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 – **20260171MN000000D163**

क	फ़ाइल संख्या FILE NO.	S/49-266/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-529-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	27.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No.: 225/AB/ADC/ICD-SACHIN/SRT/2024-25, dated 25.11.2024 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. Siddhi Vinayak Creation, Plot No.: 98, Sonal Ind. Estate-1, Chikuwadi, Udhna, Surat-394 210. Shri Sanjay Ganeshbhai Rathod, Proprietor of M/s. Siddhi Vinayak Creation, at 121, Ramnagar, Opposite BARC Gate, Udhna, Surat. Email: sanjay926773@gmail.com

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

Order-In-Appeal

M/s. Siddhi Vinayak Creation, Plot No.: 98, Sonal Ind. Estate-1, Chikuwadi, Udhna, Surat-394 210 (hereinafter referred to as "the Appellant") have filed the present appeal against the Order-In-Original No.: 225/AB/ADC/ICD-SACHIN/SRT/2024-25, dated 25.11.2024 (herein after referred to as "the impugned order") passed by the Additional Commissioner, Customs, Surat (herein after referred to as "the "adjudicating authority").

2. Facts of the case, in brief, are that the Appellant had imported Capital Goods machinery, i.e., 02 sets of Computerized Embroidery Machine under EPCG Licence No. 5230018497, dated 28.10.2015 by saving Customs Duty amount of Rs. 3,09,017/- (Actual Duty Utilization of Rs. 2,99,520/-) under the cover of the below mentioned Bills of Entry at Zero rate of duty by availing the benefit of exemption available under Notification No. 16/2015-Cus., dated 01.04.2015. The details of import are as per Table – I below:

TABLE – I

Sr. No.	Bill of Entry No. & date	Number of machinery cleared	Duty saved / available as per EPCG Licence (In Rs.)	Total Duty Foregone / Debited at the time of clearance (In Rs.)	Bank Guarantee Amount (In Rs.)
1	3138086 dt. 03.11.2015	01	3,09,017/-	1,49,760/-	48,000/-
2	3138006 dt. 03.11.2015	01		1,49,760/-	
	TOTAL	**02 Sets**	3,09,017/-	**2,99,520/-**	48,000/-

2.1 Against the said EPCG Licence, the Appellant had executed a Bond dated 02.11.2015 before the Deputy/Assistant Commissioner of Customs, ICD – Sachin, Surat for an amount of Rs. 10,00,000/- backed by a Bank Guarantee No. 0650BG003972015, dated 30.10.2015 for Rs. 48,000/- issued by the South Indian Bank, SNS House, Udhana Teen Rasta. Udhana, Surat. They had undertaken to fulfilll the export obligation as specified in the Notification and the licence.

2.2 The said machinery, i.e., 02 sets of Computerized Embroidery Machine imported under the aforesaid EPCG Licence were installed at the factory premises of M/s. Siddhi Vinayak Creation, Plot No.: 98, Sonal Ind. Estate-1, Chikuwadi, Udhna, Surat-394 210 as per the Installation Certificate dated 05.12.2015 issued by the Chartered

Engineer, Shri H.C. Dave, Surat, certifying the receipt of the goods imported and its installation.

2.3 As per the conditions of said Notification, the Appellant was required to fulfilll the export obligation on FOB basis equivalent to Six times the duty saved on the goods imported as specified on the Licence and Authorization, within a period of Six years from the date of issuance of EPCG Licence. In the instant case, the said EPCG Licence was issued to the Appellant on 02.11.2015 and accordingly, they were required to fulfilll export obligation by 01.11.2021, i.e., within a period of Six years from the date of issuance of Licence or Authorization and submit the Export Obligation Discharge Certificate (EODC) issued by the Regional DGFT Authority before the jurisdictional Customs authorities.

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

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

2.6 In view of the above, it appeared that the Appellant had failed to fulfilll the export obligation as specified in the Licence and did not comply with the mandatory condition of the said Notification, the condition of said EPCG Licence and also the conditions of the said Bond executed and furnished by them. The Appellant neither produced the EODC issued by the DGFT, Surat nor could produce any documents showing extension granted to them for fulfillment of export obligation. Therefore, the Appellant was liable to pay Customs Duty not paid (i.e. saved) by them amounting to Rs. 2,99,520/- at the time of import / clearance along with interest at the applicable rate, in terms of conditions of the said Notification read with condition of the Bond executed by them read with Section 143 of the Customs Act, 1962. Further, said the Bank Guarantee issued by the South Indian Bank, Surat furnished by them against the aforesaid EPCG Licence appeared liable to be encashed and deposited in the Government Exchequer.

