



प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद

सीमाशुल्कभवन, आलद्दीयारेडीओकिबाजुमे, नवरंगपुरा, अहमदाबाद 380009

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**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD
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निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.

फा. म./F. No.:VIII/10-07/Commr./O&A/2023-24

DIN- 20240971MN0000999FB8

आदेशकीतारीख/Date of Order :20.09.2024
जारीकरनेकीतारीख/Date of Issue :20.09.2024

द्वारापारित :-

शिव कुमार शर्मा, प्रधान आयुक्त

Passed by :-

Shiv Kumar Sharma, Principal Commissioner

मूलआदेशसंख्या : Order-In-Original No:AHM-CUSTM-000-PR.COMMR-45-2024-25
dtd..09.2024in the case of M/s. Vishakha Polyfab Private Limited, 'Vishakha House', Ashirwad Paras Corporate House, Corporate Road, Prahladnagar, Ahmedabad, Gujarat-380015

1 जिसव्यक्ति(यों) कोयहप्रतिभेजीजातीहै, उसेव्यक्तिगतप्रयोगकेलिएनिःशुल्कप्रदानकीजातीहै।

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.

2.इसआदेशसेअसंतुष्टकोईभीव्यक्तिइसआदेशकीप्राप्तिसेतीनमाहकेभीतरसीमाशुल्क, उत्पादशुल्कएवंसेवाकरअपीलीय न्यायाधिकरण, अहमदाबादपीठकोइसआदेशकेविरुद्धअपीलकरसकताहै।अपीलसहायकरजिस्ट्रार, सीमाशुल्क, उत्पादशुल्कएवंसेवाकरअपीलीयन्यायाधिकरण, दुसरीमंज़िल, बहुमालीभवन, गिरिधरनगरपुलकेबाजुमे, गिरिधरनगर, असारवा, अहमदाबाद-380 004 कोसम्बोधितहोनीचाहिए।

2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.

3. उक्तअपीलप्रारूपसं. सी.ए.3 मेंदाखिलकीजानीचाहिए।उसपरसीमाशुल्क (अपील) नियमावली, 1982 केनियम3केउपनियम(2)मेंविनिर्दिष्टव्यक्तियोंद्वाराहस्ताधरकिएजाएंगे।उक्तअपीलकोचारप्रतियोंमेंदाखिलकिया जाएतथाजिसआदेशकेविरुद्धअपीलकीगईहो,उसकीभीउतनीहीप्रतियोंसंलग्नकीजाएँ।(उनमेंसेकमसेकमएकप्रतिप्र माणितहोनीचाहिए।)अपीलमेसम्बंधितसभीदस्तावेजभीचारप्रतियोंमेंअग्रेषितकिएजानेचाहिए।
3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपीलजिसमेंतथ्योंकाविवरणएवंअपीलकेआधारशामिलहैं,चारप्रतियोंमेंदाखिलकीजाएगीतथाउसकेसाथजिसआदेशकेविरुद्धअपीलकीगईहो,उसकीभीउतनीहीप्रतियोंसंलग्नकीजाएंगी।(उनमेंसेकमसेकमएकप्रमाणितप्रतिहोगी।)
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate 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.)
5. अपीलकाप्रपत्रअंग्रेजीअथवाहिन्दीमेंहोगा।एवंइसेसंक्षिप्तएवंकिसीतर्कअथवाविवरणकेबिनाअपीलकेकारणोंकेस्पष्ट शीर्षोंकेअंतर्गततत्त्वारकरनाचाहिए।एवंऐसेकारणोंकोक्रमानुसारक्रमांकितकरनाचाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रियसीमाशुल्कअधिनियम, 1962कीधारा 129एकेउपबन्धोंकेअंतर्गतनिर्धारितफीसजिसस्थानपरपीठस्थितहै,वहांकेकिसीभीराष्ट्रीयकृतबैंककीशाखासेन्यायाधिकरणकीपीठकेसहायकरजिस्ट्रारकेनामपररेखांकितमाँगड़ाफटकेज रिएदाकीजाएगीतथायहमाँगड़ाफटअपीलकेप्रपत्रकेसाथसंलग्नकियाजाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इसआदेशकेविरुद्धसीमाशुल्क,उत्पादशुल्कएवंसेवाकरअपीलीयन्यायाधिकरणमेंशुल्कके7.5%जहांशुल्कअथवाशुल्कएवंजुरमानाकाविवादहैअथवाजुरमानाजहांशीर्फजुरमानाकेबारेमेविवादहैउसकाभुक्तानकरकेअपीलकीजाशक्तीहै।
7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute”.
8. न्यायालयशुल्कअधिनियम, 1870केअंतर्गतनिर्धारितकिएअनुसारसंलग्नकिएगएआदेशकीप्रतिपरउपयुक्तन्यायालय शुल्कटिकटलगाहोनाचाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice No. VIII/10-06/Commr./O&A/ 2023-24 dated 22.09.2023 issued by the Commissioner of Customs, Ahmedabad to M/s.

Vishakha Polyfab Private Limited, Vishakha House, Ashirwad Paras Corporate House, Corporate Road, Prahladnagar, Ahmedabad, Gujarat-380015

Brief facts of the case:

M/s. Vishakha Polyfab Private Limited, an Importer having IEC No. 0800000471 and having their registered office at Vishakha House, Ashirwad Paras Corporate House, Corporate Road, Prahladnagar, Ahmedabad, Gujarat-380015 (hereinafter referred to as 'the Importer' or 'the Noticee' for the sake of brevity) is engaged in the import of Polymers of Ethylene, in primary forms (LLDPE, LDPE) [classifiable under Customs Tariff Heading (CTH) - 3901]; Propylene copolymers (classifiable under CTH - 3902); Other Vinyl Polymers in Primary Forms (classifiable under CTH - 3905) and Polyamides in Primary Forms (classifiable under CTH - 3908) for manufacture of Packaging films for liquid, semi liquid & solid packaging for food & non-food through several ports, without payment of Duty of Customs under cover of Advance Authorizations, on the strength of the Customs Notification No.18/2015-Cus dated 01.04.2015, as amended by the Customs Notification No.79/2017-Cus dated 13.10.2017 and availed benefit of exemption from payment of IGST and/or Compensation Cess on the goods so imported.

2. Intelligence was developed by the Customs Commissionerate, Ahmedabad (hereinafter referred to as Customs Ahmedabad) to the effect that M/s. VishakhaPolyfab Private Limited, had imported various input materials without payment of Duty of Customs under cover of a number of Advance Authorizations issued by the Regional Directorate General of Foreign Trade (hereinafter referred to as DGFT). While executing such imports, the Importer availed benefit of exemption extended by Notification No.18/2015-Cus dated 01.04.2015, as amended by the Customs Notification No. 79/2017-Cus dated 13.10.2017, and did not pay any Customs Duty in the form of Integrated Goods & Service Tax (IGST) levied under Sub-section (7) of Section 3 of the Customs Tariff Act, 1975, on such input materials at the time of import. However, such exemption was extended subject to the condition that the person willing to avail such benefit should comply with pre-import condition and the finished goods should be subjected to physical exports only.

2.1 However, the intelligence developed by Customs Ahmedabad, clearly indicated that although M/s. VishakhaPolyfab Private Limited availed such exemption in respect of **10 Advance Authorizations**, but while going through the process of such imports and corresponding exports towards discharge of export obligation, they failed to comply with the pre-import condition, as required under the said Notification No.79/2017-Cus dated 13.10.2017, that extended such conditional exemption. Pre-import condition simply means that the goods should be imported prior to commencement of export to enable the exporter to manufacture finished goods, which could be subsequently exported under the same Advance Authorization for discharge of Export Obligation.

2.2 Accordingly, investigation was initiated by the Officers of Customs, ICD Sanand, Ahmedabad by way of issuance of letters. The Importer was requested vide letters dated 03.12.2020, 05.04.2021, 07.08.2021 and 07.10.2021 for production of documents in connection with such imports. They have submitted the required information/documents vide their letters dated 19.12.2020& NIL (**RUD No.-1**). The summary of the details are as under:-

Table-1

| Details of Bill of Entry and Shipping Bill under which first import and first export was made against respective Advance Authorizations | | | | | | |
|--|--------------|----------------|--------------------|----------------|--------------------|----------------|
| Sr. No | AA No | AA Date | First BE No | BE Date | First SB No | SB Date |
| 1 | 810140264 | 08-05-2017 | 2239008 | 26-06-2017 | 7883188 | 08-08-2017 |
| 2 | 810140352 | 25-05-2017 | 2266669 | 28-06-2017 | 7571927 | 25-07-2017 |

| | | | | | | |
|----|-----------|------------|---------|------------|---------|-------------|
| 3 | 810141191 | 17-10-2017 | 4473397 | 19-12-2017 | 9755287 | 07-11-2017* |
| 4 | 810141347 | 22-11-2017 | 4695459 | 05-01-2018 | 1368560 | 06-12-2017* |
| 5 | 810141563 | 20-12-2017 | 5582268 | 14-03-2018 | 2086978 | 09-01-2018* |
| 6 | 810142159 | 16-03-2018 | 6517810 | 24-05-2018 | 3734963 | 24-03-2018* |
| 7 | 810142530 | 08-05-2018 | 6535545 | 25-05-2018 | 4810516 | 11-05-2018* |
| 8 | 810142531 | 08-05-2018 | 7714209 | 20-08-2018 | 4854233 | 14-05-2018* |
| 9 | 810143830 | 12-11-2018 | 9054654 | 29-11-2018 | 8986809 | 19-11-2018* |
| 10 | 810143831 | 12-11-2018 | 9230268 | 12-12-2018 | 8977808 | 19-11-2018* |

2.3 Under the Advance Authorizations mentioned in the above chart, there are various Shipping Bills and corresponding Bills of Entry. Under Advance Authorizations as mentioned above at Sr. No. 3, 4, 5, 6, 7, 8, 9 & 10, M/s. VishakhaPolyfab Private Limited made exports first before imports were made. Quite naturally, they did not manufacture the goods which were exported under the subject Advance Authorization corresponding to the said Shipping Bills, out of the Duty-free materials imported under the subject Advance Authorization. Therefore, the materials which were exported against those Shipping Bills, were not manufactured out of the Duty-free materials imported under the Advance Authorization in question. This *prima facie* resulted in non-compliance of the pre-import condition.

2.4 It appears that in respect of the Advance Authorizations mentioned above at Sr. No. 3, 4, 5, 6, 7, 8, 9 & 10, the Importer failed to use Duty-free materials imported under the respective Advance Authorizations for the purpose of manufacture of the finished goods, which were exported towards discharge of export obligation. It is also implied that the Duty-free goods subsequently imported could not have been used for the specified purpose. Therefore, the Importer failed to comply with the pre-import condition in respect of these Advance Authorizations. Further, the detailed study of the data in RUD-1 revealed the following:-

Table-2

Details of Bills of Entry and Shipping Bills under which goods were imported and exported respectively availing the benefit under Notification No.18/2015-Cus (as amended) under respective Advance Authorizations

| Sr. No | AA No | AA Date | Shipping Bill No. | Shipping Bill date | BE No | BE Date | Port Code | Ass. Value Rs. | IGST Exemption Rs. |
|--------|-----------|------------|-------------------|--------------------|---------|------------|-----------|----------------|--------------------|
| 1 | 810141191 | 17-10-2017 | 9755287 | 07-11-2017 | 4473397 | 19-12-2017 | INSBI6 | 19,46,304 | 3,77,398 |
| | | | 1193567 | 28-11-2017 | 4694627 | 05-01-2018 | INSBI6 | 20,89,024 | 4,05,072 |
| | | | 1253272 | 30-11-2017 | 4695459 | 05-01-2018 | INSBI6 | 40,62,533 | 7,87,745 |
| | | | 1281623 | 01-12-2017 | 4880957 | 20-01-2018 | INSBI6 | 8,25,183 | 1,60,007 |
| | | | 1338913 | 05-12-2017 | 4900585 | 22-01-2018 | INSBI6 | 16,87,392 | 3,27,194 |
| | | | 1632712 | 18-12-2017 | 5239664 | 16-02-2018 | INSBI6 | 22,16,660 | 4,31,916 |
| | | | 1656577 | 19-12-2017 | 5306485 | 21-02-2018 | INSBI6 | 11,89,555 | 2,31,785 |
| | | | 1710288 | 21-12-2017 | 5382988 | 27-02-2018 | INSBI6 | 5,59,331 | 1,08,986 |
| | | | 1736039 | 22-12-2017 | 7714712 | 20-08-2018 | INPAV1 | 28,90,215 | 5,63,158 |
| | | | 1827871 | 27-12-2017 | 7794390 | 27-08-2018 | INPAV1 | 26,66,250 | 5,19,519 |
| | | | 1952118 | 02-01-2018 | 8009231 | 11-09-2018 | INPAV1 | 27,20,625 | 5,30,114 |
| | | | 9786793 | 09-11-2017 | | | | | |
| | | | 9813666 | 10-11-2017 | | | | | |
| | | | 2003097 | 05-01-2018 | | | | | |
| | | | 5817248 | 26-06-2018 | | | | | |
| 2 | 810141347 | 22-11-2017 | 1368560 | 06-12-2017 | 4695459 | 05-01-2018 | INSBI6 | 27,08,355 | 5,25,164 |
| | | | 1476533 | 11-12-2017 | 4900585 | 22-01-2018 | INSBI6 | 12,05,280 | 2,33,710 |

| | | | | | | | | | |
|---|-----------|------------|---------|------------|---------|------------|--------|-----------|-----------|
| | | | 1507787 | 13-12-2017 | 5030491 | 01-02-2018 | INSBI6 | 55,74,096 | 10,86,113 |
| | | | 1538166 | 14-12-2017 | 5131141 | 08-02-2018 | INSBI6 | 41,61,218 | 8,10,813 |
| | | | 1633498 | 18-12-2017 | 5201631 | 14-02-2018 | INSBI6 | 14,09,003 | 2,74,544 |
| | | | 1710483 | 21-12-2017 | 5298140 | 21-02-2018 | INSBI6 | 22,14,952 | 4,31,583 |
| | | | 1747022 | 23-12-2017 | 5306485 | 21-02-2018 | INSBI6 | 27,13,019 | 5,28,632 |
| | | | 1827889 | 27-12-2017 | 5382988 | 27-02-2018 | INSBI6 | 16,55,621 | 3,22,598 |
| | | | 1827893 | 27-12-2017 | 5489361 | 07-03-2018 | INSBI6 | 22,59,281 | 4,40,221 |
| | | | 1855832 | 28-12-2017 | 5643854 | 19-03-2018 | INSBI6 | 29,37,312 | 5,72,335 |
| | | | 1899878 | 30-12-2017 | 5804112 | 31-03-2018 | INSBI6 | 30,32,064 | 5,90,798 |
| | | | 1952131 | 02-01-2018 | 5915123 | 09-04-2018 | INSBI6 | 20,15,222 | 3,92,666 |
| | | | 1998906 | 04-01-2018 | 6310004 | 09-05-2018 | INSBI6 | 12,31,200 | 2,39,899 |
| | | | 2063916 | 08-01-2018 | | | | | |
| | | | 2070387 | 08-01-2018 | | | | | |
| | | | 2128382 | 11-01-2018 | | | | | |
| | | | 2277057 | 18-01-2018 | | | | | |
| | | | 2354667 | 22-01-2018 | | | | | |
| | | | 2550070 | 31-01-2018 | | | | | |
| | | | 2561330 | 31-01-2018 | | | | | |
| | | | 2614631 | 02-02-2018 | | | | | |
| | | | 2715392 | 07-02-2018 | | | | | |
| | | | 2814473 | 12-02-2018 | | | | | |
| | | | 2857909 | 14-02-2018 | | | | | |
| | | | 2865323 | 14-02-2018 | | | | | |
| | | | 2962990 | 19-02-2018 | | | | | |
| | | | 3072770 | 23-02-2018 | | | | | |
| | | | 3077908 | 23-02-2018 | | | | | |
| | | | 3159566 | 27-02-2018 | | | | | |
| | | | 3192783 | 28-02-2018 | | | | | |
| | | | 3326225 | 07-03-2018 | | | | | |
| 3 | 810141563 | 20-12-2017 | 2086978 | 09-01-2018 | 5582268 | 14-03-2018 | INSBI6 | 14,21,481 | 2,76,976 |
| | | | 2126594 | 11-01-2018 | 5643809 | 19-03-2018 | INSBI6 | 19,96,731 | 3,89,063 |
| | | | 2409721 | 24-01-2018 | 5881540 | 06-04-2018 | INSBI6 | 30,36,672 | 5,91,695 |
| | | | 2490657 | 29-01-2018 | 5885187 | 06-04-2018 | INSBI6 | 55,90,118 | 10,89,234 |
| | | | 3125579 | 26-02-2018 | 5915123 | 09-04-2018 | INSBI6 | 2,51,903 | 49,083 |
| | | | 3159827 | 27-02-2018 | 5944241 | 11-04-2018 | INSBI6 | 22,67,125 | 4,41,749 |
| | | | 3275117 | 05-03-2018 | 6048652 | 19-04-2018 | INSBI6 | 20,55,092 | 4,00,435 |
| | | | 3330838 | 07-03-2018 | 6049084 | 19-04-2018 | INSBI6 | 20,06,297 | 3,90,927 |
| | | | 3767587 | 26-03-2018 | 6064942 | 20-04-2018 | INSBI6 | 20,69,534 | 4,03,249 |
| | | | 3797177 | 27-03-2018 | 6174100 | 28-04-2018 | INSBI6 | 17,09,271 | 3,33,051 |
| | | | 3797180 | 27-03-2018 | 6310004 | 09-05-2018 | INSBI6 | 18,79,200 | 3,66,162 |
| | | | 4191890 | 13-04-2018 | 6535545 | 25-05-2018 | INSBI6 | 10,684 | 2,082 |
| | | | 4446757 | 25-04-2018 | 6647524 | 04-06-2018 | INSBI6 | 20,06,297 | 3,90,927 |
| | | | 4854282 | 14-05-2018 | 6789350 | 13-06-2018 | INSBI6 | 2,82,935 | 55,130 |
| | | | 5123064 | 25-05-2018 | 7198649 | 13-07-2018 | INSBI6 | 28,63,392 | 5,57,932 |

| | | | | | | | | | |
|---|-----------|------------|---------|------------|---------|------------|--------|-----------|-----------|
| | | | 5336881 | 04-06-2018 | 9188923 | 10-12-2018 | INPAV1 | 25,83,000 | 5,03,298 |
| | | | 5330196 | 04-06-2018 | 9188924 | 10-12-2018 | INPAV1 | 25,83,000 | 5,03,298 |
| | | | 5366901 | 05-06-2018 | 9263163 | 14-12-2018 | INSAU6 | 41,04,100 | 7,79,684 |
| | | | 5604886 | 16-06-2018 | 9263216 | 14-12-2018 | INSAU6 | 82,08,200 | 15,99,368 |
| | | | 5658885 | 19-06-2018 | 9323555 | 19-12-2018 | INPAV1 | 4,56,330 | 88,916 |
| | | | 5816715 | 26-06-2018 | | | | | |
| | | | 5819200 | 26-06-2018 | | | | | |
| | | | 5898658 | 29-06-2018 | | | | | |
| | | | 6011266 | 04-07-2018 | | | | | |
| | | | 6116135 | 09-07-2018 | | | | | |
| | | | 6131873 | 10-07-2018 | | | | | |
| | | | 6161040 | 11-07-2018 | | | | | |
| | | | 6161800 | 11-07-2018 | | | | | |
| | | | 6163190 | 11-07-2018 | | | | | |
| | | | 6425654 | 24-07-2018 | | | | | |
| | | | 6430245 | 24-07-2018 | | | | | |
| | | | 6435911 | 24-07-2018 | | | | | |
| | | | 6558224 | 30-07-2018 | | | | | |
| | | | 6574602 | 31-07-2018 | | | | | |
| | | | 6584735 | 31-07-2018 | | | | | |
| | | | 6702570 | 05-08-2018 | | | | | |
| | | | 6713194 | 06-08-2018 | | | | | |
| | | | 6745249 | 07-08-2018 | | | | | |
| | | | 6769230 | 08-08-2018 | | | | | |
| | | | 6862782 | 13-08-2018 | | | | | |
| | | | 7082455 | 23-08-2018 | | | | | |
| | | | 7921320 | 29-09-2018 | | | | | |
| | | | 7958971 | 01-10-2018 | | | | | |
| | | | 8027744 | 04-10-2018 | | | | | |
| | | | 8082130 | 06-10-2018 | | | | | |
| | | | 8528855 | 27-10-2018 | | | | | |
| | | | 8563745 | 29-10-2018 | | | | | |
| | | | 8588771 | 30-10-2018 | | | | | |
| | | | 8593787 | 30-10-2018 | | | | | |
| | | | 8630805 | 31-10-2018 | | | | | |
| | | | 8633382 | 31-10-2018 | | | | | |
| | | | 8739120 | 05-11-2018 | | | | | |
| | | | 8751687 | 05-11-2018 | | | | | |
| 4 | 810142159 | 16-03-2018 | 3916511 | 31-03-2018 | 6517810 | 24-05-2018 | INSBI6 | 58,58,591 | 11,41,547 |
| | | | 3990922 | 04-04-2018 | 6535545 | 25-05-2018 | INSBI6 | 18,80,324 | 3,66,381 |
| | | | 4071616 | 07-04-2018 | 6761899 | 12-06-2018 | INSBI6 | 22,83,435 | 4,44,927 |
| | | | 4191852 | 13-04-2018 | 6789350 | 13-06-2018 | INSBI6 | 11,55,316 | 2,25,113 |
| | | | 4256508 | 17-04-2018 | 7198649 | 13-07-2018 | INSBI6 | 2,86,339 | 55,793 |
| | | | 4279095 | 18-04-2018 | 7215794 | 14-07-2018 | INSBI6 | 2,71,830 | 52,966 |

