सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281
DIN – **20260171MN000000F037**

क	फ़ाइल संख्या FILE NO.	S/49-268/CUS/AHD/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-528-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	27.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No.: 196/AR/ADC/ICD-SACHIN/SRT/2024-25, dated 22.10.2024 passed by the Additional Commissioner, Customs, Surat.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	27.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Anupam Embroidery, Plot No.: 43, Khatodara Ind. Co-Op. Service Society, B/H Sub Jail, Khatodara, Surat- 395 002. Smt. Usha Murarka, Proprietor of M/s. Anupam Embroidery, 203, Anand Niwas, Nr. Adinath Market, Ring Road, Surat-395 002.

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	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 दस्तावेज़ों 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 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/-(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित 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 सम्बंन्ध 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	2nd 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 हज़ार रुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए**	
(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 हज़ार रुपए.**	
(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

M/s. Anupam Embroidery, Plot No.: 43, Khatodara Ind. Co-Op. Service Society, B/H Sub Jail, Khatodara, Surat- 395 002 (hereinafter referred to as "the Appellant") have filed the present appeal against the Order-In-Original No.: 196/AR/ADC/ICD-SACHIN/SRT/2024-25, dated 22.10.2024 (herein after referred to as "the impugned order") passed by the Additional Commissioner, Customs, Surat (herein after referred to as "the "adjudicating authority").

2. Facts of the case, in brief, are that the Appellant had imported Capital Goods machinery, i.e., 07 sets of Computerized Embroidery Machine under EPCG Licence No. 5230017028, dated 11.06.2015 by saving Customs Duty amount of Rs. 10,23,719/- (Actual Duty Utilization of Rs. 10,29,483/-) under the cover of the below mentioned Bills of Entry at Zero rate of duty by availing the benefit of exemption available under Notification No. 16/2015-Cus., dated 01.04.2015. The details of import are as per Table – I below:

TABLE - I

Sr. No.	Bill of Entry No. & date	Number of machinery cleared	Duty saved / available as per EPCG Licence (In Rs.)	Total Duty Foregone / Debited at the time of clearance (In Rs.)	Bank Guarantee Amount (In Rs.)
1.	9613593 dated 18.06.2015	02	10,23,719/-	2,96,769-	1,70,000/-
2.	9613604 dated 18.06.2015	02		2,81,150/-	
3.	9689289 dated 25.06.2015	03		4,51,564/-	
	TOTAL	**07 Sets**	**10,23,719/-**	**10,29,483/-**	
As per para 5.10 of Handbook of Procedure, 10% enhancement in CIF value of duty saved amount is admissible					

2.1 Against the said EPCG Licence No. 5230017028, dated 11.06.2015, the Appellant had executed a Bond dated 17.06.2015 before the Deputy/Assistant Commissioner of Customs, ICD – Sachin, Surat for an amount of Rs. 29,00,000/- backed by a Bank Guarantee No. 6246BGFD001416, dated 12.06.2015 for Rs. 1,70,000/- issued by the ICICI Bank , Ring Road Branch, Surat. They had undertaken to fulfilll the export obligation as specified in the Notification and the licence.

2.2 The said machinery, i.e., 07 sets of Computerized Embroidery Machine imported under the aforesaid EPCG Licence were installed at 1 M/s. Anupam Embroidery, Plot No.: 43, Khatodara Ind. Co-Op. Service Society, B/H Sub Jail, Khatodara, Surat- 395 002 as per the Installation Certificate dated 12.12.2015 issued by the Chartered Engineer, Dr. P.J.Gandhi , Surat, certifying the receipt of the goods imported and its installation.

2.3 As per the conditions of Notification No. 16/2015-Cus., dated 01.04.2015, the Appellant was required to fulfilll the export obligation on FOB basis equivalent to Six times the duty saved on the goods imported as specified on the Licence and Authorization, within a period of Six years from the date of issuance of EPCG Licence. In the instant case, the said EPCG Licence was issued to the Appellant on 11.06.2015 and accordingly, they were required to fulfilll export obligation by 10.06.2021, i.e., within a period of Six years from the date of issuance of Licence or Authorization and submit the Export Obligation Discharge Certificate (EODC) issued by the Regional DGFT Authority before the jurisdictional Customs authorities.