2.7 Accordingly, a Show Cause Notice under F. No. VIII/6-2702/ICD-Sachin/2015-16 dated 05.07.2024 was issued to the Appellant, proposing as to why:

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

ii. Customs Duty amounting to Rs. 2,99,520/- being the duty foregone at the time of import under EPCG Licence should not be demanded and recovered from them along with interest in terms of the said Notification as amended, read with the conditions of Bond executed and furnished by them in terms of Section 143 of the Customs Act, 1962 by enforcing the terms of the said Bond. Further, why the said Bank Guarantee backed against the Bond, should not be appropriated and adjusted towards the duty liability as mentioned above;

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

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

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

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

ii. He confirmed the demand of Customs Duty amounting to Rs. 2,99,520/- being the duty foregone at the time of import of Capital Goods under EPCG Licence in terms of the said Notification as amended, read with the conditions of Bond executed along with interest and ordered the same to be recovered in terms of Section 143 of the Customs Act, 1962 by enforcing the terms of the above mentioned Bond;

iii. He ordered to appropriate the amount of Rs. 48,000/- by encashment of the said Bank Guarantee submitted by the Appellant and ordered to adjust the said amount against the duty liability confirmed at (ii) above;

iv. He confiscated the subject imported Capital goods imported by the Appellant under Section 111 (o) of the Customs Act, 1962 read with the conditions of Bond executed in terms of Section 143 of the Customs Act, 1962 read with the said Customs Notification. However, he gave an option to redeem the said goods on

payment of redemption fine of Rs. 3,19,787/- under Section 125 (i) of the Customs Act, 1962;

v. He imposed penalty of Rs. 29,952/- upon the Appellant under Section 112 (a) of the Customs Act, 1962;

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

3. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellant have filed the present appeal on 30.01.2025. The Appellant have, inter-alia, raised various contentions and filed detailed submissions as given below in support of their claims:

"[A] The appellants submit, at the very outset, that the impugned order is passed ex-parte without providing any opportunity of hearing It is submitted that neither the show cause notice was received by the present appellants nor any intimation of hearing was received. In such facts, the appellants are not provided proper opportunity of hearing It is submitted that the order is passed ex-parte in clear violation of principles of natural justice Hence, the same is bad in law and requires to be quashed and set aside. On this short ground alone, the present appeal is required to be allowed

[B] It is submitted that Section-153 of the Customs Act provides for Modes for services of notice, order, etc It is submitted that as per Section-153(1), the notice can be given directly to the Customs Broker or Authorized Representative of the Importer It can be sent by RPAD or Speed Post or Courier with acknowledgement. It can also be sent by email or the same can be made available on common portal or the same can be published in a newspaper widely circulated in the locality or by affixing it on some conspicuous place at the place of business of the importer It is submitted that in the present case, neither the show cause notice nor any hearing intimation was served by aforesaid modes. Hence, the show cause notice itself is not served on the present appellants as provided under the Act. Hence, the order passed without proper service of show cause notice is bad in law and requires to be quashed and set aside

[C] It is further submitted that the appellants had imported the aforesaid Embroidery Machinery with a view to export fabrics in the International Market. However, after the import of machinery, due to cutthroat competition faced by the Indian Exporters, the appellants could not export the goods. Hence, the appellants

had incurred heavy losses due to non-realization of exports. It is submitted that the machinery was imported specifically to enhance business in the International Market and the aforesaid machinery was lying idle due to non-receipt of orders from International Buyers. Hence, the appellants could not export the goods as per the condition of bond

[D] It is also submitted that due to Covid-19, the entire business of the present appellants had been collapsed and the appellants had no money even to buy essentials. Hence, the appellants had run into rough weather after import of machinery. Hence, they could not fulfill export obligations.

[E] However, it is submitted that they are still trying to modify the terms of license from the DGFT and they are also trying to get orders from International Buyers. It is submitted that in case of extension of period of exports by the DGFT, the entire litigation becomes premature. Hence also, the order passed is not sustainable and requires to be quashed and set-aside

[F] It is further submitted that the goods are held liable to confiscation u/s. 111(0) of the Customs Act and redemption fine is imposed u/s 125 of the Customs Act. It is submitted that the appellants had bonafidely imported the goods by executing bond with the Customs Authority. The goods were imported openly and no wrong declaration was filed. Hence, the goods cannot be held liable to confiscation. Hence also, imposition of redemption fine is bad in law and requires to be quashed and set aside

[G] Further, penalty u/s. 112(a) and section-117 are imposed on the present appellants. It is submitted that in the facts of the present case the appellants had bonafidely imported goods and had made correct declarations at the time of import. Hence, in case of failure to export goods, benefit of duty exemption can be denied but, penalty cannot be imposed in cases of genuine hardships. The appellants submit that even imposition of token penalty is without authority of law in the facts of present case when goods were imported by filing correct declaration. Hence also, the order is bade in law and requires to be quashed and set aside.