| | | | | | | | | | |
|---|-----------|------------|---------|------------|---------|------------|--------|-----------|-----------|
| | | | 4296999 | 18-04-2018 | 7333377 | 23-07-2018 | INSB16 | 32,40,576 | 6,31,426 |
| | | | 4366407 | 21-04-2018 | 8444457 | 13-10-2018 | INSB16 | 5,74,420 | 1,11,926 |
| | | | 3734963 | 24-03-2018 | 9311188 | 18-12-2018 | INPAV1 | 25,83,000 | 5,03,298 |
| | | | 3769278 | 26-03-2018 | 9323555 | 19-12-2018 | INPAV1 | 21,26,670 | 4,14,382 |
| | | | 3853689 | 29-03-2018 | 9409781 | 26-12-2018 | INPAV1 | 12,00,360 | 2,33,890 |
| | | | 3905790 | 31-03-2018 | 9409813 | 26-12-2018 | INPAV1 | 25,72,200 | 5,01,193 |
| | | | 4424498 | 24-04-2018 | | | | | |
| | | | 4433965 | 25-04-2018 | | | | | |
| | | | 4506843 | 27-04-2018 | | | | | |
| | | | 4557037 | 30-04-2018 | | | | | |
| 5 | 810142530 | 08-05-2018 | 5386022 | 06-06-2018 | 6535545 | 25-05-2018 | INSB16 | 2,24,357 | 43,716 |
| | | | 5440635 | 08-06-2018 | 6710608 | 08-06-2018 | INSB16 | 38,10,456 | 7,42,467 |
| | | | 5604896 | 16-06-2018 | 6755991 | 11-06-2018 | INSB16 | 71,80,226 | 13,99,067 |
| | | | 5635654 | 18-06-2018 | 6867504 | 19-06-2018 | INSB16 | 38,10,456 | 7,42,467 |
| | | | 5654509 | 19-06-2018 | 6891829 | 21-06-2018 | INSB16 | 31,88,865 | 6,21,350 |
| | | | 5688305 | 20-06-2018 | 7125848 | 07-07-2018 | INSB16 | 21,30,468 | 4,15,122 |
| | | | 5793928 | 25-06-2018 | 7642073 | 14-08-2018 | INSB16 | 41,67,465 | 8,12,031 |
| | | | 5863214 | 28-06-2018 | 7714209 | 20-08-2018 | INSB16 | 35,32,248 | 6,88,258 |
| | | | 6066377 | 06-07-2018 | 8152202 | 22-09-2018 | INSB16 | 22,42,598 | 4,36,970 |
| | | | 4850220 | 14-05-2018 | 8298171 | 03-10-2018 | INSAU6 | 69,04,923 | 13,45,424 |
| | | | 6069378 | 06-07-2018 | 8363174 | 08-10-2018 | INSB16 | 21,99,656 | 4,28,603 |
| | | | 6289056 | 17-07-2018 | 8444457 | 13-10-2018 | INSB16 | 3,25,256 | 63,376 |
| | | | 6355314 | 20-07-2018 | 8459609 | 15-10-2018 | INSB16 | 23,77,213 | 4,63,200 |
| | | | 6438484 | 24-07-2018 | 8577613 | 23-10-2018 | INSB16 | 21,99,656 | 4,28,603 |
| | | | 5011278 | 21-05-2018 | 8657509 | 29-10-2018 | INSAU6 | 1,71,633 | 33,443 |
| | | | 6441019 | 24-07-2018 | 8717371 | 02-11-2018 | INSB16 | 1,72,557 | 33,623 |
| | | | 6559766 | 30-07-2018 | 8717375 | 02-11-2018 | INSB16 | 21,99,656 | 4,28,603 |
| | | | 6586554 | 31-07-2018 | 8959366 | 22-11-2018 | INSB16 | 23,65,234 | 4,60,866 |
| | | | 5016261 | 21-05-2018 | 9150228 | 06-12-2018 | INSAU6 | 33,75,542 | 6,57,724 |
| | | | 5110231 | 25-05-2018 | 9308338 | 18-12-2018 | INSAU6 | 12,94,178 | 2,52,170 |
| | | | 5121620 | 25-05-2018 | 9342355 | 20-12-2018 | INSAU6 | 33,20,016 | 6,46,905 |
| | | | 5366565 | 05-06-2018 | 9406839 | 26-12-2018 | INSAU6 | 2,78,655 | 54,296 |
| | | | 4810516 | 11-05-2018 | 9409781 | 26-12-2018 | INPAV1 | 13,71,840 | 2,67,303 |
| | | | 6720950 | 06-08-2018 | 9524885 | 04-01-2019 | INSB16 | 91,188 | 17,768 |
| | | | 6820444 | 10-08-2018 | | | | | |
| | | | 6889963 | 14-08-2018 | | | | | |
| | | | 6900064 | 14-08-2018 | | | | | |
| | | | 6908483 | 14-08-2018 | | | | | |
| | | | 6908801 | 14-08-2018 | | | | | |
| | | | 7045570 | 21-08-2018 | | | | | |
| | | | 7087069 | 23-08-2018 | | | | | |
| | | | 7088288 | 23-08-2018 | | | | | |
| | | | 7171408 | 27-08-2018 | | | | | |
| | | | 7406450 | 06-09-2018 | | | | | |

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|---|-----------|------------|---------|------------|---------|------------|--------|-----------|----------|
| | | | 7543264 | 12-09-2018 | | | | | |
| | | | 7580962 | 14-09-2018 | | | | | |
| | | | 7636192 | 17-09-2018 | | | | | |
| | | | 7651290 | 18-09-2018 | | | | | |
| | | | 7736331 | 21-09-2018 | | | | | |
| | | | 7777875 | 24-09-2018 | | | | | |
| | | | 7789926 | 24-09-2018 | | | | | |
| | | | 7814055 | 25-09-2018 | | | | | |
| | | | 7845320 | 26-09-2018 | | | | | |
| | | | 7856671 | 27-09-2018 | | | | | |
| | | | 7967864 | 01-10-2018 | | | | | |
| | | | 8063137 | 05-10-2018 | | | | | |
| | | | 8075420 | 06-10-2018 | | | | | |
| | | | 8165185 | 10-10-2018 | | | | | |
| | | | 8219287 | 12-10-2018 | | | | | |
| | | | 8289532 | 16-10-2018 | | | | | |
| | | | 8408990 | 23-10-2018 | | | | | |
| | | | 8421771 | 23-10-2018 | | | | | |
| | | | 8449090 | 24-10-2018 | | | | | |
| | | | 8547433 | 29-10-2018 | | | | | |
| | | | 8568664 | 29-10-2018 | | | | | |
| | | | 8624010 | 31-10-2018 | | | | | |
| | | | 8636622 | 31-10-2018 | | | | | |
| | | | 8636729 | 31-10-2018 | | | | | |
| | | | 8707269 | 03-11-2018 | | | | | |
| | | | 8713338 | 03-11-2018 | | | | | |
| | | | 8731313 | 05-11-2018 | | | | | |
| | | | 8755975 | 05-11-2018 | | | | | |
| | | | 8756126 | 05-11-2018 | | | | | |
| 6 | 810142531 | 08-05-2018 | 5351731 | 05-06-2018 | 7714209 | 20-08-2018 | INSBI6 | 4,60,728 | 89,773 |
| | | | 5366427 | 05-06-2018 | 7832264 | 29-08-2018 | INSBI6 | 33,78,672 | 6,58,334 |
| | | | 5440688 | 08-06-2018 | 8591977 | 24-10-2018 | INSBI6 | 43,75,915 | 8,52,648 |
| | | | 4854233 | 14-05-2018 | 8657509 | 29-10-2018 | INSAU6 | 42,05,009 | 8,19,346 |
| | | | 5561334 | 14-06-2018 | 9061152 | 30-11-2018 | INSBI6 | 2,72,063 | 53,011 |
| | | | 5121604 | 25-05-2018 | 9406839 | 26-12-2018 | INSAU6 | 27,86,550 | 5,42,959 |
| | | | 5864423 | 28-06-2018 | 9485244 | 01-01-2019 | INSBI6 | 24,28,421 | 4,73,178 |
| | | | 5908258 | 29-06-2018 | 9524885 | 04-01-2019 | INSBI6 | 20,28,922 | 3,95,335 |
| | | | 5984914 | 03-07-2018 | | | | | |
| | | | 6066389 | 06-07-2018 | | | | | |
| | | | 6282354 | 17-07-2018 | | | | | |
| | | | 6315034 | 18-07-2018 | | | | | |
| | | | 6439247 | 24-07-2018 | | | | | |
| | | | 6559465 | 30-07-2018 | | | | | |
| | | | 6793846 | 09-08-2018 | | | | | |

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|---|-----------|------------|---------|------------|---------|------------|--------|-----------|----------|
| | | | 6825556 | 10-08-2018 | | | | | |
| | | | 6908799 | 14-08-2018 | | | | | |
| | | | 7085917 | 23-08-2018 | | | | | |
| | | | 7167334 | 27-08-2018 | | | | | |
| | | | 7736618 | 21-09-2018 | | | | | |
| | | | 7745321 | 22-09-2018 | | | | | |
| | | | 7814005 | 25-09-2018 | | | | | |
| | | | 7959650 | 01-10-2018 | | | | | |
| | | | 8033115 | 04-10-2018 | | | | | |
| | | | 8075649 | 06-10-2018 | | | | | |
| | | | 8140790 | 09-10-2018 | | | | | |
| | | | 8185851 | 11-10-2018 | | | | | |
| | | | 8312542 | 17-10-2018 | | | | | |
| | | | 8398123 | 22-10-2018 | | | | | |
| | | | 8406353 | 23-10-2018 | | | | | |
| | | | 8421803 | 23-10-2018 | | | | | |
| | | | 8559195 | 29-10-2018 | | | | | |
| | | | 8636430 | 31-10-2018 | | | | | |
| | | | 8754649 | 05-11-2018 | | | | | |
| | | | 8756234 | 05-11-2018 | | | | | |
| 7 | 810143830 | 12-11-2018 | 8986809 | 19-11-2018 | 9054654 | 29-11-2018 | INSAU6 | 42,22,711 | 8,22,795 |
| | | | 9744139 | 19-12-2018 | 9061114 | 30-11-2018 | INSBI6 | 41,36,184 | 8,05,935 |
| | | | 9925857 | 27-12-2018 | 9061152 | 30-11-2018 | INSBI6 | 19,72,453 | 3,84,333 |
| | | | 9031991 | 21-11-2018 | 9064831 | 30-11-2018 | INSBI6 | 40,96,872 | 7,98,276 |
| | | | 9340546 | 04-12-2018 | 9230268 | 12-12-2018 | INSBI6 | 35,64,540 | 6,94,551 |
| | | | | | 9297091 | 17-12-2018 | INSBI6 | 19,88,910 | 3,87,539 |
| | | | | | 9297099 | 17-12-2018 | INSAU6 | 40,06,879 | 7,80,740 |
| | | | | | 9308338 | 18-12-2018 | INSAU6 | 9,05,924 | 1,76,519 |
| 8 | 810143831 | 12-11-2018 | 8977808 | 19-11-2018 | 9230268 | 12-12-2018 | INSBI6 | 4,64,940 | 90,594 |
| | | | 9082171 | 23-11-2018 | 9524885 | 04-01-2019 | INSBI6 | 1,36,781 | 26,652 |
| | | | 9108389 | 24-11-2018 | | | | | |
| | | | 9197098 | 28-11-2018 | | | | | |
| | | | 9205052 | 28-11-2018 | | | | | |
| | | | 9373057 | 05-12-2018 | | | | | |
| | | | 9538873 | 11-12-2018 | | | | | |
| | | | 9557044 | 11-12-2018 | | | | | |
| | | | 9585908 | 12-12-2018 | | | | | |
| | | | 9693182 | 17-12-2018 | | | | | |
| | | | 9740653 | 19-12-2018 | | | | | |
| | | | 9855088 | 24-12-2018 | | | | | |
| | | | 9900892 | 26-12-2018 | | | | | |
| | | | 9922307 | 27-12-2018 | | | | | |
| | | | 9955337 | 28-12-2018 | | | | | |
| | | | 1020963 | 31-12-2018 | | | | | |
| | | | 1049866 | 02-01-2019 | | | | | |

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|--------------------|--|--|---------|------------|--|--|--|---------------------|--------------------|
| | | | 1055536 | 02-01-2019 | | | | | |
| GRAND TOTAL | | | | | | | | 23,17,50,925 | 4,51,12,944 |

2.4.1 Details of Assessable Value and IGST Duty exemption availed for the goods imported under respective Bills of Entry against respective Advance Authorization are as tabulated below:

Table-3

| CUSTOM HOUSE CODE | LICENCE NUMBER | LICENCE DATE | BE NO. | BE DATE | ITEM WISE ASS VALUE | IGST Benefit Rs. |
|-------------------|----------------|--------------|---------|------------|---------------------|------------------|
| INSB16 | 810141191 | 17-10-2017 | 4473397 | 19-12-2017 | 19,46,304 | 3,77,398 |
| INSB16 | 810141191 | 17-10-2017 | 4694627 | 05-01-2018 | 20,89,024 | 4,05,072 |
| INSB16 | 810141191 | 17-10-2017 | 4695459 | 05-01-2018 | 40,62,533 | 7,87,745 |
| INSB16 | 810141191 | 17-10-2017 | 4880957 | 20-01-2018 | 8,25,183 | 1,60,007 |
| INSB16 | 810141191 | 17-10-2017 | 4900585 | 22-01-2018 | 16,87,392 | 3,27,194 |
| INSB16 | 810141191 | 17-10-2017 | 5239664 | 16-02-2018 | 22,16,660 | 4,31,916 |
| INSB16 | 810141191 | 17-10-2017 | 5306485 | 21-02-2018 | 11,89,555 | 2,31,785 |
| INSB16 | 810141191 | 17-10-2017 | 5382988 | 27-02-2018 | 5,59,331 | 1,08,986 |
| INSB16 | 810141347 | 22-11-2017 | 4695459 | 05-01-2018 | 27,08,355 | 5,25,164 |
| INSB16 | 810141347 | 22-11-2017 | 4900585 | 22-01-2018 | 12,05,280 | 2,33,710 |
| INSB16 | 810141347 | 22-11-2017 | 5030491 | 01-02-2018 | 55,74,096 | 10,86,113 |
| INSB16 | 810141347 | 22-11-2017 | 5131141 | 08-02-2018 | 41,61,218 | 8,10,813 |
| INSB16 | 810141347 | 22-11-2017 | 5201631 | 14-02-2018 | 14,09,003 | 2,74,544 |
| INSB16 | 810141347 | 22-11-2017 | 5298140 | 21-02-2018 | 22,14,952 | 4,31,583 |
| INSB16 | 810141347 | 22-11-2017 | 5306485 | 21-02-2018 | 27,13,019 | 5,28,632 |
| INSB16 | 810141347 | 22-11-2017 | 5382988 | 27-02-2018 | 16,55,621 | 3,22,598 |
| INSB16 | 810141347 | 22-11-2017 | 5489361 | 07-03-2018 | 22,59,281 | 4,40,221 |
| INSB16 | 810141347 | 22-11-2017 | 5643854 | 19-03-2018 | 29,37,312 | 5,72,335 |
| INSB16 | 810141347 | 22-11-2017 | 5804112 | 31-03-2018 | 30,32,064 | 5,90,798 |
| INSB16 | 810141347 | 22-11-2017 | 5915123 | 09-04-2018 | 20,15,222 | 3,92,666 |
| INSB16 | 810141347 | 22-11-2017 | 6310004 | 09-05-2018 | 12,31,200 | 2,39,899 |
| INSB16 | 810141563 | 20-12-2017 | 5582268 | 14-03-2018 | 14,21,481 | 2,76,976 |
| INSB16 | 810141563 | 20-12-2017 | 5643809 | 19-03-2018 | 19,96,731 | 3,89,063 |
| INSB16 | 810141563 | 20-12-2017 | 5881540 | 06-04-2018 | 30,36,672 | 5,91,695 |
| INSB16 | 810141563 | 20-12-2017 | 5885187 | 06-04-2018 | 55,90,118 | 10,89,234 |
| INSB16 | 810141563 | 20-12-2017 | 5915123 | 09-04-2018 | 2,51,903 | 49,083 |
| INSB16 | 810141563 | 20-12-2017 | 5944241 | 11-04-2018 | 22,67,125 | 4,41,749 |
| INSB16 | 810141563 | 20-12-2017 | 6048652 | 19-04-2018 | 20,55,092 | 4,00,435 |
| INSB16 | 810141563 | 20-12-2017 | 6049084 | 19-04-2018 | 20,06,297 | 3,90,927 |
| INSB16 | 810141563 | 20-12-2017 | 6064942 | 20-04-2018 | 20,69,534 | 4,03,249 |
| INSB16 | 810141563 | 20-12-2017 | 6174100 | 28-04-2018 | 17,09,271 | 3,33,051 |
| INSB16 | 810141563 | 20-12-2017 | 6310004 | 09-05-2018 | 18,79,200 | 3,66,162 |
| INSB16 | 810141563 | 20-12-2017 | 6535545 | 25-05-2018 | 10,684 | 2,082 |
| INSB16 | 810141563 | 20-12-2017 | 6647524 | 04-06-2018 | 20,06,297 | 3,90,927 |
| INSB16 | 810141563 | 20-12-2017 | 6789350 | 13-06-2018 | 2,82,935 | 55,130 |
| INSB16 | 810141563 | 20-12-2017 | 7198649 | 13-07-2018 | 28,63,392 | 5,57,932 |
| INSB16 | 810142159 | 16-03-2018 | 6517810 | 24-05-2018 | 58,58,591 | 11,41,547 |
| INSB16 | 810142159 | 16-03-2018 | 6535545 | 25-05-2018 | 18,80,324 | 3,66,381 |
| INSB16 | 810142159 | 16-03-2018 | 6761899 | 12-06-2018 | 22,83,435 | 4,44,927 |
| INSB16 | 810142159 | 16-03-2018 | 6789350 | 13-06-2018 | 11,55,316 | 2,25,113 |
| INSB16 | 810142159 | 16-03-2018 | 7198649 | 13-07-2018 | 2,86,339 | 55,793 |
| INSB16 | 810142159 | 16-03-2018 | 7215794 | 14-07-2018 | 2,71,830 | 52,966 |
| INSB16 | 810142159 | 16-03-2018 | 7333377 | 23-07-2018 | 32,40,576 | 6,31,426 |
| INSB16 | 810142159 | 16-03-2018 | 8444457 | 13-10-2018 | 5,74,420 | 1,11,926 |
| INSB16 | 810142530 | 08-05-2018 | 6535545 | 25-05-2018 | 2,24,357 | 43,716 |
| INSB16 | 810142530 | 08-05-2018 | 6710608 | 08-06-2018 | 38,10,456 | 7,42,467 |

