which has been reported as Union of India Vs. Adani Power Ltd. [(2025) 36 Centax 257 (S.C.)]. In the said latest Order, it has been observed and held by the Apex Court as under:

*"4.3 Similarly, the third question has been considered by the High Court in paragraph 41.3 and after discussion, the answer to the said question has been given in paragraph 41.3.4 of the impugned judgment. Consequently, the High Court has held in paragraph 42 as under:*

*"42. In view of the above discussion and findings arrived at as well as conclusion drawn, the levy of export duty on goods supplied from the Domestic Tariff Area to the Special Economic Zone is not justified. The petitioners are, therefore, not to be called upon to pay export duty on movement of goods from Domestic Tariff Area to Special Economic Zone units or developments."*



*"6. We find that the High Court has rightly arrived at the conclusions in the aforesaid paragraphs on a correct interpretation of the provisions of the aforesaid two Acts. In the circumstance, we do not find any reason to interfere with the impugned judgment. Hence, the appeals are dismissed.*

*7. On a conjoint reading of the aforesaid provisions, we find that Section 12 of the Customs Act, 1962 is the charging Section. However, under Section 26 of the SEZ Act, power is reserved to grant an exemption or a concession if under the provisions of the Customs Act, 1962, a duty is leviable as per the charging Sections.*

8. It is also necessary to observe as submitted by the learned senior counsel for the respondent(s) that the Madras High Court as well as the Andhra Pradesh High Court have also taken a similar view as discussed in the aforesaid impugned judgment. In the circumstances, all appeals arising therefrom are also dismissed."

15. However, I find that the above Order/Judgment relates to the period prior to the amendment of Rule 27 of the SEZ Rules, 2006, vide Notification No. GSR 909(E) dated 19.09.2018 issued by the Ministry of Commerce and Industry. Vide the said amendment, fifth Proviso to Sub-Rule (1) of Rule 27 of the SEZ Rules, 2006, has been inserted, which is as under:

*"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."*

16. Therefore, it has to be examined as to whether export duty in this case can be demanded wherein the period involved is from 22.05.2022 to 18.11.2022 i.e. after insertion of the above-mentioned Proviso.

17. I find that above-mentioned fifth Proviso to Sub-Rule 27(1) has been stuck down by Hon'ble High Court of Andhra Pradesh in Writ Petition No. 15528 of 2024 in the case of TUF Metallurgical Pvt. Ltd. vs. Union of India reported as 2025 (9) TMI 1171 - ANDHRA PRADESH HIGH COURT = (2025) 35 Centax 280 (A.P.) [18-09-2025]. Para 27 of the said Order is as under:

*"27. Be that as it may, we set aside the decision dated 26.04.2024 and hold that 5th proviso to sub-rule (1) of Rule 27 of the Special Economic Zone Rules, 2006, as ultra vires the Special Economic Zone Act, 2005 and is accordingly, struck down. This writ petition is accordingly allowed."*

17.1 Further, I find that the even after insertion of the fifth Proviso in Sub-Rule 27(1) of the SEZ Rules, 2006, vide Notification dated 19.09.2018, there are no corresponding amendments in the provisions of Section 2(18) and 2(19) of the Customs Act, 1962, which define the terms "export" and "export goods" respectively. The said definitions are as follows:



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

(19) "export goods" means any goods which are to be taken out of India to a place outside India;

17.2 Further, the definition of the term "India", as given in Section 2(27) *ibid*, says that "India" includes the territorial waters of India. In absence of amendment in any statutory provision of the Customs Act, 1962, I am of view that Export duty cannot be levied merely by virtue of amendment in Rule 27(1) of the SEZ Rules, 2006 vide Notification dated 19.09.2018. Further, the said amendment, i.e. fifth Proviso to Rule 27(1), has already been held as ultra vires to the SEZ Act, 2005 and struck down by Hon'ble High Court of Andhra Pradesh in the case of TUF Metallurgical Pvt. Ltd. vs. Union of India (supra).

18. It is a settled principle of administrative law that a Rule (subordinate legislation) cannot override or expand the scope of the Parent Act (Customs Act, 1962). The power to levy Customs Duty flows from Section 12 of the Customs Act. If the Charging Section (Section 12) does not cover DTA-to-SEZ supplies (as they are not "exports" out of India), a Rule made under the SEZ Act cannot independently create a charge of Customs Duty. The SEZ Act treats DTA-to-SEZ supplies as "exports" primarily for the purpose of granting benefits (exemptions, drawbacks) to authorized operations. This "deeming fiction" cannot be extrapolated to levy a tax (Export Duty) under the Customs Act when the Customs Act itself defines export strictly as "taking out of India". Since Section 12 of the Customs Act was not amended to include DTA-to-SEZ supplies as a taxable event, the proviso to Rule 27 of SEZ Rules is insufficient to fasten a duty liability that the parent Act does not impose. This view is supported by the Hon'ble AP High Court in Tirupati Udyog Ltd. v. Union of India [2011 (272) E.L.T. 209 (A.P.) = 2010 (7) TMI 768 - ANDHRA PRADESH HIGH COURT], wherein the Hon'ble High Court has held that the SEZ Act does not authorize the levy of Customs Duty on goods supplied from DTA to SEZ, as such goods are not "exported" beyond the territorial waters of India.

