



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-20251271MN0000777C38

क	फ़ाइल संख्या FILE NO.	S/49-259/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-496-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	26.12.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. 168/ADC/SRV/O&A/24-25 dated 12.11.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	26.12.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Shree Infracon Private Limited, 602, Parshwanath E Square, Corporate Road, Nr. AUDA Garden, Prahladnagar, Satellite, Ahmedabad, Gujarat, 380015



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.

2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	वैगेज़ के रूप में आयातित कोई माल.
(a)	any goods exported
(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/- (रुपए दो सौ मात्र) या रु.1000/- (रुपए 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 :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-				
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -				
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.				
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;				
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए				
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;				
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.				
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees				
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।				
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.				
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.				
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-				
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or				
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.				



ORDER-IN-APPEAL

An Appeal has been filed by M/s. Shree Infracon Private Limited, 602, Parshwanath E Square, Corporate Road, Nr. AUDA Garden, Prahladnagar, Satellite, Ahmedabad, Gujarat, 380015, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. 168/ADC/SRV/O&A/24-25 dated 12.11.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Customs, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, as mentioned in the impugned order, are that the Appellant is a supplier of goods viz. TMT Bars and Steel structures falling under Chapter 72 to the entities registered in GIFT- Special Economic Zone (SEZ) for their authorized operation. A third Proviso to Rule 27 of SEZ Rules, 2006 was inserted vide Notification 19th Sep. 2018, wherein Export Duty on Certain Steel Items was made applicable in case of Supplies from DTA to SEZ. Further, vide Notifications No. 28/2022-Cus dated 21.05.2022 & 29/2022-Cus dated 21.05.2022, it appeared that Export duty is leviable on goods falling under HSN 7208, 7209, 7210, 7213, 7214, 7219, 7222 and 7227 @ 15%. It appeared that 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.

2.1 It was revealed that the appellant, a supplier in GIFT-SEZ, Gandhinagar, have supplied 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 of the value of Rs. 66,55,745/- in GIFT-SEZ, Gandhinagar. M/s. Shree Infracon Pvt. Ltd. have not discharged their duty liability on the same as tabulated herein below as "Table-A":

TABLE-A

Details of Value of Goods & Duty Liability (Amt. in Rs.)	
HSN of Supplied Goods	7208 / 7214
Total Value of Supplied Goods	Rs. 66,55,745/-
Export Duty @15%	Rs. 9,98,362/-

2.2 It appeared that M/s. Shree Infracon Private Limited, had supplied goods without payment of export duty amounting to Rs. 9,98,362/- and have thereby contravened the provisions under the Customs Notifications 28/2022-Cus dated 21.05.2022 & 29/2022-



Cus dated 21.05.2022, 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. Further, it appeared that their act of non-levy and non-payment of export duty M/s. Shree Infracon Private Limited was also attracted penalty under Section 114A of the Customs Act, 1962.

2.3 In light of the above, a Show Cause Notice dated 17.05.2024 was issued to the Appellant as to why:

a) Export Duty of Rs. 9,98,362/- [Rupees Nine Lakhs Ninety Eight Thousand and Three Hundred and Sixty Two Only] as detailed in Table B of the 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 (1)(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) Penalty under Section 114A should not be imposed and recovered from them.

2.4 Consequently, the Adjudicating Authority passed the impugned order dated 12.11.2024 as under:

(a) He confirmed the demand of Export Duty of Rs. 9,87,102/- [Rupees Nine Lakhs Eighty-Seven Thousand and One Hundred and Two Only], for the supplies of TMT Bars made to the GIFT-SEZ by M/s. Shree Infracon Private Limited during the period between 22.05.2022 and 18.11.2022 and ordered to recover of the same under Section 28 (1)(a) of the Customs Act, 1962 from M/s. Shree Infracon Private Limited.

(b) He ordered to charge and recover 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 M/s. Shree Infracon Private Limited.

(c) He imposed penalty of Rs. 9,87,102/- [Rupees Nine Lakhs Eighty Seven Thousand One Hundred and Two Only] plus Interest as determined under Section 28AA above on M/s. Shree Infracon Private Limited under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to



Section 114A 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 the Order, the penalty shall be twenty-five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the impugned order passed by the Additional Commissioner, Customs, Ahmedabad. The Grounds of Appeal in brief are as under:

3.1 The appellant, as a successful bidder, was engaged in a composite works contract with GIFT SEZ Limited (an SEZ unit/developer) for the 'Construction of Utility Tunnel for Block No. 13, 14 and 15 in the SEZ Area of GIFT City, Gandhinagar. The total contract value was Rs. 5,64,89,192/-, inclusive of all materials and labor. This activity is classified as a supply of Works Contract Service under Section 2(119) of the CGST/GGST Act, 2017. This construction is considered an 'Authorized Operation' for the SEZ.

