

<p>प्रधान आयुक्त का कार्यालय सीमा शुल्क ,अहमदाबाद “सीमाशुल्क भवन ,”पहली मंजिल, पुराने हाईकोर्ट के सामने ,नवरांगपुरा, अहमदाबाद009 380 – दूरभाष4630 2754 (079) :, E-mail: cus-ahmd-adj@gov.in, फैक्स2343 2754 (079) :</p>	 <p>सत्यमेव जयते</p>	<p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOM HOUSE, FIRST FLOOR, OPP. OLD HIGH COURT, NAVRANGPURA, AHMEDABAD -380 009</p>
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DIN:20250871MN000088458A

PREAMBLE

A	फाइल संख्या/ File No.	:	F. No. GEN/ADJ/ADC/1434/2025-ICD-SRT-CUS-COMMRTE-AHMEDABAD
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	F. No. VIII/6-888/ICD-Sachin/2016-17 dated 26.03.2025
C	मूल आदेश संख्या/ Order-In-Original No.	:	118/ADC/SR/O&A/2025-26
D	आदेश तिथि/ Date of Order-In-Original	:	29.08.2025
E	जारी करनेकी तारीख/ Date of Issue	:	29.08.2025
F	द्वारापारित/ Passed By	:	Shravan Ram, Additional Commissioner, Customs Ahmedabad
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	M/s. Eva Creation, B/2, 808, Megh Malhar Residency, Nr. Hare Krishna Impex, Sarthana, Surat-395010 M/s. Eva Creation, 34, 3rd Floor, Anjani Ind. Estate-4, Block-D, Kosad Road, Surat-390004 Sh. Hasmukh Mansukhbhai Pansuriya, Proprietor of M/S. EVA CREATION, Plot No. 34, 3rd, Floor Anjani Ind, Estate-4, Blockd D, Kosad Road Surat-390004

(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क(अपील), चौथी मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरांगपुरा, अहमदाबाद में कर सकता है।
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:
(i)	अपील की एक प्रति और;
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या डूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।

BRIEF FACTS OF THE CASE:

M/s. Eva Creation, B/2, 808, Megh Malhar Residency, Nr. Hare Krishna Impex, Sarthana, Surat-395010 (hereinafter referred as “the said Importer” for the sake of brevity), holding Import Export Code No. 5216902538 had imported 03 Sets of capital goods viz. Computerized Embroidery Machine under EPCG License No. 5230020840 dated 24.05.2016 by saving duty of **Rs.13,29,653/- (Actual Duty Utilized of Rs. 13,21,957/-)** and had cleared the same vide below mentioned Bill of Entry at zero duty while availing the benefit of exemption available under Notification No. 16/2015-Cus dated 01.04.2015. The details of import are as under:

S. N.	B/E No. & Date	Qty machinery cleared	Assess Value	Duty Saved/ available as per EPCG License	Total Duty Foregone/Debited at the time of clearance	BG Amount (Rs.)
1	5667684 dtd.17.06.2016	01	16,12,418/-	13,29,653/-	3,77,556/-	65,000/- +
2	7111045 dtd.17.10.2016	02	40,33,233/-		9,44,401/-	
Total		03	56,45,651/-	13,29,653/-	13,21,957/-	2,20,000/-

As per para 5.16 of Handbook of Procedures, 10% enhancement in CIF Value of duty saved amount is admissible.

2. As per Notification No. 16/2015-Cus dated 01.04.2015 as amended, the said importer was required to fulfill the export obligation on FOB basis equivalent to six times of the duty saved on the goods imported as may be specified on the License or

authorization. The relevant portion of the said notification is produced herein below for reference:

Notification No. 16 / 2015-CUSTOMS

New Delhi, the 1st April, 2015

G.S.R. 252 (E) -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in the Table 1 annexed hereto, from, -

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

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

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

(2) that the authorisation is registered at the port of import specified in the said authorisation and the goods, which are specified in the Table 1 annexed hereto, are imported within validity of the said authorisation and the said authorisation is produced for debit by the proper officer of customs at the time of clearance: Provided that the goods imported should not fall under clause (f) of paragraph 5.01 of Foreign Trade Policy: Provided further that the catalyst for one subsequent charge shall be allowed, under the authorisation in which plant, machinery or equipment and catalyst for initial charge have been imported, except in cases where the Regional Authority issues a separate authorisation for catalyst for one subsequent charge after the plant, machinery or equipment and catalyst for initial charge have already been imported;

(3) that the importer is not issued, in the year of issuance of zero duty EPCG authorisation, the duty credit scrips under the erstwhile Status Holder

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

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

(5) that the importer executes a bond in such form and for such sum and with such surety or security as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs binding himself to comply with all the conditions of this notification as well as to fulfill export obligation on Free on Board (FOB) basis equivalent to six times the duty saved on the goods imported as may be specified on the authorisation, or for such higher sum as may be fixed or endorsed by the Regional Authority in terms of Para 5.16 of the Handbook of Procedures, within a period of six years from the date of issue of Authorisation, in the following proportions, namely :