| | | | | | | |
|--|-----------|------------|---------|------------|---------------------|--------------------|
| INSB16 | 810142530 | 08-05-2018 | 6755991 | 11-06-2018 | 71,80,226 | 13,99,067 |
| INSB16 | 810142530 | 08-05-2018 | 6867504 | 19-06-2018 | 38,10,456 | 7,42,467 |
| INSB16 | 810142530 | 08-05-2018 | 6891829 | 21-06-2018 | 31,88,865 | 6,21,350 |
| INSB16 | 810142530 | 08-05-2018 | 7125848 | 07-07-2018 | 21,30,468 | 4,15,122 |
| INSB16 | 810142530 | 08-05-2018 | 7642073 | 14-08-2018 | 41,67,465 | 8,12,031 |
| INSB16 | 810142530 | 08-05-2018 | 7714209 | 20-08-2018 | 35,32,248 | 6,88,258 |
| INSB16 | 810142530 | 08-05-2018 | 8152202 | 22-09-2018 | 22,42,598 | 4,36,970 |
| INSB16 | 810142530 | 08-05-2018 | 8363174 | 08-10-2018 | 21,99,656 | 4,28,603 |
| INSB16 | 810142530 | 08-05-2018 | 8444457 | 13-10-2018 | 3,25,256 | 63,376 |
| INSB16 | 810142530 | 08-05-2018 | 8459609 | 15-10-2018 | 23,77,213 | 4,63,200 |
| INSB16 | 810142530 | 08-05-2018 | 8577613 | 23-10-2018 | 21,99,656 | 4,28,603 |
| INSB16 | 810142530 | 08-05-2018 | 8717371 | 02-11-2018 | 1,72,557 | 33,623 |
| INSB16 | 810142530 | 08-05-2018 | 8717375 | 02-11-2018 | 21,99,656 | 4,28,603 |
| INSB16 | 810142530 | 08-05-2018 | 8959366 | 22-11-2018 | 23,65,234 | 4,60,866 |
| INSB16 | 810142530 | 08-05-2018 | 9524885 | 04-01-2019 | 91,188 | 17,768 |
| INSB16 | 810142531 | 08-05-2018 | 7714209 | 20-08-2018 | 4,60,728 | 89,773 |
| INSB16 | 810142531 | 08-05-2018 | 7832264 | 29-08-2018 | 33,78,672 | 6,58,334 |
| INSB16 | 810142531 | 08-05-2018 | 8591977 | 24-10-2018 | 43,75,915 | 8,52,648 |
| INSB16 | 810142531 | 08-05-2018 | 9061152 | 30-11-2018 | 2,72,063 | 53,011 |
| INSB16 | 810142531 | 08-05-2018 | 9485244 | 01-01-2019 | 24,28,421 | 4,73,178 |
| INSB16 | 810142531 | 08-05-2018 | 9524885 | 04-01-2019 | 20,28,922 | 3,95,335 |
| INSB16 | 810143830 | 12-11-2018 | 9061114 | 30-11-2018 | 41,36,184 | 8,05,935 |
| INSB16 | 810143830 | 12-11-2018 | 9061152 | 30-11-2018 | 19,72,453 | 3,84,333 |
| INSB16 | 810143830 | 12-11-2018 | 9064831 | 30-11-2018 | 40,96,872 | 7,98,276 |
| INSB16 | 810143830 | 12-11-2018 | 9230268 | 12-12-2018 | 35,64,540 | 6,94,551 |
| INSB16 | 810143830 | 12-11-2018 | 9297091 | 17-12-2018 | 19,88,910 | 3,87,539 |
| INSB16 | 810143831 | 12-11-2018 | 9230268 | 12-12-2018 | 4,64,940 | 90,594 |
| INSB16 | 810143831 | 12-11-2018 | 9524885 | 04-01-2019 | 1,36,781 | 26,652 |
| Total (A) ICD Khodiyar (INSB16) :-- | | | | | 16,42,13,116 | 3,19,83,202 |
| INSAU6 | 810141563 | 20-12-2017 | 9263163 | 14-12-2018 | 41,04,100 | 7,99,684 |
| INSAU6 | 810141563 | 20-12-2017 | 9263216 | 14-12-2018 | 82,08,200 | 15,99,368 |
| INSAU6 | 810142530 | 08-05-2018 | 8298171 | 03-10-2018 | 69,04,923 | 13,45,424 |
| INSAU6 | 810142530 | 08-05-2018 | 8657509 | 29-10-2018 | 1,71,633 | 33,443 |
| INSAU6 | 810142530 | 08-05-2018 | 9150228 | 06-12-2018 | 33,75,542 | 6,57,724 |
| INSAU6 | 810142530 | 08-05-2018 | 9308338 | 18-12-2018 | 12,94,178 | 2,52,170 |
| INSAU6 | 810142530 | 08-05-2018 | 9342355 | 20-12-2018 | 33,20,016 | 6,46,905 |
| INSAU6 | 810142530 | 08-05-2018 | 9406839 | 26-12-2018 | 2,78,655 | 54,296 |
| INSAU6 | 810142531 | 08-05-2018 | 8657509 | 29-10-2018 | 42,05,009 | 8,19,346 |
| INSAU6 | 810142531 | 08-05-2018 | 9406839 | 26-12-2018 | 27,86,550 | 5,42,959 |
| INSAU6 | 810143830 | 12-11-2018 | 9054654 | 29-11-2018 | 42,22,711 | 8,22,795 |
| INSAU6 | 810143830 | 12-11-2018 | 9297099 | 17-12-2018 | 40,06,879 | 7,80,740 |
| INSAU6 | 810143830 | 12-11-2018 | 9308338 | 18-12-2018 | 9,05,924 | 1,76,519 |
| Total (B) ICD Sanand (INSAU6) :-- | | | | | 4,37,84,319 | 85,31,373 |
| INPAV1 | 810141191 | 17-10-2017 | 7714712 | 20-08-2018 | 28,90,215 | 5,63,158 |
| INPAV1 | 810141191 | 17-10-2017 | 7794390 | 27-08-2018 | 26,66,250 | 5,19,519 |
| INPAV1 | 810141191 | 17-10-2017 | 8009231 | 11-09-2018 | 27,20,625 | 5,30,114 |
| INPAV1 | 810141563 | 20-12-2017 | 9188923 | 10-12-2018 | 25,83,000 | 5,03,298 |
| INPAV1 | 810141563 | 20-12-2017 | 9188924 | 10-12-2018 | 25,83,000 | 5,03,298 |
| INPAV1 | 810141563 | 20-12-2017 | 9323555 | 19-12-2018 | 4,56,330 | 88,916 |
| INPAV1 | 810142159 | 16-03-2018 | 9311188 | 18-12-2018 | 25,83,000 | 5,03,298 |
| INPAV1 | 810142159 | 16-03-2018 | 9323555 | 19-12-2018 | 21,26,670 | 4,14,382 |
| INPAV1 | 810142159 | 16-03-2018 | 9409781 | 26-12-2018 | 12,00,360 | 2,33,890 |
| INPAV1 | 810142159 | 16-03-2018 | 9409813 | 26-12-2018 | 25,72,200 | 5,01,193 |
| INPAV1 | 810142530 | 08-05-2018 | 9409781 | 26-12-2018 | 13,71,840 | 2,67,303 |
| Total (C) Pipavav Sea Port (INPAV1) :-- | | | | | 2,37,53,490 | 46,28,369 |

2.5 As evident from Table-1 and Table -2 above, the Importer has violated such pre-import condition, leading to non-payment of IGST in 77 (Seventy Seven) Bills of Entry under cover of which imports were made involving IGST amount of **Rs. 4,51,42,944/- against the 08 (Eight) Advance Authorizations** mentioned above. From Table-3, out of these **77 Bills of Entry, 58 (Fifty Eight) Bills of Entry pertain to ICD Khodiyar, Ahmedabad involving IGST amount of Rs. 3,19,83,202/-; while 10 (Ten) Bills of Entry pertain to Sanand Port involving IGST amount of Rs. 85,31,373/-, 09 (Nine) Bill of Entry pertains to Pipavav Sea Port involving IGST amount of Rs.46,28,369/-.**

3. Following provisions of law are relevant to the Show Cause Notice.

- a) Para 4.03 of the Foreign Trade Policy (2015-20);
- b) Para 4.05 of the Foreign Trade Policy (2015-20);
- c) Para 4.13 of the Foreign Trade Policy (2015-20);
- d) Para 4.14 of the Foreign Trade Policy (2015-20);
- e) 9.20 of the Foreign Trade Policy (2015-20);
- f) Para 4.27 of the Hand Book of Procedures (2015-20);
- g) Section 2(e) of the Foreign Trade (DR) Act, 1992;
- h) DGFT Notification No. 33/2015-20 dated 13.10.2017;
- i) DGFT Notification No. 31/2013 (RE-2013) dated 01.08.2013;
- j) DGFT Circular No. 3/2013 (RE-2013) dated, 02.08.2013;
- k) Notification No 18/2015-Customs dated 01.04.2015;
- l) Notification No 79/2017-Customs dated 13.10.2017;
- m) Section 17 of the Customs Act, 1962;
- n) Section 46 (4) of the Customs Act, 1962;
- o) Section 111(o) of the Customs Act, 1962;
- p) Section 112(a) of the Customs Act;
- q) Section 124 of the Customs Act, 1962;

a) Para 4.03 of the Foreign Trade Policy-2015-20 inter-alia states that:-

An Advance Authorisation is issued to allow duty free import of inputs, which are physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, energy, catalysts which are consumed/ utilised to obtain export product, may also be allowed DGFT, by means of Public Notice, may exclude any product(s) from purview of Advance Authorisation.

b) Para 4.05 of the Foreign Trade Policy-2015-20 inter-alia states that: -

4.05 Eligible Applicant / Export / Supply

- (a) Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer.
- (b) Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process (as indicated in paragraph 4.18 of Handbook of Procedures) shall be issued to manufacturer exporter only.
- (c) Advance Authorisation shall be issued for:
 - (i) Physical export (including export to SEZ);
 - (ii) Intermediate supply; and/or
 - (iii) Supply of goods to the categories mentioned in paragraph 7.02 (b), (c), (e), (f), (g) and (h) of this FTP. (iv) Supply of 'stores' on board of foreign going vessel / aircraft, subject to condition that there is specific Standard Input Output Norms in respect of item supplied.

c) Para 4.13 Foreign Trade Policy-2015-20 inter-alia states that :-

4.13 Pre-import condition in certain cases-

- (i) DGFT may, by Notification, impose pre-import condition for inputs under this Chapter.
- (ii) Import items subject to pre-import condition are listed in Appendix 4-J or will be as indicated in Standard Input Output Norms (SION).
- (iii) Import of drugs from unregistered sources shall have pre-import condition.

d) Para 4.14 Foreign Trade Policy-2015-20 inter-alia states that: -

4.14 Details of Duties exempted-

Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable. Import against supplies covered under paragraph 7.02 (c), (d) and (g) of FTP will not be exempted from payment of applicable Anti-dumping Duty, Countervailing Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, if any. However, imports under Advance Authorisation for physical exports are also exempt from whole of the integrated tax and Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be provided in the notification issued by Department of Revenue, and such imports shall be subject to pre-import condition. Imports against Advance Authorisations for physical exports are exempted from Integrated Tax and Compensation Cess upto 31.03.2018 only.

e) Para 9.20 Foreign Trade Policy-2015-20 inter-alia states that: -

9.20

“Export” is as defined in FT (D&R) Act, 1992, as amended from time to time.

f) 4.27 Exports/Supplies in anticipation or subsequent to issue of an Authorisation.

(a) Exports / supplies made from the date of EDI generated file number for an Advance Authorisation, may be accepted towards discharge of EO. Shipping / Supply document(s) should be endorsed with File Number or Authorisation Number to establish co-relation of exports / supplies with Authorisation issued. Export/supply document(s) should also contain details of exempted materials/inputs consumed.

(b) If application is approved, authorisation shall be issued based on input / output norms in force on the date of receipt of application by Regional Authority. If in the intervening period (i.e. from date of filing of application and date of issue of authorisation) the norms get changed, the authorization will be issued in proportion to provisional exports / supplies already made till any amendment in norms is notified. For remaining exports, Policy / Procedures in force on date of issue of authorisation shall be applicable.

(c) The export of SCOMET items shall not be permitted against an Authorisation until and unless the requisite SCOMET Authorisation is obtained by the applicant.

(d) Exports/ supplies made in anticipation of authorisation shall not be eligible for inputs with pre-import condition.

g) Section 2(e) of the Foreign Trade (DR) Act, 1992 states that: -

(e) “import” and ‘export’ means respectively bringing into, or taking out of, India any goods by land, sea or air;

h) Notification No.33/2015-2020 New Delhi, Dated: 13 October, 2017

Subject: Amendments in Foreign Trade Policy-2015-20 .reg

S.O. (E): In exercise of powers conferred by Section 5 of FT (D&R) Act, 1992, read with paragraph 1.02 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby makes following amendments in Foreign Trade Policy 2015-20. 1. Para 4.14 is amended to read as under: “4.14: Details of Duties exempted Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable. Import against supplies covered under paragraph 7.02 (c), (d) and (g) of FTP will not be exempted from payment of applicable Anti-dumping Duty, Countervailing Duty, Safeguard Duty and Transition

Product Specific Safeguard Duty, if any. However, imports under Advance Authorization for physical exports are also exempt from whole of the integrated tax and Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be provided in the notification issued by Department of Revenue, and such imports shall be subject to pre-import condition."

i) **Notification No. 31 (RE-2013)/ 2009-2014, dated 1st Aug., 2013**

In exercise of powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No.22 of 1992) read with paragraph 1.2 of the Foreign Trade Policy, 2009-2014, the Central Government hereby notifies the following amendments in the Foreign Trade Policy (FTP) 2009-2014.

2. After para 4.1.14 of FTP a new para 4.1.15 is inserted.

"4.1.15 Wherever SION permits use of either (a) a generic input or (b) alternative inputs, unless the name of the specific input(s) [which has (have) been used in manufacturing the export product] gets indicated / endorsed in the relevant shipping bill and these inputs, so endorsed, match the description in the relevant bill of entry, the concerned Authorisation will not be redeemed. In other words, the name/description of the input used (or to be used) in the Authorisation must match exactly the name/description endorsed in the shipping bill. At the time of discharge of export obligation (EODC) or at the time of redemption, RA shall allow only those inputs which have been specifically indicated in the shipping bill."

3. Para 4.2.3 of FTP is being amended by adding the phrase "4.1.14 and 4.1.15" in place of "and 4.1.14". The amended para would be as under:
"Provisions of paragraphs 4.1.11, 4.1.12, 4.1.13, 4.1.14 and 4.1.15 of FTP shall be applicable for DFIA holder."

4. Effect of this Notification: - Inputs actually used in manufacture of the export product should only be imported under the authorisation. Similarly inputs actually imported must be used in the export product. This has to be established in respect of every Advance Authorisation / DFIA.

j) **Policy Circular No.03 (RE-2013)/2009-2014 Dated 2nd August, 2013**

Subject: Withdrawal of Policy Circular No.30 dated 10.10.2005 on Importability of Alternative inputs allowed as per SION.

Notification No.31 has been issued on 1st August, 2013 which stipulates "inputs actually used in manufacture of the export product should only be imported under the authorisation. Similarly inputs actually imported must be used in the export product." Accordingly, the earlier Policy Circular No.30 dated 10.10.2005 becomes infructuous and hence stands withdrawn.

2. This is to reiterate that duty free import of inputs under Duty Exemption/Remission Schemes under Chapter-4 of FTP shall be guided by the Notification No. 31 issued on 1.8.2013. Hence any clarification or notification or communication issued by this Directorate on this matter which may be repugnant to this Notification shall be deemed to have been superseded to the extent of such repugnancy.

k) **Notification No.-18/2015 - Customs, Dated: 01-04-2015-**

G.S.R. 254 (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 materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of

the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under Sections 3, 8B, 8C and 9A of the said Customs Tariff Act, subject to the following conditions, namely :-

(i) that the said authorisation is produced before the proper officer of customs at the time of clearance for debit;

(ii) that the said authorisation bears: -

(a) the name and address of the importer and the supporting manufacturer in cases where the authorisation has been issued to a merchant exporter; and

(b) the shipping bill number(s) and date(s) and description, quantity and value of exports of the resultant product in cases where import takes place after fulfillment of export obligation; or

(c) the description and other specifications where applicable of the imported materials and the description, quantity and value of exports of the resultant product in cases where import takes place before fulfillment of export obligation;

(iii) that the materials imported correspond to the description and other specifications where applicable mentioned in the authorisation and are in terms of para 4.12 of the Foreign Trade Policy and the value and quantity thereof are within the limits specified in the said authorisation;

(iv) that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials;

(v) that in respect of imports made after the discharge of export obligation in full, if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or of CENVAT Credit under CENVAT Credit Rules, 2004 has been availed, then the importer shall, at the time of clearance of the imported materials furnish a bond to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture of dutiable goods and to submit a certificate, from the jurisdictional Central Excise officer or from a specified chartered accountant within six months from the date of clearance of the said materials, that the imported materials have been so used:

Provided that if the importer pays additional duty of customs leviable on the imported materials but for the exemption contained herein, then the imported materials may be cleared without furnishing a bond specified in this condition and the additional duty of customs so paid shall be eligible for availing CENVAT Credit under the CENVAT Credit Rules, 2004;

(vi) that in respect of imports made after the discharge of export obligation in full, and if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or of CENVAT credit under CENVAT Credit Rules, 2004 has not been availed and the importer furnishes proof to this effect to the satisfaction of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs as the case may be, then the imported materials may be cleared without furnishing a bond specified in condition (v);

(vii) that the imports and exports are undertaken through the seaports, airports or through the inland container depots or through the land customs

stations as mentioned in the Table 2 annexed to the Notification No.16/2015- Customs dated 01.04.2015 or a Special Economic Zone notified under Section 4 of the Special Economic Zones Act, 2005 (28 of 2005):

Provided that the Commissioner of Customs may, by special order or a public notice and subject to such conditions as may be specified by him, permit import and export through any other sea-port, airport, inland container depot or through a land customs station within his jurisdiction;

(viii) that the export obligation as specified in the said authorisation (both in value and quantity terms) is discharged within the period specified in the said authorisation or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorisation:

Provided that an Advance Intermediate authorisation holder shall discharge export obligation by supplying the resultant products to exporter in terms of paragraph 4.05 (c) (ii) of the Foreign Trade Policy;

(ix) that the importer produces evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, within a period of sixty days of the expiry of period allowed for fulfillment of export obligation, or within such extended period as the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow;

(x) that the said authorisation shall not be transferred and the said materials shall not be transferred or sold;

Provided that the said materials may be transferred to a job worker for processing subject to complying with the conditions specified in the relevant Central Excise notifications permitting transfer of materials for job work;

Provided further that, no such transfer for purposes of job work shall be effected to the units located in areas eligible for area based exemptions from the levy of excise duty in terms of notification Nos. 32/1999-Central Excise dated 08.07.1999, 33/1999-Central Excise dated 08.07.1999, 39/2001-Central Excise dated 31.07.2001, 56/2002- Central Excise dated 14.11.2002, 57/2002- Central Excise dated 14.11.2002, 49/2003- Central Excise dated 10.06.2003, 50/2003- Central Excise dated 10.06.2003, 56/2003- Central Excise dated 25.06.2003, 71/03- Central Excise dated 09.09.2003, 8/2004- Central Excise dated 21.01.2004 and 20/2007- Central Excise dated 25.04.2007;

(xi) that in relation to the said authorisation issued to a merchant exporter, any bond required to be executed by the importer in terms of this notification shall be executed jointly by the merchant exporter and the supporting manufacturer binding themselves jointly and severally to comply with the conditions specified in this notification.

i) **Notification No.-79/2017 - Customs, Dated: 13-10-2017-**

Central Government, on being satisfied that it is necessary in the public interest so to do, made the following further amendments in each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below, in the manner as specified in the corresponding entry in column (3) of the said Table: -

-:Table:-

| S. No. | Notification number and date | Amendments |
|--------|------------------------------|------------|
| (1) | (2) | (3) |

| | | |
|----|--|--|
| 1 | 16/2015-Customs, dated the 1st April, 2015 [vide number G.S.R. 252(E), dated the 1st April, 2015] | <p>In the said notification, - (a) in the opening paragraph, after clause (ii), the following shall be inserted, namely:- "iii) the whole of integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act: Provided that the exemption from integrated tax and the goods and services tax compensation cess shall be available up to the 31st March, 2018."; (b) in the Explanation C (II), for the words "However, the following categories of supplies, shall also be counted towards fulfilment of export obligation.", the words "However, in authorisations where exemption from integrated tax and goods and service tax compensation cess is not availed, the following categories of supplies, shall also be counted towards fulfilment of export obligation." shall be substituted.</p> |
| 2. | 18/2015-Customs, dated the 1st April, 2015 [vide number G.S.R. 254 (E), dated the 1st April, 2015] | <p>In the said notification, in the opening paragraph, - (a) for the words, brackets, figures and letters "from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A", the words, brackets, figures and letters "from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, integrated tax leviable thereon under sub-section (7) of section 3, goods and services tax compensation cess leviable thereon under sub-section (9) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A" shall be substituted;</p> <p>(b) in condition (viii), after the proviso, the following proviso shall be inserted, namely:</p> <p>"Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports only;"</p> <p>(c) after condition (xi), the following conditions shall be inserted, namely:</p> <p>(xii) that the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act shall be subject to pre-import condition;</p> <p>(xiii) that the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act shall be available up to the 31st March, 2018."</p> |

m) Section 17 (1) of the Customs Act, 1962 reads as: -

/SECTION 17. Assessment of duty. – (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation: - For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.

n) Section 46 (4) of the Customs Act, 1962 reads as: -

"The importer while presenting a Bill of Entry, shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods....."

o) Section 111 (o) of the Customs Act, 1962 inter alia stipulates-

"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;"

p) Further section 112 of the Customs Act, 1962 provides for penal action and inter-alia stipulates: -

Any person shall be liable to penalty for improper importation of goods: -
(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,

q) Section 124 of the Customs Act, 1962 inter alia stipulates:-

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person

(a) is given a notice in writing with the prior approval of the officer of customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

4. Imposition of two conditions for availing the IGST exemption in terms of Notification No. 79/2017-Cus dated 13.10.2017:-

4.1 Advance Authorizations are issued by the Directorate General of Foreign Trade (DGFT) to Importers for import of various raw materials without payment of Customs Duty and the said export promotional scheme is governed by Chapter 4 of the Foreign Trade Policy (2015-20), applicable for the subject case and corresponding Chapter 4 of the Hand Book of Procedures (2015-20). Prior to GST regime, in terms of the provisions of Para 4.14 of the prevailing Foreign Trade Policy (2015-20), the importer was allowed to enjoy benefit of exemption in respect of Basic Customs Duty as well as Additional Customs Duties, Anti-dumping Duty and Safeguard Duty, while importing such input materials under Advance Authorizations.