2.4 A letter F. No. ICD-SACHIN/Misc./01/2022-23, dated 13.01.2023 was issued to the Appellant requesting them to submit the copy of EODC or any extension issued by the Regional Authority, DGFT, Surat for fulfillment of export obligation. However, the Appellant had not responded to the above correspondence.

2.5 Since, no response was received from the Appellant, a letter dated 27.02.2023 was written to the Foreign Trade Development Officer, DGFT, Surat requesting to inform whether the EODC had been issued or any extension granted to the Appellant or any documents showing the fulfillment of the export obligation have been received by their office against the aforesaid EPCG Licence No. 5230017028, dated 11.06.2015. In response, the Assistant Director, Directorate General of Foreign Trade, Surat vide letter F. No. EPCG/Mis./2020-21, dated 28.02.2023 informed that the Appellant had not submitted any documents to them against fulfilment of export obligation.

2.6 In view of the above, it appeared that the Appellant had failed to fulfilll the export obligation as specified in the Licence and did not comply with the mandatory condition of the Notification No. 16/2015-Cus., dated 01.04.2015, the condition of EPCG Licence and also the conditions of the Bond executed and furnished by them. The Appellant neither produced the EODC issued by the DGFT, Surat nor could produce any documents showing extension granted to them for fulfillment of export obligation. Therefore, the Appellant was liable to pay Customs Duty not paid (i.e. saved) by them amounting to Rs. 10,29,483/- at the time of import / clearance along with interest at the applicable rate, in terms of conditions of the said Notification read with condition of the

Bond executed by them read with Section 143 of the Customs Act, 1962. Further, said the Bank Guarantee issued by the ICICI Bank, Surat and furnished by them against the aforesaid EPCG Licence appeared liable to be encashed and deposited in the Government Exchequer.

2.7 Accordingly, a Show Cause Notice under F. No. VIII/6-732/ICD-Sachin/2015-16 dated 01.05.2024 was issued to the Appellant, proposing as to why:

i. The benefit of Zero rate of duty for EPCG Scheme under the said Notification on the imported Computerized Embroidery Machine imported in the name of the appellant should not be denied;

ii. Customs Duty amounting to Rs. 10,29,483/- being the duty foregone at the time of import under EPCG Licence should not be demanded and recovered from them along with interest in terms of the said Notification as amended, read with the conditions of Bond executed and furnished by them in terms of Section 143 of the Customs Act, 1962 by enforcing the terms of the said Bond. Further, why the said Bank Guarantee backed against the Bond, should not be appropriated and adjusted towards the duty liability as mentioned above;

iii. The imported Capital goods should not be held liable for confiscation under Section 111 (o) of the Customs Act, 1962 read with the conditions of Bond executed in terms of Section 143 of the Customs Act, 1962 read with said Customs Notification as amended from time to time;

iv. Penalty should not be imposed under Section 112 (a) and Section 117 of the Customs Act, 1962;

2.8 The Adjudicating Authority, vide the impugned order, has passed order as detailed below:

i. He disallowed the benefit of zero rate of duty for EPCG Scheme under the said Notification for subject import of said goods vide subject Bills of Entry;

ii. He confirmed the demand of Customs Duty amounting to Rs. 10,29,483/- being the duty foregone at the time of import of Capital Goods under EPCG Licence in terms of the said Notification as amended, read with the conditions of Bond executed along with interest and ordered the same to be recovered in terms of Section 143 of the Customs Act, 1962 by enforcing the terms of the above mentioned Bond;

iii. He ordered to appropriate the amount of Rs. 1,70,000/- by encashment of the said Bank Guarantee issued by the ICICI Bank, Ring Road Branch, Surat submitted by the Appellant and ordered to adjust the said amount against the duty liability confirmed at (ii) above;

iv. He confiscated the subject imported Capital goods imported by the Appellant under Section 111 (o) of the Customs Act, 1962 read with the conditions of Bond executed in terms of Section 143 of the Customs Act, 1962 read with the said Customs Notification. However, he gave an option to redeem the said goods on payment of redemption fine of Rs. 21,98,293/- under Section 125 (i) of the Customs Act, 1962;

v. He imposed penalty of Rs. 1,02,948/- upon the Appellant under Section 112 (a) (ii) of the Customs Act, 1962;

vi. He imposed penalty of Rs. 1,00,000/- upon the Appellant under Section 117 of the Customs Act, 1962;

3. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellant have filed the present appeal on 21.01.2025. The Appellant have, inter-alia, raised various contentions and filed detailed submissions as given below in support of their claims:

(i) We have fulfilled the conditions of Notification No. 16/2015-Cus dated 01.04.2015 read with Foreign Trade Policy

As mentioned in Para 4 of the impugned OIO, in terms of the conditions of Notification No. 16/2015-Cus dated 01.04.2015, we were required to fulfill the export obligation on FOB basis equivalent to Six times of the duty saved on the goods imported as specified on the license or authorization. Further, as mentioned in para 15 of the impugned OIO, the conjoint reading of para 5.01 of Foreign Trade Policy (2015-20), para 5.13 of Handbook of Procedure (2015-20) and Para 2(5) of Notification No. 16/2015-Cus dated 01.04.2015 makes it explicitly clear that we were bound to fulfill the stipulated export obligation within six years unless extended by the competent authority and that the 50% of export obligation was to be completed in the first block, Ie within four years and remaining 50% export obligation was to be completed by six years from the date of issuance of license or authorization.

In this regard, it is to submit that in our case, the date of issuance of EPCG license No 5230017028 is 11.06. 2015. Further, the duty saved under goods imported by us as specified on the licence was Rs. 10,29,483/- Thus, we were required to export goods amounting to Rs. 61,76,898/- (total export obligation) within six years of 11.06.2015 i.e on or before 10.06.2021 out of which goods amounting *to Rs. 30,88,449/- (50% of export obligation) was required to be exported within 4 years of 11.06.2015 ie on or before 10.06.2019 and remaining goods amounting to Rs. 30,88,449/ (50% of remaining export obligation) was required to be exported within 6 years of 11.06.2015 ie on or before 10.06.2021 In this context, we would like to submit that we have exported goods amounting to Rs. 77,59,864/- within 2.5 years only and thus completed the total export obligation (in excess) well before the time limit of 4 years and 6 years. We are providing herewith the copy of ANF-5B (Application Form for Redemption of EPCG Authorization) Surat (copy enclosed as Annexure-VII) alongwith copies of (1) Statement of Bank realization, (ii) Export cum Tax Invoice & (iii) Shipping Bill for Export in this regard from which it can be observed that we have exported goods amounting to Rs. 77.59.864/within 2.5 years only and thus completed the total export obligation*

In view of above, it is quite evident that we have fulfilled the conditions of Notification No. 16/2015-Cus dated 01.04.2015 read with Foreign Trade Policy

(ii) We could not timely intimate the Customs department regarding fulfilment of all the conditions of Notification No. 16/2015-Cus dated 01.04.2015 by us which is just a procedural lapse.

As discussed in para 8.3 above, though we had fulfilled all the conditions of Notification No. 16/2015-Cus dated 01.04.2015, we could not inform the same to the Customs authority because my father, Shri Binod Kumar Murarka who was looking after all Government related work including Customs connected work was not keeping well since last few years and he ultimately died on 15-09-2023 (copy of death certificate as Annexure-IV). Since the death of my father, my mother also started remaining ill. This was also the reason why we could not give reply to letter dated 13-01-2023 as mentioned in para 5 of the Show cause notice. As we could not timely intimate the Customs department regarding fulfilment of all the conditions of Notification No. 16/2015-Cus dated 01.04.2015, hence, a show cause notice bearing F. No. VIII/6-732/ICD-Sachin/2015-16 dated 01-05-2024 was issued by the Additional Commissioner, Customs, Surat. Further, as discussed in para 8.4 above, as no reply was submitted by us to the show cause notice, hence, the show cause notice was decided ex-parte against us and Order-In-Original number 196/AR/ICD-SACHIN/SRT/2024-25 dated 22.10.2024 was passed by the Additional Commissioner. Customs, Surat. Thus, the issuance of Show Cause notice to us and further issuance of Order against us was due to the reason that we could not timely intimate the Customs department regarding fulfilment of all the conditions of Notification No. 16/2015-Cus dated 01.04.2015 by us which is just a procedural lapse. There are catena of judgments in which it is held that no demand of duty and/or penalty should be held in case of procedural lapse

