

<p>अपर आयुक्त का कार्यालय सीमा शुल्क मण्डल, सूरत सीमा शुल्क भवन, अलथान भीमराड रोड, एसएमसी वार्ड ऑफिस के पास मे, अलथान, सूरत - 395007</p> <p>दूरभाष: 0261-2990051 ईमेल : patoadc-srtcust@gov.in</p>	 <p>सत्यमेव जयते</p>	<p>OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOM DIVISION, SURAT CUSTOM HOUSE, ALTHAN BHIMRAD ROAD, NR. SMC WARD OFFICE, ALTHAN, SURAT -395007</p> <p>PHONE: 0261-2990051 E-mail : patoadc-srtcust@gov.in</p>
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PREAMBLE

A	फाइल संख्या /File No.	:	VIII/10-07/O&A/ADC/Khodal Diamond/2023-24
B	कारण बताओ नोटिस संख्या Show Cause Notice No. and date	:	GEN/ADJ/ADC/559/2024-DIV-SRT-CUS- COMMRT-E-AHMEDABAD dated 27.03.2024
C	मूल आदेश संख्या / Order-In- Original No.	:	10/AR/ COMMISSIONER (IN-SITU)/SRT/2024-25
D	द्वारा पारित आदेश /ORDER PASSED BY	:	ARUN RICHARD आयुक्त (पथा-स्थान) / COMMISSIONER (IN-SITU) सीमा शुल्क/CUSTOMS
E	आदेश तिथि / Date of Order	:	12.02.2025
F	जारी करने की तारीख /Date of Issue	:	12.02.2025
G	डा.अ.न./DIN	:	20250271MN000000FC63
H	आयातक का नाम और पता/Name and Address of Importer/Noticee	:	M/s. Khodal Diamond, Plot No. 7, A/401, Sitaram Complex, Nandu Doshi Ni Wadi, Gotalwadi, Katargam Surat, Gujarat – 395 004

1. जिस व्यक्ति के लिए आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए प्रति निशुल्क प्रदान की है।

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

2. कोई भी व्यक्ति जो स्वयं को इस आदेश से व्यवित मानता है वह मांग की गई ड्यूटी का 7.5% भुगतान कर सकता है, जहां शुल्क या शुल्क और जुर्माना विवाद या दंड में हैं, विवाद या जुर्माना में हैं, जहां केवल जुर्माना विवाद में है, सीमा शुल्क के तहत निर्धारित फॉर्म सी. ए. 1 और 2 में सीमा शुल्क आयुक्त (अपील), चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद -380009 को आदेश के खिलाफ अपील कर सकता है। (अपील), नियम, 1962। अपील इस आदेश की प्राप्ति की तारीख से साठ दिनों के भीतर डाक या व्यक्ति द्वारा दायर की जानी चाहिए। इस पर उचित मूल्य का न्यायालय शुल्क स्टाम्प होना चाहिए।

2. Any person deeming himself aggrieved by this order, may 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, may prefer an appeal against the order to the Commissioner of Customs (Appeal), 4th Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009 in Form C. A. 1 & 2 as prescribed under Customs (Appeal), Rules, 1962. The appeal must be filed within sixty days from the date of receipt of this order either by the post or by the person. It should bear a court fee stamp of appropriate value.

3. अपील के साथ निम्नलिखित चीजें संलग्न जाएं।

3. The following documents must be enclosed along with the appeal.

(क) अपील की प्रति, तथा (a) A copy of the appeal and

(ख) आदेश यह प्रति या अन्य आदेश की प्रति, जिस नियमानुसार कोट फी स्टाम्प लगा हो।

(ब) Copy of this order or another copy of the order, which must bear court fee stamp of appropriate value.

4. इस आदेश के खिलाफ अपील करने का इच्छुक कोई भी व्यक्ति, अपील के लंबित रहने तक, उसमें लगाए गए शुल्क या जुर्माना जमा करेगा और अपील के साथ इस तरह के भुगतान का सबूत पेश करेगा, ऐसा न करने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन न करने के कारण अपील खारिज की जा सकती है।

4. Any Person desirous of appealing against this order shall, pending the appeal deposit the duty demanding or penalty levied therein and produce proof of such payment along with the appeal; failing which the appeal is liable to be rejected for non-compliance of the provisions of Section 129 of the Customs Act, 1962.



