CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 2

CUSTOMS APPEAL NO. 10539 OF 2026

(Arising out of Order in Original No. CUS/SIIB/ALT/83/2025-SIIB-O/o-Commr-Cus-Kand dated-08/04/2026 passed by Commissioner of Customs, Kandla)

H R ENTERPRISES **Appellant**
B-13, Room No.4, Siddharth Colony Navin Chawl,
K N Gaikwad Marg, Chembur, Mumbai,
Mumbai Suburban, Maharashtra-400071

Vs.

COMMISSIONER OF CUSTOMS-KANDLA CUSTOMS **Respondent**
Office of Commissioner of Customs, Near Balaji Temple,
Kandla, Kachchh, Gujarat-370210

Appearance:
Shri Manish Jain, Advocate for the Appellant
Shri Himanshu Nachane, Superintendent (AR) for the Respondent

CORAM:
HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10572/2026

Date of Hearing : 14/07/2026
Date of Decision : 21/08/2026

Dr. AJAYA KRISHNA VISHVESHA

This appeal is directed against the impugned provisional release order no. CUS/SIIB/ALT/83/2025-SIIB-O/O-Commr.-CUS-Kandla dated 08.04.2026 issued by the Assistant Commissioner (SIIB) C.H. Kandla with the approval of Commissioner of Customs, Kandla Kutch Gujarat through which the Assistant Commissioner directed to furnish bond of Rs. 2,82,20,472/- approximate provisional value of the seized goods and bank guarantee of Rs. 29,24,465/- (50% of differential duty) for provisional release of "left over tarpaulin fabric for pavilion and tent purposes in mixed colours" imported by the appellant M/s. H. R. Enterprises.

1.1 The facts of the case in brief are that the appellant had imported the above mentioned goods by filing 21 SEZ Bills of Entry during the period between February-2025 to April-2025. The subject goods were to be warehoused with

M/s. Cargo Care Agency situated at Shed No. 366, FA-1 Type, Phase-I, Sector-IV, Kandla SEZ, Gandhidham-370240 which is FTWZ unit. M/s. Cargo Care Agency was granted permission for broad-banding of the LOA to include additional manufacturing activities, namely cutting, trimming and stitching for DTA and foreign clients vide letter of approval dated 30.12.2025.

1.3 The subject goods were placed on hold by DRI, AZU, Ahmedabad for detailed examination under various Panchnamas. Samples of each type of fabric drawn during the examination were forwarded to Customs House, Kandla (SIIB) for testing and analysis. Based on the test reports, the department alleged that the goods imported by the appellant were not 'Tarpaulins' but fabrics of varying specifications. The DRI, vide letter dated 20.03.2025, informed the appellant that specific intelligence indicated import of multiple varieties of fabric in the guise of 'Tarpaulin' by the appellant at Kandla SEZ. The imported consignments covered under various Bills of Entry, lying in the warehouse of M/s. Cargo Care Agency and other locations, were seized on the ground of alleged misdeclaration vide various seizure memo.

1.4 The learned Commissioner vide impugned order dated 08.04.2026 permitted provisional release of the 21 seized consignments under Section 110A of the Customs Act, 1962 subject to submission of Bond equal to the value of goods amounting to Rs. 2,82,20,472/- and submission of Bank Guarantee amounting to Rs. 29,24,465/- to be produced for DTA clearance.

1.5 Feeling aggrieved from the impugned order passed as mentioned above, the present appeal has been filed.

2. The learned Counsel for the appellant submitted that "Leftover fabric of tarpaulin of mix size and GSM" imported by the appellant are warehoused within the SEZ or yet to be warehoused to SEZ for authorised operations as per LOA dated 31.12.2025. The said goods have not yet been cleared into DTA, therefore, they cannot be subjected to Customs duty in terms of Section 26 of the SEZ Act,

2005. Customs duty liability on the appellant would arise only at the time of clearance of the subject goods from SEZ to DTA. The conditions in the impugned order requiring furnishing of a bond and bank guarantee for provisional release of the subject goods are contrary to Section 26 of the SEZ Act, 2005, which grants exemption from Customs duty on goods imported into an SEZ unit for carrying out authorised operations. The SEZ unit is deemed foreign territory, duty becomes payable only when goods are removed from the SEZ unit to the Domestic Tariff Area (DTA). In the absence of any revenue implication, the demand for a bond and bank guarantee is legally unsustainable. The learned Counsel supported his arguments by the law laid down in the following cases:-

a) **M/s. Adani Power Limited & 1 &** vs. **Union of India** reported at 2015 (11) TMI 1466-Guj. High Court (Approved by Hon'ble Supreme Court in **Adani Power Ltd** vs. **Union of India**, reported at 2026 (1) TMI 224 (SC)

b) **B.I.F.R.** vs. **Lunar Diamond Ltd** reported at 2020 (371) ELT

c) **GMR Aerospace Engineering Ltd** vs. **Union of India** reported at 2019 (31) G.S.T.L. 596 (A.P.)