(iii) There is no loss of revenue to the Government Exchequer

We have exported goods amounting to Rs. 77,59,864/- within 2.5 years of EPCG license No 5230017028 is 11.06.2015 only and thus completed the total export obligation (in excess) well before the time limit of 4 years and 6 years. We have already provided the copy of ANF-5B (Application Form for Redemption of EPCG Authorization) Surat (copy enclosed as Annexure-VII) alongwith copies of (1) Statement of Bank realization, (ii) Export cum Tax Invoice & (iii) Shipping Bill for Export in this regard from which it can be observed that we have exported goods amounting to Rs. 77,59,864/-within 2.5 years only and thus completed the total export obligation. Thus, there is no loss of revenue to the Government exchequer. There are catena of judgments in which it is held that no demand of duty and/or penalty should be should be held where there is no loss of revenue to the Government Exchequer

(IV) We have made application to DGFT for EODC

*We have already made application to DGFT for getting EODC on 03-01-2025 which is pending at the end of DGFT The copy of Application No. ARNEPCGCLSRE06717643AM25 in this regard is enclosed herewith as **Annexure-VIII***

10. In view of the submissions given in para 9 above, it is quite evident that we have fulfilled all the conditions of Notification No. 16/2015-Cus dated 01.04.2015 read with Foreign Trade Policy and have exported goods amounting to Rs. 77,59,864/- within 2.5 years only and thus completed the total export obligation (in excess) well before the time limit of 4 years and 6 years. Further, we could not timely intimate the Customs department regarding fulfilment of all the conditions of Notification No. 16/2015-Cus dated 01.04.2015 due to the reasons as discussed above which is just a procedural lapse. Also, there is no loss of revenue to the Government Exchequer. Moreover, we have also made application to DGFT for EODC which is pending at the end of DGFT.

In view of above, there is no question of disallowing the zero rate of duty for EPCG Scheme under Notification No.16/2015-Cus dated 01.04.2015 on the subject Machines imported by us as mentioned in para 24 (i) of the OIO. Further, confirmation demand of Customs Duty amounting to Rs.10,29,483/- along with interest as mentioned in para 24 (ii) and (v) of the OIO is also out of place. Also, appropriation of the amount of Rs.1,70,000/ bv encashment of the Bank Guarantee No. 6246BGFD001416 dated 12.06.2015 for Rs. 1,70,000/-as mentioned in para 24 (iii) of OIO is completely unjustifiable. Moreover, question of redemption fine of Rs. 21,98,293/-as mentioned in para 24 (iv) of the OIO does not at all arise. Likewise, imposition of penalty amounting to Rs. 1,02,948/- and Rs. 1,00,000/- as mentioned in para 24 (vi) and (vii) respectively of OIO is completely uncalled for.

11. Prayer from the appellant that in terms of the Grounds of Appeal, as catalogued *hereinabove, it is manifestly clear that the impugned Order of the Respondent, is liable to be set aside and the prayers of Appellants, may please be taken accordingly, in respect thereof. The Appellants, pray for a Personal Hearing, under well-settled principles of audi alteram partem, before this appeal, is disposed off, by the Honourable Appellate Authority. The Appellants, crave Your Honour's leave, in respect of the Submissions, aforementioned for adding thereto or deleting there from any matter or for making any amendments or alterations therein or for making any clarification or for adducing further evidences, in respect thereof and for presenting further documents, in connection therewith, if, so required and advised*

3.1 In addition to above submission, the appellant vide letter dt. 16.12.2025 submitted orders of the higher appellate authority (i) The Hon'ble High Court at Madras in the case between Ramsays Corporation Private Limited versus The Commissioner of Customs, Chennai (ii) The Mumbai Tribunal in the case between M/S Apex International Versus Commissioner of Customs (NS-IV). The appellant requested to take on record and set aside the order.