BRIEF FACTS OF THE CASE:

M/s. Khodal Diamond, Plot No. 7, A/401, Sitaram Complex, Nandu Doshi Ni Wadi, Gotalwadi, Katargam Surat, Gujarat – 395 004 (hereinafter referred as “the said importer” for the sake of brevity), holding Import Export Code No. 5215006318 had imported the capital goods as per Item List attach with the EPCG Licence No. 5230017656 dated 28.07.2015 by saving duty of Rs. 5,12,496/- (Actual Duty Utilized of Rs. 5,12,496/-) and had cleared the same vide below mentioned Bill of Entries 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 under:

S. N .	B/E No. & Date	Capital Goods/Machinery /Qty cleared	Duty Saved/ available as per EPCG Licence	Total Duty Foregone/Debited at the time of clearance	BG Amount (Rs.)
1	0002927 dated 21.08.2015	Diamond Cutting Measurement System Model Magnus:- 01 Nos.	5,12,496/-	2,56,248/-	80,000/-
2	0002944 dated 24.08.2015	Diamond Cutting Measurement System Model Magnus:- 01 Nos.		2,56,248/-	
	TOTAL	02 Nos	5,12,496/-	5,12,496/-	

2. As per Notification No. 16/2015-Cus dated 01.04.2015 as amended time to time, the said importer was required to fulfill the export obligation on FOB basis equivalent to six times of the duty saved on the goods imported as may be specified on the licence or authorization. The relevant portion of the said notification is produced herein below for reference:

Notification No. 16/ 2015 - Customs

New Delhi, the 1 st April, 2015.

G.S.R. 252 (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, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in the Table 1 annexed hereto, from,-

- (i) the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the said Customs Tariff Act), and*
- (ii) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, when specifically claimed by the importer.*

2. *The exemption under this notification shall be subject to the following conditions, namely:-*

- (1) that the goods imported are covered by a valid authorisation issued under the Export Promotion Capital Goods (EPCG) Scheme in terms of Chapter 5 of the Foreign Trade Policy permitting import of goods at zero customs duty;*



(2) that the authorisation is registered at the port of import specified in the said authorisation and the goods, which are specified in the Table 1 annexed hereto, are imported within validity of the said authorisation and the said authorisation is produced for debit by the proper officer of customs at the time of clearance:

Provided that the goods imported should not fall under clause (f) of paragraph 5.01 of Foreign Trade Policy:

Provided further that the catalyst for one subsequent charge shall be allowed, under the authorisation in which plant, machinery or equipment and catalyst for initial charge have been imported, except in cases where the Regional Authority issues a separate authorisation for catalyst for one subsequent charge after the plant, machinery or equipment and catalyst for initial charge have already been imported;

(3) that the importer is not issued, in the year of issuance of zero duty EPCG authorisation, the duty credit scrips under the erstwhile Status Holder Incentive Scrip (SHIS) scheme. In the case of applicant who is Common Service Provider (herein after referred as CSP), the CSP or any of its specific users should not be issued, in the year of issuance of the zero duty EPCG authorisation, the duty credit scrips under SHIS. This condition shall not apply where already availed SHIS benefit that is unutilised is surrendered or where benefits availed under SHIS that is utilised is refunded, with applicable interest, before issue of the zero duty EPCG authorisation. SHIS scrips which are surrendered or benefit refunded or not issued in a particular year for the reason the authorisation has been issued in that year shall not be issued in future years also;

(4) that the goods imported shall not be disposed of or transferred by sale or lease or any other manner till export obligation is complete;

(5) that the importer 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 Free on Board (FOB) basis equivalent to six times the duty saved on the goods imported as may be specified on the authorisation, or for such higher sum as may be fixed or endorsed by the Regional Authority in terms of Para 5.16 of the Handbook of Procedures, within a period of six years from the date of issue of Authorisation, in the following proportions, namely :-

S. N.	Period from the date of issue of Authorization	Proportion of total export obligation
(1)	(2)	(3)
1	Block of 1 st to 4 th year	Minimum 50%
2	Block of 5 th to 6 th year	Balance

