



## सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD.  
 चौथी मंज़िल 4th Floor, हड्डकोभवन HUDDCO Bhavan, ईश्वर भुवन रोड IshwarBhuvan Road,  
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009 दूरभाषक्रमांक Tel. No. 079-  
 26589281  
 DIN – 20250571MN000000D65F

क	फ़ाइलसंख्या FILE NO.	S/49-09/CUS/KDL/24-25
ख	अपीलआदेशसंख्या ORDER-IN- APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	KDL-CUS-000-APP-005-2025-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	29.05.2025
ङ	उद्भूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	OIO No. KDL/ADC/DPB/13/2023-24, dated 26.03.2024 passed by The Additional Commissioner of Customs, Customs House, Kandla.
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	29.05.2025
छ	अपीलकर्ताकानामवप्ता NAME AND ADDRESS OF THE APPELLANT:	M/s Sun Pharmaceuticals Industries Ltd. SPARCL, Tandalja, Vadodara- 3940012.

1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआ देशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन),वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकते हैं।

	<p>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.</p> <p>निम्नलिखितसम्बन्धितआदेश/Order relating to :</p> <p>(क) बैगेजकेरूपमेंआयातितकोईमाल.</p> <p>(a) any goods imported on baggage.</p> <p>(ख) भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्य स्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसे कमीहो.</p> <p>(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.</p> <p>(ग) सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतइतशुल्कवापसीकीअदायगी.</p> <p>(c) Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.</p> <p>3. पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :</p> <p>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 :</p> <p>(क) कोर्टफीएक्ट, 1870केमदसं.6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां, जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.</p> <p>(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.</p> <p>(ख) सम्बद्धदस्तावेजोंकेअलावासाथमूलआदेशकी 4 प्रतियां, यदिहो</p> <p>(b) 4 copies of the Order-in-Original, in addition to relevant documents, if any</p> <p>(ग) पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां</p> <p>(c) 4 copies of the Application for Revision.</p> <p>(घ) पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद, फीस, दण्ड, जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/- (रूपएएकहजारमात्र), जैसाभीमालाहो, सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां। यदिशुल्क, मांगागयाव्याज, लगायागयादडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु. 200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-</p> <p>(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/-.</p> <p>4. मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसी माशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क, केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं</p> <p>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 :</p> <p>सीमाशुल्क, केन्द्रीयउत्पादशुल्कवसेवाकरअपीलियअधि करण, पश्चिमीक्षेत्रीयपीठ</p>
	<p>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</p>

	दूसरीमंजिल, बहुमालीभवन, निकटगिरधरनगरपुल, असार वा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन, सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-	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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएयाउससेकमहोतोएकहजाररुपए.	
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपाँचलाखरूपएसेअधिकहोलेकिनरूपयेपचासलाखसेअधिकनहोतो;पाँचहजाररुपए	
(ब)	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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीर कमपचासलाखरूपएसेअधिकहोतो;दसहजाररुपए.	
(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)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेहैं,यादंडके 10% अदाकरनेपर,जहांकेवलदंडविवादमेहै,अपीलरखाजाएगा।	
(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.	
	उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.	
	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 Sun Pharmaceuticals Industries Ltd. SPARCL, Tandalja, Vadodara-3940012 (hereinafter referred to as "the Appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against the OIO No. KDL/ADC/DPB/13/2023-24, dated 26.03.2024 (hereinafter referred to as the "impugned order") passed by The Additional Commissioner of Customs, Customs House, Kandla (hereinafter referred to as the "adjudicating authority").

2. Briefly stated, facts of the case are that the Appellant, holders of IEC No. 0392072823, was importing various duty-free materials in terms of Notification No. 18/2015-Customs dated 01.04.2015 as amended by Notification No. 79/2017-Customs dated 13.10.2017. Further, the Directorate General of Revenue Intelligence (DGRI), Kolkata Zonal Unit, vide letter F. No. DRI/KZU/MISC-09/IGST/2019, dated 02.06.2020 informed that the appellant was involved in the import of various duty free goods under Advance Authorization scheme issued under Chapter 4 of the Foreign Trade Policy (FTP-2015-20), in contravention to the conditions imposed vide Notification No. 18/2015-Customs, dated 01.04.2015 as amended by Notification No. 79/2017-Customs dated 13.10.2017 and the appellant did not comply with the pre-import condition, as laid down in Customs Notification No. 79/2017, dated 13.10.2017. The notifications exempted certain goods from customs duties, subject to conditions, including a pre-import condition introduced in Notification No. 79/2017. The condition no. (xii), inserted in Notification no. 18/2015-Customs under Notification No. 79/2017, dated 13-10-2017, was omitted vide Notification no. 01/2019-Customs dated 10.01.2019 issued by Central Board of Indirect Taxes and Customs (CBIC). Hence, the period during which the pre-import condition was mandatory for the importer to adhere to was for the period 13.10.2017 to 09.01.2019.

