



सीमा शुल्ककार्यालय का आयुक्त के (निवारक), सीमा शुल्क भवन,
जामनगर- राजकोट हाइवे, विक्टोरिया ब्रिज के पास,
जामनगर) गुजरात – (361 001

Office of the Commissioner of Customs (Preventive),
'Seema Shulk Bhavan', Jamnagar – Rajkot Highway,
Near Victoria Bridge, Jamnagar (Gujarat) – 361 001
Email: commr-custjmr@nic.in; adj-custjmr@nic.in

DIN – 20260271MM0000111B92

1. फ़ाइल क्रमांक/ File Number F. No. CUS/2345/2025-Adjn
2. मूल आदेश क्रमांक/
Order-in-Original No. 21/Additional Commissioner/ 2025-26
एन .सृजन कुमार / N. Srujan Kumar
अपर आयुक्त/ Additional Commissioner,
सीमा शुल्क, निवारक/Customs (Preventive)
जामनगर/ Jamnagar.
3. द्वारा पारित/ passed by
Date of Order /आदेश दिनांक 12.02.2026
4. Date of issue / आदेश जारी किया 12.02.2026
5. कारण बताओ नोटिस क्रमांक एवं दिनांक
Show Cause Notice Number & Date ADC-18/2025-26 dated 27.10.2025
6. नोटिसी का नाम/
Name of Noticee M/s. Sun Mark Stainless Pvt. Ltd.,
219-205, Near Sintex Healthcare,
Indrad, Kadi,
Mehsana - 382715.

01. इस आदेश की मूल प्रति संबंधित व्यक्ति को निशुल्क प्रदान की जाती है।

The original copy of this order is provided free of cost to the person concerned.

02. इस मूल आदेश से व्यथित कोई भी व्यक्ति सीमा शुल्क अधिनियम, की धारा 1962128A)(1)a सीमा शुल्क नियम (अपील), 1982 के नियम 3 के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिन के भीतर फॉर्म सीए-1 में निम्नलिखित पते पर अपील दायर कर सकता है। फॉर्म सीए-1 में अपील का प्रपत्र, दो प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। जिनमें से कम से कम एक प्रमाणित प्रति हो

आयुक्त (अपील)
चौथी मंजिल, हडको भवन,
ईश्वर भुवन रोड, नवरंगपुरा
अहमदाबाद – 380 009

Commissioner (Appeals),
4th Floor, HUDCO Building,
Ishwar Bhuvan Road,
Navrangpura,
Ahmedabad – 380 009

Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-1 within sixty days from the date of receipt of this order, under the provisions of Section 108 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals) Rules, 1962.



	the Commissioner (Appeals) at the above mentioned address. The form of appeal in Form No. CA.-1 shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).
03.	अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये) 0.50पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची -I, मद 6 के तहत निर्धारित किया गया है।
	The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paise only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.
04.	अपीलीय ज्ञापन के साथ शुल्क भुगतान /जुर्माना /अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, 1962 की धारा 128 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।
	Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 128 of the Customs Act, 1962.
05.	अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क अपील)) नियम, और सिस्टेट 1982 नियम (प्रोसीजर) प्रक्रिया, के सभी नियमों का पूरा पालन हुआ है। 1982
	While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.
06.	इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के 7.5% के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।
	An appeal, against this order shall lie before the Commissioner (Appeals), on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.



BRIEF FACTS OF THE CASE

M/s. Sun Mark Stainless Pvt. Ltd., 219-205, Near Sintex Healthcare, Indrad, Kadi, Mehsana - 382715 (IEC No. 0813026181) (hereinafter referred to as "Importer") is engaged in export of Dehydrated Onion products.

2. It appears that the importer had re-imported 9338 Kgs, 5964 Kgs and 8155 Kgs of Stainless Steel Welded Round Tubes/Pipes Grade 304/L, SPEC A/SA-312, SIZE 6" NBXSCH 10 and filed Bill of Entry No. 8592217 dated 02.11.2023 for clearance thereof for home-consumption. The said goods were earlier exported under the cover of Shipping Bill No. 3810907 dated 29.08.2022 Stainless Steel Welded Round Tubes/Pipes Grade 304/L, SPEC A/SA-312, SIZE 6" NBXSCH 10 (2500 ft.) (Item No. 02), Shipping Bill No. 3812635 dated 29.08.2022 Stainless Steel Welded Round Tubes/Pipes Grade 304/L, SPEC A/SA-312, SIZE 6" NBXSCH 10 (1800 ft.) (Item No. 02) and Shipping Bill No. 3814933 dated 29.08.2022 Stainless Steel Welded Round Tubes/Pipes Grade 304/L, SPEC A/SA-312, SIZE 6" NBXSCH 10 (2700 ft.) (Item No. 01). At the time of exports, the importer had availed the benefit of Reward / Export Incentive Scheme viz. Drawback. Further, at the time of re-import of the said goods, the importer claimed exemption from payment of Duty of Customs, Integrated Tax and Compensation Cess in terms of Notification No. 45/2017-Customs dated 30.06.2017, as amended, vide Notification No. 46/2023-Customs dated 26.07.2023.