4.2 With the introduction of GST w.e.f. 01.07.2017, Additional Customs Duties (CVD & SAD) were subsumed into the newly introduced Integrated Goods

and Service Tax (IGST). Therefore, at the time of imports, in addition to Basic Customs Duty, IGST was made payable instead of such Additional Duties of Customs. Accordingly, Notification No.26/2017-Customs dated 29th June 2017, was issued to give effect to the changes introduced in the GST regime in respect of imports under Advance Authorization. It was a conscious decision to impose IGST at the time of import, however, at the same time, Importers were allowed to either take credit of such IGST for payments of Duty during supply to DTA, or to take refund of such IGST amount within a specified period. The corresponding changes in the Policy were brought through Trade Notice No.11/2018 dated 30.06.2017. It is pertinent to note here that while in the pre-GST regime, blanket exemption was allowed in respect of all Duties leviable when goods were being imported under Advance Authorizations, contrary to that, in post-GST regime, for imports under Advance Authorization, the Importers were required to pay such IGST at the time of imports and then they could get the credit of the same.

4.3 However, subsequently, the Government of India decided to exempt imports under Advance Authorizations from payment of IGST, by introduction of the Customs Notification No.79/2017-Cus dated 13.10.2017. However, such exemption from the payment of IGST was made conditional. The said Notification No. 79/2017-Cus dated 13.10.2017, was issued with the intent of incorporating certain changes/ amendment in the principal Customs Notifications, which were issued for extending benefit of exemption to the goods when imported under Advance Authorizations. The said Notification stated that the Central Government, on being satisfied that it is necessary in the public interest so to do, made the following further amendments in each of the Notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table, in the manner as specified in the corresponding entry in column (3) of the said Table. Only the relevant portion pertaining to the Customs Notification No.18/2015 dated 01.04.2015 is reproduced in Para 3(j) above, which may be referred to.

4.4 By issuing the subject Notification No.79/2017-Cus dated 13.10.2017, the Government of India amended inter-alia Notification No.18/2015-Cus dated 01.04.2015, and extended exemption from the payment of IGST at the time of import of input materials under Advance Authorizations. But such exemption was not absolute. As a rider, certain conditions were incorporated in the subject Notification. One being the condition that such exemption can only be extended so long as exports made under the Advance Authorization are physical exports in nature and the other being the condition that to avail such benefit one has to follow the pre-import condition.

5. The Director General of Foreign Trade, in the meanwhile, issued one Notification No.33/2015-20 dated 13.10.2017, which amended the provision of Para 4.14 of the Foreign Trade Policy (2015-20), **to incorporate the exemption from IGST, subject to compliance of the pre-import and physical export conditions**. It is pertinent to mention, that the Customs Notification No.18/2015-Cus, being an EXIM Notification, was amended by the Notification No.79/2017-Cus dated 13.10.2017, in tandem with the changed Policy by integrating the same provisions for proper implementation of the provisions of the Foreign Trade Policy (2015-20).

5.1 Therefore, conscious legislative intent is apparent in the changes made in the Foreign Trade Policy (2015-20) and corresponding changes in the relevant Customs Notifications, that to avail the benefit of exemption in respect of Integrated Goods and Service Tax (IGST), one would require to comply with the following two conditions: -

- i) All exports under the Advance Authorization should be physical exports, therefore, debarring any deemed export from being considered towards discharge of export obligation;
- ii) Pre-import condition has to be followed, which requires materials to be imported first and then be used for manufacture of the finished goods, which could in turn be exported for discharge of EO;

6. Physical Export condition in relation to the Foreign Trade Policy (2015-20) and the Notification No.79/2017-Cus dated 13.10.2017, and whether it was followed by the Importer.

6.1 The concept of physical export is derived from Para 4.05(c) and Para 9.20 of the Foreign Trade Policy (2015-20) read with section 2(e) of the Foreign Trade (DR) Act, 1992. Para 9.20 of the Policy refers to section 2(e) of the Foreign Trade (DR) Act, 1992, which defines 'Export' as follows:-

Section 2(e)"import" and 'export" means respectively bringing into, or taking out of, India any goods by land, sea or air;

Therefore, primarily, export involves taking out goods out of India, however, in Chapter 4 of the Policy, Para 4.05 defines premises under which Advance Authorizations could be issued and states that -

Para 4.05(c) Advance Authorization shall be issued for:

- (i) *Physical export (including export to SEZ);*
- (ii) *Intermediate supply; and/or*
- (iii) *Supply of goods to the categories mentioned in paragraph 7.02 (b),(c), (e), (f), (g) and (h) of this FTP.*
- (iv) *Supply of 'stores' on board of foreign going vessel/aircraft, subject to condition that there is specific Standard Input Output Norms in respect of item supplied.*

6.2 Therefore, the definition has been further extended in specific terms under Chapter 4 of the Policy and the supplies made to SEZ, despite not being an event in which goods are being taken out of India, are considered as Physical Exports. However, other three categories defined under (c) (ii), (iii) & (iv) do not qualify as physical exports. Supplies of intermediate goods are covered by Letter of Invalidation, whereas, supplies covered under Chapter 7 of the Policy are considered as Deemed Exports. None of these supplies are eligible for being considered as physical exports. Therefore, any category of supply, be it under letter of Invalidation and/or to EOU and/or under International Competitive Bidding (ICB) and/or to Mega Power Projects, other than actual exports to other country and supply to SEZ, cannot be considered as Physical Exports for the purpose of Chapter 4 of the Foreign Trade Policy (2015-20).

6.3 This implies that to avail the benefit of exemption as extended through amendment of Para 4.14 of the Policy by virtue of the DGFT Notification No. 33/2015-20 dated 13.10.2017, one has to ensure that the entire exports made under an Advance Authorization towards discharge of EO are physical exports. In case the entire exports made, do not fall in the category of physical exports, the Advance Authorization automatically sets disqualified for the purpose of exemption.

7. Pre-import condition in relation to the Foreign Trade Policy (2015-20) and the Notification No.79/2017-Cus dated 13.10.2017; Determination of whether the goods imported under the impugned Advance Authorization comply with the pre-import condition, and whether it was followed by the Importer.

7.1 Pre-import condition has been part of the Policy for long. In terms of Para 4.13 of the Policy, there are certain goods for which pre-import condition was made applicable through issuance of DGFT Notification way before the Notification dated 13.10.2017 came into being.

7.2 The definition of pre-import directly flows from Para 4.03 of the Foreign Trade Policy (2015-20)[erstwhile Para 4.1.3 of the Policy (2009-14)]. It demands that Advance Authorizations are issued for import of inputs, which are physically incorporated in the export goods allowing legitimate wastage. This Para specifically demands for such physical incorporation of imported materials in the export goods. And the same is only possible, when imports are made prior to export. Therefore, such Authorizations principally do have the pre-import condition in-built, which is required to be

followed, barring where otherwise use has been allowed in terms of Para 4.27 of the Foreign Trade Policy (2015-20)[erstwhile Para 4.12 of the Policy (2009-14)].

7.3 Advance Authorization are issued for import of Duty-free materials first, which would be used for the purpose of manufacture of export goods, which would be exported out of India or be supplied under deemed export, if allowed by the Policy or the Customs Notification. The very name Advance Authorization was coined with prefix 'Advance', which illustrates and indicates the basic purpose as aforesaid. Spirit of the scheme is further understood, from the bare fact that while time allowed for import is 12 months (conditionally extendable by another six months) from the date of issue of the Authorization, the time allowed for export is 18 months (conditionally extendable by 6 months twice) from the date of issue of the Authorization. The reason for the same was the practical fact that conversion of input materials into finished goods ready for export, takes considerable time depending upon the process of manufacture.

7.4 DGFT Notification No.31/2013 (RE-2013) dated 01.08.2013, was issued to incorporate a new Para No. 4.1.15 in the Foreign Trade Policy. The said Para is an extension of the Para 4.1.3[Para 4.03 of the Policy (2015-2000] and stipulated further condition which clarified the ambit of the aforesaid Para 4.1.3. **Inputs actually imported must be used in the export product.**

7.5 A Circular No.3/2013 (RE-2013) dated, 02.08.2013, was also issued by the Ministry of Commerce in line with the aforesaid Notification. The Circular reiterates that Duty free import of inputs under Duty Exemption/Remission Schemes under Chapter-4 of FTP shall be guided by the Notification No. 31 issued on 1.8.2013 by DGFT.

7.6 Therefore, combined reading of Para 4.03 of the Foreign Trade Policy, in force at the time of issuance of the Authorizations, and the aforesaid Notification along with the Circular as mentioned above, makes it obvious, that **benefit of exemption from payment of Customs Duty is extended to the input materials subject to strict condition, that such materials would be exclusively used in the manufacture of export goods which would be ultimately exported.** Therefore, the Importer does not have the liberty to utilize such Duty-free materials otherwise, nor do they have freedom to export goods manufactured out of something, which was not actually imported.

7.7 Therefore, such Authorizations principally do have the pre-import condition in-built, which is required to be followed, barring where otherwise use has been allowed in terms of Para 4.27 of the Foreign Trade Policy (2015-20) [erstwhile Para 4.12 of the Policy (2009-14)]. Para 4.27 of the Hand Book of Procedures for the relevant period allows exports/supplies in anticipation of an Authorization. This provision has been made as an exception to meet the requirement in case of exigencies. However, the importers/exporters have been availing the benefit of the said provision without exception and the export goods are made out of domestically or otherwise procured materials and the Duty-free imported goods are used for purposes other than the manufacture of the export goods. However, Para 4.27 (d) has barred such benefit of export in anticipation of Authorization for the inputs with pre-import condition.

7.8 Specific provision under the said Para 4.27 (d) was made, which states that-

(d) Exports/supplies made in anticipation of authorization shall not be eligible for inputs with pre-import condition.

Therefore, whenever pre-import condition is applicable in respect of the goods to be imported, the Advance Authorization holder does not have any liberty to export in anticipation of Authorization. The moment input materials are subject to pre-import condition, they become ineligible for export in anticipation of Authorization, by virtue of the said provision of Para 4.27 (d).

7.9 The pre-import condition requires the imported materials to be used for the manufacture of finished goods, which are in turn required to be exported

towards discharge of export obligation, and the same is only possible when the export happens subsequent to the commencement of imports after allowing reasonable time to manufacture finished goods out of the same. Therefore, when the law demands pre-import condition on the input materials to be imported, goods cannot be exported in anticipation of Advance Authorization. **Provisions of Para 4.27(a) &(b), i.e.export in anticipation of Authorization and the pre-import condition on the input materials are mutually exclusive and cannot go hand in hand.**

8. Advance Authorization Scheme is not just another scheme, where one is allowed to import goods Duty free, for which the sole liability of the beneficiary is to complete export obligation only by exporting goods mentioned in the Authorization. **It is not a scheme that gives carte blanche to the Importer, so far as utilization of imported materials is concerned.** Rather, barring a few exceptions covered by the Policy and the Notification, it requires such **Duty-free imported materials to be used specifically for the purpose of manufacture of export goods.** As discussed above, the scheme requires physical incorporation of the imported materials in the export goods after allowing normal wastage. Export goods are required to be manufactured out of the very materials which have been imported Duty free. **The law does not permit replenishment.** The High Court of Allahabad in the case of *Dharampur Sugar Mill* reported in 2015 (321) ELT 0565 (All.) has observed that:-

"From the records we find that the import authorization requires the physical incorporation of the imported input in export product after allowing normal wastage, reference clause 4.1.3. In the instant case, the assessee has hopelessly failed to establish the physical incorporation of the imported input in the exported sugar. The Assessing Authority and the Tribunal appears to be correct in recording a finding that the appellant has violated the provisions of Customs Act, in exporting sugar without there being any 'Export Release Order' in the facts of this case."

8.1 The Hon'ble Supreme Court in the case of *Pennar Industries* reported in TIOL-2015-(162)-SC-CUS has held that:-

"It would mean that not only the raw material imported (in respect of which exemption from duty is sought) is to be utilized in the manner mentioned, namely, for manufacture of specified products by the importer/assessee itself, this very material has to be utilized in discharge of export obligation. It, thus, becomes abundantly clear that as per this Notification, in order to avail the exemption from import Duty, it is necessary to make export of the product manufactured from that very raw material which is imported. This condition is admittedly not fulfilled by the assessee as there is no export of the goods from the raw material so utilized. Instead, export is of the product manufactured from other material, that too through third party. Therefore, in strict sense, the mandate of the said Notification has not been fulfilled by the assessee."

8.2 The High Court of Madras (Madurai Bench) in the case of M/s. Vedanta Ltd. on the issue under consideration held that:-

"pre-import simply means import of raw materials before export of the finished goods to enable the physical export and actual user condition possible and negate the revenue risk that is plausible by diverting the imported goods in the local market".

8.3 Conditions No. (v) & (vi) of the Notification No.18/2015-Cus dated 01.04.2015, prescribe the modalities to be followed for import of Duty-free goods under Advance Authorization, in cases, where export obligation is discharged in full, before the commencement of imports. This is to ensure that the Importer does not enjoy the benefit of Duty exemption on raw materials twice for the same export. It is but natural that in such a situation the Importer would have used domestically procured materials for the purpose of manufacture of goods that have been exported and on which required Duties would have been paid and credit of the same would also have been availed by the Importer. The

Importer has in this kind of situation, two options in terms of the above Notification:

8.4. The first option is elucidated in condition No.(v) of the Notification, which is as under-

"(v)that in respect of imports made after the discharge of export obligation in full, if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or of CENVAT Credit under CENVAT Credit Rules, 2004 has been availed, then the importer shall, at the time of clearance of the imported materials furnish a bond to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture of dutiable goods and to submit a certificate, from the jurisdictional Central Excise officer or from a specified chartered accountant within six months from the date of clearance of the said materials, that the imported materials have been so used:

Provided that if the importer pays additional duty of customs leviable on the imported materials but for the exemption contained herein, then the imported materials may be cleared without furnishing a bond specified in this condition and the additional duty of customs so paid shall be eligible for availing CENVAT Credit under the CENVAT Credit Rules, 2004;"

8.4.1 The second option is similarly elaborated in condition no. (vi) of the notification, as under-

"(vi)that in respect of imports made after the discharge of export obligation in full, and if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or of CENVAT credit under CENVAT Credit Rules, 2004 has not been availed and the importer furnishes proof to this effect to the satisfaction of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs as the case may be, then the imported materials may be cleared without furnishing a bond specified in condition (v);"

8.5 Thus, the purport of the above conditions in the erstwhile Notification is to ensure that if domestically procured inputs have been used for manufacture of the exported goods and the inputs are imported Duty-free after the exports, then the benefit of "zero-rating" of exports is not availed by the exporter twice.

8.6 Thus, insertion of such conditions in the Notification, is indicative of legislative intent of keeping check on possible misuse of the scheme. However, ensuring compliance of these two conditions is not easy, on the other hand, such conditions are vulnerable to be mis-used and have the inherent danger to pave way for 'rent-seeking'. Therefore, to **plug the loop-hole, and to facilitate & streamline the implementation of the export incentive scheme, in the post-GST scenario the concept of "Pre-Import" and "Physical Export" was introduced in the subject Notification**, which make the said conditions (v) & (vi) infructuous. This is also in keeping with the philosophy of GST legislation to remove as many conditional exemptions as possible and instead provide for zero-rating of exports through the option of taking credit of the IGST Duties paid on the imported inputs, at the time of processing of the said inputs.

8.7 It is the duty of an Importer seeking benefits of exemption extended by Customs Notifications issued by the Government of India/ Ministry of Finance, to comply with the conditions imposed in the Notification, which determines, whether or not one becomes eligible for the exemption. **Exemption from payment of Duty is not a matter of right, if the same comes with conditions which are required to be complied with. It is a pre-requisite that only if such conditions are followed, that one becomes eligible for such benefit. As discussed above, such conditions have been brought in with the objective of facilitating zero-rating of exports with minimal compliance and maximum facilitation.**

9. IGST benefit is available against Advance Authorizations subject to observance of pre-import condition in terms of the condition of the Para 4.14 of the Foreign Trade Policy (2015-20) and also the conditions of the newly introduced condition (xii) of Customs Notification No. 18/2015-Cus dated 01.04.2015 as added by Notification No. 79/2017-Cus dated 13.10.2017. Such pre-import condition requires goods to be imported prior to commencement of exports to ensure manufacturing of finished goods made out of the Duty-free inputs so imported. These finished goods are then to be exported under the very Advance Authorization towards discharge of export obligation. As per provision of Para 4.03 of the Foreign Trade Policy (2015-20), physical incorporation of the imported materials in the export goods is obligatory, and the same is feasible only when the imports precedes export.

9.1 The following tests enables one to determine whether the pre-import condition in respect of the Duty-free imported goods have been satisfied or not:

- i) If the importer fulfils a part or complete export obligation, in respect of an Advance Authorization, even before commencement of any import under the subject Advance Authorization, **it is implied that such imported materials have not gone into production of goods that have been exported**, by which the export obligation has been discharged. Therefore, pre-import condition is violated.
- ii) Even if the date of the first Bill of Entry under which goods have been imported under an Authorization is prior to the date of the first Shipping Bill through which exports have been made, indicating exports happened subsequent to import, but if documentary evidences establish that the consignments, so imported, were received at a later stage in the factory after the commencement of exports, then the goods exported under the Advance Authorization could not have been manufactured out of the Duty free imported goods. This aspect can be verified from the date of the Goods Receipt Note (GRN), which establishes the actual date on which materials are received in the factory. Therefore, in absence of the imported materials, it is implied that the export goods were manufactured out of raw materials, which were not imported under the subject Advance Authorization. Therefore, pre-import condition is violated.
- iii) In cases, where multiple input items are allowed to be imported under an Advance Authorization, and out of a set of import items, only a few are imported prior to commencement of export, it implies that in the production of the export goods, except for the item already imported, the importer had to utilize materials other than the Duty-free materials imported under the subject Advance Authorization. The other input materials are imported subsequently, **which do not and could not have gone into production of the finished goods exported under the said Advance Authorization**. Therefore, pre-import condition is violated.
- iv) In some cases, preliminary imports are made prior to export. Subsequently, exports are effected on a scale which is not commensurate with the imports already made. If the quantum of exports made is more than the corresponding imports made during that period, then it indicates that materials used for manufacture of the export goods were procured otherwise. Rest of the imports are made later which never go into production of the goods exported under the subject Advance Authorization. **It is then implied that the imported materials have not been utilized in entirety for manufacture of the export goods**, and therefore, pre-import condition is violated.

10. Whether the Advance Authorizations issued prior to 13.10.2017 should come under purview of investigation.

10.1 It is but natural that the Advance Authorizations which were issued prior to 13.10.2017, would not and could not contain condition written on the body of the Authorization, that one has to fulfill pre-import condition, for the bare fact that no such pre-import condition was specifically incorporated in the parent Notification No.18/2015-Cus dated 01.04.2015. The said condition was introduced by the Notification No.79/2017-Cus dated 13.10.2017, by amending the principal Customs Notification. Therefore, for the Advance Authorizations issued prior to 13.10.2017, logically there was no obligation to comply with the pre-import condition. **At the same time, there was no exemption from the IGST either during that period. Notifications are published in the public domain, and every individual affected by it is aware of what benefit it extends and in return, what conditions are required to be complied with. To avail such benefits extended by the Notification, one is duty bound to observe the formalities and/or comply with the conditions imposed in the Notification.**

10.2 While issuing the subject Notification, the Government of India instead of imposing a condition that such benefit would be made available for Advance Authorizations issued on and after the date of issuance of the Notification, kept the doors wide open for those, who obtained such Advance Authorization in the past too, subject to conditions that such Authorizations are valid for import, and pre-import and physical export conditions have also been followed in respect of those Advance Authorizations. Therefore, instead of narrowing down the benefit to the Importers, in reality, it extended benefit to many Advance Authorizations, which could have been out of ambit of the Notification, had the date of issue been made the basic criterion for determination of availment of benefit. Further, the Notification did not bring into existence any new additional restriction, rather it introduced new set of exemption, which was not available prior to issue of the said Notification. **However, as always, such exemptions were made conditional. Even the parent Notification, did not offer carte blanche to the Importers to enjoy benefit of exemption**, as it also had set of conditions, which were required to be fulfilled to avail such exemption. As such, an act of the Government is in the interest of the public at large, instead of confining such benefits for the Advance Authorizations issued after 13.10.2017, the option was left open, even for the Authorizations, which were issued prior to the issuance of the said Notification. **The Notification never demanded that the previously issued Authorizations have to be pre-import compliant, but definitely, it made it compulsory that benefit of exemption from IGST can be extended to the old Advance Authorizations too, so long, the same are pre-import compliant. The Importers did have the option to pay IGST and avail other benefit, as they were doing prior to introduction of the said Notification without following pre-import condition.** The moment they opted for IGST exemption, despite being an Advance Authorization issued prior to 13.10.2017, it was necessary for the Importer to ensure that pre-import/physical export conditions have been fully satisfied in respect of the Advance Authorization under which they intended to import availing exemption.

