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 - 20260171MN0000515496

क	फ़ाइल संख्या FILE NO.	S/49-261/CUS/MUN/2023-24
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)	MUN-CUSTM-000-APP-633-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	01.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	MCH/ADC/AK/243/2023-24 dated 26.01.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	01.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Mementos Foods Limited (Formerly known as M/s. Mementos Foods Pvt Ltd), Survey no. 170, At Talod Majra Highway, Dolatabad, Talod, Sabarkantha, Gujarat - 383215

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 exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.**6** अनुसूची **1** के अधीन निर्धारित किए गए अनुसार इस आदेश की **4** प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की **4** प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की **4** प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, **1962** (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. **200/-**(रूपए दो सौ मात्र)या रु.**1000/-**(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.**6** की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.**200/-** और यदि एक लाख से अधिक हो तो फीस के रूप में रु.**1000/-**
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. **2** के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम **1962** की धारा **129** ए **(1)** के अधीन फॉर्म सी.ए.**-3** में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, **1962** की धारा **129** ए **(6)** के अधीन, सीमाशुल्क अधिनियम, **1962** की धारा **129** ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा **129** (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

Appeal has been filed by M/s Mementos Foods Limited, (Formerly known as M/s. Mementos Foods Pvt Ltd),Survey no. 170, At Talod Majra Highway, Dolatabad, Talod, Sabarkantha, Gujarat - 383215, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AK/243/2023-24 dated 26.01.2024 (hereinafter referred to as 'the impugned order') by the Additional Commissioner, Customs House, Mundra.

2. Facts of the case, in brief, are that the appellant had imported 13 sets of capital goods viz. "Pick-up Cleaner", "Automatic Hopper Scale" and "Automatic Flow Balancer" under EPCG License No.831003529 dated 23.12.2021 by saving duty of 16,55,353/- and had cleared the same vide Bill of Entry No.6938916 dated 03.01.2022 while availing the benefit of exemption available under Notification No.16/2015 dated 01.04.2015 (as amended). The appellant had executed Bond No.2001946493 dated 03.01.2022 for Rs. 25,49,233/- through the Assistant/Deputy Commissioner of Customs, ICD-Khodiyar, Ahmedabad in respect of EPCG License No.831003529 dated 23.12.2021. The appellant also submitted Bank Guarantee No.0505421BG0001153 dated 31.12.2021 for Rs.16,55,346/- issued by State Bank of India, Ashram Road, Ahmedabad through the Commissioner of Customs, Ahmedabad valid upto 23.12.2028. They had also given an undertaking to fulfill the conditions of the Bond, EPCG License and the relevant Customs Notification at the time of registration of the EPCG License No.831003529 dated 23.12.2021 at ICD Sabarmati Kaligam Sabarmati, Ahmedabad (INSBI-6). The above 13 sets of capital goods were to be installed at the factory premises of the appellant and the goods imported shall not be disposed of or transferred by sale or lease or any other manner till export obligation was completed.

2.1 Further, the appellant in this regard have to produce Installation Certificate issued by Chartered Engineer certifying the receipt of the goods imported as per Notification No.16/2015-Customs dated 01.04.2015 (as

amended). An information vide letter F. No. GEXCOM/AE/INSP/109/2021-AE/505 dated 22.07.2022 was received from the Joint Commissioner (Prev.), CGST & Central Excise, Gandhinagar regarding unlawful storage of machinery imported against EPCG License under Notification No.16/2015- Customs dated 01.04.2015 by M/s. Mementos Foods Pvt. Ltd. wherein it was informed their office has conducting an investigation regarding GST evasion ion against M/s Mishtann Foods Limited (GSTIN:24AAACH5335GIZX) having factory premises situated at Survey Survey No.10, Vill-Kabodari, Dhansura Himatnagar Road, Taluka Talod, Distt. Sabarkantha, Gujarat.