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(6) that if the importer does not claim exemption from the additional duty leviable under section 3 of the Customs Tariff Act, 1975, the additional duty so paid by him shall not be taken for computation of the net duty saved for the purpose of fixation of export obligation provided the Cenvat credit of additional duty paid has not been taken;

(7) that the importer, including a CSP, produces within 30 days from the expiry of each block from the date of issue of authorisation 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 condition (5), the importer 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 fifteen percent per annum from the date of clearance of the goods;;

It is thus evident from the above notification that the said importer 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 licence or authorization, or for such higher sum as may be fixed or endorsed by the licencing Authority or Regional Authority, within a period of six years from the date of issuance of licence or authorization i.e. complete minimum 50% export obligation within first block of 1st to 4th years and remaining balance in second block of 5th to 6th years.

3. Accordingly, the said importer had executed Bond dated 14.08.2015 for Rs. 10,50,621/- backed by Bank Guarantee No. 0305-BG0029-15 dated 10.08.2015 for Rs. 80,000/- issued by the Punjab & Sind Bank, Lal Gate, MG Road, Surat i.r.o. EPCG License No. 5230017656 dated 28.07.2015. They had also undertaken to fulfill all the terms and conditions specified in the License and the said Notification.

4. The said machinery imported under the above said EPCG License were to be installed at the factory/business premises i.e. M/s. Khodal Diamond, Plot No. 7, 4th Floor, Room No. 401/A/B/C, Sitaram Complex, Khodiyar Nagar Ind. Society, Gotalwadi, Katargam, Surat, Gujarat – 395 004. The importer have submitted copy of Chartered Engineer Certificates both dated 31.08.2015 for installation of the above said Capital goods wherein it has been certified that the said capital goods/machines were installed at the said factory/business premises of the importer on 22.08.2015 and 25.08.2015 but they have failed to submit any document regarding export obligation fulfillment.

5. The aforesaid EPCG License No. 5230017656 dated 28.07.2015 was issued to the said importer for six years export obligation period and the Bond dated 14.08.2015 was executed. Accordingly, the said importer was required to fulfill the



export obligation within a period of six years from the date of EPCG Licence as per the condition laid down in the Notification and EPCG Licence itself and submit the Export Obligation Discharged Certificate issued by the DGFT Authority to the department.

6. Letters F. No. SSEZ/EPCG/REG/83/15-16 dated 05.11.2020, 04.08.2022 and email dated 05.08.2022 was issued/sent to the said importer to submit EODC issued by DGFT, Surat for fulfillment of Export Obligation, but no response received from the said importer on the same.

Thus, it appears, from the above that the said importer has failed to fulfill the export obligation as specified in the Licence and has not complied with the mandatory conditions of the Customs Notification 16/2015-Cus dated 01.04.2015, EPCG Licence 5230017656 dated 28.07.2015 and conditions of the Bond dated 14.08.2015.

7. As per the provisions of Section 143 of the Customs Act, 1962, the aforesaid capital goods were allowed clearance by the proper officer on execution of bond by the said importer wherein the said importer has bound himself to discharge liability within a specified period in certain manner, which he has failed to do, by not fulfilling the export obligation. Therefore, the department is entitled to recover the duty less paid by raising a demand and appropriating the Bank Guarantee furnished by the said importer against this demand. 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.

Therefore, it appears that the bonds executed by the importer are live and enforceable. Thus, department is entitled to recover the duty not paid by raising demand in terms of the said bonds furnished and executed by them.

8. Since, the said importer appears to failed to fulfill the conditions laid down under Notification No. 16/2015-Cus dated 01.04.2015 in as much as they failed to export goods manufactured from imported capital goods, imported under EPCG Licence No. 5230017656 dated 28.07.2015 which was equivalent to six times the duty saved on the goods imported and also neither produced EODC issued by DGFT, Surat nor could produce any extension granted by DGFT, Surat for fulfillment of Export Obligation. Hence, they appears liable to pay duty of Rs. 5,12,496/- in respect of the said imported goods along with interest at the applicable rate, in terms of conditions of the said Notification read with condition of Bond executed by the said importer read with Section 143 of the Customs Act, 1962.

8.1 It appears that the imported capital goods have not been used for intended purpose for which the exemption from payment of duty was claimed and therefore, the aforesaid Capital goods appears liable for confiscation under Section 111(o) of the Customs Act, 1962 and thus the said importer appears to have rendered himself liable for penal action under the provisions of Section 112(a) and Section 117 of the Customs Act, 1962.