19. As regards the requirement of amendments in the provisions of the Customs Act, 1962, to levy export duty on supply of goods from DTA to SEZ, I also rely upon the Order dated 27.04.2012 of Hon'ble Madras High Court in the case of Advait Steel Rolling Mills Pvt. Ltd. Vs. Union of India [2012 (286) E.L.T. 535 (Mad.)]. The last Para of the said order is as follows (underline supplied):



*“30. As there is no movement of goods from India to a place outside India, export duty cannot be levied. In fact, there is no ‘export’ of goods, as per the relevant provisions of the Customs Act, 1962. When the Special Economic Zones Act, 2005, is a separate Code, it would not be open to the respondents to levy duties of customs on goods moved from Domestic Tariff Areas into Special Economic Zones, as per the definition found in Section 2 of the Customs Act, 1962. Further, when the definition of term ‘export’ in Section 2(m) of the Special Economic Zones Act, 2005, is clear and specific, the definition of ‘export’, found in Section 2(18) of the Customs Act, 1962, cannot be made applicable for the levy of duties of customs on goods supplied from the Domestic Tariff Areas to the Special Economic Zones. As such, it would not be proper on the part of the respondents to levy duties of customs on goods supplied from the Domestic Tariff Areas to the units situated in the Special Economic Zones. If levy of duties of customs are to be made applicable to such goods it could only be by way of appropriate amendments introduced in the Customs Act, 1962, as well as in the Special Economic Zones Act, 2005. As such it is clear that it would not be open to the respondents to levy duties of customs on such goods, by way of Notifications or Circulars. The writ petitions are ordered accordingly. No costs.”*

20. In view of the above provisions and orders, the legal position prevailed during the period involved in the present appeal, does not authorise levy of export duty on supply of goods from DTA to SEZ Unit. Therefore, I am of the considered view that the decisions of Hon’ble Supreme Court in the case of Union of India Vs. Adani Power Ltd. [(2025) 36 Centax 257 (S.C.)] and Hon’ble High Court of Andhra Pradesh in the case of TUF Metallurgical Pvt. Ltd. vs. Union of India [(2025) 35 Centax 280 (A.P.)] are squarely applicable to the facts of the present appeal; and therefore, demand of export duty on supply of the goods by the appellant to the SEZ unit is not sustainable. Since the demand for the export duty is set aside, the demand for interest under Section 28AA of the Customs Act, 1962, cannot survive. The principle *sublato fundamento cadit opus* (when the foundation is removed, the superstructure falls) applies. Therefore, the impugned order passed by the adjudicating authority is required to be set aside.

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



**ORDER**

I set aside the Order-In-Original No. 07/AR/ADC/SRT/2024-25 dated 12.11.2024 passed by the Additional Commissioner of Customs, (In-charge: Customs Division Surat), Surat, and allow the appeal with consequential relief, in accordance with law.

  
(AMIT GUPTA)

Commissioner (Appeals),  
Customs, Ahmedabad

F.No. S/49-09/CUS/AHD/2025-26

Date: 26.02.2026

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

To

M/s. Madhavi Construction,  
Bhadkodra Ankleshwar,

B 75 Vaibhav Park Society, Kapodara Patiya Valia Road,  
Ankleshwar, Bharuch - 393002.

(email: [madhaviconstruction4@gmail.com](mailto:madhaviconstruction4@gmail.com) , [madhavioffice4@gmail.com](mailto:madhavioffice4@gmail.com) )



Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.  
(email: [ccoahm-guj@nic.in](mailto:ccoahm-guj@nic.in) )
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.  
(email: [cus-ahmd-guj@nic.in](mailto:cus-ahmd-guj@nic.in) [rra-customsahd@gov.in](mailto:rra-customsahd@gov.in) )
3. The Additional Commissioner of Customs, In-charge: Custom Division Surat, Surat/Ahmedabad. (email: [patoadc-srtcust@gov.in](mailto:patoadc-srtcust@gov.in) [adjcus-surat@gov.in](mailto:adjcus-surat@gov.in) [cus-ahmd-adj@gov.in](mailto:cus-ahmd-adj@gov.in) [Custech.surat@gov.in](mailto:Custech.surat@gov.in) )
4. Shri. Aman Rathi, Chartered Accountant, Ahmedabad. (email: [info@rayassociates.com](mailto:info@rayassociates.com) , [oz1529@gmail.com](mailto:oz1529@gmail.com) , [ray1associates@gmail.com](mailto:ray1associates@gmail.com) )
5. Guard File.

\*\*\*\*\*