3. The relevant text of the amended Notification No. 45/2017-Customs dated 30.06.2017 (as amended vide Notification No. 46/2023-Customs dated 26.07.2023) is extracted here-in-below for the ease of reference:-

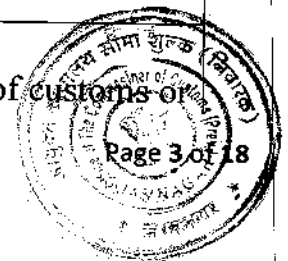
Notification No. 45/2017 –Customs

New Delhi, the 30th June, 2017

G.S.R.(E).-In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling within any Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below when re-imported into India, from so much of the duty of customs leviable thereon which is specified in the said First Schedule, and the whole of the, integrated tax, compensation cess leviable thereon respectively under sub-section (7) and (9) of section 3 of the said Customs Tariff Act, as is in excess of the amount indicated in the corresponding entry in column (3) of the said

Table

Sl. No.	Description of goods	Conditions
(1)	(2)	(3)
1	Goods exported – (a) under claim for drawback of	amount of drawback of customs or



any customs or excise duties levied by the Union	excise duties allowed at the time of export;
(b) under claim for drawback of any excise duty levied by a State	amount of excise duty leviable by State at the time and place of importation of the goods, allowed at the time of export;
(c) under claim for refund of integrated tax paid on export goods	amount of refund of integrated tax, availed at the time of export;
(d) under bond without payment of integrated tax	amount of integrated tax not paid;
(e) under duty exemption scheme (DEEC/Advance Authorisation/DFIA) or Export Promotion Capital Goods Scheme (EPCG)	amount of integrated tax and compensation cess leviable at the time and place of importation of goods;
(f) under claim for RoDTEP	amount of Remission of Duties and Taxes on Exported Products (RoDTEP) allowed at the time of export;
(g) under claim for RoSCTL”;	<p>amount of Rebate of State and Central Taxes and Levies (RoSCTL) allowed at the time of export and subject to the following conditions applicable for such goods -</p> <p>(i) DEEC book has not been finally closed and export in question is de-logged from DEEC Book; Advance Authorisation/DFIA has not been redeemed and the authorisation holder has not been discharged from the export obligation by DGFT;</p> <p>(ii) In case of EPCG scheme the period of full export performance has not expired and necessary endorsements regarding reimport have been made;</p> <p>(iii) The importer had intimated the details of the consignment re-imported to the Assistant Commissioner of Customs or Deputy Commissioner of Customs in charge of the factory where the goods were manufactured or the premises from where the goods</p>

were supplied and to the licensing authority regarding the fact of re-importation and produces a dated acknowledgement of such intimation at the time of clearance of goods;

(iv) The manufacturer-exporters may be permitted clearance of such goods without payment of Central Excise duty or integrated tax and compensation cess under transit bond to be executed with the Customs authorities at the port of importation, such bond will be cancelled on the production of certificate issued by the jurisdictional Customs authority about receipt of re-imported goods into their factory or the premises from where the goods were supplied.

Provided that the Assistant Commissioner of Customs/Deputy Commissioner of Customs is satisfied that -

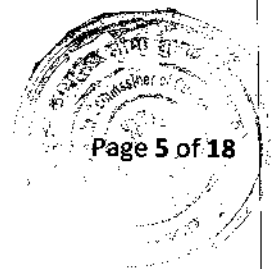
(a) *****

(b) in all other cases, the goods **other than** those exported under Duty Exemption Scheme (DEEC/Advance Authorisation/DFIA) or Export Promotion Capital Goods Scheme (EPCG) or Duty Entitlement Passbook Scheme (DEPB) or any scheme of Chapter 4 of Foreign Trade Policy are re-imported **within three years after their exportation** or within such extended period, not exceeding two years, as the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, on sufficient cause being shown for the delay may be allowed;

(c) in the case of goods exported under the Duty Exemption Scheme (DEEC/Advance Authorisation/DFIA) or Export Promotion Capital Goods Scheme (EPCG) or Duty Entitlement Passbook Scheme (DEPB) or any scheme of Chapter 4 of Foreign Trade Policy, re-importation of such goods takes place **within one year of exportation** or such extended period not exceeding one more year as the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, on sufficient cause being shown for the delay may be allowed;

(d) *****

(e) *****



2. This Notification will apply to the exports for which order permitting clearance and loading under section 51 of the Customs Act, 1962, has been given on or after 01st day of July, 2017.