2.1 The learned Counsel for the appellant also relied upon **AIE Fiber Resource & Trading (India) (P) Ltd** reported at 2021 (12) TMI 1265-AAR, Telangana in which it was held that goods warehoused in an FTWZ qualify as "warehoused goods" under the Customs Act.

2.2 The learned Counsel for the appellant prayed that conditions of furnishing of bond amounting to Rs. 2,82,20,472/- and a bank guarantee of Rs. 29,24,465/- for provisional release of the subject goods are arbitrary and illegal therefore, the impugned order may be set aside to the extent of demanding bond amounting to Rs. 2,82,20,472/- and a bank guarantee amounting to Rs. 29,24,465/-.

3. The learned AR has reiterated the impugned order and submitted that I.E.C. of the appellant M/s. H R Enterprises was being misused for import of various goods by Haresh Shethiya who is the actual importer of goods. The

learned AR prayed that the impugned order may be upheld and the appeal may be rejected.

4. I have heard the learned Counsel for the appellant and the learned AR for the department and perused the records.

4.1 By means of the impugned order dated 08.04.2026 the learned Assistant Commissioner ordered for provisional release of the 21 seized consignments under Section 110A of the Customs Act, 1962, subject to submission of bond equal to the value of goods amounting to Rs. 2,82,20472/- and submission of bank guarantee amounting to Rs. 29,24,465/- to be produced for DTA clearance. There is no dispute that imported goods are to be warehoused by the appellant in FTWZ unit which has permission to undertake various manufacturing activities as authorised operations. The manufacture goods would be cleared from FTWZ to DTA after said manufacturing activities are undertaken on the imported goods. Permitted authorised operations / manufacturing activities as per letter of approval dated 30.12.2025 are as under:-

Sr. No.	Service Activity description as per unit	SAC Code	Description of Service as per DGFT website (SAC description)
1	Trimming	998821	Textile manufacturing services
2	Stitching	998822	Wearing apparel manufacturing services
		998898	Other manufacturing services
3	Cutting	998821	Textile manufacturing services

4.2 It is pertinent to mention here that the imported goods and the manufactured goods would be different. The manufactured goods would be treated as goods cleared in domestic market from SEZ and the value and rate of customs duty on the manufactured goods would be applicable treating them "manufactured goods as imported into India". Section 26 of the SEZ Act is reproduced below for ready reference:-

"26. ***Exemptions, drawbacks and concessions to every Developer and entrepreneur*** *(1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:-*

(a) exemption from any duty of customs, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods imported into, or service provided in, a Special Economic Zone or a Unit, to carry on the authorized operations by the Developer or entrepreneur;

(b) exemption from any duty of customs, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods exported from, or services provided, from a Special Economic Zone or from a Unit, to any place outside India;

*(c)****"*

4.3 From the reading of Section 26(1)(a) and (b) of the SEZ Act, it is clear that it provide exemptions, drawbacks and concessions in payment of Customs duty under the Customs Act, 1962 or the Customs Tariff Act, 1975 on goods imported into SEZ area by the developer or entrepreneur or goods exported or services provided within the SEZ zone or from a Unit.

4.4 Section 30(a) of the SEZ Act provides that any goods removed from SEZ to DTA shall be chargeable with customs duty and other duties under the Customs Tariff Act, 1975 where applicable, as leviable on such goods when imported. Section 30 of SEZ Act is reproduced below for ready reference:-

"30. Domestic clearance by Units. - *Subject to the conditions specified in the rules made by the Central Government in this behalf :-*

(a) any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 (51 of 1975), where applicable, as leviable on such goods when imported; and

(b) the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty."

4.5 In view of above legal position, it is evident that customs duty liability will arise only when goods are cleared from SEZ to DTA and not before. In **M/s.**

Adani Power Limited v. **Union of India** reported at 2015 (11) TMI 1466-(Gujarat High Court) Hon'ble High court held as under:

> *"**48.** Thus, from the above, it can be seen that in order to give an impetus to exports, the SEZ Act was enacted. The SEZ Act envisages a deeming fiction where a SEZ area would be considered outside the customs area of the country. It is also noticed that Section 30 of the SEZ Act permits DTA clearances to a SEZ unit under certain conditions. One of the conditions being the goods removed from SEZ to DTA would be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 where applicable as leviable on such goods when imported.*
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> ***53.** However, from the above statutory provisions, it can be seen that by virtue of Section 30 of the SEZ Act, a SEZ unit on its clearance of goods to any DTA invites duty of customs where applicable as leviable on such goods when imported. Such DTA clearance by a SEZ unit would, thus, be treated as imports for computation of customs duty. Section 30 of the SEZ Act only imposes conditions for a SEZ unit to clear the goods to a DTA. Such condition is payment of authorized duties, as applicable and leviable on such goods when imported. By reference, therefore, the charging Section 12 of the Customs Act, 1962 would be leviable as if the goods cleared by SEZ unit to the DTA are in the nature of imports. If, therefore, by virtue of an exemption notification, the whole of customs duty payable is exempted, then no customs duty would be payable on import of such goods. Even otherwise, Section 51 of the SEZ Act gives overriding effect to the provisions of the Act.*
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> ***54.** Section 30(a) of the SEZ Act provides that if any goods are removed from SEZ to DTA, such goods will be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 as leviable on such goods when imported. Meaning thereby, that if any goods are removed from the SEZ to DTA, then the present customs duty will be leviable treating the goods to be imported from outside India**"*

