



सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद  
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD  
 चौथी मंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,  
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.  
 दूरभाष क्रमांक Tel. No. 079-26589281  
 DIN-20251271MN0000333F51

क	फ़ाइल संख्या FILE NO.	S/49-292/CUS/AHD/2024-25
ख	अपीलआदेश संख्या ORDER-IN- APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-469-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	11.12.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	O.I.O. No. 06/AR/ADC/SRT/2024-25 dated 11.11.2024 passed by the Additional Commissioner of Customs, In-charge Customs Division Surat, Surat.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	11.12.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Alpesh Metal Corporation, 1, Radhabhuvan Tanaji Painter Lane, Siddharth Road, Pratapnagar, Vadodara – 390001.

1. यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.

This copy is granted free of cost for the private use of the person to whom it is issued.

2. सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं.



	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.	
	निम्नलिखित सम्बन्धित आदेश/Order relating to :	
(क)	बैगेज 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 दस्तावेजों 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 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु.1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां, यदि शुल्क मांगा गया ब्याज लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-	
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs. 200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs. 200/- and if it is more than one lakh rupees, the fee is Rs. 1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016



5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने मांगे गए शुल्क के 10 % अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10 % अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
(a)	in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
(b)	for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



ORDER-IN-APPEAL

1. M/s. Alpesh Metal Corporation (hereinafter referred as 'the appellant') has filed the present appeal under Section 128 of the Customs Act, 1962, against an Order-In-Original No. 06/AR/ADC/SRT/2024-25 dated 11.11.2024 (hereinafter referred to as 'the impugned order'), passed by the Additional Commissioner of Customs, Customs Division Surat, Surat (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant has supplied MS Plates and TMT Bars of various size falling under Chapter 72 to an SEZ Unit viz. Jubilant Ingrevia Ltd. situated within Jubilant SEZ. The subject goods were attracting export duty @15% during the period of 22.05.2022 to 18.11.2022 as per the provisions of Notification No.28/2022-Customs and 29/2022-Custom, both dated 21.5.2022. As the appellant had not paid export duty on their supply to SEZ Unit, a Show Cause Notice dated 16.05.2024 came to be issued by Additional Commissioner of Customs, Custom Division-Surat, towards demand of Export Duty of Rs. 7,30,665/- along with interest under the provisions of Section 28(1) and Section 28AA of the Customs Act, 1962. Vide impugned order dated 11.11.2024, the said demand has been confirmed by the adjudicating authority.

3. Being aggrieved, the appellant has filed the present appeal, mainly on the following grounds of appeal.

3.1 Export duty is levied under Customs Act, 1962. Section 12 of the CA, 1962 provides for levy of import/export duty for goods coming into or exported out of India. The term "export" is defined under Customs Act, 1962 at Section 2(18) thereof to mean "taking out of India to a place outside India". Section 2(27) defines what is "India", which includes even territorial waters of India and Section 2 read with Second Schedule to Customs Tariff Act, 1975 provides for export duty on goods exported out of India.

3.2 A conjoint reading of the above would suggest that export duty can be levied only when goods are physically taken out of India. As against this, the impugned order heavily relies upon Rule 27 proviso under SEZ Rules, 2006, which provides for levy of export duty on supplies made from DTA to SEZ. First of all, the Parent Act for export duty is CA, 1962 and its levy is governed by CTA, 1975 as state supra. Any amendment to SEZ Rules, 2006 cannot override the statutory provisions governing levy itself for export duty, which does not extend to supplies made to SEZ at all.



3.3 The appellant further submitted that this issue is already decided by the jurisdictional High Court of Gujarat in the case of Essar Steel Ltd. 2010 (249) E.L.T. 3 (Guj.) as upheld by Hon'ble Apex Court and reported at 2010 (255) E.L.T. A115 (SC). It was categorically held, considering the statutory scheme of things, that:

- No Export Duty under Customs Act, 1962:

Export duty can only be levied when goods are physically taken out of India. Supplies to SEZs remain within Indian territory and cannot be treated as exports under the Customs Act.