Explanation - For the purposes of this notification, -

- (a) *****
- (b) "Foreign Trade Policy" means the Foreign Trade Policy, 2023, notified by the Government of India in the Ministry of Commerce and Industry vide notification No. 1/2023 dated the 31st March, 2023, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-Section (ii) vide S.O. 1565 (E) dated the 31st March, 2023;
- (c) *****
- (d) *****
- (e) "RoDTEP" means the Scheme for Remission of Duties and Taxes on Exported Products as per chapter 4 of Foreign Trade Policy.
- (f) "RoSCTL" means the Scheme for Rebate of State and Central Taxes and Levies as notified by the Ministry of Textiles

4. It was observed during the course of Post Clearance Audit (PCA) of the relevant records pertaining to Bill of Entry No. **8592217** dated **02.11.2023** that:-

- at the time of export of the goods (now being re-imported) vide Shipping Bill No. **3810907** dated **29.08.2022**, **3812635** dated **29.08.2022** and **3814933** dated **29.08.2022**, the benefit of schemes like **Drawback** was availed by the importer;
- the said goods was exported on **29.08.2022** and has been re-imported (imported back) on **02.11.2023** i.e. beyond the period of one year from the exportation of such goods, therefore, the re-import of goods is covered by the proviso (c) of Para (1) of aforementioned notification;
- the proviso (c) of Para (1) of aforementioned notification *inter alia* provides that the benefit of exemption from payment of Customs Duty / Integrated Tax / Compensation Cess, if any, payable at the time of re-import of goods, is subject to an extension from the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, on sufficient cause being shown for the delay, in case of re-import of the goods take place after the period of one year from date of its exportation;
- the extension for re-import of the goods after the period of one year from date of its exportation was not obtained from the Principal Commissioner of Customs or Commissioner of Customs;

In view of the above observations, the importers appeared to be not eligible for exemption from payment of Customs duty by virtue of Notification No. 46/2017 Customs (supra), as a result, appropriate Customs duty become payable on merit.



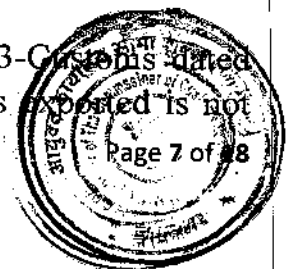
the time of re-importation of the goods sought to be cleared under the said Bill of Entry.

5. Accordingly, a Pre-Notice consultation letter bearing F.No.CUS/2345/2025-Adjn. dated 01.09.2025 was issued to the Importer, as stipulated under proviso to clause (a) to sub-section (1) of Section 28 of the Customs Act, 1962 read with Pre-Notice Consultation Regulations, 2018, communicating them the grounds for recovery of Customs duty of Rs.13,02,695/- along with interest and penalty. Despite lapse of ample time for filing submission as stipulated under Regulation 3(2) of the Pre-Notice Consultation Regulations, 2018, the Importer did not respond. As a Consultative Letter (CL) bearing No. PCA/JMN/GPPL/CL-5/2024 dated 06.09.2024 as per the provisions of Customs, Post Clearance Audit Manual, 2018 was also issued to the importer with request to pay appropriate Customs Duty and alternatively, the importer was also requested to submit their response in case of their dis-agreement with the above observation to which the importer vide their letter dated Nil submitted their response and *inter alia* stated, as under:-

- (i) They had exported Stainless Steel Welded Round Tubes/Pipes to their Buyer vide Shipping Bill No. **3810907 dated 29.08.2022, 3812635 dated 29.08.2022 and 3814933 dated 29.08.2022** and the same was re-imported vide Bill of Entry No. **8592217 dated 02.11.2023** due to rejection of the same from Buyer the pipe wall thicknesses are out of tolerance.
- (ii) They paid IGST at the time of re-import of Rs. 14,21,121/-.
- (iii) They re-paid the Drawback with 15% interest vide Challan No. CUS/408/2023-24 dated 10.11.2023.
- (iv) They stated that in Notification No. 46/2023-Customs dated 26.07.2023, Drawback scheme was additionally inserted and was effective from 27.07.2023. At the time of Re-import, they have paid/returned all the benefits availed at the time of Export and as the amended Notification No. 46/2023-Customs dated 26.07.2023 is after LEO of their export shipment, it would not be applicable to them.

6. It also appeared from the facts & circumstance of the case as well as response submitted by the importer that –

- (a) vital condition of time-line of one year for re-import of the goods from the date of its exportation, for availing exemption from payment of Customs Duty, Integrated Cess and Compensation Cess etc. have been violated;
- (b) the Buyer vide its letter dated Nil (received on 12.08.2024) has informed that the goods was returned due to rejection of the same from Buyer due to pipe wall thicknesses which are out of tolerance of the cargo, however, no such supporting documents have been provided. More so, the goods have been rejected almost after long period of 15 months from the date of export. Therefore, there is no justifiable reason for delay in re-import of the exported goods;
- (c) The argument of the importer that Notification No. 46/2023-Customs dated 26.07.2023 has been issued after grant of LEO in r/o goods



tenable in as much as notification is in relation to re-import of goods. Moreover, change in FTP resulted into change in time-line of exemption benefit at the time of re-import and the same is to be adhered to strictly. The only requirement was to seek exemption from competent authority on justifiable reason, however, no such extension is sought nor is justifiable reason mentioned.