[H] The appellants seek to rely upon various case laws which hold that penalty u/s 112 of the Customs Act is not imposable if the importer has established bonafides.

[I] It is also settled law that penalty under section 112 can be imposed only if importer had knowledge pertaining to mis-declaration. The Higher Authorities have consistently taken a view that if the importer has acted bonafidely without having knowledge of any wrong then penalty u/s 112 (1) or Section-117 cannot be imposed The appellants seek to rely upon such orders at the time of hearing

[J] It is submitted that the order further directs to encash bank guarantee submitted at the time of import In this regard, it is submitted that the bank guarantee issued by South Indian Bank Ltd was valid up to 29. 10.2023 and the bank has specifically stated that they are liable to pay guaranteed amount on or before 29.10.2023 Once that period of limitation is over, the bank guarantee cannot be encashed Hence also, the order directing encashment of bank guarantee is bad in law and requires to be quashed and set aside."

4. Personal hearing in the matter was held on 24.12.2025 in virtual mode. Shri Nirav Shah, Advocate, appeared & attended hearing on behalf of the Appellant. He reiterated the submissions made in the appeal memorandum. He further requested to grant one week time to file written submission along with case laws relied during hearing. He vide mail dated 30.12.2025 submitted his further submission which are as under:

"1. It was submitted during the course of hearing that the order is passed in gross violation of principles of natural justice. It is submitted that my clients had been living at the same place i.e. 121, Ram nagar, Opp: BARC Gate, Udhna, Surat, where the order is received by my clients. Though the aforesaid address was available with the department, it is strange that the show cause notice or the personal hearing intimations are not issued at the aforesaid address. It was submitted during the course of hearing that when the address of the appellant was available with the department and when letters / communications / notices were returned back to the Adjudicating Author ity, it was duty of the Adjudicating Authority to serve the same at residential address, which was available with him. Hence, it is sub mitted that the order is passed ex-parte in violation of principles of natural justice and hence, the same is required to be quashed and set aside.

2. It was further submitted that my client is not well literate and accord ingly, was not aware of procedure for extension of time for export obligation. Due to Corona Pandemic and subsequent closure of business, my clients could not fulfill his export obligation. The ex tension of time for fulfilling export obligation is allowed by the DGFT in each case when the application is filed after Corona Pandemic.

However, due to not being well literate, my client could not make application for extension of time. In such facts, the export obligation could not be fulfilled resulting in issuance of demand notice for customs duty.

3. It was also submitted that the Adjudicating Authority has confiscated the imported machinery and has also imposed redemption fine in lieu of confiscation. Further, the Adjudicating Authority has imposed penalty u/s. 117 of the Customs Act. In this regard, it was submitted that it is very settled law that in cases of non-fulfillment of export obligation, the goods cannot be confiscated invoking section-111 (o) of the Customs Act and penalty cannot be imposed u/s. 117. It is held by innumerous authorities that when Exim Policy has provided, alternative of payment of duty in the event of failure to fulfill the ex port obligation, the failure is remedied by recovery of duty eliminat ing the scope of invoking section-111(o) of the Customs Act. Reli ance was placed on following orders of the Hon'ble Tribunal for aforesaid proposition of law :

1. 2004 (173) ELT 100 (Tri.-Bang.) in the case of Taurus Novelties Ltd.
2. 2007 (210) ELT 200 (Tri.-Bang.) in the case of Premier Granites Ltd.
3. 2017 (357) ELT 632 (Tri.-Del) in the case of Age of Enlight enment Publications.
4. 2019 (368) ELT 1113 (Tri.-Mumbai) in the case of Global Boards Ltd.
5. 2020 (371) ELT 729 (Tri.-Ahmd.) in the case of Asia Motor Works."

5. Before going into the merits of the case, it is observed from the Form CA-1 dated 27.01.2025 that the impugned order dt. 25.11.2024 has been shown as received on 10.12.2024 and the appeal has been filed on 30.01.2025. Therefore, the appeal has been filed within 60 days as mandated in the Section 128 of the Customs Act, 1962. It is also observed that the appellant has submitted copy of TR 6 challan no. 89/24-25 dated 16.01.2025 evidencing payment of pre-deposit of Rs. 22,500/- made for the purpose of filing the appeal which complied with the provision of Section 129 of the Customs Act, 1962. The copy of Form CA-1 and other documents pertains to filing of appeal, were sent to the adjudicating authority vide letter dt. 25.03.2025, however, till date no report received in the matter.