2.2 A search operation was conducted at the aforesaid factory premises of M/s Mishtann Foods Ltd. on 20/21.04.2022 and certain goods including 63 packages of machineries (Sortex machine & its parts) bearing the brand name "Bühler", claimed to be of M/s Mementos Foods Pvt. Ltd. (GSTIN:24AALCM4206G1ZP), were placed under prohibition, vide Order of Prohibition GST INS-03 dated 21.04.2022, as no documents relevant to the said SOSNIZE BOSIN machinery were maintained by the taxpayer at their said factory premises. No E-way Bill/ delivery challan, evidencing the movement of goods, produced by the party. During investigation, scrutiny of documents furnished by M/s Mementos Foods Pvt. Ltd. in respect of their aforesaid 63 packages of machineries revealed that some packages of the said machine were imported by M/s Mementos Foods Pvt. Ltd. against EPCG License 0831003529 & 0831003268 dated 23.12.2021 & 30.11.2021 respectively under Notification No.16/2015-Customs dated 01/04/2015, as observed from Bills of Entry submitted by the taxpayer to their office. Further, it is observed from the Bills of Entry that the said machineries were imported by the taxpayer through Bill of Entry No.6629546 dated 11.12.2021 (Ahmedabad) and No.6938916 dated 03.01.2022 (Mundra).

2.3 As per the Para-4 and Para-9 of the Notification No.16/2015-Customs dated 01.04.2015, the goods imported under EPCG scheme claiming the benefit of duty exemption, shall not be disposed of or transferred by sale or lease or any other manner till export obligation is complete. The capital goods were required to be installed in the premises and put to use immediately after the import and a certification of same to be furnished before the Deputy Commissioner of Customs or Assistant Commissioner of Customs at the port of import confirming such installation. As the aforesaid machineries of M/s

Mementos Foods Pvt. Ltd., imported under EPCG License, have been stored in a place other than the registered business premises of the taxpayer in violation of the conditions mentioned in Notification No. 16/2015-Customs dated 01.04.2015. Therefore, the matter was forwarded to Mundra Customs and Ahmedabad Customs for taking necessary action.

2.4 On the basis of above information, a summons dated 08.08.2022 & 18.10.2022 was issued to the appellant to provide the installation certificate of machine imported vide BE No.6938916 dated 03.01.2022 under EPCG License and to provide the status of capital goods (machinery seized) by CGST, Gandhinagar. In reply to the above summons, the appellant submitted that their import consignment was under custody of CGST, Gandhinagar & not yet released by them & issued SCN No.39/2022-23 dated 18.10.2022 vide DIN No.20221064WU000000CB5F to Mistann Foods Limited for submission of documents related to Mementos Foods Pvt. Ltd. They have been informed that the same matter is sub judice. They are awaiting positive movement in the matter. Once the machineries would be released then only, they could get it transferred to their factory location, get it installed and accordingly would be able to provide the Installation certificate.

2.5 As per Notification No.16/2015-Customs dated 01.04.2015 (as amended), the appellant was required to install and put to use, after their import, in the appellant's factory or premises and a certificate from the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise or from an independent Chartered Engineer, is produced within a period of six months from the date of completion of imports before the Deputy Commissioner of Customs or Assistant Commissioner of Customs at the port of import confirming such installation and use of the capital goods in the appellant's factory or premises.

2.6 The aforesaid EPCG License No.831003529 dated 23.12.2021 was issued to the appellant to import for a period of 24 months having 6 years' period of export and the Bond dated 03.01.2022 was executed to fulfill the conditions mentioned therein in respect of Notification No.16/2015- Customs dated 01.04.2015 (as amended). Accordingly, the appellant was required to fulfill the condition of not disposing of or transferred by sale or lease or any other manner of imported goods till export obligation is completed and the capital goods

imported, assembled or manufactured, were required to be installed and put to use, after their import, in the appellant's factory or premises and a certificate from the jurisdictional Deputy or Assistant Commissioner of Central Excise or from an independent Chartered Engineer was required to be submitted in this respect. However, the imported goods were found lying at the premises other than the registered place of business for which no information was given to the department at any point of time. Therefore, the appellant failed to abide by the conditions mentioned in Notification No.16/2015-Customs dated 01.04.2015 and EPCG License. Hence, the 13 sets of imported capital imported under Bill of Entry No.6938916 dated 03.01.2022 without payment of duty under EPCG Scheme are liable for confiscation under Section 111(o) of the Customs Act, 1962.

