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 – **20260171MN000000BE0C**

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| क | फ़ाइल संख्या FILE NO. | S/49-269/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-530-25-26 |
| ग | पारितकर्ता PASSED BY | Shri Amit Gupta<br>Commissioner of Customs (Appeals),<br>Ahmedabad |
| घ | दिनांक DATE | 27.01.2026 |
| ङ | उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO. | 08/AR/ADC/SRT/2024-25 dt. 12.11.2024 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 Fluid Line Engineers and Fabricators Pvt Ltd., C-51, Panki Road No. 12, Udyog Kunj, Kanpur Nagar, Uttarpradesh- 208 022. |

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| 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.** |

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| | 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( | बैगेज़ 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 |

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| | 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-<br>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or<br>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees. | |

**Order-In-Appeal**

M/s Fluid Line Engineers and Fabricators Pvt Ltd., C-51, Panki Road No. 12, Udyog Kunj, Kanpur Nagar, Uttarpradesh- 208 022 (hereinafter referred to as "the Appellant") have filed the present appeal against the Order-In-Original No.: 08/AR/ADC/SRT/2024-25 dt. 12.11.2024 ( herein after referred to as "the impugned order") passed by the Additional Commissioner of Customs, Customs Division Surat, Surat (herein after referred to as "the "adjudicating authority").

2. Facts of the case, in brief, are that the appellant has supplied Galvalume Precoated Coloured Sheets, SS Structured Steels & MS Chequered Plates of various size falling under Chapter 72 to an SEZ Unit viz. Jubilant Ingrevia Ltd. situated within Jubilant SEZ at plot No. 05, Village-Vilayat, GIDC, Taluka-Vagra, Dist.-Bharuch , Gujarat-392 012. 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 No.: 28/2022-Customs and 29/2022-Custom both dated 21.05.2022 and 58/2022-Customs dated 18.11.2022. 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 by Additional Commissioner of Customs, Custom Division-Surat, towards demand of Export Duty of Rs. 11,52,105/- 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 and interest have been confirmed by the adjudicating authority.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellant have filed the present appeal on 23.01.2025. The appellant raised various contentions and filed detailed submissions as given below in support of their claim:

- *That the Ld. Additional Commissioner Custom have erred in law and on facts in issuing the impugned order without granting sufficient opportunity of being heard as per Pre Notice Consultation regulation,2018 before issue of Show cause Notice, without considering appellant reply and deliberating/differentiating appellant contention under SCN and passing Order without providing appropriate opportunity of personal hearing and thereby rule of Natural justice is disregarded.*
- *That the appellant Company is of the opinion that Order/SCN issued is not sustainable in Law since as per the Fifth proviso to Rule 27 of the SEZ Rules, 2006 is ultra vires the SEZ Act, 2005 and Violative of Article 265 of the Constitution of India, where Export duty under Section 12 of the Custom Act is leviable on Export of goods Notified in second schedule to the Custom Tariff Act*

*to a Place outside India and accordingly order so passed is required to be quashed.*

- *That the appellant Company relying on writ petition filed by importer namely Jubilant Ingrevia Limited, various judicial precedent of Jurisdiction High Court as well as matter pending at Supreme Court is of the view that the issue of levy of export duty on supplies to SEZ is no longer res integra and stands settled in favor of the assesse and accordingly request to pass order quashing demand or alternatively keep in abeyance till the disposal of writ petition.*
- *That the appellant Company submit that the demand raised in the SCN/Order is leading to duplication of tax liability (Double Taxation) and accordingly Order raising export duty on the same material required to be dropped where challan depositing Tax by Jubilant Ingrevia has already been submitted during the course of SCN hearing.*
- *That the issue of levy of export duty on supplies to SEZ is no longer res integra and stands settled in favor of the assesse and accordingly request to pass order quashing demand. Relevant Case law, Appellant relied with facts are reproduced below for ready reference.*
- *That the issue of legality of levy of Export Duty on supplies from DTA to SEZ came up for consideration for the first time before this Hon'ble Court in* ***Essar Steel Limited v. Union of India [2010 (249) E.L.T. 3 (Guj.)]****. The Gujarat High Court held that the movement of goods from DTA to SEZ qualifies as exports under the SEZ Act, emphasizing that no export duty can be levied on such supplies. This judgment highlighted the overriding nature of the SEZ Act in cases of legal conflicts.*
- *That the Hon'ble High Court of Madras in case of M/s Advait Steel Rolling Mills Pvt. Ltd. [2012(286) ELT 535 (Mad)] has referred to definition of export under SEZ Act, 2005 wherein it states "export" inter alia means "Supplying goods, or providing services from DTA to a unit or developer" and definition of export under Section 2(16) of Customs Act, 1962 cannot he made applicable for levies of duty of Customs on goods supplied from DTA to SEZ as there is no movements of goods from India to place outside India, export duty cannot be levied. It has been held Customs duty on exports is applicable only when goods are taken out of India to a place outside India. In movements of goods from DTA to SEZ there is no movement of goods from India to a place outside India. Hence, it was derided that supply from DTA to SEZ is not supply of goods to a place outside India.*
- *It can thus be seen that according to the SEZ Act, supply of goods from DTA to the SEZ constitutes export. Further, as per section 51 of the SEZ Act, the*