10.3 Therefore, it is not a matter of concern whether an Advance Authorization was issued prior to or after 13.10.2017, to ascertain whether the same is entitled for benefit of exemption from IGST, the Advance Authorization should pass the test of complying with both the pre-import and physical export conditions.

11. Whether the Advance Authorizations can be compartmentalized to make it partly compliant to pre-import/physical export and partly otherwise.

11.1 Advance Authorization Scheme has always been Advance Authorization specific. The goods to be imported/exported, quantity of goods required to be imported/exported, value of the goods to be imported/exported, numbers of items to be allowed to be imported/exported, everything is determined in respect of the Advance Authorization issued. Advance Authorization specific benefits are extended irrespective of the fact whether the Importer chooses to import the whole materials at one go or in piece meal. Therefore, such benefit and/or liabilities are not Bills of Entry specific. Present or the erstwhile Policy has never had any provision for issuance of Advance Authorizations, compartmentalizing it into multiple sections, part of which may be compliant with a particular set of

conditions and another part compliant with a different set of conditions. Agreeing to the claim of considering part of the imports in compliance with pre-import condition, when it is admitted by the Importer that pre-import condition has been violated in respect of an Advance Authorization, would require the Policy to create a new provision, to accommodate such diverse set of conditions in a single Authorization. Neither the present set of Policy nor the Customs Notification has any provision to consider imports under an Advance Authorization by hypothetically bifurcating it into an Authorization, simultaneously compliant to different set of conditions. As of now, the Advance Authorizations are embedded with a particular set of conditions only. An Authorization can be issued either with pre-import condition or without it. **Law doesn't permit splitting it into two imaginary set of Authorizations, for which requirement of compliances are different.**

11.2 Allowing exemption for part compliance is not reflective in the Legislative intent. For proportional payment of Customs Duty in case of partial fulfilment of EO, specific provisions have been made in the Policy, which, in turn has been incorporated in the Customs Notification. No such provision has been made in respect of imports w.r.t Advance Authorizations with "**pre-import and physical exports**" conditions. **In absence of the same, compliance is required in respect of the Authorization as a whole.** In other words, if there are multiple shipments of import & multiple shipments of export, then so long as there are some shipments in respect of which Duty-free imports have taken place later & exports corresponding to the same have been done before, then, the pre-import condition stipulated in the IGST exemption Notification gets violated. **Once that happens, then even if there are some shipments corresponding to which imports have taken place first & exports made out of the same thereafter, the IGST exemption would not be available, as the benefits of exemption applies to the license as a whole.** Once an Advance Authorization has been defaulted, there is no provision to consider such default in proportion to the offence committed.

11.3 Para 4.49 of the Hand Book of Procedures (2015-20), Volume-I, demands that if export obligation is not fulfilled both in terms of quantity and value, the Authorization holder shall, for the regularization, **pay to Customs Authorities, Customs Duty on unutilized value of imported/ indigenously procured material along with interest** as notified; which implies that the Authorization holder is legally duty bound to pay the proportionate amount of Customs Duty corresponding to the **unfulfilled export obligation**. Customs Notification too, incorporates the same provision.

11.4 Para 5.14 (c) of the Hand Book of Procedures, Volume-I, (2015-20) in respect of EPCG Scheme stipulates that where export obligation of any particular block of years is not fulfilled in terms of the above proportions, except in such cases where the export obligation prescribed for a particular Block of years is extended by the Regional Authority, such Authorization holder shall, within 3 months from the expiry of the Block of years, pay as Duties of Customs, an amount that is proportionate to the unfulfilled portion of the export obligation vis-a-vis the total export obligation. In addition to the Customs Duty calculated, interest on the same is payable. Customs Notification too, incorporates the same provision.

11.5 Thus, in both the cases, Advance Authorization under Chapter 4 & EPCG under Chapter 5 of the Hand Book of Procedure 1 (HBPv1), the statutory provisions have been made for payment of Duty in proportion to the unfulfilled EO. This made room for part compliance and has offered for remedial measures. The same provisions have been duly incorporated in the corresponding Customs Notifications.

11.6 Contrary to above provisions, in the case of imports under Advance Authorisation with pre-import and physical export conditions for the purposes of availing IGST exemptions, **both the Policy as well as the Customs Notifications are silent on splitting of an Advance Authorisation.** This clearly indicates that the legislative intent is totally different in so far as exemption from IGST is concerned. It has not come with a rider allowing part compliance.

Therefore, once vitiated, the IGST exemption would not be applicable on entire imports made under the Authorisation.

12. Violations in respect of the Foreign Trade Policy (2015-20) and the condition of the Notification No.79/2017-Cus dated 13.10.2017 in respect of the imports made by the Importer:-

12.1 Customs Notification No.79/2017-Cus dated 13.10.2017, was issued extending benefit of exemption of IGST (Integrated Goods & Service Tax), on the input raw materials, when imported under Advance Authorizations. The original Customs Notification No.18/2015-Cus dated 01.04.2015, that governs imports under Advance Authorizations, has been suitably amended to incorporate such additional benefit to the Importers, by introduction of the said Notification. It was of course specifically mentioned in the said Notification that “the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of Section 3 of the **said Customs Tariff Act shall be subject to pre-import condition;**” therefore, for the purpose of availing the benefit of exemption from payment of IGST, one is required to comply with the Pre-import condition. Pre-import condition demands that the entire materials imported under Advance Authorizations should be utilized exclusively for the purpose of manufacture of finished goods, which would be exported out of India. **Therefore, if the goods are exported before commencement of import or even after commencement of exports, by manufacturing such materials out of raw materials which were not imported under the respective Advance Authorization, the Pre-import condition is violated.**

12.2 DGFT Notification No.33/2015-20 dated 13.10.2017 amended the Para 4.14 of the Foreign Trade Policy (2015-20). It has been clearly stated in the said Para 4.14 of the Policy that-

*“Imports under Advance Authorisation for physical exports are also exempt from whole of the integrated tax and Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be provided in the notification issued by Department of Revenue, **and such imports shall be subject to pre-import condition.**”*

Basically, the said Notification brought the same changes in the Policy, which have been incorporated in the Customs Notification by the aforementioned amendment.

12.3 For the purpose of availing the benefit of exemption from payment of IGST in terms of Para 4.14 of the Foreign Trade Policy (2015-20) and the corresponding Customs Notification No.79/2017-Cus dated 13.10.2017, it is obligatory to comply with the Pre-import as well as physical export conditions. Therefore, if for reasons as elaborated in earlier paras, the Duty-free materials are not subjected to the process of manufacture of finished goods, which are in turn exported under the subject Advance Authorization, condition of pre-import gets violated.

12.4 Combined provisions of the Foreign Trade Policy and the subject Customs Notifications, clearly mandate, only imports under pre-import condition would be allowed with the benefit of such exemption subject to physical exports. **Therefore, no such exemption can be availed, in respect of the Advance Authorizations, against which exports have already been made before commencement of import or where the goods are supplied under deemed exports.** The Importer failed to comply with the aforementioned conditions.

13. Pre-import has to be put in respect of input, which should find place in paragraph 4.13 of the Foreign Trade Policy, which is not so in the present case;

13.1 Para 4.13 (i) states that:-

“DGFT may, by Notification, impose pre-import condition for inputs under this Chapter.”

The said Para clearly left open, the scope of imposing pre-import condition on any goods which could have been covered by the said Chapter 4 of the Policy. Therefore, imposing such condition across board for all goods imported under Advance Authorization was well within the competence and authority of the Policy makers. The only condition was to issue a Notification before imposition of such pre-import condition. In the present case, DGFT has issued the Notification No.33/2015-20, which fulfills the requirement of the said provision of law.

13.2 Para 4.13 of the Foreign Trade Policy states that to impose pre-import condition, the Directorate General of Foreign Trade is required to issue Notification for that purpose. The DGFT has followed the said principle and accordingly issued Notification No.33/2015-20 dated 13.10.2017. **The said Notification is general in nature and does not exclude any goods from the purview of the same.** Only condition that is imposed that for one and all goods, is that pre-import condition has to be followed in case the Importer wants to avail the benefit of IGST exemption. In absence of any specific negative list containing specific mention of set of goods, which may not be covered by the said provision, it has been ensured that all goods are covered by the said Notification, provided that the Importer intends to avail exemption of IGST. **It is a common practice and understanding that in case of general provision, the same is applicable to one and all except those covered by a specific clause in the form of negative list. It is neither practicable nor possible to specify each and every single item on earth for the purpose. In absence of any such negative list offered by the said Notification, such pre-import condition becomes applicable for all goods to be imported.**

13.3 Therefore, the question of specific mention of a particular set of items does not arise. It is impracticable and impossible to issue a Notification mentioning all possible goods, which could be imported under Advance Authorization, to bring them within the ambit of pre-import condition. **Much simpler and conventional way to cover goods across board is to issue Notification in general, without any negative list.** The DGFT authority has done the same, and issued the subject Notification No. 33/2015-20 dated 13.10.2017, which without any shadow of doubt covers all goods including the one being imported by the Noticee. **Therefore, to mis-interpret the scope of Para 4.13 of the Foreign Trade Policy, and to make an attempt to confine the scope of the said Para to infer that the goods imported are not covered by the said Para is not in consonance with the Policy in vogue.**

13.4 Interpretation that the reference to “inputs with pre-import condition” in the Foreign Trade Policy and Hand Book of Procedures should be construed to mean only those inputs which have been notified under Appendix-4J also appears to be distorted, misleading and contrary to the spirit of the Policy. Para 4.13 states that “DGFT may, by Notification, impose pre-import condition for inputs”. The term Inputs has been used in general without confining its’ scope to the set of limited items covered by Appendix-4J. As discussed below, **the purpose of Appendix-4J is to specify export obligation period of a few inputs, for which pre-import condition has also been imposed.** But that does not mean, the item has to be specified in Appendix-4J, for being considered as inputs having pre-import condition imposed. The basic requirement of the Para is to issue a Notification under Foreign Trade Policy, declaring goods on which such pre-import condition is imposed. Such requirement was fulfilled by the Policy makers and DGFT Notification No. 33/2015-20 dated 13.10.2017, was issued accordingly. The Notification, by not incorporating any negative list or exclusion clause, made it clear that any inputs imported under Advance Authorization, would require to follow pre-import condition in case the Importer wants to avail benefit of IGST exemption. **Appendix-4J has nothing to do with it.**

13.5 Appendix 4J issued in tandem with the provision of Para 4.22 of the Foreign Trade Policy during the material period (presently under Para 4.42 of the Hand Book of Procedures) provides for export obligation period in respect of various goods allowed to be imported. While, Para 4.22 is the general provision, that specifies 18 months as the export obligation period in general, the said Para, also provides that such export obligation period would be different for a set of

goods as mentioned in Appendix-4J. Therefore, Appendix-4J has been placed in the Policy as a part of Para 4.22 of the Policy and not as part of Para 4.13. Secondly, Appendix-4J is basically a negative list for the purpose of Para 4.22, which specifies a set of goods for which export obligation period is different from the general provision of Para 4.22. In addition to that in respect of those items additional condition has also been imposed that pre-import condition has to be followed.

13.6 From the heading of the said Appendix-4J, which states that "**Export Obligation Period for Specified Inputs.....**" it clearly refers to Para 4.22 of the Foreign Trade Policy/Para 4.42 of the Hand Book of Procedures, it becomes clear that the purpose of the same is to define EO period of specified goods. Simply, because Appendix 4J demands for compliance of pre-import condition, does not mean that the same becomes the list meant for goods for which pre-import condition is applicable. Therefore, to say that the goods imported by the Importer are not covered by the Appendix 4J, and therefore, are beyond the purview of the subject Notification is incorrect and baseless.

14. Violations of the provisions of the Customs Act, 1962:-

14.1 In terms of Section 46 of the Customs Act, 1962, while presenting the Bills of Entry before the Customs Authority for clearance of the imported goods, it was the duty of the Importer to declare whether or not they complied with the conditions of pre-import and/or physical export in respect of the Advance Authorizations under which imports were being made availing benefit of IGST exemption. The law demands true facts to be declared by the Importer. It was the duty of the Importer to pronounce that the said pre-import and/or physical exports conditions could not be followed in respect of the subject Advance Authorization. As the Importer has been working under the regime of self-assessment, where they have been given liberty to determine every aspect of an imported consignment from classification to declaration of value of the goods, it was the sole responsibility of the Importer to place correct facts and figures before the assessing authority. In the material case, the Importer has failed to comply with the requirements of law and incorrectly availed benefit of exemption of Notification No.79/2017-Cus dated 13.10.2017. This has therefore, resulted in violation of Section 46 of the Customs Act, 1962.

14.2 The Importer failed to comply with the conditions laid down under the relevant Customs Notification as well as the DGFT Notification and the provisions of the Foreign Trade Policy (2015-20), as would be evident from the discussion supra. Further, as per the provisions of the Notification No.18/2015-Cus dated 01.04.2015 to the effect that in respect of imports made before the discharge of export obligation in full, the Importer at the time of clearance of the imported materials executes a Bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this Notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials. Therefore, the Notification No.18/2015-Cus dated 01.04.2015, as amended gives authority to recover Customs Duty alongwith interest in case the goods are imported without observing the conditions of the Notification. Further, in terms of the provisions of the Notification No.18/2015-Cus dated 01.04.2015 read with Section 143 of the Customs Act, M/s. VishakhaPolyfab Private Limited, Ahmedabad had executed the Bonds at the time of import of Duty-Free inputs under Advance Authorizations binding themselves to pay the Duty of Customs foregone in the event of their failure to fulfill the obligation cast upon them in this behalf as per the conditions of the Notification. Therefore, the Bonds executed by M/s. VishakhaPolyfab Private Limited, Ahmedabad are required to be enforced and the amount of Duty forgone (IGST amount) is required to be recovered from them along with interest at @15% rate, without limitation of any time.

14.3 With the introduction of self-assessment under the Customs Act, more faith is bestowed on the Importer, as the practice of routine assessment, concurrent audit and examination has been dispensed with and the Importers have been assigned with the responsibility of assessing their own goods under Section 17 of the Customs Act, 1962. As a part of self-assessment by the Importer, it was the duty of the Importer to present correct facts and declare to the Customs Authority about their inability to comply with the conditions laid down in the Customs Notification, while seeking benefit of exemption under Notification No.79/2017-Cus dated 13.10.2017. However, contrary to this, they availed benefit of the subject Notification for the subject goods, without complying with the conditions laid down in the exemption Notification in violation of Section 17 of the Customs Act, 1962. Amount of Customs Duty attributable to such benefit availed in the form of exemption of IGST, is therefore, recoverable from them under the provisions of Notification No.18/2015-Cus dated 01.04.2015, as amended and in terms of clauses of Bonds executed read with Section 143 of Customs Act, 1962.

14.4 The Importer failed to comply with the pre-import condition of the Notification and imported goods Duty free by availing benefit of the same without observing condition, which they were duty bound to comply. This has led to contravention of the provisions of the Notification No.18/2015, as amended by Notification No.79/2017-Cus dated 13.10.2017, and the Foreign Trade Policy (2015-20), which rendered the goods liable to confiscation under Section 111(o) of the Customs Act, 1962.

14.5 Section 124 of the Customs Act, 1962, states that no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person:

- (a) *is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*
- (b) *is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*
- (c) *is given a reasonable opportunity of being heard in the matter;*

14.6 Therefore, while the Notification No.18/2015-Cus dated 01.04.2015, as amended read with Section 143 of the Customs Act, 1962 gives authority to recover Customs Duty in case the goods are imported without observing the conditions of the Notification, and Section 111(o) of the Act, gives the authority to hold goods liable for confiscation in case such goods are imported by availing benefit of an exemption Notification and the Importer fails to comply with and/or observe conditions laid down in the Notification. Further, Section 124 authorises the proper Officer to issue Show Cause Notice for confiscation of the goods, recovery of Customs Duty and imposition of penalty in terms of Section 112(a) of the Customs Act, 1962.

14.7 In conclusion, it appears that M/s. VishakhaPolyfab Private Limited, Ahmedabadhave contravened the provisions of Sections 17 and 46 of the Customs Act, 1962, and also the provisions of Customs Notification No.18/2015-Cus dated 01.04.2015, as amended by the Customs Notification No.79/2017-Cus dated 13.10.2017, read with provisions of Para 4.03, 4.13 & 4.14 of the Foreign Trade Policy (2015-20), as amended by the DGFT Notification No.33/2015-20 dated 13.10.2017, issued in terms of the provision of Para 4.13 of the Foreign Trade Policy (2015-20), as they imported Polymers of Ethylene, in primary forms (LLDPE, LDPE) [classifiable under Customs Tariff Heading (CTH) - 3901]; Propylene copolymers (classifiable under CTH - 3902); Other Vinyl Polymers in Primary Forms (classifiable under CTH - 3905) and Polyamides in Primary Forms (classifiable under CTH - 3908) for manufacture of Packaging films for liquid, semi liquid & solid packaging for food & non-food through several ports, without payment of Duty of Customs under cover of Advance

Authorizations, on the strength of the subject Notification and availed benefit of exemption from payment of IGST and/or Compensation Cess on the goods so imported, leviable in terms of Sub-section (7) & Sub-section (9) of Section 3 of the Customs Tariff Act, 1975, but failed to comply with pre-import and/or physical export conditions laid down in the subject Notification. Their act of omission and/or commission appears to have resulted in non-payment of duty of Customs in the form of Integrated Goods & Service Tax (IGST) totally to the extent of **Rs. 4,51,42,944/- (ICD Khodiyar Rs. 3,19,83,202/-, ICD Sanand Port Rs. 85,31,373/- and Pipavav Sea Port Rs. 46,28,369/-)** which appears to be recoverable under the provisions of Notification No.18/2015-Cus dated 01.04.2015, as amended read with Section 143 of the Customs Act, 1962 and in terms of clauses of Bonds executed by them, along with applicable interest, and also appears to attract the provisions of Section 111(o) of the Customs Act, 1962, making the goods valued at **Rs.23,17,50,925/- (ICD Khodiyar Rs. 16,42,13,116/-, ICD Sanand Port Rs. 4,37,84,319/- and Pipavav Sea Port Rs. 2,37,53,490/-)** liable for confiscation and the Noticee liable to penalty under Section 112 (a) of the Act ibid.

15. This Show Cause Notice pertains to demand of Duty involved in the goods imported through multiple ports viz. ICD Khodiyar, ICD, Sanand and Pipavav Sea Port. This Show Cause Notice is being issued by the Competent Authority at Customs Ahmedabad as per Notification No.28/2022-Customs (N.T.) dated 31.03.2022 issued by Central Board of Indirect Taxes and Customs (CBIC), New Delhi being the Port where highest Duty is involved.

16. In view of the above, Show Cause Notice No.VIII/10-07/Commr./O&A/2023-24 dated 22.09.2023 issued to **M/s. Vishakha Polyfab Private Limited** calling upon to show cause in writing to the Commissioner of Customs, Ahmedabad as to why: -

- a) Duty of Customs amounting to **Rs.3,19,83,202/- (Rupees Three Crore,Nineteen Lakh, Eighty Three Thousand, Two Hundred and Two only)** in the form of IGST saved in the course of imports of the goods through ICD Khodiyar Port under the subject Advance Authorizations and the corresponding Bills of Entry as detailed in Table-3 above, in respect of which benefit of exemption under Customs Notification No.18/2015-Cus dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017, was incorrectly availed, without complying with the obligatory pre-import condition as stipulated in the said Notification, and also for contravening the provisions of Para 4.14 of the Foreign Trade Policy (2015-20), should not be demanded and recovered from them in terms of the provisions of Notification No. 18/2015-Cus dated 01.04.2015, as amended read with Section 143 of the Customs Act, 1962 and the Bonds executed by them;
- b) Duty of Customs amounting to **Rs.85,31,373/- (Rupees Eighty Five Lakh, Thirty One Thousand, Three Hundred and Seventy Three only)** in the form of IGST saved in the course of imports of the goods through ICD Sanand Port under the subject Advance Authorizations and the corresponding Bills of Entry as detailed in Table-3 above, in respect of which benefit of exemption under Customs Notification No.18/2015-Cus dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017, was incorrectly availed, without complying with the obligatory pre-import condition as stipulated in the said Notification, and also for contravening the provisions of Para 4.14 of the Foreign Trade Policy (2015-20), should not be demanded and recovered from them under the provisions of Notification No. 18/2015-Cus dated 01.04.2015, as amended read with Section 143 of the Customs Act, 1962 and the Bonds executed by them;
- c) Duty of Customs amounting to **Rs.46,28,369/- (Rupees Forty Six Lakh, Twenty Eight Thousand, Three Hundred and Sixty Nine only)** in the form of IGST saved in the course of imports of the goods through Pipavav Seaport under the subject Advance Authorizations and the corresponding Bills of Entry as detailed in Table-3 above, in

respect of which benefit of exemption under Customs Notification No.18/2015-Cus dated 01.04.2015, as amended by Notification No. 79/2017-Cus, dated 13.10.2017, was incorrectly availed, without complying with the obligatory pre-import condition as stipulated in the said Notification, and also for contravening the provisions of Para 4.14 of the Foreign Trade Policy (2015-20), should not be demanded and recovered from them under the provisions of Notification No.18/2015-Cus dated 01.04.2015, as amended read with Section 143 of the Customs Act, 1962 and the Bonds executed by them;

- d) Subject goods having assessable value of **Rs.16,42,13,116/- (Rupees Sixteen Crore, Forty Two Lakh, Thirteen Thousand, One Hundred and Sixteen only)** imported through ICD Khodiyar Port under the subject Advance Authorizations should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962, for being imported by availing incorrect exemption of IGST in terms of the Notification No.18/2015-Cus dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017, without complying with the obligatory pre-import condition laid down under the said Notification;
- e) Subject goods having assessable value of **Rs.4,37,84,319/- (Rupees Four Crore, Thirty Seven Lakh, Eighty Four Thousand, Three Hundred and Nineteen only)** imported through ICD Sanand Port under the subject Advance Authorizations should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962, for being imported by availing incorrect exemption of IGST in terms of the Notification No.18/2015-Cus dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017, without complying with the obligatory pre-import condition laid down under the said Notification;
- f) Subject goods having assessable value of **Rs.2,37,53,490/- (Rupees Two Crore, Thirty Seven Lakh, Fifty Three Thousand, Four Hundred and Ninety only)** imported through Pipavav SeaPort under the subject Advance Authorizations should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962, for being imported by availing incorrect exemption of IGST in terms of the Notification No.18/2015-Cus dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017, without complying with the obligatory pre-import condition laid down under the said Notification;
- g) Interest should not be demanded and recovered from them in terms of the provisions of Notification No.18/2015-Cus dated 01.04.2015, as amended read with Section 143 of the Customs Act, 1962 and the Bonds executed by them on such Duty of Customs in the form of IGST mentioned at (a) to (d) above;
- h) Penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962, for improper importation of goods availing exemption under Notification No.18/2015-Cus dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017, without observance of the pre-import and/or physical export conditions set out in the Notification, resulting in non-payment of Customs Duty, which rendered the goods liable to confiscation under Section 111(o) of the Customs Act, 1962;
- i) Bonds executed by them at the time of import should not be enforced in terms of Section 143(3) of the Customs Act, 1962, for recovery of the Customs Duty as mentioned above and interest thereupon.

