Government of India (भारत सरकार)
Department of Commerce (वाणिज्य विभाग)
Directorate General of Foreign Trade (विदेश व्यापार महानिदेशालय)
Vanijya Bhawan, New Delhi-110011
वाणिज्य भवन,नई दिल्ली

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01/92/180/44/AM26/PC6 /39

Date of Order: 10.08..2026

Date of Dispatch: 10.08.2026

Name of the Applicant:	M/s Diagold Creation Pvt. Ltd. Unit No. 204, Tower-I, SEEPZ-SEZ, Andheri East, Mumbai – 400096.
IEC No.	0301026971
Order Appealed against:	Appeal against against Order-in-Original No. Cust-11/205/2022-CUSTOM/0-250/06818 dt. 13.05.2025 by DC, SEEPZ SEZ.
Order passed by:	**Shri Lav Agarwal** **Director General of Foreign Trade**

Order-in-Appeal

M/s Diagold Creation Pvt. Ltd. (hereinafter referred to as the "Appellant"), a unit of the SEEPZ Special Economic Zone (SEEPZ-SEZ), was granted a Letter of Approval (LOA) dated 05.02.2003, by the Development Commissioner, SEEPZ-SEZ..

2. Vide Notification No. 101 (RE-2013)/2009-2014, dated the 5th December 2014, the Central Government has authorized the Director General of Foreign Trade, aided by one Addl. DGFT, to function as Appellate Authority against the orders passed by the Development Commissioner, Special Economic Zones, as Adjudicating Authority. Hence, the present Appeal is before me.

3. Brief History of the Case:

3.1 The Appellant, a unit of the SEEPZ Special Economic Zone (SEEPZ-SEZ), was granted a Letter of Approval (LOA) dated 05.02.2003, as amended, by the Development Commissioner, SEEPZ-SEZ, for manufacture of Gold Jewellery Studded with Diamonds & Precious Stones, Gold Jewellery Studded with Semi Precious Stones, Labgrown Diamonds, Platinum Jewellery Studded with Diamonds & Precious Stones & Semi Precious Stones, Labgrown Diamonds, Silver Jewellery Studded with Diamonds & Precious Stones & Semi Precious Stones, Labgrown Diamonds & CZ, etc. The said LOA has been renewed from time to time and, as last renewed, is valid for the 5th block of five years, i.e., from 01.04.2025 to 31.03.2030.

3.2 Under Rule 22(3) read with Rule 54 of the SEZ Rules, 2006, and Condition No. 7 of the Bond-cum-Legal Undertaking, the Appellant was required to submit Annual Performance Reports (APRs) within 180 days from the close of each financial year, duly certified by a Chartered Accountant. Condition No. 7 further stipulates that failure to submit such information within the stipulated time may result in withdrawal of the permission granted to the Unit for carrying out authorised operations and/or stoppage of further imports and sales in the DTA.

3.3 The Appellant failed to submit APRs for three consecutive financial years – 2020-21, 2021-22, 2022-23 and 2023-24 – within the prescribed period. The details of the defaults, as established from the record and admitted by the Appellant, are tabulated below:

Financial Year	**Due Date**	**Actual Date of Submission**	**Delay (Days)**
2020-21	31.12.2021*	11.03.2025	1165 days
2021-22	30.09.2022	11.03.2025	892 days
2022-23	30.09.2023	11.03.2025	527 days
2023-24	30.09.2024	11.03.2025	161 days

*Due date for FY 2020-21 stood extended to 31.12.2021 on account of COVID-19 vide Ministry of Commerce & Industry circular dated 29.06.2021.

The cumulative period of default across the four financial years amounts to 2745 days.

3.4 The matter was placed before the 197th meeting of the Unit Approval Committee (UAC), SEEPZ-SEZ, held on 24.03.2025, which, upon scrutiny of the Appellant's records, directed the issuance of a Show Cause Notice for the delayed submission of APRs, while simultaneously noting that the Appellant had achieved positive Net Foreign Exchange (NFE) on a cumulative basis in terms of Rule 54 of the SEZ Rules, 2006.

