प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

"सीमाशुल्क भवन ,"पहली मंजिल ,पुराने हाईकोर्ट के सामने ,नवरंगपुरा ,अहमदाबाद – 380 009.

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DIN: 20250671MN0000722004

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	GEN/ADJ/ADC/1137/2025-ICD-SRT-CUS-COMMRTE-AHMEDABAD
B	कारण बताओ नोटिस संख्या–तारीख / Show Cause Notice No. and Date	:	VIII/6-4078/ICD-Sachin/2015-16 dated:18.11.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	**53/ADC/SR/O&A/2025-26**
D	आदेश तिथि/ Date of Order-In-Original	:	**19.06.2025**
E	जारी करनेकी तारीख/ Date of Issue	:	**19.06.2025**
F	द्वारापारित/ Passed By	:	**SHRAVAN RAM**, Additional Commissioner, Customs Ahmedabad.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	M/S. SHYAM FASHION, 403, SUNDARAM APARTMENT, NR. SHREENATHJI BUNGLOW, MOTA VARACHHA, SURAT-395006. M/S. SHYAM FASHION, C/3-4, 2ND FLOOR, KHODIYAR NAGAR, AMBAWADI, , VARACHHA ROAD, SURAT-395006. SHRI HITESHBHAI BALABHAI BODARIYA , PROPRIETOR OF M/S SHYAM FASHION, 403, SUNDARAM APARTMENT, NR. SHREENATHJI BUNGLOW, MOTA VARACHHA, SURAT-395006.
(1)	**यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।**		
(2)	**कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क(अपील), चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।**		
(3)	**अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:**		
(i)	**अपील की एक प्रति और;**		
(ii)	**इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।**		
(4)	**इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।**		

BRIEF FACTS OF THE CASE:

M/S. SHYAM FASHION, 403, Sundaram Apartment, Nr. Shreenathji Bunglow, Mota Varachha, Surat-395006 (hereinafter referred as "the noticee" or " the importer" for the sake of brevity), holding Import Export Code No. 5211000692 had imported 01 Set of capital goods viz. Computerised Embroidery Machine under EPCG Licence No. 5230020057 dated 16.03.2016 [**RUD-1 to SCN**], as amended, by saving duty of **Rs.4,05,426/- (Actual Duty Utilized of Rs. 4,14,882/-) [RUD-2 to SCN]** and had cleared the same vide below mentioned Bill of Entry at zero duty while availing the benefit of exemption available under Notification No. 16/2015-Cus dated 01.04.2015. The details of import are as Table-1 below:

Table-1

S. N.	B/E No. & Date	Qty machinery cleared	Assessable Value (Rs.)	Duty Saved/ available as per EPCG Licence (Rs.)	Total Duty Foregone/Debited at the time of clearance (Rs.)	BG Amount (Rs.)
1	4669002 dtd: 22.03.2016	01	17,71,826/-	4,05,426/-	4,14,882/-	65,000/-
Total		01	17,71,826/-	4,05,426/-	4,14,882/-	65,000/-
As per para 5.16 of Handbook of Procedures, 10% enhancement in CIF Value of duty saved amount is admissible.						

2. The importer had executed Bond dated 21.03.2016 for Rs. 13,00,000/- **[RUD-3 TO SCN]** backed by Bank Guarantee No. 314/2015-16 dated 17.03.2016 for Rs. 65,000/- issued by the Laxmi Vilas Bank Ltd., Belgium Tower, Silver Plaza Complex, Ring Road, Surat-395003 for EPCG License No. 5230020057 dated 16.03.2016. They had also undertaken to fulfill all the terms and conditions specified in the License and the said Notification.

3. The 01 Set of Computerised Embroidery Machine imported under the above said EPCG License were installed at the factory/business premises i.e **M/s. Shyam Fashion,** C/3-4, 2nd Floor, Khodiyar Nagar, Ambawadi, , Varachha Road, Surat-395006 , as per the Installation Certificate dated 11.06.2016 issued by Chartered Engineer Dr. P. J. Gandhi, Surat, certifying the receipt of the goods imported and its installation **[RUD-4 TO SCN]**.

4. In terms of the conditions of Notification No. 16/2015-Cus dated 01.04.2015, the Noticee was required to fulfill the export obligation on FOB basis equivalent to Six times of the duty saved on the goods imported as specified on the license or authorization.