4. Personal hearing in the matter was held on 18.12.2025 in virtual mode. Shri Manish Barot, GST Consultant, appeared for hearing on behalf of the Appellant. He reiterated the submissions made in the appeal memorandum. Additional submission already submitted vide letter dt. 16.12.2025, contents are produced above at para no. 3.1.

5. Before going into the merits of the case, it is observed that the appellant has submitted a copy of TR 6 Challan 88/2024-25 dt. 15.01.2025 towards payment of pre-deposit of Rs. 77,211/- calculated @7.5% of the duty amount Rs. 10,29,483/- under the provisions of Section 129E of the Customs Act, 1962.

5.2 It is observed that the one set of Appeal memorandum and related appeal papers received from the appellant forwarded to the adjudicating authority i.e the Additional Commissioner, Customs, Division-Surat vide letter dt. 25.03.2025 to have their comments on the aspects of the date of receipt of the order by the appellant, para wise commnets on the grounds of appeals raised by the appellant etc. However, no reply thereof has been received.

6. It is observed in the Form No. C.A.-1, the appellant has shown the date of

communication of the impugned order dated 22.10.2024, as 22.10.2024. Whereas, the appeal has been received in this office on 21.01.2025. Thus, this appeal has been filed after a delay of 31 days beyond the normal period of 60 days, as prescribed for filing appeal under Section 128(1) of the Customs Act, 1962. The details of the date of communication of the impugned order and filing of the present appeal as per appeal memorandum are as under:-

Sr. No.	Appeal No.	Impugned Order No. & Date	Communication of Impugned Order as per Appeal Memorandum	Appeals filed on	No. of days delayed in filing Appeal
1.	2.	3.	4.	5.	6.
1.	S/49-268/CUS/ AHD/2024-25	196/AR/ADC/ICD-SACHIN/SRT/2024-25 dated 22.10.2024	22.10.2024	21.01.2025	91

6.1 It is observed that the appellant has applied for condonation of delay in filing of appeal vide her request letter dated 13.01.2025. The points submitted for condonation of delays are mentioned as under:

> " *Before submitting the application for condonation of delay. I Abha Agrawal daughter of Usha Murarka, proprietor of M/s. Anupam Embroidery. Plot No. 43. Khatodara Ind. Co-Op Service Soci., B/h. Sub Jail, Khatodara, Surat- 395002 would like to submit that as my mother is not keeping well, hence she has given me General Power of Attorney to appear for and represent on behalf of her firm before indirect tax department / all government department and accordingly I am filing application for condonation of delay on behalf of my mother Usha Murarka (Copy of General Power of Attorney enclosed herewith as Annexure-IA).*
>
> 2. *An Order-In-Original number 196/AR/ICD-SACHIN/SRT/2024-25 dated 22.10.2024 has been passed by the Additional Commissioner, Customs, Surat against us ie. Anupam Embroidery. Plot No. 43, Khatodara Ind Co-Op Service Soc. B/h Sub Jail, Khatodara, Surat-395 002. As we are not having any proof of receipt of said OIO hence, we are considering the date of receipt of OIO as 22. 10.2024 only. Now, as per section 128(1) of Customs Act, 1962 we were required to file appeal to the Commissioner (Appeals) within 60 days from the date of*

communication of impugned OIO However, we could not file appeal within 60 days, the reason for which is as below-

My Mother, Smt. Usha Murarka is the proprietor of our unit. My father, Shri Binod Kumar Murarka who was looking after all Government related work including Customs connected work was not keeping well since last few years and he ultimately died on 15-09-2023 (copy of death certificate as Annexure-IV). Since the death of my father, my mother also started remaining ill and hence she gave me power of attorney as discussed in para 1 above. Further, as my father was looking after all customs connected work, we were not aware of any correspondence made with Customs department in past and also were not having any knowledge about Customs formalities pending at our end. This was also the reason why we could not file any reply to the show cause notice in reference. When we received the impugned OIO dated 22.10.2024, we were completely not aware about the importance of same and the necessary action required at our end in this respect. Under the situation, it took some time for us to take a decision regarding necessary action to be carried out by us in the matter. In fact, it was just one month back that we came to know that an appeal is required to be filed against the said OIO and hence we started looking for the consultant/advocate for the same. When we decided to hand over the work of filing appeal to one Customs consultant, we came to know that appeal was already time barred and thus there was only one option of filing an Application for condonation of delay along with appeal. Accordingly, we are filing herewith the appeal with an Application for condonation of delay Looking at the situation of our family and the lack of knowledge at our end as discussed above, it is humbly requested to kindly accept our appeal as per the provisions of Proviso to Section 128 (1) of Customs Act, 1962 and oblige."