7. Accordingly, in view of the aforesaid reasons, the goods imported vide BE No **8592217 dated 02.11.2023** is in contravention of aforesaid notification, therefore, the importer appears to be not eligible for benefit of exemption from payment of Customs duty. Accordingly, the importer is liable to pay Duty along with interest & other liabilities, as under :-

SR. NO.	PARTICULARS	DUTY
(1)	Assessable Value (Rs.)	(Rs.) 78,95,118/-
(2)	Basic Customs Duty (@30%) (Rs.)	(Rs.) 11,84,268/-
(3)	Social Welfare Surcharge (10% of BCD)	(Rs.) 1,18,427/-
(4)	Total Customs Duty (2+3)	(Rs.) 13,02,695/-
(5)	Interest (as per Section 28AA)	As applicable
(6)	Amount already paid : (-) Drawback (Re-paid)	(Rs.)1,11,200/-+20,062/-(Interest) = 1,31,262/- Importer have paid : Rs. 1,31,520/-

8. Whereas, on introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2017, it is the responsibility of the importer to correctly declare the description, classification, applicable exemption notification, applicable duties, rate of duties and its relevant notifications etc. in respect of the said imported goods and pay appropriate duty accordingly and comply with the conditions of the notifications. In the instant case, it appeared that the importer had wrongly availed the benefit of exemption notification in contravention of the vital condition of the notification. It, therefore, appeared that the importer had violated the provisions of Section 17(1) of the Customs Act, 1962 in as much as they failed to correctly self-assess the impugned goods and also wilfully violated the condition of Notification No. 45/2017-Cus. (as amended) read with sub-section (a) and (aA) of Section 46 of the Customs Act, 1962. The act and omission as discussed hereinabove appeared to have rendered the importer liable to penalty under Section 117 of the Customs Act, 1962.

9. In view of above, it appeared that the importer was indulged in wilful mis-declaration in order to wrongly avail of the benefit of exemption notification in as much as they reversed / paid-back export incentives of Drawback (along with interest) totally amounting to Rs. **1,31,520/-** and wrongly claimed the benefit of exemption from payment of Customs duty in contravention of



condition, as discussed hereinabove, with an intent to evade payment of Customs duty. The said acts of omission and commission on the part of the importer appeared to have resulted in short levy of Customs duty to the tune of **Rs. 13,02,695/-** (Rupees Thirteen Lakhs Two Thousands Six Hundred and Ninety Five only) (as calculated hereinabove), which appeared recoverable from them under the provisions of Section 28(1) of the Customs Act, 1962 along with interest as applicable, under Section 28AA of the Customs Act, 1962.

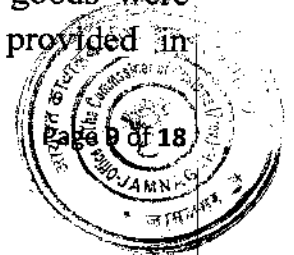
10. Accordingly, a Show Cause Notice No. ADC-18/2025-26 dated 27.10.2025 was issued to the importer asking them, as to why:

- (i) the benefit of exemption from payment of Customs Duty on re-import of the subject goods i.e. Stainless Steel Welded Round Tubes/Pipes availed, as per Notification No. 45/2017-Cus. (as amended), should not be denied and why the subject Bill of Entry should not be re-assessed **on merit** accordingly;
- (ii) Differential Customs duty amounting to **Rs. 13,02,695/-** (Rupees Thirteen Lakhs Two Thousands Six Hundred and Ninety Five only) should not be demanded and recovered from them under Section 28(1) of the Customs Act, 1962;
- (iii) Interest should not be recovered from them on the differential Customs duty mentioned at (ii) above under Section 28AA of the Customs Act, 1962;
- (iv) Penalty should not be imposed upon them under the provisions of Section 117 of the Customs Act, 1962.

DEFENCE REPLY

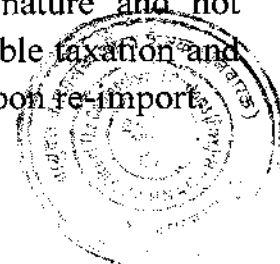
11. The Importer submitted written defense on 13.01.2026 and put forth following points:

- (i) The Impugned SCN proposes to deny the benefit of exemption claimed by them in terms of Notification No.45/2017- Customs dated 30.06.2017 on the ground that the subject were not re-imported within the time period of one year from the date of export of goods as required under proviso (c) of Para 1 of Notification No.45/2017- Customs dated 30.06.2017 which provides that if the goods are exported under the Duty Exemption Scheme(DEEC/Advance Authorisation/DFIA) or Export Promotion Capital Goods Scheme(EPCG) or Duty Entitlement Passbook Scheme (DEPB) **or any scheme of Chapter 4 of Foreign Trade Policy, re-importation of such goods takes place within one year of exportation or such extended period not exceeding one more year as the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, on sufficient cause being shown for the delay may be allowed.**
- (ii) It is the allegation of the Department that since the subject goods were exported under the Drawback Scheme, the time limitation provided in

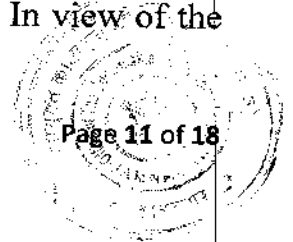


Proviso (c) of the Notification would be applicable for claim of exemption at the time of re-import.