4.1 Further, the Noticee was required to execute a Bond in such form and for such sum and with such surety or security as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs binding himself to fulfill export obligation on FOB basis equivalent to Six times the duty saved on the goods imported as may be specified on the license or authorization, or for such higher sum as may be fixed or endorsed by the licensing Authority or Regional Authority, within a period of Six years from the date of issuance of license or authorization, i.e. complete 50% export

obligation within first block of 1st to 4th years and remaining 50 % in second block of 5th to 6th years.

4.2. The Noticee was, thus, required to fulfill the export obligation within a period of Six years from the date of issuance of EPCG Licence in terms of the condition laid down in the Notification and in the EPCG License itself. In the instant case, the EPCG Licence was issued to the Noticee on **16.03.2016** and accordingly, the said Noticee was required to fulfill export obligation by **15.03.2022** i.e. within a period of six years from the date of issuance of license or authorization. Further, the Noticee was also required to submit the Export Obligation Discharge Certificate (EODC) issued by the Regional DGFT Authority before the jurisdictional Customs authorities by the date as specified above.

5. A letter was issued vide F. No. ICD-Sachin/Misc/01/2022-23 dated 13.01.2023 **[RUD-5 TO SCN]** to the Noticee requesting them to furnish the copy of EODC or any extension issued by the Regional Authority, DGFT, Surat, for fulfillment of Export Obligation. However, the Noticee has not responded to the above communication.

5.1 A letter dated 02.03.2023 vide F. No. ICD-Sachin/DGFT/07/2020-21 **[RUD-6 TO SCN]** was issued to the Foreign Trade Development Officer, DGFT, Surat requesting them to inform this office whether the EODC has been issued or any extension granted to the said Noticee or any documents showing the fulfillment of the export obligation have been received by their office against the aforesaid EPCG Licence No. **5230020057 dated 16.03.2016**. Foreign Trade Development Officer, DGFT, Surat has not submitted any reply.

5.2 In view of the above, it is evident that the Noticee had failed to fulfill the export obligation as specified in the License and did not comply with the mandatory condition of the Notification No.16/2015-Cus dated 01.04.2015, the condition of EPCG License and also the conditions of the Bond executed and furnished by them.

6. LEGAL PROVISIONS:

6.1 The said section is produced herein below for reference:

> ***"SECTION 143. Power to allow import or export on execution of bonds in certain cases.*** *- (1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the Assistant Commissioner of Customs or Deputy Commissioner of Customs*

approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.

(2) If the thing is done within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.

(3) If the thing is not done within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law."

6.2 SECTION 111. "*Confiscation of improperly imported goods, etc.* -

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;"

6.3 SECTION 112: It provides for penalty for improper importation of goods according to which,

"Any person, -

(a) who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or

…

Shall be liable;-

…

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114 A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher:

PROVIDED that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within

thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty five per cent of the penalty so determined;

…"

6.4 SECTION 117:

"Penalties for contravention, etc., not expressly mentioned. -

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding 1[four lakh rupees]."

7. The Noticee was allowed clearance of the aforesaid capital Goods/machines, by the proper officer, on execution of a Bond in terms of the provisions of section 143 of the Customs Act, 1962. By executing the Bond before the Deputy/Assistant Commissioner of Customs, ICD-Sachin, Surat, the Noticee had bound themselves to discharge liability within a specified period, however, it appeared the said noticee has failed to do, by not fulfilling the export obligation. Therefore, the Customs authorities are entitled to recover the Duty not paid or short paid by the Noticee by raising a demand and appropriating the Bank Guarantee furnished by them against the proposed demand.

7.1 Therefore, it appeared that the noticee failed to fulfill the conditions laid down under Notification No. 16/2015-Cus dated 01.04.2015 in as much it appeared that the noticee has failed to fulfill export obligations against the goods imported by using the aforesaid EPCG License No. **5230020057 dated 16.03.2016**. The Noticee neither submitted the EODC issued by the DGFT, Surat nor could produce any documents showing extension granted to them for fulfillment of Export Obligation.

7.2 The Noticee appeared liable to pay Customs Duty not paid (i.e. saved) by them amounting to **Rs. 4,14,882/-** at the time of import/clearance along with interest at the applicable rate, in terms of conditions of the said Notification read with condition of the Bond executed by them read with Section 143 of the Customs Act, 1962.