3.2 The supply of Works Contract Service to an SEZ Developer/Unit is considered an Interstate supply and is thus liable to Integrated Goods and Service Tax (IGST) in terms of Section 5(1) read with Section 7 of the IGST Act, 2017. However, the supply to an SEZ Developer or SEZ Unit for authorized operations is a Zero Rated supply under Section 16(1)(b) of the IGST Act, 2017. The appellant supplied this service under a Letter of Undertaking (LUT).

3.3 The core dispute revolves around the levy of 'Export duty' on Articles of Iron and Steel (with HSN codes 7208 and 7214) that the appellant procured locally (intra-state supply on payment of CGST and SGST) and transferred to the SEZ site under a delivery challan for use in the works contract.

3.4 The department, in the impugned order, considered the procurement of these materials from local suppliers as an 'export' to the SEZ for the purpose of demanding 'export duty' under Notifications No. 28/2022-Customs and 29/2022-Customs. The appellant contends that the transfer of these goods via delivery challan for use in the works contract service is not a 'supply' within the meaning of GST, nor is it an 'export of goods' liable for export duty. The appellant argues that the taxable event is the issuance of Running Account (RA) Bills for the composite Works Contract Service, not the entry



of local goods into the SEZ under delivery challan. The adjudicating authority erred by artificially fragmenting the composite Works Contract Service into a supply of goods to fasten export duty liability, which is factually and legally incorrect. The total contract value is inclusive of the material cost.

3.5 The appellant asserts that the transfer of goods from the Domestic Tariff Area (DTA) to the SEZ site cannot be treated as 'export' under Section 2(18) of the Customs Act, 1962, as it does not amount to taking goods "out of India to a place outside India". Consequently, the goods cannot be subjected to customs duties under the charging Section 12. The appellant relies on the Gujarat High Court and Supreme Court orders in the case of *Essar Steel Limited* which held that export duty was not payable on the movement of goods from DTA to SEZ units or developers, as the definition of 'export' in the Customs Act was not amended, and the legal fiction in the SEZ Act treating DTA to SEZ movement as export cannot be extended to levy duty under the Customs Act.

3.6 The power of the Central Government to impose Export Duty under the emergency provisions of Section 8 of the Customs Act, 1962, is restricted to 'Articles' (goods) and does not extend to the 'supply of service', which the appellant is providing. The appellant argues that the reliance on the proviso to Rule 27 of the SEZ Rules, 2006, which provides that DTA supplies to SEZ "shall attract export duty, in case, export duty is leviable on items attracting export duty," is incorrect because this rule applies to the supply of goods and not the supply of services, which is the nature of the appellant's contract. While acknowledging the SEZ Act's overriding effect, the appellant contends that the specific provisions of the CGST/GGST Act, 2017, governing them as a supplier of Works Contract Service (a service supply), cannot be ignored.

ADMISSION OF APPEAL:

4.1 In the Form No. C.A.-1, the date of communication of impugned order dated 12.11.2024 has been shown as 12.11.2024. Whereas, this appeal has been filed on 10.01.2025. Thus, the appeal has been filed within the normal period of limitation of 60 days, as prescribed under Section 128(1) of the Customs Act, 1962.

4.2 The appellant has submitted evidence towards payment of pre-deposit of Rs.98,710/- on 09.01.2025 under Section 129E of the Customs Act, 1962.

4.3 As the appeal has been filed within time-limit as prescribed under Section 128 and with the pre-deposit under Section 129E of the Customs Act, 1962, it has been



admitted and being taken up for disposal on merits.

PERSONAL HEARING:

5. Personal hearing in this matter was held in virtual mode on 02.12.2025, for which Shri Vijay N. Thakkar, Consultant, appeared on behalf of the appellant. He re-iterated the submissions made at the time of filing the appeal. Further, he stated that in the given case Export duty is demanded on the material used by DTA service provider for supply of construction service on which IGST is paid; that here it is a case of supply of service, whereas in the case of Essar Steel Limited, it was case of supply of goods to SEZ unit.