- (iii) Proviso (c) of the Notification is not applicable in cases of claim of Drawback because drawback is not Scheme under Chapter 4 of the FTP. Thus, the limitation period of one year for duty exemption on re-import of goods would not be applicable in their case. They had availed the drawback benefits under Section 75 of the Customs Act, 1962 and not under the provisions of the Foreign Trade Policy.
- (iv) Section 75 of the Customs Act, 1962 provides for the grant of duty drawback on imported materials used in the manufacture of the goods that are exported. The scheme is administered by the Central Board of Indirect Taxes and Customs (CBIC) under the Ministry of Finance, and the rates of drawback are notified by the Central Government from time to time. This entitlement is based on the incidence of customs duties suffered on inputs and is independent of any export promotion scheme under Foreign Trade Policy.
- (v) On the contrary, the Foreign Trade Policy is a framework formulated by the Directorate General of Foreign Trade under the Ministry of Commerce, which governs schemes such as Advance Authorization, EPCG and RODTEP. These schemes are different from duty drawback as drawback is a long-standing scheme which is governed by the Customs Act itself and not the Foreign Trade Policy.
- (vi) They placed reliance upon the case of **M/s. ADF Foods Ltd. v. Commissioner of Customs, Nhava Sava- II, 2025 (7) TMI 1148 - CESTAT MUMBAI** wherein the Hon'ble Tribunal had observed that Export Promotion Schemes are specifically enumerated in para 4 of Circular No. 36/2010-Cus as Advance Authorisation, DFI, DEPB, reward schemes, etc. Thus, Drawback is a benefit given to the exporter which is not covered directly under Export Promotion Scheme of the DGFT, Ministry of Commerce. To say it otherwise, an Export Promotion Scheme is a policy provided by the Government whereas Drawback is provided by the Customs Act itself.
- (vii) Thus, the limitation period of one year for duty exemption on re-import of goods as provided under Proviso (c) of Para 1 of Notification 45/2017-Cus, would not be applicable in their case. Hence, on this ground itself, the Impugned SCN is liable to be set aside.
- (viii) Without prejudice to the above submissions, it is submitted that the time period of one year prescribed in Proviso (c) of Para 1 of Notification No. 45/2017-Cus dated 30.06.2017, is merely procedural in nature and not mandatory. The essence of the Notification is to prevent double taxation and ensure that export incentives availed earlier are neutralized upon re-import.

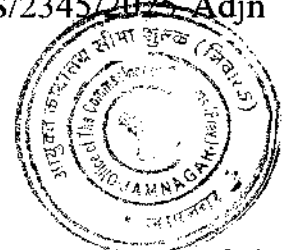


- (ix) Further, time period for re-import mentioned in the Notification is not accompanied by any penal consequence for non-compliance. This indicates that the provision is directory, not mandatory.
- (x) They placed reliance upon the case of **Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner, 1991 (55) E.L.T 437 (S.C)**, wherein the Hon'ble Supreme Court drew clear distinction between substantive conditions and procedural conditions in Exemption Notification. It held that procedural requirements of a technical nature can be condoned, and denial of benefit for minor procedural lapses defeats the purpose of beneficial legislation.
- (xi) Without prejudice, the Notification itself provides extension of one year time period to a further period of one year on approval from the Principal Commissioner of Customs or Commissioner of Customs. It is submitted that there was sufficient reason with them not to re-import the goods within a period of one year. The subject goods were re-imported after 15 months due to rejection of the same from the Buyer as the pipe wall thickness was out of tolerance of the cargo. Therefore, re-import was made within the extendable period i.e. within 2 years from the date of export. Thus, substantive benefit should not be denied for minor procedural infraction.
- (xii) They were granted permission at the time of import of the subject goods for clearance thereof for home consumption. Therefore, when exemption is granted at the stage of clearance of the goods, it is treated as post facto permission. This post-facto permission to the subject goods was granted to them by the customs officer. Any permission granted prior to or subsequently would imply granting the permission itself. Reliance in this regard is placed on the decision of **Life Insurance Corporation of India v. Escorts Ltd. and Ors- 1986 Supreme Court Cases 264**. The above decision of Apex Court was placed reliance on by Hon'ble CESTAT, Mumbai in the case of **Hyundai Heavy Industries Co. Ltd. v. Commr. of Cus. (Import), Mumbai- 2006 (205) E.L.T. 841 (Tri. - Mumbai)**.
- (xiii) Therefore, any irregularities cease to exist upon the post facto permit issued in the instant case. In light of the same, all factual errors are rendered irrelevant and hence, demand is liable to be set aside. Reliance in this regard is placed on the decision of the Hon'ble CESTAT Ahmedabad in the case of **Essar Power Gujarat Ltd. Versus Commissioner of Customs, Jamnagar 2011 (265) E.L.T. 143 (Tri. - Ahmd.)** wherein it was held that post-facto permission issued to the assessee should have been considered by the authorities and by the virtue of such permission no case would lie against the said assessee.
- (xiv) By the application of the ratio in the above decisions in the present case, post facto permit is expressly applicable to the re-import of Stainless-Steel Welded Round Tubes/ Pipes. Thus, no law has been violated. In view of the same, the Impugned SCN is liable to be set aside.