8. It also appeared that the imported capital goods were not used for intended purpose for which the exemption from payment of duty was claimed and therefore, the aforesaid capital goods imported against the above said EPCG License were liable for confiscation under Section 111(o) of the Customs Act, 1962. It therefore appeared that the Noticee had rendered themselves liable to penalty under Section 112 (a) and Section 117 of the Customs Act, 1962.

9. Since, the Noticee could not submit the said EODC and therefore appeared to have failed to fulfill the conditions laid down under Notification No. 16/2015-Cus dated 01.04.2015 as well as under the EPCG License and the Bond; the Bank Guarantee No.

314/2015-16 dated 17.03.2016 for Rs. 65,000/- issued by the Laxmi Vilas Bank Ltd., Belgium Tower, Silver Plaza Complex, Ring Road, Surat-395003 furnished by the Noticee against the aforesaid EPCG License No. 5230020057 dated 16.03.2016 appeared liable to be encashed and deposited in the Government exchequer.

10. Thereafter, a Show Cause Notice was issued to **M/s. Shyam Fashion,** 403, Sundaram Apartment, Nr. Shreenathji Bunglow, Mota Varachha, Surat-395006 was issued a show cause notice bearing F. No. VIII/6-4078/ICD-Sachin/2015-16 dated 18.11.2024 by the Additional Commissioner of Customs, Surat, as to why:

(i) The benefit of Zero Duty for EPCG Scheme under Notification No. 16/2015-Cus dated 01.04.2015 on the subject imported Computerised Embroidery Machine in the name of **M/s. Shyam Fashion,** 403, Sundaram Apartment, Nr. Shreenathji Bunglow, Mota Varachha, Surat-395006 should not be denied;

(ii) Customs Duty totally amounting to **Rs. 4,14,882/- (Rupees Four Lakh Fourteen Thousand Eight Hundred Eighty Two only)** being the Duty forgone at the time of import under EPCG Licence, should not be demanded and recovered from them in terms of Notification No.16/2015-Cus 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;

(iii) Interest at the applicable rate should not be recovered from them on the Customs Duty as mentioned at (ii) above;

(iv) The imported Capital Goods should not be held liable for confiscation 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-Cus dated 01.04.2015 as amended from time to time;

(v) Penalty should not be imposed on the noticee under Section 112(a) of the Customs Act, 1962;

(vi) Penalty should not be imposed on the noticee under Section 117 of the Customs Act, 1962;

(vii) Bond executed by them at the time of import should not be enforced in terms of Section 143(3) of the Customs Act, 1962 and the Bank Guarantee thereof should not be encashed for recovery of the Customs Duty as mentioned above and interest thereupon.

DEFENSE SUBMISSION AND PERSONAL HEARING:

11. In response to the show cause notice, M/s. Shyam Fashion have not submitted any written submission till date.

11.1 Opportunities for Personal hearing was given to the importer on 26.05.2025, 03.06.2025 and 11.06.2025 in compliance with Principle of Natural Justice. However, noticee did not attend any of the Personal Hearing.

11.2 From the aforesaid facts, it is observed that sufficient opportunity has been granted to the noticee, but they chose not to join the personal hearing.

DISCUSSIONS AND FINDINGS:

12. I have carefully gone through the show cause notice, records and facts in the present case. I find that the noticee have failed to appear for Personal Hearing as well as submit any written submission, inspite of being given opportunity to appear in person several times as detailed in forgoing para for defending their case. Under such circumstance, there is no option left for me but to proceed with the adjudication proceedings ex-parte in terms of merit of the case.

12.1 With regard to proceeding to decide the case ex-parte in respect of, support is drawn from the following case laws:

12.1.1 Hon'ble High Court of Kerala in the case of ***UNITED OIL MILLS VS. COLLECTOR OF CUSTOMS & C.EX. COCHIN REPORTED IN 2000 (124) ELT 53 (KER.)*** has held that:

> *"19. No doubt hearing includes written submissions and personal hearing as well but the principle of Audi Alteram Partem does not make it imperative for the authorities to compel physical presence of the party concerned for hearing and go on adjourning the proceeding so long the party concerned does not appear before them. What is imperative for the authorities is to afford the opportunity. It is for the party concerned to avail the opportunity or not. If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice. In the instant case as stated in detail in preceding paragraphs, repeated adjournments were granted to the petitioners, dates after dates were fixed for personal hearing, petitioners filed written submissions, the administrative officer of the factory appeared for personal hearing and filed written submissions, therefore, in the opinion of this Court there is sufficient compliance of the principles of natural justice as adequate opportunity of hearing was afforded to the petitioners.*
>
> *21. It may be recalled here that the requirement of natural justice varies from cases to cases and situations to situations. Courts cannot insist that under all circumstances personal hearing has to be afforded. Quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the persons concerned but it cannot be held that before dismissing such applications in all events the quasi-judicial authorities must hear the applicants personally. When principles of natural justice require an opportunity before an adverse order is passed, it does not in all*

circumstances mean a personal hearing. The requirement is complied with if the person concerned is afforded an opportunity to present his case before the authority. Any order passed after taking into consideration the points raised in such applications shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters. See Union of India and Another v. M/s. Jesus Sales Corporation [1996 (83) E.L.T. 486 (S.C.) = J.T. 1996 (3) SC 597]."

12.1.2 Hon'ble Tribunal of Mumbai in the case of ***SUMIT WOOL PROCESSORS V. CC, NHAVA SHEVA REPORTED IN 2014 (312) E.L.T. 401 (TRI. - MUMBAI)*** has observed as under:

"8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus the argument taken is only an alibi to escape the consequences of law. Accordingly, we reject the plea made by them in this regard."

12.1.3 Hon'ble Supreme Court in the case of ***JETHMAL VS. UNION OF INDIA REPORTED IN 1999 (110) ELT 379 (S.C.)*** has held as under:

"7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well-known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality."

12.1.4 Hon'ble Delhi Tribunal in the case of ***COMMISSIONER OF C.EX. VS. PEE IRON & STEEL CO. (P) LTD. REPORTED IN AS 2012 (286) E.L.T. 79 (TRI. – DEL)*** [upheld by Hon'ble Punjab & Haryana High Court reported in ***2015 (316) E.L.T. A118 (P&H.)***] has observed that:

"9. Notice to the respondent has been received back undelivered with the report that address is not correct. No other address of the respondent is available on record, therefore, the respondent cannot be served with the notice without undue delay and expense. Accordingly, we are constrained to proceed ex parte order against the respondent."

13. Therefore, I proceed to adjudicate the aforesaid Show Cause Notice. The issues for consideration before me are as follows:

(i) Whether the zero duty for EPCG scheme under the said Notification No. 16/2015-Cus dated 01.04.2015 is admissible to the Noticee in absence of non-fulfillment of the export obligation prescribed therein.

(ii) Whether the Capital Goods under consideration are liable to confiscation.

(iii) Whether the Noticee is liable for penalties as invoked in the SCN.

14. Now I proceed to decide whether the zero duty for EPCG scheme under the said Notification No. 16/2015-Cus dated 01.04.2015 is admissible to the Noticee in absence of non-fulfillment of the export obligation prescribed therein.

14.1 The EPCG Licence was issued to the Noticee on **16.03.2016** and accordingly, in terms of conditions of Notification No. 16/2015-Cus dated 01.04.2015, the Noticee was required to fulfill export obligation by **15.03.2022** i.e. within a period of six years from the date of issuance of license or authorization. The notice has not submitted any documents in respect of grant of extended period for meeting Export obligation or EODC issued by the DGFT. The noticee has not submitted any documents in support of the fulfillment of Export obligation by them. They have also not submitted any document which suggests that noticee have submitted necessary documents to DGFT, Surat for issue of EODC. I find that sufficient time has been given to the noticee for submission of proof of export obligation and EODC issued by DGFT. I also find that noticee has failed to attend any personal hearings granted to them to meet the end of principal of natural justice.

14.2 I find that the noticee has failed to submit the requisite export obligation discharge certificate (EODC/Redemption issued by DGFT) which is a mandatory condition to be complied with by the noticee. The noticee had bound themselves to fulfill the requisite export obligation at the time of importation of the Capital Goods at zero rate of duty. The Capital Goods, at the time of their importation in India, have been allowed clearance at zero rate of Customs Duty wherein the Bond was furnished by the Noticee, to comply with the conditions of Notification No. 16/2015-Cus dated 01.04.2015 and Foreign Trade Policy 2015-20 as well as Handbook of Procedure. By executing said Bond, the Noticee has legally bound themselves to the effect that in case of non-fulfillment of export obligation, they would pay the Customs Duty along with interest.