- No Export Duty under SEZ Act, 2005:

The SEZ Act's legislative intent is to provide tax exemptions for goods and services supplied to SEZ units. The absence of any charging provision in the SEZ Act further supports this conclusion.

- Fictions under SEZ Act Cannot Extend to Customs Act:

Legal fiction defining SEZs as outside customs territory applies only for SEZ Act purposes. It cannot be used to justify export duty under the Customs Act. The decision in Essar Steel (Supra) was also followed in various decisions.

3.4 That in light of the above, since SEZ is a territory within India and since any supply to SEZ is not per se export at all, within the meaning of Customs Act, 1962 which specifically defines the said term, and since Export duty is a duty of Customs, under no circumstances, much less any legal ones, can supply of goods from DTA to SEZ be ever subjected to levy of export duty at all.

3.5 In Advait Steel Rolling Mills Pvt. Ltd. v. UOI [2012 (286) E.L.T. 535 (Mad.)], the Hon'ble Madras High Court held that if levy of duties of customs are to be made applicable to goods supplied from DTA to SEZ, it could only be by way of appropriate amendments introduced in the Customs Act, 1962, as well as in the Special Economic Zones Act, 2005.

3.6 Hon'ble Apex Court recently in the case of Safari Retreats P. Ltd. 2024 (10) TMI 286-SUPREME COURT categorically held that definition of any term under one statute cannot be imported and applied to such term in another statute at all. Hence, the term

"export" as understood under Customs Act, 1962 is different from what is understood under SEZ Act and Ruled framed thereunder, more so since they are based on deeming fiction, for the above reasons.

3.7 Having amended delegated legislation viz. Rule 27 of SEZ Rules, 2017, does not render goods supplied to SEZ as "exports" for the purpose of levy of Export duty under Customs Act, 1962 at all. Unless and until any amendment is made to Customs Act, 1962 or Customs Tariff Act, 1975. The 5th proviso to Rule 27 inasmuch as it provides for a levy of Export Duty on goods supplied from DTA to SEZ in the absence of any charging section under the SEZ Act, Customs Act or any other law, is violative of Article 265 of the Constitution and must therefore be struck down as unconstitutional. A rule cannot override the provisions of the Act and is subordinate legislation.

3.8 The SEZ unit itself has already paid up the Export duty on the very same supply as being the subject matter of the present proceedings. Once having already collected and recovered the said Export duty, and having not even returned the same back to the SEZ unit, the very same export duty demand cannot once again be raised against the Appellant at all.

4. In view of the above submissions, the appellant requested that the impugned order is required to be set aside with consequential relief.

5. The appellant has submitted a printout of e-receipt towards payment of Rs. 54,800/- vide Challan No. 2084746158 dated 12.02.2025 towards payment of pre-deposit calculated @7.5% of the duty amount under the provisions of Section 129E of the Customs Act, 1962.

6.1 In the Form No. C.A.-1, the appellant has shown the date of communication of the impugned order dated 11.11.2024, as '26.11.2024'. Whereas, the appeal has been received in this office on 18.02.2025. Thus, this appeal has been filed after a delay of 24 days beyond the normal period of 60 days, as prescribed for filing appeal under Section 128 of the Customs Act, 1962. The appellant has applied for condonation of delay in filing of appeal.

6.2 As regards condonation of delay up to a period of 30 days in filing appeals, I refer the Judgment of Hon'ble Supreme Court in the case of Collector, Land Acquisition



*Anantnag and Another Vs. Mst. Katiji and Others* reported in 1987 (28) ELT 185 (SC), wherein it has been held that a justifiable liberal approach should be adopted in cases of condonation of delay. Accordingly, I condone the delay of 24 days in filing the Appeal, as per the first proviso to Section 128(1) of the Customs Act, 1962.