17. Written submission. The importer submitted interim reply to the Show Cause Notice vide their letter dated 04.07.2024 wherein they inter alia stated as under:

17.1 Customs Department cannot adjudicate the issue when an application for EODC is pending before the DGFT Authority: that the verification of compliance of the conditions (including pre-import and physical exports) prescribed under the advance licenses issued under the Chapter 4 of the FTP is prerogative of the DGFT authority and not of the Customs Authority; that the conditions of pre-import and physical exports were introduced under the Customs Act only to bring it into tandem with the updated FTP; that since, the FTP had same conditions and an application for EODC/Redemption letter had already been made by the notices before the DGFT authority and the DGFT is seized of the matter, requested not to take up this matter till DGFT takes a call on the pending application; further they referred the CBIC Circular No 16/2017-Cus dated 02.05.2017 wherein it is clarified that in case where the licence/authorization holder submit proof of their application having been submitted to DGFT, the matter may be kept in abeyance till the same is decided by DGFT; that the officer are bound to follow the Circulars/instructions issued by CBIC in adherence of judicial discipline and cited the decision of Commissioner of Central Excise, Bolpur s. Ratan Melting and Wiring Industries [2008 (231) ELT22 (SC)], Kalyani Packaging Industry vs. Union of India [2004 (168) ELT 145 (SC)] and Collector of Central Excise, Vadodara vs. Dhiren Chemicals Industries [2002 (139) ELT (SC)];

17.2 Separate Order to be passed in Respect of the preliminary objection raised by the Noticee: That in terms of settled law where an assessee raises any preliminary objection, then the Authority is/ are duty bound to pass an speaking order providing the reason for not accepting the preliminary objections; that they cited the decision of Hon'ble Gujarat High Court rendered in case of Mahek Glaze Private Ltd Vs. Union of India [2014 (300) ELT 25 (Guj)] and requested to either keep the matter in abeyance to avoid multiplicity of the proceeding or to pass a necessary separate order in compliance to the law down in said decision of Hon'ble Gujarat High Court;

17.3 Customs Authority cannot object once certificate of discharge of export Obligation is issued by DGFT: That in respect of Advance Licence No. 81042159 dated 16.03.2018, EODC had already been issued by the DGFT authority on 26.06.2019; that in terms of settled law once the Licensing authority i.e. DGFT has redeemed the license and issued EODC/ redemption letter, Customs authority cannot object/raise their grievances and should follow the decision of licensing authority; that it is settled position of law that when a fiscal statutory authority, it is only that statutory authority which is empowered to monitor compliance of the conditions of the certificate and to initiate action, in case of non-compliance and placed the reliance on the decisions (i) Zuari Industries Ltd. Vs. Commissioner of C.Ex. & Customs 2007 (210) ELT 648 (SC)], (ii) Titan Medical Systems Pvt. Ltd. vs. Collector of Customs, New Delhi (151) ELT254 (SC)][(iii) Vadidal Chemical Ltd. Vs. State of Andhra Pradesh, 2005 (192) ELT 33 (SC)];

17.4 The captioned SCN ought to have been issued within reasonable period: That in the present case noticee is not guilty of any fraud, collusion, wilful mis-statement or suppression of facts with intent to evade payment of duty and as such the captioned SCN ought to have been issued within reasonable period of time; that they cited the decision of Hon'ble Gujarat High Court in case of Maxim Tubes Company Ltd which was challenged by the Revenue before Supreme Court and stated that being an interpretational issue, the onus to prove collusion, suppression and wilful mis-conduct lies on the Department and placed reliance on Commissioner of Central Excise Vs. Hindustan national Glass and Indsutires Ltd [2016 (1) TMI 820 (SC); that the SCN does not allege any suppression of facts/ mis statements with an intent to evade payment of duty, therefore, caption SCN ought to have been issued within reasonable period of limitation;

17.5 Penalty not imposable as there was no contumacious conduct on part of the noticee and he was under the bonafide belief: That without prejudice to the aforesaid and sake of argument, it is assumed that the noticee failed to comply with pre-import condition as laid down under the FTP and the Customs

Notification, then also the noticee has never any ill intention not to pay duty; that this belief of the noticee is supported by the judgment of Hon'ble Gujarat High Court dated 04.02.2019 passed in the case of Cosmo Films Ltd [Special Civil Application bearing No. SCA/1518 of 2018] whereby the Hon'ble High Court set aside the mandatory fulfilment of 'pre-import conditions incorporated in the FTP 2015-2020 and Handbook of Procedures 2015-2020 by Notificaiton NO. 33/2015-20 and Notification No. 79/2015-Customs both dated 13.10.2017; that the Hon'ble High Court held that such fulfilment in order to claim exemption of IGST on inut imported into India for the production of goods to be exported from India, on the strength of an advance authorization was arbitrary and unreasonable; that the in view of the bona fide belief in the matter, no penalty can be imposed on them; they cited decision of Commissioner of Central Excise Vs. HMM Ltd. [1995 (76) ELT 497 (SC)] and stated that where the demand is unsustainable, the imposition of penalty cannot sustain; that reference can also be made to the judgement of Hon'ble Supreme Court in case of D Navinchandra V UOI 1987 (29) ELT 492 (SC) wherein it is held that bona fide must be considered while imposing penalty and cited the decision of Akabar Badruddin Jiwani Vs. CC 1990 (47) 161 (SC) and Extrusion Vs. CC 1994 (70) ELT 52 (Cal.); that penal action under law cannot be initiated where the assessee was under bona fide belief and cited the decision of CCE vs. Veril Electronics Pvt. LTD 2012 (281) ELT 222 (Kar), Essar Telecom Infrastructure Pvt. Ltd. vs. UOI 2012 9275) EKT 167 (Kar.), CCE Vs. ITC Ltd 2010 (257) ELT 514 (Kar.); That there should be some more positive act other than mere inaction or failure on the part of the assessee or there must be a conscious or deliberate withholding of information by the assessee to invoke larger period of limitation and cited the decision of Hon'ble Supreme Court rendered in the case of Nestle India Ltd Vs. CCE[2009 (235) ELT 577 (SC)];

17.6 Penalty not imposable if issue involve is one of interpretation: That without prejudice to the above, penalty ought not to have been imposed if the issue involved is an interpretational; that in present facts, the issue is with regard to the validity of pre-import condition; that as demonstrated above, the present issue involves interpretation of complex legal provision, therefore imposition of penalty was not warranted in the present case and placed the reliance on the decision of (i) Ispat Industries Ltd. Vs. CCE 2006 (199) ELT 509 (Tri. Mum), (ii) Secretary, Town Hall Committee Vs. CCE 2007 (8) STR 170 (Tri. Bang.), (iii) CCE Vs. Sikkar Ex-Serviceman Welfare Coop. Socioity Ltd 2006 (4) STR 213 (Tri. De.); (iv) Haldia Petrochemical Ltd Vs. CCE 2006 (197) ELT 97 (Tri. Del.) (v) Siyaram Silk Mills Ltd Vs. CCE 2006 (195) ELT 284 (Tri. Mumbai) and (vi) Fibres Foils Ltd Vs. CCE 2005 (190) ELT 352 (Tri. Mumbai);

17.7 Interest is not payable: That as the duty itself is not payable, there is no question of payment of interest; placed reliance on CCE Vs. HMM Ltd. [1995 (76) ELT 497 (SC)];

17.8 Goods are not liable for confiscation; That the goods are not liable for confiscation under Section 111(o) of the Customs Act; that confiscation under Section 111 (o) of the Customs Act, 1962 is applicable when 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); that not only the Noticee but Department was also carrying bona fide belief that the Noticee is entitled for the exemption as pre-import condition was under challenge before the Hon'ble Gujarat High Court during the period of dispute in the present case which was later on struck down by Hon'ble High Court and therefore, the proper officer has also not raised any objection while assessing the bill of entry and hence, until 2023 when Hon'ble Apex Court reversed Hon'ble Gujarat High Court judgement,

it cannot be said that the noticee had violated any provision of the Customs Act; that the goods are not prohibited under Customs Act, and therefore, Section 111 (o) of the Customs Act is not applicable; that the goods are not available for confiscation as the same were used in the manufacturing process and finished goods were exported and placed reliance on Shiva Kripa Ispat Pvt. Ltd Vs. CCE, Nasik [2009 (235) ELT 623] Tri-LB], Knowledge Infrastructure Systems Pvt. Ltd Vs. Additional Director General, DRI 2019 (366) ELT A95 (Tri. Mumbai), Bussa Overseas & Properties Vs. C.L. Mahar, ACC 2004 (163) ELT 304 (Bom.) and Sampat Raj Dugar [1992 (58) EKT 163(SC)].

18. Personal Hearing. Date for personal hearing was fixed on 04.06.2024 and 12.06.2024. However, importer vide letter dated 13.06.2024 requested for another date after three weeks. Accordingly another date was fixed on 04.07.2024, however, importer did not attend and therefore Personal Hearing was fixed on 10.09.2023. However, vide letter dated 09.09.2024 received by this office on 10.09.2024 requested for adjournment and requested for another date. Accordingly, next date fixed was on 13.09.2024. Shri Maheshbhai Patel, Accountant of the Importer and their advocate appeared for Personal hearing on 13.09.2024 wherein the advocate of the importer reiterated the content of their defence reply dated 04.07.2024 and further submitted that they would be submitting additional submission before 20.09.2024.

19. DISCUSSION AND FINDINGS: I have carefully gone through the facts of the case and the submission dated 04.07.2024 and records of personal hearing held on 13.09.2024 made by the importer. As per the Personal hearing held on 13.09.2024, the importer was to file additional submission before 20.09.2024 but same has not been filed till today.

20. The issues for consideration in the Show Cause Notice No.VIII/10-07/Commr./O&A/2023-24 dated 22.09.2023 before me are as under: -

- (i) Whether the Importer during October 13, 2017 to January 9, 2019, was eligible to claim exemption of Integrated Goods and Services Tax ("IGST") and GST compensation cess on inputs imported into India for the production of goods to be exported from India, on the strength of an advance authorization, without fulfilment of such mandatory 'pre-import condition?
- (ii) If not, whether such Duty amounting to Rs.4,51,42,944/- (Rupees Four Crore, Fifty One Lakh, Forty Two Thousand, Nine Hundred and Forty Four only) [(Rs.3,19,83,202/- i.r.o. import through ICD Khodiyar, Rs.85,31,373/- i.r.o. import through ICD Sanand, Rs.46,28,369/- i.r.o. import through Pipavav Sea Port)] in the form of IGST saved in course of imports of the goods under the subject Advance Authorizations through ICD, Khodiyar, ICD Sanand and Pipavav Port is liable to be demanded and recovered alongwith interest under Section 143 of the Customs Act, 1962 or otherwise?
- (iii) Whether such goods having assessable value of Rs.23,17,50,925/- (Rupees Twenty Three Crore, Seventeen Lakh, Fifty Thousand, Nine Hundred and Twenty Five only) [(Rs. 16,42,13,116/- i.r.o. import through ICD Khodiyar, Rs. 4,37,84,319/- i.r.o. import through ICD Sanand, Rs. 2,37,53,490 /- i.r.o. import through Pipavav Sea Port)] are liable for confiscation under Section 111(o) of the Customs Act, 1962;
- (iv) Whether the Importer is liable for penalty under Section 112(a) of the Customs Act, 1962;

(v) Whether Bonds executed by them at the time of import is liable to be enforced in terms of Section 143(3) of the Customs Act, 1962, for recovery of the Customs Duty and interest as mentioned above.

21. I find that Duty liability with interest and penal liabilities would be relevant only if the bone of contention that whether the Importer has violated the obligatory pre-import condition as stipulated in Notification No.79/2017-Cus, dated 13-10-2017 is answered in the affirmative. Thus, the main point is being taken up firstly for examination.

22. Genesis of Pre-Import Condition:

22.1 Before proceeding for adjudication of the Show Cause Notice, let us firstly go through relevant provisions which will give genesis of 'Pre-Import Condition'.

22.1.1 Relevant Para 4.03 of the Foreign Trade Policy (2015-20) inter-alia states that: -

An Advance Authorisation is issued to allow duty free import of inputs, which are physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, energy, catalysts which are consumed/ utilised to obtain export product, may also be allowed. DGFT, by means of Public Notice, may exclude any product(s) from purview of Advance Authorisation.

22.1.2 Relevant Para 4.13 of the Foreign Trade Policy (2015-20) inter-alia states that: -

4.13 Pre-import condition in certain cases-

(i) DGFT may, by Notification, impose pre-import condition for inputs under this Chapter.

(ii) Import items subject to pre-import condition are listed in Appendix 4-J or will be as indicated in Standard Input Output Norms (SION).

22.1.3 Relevant Para 4.14 of the Foreign Trade Policy (2015-20) inter-alia states that: -

4.14 Details of Duties exempted-

Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable. Import against supplies covered under paragraph 7.02 (c), (d) and (g) of FTP will not be exempted from payment of applicable Anti-dumping Duty, Countervailing Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, if any. However, imports under Advance Authorisation for physical exports are also exempt from whole of the integrated tax and Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be provided in the notification issued by Department of Revenue, and such imports shall be subject to pre-import condition. Imports against Advance Authorisations for physical exports are exempted from Integrated Tax and Compensation Cess upto 31.03.2018 only.

22.1.4 NOTIFICATION NO. 31 (RE-2013)/ 2009-2014 dated 1st August, 2013:

In exercise of powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No.22 of 1992) read with paragraph 1.2 of the Foreign Trade Policy, 2009-2014, the Central Government

hereby notifies the following amendments in the Foreign Trade Policy (FTP) 2009-2014.

2. After para 4.1.14 of FTP a new para 4.1.15 is inserted.

"4.1.15 Wherever SION permits use of either (a) a generic input or (b) alternative inputs, unless the name of the specific input(s) [which has (have) been used in manufacturing the export product] gets indicated / endorsed in the relevant shipping bill and these inputs, so endorsed, match the description in the relevant bill of entry, the concerned Authorisation will not be redeemed. In other words, the name/description of the input used (or to be used) in the Authorisation must match exactly the name/description endorsed in the shipping bill. At the time of discharge of export obligation (EODC) or at the time of redemption, RA shall allow only those inputs which have been specifically indicated in the shipping bill."

3. Para 4.2.3 of FTP is being amended by adding the phrase "4.1.14 and 4.1.15" in place of "and 4.1.14". The amended para would be as under:

"Provisions of paragraphs 4.1.11, 4.1.12, 4.1.13, 4.1.14 and 4.1.15 of FTP shall be applicable for DFIA holder."

4. **Effect of this Notification:** Inputs actually used in manufacture of the export product should only be imported under the authorisation. Similarly inputs actually imported must be used in the export product. This has to be established in respect of every Advance Authorisation / DFIA.

22.2 With the introduction of GST w.e.f. 01-07-2017, Additional Duties of Customs (CVD & SAD) were subsumed into the newly introduced Integrated Goods and Service Tax (IGST). Therefore, at the time of imports, in addition to Basic Customs Duty, IGST was made payable instead of such Additional Duties of Customs. Accordingly, Notification No.26/2017-Customs dated 29 June 2017, was issued to give effect to the changes introduced in the GST regime in respect of imports under Advance Authorization. The corresponding changes in the Policy were brought through Trade Notice No.11/2018 dated 30-06-2017. It is pertinent to note here that while in pre-GST regime, blanket exemption was allowed in respect of all Duties leviable when goods were being imported under Advance Authorizations, contrary to that, in post-GST regime, for imports under Advance Authorization, the importers were required to pay such IGST at the time of imports and then they could get the credit of the same.

However, subsequently, the Government decided to exempt imports under Advance Authorizations from payment of IGST, by introduction of the Customs Notification No.79/2017 dated 13-10-2017. However, such exemption from the payment of IGST was made conditional. The said Notification No.79/2017 dated 13-10-2017, was issued with the intent of incorporating certain changes/ amendment in the principal Customs Notifications, which were issued for extending benefit of exemption to the goods when imported under Advance Authorizations.

22.2.1 D.G.F.T. Notification No. 33/2015-2020 dated 13.10.2017 amended the provisions of Para 4.14 of the Foreign Trade Policy 2015-20 which read as under:

Para 4.14 is amended to read as under:

"4.14: Details of Duties exempted

Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable. Import against supplies covered under paragraph 7.02 (c), (d) and (g) of FTP will not be exempted from payment of applicable Anti-dumping Duty, Countervailing Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, if any. However, imports under Advance Authorization for physical exports are also exempt from whole of the integrated tax and Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be provided in the notification issued by Department of Revenue, and such imports shall be subject to pre-import condition."

22.2.2 Notification No.-79/2017 - Customs, Dated: 13-10-2017. The relevant amendment made in Principal Notification No. 18/2015-Customs dated 01.04.2015 vide Notification No. 79/2017 - Customs, Dated: 13-10-2017 is as under:

-: Table:-

| S. No. | Notification number and date | Amendments |
|---------------|--|---|
| (1) | (2) | (3) |
| 1 | | |
| 2. | 18/2015- Customs, dated the 1 st April, 2015 [vide number G.S.R. 254 (E), dated the 1 st April, 2015] | <p><i>In the said notification, in the opening paragraph, - (a)</i></p> <p><i>(b) in condition (viii), after the proviso, the following proviso shall be inserted, namely:-</i></p> <p><i>"Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports only;"</i></p> <p><i>(c)</i></p> <p><i>(c) after condition (xi), the following conditions shall be inserted, namely :-</i></p> <p><i>"(xii) that the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act shall be subject to pre-import condition;</i></p> |

22.3 Further, I find that Notification No.01/2019-Cus. dated 10.01.2019 removed/omitted the 'Pre-Import condition' laid down vide Amendment Notification No. 79/2017- Cus dated 13.10.2017 in the Principal Notification No. 18/2015-Cus dated 01.04.2015.

22.4 The High Court of Madras (Madurai Bench) in the case of M/s Vedanta Ltd reported as 2018 (19) G.S.T.L. 637 (Mad.)on the issue under consideration held that:-

"pre-import simply means import of raw materials before export of the finished goods to enable the physical export and actual user condition possible and negate the revenue risk that is plausible by diverting the imported goods in the local market".

22.5 I find that 'Pre-Import Condition' is unambiguous word/phrase. Further, I find that the definition of pre-import directly flows from Para 4.03 of the Foreign Trade Policy (2015-20) [erstwhile Para 4.1.3 of the Policy (2009-14)] wherein it is said that Advance Authorizations are issued for import of inputs, which are physically incorporated in the export goods allowing legitimate wastage. Thus, this Para specifically demands for such physical incorporation of imported materials in the export goods. And the same is only possible, when imports are made prior to export. Therefore, such Authorizations principally do have the pre-import condition in-built, which is required to be followed. In the instant case, it is undisputed fact that the Importer has not complied with the Pre-Import Condition as laid down vide Exemption Notification No. 18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017.