14.3 The condition at para 2(5) of Notification No. 16/2015-Cus dated 01.04.2015 stipulates that the exemption was subject to the condition that the Noticee was required to execute a Bond binding themselves to comply with all the conditions of the Notification and fulfill their export obligation within a period of Six years from the date of issue of License/Authorisation. The relevant text of the same is reproduced under for ease of reference:

> *5) that the Noticee executes a Bond in such form and for such sum and with such surety or security as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs binding himself to comply with all the conditions of this Notification as well as to fulfill export obligation on FOB basis equivalent to Six times the duty saved on the goods imported as may be specified on the authorization, or for such higher sum as may be fixed or endorsed by the Licensing Authority or Regional Authority in terms of Para 5.10 of the Handbook of Procedures Vol I, issued under para 2.4 of the Foreign Trade Policy, within a period of Six years from the date of issue of Authorization, in the following proportions, namely :-*

S. No.	*Period from the date of issue of Authorization*	*Proportion of total export obligation*
(1)	*(2)*	*(3)*
1.	*Block of 1st to 4th year*	*50%*
2.	*Block of 5th to 6th year*	*Balance*

Further, Para 5.01(EPCG Scheme) of the Foreign Trade Policy 2015-20 and Para 5.13 of Handbook of Procedure (2015-20) stipulate that the export obligation to the extent of Six times of the duty saved is required to be fulfilled within Six years from date of issue of Authorisation. The relevant text of the said provisions is reproduced as under:

Zero Duty EPCG Scheme	***5.01***	*(a) EPCG Scheme allows import of capital goods for preproduction, production and post-production at Zero customs duty.*

Blockwise Fulfillment of EO	***5.13***	*(a) The Authorisation holder under the EPCG scheme shall, while maintaining the average export obligation, fulfill the specific export obligation over the prescribed block period in the following proportions:*

Period from the date of issue of Authorisation	*Minimum export obligation to be fulfilled*
Block of 1st to 4th year	*50%*
Block of 5th and 6th year	*Balance EO*

Therefore the conjoint reading of para 5.01 of Foreign Trade Policy (2015-20), para 5.13 of Handbook of Procedure (2015-20) and Para 2(5) of Notification No. 16/2015-Cus dated 01.04.2015 makes it explicitly clear that the Noticee was bound to fulfill the stipulated export obligation within Six years unless extended by the

competent authority. The 50% of export obligation was to be completed in the first block, i.e. within four years and remaining 50% export obligation was to be completed by six years from the date of issuance of licence or authorization. In the present case, the Noticee has not produced any document issued by the competent authority, i.e. DGFT, Surat indicating extension of the period for fulfillment of export obligation. The Noticee was required to furnish EODC issued by the competent authority on completion of the stipulated time frame, i.e. Six years. I find that noticee have failed to furnish the requisite EODC within the stipulated time frame. Thus, it is amply clear that the Noticee have not fulfilled their export obligation with respect to the EPCG licenses under consideration, and thereby violated the conditions of Notification No. 16/2015-Cus dated 01.04.2015 as well as Foreign Trade Policy 2015-20 and Handbook Of Procedure. In such circumstances, it was incumbent upon the Noticee to have paid the Customs Duty within three months from the completion of each block at their own volition.

14.4 The legal sanctity of the above discussion is arrived at from para 2(7) of Notification No. 16/2015-Cus dated 01.04.2015 which reads as follows:

> *"(7) that the importer, including a CSP, produces within 30 days from the expiry of each block from the date of issue of authorization or within such extended period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow, evidence to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs showing the extent of export obligation fulfilled, and where the export obligation of any particular block is not fulfilled in terms of the preceding condition, the Noticee shall within three months from the expiry of the said block pay duties of customs equal to an amount which bears the same proportion to the duties leviable on the goods, but for the exemption contained herein, which the unfulfilled portion of the export obligation bears to the total export obligation, together with interest at the rate of 15% per annum from the date of clearance of the goods;"*