2.7 In view of the above, the appellant failed to fulfill the conditions laid down under Notification No.16/2015-Customs dated 01.04.2015 as discussed above. Therefore, they are therefore liable to pay duty foregone amounting to Rs.16,55,353/- in respect of the said imported goods along with interest at the applicable rate, in terms of conditions of the said Notification read with condition of Bond executed by the appellant and Section 143 of the Customs Act, 1962.

2.8 Accordingly, a Show Cause Notice was issued to M/s Mementos Foods Pvt. Ltd. demanding the duty foregone, along with applicable interest and penalty. Consequently, the adjudicating authority passed the following order:

(i) He denied the benefit of exemption of duty for EPCG Scheme under Notification No. 16/2015-Customs dated 01.04.2015 on the imported 13 sets of capital goods viz. "Pick-up Cleaner", "Automatic Hopper Scale" and "Automatic" Flow Balancer" imported in the name of M/s Mementos Foods Pvt. Ltd.

(ii) He confiscated the Imported Capital Goods having total assessable value of Rs. 59,68,462/ under Section 111(o) of the Customs Act, 1962 read with conditions of Bond executed in terms of Section 143 of the Customs Act, 1962 read with Notification No.16/2015- Customs dated 01.04.2015 as amended from time to time. He also imposed fine of Rs 6,00,000/- (Rupees six lakh Only) on M/s Mementos Foods Pvt. Ltd., under section 125 of the Customs Act, 1962.

(iii) He demanded and ordered to recover the Customs duty total amounting to Rs. 16,55,353/- (Rupees Sixteen Lakh Fifty-Five Thousand Three Hundred Fifty-Three only) being the duty foregone at the time of import under EPCG Licence, from appellant in terms of Notification No.16/2015-Customs dated 01.04.2015 as amended, read with the Conditions of Bond executed and furnished by them in term of Section 143 of the Customs Act, 1962 by enforcing the terms of the said Bond. Further, he appropriated and adjusted the Bank Guarantee No.0505421BG0001153 dated 31.12.2021 for Rs.16,55,346/- backed against the Bond, towards the duty liability as mentioned above.

(iv) He ordered to recover the Interest at the applicable rate from M/s Mementos Foods Pvt. Ltd., on the Customs duty as mentioned at (iii) above in term of Notification No.16/2015-Customs dated 01.04.2015 as amended from time to time read with Conditions of Bond executed in term of Section 143 of Customs Act, 1962.

(v) He imposed Penalty of Rs. 1,00,000-/ (Rs. One lakh Only) on the M/N Mementos Foods Pvt. Ltd under Section 112( )(ii) of the Customs Act, 1962 for the acts of omission & commission mentioned above.

(vi) He imposed Penalty of Rs. 10,000/- (Rs. Ten Thousand Only) on the M/B Mementos Foods Pvt. Ltd under Section 117 of the Customs Act, 1962 for the acts of omission & commission mentioned above.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the order passed by the Additional Commissioner, Customs, Mundra. The Grounds of Appeal are not reproduced in detail for sake of brevity, as the copy of the same is available with the Appellant as well Respondent. However, the same have been examined and the brief is as under:

3.1 The appellant challenges the Order-in-Original on the primary ground that the adjudicating authority failed to consider that the non-installation of imported capital goods was due to circumstances beyond their control. While regulations typically require installation within six months, the

goods in this case were seized by Central GST authorities on April 21, 2022—well before the expiration of the six-month window following their January 2022 importation. The appellant argues the legal maxim Lex non cogit ad impossibilia (the law does not compel the impossible), asserting they could not legally install the machinery while it was under seizure and prohibition by another government authority.