- (xv) The Department vide the Impugned SCN has demanded differential customs duty by invoking Section 28(1) of the Customs Act, 1962. It is submitted that the subject goods were assessed and cleared by the proper officer after due verification of documents and declarations. This amounts to post- facto clearance of the goods. It is submitted that Section 28 is a review mechanism and not a tool for arbitrary reassessment. Courts have time and again emphasised that reopening assessments without valid ground undermines certainty in trade and violates the principles of natural justice. Thus, it is submitted that once the goods are assessed and cleared by the Customs Authority, the assessment attains finality unless reopened under statutory provisions. Thus, the Impugned SCN is liable to be set aside.
- (xvi) The demand of interest under Section 28AA of the Customs Act is not sustainable in the present case as differential duty is also not payable as demonstrated in the foregoing submissions. It is cardinal principle of law that when the principal demand is not justified, there is no liability to pay ancillary demands. Therefore, they are not liable to pay interest as proposed in the Impugned SCN. The Hon'ble Supreme Court of India in the case of **Pratibha Processors vs. Union of India, 1996 (88) E.L.T 12 (S.C.)**, has held that when the principal amount (duty) is not payable due to exemption, there is no occasion or basis to levy any interest, either. This case is followed by the Hon'ble Supreme Court in the case of **Commissioner of Customs, Chennai v. Jayathi Krishna and Co., 2000 119 ELT 4 SC**. The aforesaid proposition that interest cannot be demanded when duty demand is not sustainable has also been upheld in several High Court and Tribunal decisions.
- (xvii) Further, Section 117 of the Customs Act, 1962 is a residuary provision which provides for a penalty where a person contravenes provisions of Act or abets any such contravention or fails to comply with any provision of the Act. Such penalty under Section 117 is attracted only when no express penalty is elsewhere provided for such contraventions or failures on the part of the assessee. In other words, penalty under Section 117 cannot be imposed for a contravention or failure for which a specific penalty is provided. In absence of any disclosure as to which provision has been violated, penalty under Section 117 of the Customs Act, 1962 cannot be imposed. Reliance in this regard is placed on the decisions of Hon'ble Tribunal in **DHL Express (India) Pvt. Ltd. v. Commissioner of Cus., Airport, Mumbai, 2016 (332) E.L.T 169 (Tri.-Mumbai)** and **Intermark Shipping Agencies Pvt. Ltd. v. Central Ex.m Cus., (A), Kandla, 2014 (314) E.L.T. 557 (Tri.- Ahmd.)**.
- (xviii) In view of the foregoing submissions, they pleaded to drop the proceedings initiated vide Show Cause Notice issued from F.No. CUS/2345/2025- Adjn dated 27.10.2025.

PERSONAL HEARING:



12. The personal hearing in the subject case was granted on 27.01.2026 in virtual mode as a natural justice, which was attended by Ms. Raksha Bhandari, Advocate, M/s. Laksmikumaran & Sridharan, duly authorized by the Noticee. During the personal hearing, she stated that they exported goods under duty drawback scheme which is not part of Chapter 4 of Foreign Trade Policy, hence proviso (b) of Notification No. 45/2017-Customs dated 30.06.2017 is applicable to them which allows re-import within 3 years of export.

DISCUSSIONS AND FINDINGS:

13. I have carefully considered the facts of the case, the allegations made in the Show Cause Notice, the written defence submissions filed by the Noticee, the oral submissions made during the personal hearing held on 27.01.2026 and the records available on file. The issues for determination are:

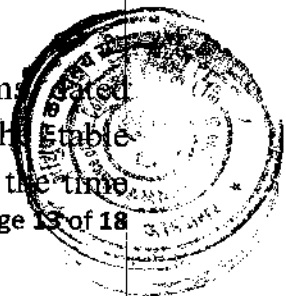
- (i) Whether proviso (b) or proviso (c) of para (1) of Notification No. 45/2017-Customs dated 30.06.2017, as amended, is applicable to the Noticee; and
- (ii) Whether the demand of duty, interest and penalty proposed in the impugned Show Cause Notice is sustainable in law.

14. The sole basis for denial of exemption in the impugned Show Cause Notice is that the subject goods were re-imported beyond one year from the date of export without obtaining extension from the competent authority, as contemplated under proviso (c) of para (1) of Notification No. 45/2017-Customs dated 30.06.2017 as amended vide Notification No. 46/2023- Customs dated 26.07.2023. There is no dispute on facts that the goods were exported on 29.08.2022 and re-imported on 02.11.2023, i.e. after about 15 months.

14.1 The Noticee has contended that proviso (c) of para (1) of Notification No. 45/2017-Customs dated 30.06.2017, as amended, is not applicable to their case since the exports were made under the Duty Drawback Scheme, which is governed by Section 75 of the Customs Act, 1962 and not under any scheme of Chapter 4 of the Foreign Trade Policy. It is their submission that proviso (b) of para (1) of Notification No. 45/2017-Customs dated 30.06.2017, as amended, which allows re-import within three years, would govern the present case.