4.6 The judgment of Hon'ble Gujarat High Court as mentioned above has been upheld by Hon'ble Supreme Court in the case of **M/s. Adani Power Ltd** vs **Union of India** reported at 2026 (1) TMI 224 (SC). Hon'ble Supreme Court has held as follows:-

> *"**28.** Learned senior counsel further submitted that Section 30 of the SEZ Act requires parity of treatment. Goods removed from an SEZ into the DTA are to*

bear the same customs duty "as if imported into India". Imported electrical energy has consistently stood at a nil rate of customs duty. Therefore, electrical energy cleared from an SEZ to the DTA must equally attract nil customs duty. Imposing duty on SEZ-generated electricity while imported electricity carries no duty produces an artificial and constitutionally suspect classification. It was urged that such a differential treatment directly defeats the object of the SEZ Act and violates Article 14 of the Constitution.

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60. *Section 12 of the Customs Act is the charging provision. It contemplates a duty on goods imported into India. Section 30 of the SEZ Act says that goods cleared from an SEZ to the DTA "shall be chargeable to duties of customs as leviable on such goods when imported". This is a parity clause. It says: treat SEZ-to-DTA clearances as if they bore the same duty as comparable imports. It does not say: regard every SEZ-to-DTA clearance as an "import into India" for all purposes of Section 12, irrespective of physical reality, and irrespective of whether such imports actually bear any duty.*

61. *The High Court in 2015 correctly held that electrical energy generated within India and wheeled into the DTA is not, in truth, a case of import into India. The deeming fiction of Section 30 of the SEZ Act is intended to align duty treatment, not to expand the scope of the charging section beyond what Parliament has enacted. A deeming fiction cannot be pressed beyond the purpose for which it was enacted.*

62. *Put differently: Section 30 of the SEZ Act does not create a new customs levy. It only says that if (and to the extent that) such goods would have attracted customs duty had they physically crossed the border, then the same incidence will apply when those goods move from the SEZ to the DTA. If, on actual import, electrical energy attracts no customs duty, then, by force of Section 30, the same result i.e., no customs duty must follow for SEZ clearances of electrical energy. Nothing in Section 30 either authorises or contemplates the imposition of a fresh or differential levy singling out SEZ-generated power.*

63. *This parity logic sits at the centre of the scheme. Imported electricity bore no customs duty. SEZ electricity a like commodity was nonetheless subjected to duty. That differential treatment violates both the statutory parity mandated by Section 30 of the SEZ Act and the equality guarantee under Article 14. The High Court in 2015 captured this, and we reaffirm it."*

4.7 From the perusal of the judgment delivered by the Hon'ble Gujarat High Court and Hon'ble Supreme Court as mentioned above, it is clear that Customs duty liability would be applicable only when goods are cleared from SEZ to DTA and not before that stage. In the present case, that stage has not arisen because, imported goods are yet to be warehoused in FTWZ or some containers are in FTWZ. In both the cases, authorised operations are yet to be undertaken on the said imported goods. Only thereafter, the manufactured goods would be cleared from the SEZ to DTA which would be subjected to Customs duty. The rate of duty and valuation would be applicable when said manufactured goods are cleared from SEZ to DTA and not before. Therefore, any demand of bank guarantee, by computing the customs duty on the imported goods which are to be warehoused for authorised operations in SEZ, for the provisional release of imported goods is not legally sustainable and therefore, is liable to be set aside and it will be proper to modify the conditions of provisional release order. Though the condition of provisional release subject to furnishing of bond equal to the value of goods amounting to Rs. 2,82,20,472/- may be retained, the condition regarding demand of Bank Guarantee to the tune of 50% of the differential duty i.e. Rs. 29,24,465/- is liable to be set aside.

4.8 Therefore, conditions for provisional release of subject goods are modified as above. The subject goods may be released provisionally subject to furnishing of bond equal to the value of goods amounting to Rs. 2,82,20,472/-. The condition of furnishing the bank guarantee of Rs. 29,24,465/- is set aside. The subject goods shall be used in FTWZ for authorised operations only. The appellants would be liable to pay appropriate Customs duty on manufactured goods when cleared from SEZ to DTA after authorised operations. Therefore, provisional release of subject goods is allowed only for undertaking authorised operations which would be in the interest of the appellant as well as the Revenue both.

(Order pronounced in the open Court on 21.08.2026)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

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