2.1 Further, during the investigation, it appeared that the appellant had imported goods under Advance Authorizations at Kandla Port during the period 13.10.2017 to 10.01.2019 and wrongly availed IGST exemption by availing benefit of Notification No. 79/2017-Customs, dated 13th October, 2017 in respect of 11 Bills of Entry against 6 Advance Authorizations as per below mentioned under: -



**Table-I**

Sr. No.	BoE No.	Date	Advance Authorisation no.	Advance Authorisation Date	Value	IGST
1	6046704	19.04.2018	510402336	25.04.2017	1351693	325091.7
2	8431636	12.10.2018	510402336	25.04.2017	2395895	463464
3	9181394	10.12.2018	510405227	04.01.2018	964201	193941
4	9182548	10.12.2018	510405227	04.01.2018	1227166	237384
5	6324990	10.05.2018	510403284	30.06.2017	701301	168667.74
6	6496692	23.05.2018	510406406	10.05.2018	624699	150244.56
7	8429741	12.10.2018	510406406	10.05.2018	4791789	963828
8	8479268	16.10.2018	510406779	07.06.2018	1249018	269348.4
9	8479274	16.10.2018	510406779	07.06.2018	256866	55392.66
10	8684108	31.10.2018	510407451	06.08.2018	3214005	646470
11	8684139	31.10.2018	510407451	06.08.2018	292 1823	565200
Total					<b>1,96,98,456</b>	<b>40,39,032</b>



2.2 Further, it appeared that the appellant imported various duty free inputs vide the advance authorization as mentioned above, on the strength of the subject notification and availed benefit of exemption from payment of IGST on the goods so imported, leviable in terms of Sub-section (7) of Section 3 of the Customs Tariff Act, 1975, by deliberately suppressing the fact of non-compliance of pre-import condition laid down in the subject notification. Their deliberate act of omission and/or commission by resorting to suppression of material facts from the Customs authority, appeared to have resulted in non-payment of duty of Customs in the form of Integrated Goods & Service Tax (IGST) to the extent of Rs.40,39,032/- which appeared to be recoverable under Section 28(4) of the Customs Act, 1962, along with applicable interest, and also appeared to attract provision of Section 111(o) of the Customs Act, 1962, making the goods liable for confiscation and the company liable to penalty under Section 114A & Section 112 (a) of Act ibid.

2.2 Further, the appellant had paid the IGST amount of Rs.28,19,151.32/- alongwith interest of Rs.15,21,431.51/- vide TR-6 Challan No.42, dated 04.05.2022 in pursuance of directives received from DRI Kolkata vide letter DRI/KZU/CF/INT-12/2020/4182, dated 11.11.2020 against the import made vide bill of entries as mentioned in Table-I above.

2.3 Further, after the completion of investigation, the appellant was issued Show Cause Notice asking them as to why:

*A.1*

- a) Duty of Customs amounting to Rs 40,39032/- in the form of IGST saved should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 read with the provisions of Section 143(3) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962.
- b) Subject goods having assessable value of Rs.1,96,98,456/- imported through Kandla Port vide 11 Bills of Entry under the subject Advance Authorizations should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962;
- c) Penalties should not be imposed upon them under Section 112(a) and 114A of the Customs Act, 1962
- d) Bonds executed by them at the time of import should not be enforced in terms of Section 143(3) of the Customs Act, 1962 for recovery of dues.

3. Thereafter, the Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order, wherein the adjudicating authority had passed the order as detailed below:

- (i) He confirmed the Customs duty amounting to Rs.40,39,032/- in the form of IGST saved in course of imports of the goods through Kandla Port vide Eleven Bills of Entry under the cover of 6 Advance Authorizations under Section 28(4) of the Customs Act, 1962 read with the provisions of Section 143(3) of the Customs Act, 1962 which provides for recovery of the Customs duty and interest thereupon by way of enforcement of the Bonds executed by them at the time of import.