14.2 I find this argument to be misconceived and untenable. While it is correct that Duty Drawback flows from Section 75 of the Customs Act, 1962 and is not framed under the Foreign Trade Policy, it is equally well-settled that Drawback is an export incentive scheme so as to promote exports, as it represents reimbursement of duties suffered on inputs used in export goods. The mere fact that its legal source is the Customs Act, 1962 does not strip it of its character as an export incentive.

14.3 It is also relevant to note that Notification No. 45/2017-Customs dated 30.06.2017, as amended itself specifically recognizes drawback in the Schedule appended thereto and prescribes the manner in which drawback availed at the time



of export is to be adjusted at the time of re-import. Once drawback cases are expressly covered by the notification, it is impermissible to ignore the corresponding conditions governing re-import, including the time limitation and requirement of extension. In cases where export incentives have been availed, the Notification No. 45/2017-Customs dated 30.06.2017, as amended prescribes stricter timelines for re-import and mandates approval for extension, thereby ensuring that re-import exemption is not used as a device to indefinitely defer payment of customs duties.

14.4 I further find that Para 4.01(b) of Chapter 4 of the Foreign Trade Policy, 2023 specifically mention "Duty Drawback (DBK) Scheme, administered by Department of Revenue" under the heading "Duty Remission Scheme" and scanned image of the relevant page is as below:

Duty Exemption / Remission Schemes

4.00 Objective

Schemes under this Chapter enable duty free import of inputs for export production, including replenishment of inputs or duty remission.

4.01 Schemes

(a) Duty Exemption Schemes.

The Duty Exemption schemes consist of the following:

- Advance Authorisation (AA) (which will include Advance Authorisation for Annual Requirement).
- Duty Free Import Authorisation (DFIA).

(b) Duty Remission Scheme.

Duty Drawback (DBK) Scheme, administered by Department of Revenue.

(c) Scheme for Rebate on State and Central Taxes and Levies (RoSCTL), as notified by the Ministry of Textiles.

(d) Schemes for Remission of Duties and Taxes on Exported Products (RoDTEP) notified by Department of Commerce and administered by Department of Revenue.

4.02 Applicability of Policy & Procedures

Authorisation under this Chapter shall be issued in accordance with the Policy and Procedures in force on the date of issue of the Authorisation.

4.03 Advance Authorisation

(a) Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed / utilized in the process of production of export product, may also be allowed.

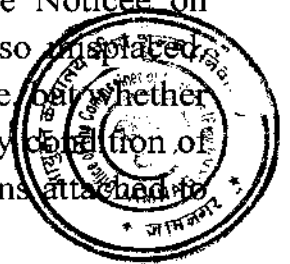
(b) Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

- (i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures);

OR

- (ii) On the basis of self declaration as per paragraph 4.07 of Handbook of Procedures.

From the above, it is evident that the reliance placed by the Noticee on judicial precedents distinguishing drawback from FTP schemes is also misplaced. The issue in the present case is not whether drawback is an FTP scheme, but whether re-import of goods exported with fiscal benefit can bypass a mandatory condition of an exemption notification. On this issue, the law is clear that conditions attached to



exemption must be strictly fulfilled, irrespective of the administrative source of the export benefit.

14.5 I therefore hold that the attempt to segregate drawback from other export incentives for the purpose of claiming a relaxed time limit is unsustainable in law. The subject exports, having admittedly enjoyed the benefit of drawback, are squarely governed by the restrictive time framework envisaged under proviso (c) of para (1) of Notification No. 45/2017-Customs dated 30.06.2017, as amended.

15. I further find that the time limit prescribed under proviso (c) is not a mere procedural formality but a substantive and mandatory condition for availing exemption. It is a settled principle of law that exemption notifications must be strictly construed, and any person claiming exemption must demonstrate strict compliance with all conditions thereof. The Hon'ble Supreme Court has consistently held that while procedural lapses may be condoned, non-fulfilment of a substantive condition renders the exemption unavailable. My this view draws support from the following decisions:

COMMISSIONER OF CUSTOMS, HYDERABAD Versus PENNAR INDUSTRIES LTD. [2015 (322) E.L.T. 402 (S.C.)]

“19. Since the conditions of the exemption notification are not fulfilled and the law requires strict compliance of the exemption notification, the assessee becomes liable to pay the import duty which was payable, but for the benefit of exemption Notification No. 30/1997, which was obtained by the assessee.”

MERIDIAN INDUSTRIES LTD. Versus COMMISSIONER OF CENTRAL EXCISE [2015 (325) E.L.T. 417 (S.C.)]

“13. The appellant is seeking the benefit of exemption Notification No. 8/97-C.E. Since it is an exemption notification, onus lies upon the appellant to show that its case falls within the four corners of this notification and is unambiguously covered by the provisions thereof. It is also to be borne in mind that such exemption notifications are to be given strict interpretation and, therefore, unless the assessee is able to make out a clear case in its favour, it is not entitled to claim the benefit thereof. Otherwise, if there is a doubt or two interpretations are possible, one which favours the Department is to be resorted to while construing an exemption notification.”