*provisions of the SEZ Act shall have over riding effect over provisions of any other law in case of any inconsistency. Section 53 of the SEZ Act makes an SEZ a territory outside the customs territory of India. It is in line of these provisions that rule 30 (1) of the SEZ rules, 2006 provides that the DTA supplier supplying goods to the SEZ shall clear the goods either under bond or as duty paid goods under claim of rebate.*

- *The decision in Essar Steel (Supra) has been challenged before the Hon'ble Supreme Court and the Special Leave Petition filed by the Revenue is pending Union of India v. Essar Steel India Ltd. [2022 (380) E.L.T. 403 (S.C.)].*

*The decision in Essar Steel (Supra) was also followed in various decisions including the following:*

1. *Shyamaraju & Co. India Pvt. Ltd. v. UOI [2010 (256) E.L.T. 193 (Kar.)]*
2. *CCE v. Biocon Ltd. [2011 (267) E.L.T. 28 (Kar.)]*
3. *Tirupati Udyog Limited v. Union of India [2011 (272) E.L.T. 209 (A.P.)]*
4. *Welspun Anjar Pipes Ltd. v. UOI [2015 (323) E.L.T. 130 (Guj.)] affirmed in Union of India v. Welspun Anjar Pipes Ltd. [2015 (323) E.L.T. A28 (S.C.)]*

*If levy of Export Duty is 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.*

- *That the Appellant Company submit that the demand raised in the SCN/Order is leading to duplication of tax liability (Double Taxation) and accordingly Order raising export duty on the same material required to be dropped in view of the following:*

- *Appellant most respectfully state that the Ld. Additional Commissioner has raised the demand without considering the fact that Jubilant SEZ has already made payment of Duty and the same has been communicated in response to the SCN via mail dated 14th Oct 2024 the copy of which is attached herewith for your reference and the writ petition is still pending for judgement and no duty refund has been claimed till date. Since the SEZ unit has already made payment of applicable duty the demand raised on Appellant amounts to duplication of demand of export duty. The details of payment of export duty as produced below for your reference along with the supporting Deposit challan slip. Necessary Working for Export duty for items supplied and Challan paid there against are submitted along with Certificate/mail of Jubilant SEZ in* **Annexure F**.

- *The Adjudicating authority/show cause notice authority should have waited for the decision of the Hon'ble court in this matter before passing of the order/issue of show notice.*
- *Since the High court decision in case of Essar is not stayed by Supreme Court and decision in case Union of India v. Essar Steel India Limited [2022 (380) E.L.T 403 (S.C.)] is pending before Hon'ble Supreme court, the same is applicable on all the authorities clearly the order/SCN demand duty is not as per the settled judicial principles and law of the land and the decision of Writ filed by Jubilant SEZ is also pending. The buyer SEZ unit/Developer has neither won the case nor has the duty is set aside nor has he filed a refund claim. Without going into these issues, merely because the buyer filed a writ, there cannot be a demand/levy once again.*
- *At the most the Customs department could have issued protective demand notice in the matter and could have kept the issue in call book till the disposal of writ petition filed by Jubilant Ingrevia Limited / Jubilant Infrastructure Limited / Jubilant Agro Sciences Limited.*

- *Appellant Company is of the view that since the alleged Export duty in terms of Section 28(1) of Custom Act is already paid by the Importer, demanding Export duty as well as recovery of Interest as per Section 28AA of Custom Act, is unwarranted and requested to drop the order levying Export duty along with Interest on duty demand in view of levy being unconstitutional and without authority of law.*

**PERSONAL HEARING:**

4. Personal hearing in the matter was held on 13.01.2026 in physical mode. Shri Aatish Shah, CA, appeared for hearing on behalf of the Appellant. He reiterated the submissions made in the appeal memorandum. He submitted an additional submission dated 13.01.2026, which is more or less the same as what was already communicated in the main appeal dated 23.01.2025.