8.2 Since, it appears that, the said importer has not fulfill the conditions laid down under Notification No. 16/2015-Cus dated 01.04.2015, the Bank Guarantee No. 0305-BG0029-15 dated 10.08.2015 for Rs. 80,000/- issued by the Punjab & Sind Bank, Lal Gate, MG Road, Surat in favour of the Asstt./Deputy Commissioner of Customs, SurSEZ, Sachin, Surat against the EPCG License No. 5230017656 dated 28.07.2015 were required to be encashed accordingly the said B.G. for amount of Rs. 80,000/- has been encashed vide TR-6 Challan No. 959/22-23 dated 29.11.2022 and deposited in Government Exchequer. The same appears to be appropriated against the proposed demand.

8.3 As per para (7) of Customs Notification No. 16/2015-Cus dated 01.04.2015, the importer was required to produce, within 30 days from the expiry of each block from the date of issue of authorization or within such extended period, evidence to the extent of export obligation fulfilled by them, and where the export obligation of any particular block was not fulfilled in terms of the condition (5) of the said notification, the importer were required to pay duties of customs equal to an amount which for the unfulfilled portion of the export obligation along with applicable interest from the date of the clearance of the goods within three months from the expiry of the said block. The said importer had also given bond to this effect. The letters dated 05.11.2020, 04.08.2022 and email dated 05.08.2022 was written to the importer to intimate the extent of export obligation fulfilled by them but no response was given by the importer.

9. The DGFT, Surat were also endorsed the copy of the above said letter with request to intimate Division office whether the importer has applied for EODC against EPCG License No. 5230017656 dated 28.07.2015 and on pursuing this



matter with the DGFT, Surat through emails dated 20.01.2023 and 20.02.2023 they have replied on 21.02.2023, that the said importer has not submitted any documents towards their EO fulfillment. It is evident that they had neither fulfilled their Export obligation nor paid the duty. These facts were not disclosed to the department, thereby it appears, suppressing the facts with a clear intent to evade the payment of duty.

10. In view of the above, the Noticee was issued a show cause notice bearing F.No. GEN/ADJ/ADC/559/2024-DIV-SRT-CUS-COMMRTE-AHMEDABAD dated 27.03.2024 by the Additional Commissioner, 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 'Diamond Cutting Measurement System: Model Magnus' in the name of M/s. Khodal Diamond, Surat should not be denied.
- (ii) Customs Duty totally amounting to Rs. 5,12,496/- (Rupees Five Lakh Twelve Thousand Four Hundred Ninety Six 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 by enforcing the terms of the said Bond and as to why the amount of Rs. 80,000/- encashed of Bank Guarantee No. 0305-BG0029-15 dated 10.08.2015 issued by the Punjab & Sind Bank, Lal Gate, MG Road, Surat backed against the Bond, should not be appropriated and adjusted towards the Duty liability as mentioned above.
- (iii) Interest at the applicable rate should not be recovered from them on the Customs Duty as mentioned at (ii) above in term of Notification No. 16/2015-Cus dated 01.04.2015 as amended from time to time read with Conditions of the Bond executed in term of Section 143 of the Customs Act, 1962.
- (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 Importer under Section 112(a) of the Customs Act, 1962 for the acts of omission & commission mentioned above.
- (vi) Penalty should not be imposed on the Importer under Section 117 of the Customs Act, 1962 for the acts of omission & commission mentioned above.
- (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:

11. The said Noticee has not submitted any documents in reply of the said Show Cause Notice.



PERSONAL HEARING:

12. The opportunities of Personal Hearing in the matter were given to the said Noticee on 23.09.2024 (1st personal hearing); 10.10.2024 (2nd personal hearing) and; 22.10.2024 (3rd personal hearing), 19.11.2024 (4th personal hearing) and on 16.01.2025 (5th personal hearing), which was not attended by the noticee.

DISCUSSION & FINDINGS

13. I have carefully studied the case records. The issues for consideration before me are as follows:

- (i) Whether the benefit of zero duty for EPCG Scheme under 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 penalty as invoked in the subject SCN dated 27.03.2024.