3.2 Furthermore, the appellant contests the allegation that they violated Notification No. 16/2015-Customs by "disposing of" the goods. They clarify that the machinery was merely being stored temporarily at the premises of M/s Mishtann Foods Ltd. because the appellant's own factory building was not yet completed at the time of delivery. The appellant maintains full ownership of the assets, as evidenced by their company Balance Sheet and Income Tax returns where they continue to claim depreciation. They argue that the failure to inform Customs of this temporary storage arrangement was a mere procedural lapse rather than a substantive violation of the law.

3.3 The appeal also highlights a significant violation of the principles of natural justice, claiming the order was passed ex-parte without providing a fair opportunity to be heard. The appellant states they did not receive invitations for all scheduled personal hearings, particularly after the adjudicating authority changed, and was not granted the three statutory adjournments provided for in law. Consequently, they request that the impugned order, including the demand for customs duty, interest, and penalties totaling Rs. 1,10,000, be set aside in its entirety.

3.4 The appellant has placed reliance on the following case laws:-

- M/s Regency Ceramics Ltd. reported at 2018 (363) ELT 293 (T)
- M/s Thiagarajar Mills Ltd. reported at 1999 (111) ELT 288 (T)
- M/s HEG Ltd. reported at 2019 (29) GSTL 730 (T)
- M/s Murari Lal Singhal reported at 2019 (25) GSTL 45 (T)

PERSONAL HEARING:

4. A personal hearing was granted to the Appellant on 08.05.2025, 18.06.2025, 26.06.2025 and 09.07.2025 following the principles of natural justice However, the appellant neither appeared nor filed any submission.

I therefore proceed to decide the case on the basis of records available before me.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs, Mundra and the defense put forth by the Appellant in their appeal.

5.1 The central issue in the present appeal is whether the Appellant, having availed of a conditional exemption under Notification No. 16/2015-Customs, can escape the liability of customs duty, interest, and penalty when they have admittedly failed to produce the Export Obligation Discharge Certificate (EODC) from the competent authority (DGFT) within the prescribed time limit. The ancillary issues relate to the legality of confiscation under Section111(o) of the Customs Act, 1962, and the alleged violation of the principles of natural justice.

5.2 At the outset, it is necessary to understand the legal nature of the benefit availed by the Appellant. The Appellant imported goods claiming exemption under Notification No. 16/2015-Customs. This notification was issued by the Central Government in the public interest to boost exports. It is a settled principle of law that the State does not grant tax exemptions out of charity; there is always a quid pro quo. In the context of the EPCG and Advance Authorization schemes, the quid pro quo is the "Export Obligation." The Government forgoes its legitimate revenue (Customs Duty) on the specific promise and undertaking by the importer that they will earn foreign exchange for the country by exporting goods manufactured using the imported capital goods or inputs.

5.3 The exemption is not absolute; it is "conditional." The condition is a "condition subsequent," meaning it has to be fulfilled after the importation of goods. The moment the importer fails to fulfill this condition—specifically the Export Obligation—the very foundation of the exemption collapses. The duty, which was merely held in abeyance, becomes immediately recoverable. The Hon'ble Supreme Court in the landmark judgment of **Commissioner of Customs (Imports), Mumbai vs. Dilip Kumar & Company [2018 (361) E.L.T. 577 (S.C.)]** has laid down the law regarding the interpretation of exemption notifications.

The Constitution Bench held:

"Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification."

5.4 Applying the ratio of Dilip Kumar & Co. to the present case, the burden was entirely on the Appellant to prove that they have satisfied the conditions of Notification No. 16/2015-Customs. The only document recognized by law to prove the discharge of Export Obligation is the Export Obligation Discharge Certificate (EODC) issued by the DGFT. The Appellant has failed to produce this critical document. In the absence of the EODC, the Appellant has failed to discharge the burden of proof required to retain the benefit of the exemption. Consequently, the benefit must be denied, and the duty must be recovered.