6.2 In this regard, I have gone through the provisions of limitations for filing an appeal as specified under Section 128 (1) of the Customs Act, 1962. Thus, it is relevant to refer the legal provisions governing filing an appeal before the Commissioner (Appeals) and his powers to condone the delay in filing appeals beyond 60 days. Extracts of relevant Section 128 of the Customs Act, 1962 are reproduced below for ease of reference:

SECTION 128. Appeals to [Commissioner (Appeals)]. — (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order.

[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

6.3 Section 128 of the Customs Act, 1962 makes it clear that the appeal has to be filed within 60 days from the date of communication of order. Further, if the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days.

6.4 It will also be relevant to refer to the judgment of Hon'ble Supreme Court in case of Singh Enterprises – [2008 (221) E.L.T. 163 (S.C.)], wherein the Hon'ble Apex Court had, while interpreting the Section 35 of the Central Excise Act, 1944, which is pari materia to Section 128 of the Customs Act, 1962, held that the appeal has to be filed within 60 days, but in terms of the proviso, further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The relevant para is reproduced below:

> ***"8.*** *The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-*

section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."

6.5 The above view was reiterated by the Hon'ble Supreme Court in Amchong Tea Estate [2010 (257) E.L.T. 3 (S.C.)]. Further, the Hon'ble High Court of Gujarat in case of Ramesh Vasantbhai Bhojani – [2017 (357) E.L.T. 63 (Guj.)] and Hon'ble Tribunal Bangalore in the case of Shri Abdul Gafoor Vs Commissioner of Customs (Appeals) [2024-TIOL-565-CESTAT-BANG] have taken a similar view while dealing with Section 128 of the Customs Act, 1962.

6.6 In terms of legal provisions under Section 128 of the Customs Act, 1962 and in light of the judicial pronouncements by the Hon'ble Supreme Court, Hon'ble High Court and Hon'ble Tribunal Bangalore, it is settled proposition of law that the appeals before first appellate authority are required to be filed within 90 days, including the condonable period of 30 days as provided in the statute, and the Commissioner (Appeals) is not empowered to condone any delay beyond 30 days.

6.7 In light of the above observation, I find that the appeal have been filed after 90 days from the date of receipt of the impugned order. I am not empowered to condone the delay in filing the appeal beyond the period specified in Section 128 of the Customs Act, 1962. Hence, the same is held to be time barred.

7. In view of the discussion made above, I reject the appeal filed by the Appellant on the grounds of limitation without going into the merits of the case.

(Amit Gupta)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-268/CUS/AHD/24-25 Date: 27.01.2026

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

Through Speed Post:

To

M/s. Anupam Embroidery,

Plot No.: 43, Khatodara Ind. Co-Op. Service Society,

B/H Sub Jail, Khatodara,

Surat- 395 002

Email: bindohuf@gmail.com

Copy to:

1.The Chief Commissioner of Customs Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in)

2.The Principal Commissioner of Customs, Custom House, Ahmedabad. (email: cus-ahmd-guj@nic.in rra-customsahd@gov.in).

3. The Additional Commissioner of Customs, ICD – Sachin, Surat. (Email: adjcus-surat@gov.in / cus-ahmd-adj@gov.in)

4.The Deputy Commissioner, Customs, ICD – Sachin, Surat. (icd-sachin@gov.in).

4. Shri Manish Barot, GST Consultant on behalf of M/s. Anupam Embroidery,

, Surat. (manishbarot@yahoo.in)

5. Guard File.