14. I find that the said noticee has failed to submit the requisite export obligation discharge certificate which is a mandatory condition to be complied with by the said noticee. The said noticee had bound themselves to fulfill the requisite export obligation and thereby at the time of importation of the Capital Goods paid custom duties at subject concessional rate. The Capital Goods, at the time of their importation in India, have been allowed clearance at concessional 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.

15. 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 Eight 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 importer 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 Free on Board (FOB) basis equivalent to six times the duty saved on the goods imported as may be specified on the authorisation, or for such higher sum as may be fixed or endorsed by the Regional Authority in terms of Para 5.16 of the Handbook of Procedures, within a period of six years from the date of issue of Authorisation, in the following proportions, namely :-*

S. N.	Period from the date of issue of Authorization	Proportion of total export obligation
(1)	(2)	(3)
1	Block of 1 st to 4 th year	Minimum 50%
2	Block of 5 th to 6 th year	Balance

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Further, Para 5.01 of the Foreign Trade Policy 2015-20 and Para 5.10 and Para 5.14 of Handbook of Procedure Vol.1 (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 Custom Duty EPCG Scheme	5.01	<p>(a) EPCG Scheme allows import of capital goods for pre-production, production and post-production at Zero customs duty. Alternatively, the Authorisation holder may also procure Capital Goods from indigenous sources in accordance with provisions of paragraph 5.07 of FTP. Capital goods for the purpose of the EPCG scheme shall include:</p> <ul style="list-style-type: none"> (i) Capital Goods as defined in Chapter 9 including in CKD/SKD condition thereof; (ii) Computer software systems; (iii) Spares, moulds, dies, jigs, fixtures, tools & refractories for initial lining and spare refractories; and (iv) catalysts for initial charge plus one subsequent charge. <p>(c) Import under EPCG Scheme shall be subject to an export obligation equivalent to 6 times of duty saved on capital goods, to be fulfilled in 6 years reckoned from date of issue of Authorisation.</p>						
Fulfillment Of Export Obligation	5.14	<p>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:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Period from the date of issue of Authorisation</th> <th>Minimum export obligation to be fulfilled</th> </tr> </thead> <tbody> <tr> <td>Block of 1st to 4th year</td> <td>50%</td> </tr> <tr> <td>Block of 5th and 6th year</td> <td>Balance EO</td> </tr> </tbody> </table>	Period from the date of issue of Authorisation	Minimum export obligation to be fulfilled	Block of 1 st to 4 th year	50%	Block of 5 th and 6 th year	Balance EO
Period from the date of issue of Authorisation	Minimum export obligation to be fulfilled							
Block of 1 st to 4 th year	50%							
Block of 5 th and 6 th year	Balance EO							

Therefore the conjoint reading of para 5.01 of Foreign Trade Policy (2015-20), para 5.10 and 5.14 of Handbook of Procedure Vo.1 (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 competent authority. The 50% of export obligation was to be completed in the first block, i.e. within four years and balance export obligation was to be completed by six year 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 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. However, they 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 (2015-20). 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.



16. 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 authorisation 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 condition (5), the importer 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 fifteen percent per annum from the date of clearance of the goods;

Likewise, para 5.14 of the Handbook of Procedure Vol.1 (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:

5.14

(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.

17. 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.

18. In view of the above discussions, I find that the benefit of exemption under Notification No. 16/2015-Cus dated 01.04.2015 is not admissible to the Noticee owing to non-fulfillment of the export obligation specified under the said Notification. Resultantly, 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 proposed.

19. 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 subject case. The Bond and Bank Guarantee 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. I find it relevant to rely on 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]

20. Further, I find that the said noticee has not fulfilled the conditions stipulated in the Customs Notification No. 16/2015-Cus dated 01.04.2015 and conditions of the Bond. Thereby I hold that the demand of custom duties and interest raised vide show cause notice F.No. GEN/ADJ/ADC/559/2024-DIV-SRT-CUS-COMMRTE-AHMEDABAD dated 27/03/2024 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 a concessional customs duties. The noticee was required to comply with the conditions of the said Notification 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 the acts of contraventions of the said Notification & Bond with respect to subject import of capital goods calls for a higher Redemption Fine imposition. It is a settled law that Exemption Notification should be complied strictly and no scope of intention is allowed. For this reason I find it apt to impose the fine in lieu of confiscation under section 125(1) Custom Act to the 50% value of subject goods, which arrives at Rs. 9,69,600/- (Rupees Nine Lakhs Sixty Nine Thousand Six Hundred Only).