Likewise, para 5.13(c) of the Handbook of Procedure (2015-20) unequivocally expresses that the Noticee is under an obligation to pay the Customs Duty along with Interest in case of non-fulfillment of the export obligation. The relevant text of the same is reproduced as follows:

> *5.13.(c) Where EO of the first block is not fulfilled in terms of the above proportions, except in cases where the EO prescribed for first block is extended by the Regional Authority subject to payment of composition fee of 2% on duty saved amount proportionate to unfulfilled portion of EO pertaining to the block, the Authorization holder shall, within 3 months from the expiry of the block, pay duties of customs (along with applicable interest as notified by DOR) proportionate to duty saved amount on total unfulfilled EO of the first block..*

By virtue of above provisions, the Noticee was under obligation to pay the Customs Duties along with Interest at the rate of 15% from the date of clearance of goods, within 3 months from the expiry of the respective block years. The Noticee had also executed a Bond by virtue of which they were under an obligation to discharge the Customs Duty along with Interest.

14.5 At this juncture, it is to mention that the term "Bond" is defined under Sub-section (5) of Section 2 of the Indian Stamp Act, 1899 as follows:

(5) "Bond" —"Bond" includes—

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another:

Likewise, Section 2(d) of The Limitation Act, 1963 defines the term 'Bond' as under:

(d) "bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

In light of the definition of the term 'Bond', it is expressly clear that the Noticee has undertaken the obligation to pay Customs Duty along with Interest @15% in the event of non-fulfillment of export obligation. The act of the Noticee, of not paying Customs Duty along with Interest @15%, tantamount to dishonoring the Bond executed by them.

14.6 In view of the above discussions, I find that the benefit of exemption under Notification No. 16/2015-Cus is not admissible to the Noticee owing to non-fulfillment of the export obligation specified under the said Notification. Consequently, the Customs Duty along with Interest, is liable to be recovered from the Noticee as mandated under Notification No. 16/2015-Cus dated 01.04.2015 and Foreign Trade Policy 2015-20. Further, the bank guarantees furnished by the Noticee against the aforesaid EPCG License/authorizations needs to be encashed and appropriated/ adjusted against the Duty liabilities pending. It is on record that the said noticee has not paid differential custom duties within 3 months from the expiry of the respective block years, as specified in the said Notification. I hold that the wordings of the Exemption Notification should be strictly interpreted and it is mandatory to give effect to the said meaning by giving due regard to the clear meaning of words and the subject matter should be governed by the language of the Notification. I cannot allow any scope of intendment. I find my view of strict interpretation of the wordings of the

said Notification in compliance to judicial discipline laid down by the Hon'ble Supreme Court, to cite a few decisions, as follows:

i. 2015 (324) E.L.T. 656 (S.C.) (para 31)
ii. 2011 (265) E.L.T. 14 (S.C.) (para 10)
iii. 1989 (40) E.L.T. 239 (S.C.) (para 11)
iv. 1978 (2) E.L.T. (J350) (S.C.) (para 5)
v. CCE1995 (77) E.L.T. (474) (S.C.) (para 16)

15. Now I proceed to decide whether the Capital Goods under consideration are liable to confiscation.

15.1 Regarding the issue of liability of subject Capital Goods to confiscation, I find that the Capital Goods were imported by availing the benefit of exemption under Notification No. 16/2015-Cus dated 01.04.2015. One of the conditions laid down in the said exemption Notification is that the Noticee was required to export goods valued at Six times the amount of Duty so saved within a period of Six years. Thus, the exemption was admissible subject to fulfillment of the conditions laid down in the exemption Notification. In the instant case, the condition stipulated under the exemption Notification has not been fulfilled and thereby I find that the said Capital Goods are liable to confiscation in terms of the provisions of Section 111(o) of the Customs Act. The relevant text of the said statute is reproduced as follows:

> *"The following goods brought from a place outside India shall be liable to confiscation:*
>
> *(a) _ _ _ _*
>
> *(b) _ _ _ _*
>
> *(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;"*

Thus, I find that the Capital Goods under consideration are liable for confiscation in terms of the provisions of Section 111(o) of the Customs Act, 1962. Further, I find that Bond and Bank Guarantee have been submitted by the noticee in the present case. The Bond submitted by the noticee is enforceable and thereby I hold that for the subject goods being liable to confiscation, redemption fine as per section 125(1) of Custom Act can be imposed. Further, redemption fine is imposable in light of the judgment in the case of ***M/S VISTEON AUTOMOTIVE SYSTEMS INDIA LTD. REPORTED AT 2018 (009) GSTL 0142 (MAD)*** wherein the Hon'ble High Court of Madras has observed as follows:

> *"Redemption fine - Imposition of - Availability of goods - It is not necessary for imposing redemption fine. - The opening words of Section 125, "Whenever*

confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii). [para 23]

Redemption fine - Imposition of - Pre-requisite is liability of goods to confiscation - It is goods that are redeemed and not improper conduct of importer or exporter - Section 125 of Customs Act, 1962. - For improper importation of the dutiable goods or the prohibited goods, the importer is liable to be proceeded against under Section 112 of the Act by subjecting him to a penalty. Therefore, the fine proposed to be imposed under Section 125 of the Act is directed against the goods, in addition to the one that was already provided for under Section 112 of the Act. The fine contemplated is for redeeming the goods, whereas, the importer is sought to be penalised under Section 112 for doing or omitting to do any act which rendered such goods imported by him, liable to be confiscated under Section 111 of the Act and for that act or omission, the appellant is liable to be penalised. [paras 20, 22]

Penalty and redemption fine - Levy of - Under Sections 112 and 125 of Customs Act, 1962 - They operate in two different fields. - The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only.

Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. [para 23]"

15.2 I find that the noticee has not fulfilled the conditions stipulated in the Customs Notification No. 16/2015-Cus dated 01.04.2015 and conditions of the Bond. I find the demand of custom duties and interest raised vide show cause notice sustainable and rightly invoked. I find it a grave economic offence that the subject capital goods have not been put to intended use despite being imported at zero customs duties. The noticee was required to comply with the conditions of the said Notification No. 16/2015-Cus dated 01.04.2015, the conditions of which have not been complied with. I find it of concern that the conditions of said Notification and said Bond has not been fulfilled. This act of omission and contraventions of the said Notification & Bond calls for a higher Redemption Fine imposition. Further, I find that the noticee despite availing the benefit of this exemption Notification has not fulfilled its export obligation. It is a settled law that Exemption Notification should be complied strictly and no scope of intendment is allowed. For this reason I find it apt to impose the fine in lieu of confiscation under section 125(1) of Custom Act, 1962.

16. Whether the Noticee is liable for penalties as invoked in the SCN.

16.1 The Show Cause Notice proposes imposition of penalty on the Noticee under the provision of Section 112 (a) of the Customs Act, 1962. In terms of the provisions of Section 112(a), any person, who in relation to any goods, omits to do any act which act or omission would render such goods liable to confiscation under Section 111, is liable to penalty. I find that noticee by not fulfilling the export obligation have rendered the subject capital goods liable for confiscation and as such rendered themselves liable for penalty under Section 112(a)(ii) of the Customs Act, 1962. Accordingly, I find that the noticee is liable to penalty in terms of the provisions of Section 112(a)(ii) of the Customs Act, 1962.

16.2 I further find that the Noticee have not achieved export obligation which they had undertaken to achieve while importing subject machines under said EPCG authorization. This fact implies that the Capital Goods under consideration were not used for intended purpose. Thus, the Noticee have contravened the provisions of Notification No. 16/2015-Cus dated 01.04.2015. Further I find that they have not replied to the letters issued by the department, and did not co-operate with the inquiry and thereby have rendered themselves liable to penalty in terms of the provisions of Section 117 of the Customs Act, 1962.

17. I find that the Noticee had submitted the Bank Guarantee No. 314/2015-16 dated 17.03.2016 for Rs. 65,000/- issued by the Laxmi Vilas Bank Ltd., Belgium Tower, Silver Plaza Complex, Ring Road, Surat-395003 , against the EPCG License No. 5230020057 dated 16.03.2016. The said Bank Guarantee of Rs. 65,000/- is required to be appropriated and the amount of Rs. 65,000/- is to be deposited in Government

exchequer and the same may be adjusted against the aforesaid demand confirmed vide this subject Order.

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

ORDER

(i) I disallow the benefit of zero rate of duty for EPCG Scheme under Notification No. 16/2015-Cus dated 01.04.2015 on the subject Machines imported in the name of **M/s. Shyam Fashion, 403, Sundaram Apartment, Nr. Shreenathji Bunglow, Mota Varachha, Surat-395006**.