DISCUSSION AND FINDINGS:

6. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs, Ahmedabad, and the defense put forth by the Appellant in their appeal. The core issue to be decided in this appeal is whether Export Duty is leviable on steel items (TMT Bars, Structural Steel, etc.) procured and used by the Appellant (a DTA unit) for the execution of a "Works Contract" (Construction of Utility Tunnel) within the SEZ premises of the developer (M/s. GIFT SEZ Ltd.) during the period 22.05.2022 to 18.11.2022.

6.1 The first fundamental infirmity in the Impugned Order lies in the classification of the transaction. The Appellant has submitted substantial evidence, including the Agreement dated 13.04.2021 and the Letter of Intent dated 05.03.2021, which clearly establish that the contract awarded to them was for the "Construction of Utility Tunnel". This is indisputably a Works Contract, which is defined as a service under the GST regime (SAC 9954). The Notifications No. 28/2022-Customs and 29/2022-Customs, both dated 21.05.2022, imposed Export Duty specifically on "goods" falling under Chapter 72 (Iron and Steel). These notifications do not levy duty on "Services". In a composite Works Contract, the goods (steel) are consumed and embedded into the earth to create immovable property. There is no independent export of "goods" as chattels. The Adjudicating Authority erred by artificially fragmenting a composite service contract to isolate the value of material components for the purpose of levying Customs Export Duty, for which there is no legal backing in the Customs Act.

6.2 The pivotal legal question is whether the movement of goods from DTA to SEZ constitutes an "Export" for the purpose of levying Customs Duty. The power to levy Customs Duty stems from Section 12 of the Customs Act, 1962, which imposes duties on



goods "imported into, or exported from, India." Section 2(18) of the Customs Act defines "export" as under:

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

6.3 Section 2(27) of the Customs Act, 1962, defines "India" to include the territorial waters of India. It is an undisputed geographical fact that the SEZ (GIFT City, Gandhinagar) is located within the territory of India. The goods in question have moved from Ahmedabad (DTA) to Gandhinagar (SEZ). They have physically never left the territory of India. Therefore, the charging event under Section 12 read with Section 2(18) of the Customs Act—i.e., taking goods to a place outside India—has not occurred. It is an undisputed fact that the SEZ in question (GIFT City, Gandhinagar) is located within the territorial limits of India. Therefore, the physical movement of goods from the DTA to the SEZ does not satisfy the definition of "export" under the Customs Act, 1962, as the goods have not been taken to a place "outside India."

6.4 The Adjudicating Authority has noted the judgment of the Hon'ble High Court of Gujarat in *Essar Steel Ltd. v. Union of India* [2010 (249) E.L.T. 3 (Guj.)], but has chosen to disregard it on the grounds that a review petition is pending and relying on the amendment to Rule 27 of SEZ Rules. I find that the Hon'ble Gujarat High Court, the jurisdictional High Court in this matter, has explicitly held to the effect that export duty is not payable on movement of goods from DTA to SEZ units or developers; that definition of 'export' or charging Section 12 *ibid* was not amended and charging provision was not inserted contemplating movement of goods from Domestic Tariff Area to Special Economic Zone as taxable event entailing export duty as in the case of export.

6.5 While the Department may have filed a review petition, the operation of the High Court's order has not been stayed. In the judicial discipline hierarchy, the order of the jurisdictional High Court is binding on the Adjudicating Authority unless stayed or set aside by the Supreme Court.

6.6 The Adjudicating Authority erred in ignoring this binding precedent. The Impugned Order relies on the third proviso to Rule 27 of the SEZ Rules, 2006 (inserted in 2018), which reads:



"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."

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 legally 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.)], 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. The Appellant correctly pointed out that Section 8 of the Customs Act empowers the Central Government to levy export duty on "articles". This further reinforces that the levy is on tangible goods (articles) physically exported. Since the Appellant provided a "Service" (Works Contract) and the goods were consumed within India to create immovable property, the invocation of Section 8 or the Notifications issued thereunder is misplaced.