21. 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 omits to do any act which act or omission would render such goods liable to confiscation under Section 111, is liable to penalty. Resultantly, I find that the Noticee is liable to penalty in terms of the provisions of Section 112(a)(ii) of the Customs Act, 1962.



22. 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 and thereby have rendered themselves liable to penalty in terms of the provisions of Section 117 of the Customs Act, 1962.

23. I find that the Noticee had submitted the Bank Guarantee No. 0305-BG0029-15 dated 10.08.2015 issued by the Punjab & Sind Bank, Lal Gate, MG Road, Surat, for Rs. 80,000, against the EPCG License No. 5230017656 dated 28.07.2015. I note that the said Guarantee of Rs 80,000/- has been encashed vide TR-6 Challan No. 959/22-23 dated 29.11.2022 and deposited in Government Exchequer thereby the said amount is required to be adjusted against the aforesaid demand raised vide this subject Order.

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

ORDER

- (i) I order to disallow benefit of zero duty for EPCG Scheme under Notification No. 16/2015-Cus dated 01.04.2015 on the subject imported 'Diamond Cutting Measurement System: Model Magnus' in the name of M/s. Khodal Diamond vide subject Bills of entry.
- (ii) I confirm the demand of Customs Duty totally amounting to Rs. 5,12,496/- (Rupees Five Lakh Twelve Thousand Four Hundred Ninety Six 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. Khodal Diamond in terms of Section 143 of the Customs Act, 1962 by enforcing the terms of the above mentioned Bond.
- (iii) I order to appropriate the amount of Rs. 80,000/- by encashment of the Bank Guarantee No. 0305-BG0029-15 dated 10.08.2015 issued by the Punjab & Sind Bank, Lal Gate, MG Road, Surat submitted by the Noticee. As the said amount has been encashed vide T R 6 Challan No. 959/22-23 dated 29.11.2022 and the amount of Rs. 80,000/- has been deposited in Government exchequer, the amount may be adjusted against the duty liability confirmed at Sr. No (ii) above.
- (iv) I hold the subject Capital Goods under reference imported M/s. Khodal Diamond, Plot No. 7, A/401, Sitaram Complex, Nandu Doshi Ni Wadi, Gotalwadi, Katargam Surat, Gujarat – 395 004, liable to confiscation in terms of the provisions of section 111(o) of the Customs Act, 1962 read with conditions of Bond executed in terms of section 143 of the Customs Act, 1962 and read with Customs Notification No. 16/2015-Cus dated 01.04.2015 as amended. I hereby allow the Noticee an option to redeem the said goods on payment of redemption fine of Rs. 9,69,600/- (Rupees Nine Lakhs Sixty Nine Thousand Six Hundred Only), as discussed in para 20, in terms of the provisions of Section 125(1) of the Customs Act, 1962.



(v) 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.

(vi) I impose penalty of Rs. 51,250/- (Rupees Fifty One Thousand Two Hundred Fifty only) on M/s. Khodal Diamond, in terms of Section 112(a)(ii) of the Customs Act, 1962.

(vii) I impose penalty of Rs.1,00,000/- (Rupees One lakh only) on M/s. Khodal Diamond, in terms of Section 117 of the Customs Act, 1962.

Dated 12.02.2025

अरुण रिचर्ड
12-2-2025
(Arun Richard)
Commissioner (In-situ)
Customs

To,

M/s. Khodal Diamond,
Plot No. 7, A/401, Sitaram Complex,
Nandu Doshi Ni Wadi, Gotalwadi, Katargam
Surat, Gujarat – 395 004.

Copy to:-

1. The Principal Commissioner of Customs, Ahmedabad.
2. The Deputy Commissioner of Customs, ICD-Sachin, Surat.
3. The Deputy/Assistant Commissioner (System), Customs HQ, Ahmedabad for uploading on the official website i.e. <https://www.ahmedabadcustoms.gov.in>
4. The Joint Director General, DGFT, 6th Floor, Resham Bhavan, Lal Darwaja, Surat-395003 for information and necessary action.
5. Guard file.