5.5 When the Appellant cleared the goods without payment of duty, they executed a Bond under Section 143 of the Customs Act, 1962. Section 143 serves as a bridge between the time of import and the time of fulfillment of the post-import condition. Section 143(1) reads:

"Where this Act or any other law requires anything to be done before a person can import or export any goods... and the proper officer is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import... he may... permit the import... subject to the person executing a bond... binding himself to do that thing in respect of the goods..."

5.6 By executing this Bond, the Appellant entered into a solemn contract with the President of India (represented by the Customs Department). The terms of the Bond are specific: the importer undertakes to produce the EODC within a specified period, failing which they undertake to pay the duty and interest. This Bond is an independent contract. It is not merely a procedural formality. Once the period specified in the Bond (or the period prescribed in the Notification) expires and the condition (production of EODC) is not met, an "Event of Default" occurs. The Customs Department is legally entitled to enforce the Bond immediately. The Appellant's argument that the matter is "pending" with the DGFT does not absolve them of their liability under the Bond. The

Customs Act does not mandate the Customs Officer to wait indefinitely for the DGFT's decision. If the EODC is not produced by the deadline, the Customs Officer is duty-bound to enforce the Bond to protect the revenue.

5.7 The Hon'ble Supreme Court in **Sheshank Sea Foods Pvt. Ltd. vs. Union of India [1996 (88) E.L.T. 626 (S.C.)]** clearly held that the Customs authorities have independent jurisdiction to act against the importer for violation of the conditions of the exemption notification and the bond, irrespective of the proceedings before the licensing authority (DGFT). The Court held that the two jurisdictions—Customs and DGFT—operate in distinct fields, although they may overlap. The Customs authorities are not precluded from taking action for recovery of duty and confiscation of goods merely because the DGFT has not yet cancelled the license or is considering an extension. In the present case, since the time limit has expired and no extension order was produced, the enforcement of the Bond by the Adjudicating Authority is strictly in accordance with the law and the principles laid down by the Apex Court.

5.8 A major contention of the Appellant is that the goods are not liable for confiscation under Section 111(o) because there was no "improper importation" at the time of clearance. They argue that the goods were validly imported under a valid license. This argument is legally misconceived and betrays a lack of understanding of the scope of Section 111(o). Section 111(o) of the Customs Act, 1962 states:

> *"The following goods brought from a place outside India shall be liable to confiscation: ... (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer."*

5.9 The legislative intent behind Section 111(o) is specifically to cover cases where the violation occurs after the goods have been cleared from Customs control. It is designed to tackle "Post-Importation" breaches. If the Appellant's argument were accepted, Section 111(o) would be rendered redundant, as every importer utilizing an exemption would claim that the import was valid at the time of entry. The Hon'ble Supreme Court in Union of India vs. Jain Shudh Vanaspati Ltd. [1996 (86) E.L.T. 460 (S.C.)] settled this issue definitively. The Court held

that a violation of a condition of the exemption notification, even if it occurs subsequent to the clearance of goods, renders the goods liable to confiscation under Section 111(o). The liability relates back to the date of import because the exemption was conditional. If the condition is broken, the exemption is void ab initio, and the goods are deemed to have been imported in violation of the law. In the instant case, the condition was to fulfill the Export Obligation and produce the EODC. The Appellant failed to observe this condition. Therefore, the goods strictly fall within the ambit of Section 111(o).

5.10 Furthermore, the Appellant's argument regarding the "availability of goods" for confiscation needs to be addressed. It is often argued that if goods are not available (i.e., they have been used or sold), confiscation cannot be ordered. However, the Adjudicating Authority has rightly relied upon the judgment of the Hon'ble Madras High Court in M/s Visteon Automotive Systems India Limited [2018 (9) G.S.T.L. 142 (Mad.)]. In the Visteon case, the High Court analyzed the interplay between Section 111, Section 112, and Section 125 of the Customs Act. The Court held:

"The penalty directed against the Importer under Section 112 and the fine payable under Section 125 operate in two different fields... Hence, the availability of the goods is not necessary for imposing the redemption fine."