6.7 Even assuming arguendo that DTA to SEZ supplies could be taxed, the specific facts of this case exonerate the Appellant:

- i. The Appellant entered into a contract for the "Construction of Utility Tunnel". This is a Works Contract Service.
- ii. Under the GST regime, which governs domestic transactions, Works Contract is classified as a Service (SAC 9954).
- iii. The Notifications 28/2022-Cus and 29/2022-Cus impose export duty on Goods (specifically Steel articles under Chapter 72). They do not impose export duty on "Services".



iv. The steel items were not sold as goods for trading; they were consumed/embedded into the earth to create an immovable structure (tunnel) within the SEZ.

v. Section 8 of the Customs Act, 1962 empowers the Government to levy export duty on "articles". There is no provision to levy export duty on a "Works Contract Service" or on goods that have been consumed to become immovable property within India. The Adjudicating Authority artificially fragmented a composite works contract into "goods" to demand duty, which is legally impermissible. The dominant nature of the contract was the creation of infrastructure, not the export of steel.

7. I find that the impugned order treats that the appellant has made supply of goods to SEZ. Even in this situation, demand of export duty on transfer of goods from DTA to SEZ, is not sustainable, as held by the jurisdictional High Court as well as Supreme Court in the following cases.

7.1 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 in Review Petition No. 1848 of 2010 which is reported as *Union of India Vs. Essar Steel India Ltd.* [2022 (380) ELT 403 (SC)] and the SLPs had been restored. This fact has been noted in the impugned order at Para 9.2.6.2. I find that 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 follows:

"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."

7.2 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."



7.3 Therefore, it has to be examined as to whether export duty on transfer of goods from DTA to SEZ 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.

7.4 I find that above-mentioned fifth Proviso to Sub-Rule 27(1) has been struck 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) 35 Centax 280 (A.P.) [18-09-2025]. Para 27 of the said Order is as under:

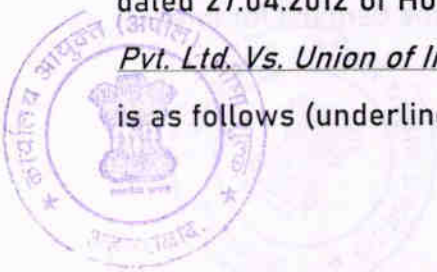
"27. Be that as it may, we set aside the decision dated 26.04.2024 and hold that 5th proviso to sub-rule (1) of Rule 27 of the Special Economic Zone Rules, 2006, as ultra vires the Special Economic Zone Act, 2005 and is accordingly, struck down. This writ petition is accordingly allowed."

7.5 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 under:

- (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;

7.6 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).

7.7 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."

7.8. 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 movement of goods from DTA to SEZ. 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.)] can be applied to the present case, even if it is viewed (for sake of argument) that the appellant has supplied goods from DTA to SEZ. Therefore, demand of export duty from the appellant is not sustainable and the impugned order passed by the adjudicating authority is required to be set aside.

8. Based on the foregoing discussion and findings, I am of the view that the supply of goods or services from DTA to SEZ does not constitute "Export" under Section 2(18) of the Customs Act, 1962, for the purpose of levying Export Duty. The binding judgments, as discussed hereinabove, prohibit such levy, and the Adjudicating Authority erred in ignoring them. Since the demand for the export duty is set aside, the demand for interest



under Section 28AA and the imposition of penalty under Section 114A of the Customs Act, 1962, cannot survive. The principle *sublato fundamento cadit opus* (when the foundation is removed, the superstructure falls) applies.

9. In view of the above discussions and findings, I pass the following order:

- a. The Order-in-Original No. 168/ADC/SRV/O&A/2024-25 dated 12.11.2024 passed by the Additional Commissioner of Customs, Ahmedabad, is hereby set aside.
- b. The Appeal filed by M/s. Shree Infracon Pvt. Ltd. is allowed with consequential relief, if any, in accordance with the law.




(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-259/CUS/AHD/2024-25

Date: 26.12.2025

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

To,

M/s. Shree Infracon Private Limited,
602, Parshwanath E Square, Corporate Road, Nr. AUDA Garden, Prahladnagar,
Satellite, Ahmedabad, Gujarat, 380015.
(admin@shreeinfracon.com shreeinfracon@yahoo.co.in)

Copy to:

1. The Chief Commissioner of Customs, Custom House, Ahmedabad.
(email: ccoahm-guj@nic.in)
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
(email: cus-ahmd-guj@nic.in rra-customsahd@gov.in)
3. The Additional Commissioner of Customs (in-charge GIFT SEZ), Ahmedabad
(email: cus-ahmd-adj@gov.in)
4. The Specified Officer, Gift SEZ, Gandhinagar
(email: so-giftsez@gov.in)
5. Shri Vijay N. Thakkar, Indirect Tax Consultant, Ahmedabad
(email: vijyot2008@gmail.com)
6. Guard File.