He appropriated the IGST amount of Rs.28,19,151.32/- paid vide TR-6 Challan No. 42, dated 04.05.2022.

- (ii) He ordered to recover interest at the applicable rate on the amount of Customs duty of Rs.40,39,032/- under Section 28AA of the Customs Act, 1962 and appropriated the interest amount of Rs.15,21,431.51/- paid vide TR-6 Challan No. 42, dated 04.05.2022.
- (iii) He confiscated the subject goods having assessable value of Rs.1,96,98,456/-, imported through Kandla Port under Section 111(o) of the Customs Act, 1962 for non-fulfillment of 'pre-import' condition as enshrined in Customs Notification No. 18/2015-

Customs dated 01.04.2015, as amended by Notification No. 79/2017-Customs dated 13.10.2017.

As regards the goods were not physically available for confiscation, he imposed the redemption fine of Rs.20,00,000/- (Rupees Twenty lakhs only) in lieu of confiscation under Section 125 of the Customs Act, 1962.

(iv) He imposed the penalty equal to duty confirmed at (i) above plus interest thereon, under Section 114A of the Customs Act, 1962. If the duty and interest as confirmed above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty and interest as per the first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within said period of 30 days.

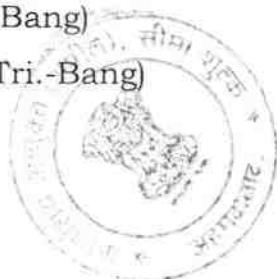
(v) He refrained from imposing penalty under Section 112(a) the Customs Act, 1962.

He enforced the Bond in terms of Section 143(3) of the Customs Act, 1962 executed by the appellant at the time of import, for the recovery of Customs duty, interest and penalty/fine.

4. Being aggrieved with the impugned order, the Appellant have filed the present appeal and mainly contended the following:

- That the imports were correctly made under Advance Authorization, satisfying all terms of the exemption and the impugned order wrongly concludes that the appellant availed exemption under Notification No. 18/2015-Cus without complying with the *pre-import condition*.
- That DGFT Public Notice No. 52/2015-20 dated 18.01.2019 clarified that pre-import condition applies only to certain items (e.g., gold), not pharmaceutical products like those imported by the appellant.
- That the impugned order incorrectly relies on CBIC Circular No. 3/2019-Cus dated 16.01.2019, which was later clarified by CBIC Circular No. 14/2019-Cus dated 03.06.2019—confirming that no recovery is to be made if goods are used for manufacture and export.
- That the impugned order erroneously demands IGST despite the imports being used for export production, which fulfills the essential condition for exemption under Advance Authorization.

- That the Adjudicating Authority failed to provide an adequate opportunity for the appellant to rebut the allegations or respond to evidence relied upon.
- That since final products were exported under bond/LUT, there is no revenue loss to the Government, reinforcing the eligibility of the exemption and the benefit of exemption cannot be denied for a mere procedural lapse or incorrect interpretation of a condition (pre-import), especially when substantive conditions (export obligation) were met.
- They have relied upon the various case laws, few of which are as under:
  - a. *Bharti Airtel Ltd. v. CC, Bangalore* 2021 (378) E.L.T. 21 (Tri.-Bang)
  - b. *Sika India Pvt. Ltd. v. CC, Bangalore* 2020 (373) E.L.T. 166 (Tri.-Bang)



### **PERSONAL HEARING**

5. Shri Shobhit Jain and Ms. Madhur Azad, both Advocates, attended the personal hearing on 18.03.2025 on behalf of the Appellant. They reiterated the submission made in the appeal memorandum and vide their written submission stated that the impugned order is unsustainable as appellant complied with all conditions, including using imported inputs to manufacture taxable goods for export. The Advance Authorizations qualify for clubbing, negating the alleged pre-import violation. The case is revenue neutral, and no interest or penalty is leviable as per the *Mahindra & Mahindra* judgment upheld by the Supreme Court. The demand is time-barred, and redemption fine is not applicable since the goods were lawfully cleared and are no longer available for confiscation.

5.1 Further, due to change in appellate authority, a fresh PH was provided to the appellant to which Ms. Madhur Azad, Advocate, attended the personal hearing on 06.05.2025 in virtual mode on behalf of the appellant. She reiterated the submissions and also filed a written submission dated 06.05.2025.