7. In view of the above position, the appeal has been admitted and being taken up for disposal.

8. One set of the appeal memorandum has forwarded to the adjudicating authority, for comments vide this office letter dated 25.03.2025, but no reply thereof has been received. So, I proceed to decide the appeal on the basis of documents submitted by the appellant.

#### PERSONAL HEARING

9. Personal Hearing in respect of the appeal was held on 09.12.2025, which has been attended by Mr. Saurabh Dixit, Advocate, on behalf of the appellant. He reiterated the submissions made at the time of filing of appeals. He also submitted additional submissions dated 09.12.2025 and furnished copies of relied upon case laws.

#### ADDITIONAL SUBMISSIONS (Gist)

10. Gist of the additional submissions filed by the appellant are as under.

10.1 Article 13(3) of the Indian Constitution includes within the definition of law forms of subordinate legislation such as order, rule, regulation, notification. Therefore, the subordinate legislation in the present case i.e. amendment of Rule 27 of SEZ Rules, 2017 which was issued contrary to the Customs Act, 1962. Hence, the same cannot prevail over the primary legislation. We are legally duty bound to ensure that the primary legislation should prevail over the subordinate legislation. Therefore, even though, the SEZ Rule created the same is not binding for the reason that the same is not in consonance with primary legislations which is Customs Act, 1962. Authorities has to give primacy to the primary legislation and not to the subordinate legislation. Some of the judgments play very crucial role in reviewing primary and subordinate legislation to ensure they conform to the Constitution and the principles of legality and reasonableness which are as follows:



- Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225; AIR 1973 SC 1461;
- Minerva Mills v. Union of India, AIR 1980 SC 1789;
- Harakchand Ratanchand Banthia v. UoI, AIR 1970 SC 1453 = 1970 SCR (1) 479.

10.2 This issue is already decided by the jurisdictional High Court of Gujarat in the case of Essar Steel Ltd. 2010 (249) E.L.T. 3 (Guj.) as upheld by Hon'ble Apex Court and reported at 2010 (255) E.L.T. A115 (SC).

10.3 That the identical issue squarely covered by the Hon'ble Andhra Pradesh HC in case of M/s. TUF Metallurgical Private Limited 2025(9) TMI 1171 - AP, held that the 5th proviso to sub-rule (1) of Rule 27, SEZ Rules, 2006, is ultra vires the SEZ Act, 2005 and the same was accordingly struck down. The court found no statutory authority permitting the Central Government to levy customs duty on movement of goods from the Domestic Tariff Area to an SEZ. It was held that Section 55 does not authorize such a levy and Section 30 only contemplates duty on removals from SEZ to DTA.

10.4 In view of the above additional submissions, the appellant again requested to quash and set aside the impugned order with consequential relief.

#### DISCUSSION AND FINDINGS

11. I have carefully gone through the written as well as oral submissions made by or on behalf of the appellant viz. M/s. Alpesh Metal Corporation. The issue involved in the appeal is whether export duty on the goods supplied by the appellant to SEZ Unit is leviable or not.

12. In the Judgment dated 04.11.2009 in the case of *Essar Steel Limited and Adani Power Ltd. Vs. Union of India* [2010 (249) E.L.T. 3 (Guj.) = 2009 (11) TMI 141 - GUJARAT HIGH COURT], Hon'ble High Court of Gujarat has held that the levy of export duty on the goods supplied from Domestic Tariff Area to Special Economic Zone is not justified; that the petitioners not to be called upon to pay export duty on movement of goods from DTA to SEZ units or developers. I note that Special Leave to Appeal (Civil) No. 5698 of 2010 with SLP (C) Nos. 6204, 6307, 7818, 7931, 9243 and 10118 of 2010 filed by Union of India against the aforesaid Judgment dated 04.11.2009 has been dismissed by Hon'ble Supreme Court on 12.07.2010 [Union of India v. Essar Steel Ltd. - 2010 (255) E.L.T. A115 (S.C.)]. However, the said Order dated 12.07.2010 has been recalled by Hon'ble Supreme Court vide Order dated 10.02.2020 reported as *Union of India Vs. Essar Steel India Ltd.*