3.5 Accordingly, SCN dated 10.04.2025 was issued to the Appellant by the Development Commissioner, SEEPZ-SEZ, calling upon it to show cause as to why penal action should not be taken under Section 11(2) of the Foreign Trade (Development & Regulation) Act, 1992 ("FT(D&R) Act") read with Rule 54(2) of the SEZ Rules, 2006.

3.6 In response to the SCN, the Appellant filed: (i) attributed the delay to the disbanding of its entire accounts team on account of the COVID-19 pandemic; (ii) cited subsequent challenges in recruiting and training a new accounts team, compounded by high attrition; (iii) submitted that operations had since been stabilised and streamlined with a competent accounts team now in place; and (iv) expressed deep regret and tendered an unconditional apology, assuring future compliance. A personal hearing was granted to the Appellant through video conference on 06.05.2025, at which the Appellant's representative admitted the fact of delayed/non-timely submission of the APRs.

3.7 After considering the Appellant's written submissions and the record of the personal hearing, the Development Commissioner, SEEPZ-SEZ, passed Order-in-Original dated 13.05.2025 ("impugned Order"), holding that the Appellant had violated the provisions of the SEZ Rules, 2006 and the terms and conditions of the Bond-cum-Legal Undertaking, and imposing a monetary penalty of Rs. 9,15,000/- (Rupees Nine Lakhs Fifteen Thousand Only) upon the Appellant under Section 11(2) of the FT(D&R) Act, 1992 read with Rule 54(2) of the SEZ Rules, 2006.

4. Aggrieved by the impugned Order dated 13.05.2025, the Appellant has preferred the present appeal under Section 15 of the FT (D&R) Act, 1992.

5. The following grounds have been urged in the appeal:

5.1 That the Adjudicating Authority failed to appreciate the facts and circumstances of the case of the Appellant;

5.2 That the imposition of penalty is disproportionate to the nature of the violation;

5.3 That the Appellant has been a compliant SEZ unit and has not wilfully defaulted;

5.4 That the Appellant is not a habitual defaulter and the delayed submission of APRs was only on account of unavoidable circumstances;

5.5 That there was no wilful act or apathy on the part of the Appellant, the delay being only on account of adverse circumstances;

5.6 That the Appellant has not derived any undue advantage from the delayed submission of APRs, having already achieved the mandated Net Foreign Exchange (NFE) and other obligations under the SEZ Rules; and

5.7 That the delayed submission of APRs is a purely technical violation in nature and merits condonation/leniency. The Appellant has accordingly sought waiver, or reduction to a token amount, of the penalty imposed.

6. The Development Commissioner, SEEPZ-SEZ (the Respondent), vide letter dated 06.10.2025, has filed detailed written comments opposing the appeal and praying that it be dismissed and the impugned Order be upheld in its entirety. The Respondent's submissions, briefly stated, are:

6.1 That the obligation to file APRs within the stipulated period is a clear statutory and contractual obligation binding on the Appellant under the SEZ Rules, 2006 and the BLUT, and that the failure to comply for four consecutive years, with delays ranging from 161 to 1165 days, constitutes a well-established and deliberate contravention, particularly since all four APRs were filed in a single instance on 11.03.2025, defeating the very purpose of year-wise monitoring;

6.2 That penalties for violation of statutory rules do not require proof of mens rea and are intended to act as a deterrent, relying upon the Supreme Court's judgment in Chairman, SEBI v. Shriram Mutual Fund [(2006) 5 SCC 361];

6.3 That due process was fully complied with – a detailed SCN was issued, the Appellant's reply was received and considered, a personal hearing was afforded, and the penalty has been imposed proportionately having regard to the cumulative and repetitive nature of the default;

6.4 That non-submission of APRs within time obstructs regulatory oversight of exports and imports and amounts to operating in contravention of law within the meaning of Section 11(2) of the FT(D&R) Act, 1992, and that the ground that mere delay does not amount to a violation is untenable;

6.5 That reliance has also been placed on the decision of the Hon'ble DGFT in the matter of M/s M.D. Equipments Pvt. Ltd. [OIA F.No. 01/92/180/67/AM-24/PC-6 dated 03.01.2025], upholding the imposition of penalty for delayed filing of APRs, and observing that penalties for violation of statutory rules are strict in nature and quasi-judicial authorities must be cautious in extending leniency once a violation is established; and

6.6 That considering the cumulative delay of 2745 days over four financial years, the penalty of Rs. 9,15,000/- imposed is neither excessive nor harsh, and that waiver or reduction would set an undesirable precedent and dilute the deterrent purpose of the SEZ compliance regime. It has accordingly been prayed that the appeal be dismissed and the impugned Order upheld.