22.6 Further, I find that this issue is *res judicata* in as much as **Hon'ble Supreme Court in the case of Union of India Vs. Cosmo Films Ltd reported as 2023 (72) GSTL 147 (SC)** has overruled judgment of Hon'ble High Court of Gujarat and has held that pre-import condition, during **October, 2017 to January, 2019**, in Advance Authorization Scheme was valid. Relevant Paras of the decision are as under:

69. *The object behind imposing the 'pre-import condition' is discernible from Paragraph 4.03 of FTP and Annexure-4J of the HBP; that only few articles were enumerated when the FTP was published, is no ground for the exporters to complain that other articles could not be included for the purpose of 'pre-import condition'; as held earlier, that is the import of Paragraph 4.03(i). The numerous schemes in the FTP are to maintain an equilibrium between exporters' claims, on the one hand and on the other hand, to preserve the Revenue's interests. Here, what is involved is exemption and postponement of exemption of IGST, a new levy altogether, whose mechanism was being worked out and evolved, for the first time. The plea of impossibility to fulfil 'pre-import conditions' under old AAs was made, suggesting that the notifications retrospectively mandated new conditions. The exporter respondents' argument that there is no rationale for differential treatment of BCD and IGST under AA scheme is without merit. BCD is a customs levy at the point of import. At that stage, there is no question of credit. On the other hand, IGST is levied at multiple points (including at the stage of import) and input credit gets into the stream, till the point of end user. As a result, there is justification for a separate treatment of the two levies. IGST is levied under the IGST Act, 2017 and is collected, for convenience, at the customs point through the machinery under the Customs Act, 1962. The impugned notifications, therefore, cannot be faulted for arbitrariness or under classification.*

70. *The High Court was persuaded to hold that the subsequent notification of 10-1-2019 withdrew the 'pre-import condition' meant that the Union itself recognized its unworkable and unfeasible nature, and consequently the condition should not be insisted upon for the period it existed, i.e., after 13-10-2017. This Court is of the opinion that the reasoning is faulty. It is now settled that the FTPRA contains no power to frame retrospective regulations. Construing the later notification of 10-1-2019 as being effective from 13-10-2017 would be giving effect to it from a date prior to the date of its existence; in other words the Court would impart retrospectivity. In Director General of Foreign Trade &Ors. V Kanak Exports &Ors. [2015 (15) SCR 287 = 2015 (326) E.L.T. 26 (S.C.)] this Court held that :*

"Section 5 of the Act does not give any such power specifically to the Central Government to make rules retrospective. No doubt, this Section confer powers upon the Central Government to 'amend' the policy which has been framed under the aforesaid provisions. However, that by itself would not mean that such a provision empowers the Government to do so retrospective."

71. To give retrospective effect, to the notification of 10-1-2019 through interpretation, would be to achieve what is impermissible in law. Therefore, the impugned judgment cannot be sustained on this score as well.

75. For the foregoing reasons, this court holds that the Revenue has to succeed. The impugned judgment and orders of the Gujarat High Court are hereby set aside. However, since the respondents were enjoying interim orders, till the impugned judgments were delivered, the Revenue is directed to permit them to claim refund or input credit (whichever applicable and/or wherever customs duty was paid). For doing so, the respondents shall approach the jurisdictional Commissioner, and apply with documentary evidence within six weeks from the date of this judgment. The claim for refund/credit, shall be examined on their merits, on a case-by-case basis. For the sake of convenience, the revenue shall direct the appropriate procedure to be followed, conveniently, through a circular, in this regard."

22.7 Further I find that at Para 59 of the order of the Hon'ble Supreme Court dated 28-04-2023 in Civil Appeal No. 290 of 2023 in the matter of Union of India Vs Ms Cosmo Films Ltd., it is held that –

"Therefore, any category of supply, be it under letter of invalidation and/or to EOU and/ or under International Competitive Bidding (ICB) and/ or to Mega Power Projects, other than actual exports to other country and supply to SEZ, cannot be considered as "physical exports". One of the objects behind the impugned notifications was to ensure that the entire exports made under AAs towards discharge of export orders were physical exports. In case the entire exports were not physical exports, the AAs were automatically ineligible for exemption."

Therefore, the Apex court made it crystal clear that the condition of "Physical Export" has to be complied with in respect of the entire Authorization and if the entire exports made under the authorization is not physical export, irrespective of the extent of non-compliance, the Authorization automatically becomes ineligible for exemption. This observation of the Apex court is mutatis mutandis applicable in respect of the "Pre-import" condition too. Therefore, even if in view of the importer, they had partially complied with such condition in respect of a particular Authorization, non-compliance in respect of the other part makes it ineligible for the exemption in entirety.

22.8 I find that based on the decision of Hon'ble Supreme Court in aforesaid case of Union of India Vs. Cosmo Films Ltd, CBIC issued Circular No. 16/2023-Cus dated 07.06.2023 which is reproduced as below:

Import — Pre-import condition incorporated in Foreign Trade Policy and Handbook of Procedures 2015-20 — Availing exemption from IGST and GST Compensation Cess - Implementation of Supreme Court direction in Cosmo Films case

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Indirect Taxes & Customs, New Delhi

Subject: Implementation of Hon'ble Supreme Court direction in judgment dated 28-4-2023 in matter of Civil Appeal No. 290 of 2023 relating to 'pre-import condition' - Regarding.

Attention is invited to Hon'ble Supreme Court judgment dated 28-4-2023 in matter of Civil Appeal No. 290 of 2023 (*UOI and others v. Cosmo Films Ltd.*) [(2023) 5 Centax 286 (S.C.) = 2023 (72) G.S.T.L. 417 (S.C.)] relating to mandatory fulfilment of a 'pre-import condition' incorporated in para 4.14 of FTP 2015-20 *vide* the Central Government (DGFT) Notification No. 33/2015-20, dated 13-10-2017, and reflected in the Notification No. 79/2017-Customs, dated 13-10-2017, relating to Advance Authorization scheme.

2. The FTP amended on 13-10-2017 and in existence till 9-1-2019 had provided that imports under Advance Authorization for physical exports are also exempt from whole of the integrated tax and compensation cess, as may be provided in the notification issued by Department of Revenue, and such imports shall be subject to pre-import condition.

3. Hon'ble Supreme Court has allowed the appeal of Revenue directed against a judgment and order of Hon'ble Gujarat High Court [2019 (368) E.L.T. 337 (Guj.)] which had set aside the said mandatory fulfilment of pre-import condition. As such, this implies that the relevant imports that do not meet the said pre-import condition requirements are to pay IGST and Compensation Cess to that extent.

4. While allowing the appeal of Revenue, the Hon'ble Supreme Court has however directed the Revenue to permit claim of refund or input credit (whichever applicable and/or wherever customs duty was paid). For doing so, the respondents shall approach the jurisdictional Commissioner, and apply with documentary evidence within six weeks from the date of the judgment. The claim for refund/credit, shall be examined on their merits, on a case-by-case basis. For the sake of convenience, the revenue shall direct the appropriate procedure to be followed, conveniently, through a circular in this regard.

5.1 The matter has been examined in the Board for purpose of carrying forward the Hon'ble Supreme Court's directions. It is noted that -

(a) ICES does not have a functionality for payment of customs duties on a bill of entry (BE) (unless it has been provisionally assessed) after giving the Out-of-Charge (OOC) to the goods. In this situation, duties can be paid only through a TR-6 challan.

(b) Under GST law, the BE for the assessment of integrated tax/compensation cess on imports is one of the documents based on which the input tax credit may be availed by a registered person. A TR-6 challan is not a prescribed document for the purpose.

(c) The nature of facility in Circular No. 11/2015-Cus. (for *suomotu* payment of customs duty in case of *bona fide* default in export obligation) [2015 (318) E.L.T. (T11)] is not adequate to ensure a convenient transfer of relevant details between Customs and GSTN so that ITC may be taken by the importer.

(d) The Section 143AA of the Customs Act, 1962 provides that the Board may, for the purposes of facilitation of trade, take such measures for a class of importers-exporters or categories of goods in order to, *inter alia*, maintain transparency in the import documentation.

5.2 Keeping above aspects in view, noting that the order of the Hon'ble Court shall have bearing on importers others than the respondents, and for purpose of carrying forward the Hon'ble Court's directions, the following procedure can be adopted at the port of import (POI) :-

- (a) for the relevant imports that could not meet the said pre-import condition and are hence required to pay IGST and Compensation Cess to that extent, the importer (not limited to the respondents) may approach the concerned assessment group at the POI with relevant details for purposes of payment of the tax and cess along with applicable interest.
- (b) the assessment group at POI shall cancel the OOC and indicate the reason in remarks. The BE shall be assessed again so as to charge the tax and cess, in accordance with the above judgment.
- (c) the payment of tax and cess, along with applicable interest, shall be made against the electronic challan generated in the Customs EDI System.
- (d) on completion of above payment, the port of import shall make a notional OOC for the BE on the Customs EDI System [so as to enable transmission to GSTN portal of, *inter alia*, the IGST and Compensation Cess amounts with their date of payment (relevant date) for eligibility as per GST provisions].
- (e) the procedure specified at (a) to (d) above can be applied once to a BE.

6.1 Accordingly, the input credit with respect to such assessed BE shall be enabled to be available subject to the eligibility and conditions for taking input tax credit under Section 16, Section 17 and Section 18 of the CGST Act, 2017 and rules made thereunder.

6.2 Further, in case such input tax credit is utilized for payment of IGST on outward zero-rated supplies, then the benefit of refund of such IGST paid may be available to the said registered person as per the relevant provisions of the CGST Act, 2017 and the rules made thereunder, subject to the conditions and restrictions provided therein.

7. The Chief Commissioners are expected to proactively guide the Commissioners and officers for ironing out any local level issues in implementing the broad procedure described in paras 5 and 6 above and ensuring appropriate convenience to the trade including in carrying out consequential actions. For this, suitable Public Notice and Standing Order should be issued. If any difficulties are faced that require attention of the Board, those can be brought to the notice.

22.9 Further, I find that DGFT have issued Trade Notice No. 7/2023-24 dated 08.06.2023, saying that "all the imports made under Advance Authorization Scheme on or after 13.10.2017 and upto and including 09.01.2019 which could not meet the pre-import condition may be regularized by making payments as prescribed in the Customs Circular".

22.10 Thus, from the findings and discussion in Para 23 to 23.9 above, I find that there is no dispute that the said importer has failed to comply with the mandatory conditions of 'Pre-Import' while claiming the benefit of Exemption from IGST and Compensation Cess under Exemption Notification No. 18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017 during the period from October 13, 2017 to January 9, 2019, in Advance Authorization Scheme. Therefore, I find that the importer was not eligible to avail exemption under Notification No. 18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017 on inputs imported under Advance Authorizations without fulfilment of mandatory 'Pre-Import Condition'.

22.11 I find that the Hon'ble Supreme Court in the case of Union of India Vs. Cosmo Films Ltd reported as 2023 (72) GSTL 147 (SC) have discussed exhaustively the provisions of the Customs Act as well as the provisions of the FTP and it has been held that pre import conditions is required to be complied with.

22.12 In view of above discussion, I hold that in the absence of fulfilment of the mandatory 'pre-import condition', the importer was not eligible to claim exemption of Integrated Goods and Services Tax ("IGST") and GST compensation cess on inputs imported into India for the production of goods to be exported from India, on the strength of an advance authorization. Accordingly, I hold that the importer is liable to pay the duty as demanded in the SCN.

23. Whether the Duty of Customs amounting to Rs. 4,51,42,944/- (Rupees Four Crore, Fifty One lakh, Forty Two Thousand, Nine Hundred and Forty Four only) in respect of import through ICD Khodiyar , ICD Sanand and Pipavav Seaport as detailed in the Show Cause Notice is required to be demanded and recovered alongwith interest from them under Section 143 of the Customs Act, 1962 and whether Bonds executed by the Importer at the time of import should be enforced in terms of Section 143(3) of the Customs Act, 1962, for recovery of the Customs Duty alongwith interest?

23.1 I find that it would be worth to reiterate that the Hon'ble Supreme Court in case of Union of India Vs. Cosmo Films Ltd has overruled judgment of Hon'ble Gujarat High Court and has held that pre-import conditions, during October 13, 2017 to January 9, 2019, in Advance Authorization Scheme was valid. Thus, I find that the Hon'ble Supreme Court has settled that IGST and Compensation Cess involved in the Bills of Entry filed during October 13, 2017 to January 9, 2019 is required to be paid on failure to compliance of 'Pre-Import Condition' as stipulated under Exemption Notification No. 18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017. I find that it is undisputed fact that said Importer has failed to fulfill and comply with 'Pre-Import condition' incorporated in the Foreign Trade Policy of 2015-2020 and Handbook of Procedures 2015-2020 by DGFT Notification No. 33/2015-20 and Customs Notification No.18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017.

23.2 I find that as per condition (iv) of the Notification No. 18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017 Importer is bound to comply with all the conditions of this notification. I find that in the present case, the importer has also filed Bond under Section 143 of the Customs Act, for the clearance of imported goods under Advance Authorization availing the benefit of exemption under Customs Notification No.18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017.

Sub Section (1) of Section 143 explicitly says that "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". On perusal of language of the Bonds filed by the Importer, I find that conditions are explicitly mentioned in Bond. The wording and condition of Bond inter alia is reproduced below:

"WHEREAS we, the obligor (s) have imported the goods listed in annexure-1 availing customs duty exemption in terms of the notification of the Government of India in Ministry of Finance (department of revenue) No.018/2015 dated 01.04.2015 (hereinafter referred to as the said Notification) against the Advance License No. (hereinafter as the license) for the import of the goods mentioned there in on the terms and conditions specified in the said notification and license.

NOW THE CONDITIONS OF THE ABOVE BOND ARE THAT: -

1. **I/We, the obligor(s) fulfil all the conditions of the said notification and shall observe and comply with its terms and condition.**
2. **We the obligor shall observe all the terms and conditions specified in the license.**
- 3....
- 4....
5. **We, the obligor, shall comply with the conditions stipulated in the said Import & Export Policy as amended from time to time.**
- 6....

It is hereby declared by us, the obligor(s) and the Government as follows: -

1. **The above written Bond is given for the performance of an act in which the public are interest.**
2. **The Government through the commissioner of customs or any other officer of the Customs recover the same due from the Obligor(s) in the manner laid sub-section (1) of the section 142 of the customs act,1962."**

23.3 I find that the said importer is obliged to follow the conditions of the Bond. Therefore, I find that by filing the Bond under Section 143, said Importer is obliged to pay the consequent duty liabilities on non-compliance/failure to fulfill the conditions of the Notification. Therefore, I find that said Importer is liable to pay differential duty alongwith interest without any time limit. Therefore, I find that the Bond is required to be enforced under Section 143 (3) of the Customs Act, 1962 for the recovery of differential Customs Duty Rs. 4,51,42,944/- (Rupees Four Crore, Fifty One lakh, Forty Two Thousand, Nine Hundred and Forty Four only) i.r.o. import through ICD Khodiyar, ICD Sanand and Pipavav Seaport alongwith interest.

23.4 The importer has contended that imposition of interest on the proposed demand is wholly without jurisdiction and illegal as IGST on imports is leviable under Section 3(7) of the Customs Tariff Act and there is no statutory provision providing for levy of interest in case of delayed payment of duty under the Customs Tariff Act and therefore interest as proposed is not leviable. I find that the importer has failed to comply with the pre-import conditions as laid down under Notification No. 18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017 binding himself to pay interest at the rate of 15% in the event of failure to comply with the condition of the said notification. Hon'ble Supreme Court has held that 'Pre import conditions was required to be fulfilled and therefore as per the condition of the bond, the importer is liable for payment of interest on the duty demanded.

23.5 I rely on the ratio of decision of Hon'ble Gujarat High Court rendered in the case of Rivaa Exports Vs. Union of India reported in 2007 (210) ELT 664 (Guj) wherein it has been held as under:

"3. *There is no dispute on the fact that an undertaking has been given by the petitioners in form Annexure-I. As per that undertaking the petitioners are directed to pay an amount equal to duty liability on the goods cleared in terms of the said Notification No. 31/97-Cus., dated 1-4-1997 and Licence No. P/W/5200539, dated 7-7-1999, in the event of their failure to comply with the conditions of the said Notification and Licence. It is also an admitted fact that petitioner has paid appropriate amount of duty, to the extent that it has not discharged the export liability as required under the undertaking.*

4. *It is also true that Notification No. 31/97-Cus., dated 1-4-1997 has been issued in exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962, wherein while exempting materials from the payment of Customs duty, in particular case a liability to pay interest has also been fixed in case the importer fails to discharge his obligation to export the goods under the Policy.*

5. *Now we come to the undertaking given by the petitioner. For ready reference relevant portion of the undertaking is reproduced below : -*

"WHEREAS THE PRESIDENT OF INDIA, acting through the Assistant Commissioner of Customs, Surat, Ministry of Finance, Government of India (hereinafter referred to as the Government) has agreed to grant M/s. Parag Exports, Parag House, Near Udhna Darwaja, Ring Road, Surat 395 002, Gujarat (hereinafter referred to as the Importer/Exporter), exemption in terms of Notification No. 31/97, dated 1-4-1997 against Import Licence No. P/W/5200577, dated 23-8-1999 (hereinafter referred to as Licence for the Import of the goods mentioned therein) on the terms and conditions specified in the said Notification and Licence.

WHEREAS M/s. Parag Export have undertaken to produce evidence in respect of export obligation to be discharged against the said Licence No. P/W/5200577, dated 23-8-1999 and Notification No. 31/97, dated 1-4-1997 within 30 days from the expiry of the export obligation period. WHEREAS M/s. Parag Exports have further unconditionally and irrevocably undertaken to pay an amount equal to the duty leviable on the goods cleared/to be cleared in terms of said Notification No. 31/97, dated 1-4-1997 and Licence No. P/W/5200577, dated 23-8-1999 in the event of their failure to comply with the conditions of the said Notification and Licence in respect of the following consignments."

6. *A perusal of the part of the undertaking clearly shows that Assistant Commissioner of Customs has, acting on behalf of His Excellency President of*

India, agreed to grant M/s. Parag Exports, Parag House, Near Udhna Darwaja, Ring Road, Surat, exemption in terms of Notification No. 31/97-Cus., dated 1-4-1997 against Import Licence No. P/W/5200539 on the terms and conditions prescribed in the said Notification. In turn the petitioner has agreed to discharge the export obligation against the said Licence and Notification No. 31/97 dated 1-4-1997 and produce evidence in respect of export obligation within 30 days from the expiry of the export obligation period and if it fails to comply with the same, it has to pay an amount equal to the duty leviable on the goods cleared/to be cleared in terms of said Notification No. 31/97-Cus., dated 1-4-1997 and Licence No. P/W/5200539, dated 7-7-1999.

7. This agreement is entered into by Parag Exports on one side and The President of India on the other side, through the Assistant Commissioner, who acted on behalf of His Excellency the President of India. Exemption has been given by the Assistant Commissioner under the agreement and that export obligations are to be discharged by Parag Exports, and if it fails to discharge the obligations, then M/s. Parag Export is required to pay duty and interest thereon.

8. Therefore, it cannot be said that it is a mere undertaking. In fact, it is an agreement in form of undertaking agreed between two parties i.e. Assistant Commissioner of Customs on one side and M/s. Parag Exports on the other side.

9. The Assistant Commissioner has agreed to grant exemption in terms of Notification No. 31/97, dated 1-4-1997 against Import Licence No. P/W/5200539, dated 7-7-1999 on the terms and conditions specified in the Notification and Licence and failure to comply with the terms and conditions would necessarily cast a liability on M/s. Parag Exports to pay duty as well as interest as per Notification No. 31/97-Cus., dated 1-4-1997.

10. Merely adopting the terms and conditions of Notification No. 31/97 by the parties does not mean that this agreement in form of undertaking has become a statutory contract.

11. This undertaking has not been given under any provisions of the Act. It is pure and simple agreement, agreed between the Assistant Commissioner of Customs, who is acting on behalf of His Excellency the President of India on one side and M/s. Parag Exports on the other side, who has agreed to discharge the export obligations and produce evidence in respect of export obligation to be discharged against the Licence and Notification within 30 days from the expiry of the export obligation period and have further unconditionally and irrevocably undertaken to pay an amount equal to the duty and interest leviable on the goods cleared/to be cleared in terms of the said Notification and Licence in the event of its failure to comply with the conditions.

12. Merely adopting the terms and conditions or the scheme of Notification No. 31/97-Cus., dated 1-4-1997, it cannot be said that the agreement entered into between the parties has become statutory agreement. Therefore, while petitioners agreed to pay interest under the agreement in form of undertaking, it is a contractual liability. When it is a contractual liability, the Settlement Commission has rightly not entertained the application of the petitioner and remitted the matter back to the Deputy Commissioner for adjudication.