[2022 (380) ELT 403 (SC)] and the SLPs had been restored. Now, Hon'ble Supreme Court has decided this issue vide Order dated 28.08.2025, which has been reported as *Union of India Vs. Adani Power Ltd.* [(2025) 36 Centax 257 (S.C.)]. In the said latest Order, it has been observed and held by the Apex Court as under:

*"4.3 Similarly, the third question has been considered by the High Court in paragraph 41.3 and after discussion, the answer to the said question has been given in paragraph 41.3.4 of the impugned judgment. Consequently, the High Court has held in paragraph 42 as under:*

*"42. In view of the above discussion and findings arrived at as well as conclusion drawn, the levy of export duty on goods supplied from the Domestic Tariff Area to the Special Economic Zone is not justified. The petitioners are, therefore, not to be called upon to pay export duty on movement of goods from Domestic Tariff Area to Special Economic Zone units or developments."*



.....

*"6. We find that the High Court has rightly arrived at the conclusions in the aforesaid paragraphs on a correct interpretation of the provisions of the aforesaid two Acts. In the circumstance, we do not find any reason to interfere with the impugned judgment. Hence, the appeals are dismissed.*

*7. On a conjoint reading of the aforesaid provisions, we find that Section 12 of the Customs Act, 1962 is the charging Section. However, under Section 26 of the SEZ Act, power is reserved to grant an exemption or a concession if under the provisions of the Customs Act, 1962, a duty is leviable as per the charging Sections.*

*8. It is also necessary to observe as submitted by the learned senior counsel for the respondent(s) that the Madras High Court as well as the Andhra Pradesh High Court have also taken a similar view as discussed in the aforesaid impugned judgment. In the circumstances, all appeals arising therefrom are also dismissed."*

13. However, I find that the above Order/Judgment relates to the period prior to the amendment of Rule 27 of the SEZ Rules, 2006, vide Notification No. GSR 909(E) dated

19.09.2018 issued by the Ministry of Commerce and Industry. Vide the said amendment, fifth Proviso to Sub-Rule (1) of Rule 27 of the SEZ Rules, 2006, has been inserted, which is as under:

*"Provided also that supplies from Domestic Tariff Area to Special Economic Zones shall attract export duty, in case, export duty is leviable on items attracting export duty."*

14. Therefore, it has to be examined as to whether export duty in this case can be demanded wherein the period involved is from 22.05.2022 to 18.11.2022 i.e. after insertion of the above-mentioned Proviso.

15. I find that above-mentioned fifth Proviso to Sub-Rule 27(1) has been struck down by Hon'ble High Court of Andhra Pradesh in Writ Petition No. 15528 of 2024 in the case of *TUF Metallurgical Pvt. Ltd. vs. Union of India* reported as (2025) 35 Centax 280 (A.P.) [18-09-2025]. Para 27 of the said Order is as under:

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

16.1 Further, I find that the even after insertion of the fifth Proviso in Sub-Rule 27(1) of the SEZ Rules, 2006, vide Notification dated 19.09.2018, there are no corresponding amendments in the provisions of Section 2(18) and 2(19) of the Customs Act, 1962, which define the terms "export" and "export goods" respectively. The said definitions are as under:

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

(19) *"export goods" means any goods which are to be taken out of India to a place outside India;*

16.2 Further, the definition of the term "India", as given in Section 2(27) *ibid*, says that "India" includes the territorial waters of India. In absence of amendment in any statutory provision of the Customs Act, 1962, I am of view that Export duty cannot be levied merely by virtue of amendment in Rule 27(1) of the SEZ Rules, 2006 vide Notification dated 19.09.2018. Further, the said amendment, i.e. fifth Proviso to Rule 27(1), has already been



held as ultra vires to the SEZ Act, 2005 and struck down by Hon'ble High Court of Andhra Pradesh in the case of TUF Metallurgical Pvt. Ltd. vs. Union of India (supra).