7. The parties were granted a personal hearing in the matter on 10.07.2026 through video conferencing. Shri Dr. Rajesh N. Doshi, Director, appeared on behalf of the Appellant, and Dr. Sandeep D. Bhosle, DDC, SEEPZ from the office of the Development Commissioner, SEEPZ-SEZ, appeared on behalf of the Respondent.

8. At the hearing, the Appellant reiterated the grounds taken in the appeal, in particular that the delay was occasioned by the disbanding and subsequent rebuilding of its accounts team on account of the COVID-19 pandemic, that all four outstanding APRs now stand filed, that the Appellant has continued to achieve positive Net Foreign Exchange on a cumulative basis, and that the Appellant has no history of default either before or after the period in question. The Appellant reiterated its unqualified admission of the delay, tendered an unconditional apology, and prayed for a lenient view and reduction of the penalty. The representative of the Development Commissioner reiterated the written comments and submitted that, given the magnitude and repetitive nature of the default, the penalty as imposed ought to be upheld.

9. Observations and Findings

9.1 The Special Economic Zones Act, 2005 and the SEZ Rules, 2006 constitute a self-contained regulatory code governing the establishment and functioning of SEZ units. The fiscal and procedural concessions extended to such units are granted in exchange for the units fulfilling certain performance and reporting obligations, the Annual Performance Report being the principal instrument through which the Approval Committee and the Development Commissioner monitor compliance, including the maintenance of positive Net Foreign Exchange. Timely and year-wise submission of the APR is, therefore, not a mere formality but central to the regulatory architecture of the SEZ scheme.

9.2 Rule 22(3) of the SEZ Rules, 2006 uses the mandatory expression "shall submit", and Condition No. 7 of the BLUT executed by the Appellant in Form-H under Rule 22(1)(i) independently and contractually binds the Appellant to submit the APR within 180 days of the close of the financial year. The 180-day window is itself a reasonably generous concession, allowing sufficient time for the accounts to be audited and certified by an independent Chartered Accountant. A unit that avails of the benefits of the SEZ scheme cannot simultaneously resile from the compliance obligations that are the quid pro quo for such benefits.

9.3 The fact of default – delays of 1165, 892, 527 and 161 days respectively for FY 2020-21 to FY 2023-24 – is not in dispute. It stands admitted by the Appellant both in its reply dated 21.04.2025 to the SCN, at the personal hearing before the Development Commissioner on 06.05.2025, in the grounds of appeal, and again at the hearing before this Authority. The impugned Order records that the Development Commissioner duly considered the Appellant's explanation, the record of the personal hearing, and the applicable statutory and contractual provisions before arriving at the finding of violation. This Authority finds no infirmity in the finding recorded in the impugned Order that the Appellant has violated Rule 22(3) read with Rule 54 of the SEZ Rules, 2006 and Condition No. 7 of the Bond-cum-Legal Undertaking, and is accordingly liable for penal action under Section 11(2) of the FT(D&R) Act, 1992 read with Rule 54(2) of the SEZ Rules, 2006. The reliance placed by the Respondent on Chairman, SEBI v. Shriram Mutual Fund [(2006) 5 SCC 361] for the proposition that proof of mens rea is not required for violation of a statutory/regulatory obligation is well founded, and Grounds of the appeal, insofar as they seek to deny liability altogether, cannot be accepted.

9.4 Ground of the appeal, that the Appellant has derived no undue advantage since it has met its NFE obligations, does not detract from the fact of the violation. Timely submission of the APR serves a distinct regulatory purpose – enabling the Approval Committee to undertake year-wise performance review – independent of whether the NFE obligation is ultimately met. Similarly, the argument that the violation is "purely technical", is not well founded: a cumulative delay of 2745 days across four consecutive years, all four APRs having been filed together on a single date, cannot be characterised as a merely technical lapse.