### **DISCUSSION & FINDINGS**

6. I have gone through the appeal memorandum filed by the appellant, records of the case and submissions made during personal hearing. The main contention in the appeal is that there shall be no recovery of IGST as the appellant had imported the goods under Advance authorization scheme which are used for export purpose. Therefore, the main issues to be decided in present appeal are whether the impugned order confirming the IGST along with interest under Section 28(1) and Section 28AA respectively of the Customs Act, 1962, confiscating the subject goods under Section 111(o) of the Customs Act, 1962,

412

imposing redemption fine under Section 125 of the Customs Act, 1962, imposing penalty under Section 114A of the Customs Act, 1962 and enforcing the Bond in terms of Section 143(3) of the Customs Act, 1962 in the facts and circumstances of the case, is legal and proper or otherwise.

6.1 Before going into the merits of the case, I find that as per CA-1 Form of the Appellant, the present appeal has been filed on 16.05.2024 against the impugned order dated 26.03.2024 which is within the statutory time limit of 60 days prescribed under Section 128(1) of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit, it has been admitted and being taken up for disposal in terms of Section 128A of the Customs Act, 1962.

6.2 It is observed that the appellant has contended that they had substantively complied with the pre-import condition, as the imported inputs were used in the manufacture of taxable goods which were physically exported, thereby fulfilling the core intent of the condition — to avoid double benefits and they emphasize that the situation is revenue neutral, as any IGST paid would have been claimable as ITC or refund. In this regard, it is observed from the Para 15.3 to 18.2 of the impugned order that the appellant, at most instances, *"had made the exports vide different Shipping Bills before importing any raw material against the said Advance Authorisation. This clearly proves that in order to effect exports, the importer had procured required raw material from domestic market and as and when the duty free materials were imported, such duty free material was used as replenishment against the duty paid domestically procured material/inputs. It is crystal clear that the importer violated pre-import condition and did not physically incorporate the duty free imported material in the export goods".*

Further, I rely on the **Hon'ble Supreme Court Judgment in the case of Union of India vs. Cosmo Films Ltd., 2023-VIL-47-SC**, upheld the validity of the pre-import condition for availing IGST exemption under Advance Authorisation as per Notification No. 79/2017-Cus, dated 13.10.2017 wherein

- The Hon'ble Supreme Court reversed the Gujarat High Court's decision in *Maxim Tubes Company Pvt. Ltd.*, which had declared the pre-import condition unconstitutional.
- The Hon'ble Supreme Court held that the pre-import condition is a valid and reasonable restriction to prevent misuse (i.e., double benefit of IGST exemption on import and IGST refund on export).
- The Hon'ble Supreme Court ruled that exporters cannot claim exemption under Advance Authorisation, if inputs were not imported before export — i.e., back-to-back imports after fulfilling export obligation are not permitted under the pre-import regime.

In view of the above, I am of the considered view that IGST saved in course of imports of the goods through Kandla Port vide 11 Bills of Entry under the cover of 6 Advance Authorizations under Section 28(4) of the Customs Act, 1962 read with the provisions of Section 143(3) of the Customs Act, 1962 as confirmed vide impugned order is legally sustainable, since the impugned order clarifies that the goods imported, under Advance authorization and claiming the exemption benefit of the subject notification, were not used in the dedicated exports and the appellant have misused the imported goods as replenishment of the goods procured from the domestic market, thus violating the pre-import conditions. Therefore, the contention of the appellant is liable to be rejected.

6.3 Further, regarding the levy of interest under Section 28AA of the Customs Act, 1962, confiscation of the subject goods under Section 111(o) of the Customs Act, 1962, imposition of redemption fine under Section 125 of the Customs Act, 1962, imposition of penalty under Section 114A of the Customs Act, 1962, the appellant has relied on the decision of the Hon'ble Bombay High Court in Mahindra & Mahindra Vs. UOI - 2022-VIL-690-BOM-CU and Judgment cited by Hon'ble Bombay High Court in the case of A.R. Sulphonates vs. Union of India & Ors, 2025 (4) TMI 578.

In this regard, I have perused the aforesaid judgments and the relevant para of the Hon'ble Bombay High Court in the case of A.R. Sulphonates vs. Union of India & Ors is reproduced as below:

"...