5.11 While the practical enforcement of a redemption fine requires the goods to be available for release, the liability for confiscation is a legal status that attaches to the goods. This liability is the foundational fact that allows the imposition of a penalty under Section 112. If the goods were not "liable to confiscation," no penalty could be imposed. Therefore, the finding that the goods are liable for confiscation under Section 111(o) is legally sustainable and necessary to support the imposition of the penalty, regardless of whether the goods are physically available for seizure.

5.12 The Appellant has vehemently argued that the Adjudicating Authority violated the principles of natural justice by not granting three adjournments and by deciding the matter ex-parte. I have examined the records to verify this claim. Section 122A of the Customs Act, 1962, governs the adjudication procedure. It states:

"The adjudicating authority may, if sufficient cause is shown... grant time... and adjourn the hearing... Provided that no such adjournment shall be granted more than three times to a party during the proceeding."

5.13 The Appellant interprets this provision to mean that three adjournments are a "mandatory minimum right." This interpretation is incorrect. The statute uses the words "may grant time" and "sufficient cause." The proviso sets a maximum limit ("not more than three times") to curb delay tactics; it does not confer an absolute right to three adjournments in every case. If the Adjudicating Authority finds that the party is deliberately avoiding proceedings or that no sufficient cause is shown, they are empowered to proceed. The records indicate that the Personal Hearing (PH) notices were issued to the Appellant. The Appellant claims they did not receive them. However, it is the duty of the importer to keep their contact details (address and email) updated with the Department.Service of notice by Registered Post/Speed Post to the last known address or by email as per Section 153 of the Customs Act is deemed valid service. In Nirma Ltd. vs. Commissioner of Central Excise, Ahmedabad [2008 (232) E.L.T. 228 (Tri. - Ahmd.)], it was held that if a noticee fails to attend the hearing despite service of notice, they cannot later complain of violation of natural justice. The principles of natural justice are not unruly horses; they cannot be used to defeat the ends of justice or to delay the recovery of legitimate government dues indefinitely.

5.14 The Adjudicating Authority in the OIO has recorded that opportunities were granted. The Appellant did not appear or provide any valid reason for non-appearance. Therefore, the Adjudicating Authority had no option but to decide the case on merits based on the available records. I find no procedural infirmity in this approach. The plea of violation of natural justice is rejected as it appears to be an afterthought to cover up the substantive default.

5.15 The Appellant has contested the demand of interest. It must be noted that under the current legal regime, interest is not a penalty; it is compensatory in character. The Government was entitled to the duty on the date of import. The Appellant retained this money (duty) for several years under the promise of exports. Since they failed to export (or failed to prove it), they have effectively utilized the Government's money for their business purposes. Section 28AA of the Customs Act, 1962, mandates the payment of interest on delayed payment of duty. The Hon'ble Supreme Court in **Pratibha Processors vs. Union of India [1996 (88) E.L.T. 12 (S.C.)]** explained the concept of interest:

"Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying it on the due date."

5.16 In the context of the EPCG/Advance Authorization schemes, the notification itself usually contains a condition regarding payment of interest in case of default. Even otherwise, the Bond executed by the Appellant explicitly binds them to pay interest. Therefore, the confirmation of interest by the Adjudicating Authority is mandatory and statutory. It is not discretionary. The demand for interest is legally sustainable and is upheld.

5.17 The Adjudicating Authority imposed a penalty of ₹1,00,000/- under Section 112(a) and ₹10,000/- under Section 117. Section 112(a) provides for a penalty on any person who, in relation to any goods, does or omits to do any act which renders such goods liable to confiscation under Section 111. As established above, the Appellant's omission to fulfill the Export Obligation rendered the goods liable to confiscation under Section 111(o). Consequently, the ingredients for imposing a penalty under Section 112(a) are fully satisfied. The Appellant may argue that there was no "mens rea" or criminal intent. However, it is a settled principle in taxation law that for imposing a civil penalty for breach of a statutory condition, mens rea is not always an essential ingredient unless the statute specifically uses words like "with intent to evade." Section 112(a) is attracted by the mere fact of the goods becoming liable to confiscation. The quantum of penalty imposed (approx. 6% of the duty evaded) is extremely lenient and reasonable.