13. We see no substance in the petition and the same is therefore, dismissed."

Further, I rely on the ratio of decision of Hon'ble Bombay High Court in the case of Pratibha Syntext Ltd. Vs. Union of India reported in 2003 (157) E.L.T. 141 (Bom.) wherein it has been interalia held as under:

"In our opinion, there is no merit in this contention. Admittedly, the goods imported by the petitioners were allowed to be cleared without payment of duty in view of

Exemption Notification No. 204/92. At the time of clearance of the imported materials, it was obligatory on the part of the petitioners to produce proof of having executed a bond or a legal undertaking before the concerned licensing Authority for complying with the condition of Notification No. 204/92 and also make a declaration before the Assistant Collector of Customs binding himself to pay on demand the amount of duty leviable if the conditions of the Notifications are not complied with. In the present case, it is not in dispute the imported goods were cleared without payment of duty as per Notification No. 204/92. It is not in dispute that the bond and the legal undertaking given by the petitioners to the Licensing Authority and produced before the Customs authorities at the time of the clearance of the goods did contain a clause to the effect that if the export obligation is not fulfilled, then the customs duty payable on the goods cleared under Notification No. 204/92 shall be paid with interest at the rate specified therein. It is also not in dispute that the petitioners have committed breach of the licence granted to them and have also committed breach of the conditions attached to Notification No. 204/92. When the Customs authorities initiated proceedings for recovery of duty, the petitioners have approached the Settlement Commission. Before the Settlement Commission, the petitioners have not disputed the jurisdiction of the Customs authorities to initiate proceedings under the Customs Act for recovery of customs duty. Therefore, the question to be considered is, having not disputed the jurisdiction of the Customs authorities to initiate proceedings under the Customs Act, is it open to the petitioners to challenge the grant of interest.

Exemption Notification No. 204/92 issued under Section 25 of the Customs Act clearly provides that before clearance of the imported goods, the petitioners shall produce proof of having executed a bond or a legal undertaking before the concerned Licensing Authority, for complying with conditions of the said Notification. Therefore, the terms and conditions of bond and legal undertaking executed before the Licensing authorities agreeing to pay customs duty with interest in case of breach, became part and parcel of the conditions of the exemption notification issued under Section 25 of the Customs Act, 1962. Since, there was breach of the terms of the Exemption Notification, the customs authorities were entitled to recover the duty with interest. Merely, because the Commission erroneously or otherwise had not levied interest in his order, it cannot be said that the Customs authorities had no jurisdiction to recover interest. If the petitioners were satisfied with the order of the Commissioner of Customs, there was no need for them to approach the Settlement Commission. Once the petitioners have voluntarily chosen the jurisdiction of the entire issue by the Settlement Commission afresh, in the light of the disclosure made by them it was open to the Settlement Commission to direct the petitioners to pay the customs duty with interest. Although the Settlement Commission has levied interest at a percentage, much less than what was agreed to pay by the petitioners in their bond and legal undertaking, the same being not an issue in this petition, we are not expressing any opinion in that behalf. Therefore, we have no hesitation in holding that once the petitioners committed breach of the terms of the exemption Notification No. 204/92, the Customs authorities were entitled to enforce the declaration with bond and legal undertaking given by the petitioners and recover customs duty with interest. If the customs authorities were entitled to recover duty with interest, then no fault could be found with the Settlement Commission in directing the petitioners to pay customs duty with interest."

23.6 I find that it is not in dispute that the importer had imported the goods claiming the benefit of Notification No.18/2015 dated 01.04.2015 under Advance Authorization. Condition (iv) of the Notification No.18/2015 dated 01.04.2015 says that "(iv) that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum

as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen per cent per annum from the date of clearance of the said materials.”. Thus, the importer is liable for payment of IGST alongwith interest invoking the provision of Section 143 of the Customs Act, 1962 and Further Bond is required to be enforced to recover the duty along with interest as per Section 142 of the Customs Act, 1962.

In view of the above, I find that the differential Customs Duty amounting to Rs.4,51,42,944/- (Rupees Four Crore, Fifty One Lakh, Forty Two Thousand, Nine Hundred and Forty Four only) [(Rs.3,19,83,202/- i.r.o. import through ICD Khodiyar, Rs.85,31,373/- i.r.o. import through ICD Sanand, Rs.46,28,369/- i.r.o. import through Pipavav Sea Port)] is required to be recovered alongwith interest under Section 143 (3) of the Customs Act, 1962

24. Whether the subject goods having assessable value of Rs. Rs.23,17,50,925/- (Rupees Twenty Three Crore, Seventeen Lakh, Fifty Thousand, Nine Hundred and Twenty Five only) [(Rs. 16,42,13,116/- i.r.o. import through ICD Khodiyar, Rs. 4,37,84,319/- i.r.o. import through ICD Sanand, Rs. 2,37,53,490 /- i.r.o. import through Pipavav Sea Port)] as detailed in the Show Cause Notice, are liable for confiscation under Section 111(o) of the Customs Act, 1962?

24.1 Show Cause Notice proposes confiscation of the impugned imported goods under Section 111(o) of the Customs Act, 1962. 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, would come under the purview of Section 111(o) of Customs Act, 1962. As discussed above and relying on the decision of Hon'ble Supreme Court in case of Union of India Vs. Cosmo Films Ltd reported as 2023 (72) GSTL 147 (SC) wherein Hon'ble Supreme Court has held that pre-import condition, during October,2017 to January,2019, in Advance Authorization Scheme was valid, I find that the Importer has failed to comply with the pre-import conditions as stipulated under Notification No. 18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017 and therefore, imported goods under Advance Authorization claiming the benefit of exemption Notification No. 18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017 are liable for confiscation under Section 111(o) of the Customs Act,1962.

24.2 As the impugned goods are found liable to confiscation under Section 111 (o) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 can be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. Section 125 (1) of the Customs Act, 1962 reads as under: -

“125 Option to pay fine in lieu of confiscation –

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods /or, where such owner is not known, the person from whose

possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit..."

24.3 I find that the importer has wrongly availed the benefit of Notification No.18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017 and further imported goods have been cleared after the execution of Bond for the clearance of the imported goods under Advance Authorization. I rely on the decision in the matter of Weston Components Ltd. v. Collector reported as 2000 (115) E.L.T. 278 (S.C.) wherein Hon'ble Supreme Court has held that:

"It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine".

24.4 I further find that even in the case where goods are not physically available for confiscation, 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 under:

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. We accordingly answer question No. (iii).

24.5 I also find that Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.)**, has held *inter alia* as under: -

“..... In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;

“23. 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. We accordingly answer question No. (iii).”

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above.”

24.6 I find that importer has contended that the goods are not available for confiscation as the same were used in the manufacturing process and finished goods were exported and placed reliance on Shiva Kripa Ispat Pvt. Ltd Vs. CCe, Nasik [2009 (235) ELT 623] Tri-LB], Knowledge Infrastructure Systems Pvt. Ltd Vs. Additional Director General, DRI 2019 (366) ELT A95 (Tri. Mumbai), Bussa Overseas & Properties Vs. C.L. Mahar, ACC 2004 (163) ELT 304 (Bom.) and Sampat Raj Dugar [1992 (58) EKT 163(SC)]. In view of the discussion held in As discussed above in Para 25.4 and 25.5 hereinabove, ratio of none of the case laws relied upon by the importer is applicable to the present case.

Further, I find that importer has contended that the goods are not prohibited under Customs Act, and therefore, Section 111 (o) of the Customs Act is not applicable. I find that the importer has mis-interpreted the provision of Section 111(o) of the Customs Act, 1962 which specifically says that “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;"

In the present case, it is clearly apparent that the importer never complied with the conditions of the exemption notification and has knowingly violated the conditions. The importer has knowingly cleared the imported goods without observing obligatory condition of 'Pre-Import' as envisaged under Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017. In view of the above, the impugned goods imported without observing obligatory condition of "Pre-import" as envisaged in the aforementioned notification are rightly liable for confiscation under Section 111(o) of the Customs Act, 1962. Therefore, the contention of the importer is not tenable.

24.7 In view of the above, I find that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of subject goods having assessable value of Rs.23,17,50,925/- (Rupees Twenty Three Crore, Seventeen Lakh, Fifty Thousand, Nine Hundred and Twenty Five only) [(Rs. 16,42,13,116/- i.r.o. import through ICD Khodiyar, Rs. 4,37,84,319/- i.r.o. import through ICD Sanand, Rs. 2,37,53,490 /- i.r.o. import through Pipavav Sea Port)] under the subject Advance Authorizations as detailed in the Show Cause Notice.

25. Whether the importer is liable to Penalty under Section 112 of the Customs Act, 1962?

25.1 I find that the importer had imported the goods under Advance Authorisations availing the benefit of Notification but failed to fulfill the pre import condition as stipulated therein in the said Notification. Therefore, the goods became liable to confiscation under Section 111(o) of the Custom Act, 1962. Since the goods are liable to confiscation under Section 111(o) of the Custom Act, 1962, penalty under Section 112(a) (ii) of the Customs Act, 1962 is attracted. Further, I find that the ratio of decision rendered by Hon'ble Tribunal, Mumbai in case of Sanghi Industries Ltd Vs. Commissioner of Customs (Export Promotion), Mumbai reported in 2012 (277) ELT (Tr. Mumbai) is squarely applicable in the present case. Relevant Para of the decision is re-produced below:-

"6.8 The appellant has also raised a point that Section 111(o) of the Customs Act for confiscation of the goods is not invokable in the present case. The argument of the appellant is that under Notification 160/92-Cus, which is a conditional exemption Notification, there are two options given to the importer, namely, either to fulfil the export obligation or on failure, pay duty. Thus by paying the duty, the appellants have fulfilled the conditions of Notification No. 160/92 and, therefore, there is no violation and consequently the goods are not liable to confiscation under Section 111(o) of the Act. This argument is totally irrational and illogical. Demand of duty and confiscation of the goods are two totally different aspects under the Customs law. Demand of duty arises on importation of the goods and if goods have been imported at a concessional rate of duty subject to fulfilment of certain conditions and such conditions are violated, then the duty concession would not be available at all. In the case under consideration, the demand of duty has arisen under the Notification itself in terms of the bond executed by the importer at the time of importation of the goods. Confiscation of the goods arise under Section 111 of the Customs Act in certain specified situations. Section 111(o) reads as follows:

"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."

In such an eventuality, the goods imported shall be liable to confiscation. In the instant case the goods were imported availing a concessional rate of duty on the condition that the goods will be put to use for manufacture and export of certain products up to certain value within a specified period. When the importer failed to fulfill the condition by not exporting the goods of required value within the stipulated period, then he was no longer eligible for the concessional rate of duty and the duty liability has to be discharged in full without availing the benefit of the exemption. For the same conduct, the goods also became liable to confiscation under the provisions of Section 111(o). The duty liability arises on account of importation. The liability to confiscation or fine is for violation of the conditions of the importation. The act of importation and the conditions of importation are two different things and for violation of each of them, separate consequences would follow. In the instant case the duty liability has been imposed for the import of the goods and the goods have been confiscated for violating the terms and conditions of importation. Since the goods are liable to confiscation, the liability to penalty arises under Section 112 of the Customs Act. Penalty is an action (in personam) on the importer while the duty and fine are (action in rem) on the goods. As per Section 112 of the Customs Act, liability to penalty arises when a person who in relation to any goods acts or omits any act which act or omission would render the goods liable to confiscation under Section 111. Any person who abets or aids the commission of an act or omits to such an act (which renders the goods liable for confiscation) is also liable to penalty. Similarly when a person acquires possession or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other way dealing in goods which he knows or has reason to believe are liable to confiscation under Section 111 is also liable to penalty under Section 112. In the instant case the appellant imported the goods subject to a condition that he would fulfil the export obligation which obligation he failed to fulfill. Therefore, the goods became liable to confiscation under Section 111(o). Since the goods are liable to confiscation under Section 111(o), penalty under Section 112(a) is attracted. In this case, penalty has been imposed under Section 112(a) and there is no illegality or infirmity in imposing penalty apart from demanding differential duty and we hold accordingly. When the goods are liable to confiscation, the adjudicating authority has the power to allow the redemption of the goods on payment of fine in lieu of confiscation under section 125 of the Customs Act. The goods were released to the appellants at the time of importation under a bond executed by the appellant. The release of the goods was thus provisional. Therefore, when the assessment is finalized subsequently, even if the goods are not available for confiscation, redemption fine in lieu of confiscation can be imposed as has been held in a number of judicial pronouncements on the subject. Therefore the imposition of redemption fine in the instant case is fully justified and is quite legal and we hold accordingly."

Thus, I find that the importer is liable for penalty under Section 112 (a)(ii) of the Customs Act, 1962.

26. I find that the said Importer has also contested that they had received EODC certificates in respect of Advance Authorization No. 81042159 from DGFT and further their application is pending before the DGFT for EODC and therefore, Customs Authority cannot object once certificate of discharge of export obligation is issued by DGFT and further, Customs department cannot adjudicate the issue when the application for EODC is pending before the DGFT Authority. In this regard, I find that the contention of the importer is totally incorrect and contrary to the law laid down by the Honourable Supreme Court of India in the case of **Sheshank Sea Foods Pvt. Ltd. Vs. UOI [1996 (88) ELT 626 (SC)]**. The Hon'ble Apex Court had in the said case held at para 10 of their judgment that:

"We do not find in the provisions of the Import and Export Policy or the Hand Book of Procedure issued by the Ministry of Commerce, Government of India, anything that even remotely suggests that the aforesaid power of the Customs authorities had been taken away by the licensing authority. That the licensing authority is empowered [to] conduct such an investigation does not by itself preclude the Customs authorities from doing so".

Further, at para 11 of the said judgment the Hon'ble Supreme Court held that :

"It is true that the terms of the said Exemption Notification were made a part of the appellants' licences and, in that sense, a breach of the terms of the said Exemption Notification is also a breach of the terms of the licence, entitling the licensing authority to investigate. But the breach is not only of the terms of the licence; it is also a breach of the condition in the Exemption Notification upon which the appellants obtained exemption from payment of Customs duty, and therefore, the terms of Section 111(o) enable the Customs authorities to investigate." [emphasis supplied]

Further, relying upon the above decision, the apex court in the case of 'Commissioner of Customs, Hyderabad Vs. Pennar Industries Ltd.' [2004(170) ELT 135 SC], held that:

"16. The aforesaid Order-in-Original of DGFT was under the provisions of EXIM Policy. It is held by this Court in Sheshank Sea Foods Pvt. Ltd. (supra) that the same would not be binding on the customs authorities and as far as action taken under the Customs Act is concerned, the same is to be covered by the provisions of the Customs Act."

The ratio of the above decision in the case of Sheshank Sea Foods is squarely applicable to the facts of the present case and hence the contention of the importer is without any merit. Further, I find that even the **DGFT** has issued Trade Notice No. 7/2023-24 dated 08.06.2023, saying that " all the imports made under Advance Authorization Scheme on or after 13.10.2017 and upto and including 09.01.2019 which could not meet the pre-import condition may be regularized by making payments as prescribed in the Customs Circular". However, the importer has not paid the IGST till date.

27. I find that importer has contended that caption SCN ought to have been issued within a reasonable period. I find that said plea is not acceptable as it undisputed facts that importer had not complied with the condition of Pre-Import' at the time of import under Advance Authorisation. The importer had filed Bond at the time of importation under Advance Authorization binding themselves to pay the duty alongwith interest in the event of failure to any condition of the Customs as well as DGFT Notifications. I rely on the ratio of the decision of Hon'ble Mumbai Tribunal rendered in case of Commissioner of Hindustan Lever Ltd Vs. Commissioner of Customs (EPO, Mumbai reported in 2012 (281) ELT 241 (Tri. Mumbai) wherein it has been interalia held as under:

"7.3 The appellant has also raised a contention that duty demand is time-barred as the show cause notice has been issued only on 29-10-2004, whereas the

import of Crude Palm Stearine has taken place in March and June 1999, that is, after a period of five years from the date of import. The question of time bar in this case will not arise for the reason that the duty demand is raised in terms of the bond and letter of undertaking executed by the importer appellant with the customs authorities. In terms of the said bond/LUT, there is a obligation on the part of the appellant to fulfil the terms and conditions of import which we have already held that the appellant has not fulfilled. The bond/LUT executed with the customs has not been discharged and therefore, duty demand can be raised at any time before the bond is discharged. Since the duty demand is sustainable, the liability to pay interest thereon is automatic and consequential. Therefore, the appellant is liable to pay interest on the duty demand of Rs. 66,71,998/- in terms of the bond/LUT executed by them at the appropriate rates. Since the appellant has failed to fulfil the terms and conditions of the relevant customs notification in respect of the end use specified therein, the quantity of 805.266 MTs of crude palm stearine valued at Rs. 1,49,99,863/- is liable to confiscation under the provisions of Section 111(o) of the Customs Act, 1962 and we hold accordingly. Consequently the appellant would be liable to penalty under Section 112(a) of the Customs Act, 1962. Since the crude palm stearine was allowed to be cleared in terms of the bond executed with the customs, in lieu of confiscation, redemption fine under Section 125 of the said Customs Act can also be imposed."

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

::ORDER::

28.1 I confirm the total demand of Customs duty of **Rs.4,51,42,944/- (Rupees Four Crore, Fifty One Lakh, Forty Two Thousand, Nine Hundred and Forty Four only) [(Rs.3,19,83,202/- i.r.o. import through ICD Khodiyar, Rs.85,31,373/- i.r.o. import through ICD Sanand, Rs.46,28,369/- i.r.o. import through Pipavav Sea Port)]** being the duty foregone at the time of import of goods under Advance Authorizations in terms of Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017, read with conditions of Bond executed and order the same to be recovered from M/s. Vishakha Polyfab Private Limited, Vishakha House, Ashirwad Paras Corporate House, Corporate Road, Prahladnagar, Ahmedabad, Gujarat-380015 in terms of Section 143(3) of the Customs Act, 1962 by enforcing the terms of the above mentioned Bond. Further, I order for recovery of the same as per Section 142 of the Customs Act, 1962.

28.2 I Order to recover Interest at the rate of 15% on the duty demanded at Para 28.1 above from the date of clearance of the imported goods from M/s. Vishakha Polyfab Private Limited, Vishakha House, Ashirwad Paras Corporate House, Corporate Road, Prahladnagar, Ahmedabad, Gujarat-380015 as per Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017 read with conditions of Bond executed by them, in terms of Section 143(3) of the Customs Act, 1962 by enforcing the terms of the above mentioned Bond. Further, I order for recovery of the same as per Section 142 of the Customs Act, 1962.

28.3 I hold the subject goods having assessable value of **Rs.23,17,50,925/- (Rupees Twenty Three Crore, Seventeen Lakh, Fifty Thousand, Nine Hundred and Twenty Five only) [(Rs. 16,42,13,116/- i.r.o. import through ICD Khodiyar, Rs. 4,37,84,319/- i.r.o. import through ICD Sanand, Rs. 2,37,53,490 /- i.r.o. import through Pipavav Sea Port)]** imported by M/s. Vishakha Polyfab Private Limited, Vishakha House, Ashirwad Paras Corporate House, Corporate Road, Prahladnagar, Ahmedabad, Gujarat-380015 under the subject Advance Authorizations as detailed in the Table-3 in Show Cause Notice

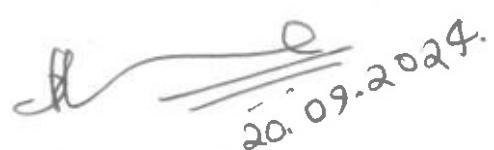
liable for confiscation under Section 111(o) of the Customs Act, 1962. However, I give them the option to redeem the goods on payment of Fine of **Rs. 2,30,00,000/- (Rupees Two Crore, Thirty Lakh only)** under Section 125 of the Customs Act, 1962.

28.4 I impose a penalty of **Rs.40,00,000/- (Rupees Forty Lakh only)** on M/s. Vishakha Polyfab Private Limited, Vishakha House, Ashirwad Paras Corporate House, Corporate Road, Prahladnagar, Ahmedabad, Gujarat-380015 under Section 112(a) of the Customs Act, 1962.

28.5 I order to enforce the Bonds executed by M/s. Vishakha Polyfab Private Limited, Vishakha House, Ashirwad Paras Corporate House, Corporate Road, Prahladnagar, Ahmedabad, Gujarat-380015 in terms of Section 143(3) of the Customs Act, 1962, for recovery of the Customs Duty as mentioned at para above alongwith interest as per Section 142 of the Customs Act, 1962

29. This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and Rules/Regulations framed thereunder or any other law for the time being in force in the Republic of India.

30. The Show Cause Notice No. VIII/10-07/Commr./O&A/2023-24 dated 22.09.2023 is disposed off in above terms.



20.09.2024

(Shiv Kumar Sharma)
Principal Commissioner

DIN-20240971MN0000999FB8

F.No.VIII/10-07/Commr./O&A/2023-24

Date:20.09.2024

To

1. M/s. Vishakha Polyfab Private Limited,

Address-1: Vishakha House, Ashirwad Paras Corporate House, Corporate Road, Prahladnagar, Ahmedabad, Gujarat-380015

Address-2: 549/2, Village: Vadsar, Tal:Kalol, Dist:- Mehsana, Gujarat-382721

Copy to:-

1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad for information please.
2. The Deputy/Assistant Commissioner of Customs, ICD Khodiyar, Ahmedabad for information.
3. The Deputy/Assistant Commissioner of Customs, ICD Sanand for information.
4. The Deputy/Assistant Commissioner of Customs, Custom House, Pipavav for information.
5. The Superintendent of Customs (Systems), Ahmedabad in PDF format for uploading on the Website of Customs Commissionerate, Ahmedabad.
6. The Guard File.