5.1 I have carefully gone through the appeal memorandum as well as records of the case and the submission made on behalf of the Appellant during the course of hearing. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority disallowing the benefit of concessional rate of duty

under Notification No. 16/2015 - Cus., dated 01.04.2015, confirming the demand of duty along with interest, confiscating the Capital goods under Section 111 (o) of the Customs Act, 1962 and imposing penalty upon the Appellant under Sections 112 (a) and 117 of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

5.2 It is observed from the grounds of appeal that the impugned order is passed ex-parte without providing any opportunity of hearing which violation of principles of natural justice. I find that the contention of the appellant is factually incorrect and not borne out from the records. In this regard, reference is invited to paragraph 12 of the impugned order, wherein it is clearly recorded that the appellant was afforded three opportunities of personal hearing, scheduled on 14.10.2024, 25.10.2024 and 12.11.2024. Despite the said opportunities, the appellant neither appeared for the personal hearings nor filed any written defence submissions. This clearly establishes that due opportunity of personal hearing was granted to the appellant, and therefore, the contention that the order is ex parte is incorrect and misleading. Consequently, the allegation of violation of the principles of natural justice is unfounded and unsustainable.

5.3 It is also observed that the appellant submitted that he had been living at the place i.e. 121, Ramnagar, Opp: BARC Gate, Udhna, Surat, where the order is received by him. This, address was available with the department, however, the show cause notice or the personal hearing intimations were not issued at the aforesaid address. Due to this, letters / communications / notices were returned back to the Adjudicating Authority, it was duty of the Adjudicating Authority to serve the same at residential address, which was available with him. Hence, the order is passed ex-parte in violation of principles of natural justice and hence, the same is required to be quashed and set aside.

5.3.1 The above contention of the appellant is incorrect and misleading. It is a matter of record that the Show Cause Notice bearing F. No. VIII/6-2702/ICD-Sachin/2015-16 dated 05.07.2024 was issued to the appellant and sent to the address (i) M/s. Siddhi Vinayak Creation, Plot No.: 98, Sonal Ind. Estate-1, Chikuwadi, Udhna, Surat-394 210 and (ii) Shri Sanjay Ganeshbhai Rathod, proprietor of M/s. Siddhi Vinayak Creation, 121, Ramnagar, Opposite BARC Gate, Udhna, Surat, as mentioned in paragraph 5.3 above. The said fact is verifiable from the appeal papers at page No. 30, which have been

submitted by the appellant himself. Therefore, the claim of non-service of the Show Cause Notice is devoid of merit and is liable to be rejected.

5.3.2 After issuance of Order-in-Original No. 225/AB/ADC/ICD-SACHIN/SRT/2024-25 dated 25.11.2024, the same was dispatched to the following addresses: (i) M/s. Siddhi Vinayak Creation, Plot No. 98, Sonal Industrial Estate–1, Chikuwadi, Udhna, Surat–394210, and (ii) Shri Sanjay Ganeshbhai Rathod, Proprietor of M/s. Siddhi Vinayak Creation, at 121, Ramnagar, Opposite BARC Gate, Udhna, Surat. The appellant himself has admitted, in his additional submission dated 30.12.2025, that the said Order-in-Original was received at the address, i.e., 121, Ramnagar, Opposite BARC Gate, Udhna, Surat. This admission clearly establishes that the letters/communications/notices/orders were consistently sent by the department to the correct address and were duly received by the appellant. Hence, the contention of the appellant regarding non-receipt of communications is incorrect and misleading and deserves to be rejected.

5.3.3 It is a matter of record that various documentary evidences conclusively establish that the official business communication address of M/s. Siddhi Vinayak Creation is **Plot No. 98, Sonal Industrial Estate–1, Chikuwadi, Udhna, Surat–394210**. The documents relied upon by the appellant himself, namely, Authorization Forwarding Letter dated 28.10.2015 issued by DGFT, Surat (page 10), EPCG Licence dated 28.10.2015 (page 14), Bank Account details of South Indian Bank (page 17), Bank Guarantee dated 30.12.2015 (page 18), Bill of Entry (page 21), Show Cause Notice dated 05.07.2024 (page 25), Order-in-Original dated 25.11.2024 (page 32) and TR-6 Challan dated 16.01.2025 (page 09) of the appeal memorandum, clearly and consistently reflect the said address as the appellant's official place of business.