5.18 Regarding Section 117, this is a residuary penalty provision for contravention of any provision of the Act or rules where no express penalty is provided. The Appellant failed to follow the procedural requirements of submitting progress reports or informing the Customs Department about the status of their EODC application. This procedural non-compliance justifies the nominal penalty under Section 117.

5.19 The appellant has argued that the delay is due to DGFT, and it is a "technical" procedural lapse. However, I find that the failure to export goods or the failure to prove such export is not a "technical" lapse; it is a substantive breach of the core condition of the exemption. The Customs Department is not concerned with the internal administrative delays of the Appellant or their consultants in approaching the DGFT. The law requires the EODC to be

produced by a specific date. If it is not, the duty is payable. The Appellant cannot hold the Customs revenue to ransom citing procedural delays at another agency. The appellant has also argued that the demand is premature. However, I find that the demand is not premature. The Bond period and the Export Obligation period have expired. The cause of action for the Department arose the day the obligation period ended without the production of the EODC. Waiting any longer would have put the Revenue at risk of the demand becoming time-barred. The Appellant has cited various Tribunal judgments suggesting that technical breaches shouldn't attract penalty. I have reviewed these citations. They are distinguishable on facts. Those cases generally involve situations where the export obligation was admittedly fulfilled, and only the submission of documents was delayed. In the present case, there is no evidence on record to prove that the Export Obligation has actually been fulfilled. Mere assertion by the Appellant is not evidence. Without the EODC, the breach is treated as substantive, not technical.

5.20 In view of the detailed discussion above, I arrive at the following irresistible conclusions that the Appellant has indisputably violated the conditions of Notification No. 16/2015-Customs and the Bond executed under Section 143 of the Customs Act, 1962. The goods are liable for confiscation under Section 111(o) due to post-importation non-compliance, as supported by the Supreme Court's ruling in Jain Shudh Vanaspati. The adjudication process adhered to the principles of natural justice, and the limitation on adjournments under Section 122A was correctly applied. The duty and interest constitute a debt due to the Government, which the Appellant has failed to discharge. The penalties imposed are lawful, proportional, and necessary to deter non-compliance with Export Promotion Schemes. The Adjudicating Authority has passed a well-reasoned and speaking order. The findings in the OIO are consistent with the statutory provisions and the judicial precedents cited above. The Appellant has failed to make out a case for interference with the impugned order.

5.21 I also find that failure to produce EODC is a breach of the fundamental condition of Notification 16/2015. The Appellant failed to honor the terms of the Bond executed under Section 143. Following the Dilip Kumar judgment, the Appellant is not entitled to the benefit once conditions are breached. The Appellant has not produced any stay or extension order from the DGFT regarding their Export Obligation. The liability for duty and interest is

settled law in matters of EPCG/Advance Authorization defaults where EODC is missing.

6. After considering the facts, circumstances, and the legal position discussed above, I find no merit in the appeal filed by M/s Mementos Foods Limited. The Order-in-Original No. MCH/ADC/AK/243/2023-24 dated 26.01.2024 is hereby upheld in its entirety.

7. The Appeal field by M/s Mementos Foods Limited is hereby rejected.

सत्यापित/ATTESTED
अधीक्षक/SUPRERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

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

F. No. S/49-261/CUS/MUN/2023-24 5231

Date: 01.01.2026

By Speed post /E-Mail

To,
M/s Mementos Foods Limited,
(Formerly known as M/s. Mementos Foods Pvt Ltd),
Survey no. 170, At Talod Majra Highway,
Dolatabad, Talod, Sabarkantha,
Gujarat - 383215

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House ,Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.