17. As regards the requirement of amendments in the provisions of the Customs Act, 1962, to levy export duty on supply of goods from DTA to SEZ, I also rely upon the Order dated 27.04.2012 of Hon'ble Madras High Court in the case of Advait Steel Rolling Mills Pvt. Ltd. Vs. Union of India [2012 (286) E.L.T. 535 (Mad.)]. The last Para of the said order is as follows (underline supplied):

*"30. As there is no movement of goods from India to a place outside India, export duty cannot be levied. In fact, there is no 'export' of goods, as per the relevant provisions of the Customs Act, 1962. When the Special Economic Zones Act, 2005, is a separate Code, it would not be open to the respondents to levy duties of customs on goods moved from Domestic Tariff Areas into Special Economic Zones, as per the definition found in Section 2 of the Customs Act, 1962. Further, when the definition of term 'export' in Section 2(m) of the Special Economic Zones Act, 2005, is clear and specific, the definition of 'export', found in Section 2(18) of the Customs Act, 1962, cannot be made applicable for the levy of duties of customs on goods supplied from the Domestic Tariff Areas to the Special Economic Zones. As such, it would not be proper on the part of the respondents to levy duties of customs on goods supplied from the Domestic Tariff Areas to the units situated in the Special Economic Zones. If levy of duties of customs are to be made applicable to such goods it could only be by way of appropriate amendments introduced in the Customs Act, 1962, as well as in the Special Economic Zones Act, 2005. As such it is clear that it would not be open to the respondents to levy duties of customs on such goods, by way of Notifications or Circulars. The writ petitions are ordered accordingly. No costs."*

18. In view of the above provisions and orders, the legal position prevailed during the period involved in the present appeal, does not authorise levy of export duty on supply of goods from DTA to SEZ Unit. Therefore, I am of the considered view that the decisions of Hon'ble Supreme Court in the case of Union of India Vs. Adani Power Ltd. [(2025) 36 Centax 257 (S.C.)] and Hon'ble High Court of Andhra Pradesh in the case of TUF Metallurgical Pvt. Ltd. vs. Union of India [(2025) 35 Centax 280 (A.P.)] are squarely applicable to the facts of the present appeal; and therefore, demand of export duty on



supply of the goods by the appellant to the SEZ unit is not sustainable. Therefore, the impugned order passed by the adjudicating authority is required to be set aside.

19. In view of the above discussion and findings, I pass the following order.

**Order**

I set aside the Order-In-Original No. 06/AR/ADC/SRT/2024-25 dated 11.11.2024 passed by the Additional Commissioner of Customs, Customs Division Surat, and allow the appeal with consequential relief, in accordance with law.



(AMIT GUPTA)

Commissioner (Appeals),  
Customs, Ahmedabad

F.No. S/49-292/CUS/AHD/2024-25

Date: 11.12.2025

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

To

M/s. Alpesh Metal Corporation,  
1, Radhabhuvan Tanaji Painter Lane,  
Siddharth Road, Pratapnagar,  
Vadodara - 390001.  
(email: [info@alpeshmetalcorp.com](mailto:info@alpeshmetalcorp.com))

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.  
(email: [ccoahm-guj@nic.in](mailto:ccoahm-guj@nic.in))
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.  
(email: [cus-ahmd-guj@nic.in](mailto:cus-ahmd-guj@nic.in) [rra-customsahd@gov.in](mailto:rra-customsahd@gov.in))
3. The Additional Commissioner of Customs, In-charge: Custom Division Surat, Ahmedabad. (email: [patoadc-srtcust@gov.in](mailto:patoadc-srtcust@gov.in) [adjcus-surat@gov.in](mailto:adjcus-surat@gov.in) [cus-ahmd-adj@gov.in](mailto:cus-ahmd-adj@gov.in) [Custech.surat@gov.in](mailto:Custech.surat@gov.in))
4. Shri. Saurabh Dixit, Advocate, Vadodara. (email: [info@saurabhdixit.in](mailto:info@saurabhdixit.in))
5. Guard File.

\*\*\*\*\*