9.5 Having upheld the finding of violation, this Authority turns to the question that is central to the present appeal, namely, whether the quantum of penalty imposed by the impugned Order warrants modification in the exercise of appellate jurisdiction. The power to impose penalty under Section 11(2) of the FT(D&R) Act, 1992 is a discretionary power, the exercise of which must be guided by the principle of proportionality – the penalty must bear a reasonable relationship to the gravity of the violation, the conduct of the noticee, the degree of culpability, and all other attendant circumstances.

9.6 In the present case, the following circumstances are relevant to the quantum of penalty: (i) the Appellant has admitted the default fully and without qualification at every stage of the proceedings, both before the Development Commissioner and before this Authority; (ii) all four outstanding APRs, once compiled, were in fact filed, duly certified by an independent Chartered Accountant, and have since been accepted and noted by the Approval Committee in its 197th meeting held on 24.03.2025, with the Committee recording that the Appellant had achieved positive NFE on a cumulative basis; (iii) the delay for FY 2020-21, the largest component of the default, arose in substantial part from the disruption caused by the COVID-19 pandemic, a circumstance beyond the ordinary control of the Appellant, even though the extended timeline itself has already been factored into the computation of 1165 days; and (iv) the Appellant has tendered an unconditional apology and an assurance of future compliance.

9.7 At the same time, this Authority is unable to accept that the delay merits a token penalty or a wholesale waiver, as prayed for by the Appellant. The default persisted over four consecutive financial years, the delay for FY 2020-21 being particularly egregious even after accounting for the COVID-19 relaxation, and all four APRs were filed together only after the matter was flagged before the Approval Committee, rather than on the Appellant's own initiative. Sustained, multi-year non-compliance of this nature cannot be treated as a one-time, inadvertent lapse, and a purely nominal penalty would dilute the deterrent purpose that the penalty provisions of the SEZ compliance regime are intended to serve.

9.8 Balancing the gravity and duration of the default against the mitigating factors noted above – in particular the Appellant's candid admission of default, the COVID-19-related disruption underlying the largest component of the delay, the subsequent filing of all outstanding APRs, the achievement of positive cumulative NFE, and the absence of any prior or subsequent history of default – this Authority is of the view that the ends of justice would be met by reducing the penalty imposed from Rs. 9,15,000/- (Rupees Nine Lakhs Fifteen Thousand Only) to Rs. 5,00,000/- (Rupees Five Lakhs Only), while affirming the finding of violation recorded in the impugned Order in all other respects.

Order

01/92/180/44/AM26/PC6/39 **Dated: 10.08.2026**

For the reasons set out hereinabove, the appeal filed by M/s Diagold Creation Pvt. Ltd. under Section 15 of the Foreign Trade (Development & Regulation) Act, 1992 against Order-in-Original No. CUST-11/205/2022-CUSTOM/O-250/06818 dated 13.05.2025 passed by the Development Commissioner, SEEPZ-SEZ, is hereby partly allowed. The monetary penalty imposed on M/s Diagold Creation Pvt. Ltd. is hereby reduced from Rs. 9,15,000/- (Rupees Nine Lakhs Fifteen Thousand Only) to Rs. 5,00,000/- (Rupees Five Lakhs Only). In all other respects, the findings and conclusions recorded in the Order-in-Original dated 13.05.2025 are affirmed and upheld.

The Appellant is hereby put on express notice that the reduction in penalty granted by this Order is a one-time measure. Any failure to submit the Annual Performance Report for any future financial year within the prescribed period of 180 days shall be treated as a deliberate and aggravated violation, and neither admission of default nor the circumstances noted in this Order shall be entertained as grounds for mitigation in any future proceedings.

The Appeal stands disposed of in the above terms.

(Lav Agarwal)
Director-General of Foreign Trade

Copy To:

1. M/s Diagold Creation Pvt. Ltd., Unit No. 204, Tower-1, SEEPZ-SEZ, Andheri East, Mumbai – 400 096.

2. The Development Commissioner, SEEPZ-SEZ, Andheri East, Mumbai – 400 096 – for information and compliance.

3. DGFT's Website.

(Sumit Verma)

Deputy Director General of Foreign Trade