**KRISHI UPAJ MANDI SAMITI Versus COMMISSIONER OF C. EX. & S.T.,
ALWAR [2022 (58) G.S.T.L. 129 (S.C.)]**

"8. The exemption notification should not be liberally construed and beneficiary must fall within the ambit of the exemption and fulfil the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication.

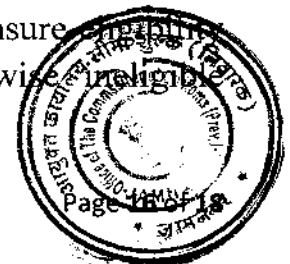
**STAR INDUSTRIES Versus COMMISSIONER OF CUSTOMS (IMPORTS),
RAIGAD [2015 (324) E.L.T. 656 (S.C.)]**

"31. We, thus, are of the opinion that in the impugned judgment, the Tribunal has rightly arrived at the conclusion that by virtue of Note 4, concentrate has to be necessarily treated as different from ores which is deemed as manufactured product after Molybdenum Ores underwent the process of roasting. Once we keep in mind that conversion of ores into concentrate is considered as manufacture and, therefore, becomes liable for central excise levy, exemption Notification No. 4/2006-C.E. is to be interpreted in this light as the Legislature has intended to treat ores and concentrates as two distinct items and Notification No. 4/2006-C.E. exempts only 'ores', concentrates automatically falls outside the purview of said notification. It is rightly argued by the learned senior counsel for the Revenue that exemption notifications are to be construed strictly and even if there is some doubt, benefit thereof shall not enure to the assessee but would be given to the Revenue. This principle of strict construction of exemption notification is now deeply ingrained in various judgments of this Court taking this view consistently."

15.1 In the present case, the notification itself provides a statutory mechanism for extension of time by the Principal Commissioner or Commissioner of Customs on sufficient cause being shown. The existence of such a mechanism further reinforces the mandatory nature of the condition. The Noticee, however, neither sought such extension nor produced any evidence to justify the delay at the relevant time.

15.2 The plea that the goods were rejected by the overseas buyer due to out-of-tolerance wall thickness has been raised belatedly and is not supported by cogent documentary evidence. More importantly, even assuming the rejection to be genuine, no explanation has been offered as to why the statutory extension procedure was not invoked.

16. I also find no merit in the argument that clearance of the goods by the proper officer amounts to post-facto approval or waiver of the conditions of the notification. With the introduction of self-assessment under Section 17 of the Customs Act, 1962, the onus squarely lies on the importer to correctly assess duty and ensure compliance for exemption. Clearance of goods does not validate an otherwise irregular



exemption claim, nor does it bar subsequent action under Section 28 when short levy is detected.

17. In view of the foregoing discussion, I hold that:

- (i) Proviso (c) of para (1) of Notification No. 45/2017-Customs is applicable to the present case;
- (ii) The Noticee has failed to fulfil a vital and mandatory condition of the notification by re-importing the goods beyond one year without obtaining the prescribed extension;
- (iii) The benefit of exemption was wrongly availed, resulting in short-levy of customs duty; and
- (iv) The demand of differential customs duty under Section 28(1), along with interest under Section 28AA and penalty under Section 117 of the Customs Act, 1962, is legally sustainable.

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

ORDER

- (i) I hold that the importer M/s. Sun Mark Stainless Pvt. Ltd., 219-205, Near Sintex Healthcare, Indrad, Kadi, Mehsana - 382715 is not eligible for exemption under Notification No. 45/2017-Customs dated 30.06.2017 as amended in respect of re-import of Stainless Steel Welded Round Tubes/Pipes covered under Bill of Entry No. 8592217 dated 02.11.2023.
- (ii) I confirm and order recovery of Customs duty amounting to Rs. 13,02,695/- (Rupees Thirteen Lakhs Two Thousands Six Hundred and Ninety Five only) under Section 28(1) of the Customs Act, 1962.
- (iii) I confirm and order recovery of interest under Section 28AA of the Customs Act, 1962.
- (iv) I impose penalty of Rs.1,00,000/- (Rupees One Lakh only) under Section 117 of the Customs Act, 1962.

The Show Cause Notice No. ADC-18/2025-26 dated 27.10.2025 is hereby disposed of accordingly.

17. This order is issued without prejudice to any other action which may be contemplated against the Importer or any other person in terms of any of the provisions of the Customs Act, 1962 and/or any other law for the time being in force.



(N. Srujan Kumar)
Additional Commissioner
Date: 12.02.2026

DIN - 20260271MM0000111B92

BY Speed Post A.D

To,
M/s. Sun Mark Stainless Pvt. Ltd.,
219-205, Near Sintex Healthcare,
Indrad, Kadi,
Mehsana - 382715.

Copy to:-

- i. The Commissioner, Customs (Preventive), Jamnagar [Kind Attention: the Superintendent (Review-HQ), Customs (Preventive), Jamnagar]
- ii. The Assistant Commissioner of Custom House, Pipavav for information and further necessary action.
- iii. Guard File.