Therefore, in terms of Section 153(b) of the Customs Act, 1962, service of the Show Cause Notice, personal hearing letters, Order-in-Original and other official communications at the appellant's last known place of business, i.e., **Plot No. 98, Sonal Industrial Estate–1, Chikuwadi, Udhna, Surat–394210**, is valid and proper. In view of the overwhelming documentary evidence on record, it is evident that the Department has duly complied with the statutory requirements of service of notice. Hence, the appellant's claim regarding improper service of communications is false, misleading and devoid of any legal merit and is liable to be rejected.

5.4 It is observed from the impugned order that the department, vide letter dated 13.01.2023, requested to the appellant to furnish a copy of the Export Obligation Discharge Certificate (EODC) or any extension granted by the Regional Authority, DGFT, Surat, in respect of fulfilment of export obligation under the EPCG licence. However, the appellant failed to respond to the said letter. Thereafter, a letter dated 27.02.2023 was addressed to the Foreign Trade Development Officer, DGFT, Surat, seeking confirmation as to whether the EODC had been issued or any extension had been granted to the appellant, or whether any documents evidencing fulfilment of export obligation had been submitted by the appellant. In response thereto, the Assistant Director, DGFT, Surat, vide letter dated 28.02.2023, categorically informed that the importer/appellant had not submitted any documents towards fulfilment of export obligation. It is further noted that the appellant was required to fulfil the export obligation within a period of six years from the date of issue of the EPCG licence, i.e., from 02.11.2015 to 01.11.2021. However, even after lapse of more than five years from the expiry of the said period, the appellant has neither fulfilled the export obligation nor produced any evidence of exports made against the said licence before the DGFT authorities. Further, no application has been made by the appellant to the DGFT authority for redemption of the EPCG licence. In view of the above facts, it is evident that the appellant has failed to comply with the conditions of the EPCG licence as well as the relevant exemption notification, and is therefore liable for denial of the benefit availed thereunder.

5.5 It is not under dispute, that the Appellant have not fulfilled their export obligation inasmuch as they have not submitted the Export Obligation Discharge Certificate evidencing the fulfillment of the export obligation in respect of the EPCG issued by the DGFT. It is further observed from the records of the case that the Appellant have not been able to submit the EODC before this appellate authority as well. It is pertinent to mention that in view of non-submission of any application for EODC to the DGFT , the Appellant is not entitled to the benefit of the Notification *ibid*. In view of the above, I agree with the observations and findings of the adjudicating authority in the impugned order and do not find any justification to interfere with the findings in the impugned order passed by the adjudicating authority.

6. In view of the foregoing facts and findings, it is evident that the appellant has neither obtained the Export Obligation Discharge Certificate (EODC) nor even filed an application for the same with DGFT, Surat, despite lapse of considerable time and repeated opportunities. It is well settled that compliance with export obligation under the

EPCG Scheme and production of EODC within the prescribed or extended period is a mandatory statutory requirement. In the absence of EODC, the appellant fails to establish fulfilment of export obligation, and consequently, the benefit availed under the EPCG licence cannot be sustained. The impugned order, confirming demand of duty along with applicable interest and penalties for non-fulfilment of export obligation, is therefore found to be legal, proper, and sustainable, and does not call for any interference.

7. In view of the above fact and findings, the appeal filed by the appellant is hereby rejected.

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

F. No. S/49-266/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. Siddhi Vinayak Creation,
Plot No.: 98, Sonal Ind. Estate-1,
Chikuwadi, Udhna,
Surat-394 210

Shri Sanjay Ganeshbhai Rathod,
Proprietor of M/s. Siddhi Vinayak Creation,
at 121, Ramnagar, Opposite BARC Gate,
Udhna, Surat.

Email: sanjay926773@gmail.com

Copy to:

1.The Chief Commissioner of Customs Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in)
2.The Principal Commissioner of Customs, Custom House, Ahmedabad. (email: cus-ahmd-guj@nic.in rra-customsahd@gov.in).
3. The Additional Commissioner of Customs, ICD – Sachin, Surat. (Email: adjcus-surat@gov.in / cus-ahmd-adj@gov.in)
4.The Deputy Commissioner, Customs, ICD – Sachin, Surat. (icd-sachin@gov.in).
5. Shri Nirav Shah, Advocate on behalf of M/s.Siddhi Vinayak Creation, Surat. (niravpshah@outlook.com)
6. Guard file.