(ii) I confirm the demand of Customs Duty amounting to **Rs. 4,14,882/- (Rupees Four Lakh Fourteen Thousand Eight Hundred Eighty Two only)** being the duty foregone at the time of import of Capital Goods under said EPCG Licence in terms of Notification No. 16/2015-Cus dated 01.04.2015 as amended, read with the Conditions of Bond executed and order the same to be recovered from **M/s. Shyam Fashion,** 403, Sundaram Apartment, Nr. Shreenathji Bunglow, Mota Varachha, Surat-395006, in terms of Section 143 of the Customs Act, 1962 by enforcing the terms of the above mentioned Bond.

(iii) I hold the subject Capital Goods under reference imported by **M/s. Shyam Fashion,** 403, Sundaram Apartment, Nr. Shreenathji Bunglow, Mota Varachha, Surat-395006, liable to confiscation in terms of the provisions of section 111(o) of the Customs Act, 1962. However, I hereby allow the Noticee an option to redeem the said goods on payment of redemption fine of **Rs. 1,00,000/- (Rupees One Lakh Only)** in terms of the provisions of Section 125(1) of the Customs Act, 1962.

(iv) I order to recover interest at the applicable rate on the Customs duty confirmed at (ii) above in terms of Notification No. 16/2015-Cus dated 01.04.2015 as amended read with conditions of Bond executed and furnished by them in terms of Section 143 of the Customs Act, 1962.

(v) I impose penalty of **Rs.41,488/--(Rupees Forty One Thousand Four Hundred Eighty Eight only)** on **M/s. Shyam Fashion,** 403, Sundaram Apartment, Nr. Shreenathji Bunglow, Mota Varachha, Surat-395006, in terms of Section 112(a)(ii) of the Customs Act, 1962.

(vi) I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** on **M/s. Shyam Fashion,** 403, Sundaram Apartment, Nr. Shreenathji Bunglow, Mota Varachha, Surat-395006, in terms of Section 117 of the Customs Act, 1962.

(vii) I order to appropriate the amount of Rs. 65,000/- by encashment of the Bank Guarantee No. 314/2015-16 dated 17.03.2016 for Rs. 65,000/- issued by the Laxmi Vilas Bank Ltd., Belgium Tower, Silver Plaza Complex, Ring Road, Surat-395003, submitted by the Noticee. The same is required to be encashed and the deposited in Government exchequer. The amount may be adjusted against the duty, interest and fine/penalty liabilities confirmed above.

19. The Show Cause Notice bearing No. VIII/6-4078/ICD-Sachin/2015-16 dated 18.11.2024 is disposed of in above terms.

Digitally signed by
Shravan Ram
Date: 19-06-2025
17:38:06

(SHRAVAN RAM)
Additional Commissioner
Customs Ahmedabad

DIN: 20250671MN0000722004

F. No. GEN/ADJ/ADC/1137/2025-ICD-SRT-CUS-COMMRTE-AHMEDABAD Dated: 19.06.2025

By Speed Post A.D./E-mail /Hand Delivery/Through Notice Board

To,

M/S. SHYAM FASHION,
403, SUNDARAM APARTMENT,
NR. SHREENATHJI BUNGLOW,
MOTA VARACHHA, SURAT-395006.

M/S. SHYAM FASHION,
C/3-4, 2ND FLOOR, KHODIYAR NAGAR,
AMBAWADI, VARACHHA ROAD,
SURAT-395006.

SHRI HITESHBHAI BALABHAI BODARIYA,
PROPRIETOR OF M/S SHYAM FASHION,
403, SUNDARAM APARTMENT,
NR. SHREENATHJI BUNGLOW,
MOTA VARACHHA, SURAT-395006.

Copy to:

(i) The Principal Commissioner, of Customs, Ahmedabad.
(ii) The Deputy/Assistant Commissioner of Customs, ICD-Sachin, Surat.
(iii) The System In–Charge, Customs HQ, Ahmedabad for uploading on the official website i.e. http://www.ahmedabadcustoms.gov.in
(iv) The Joint Director General, DGFT, 6th Floor, Resham Bhavan Lal Darwaja, Surat-395003 for information and necessary action.
(v) Guard File/Office copy.
(vi) Notice Board