**DISCUSSION & FINDINGS:**

5. Before going into the merits of the case, in the Form No. C.A.-1, the appellant has shown the date of communication of the impugned order dated 12.11.2024, as 26.11.2024. Whereas, the appeal has been received in this office on 23.01.2025. Thus, this appeal has been filed within the normal period of 60 days, as prescribed for

filing appeal under Section 128 of the Customs Act, 1962.

5.1 The appellant has submitted a printout of e-receipt towards payment of Rs. 86,408/- vide Challan Ref. No.: 3927394229 dated 18.01.2025 towards payment of pre-deposit calculated @7.5% of the duty amount under the provisions of Section 129E of the Customs Act, 1962. As the appeal has been filed within the time-limit and complies with the requirement of Section 129E of the Customs Act, 1962, the appeals has been admitted and being taken up for disposal on merits.

5.2 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, but no reply thereof has been received. So, I proceed to decide the appeal on the basis of documents submitted by the appellant.

6. I have carefully gone through the impugned order, the appeal memorandum filed by the Appellant, as well as records of the case. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority confirming Export duty on the goods supplied by the appellant to SEZ Unit is leviable or not, in the facts and circumstances of the case, is legal and proper or otherwise.

6.1 In the present issue of export duty liability on the goods supplied to the SEZ unit by the DTA supplier, 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 is very relevant and important.

The Hon'ble High Court of Gujarat, in above judgement 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."*

6.2 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."*

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 from 19.09.2018.

6.3 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) 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."*

6.4 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;*

6.5 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 stuck down by Hon'ble High Court of Andhra Pradesh in the case of ***TUF Metallurgical Pvt. Ltd. vs. Union of India*** (supra).

6.6 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."*

6.7 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. Therefore, the impugned order passed by the adjudicating authority is required to be set aside.

7. In view of the foregoing discussion, the statutory provisions and the binding judicial pronouncements, it is abundantly clear that during the period involved in the present appeal, there was no authority of law to levy export duty on supplies of goods from the Domestic Tariff Area to a Special Economic Zone unit. The issue now stands conclusively settled by the Hon'ble Supreme Court in *Union of India v. Adani Power Ltd.* [(2025) 36 Centax 257 (S.C.)] and further reinforced by the judgment of the Hon'ble Andhra Pradesh High Court in *TUF Metallurgical Pvt. Ltd. v. Union of India* [(2025) 35 Centax 280 (A.P.)], wherein the very basis for such levy has been held to be unsustainable in law. These decisions are squarely applicable to the facts of the present case and leave no scope for a contrary view. Accordingly, the demand of export duty

raised on the appellant in respect of supplies made from DTA to the SEZ unit is without authority of law and cannot be sustained.

7.1 Accordingly, the Order-in-Original No. 08/AR/ADC/SRT/2024-25 dated 12.11.2024 passed by the Additional Commissioner of Customs, Customs Division, Surat, is hereby set aside, and the appeal is allowed with consequential relief, in accordance with law.

(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F.No. S/49-269/CUS/AHD/2024-25 Date: 27.01.2026

By E-mail (As per Section 153(1)(c) of the Customs Act, 1962)
Through Speed Post:
To
M/s Fluid Line Engineers and Fabricators Pvt Ltd.,
C-51, Panki Road No. 12,
Udyog Kunj, Kanpur Nagar,
Uttarpradesh- 208 022
(email: projects@fluidinegroup.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, In-charge: Custom Division Surat, Ahmedabad. (email: patoadc-srtcust@gov.in adjcus-surat@gov.in cus-ahmd-adj@gov.in Custech.surat@gov.in )
4. The Deputy Commissioner of Customs, Custom Division Surat, Ahmedabad. ( Email: Custech.surat@gov.in )
5. The Specified officer, Jubilant Special economic zone, Plot no. 5, village-Vilayat,GIDC, taluka-vagra, Bharuch-392012 . ( jubiliant.customs@gmail.com )
6. Shri. Aatish Shah, CA on behalf of M/s Fluid Line Engineers and Fabricators Pvt Ltd., (email: info@anilnshahca.com audit@anilnshahca.com )
7. Guard File.