70. *In our view, for all the reasons stated hereinabove, the impugned Order, to the extent that it levies interest and penalty, is without the authority of law and is liable to quashed and set aside.*

71. As far as Circular No. 16/ 2023-Customs dated 7 th June, 2023 is concerned, it seeks to recover interest along with IGST. The relevant part of the said Circular reads as under:-

"(a):- for the relevant imports that could not meet the said pre-import condition and are hence required to pay IGST and Compensation Cess to that extent, the importer (not limited to the respondents) may approach the concerned assessment APRIL 09, 2025 S.R.JOSHI 13-wp-19366-2024-judgement.doc group at the POI with relevant details for purposes of payment of the tax and cess along with applicable interest."

72. *In our view, for all the reasons stated herein above, the said Circular, to the extent that it seeks to recover interest, is bad in law.*



73. As far as redemption fine imposed by the impugned Order is concerned, the same is demanded in lieu of confiscation of goods under Section 111(o) of the Customs Act. As per Section 111(o) of the Customs Act, the goods shall be liable for confiscation in the event the condition subject to which the goods are exempted from duty is not observed. As already held by us on the basis of the Judgement of the Hon'ble Supreme Court in the case of Orient Fabrics Limited (*supra*), Section 3 (12) of the Tariff Act, after its amendment by Finance (No.2) Act, 2024, dated 16 th August, 2024, makes applicable the provisions relating to interest, offences and penalties of the Customs Act to the Tariff Act. As already held by us, Section 3 (12) of the Tariff Act, as amended, is applicable only after 16 th August, 2024 and is not applicable to the present case. Accordingly, in the present case, **no confiscation could have been imposed.**

74. Further, the Joint Director General of Foreign Trade, by Trade Notice No. 7 of 2023-24 dated 8 th July, 2023 clarified that all imports made under the Advance Authorization Scheme on or after 13 th October, 2017 and APRIL 09, 2025 S.R.JOSHI 13-wp-19366-2024-judgement.doc upto and including 9th January, 2019, which could not meet the pre-import condition, may be regularized by making payments as prescribed in the Customs Circular No. 16/2023 - Customs dated 7 th June, 2023. For this reason also, **no confiscation can be done nor any redemption fine can be imposed.**

75. Further, in the present case, once the Petitioner pays the IGST, it would amount to the Petitioner not having availed the benefit of the exemption and the issue would be regularized. Therefore, the provisions of Section 111 (o) of the Customs Act will not be attracted. Consequently, **no fine and penalty would be recoverable from the Petitioner.**



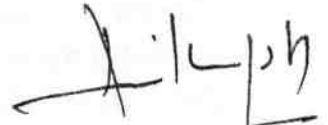
In view of the above, it is observed that the issue involved in the aforesaid judgments is identical in nature and squarely covers the present case as they had also dealt with the recovery of interest, redemption fine and penalty as in the present case. In view of the same, the adjudicating authority shall examine the facts of the case and decide the issue on the basis of the aforesaid both the Judgments of Hon'ble Bombay High Court.

7. In view of the discussions made above, I pass orders as detailed below:

- I. I uphold the impugned order to the extent of recovery of Customs duty under Section 28(4) of the Customs Act, 1962.
- II. I allow the appeal by way of remand to the adjudicating authority with the direction to pass the fresh speaking order in light of the aforesaid judgments to the extent of recovery of interest, confiscation of the

goods, and imposition of redemption fine and penalty under various provisions of Customs Act, 1962.

The appeal is disposed of in above terms.



(AMIT GUPTA)  
COMMISSIONER (APPEALS)  
CUSTOMS, AHMEDABAD

F. Nos. S/49-09/CUS/KDL/24-25  
*100*

Dated – 29.05.2025

By Registered Post A.D.

To,  
M/s Sun Pharmaceuticals Industries Ltd.,  
SPARCL, Tandalja,  
Vadodara- 3940012

**Copy to:**

- 1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
- 2. The Commissioner of Customs, Customs, Kandla.
- 3. The Additional Commissioner of Customs, Customs House, Kandla.
- 4. Guard File.

सत्यापित/ATTESTED  
  
 अधीक्षक/SUPERINTENDENT  
 सीमा शुल्क (अपील), अहमदाबाद  
 CUSTOMS (APPEALS), AHMEDABAD