<i>S. No.</i>	<i>Period from the date of issue of Authorisation</i>	<i>Proportion of total export obligation</i>
<i>1</i>	<i>Block of 1st to 4th year</i>	<i>Minimum 50%</i>
<i>2</i>	<i>Block of 5th and 6th year</i>	<i>Balance</i>

Provided that in case the authorisation is issued to a CSP, the CSP shall execute the bond with bank guarantee and the bank guarantee shall be equivalent to 100% of the duty foregone, and the bank guarantee shall be given by CSP or by anyone of the users or a combination thereof, at the option of the CSP:

Provided further that the export obligation shall be 75% of the normal export obligation specified above when fulfilled by export of following green

technology products, namely, equipment for solar energy decentralized and grid connected products, bio-mass gassifier, bio-mass or waste boiler, vapour absorption chillers, waste heat boiler, waste heat recovery units, unfired heat recovery steam generators, wind turbine, solar collector and parts thereof, water treatment plants, wind mill and wind millturbine or engine, other generating sets - wind powered, electrically operated vehicles - motor cars, electrically operated vehicles - lorries and trucks, electrically operated vehicles - motor cycle and mopeds, and solar cells:

Provided also that for units located in Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura, the export obligation shall be 25% of the normal export obligation specified above:

Provided also that where a sick unit holding EPCG authorisation is notified by the Board for Industrial and Financial Reconstruction (BIFR) or where a rehabilitation scheme is announced by the concerned State Government in respect of sick unit holding EPCG authorisation for its revival, the export obligation may be fulfilled within time period allowed by the Regional Authority as per the rehabilitation package prepared by the operating agency and approved by BIFR or rehabilitation department of State Government. In cases where the time period is not specified in the rehabilitation package, the export obligation may be fulfilled within the period specified in paragraph 5.05 of the Foreign Trade Policy;

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

(7) that the importer, including a CSP, produces within 30 days from the expiry of each block from the date of issue of authorisation or within such extended period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow, evidence to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs showing the extent of export obligation fulfilled, and where the export obligation of any particular block is not fulfilled in terms of the condition (5), the importer shall within three months from the expiry of the said block pay

duties of customs equal to an amount which bears the same proportion to the duties leviable on the goods, but for the exemption contained herein, which the unfulfilled portion of the export obligation bears to the total export obligation, together with interest at the rate of fifteen percent. per annum from the date of clearance of the goods;

(8) that where the importer fulfills 75% or more of the export obligation as specified in condition (5) [over and above 100% of the average export obligation] within half of the period specified for export obligation as mentioned in condition (5), his balance export obligation shall be condoned and he shall be treated to have fulfilled the entire export obligation ;

It is thus evident from the above notification that the said importer was required to execute a bond in such form and for such sum and with such surety or security as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs binding himself to fulfill export obligation on FOB basis equivalent to six times the duty saved on the goods imported as may be specified on the licence or authorization, or for such higher sum as may be fixed or endorsed by the licencing Authority or Regional Authority, within a period of six years from the date of issuance of licence or authorization i.e. complete 50% export obligation within first block of 1st to 4th years and remaining 50 % in second block of 5th to 6th years.

3. Accordingly, the said importer had executed Bond dated 15.06.2016 for Rs. 36,00,000/- backed by Bank Guarantee No. 518/2016-17 Dated 27.05.2016 for Rs. 65,000/- issued by the Lakshmi Vilas Bank, Surat, and Bank Guarantee No. 828/2016-17 Dated 21.09.2016 for Rs. 1,55,000/- issued by the Lakshmi Vilas Bank, Surat for EPCG License No. 5230020840 dated 24.05.2016. They had also undertaken to fulfill all the terms and conditions specified in the License and the said Notification.

4. The said machinery i.e. 03 Sets of Computerized Embroidery Machine imported under the above said EPCG License were installed at the factory/business premises i.e. **M/s. Eva Creation, 34, 3rd Floor, Anjani Ind. Estate-4, Block-D, Kosad Road, Surat-390004** as per the Installation Certificate dated 12.11.2016 issued by Chartered Engineer, Mr Gunjan P Talaviya , Surat certifying the receipt of the goods imported and its installation.

5. The aforesaid EPCG License No. 5230020840 dated 24.05.2016 was issued to the said importer and the Bond dated 15.06.2016 was executed. Accordingly, the said importer was required to fulfill the export obligation within a period of six years from the date of

EPCG License as per the condition laid down in the Notification and EPCG License itself and submit the Export Obligation Discharged Certificate issued by the DGFT Authority to the department.

6. Letter F.No. VIII/6-888/ICD-Sachin/2016-17 dated 20.07.2023 was issued to the said importer to either furnish the EODC issued by DGFT, Surat or any extension granted by DGFT, Surat for fulfillment of Export Obligation, but no reply received.

6.1. As no reply was received from the said importer, a letter F.No. ICD-Sachin/DGFT/07/2020-21 dated 02.03.2023 & a letter F.No. ICD-Sachin/DGFT/07/2020-21 dated 05.02.2025 was issued to the Foreign Trade Development officer, DGFT, Surat requesting them to intimate this office, whether the said importer has been issued EODC against EPCG License No. 5230020840 dated 24.05.2016 or any documents showing the fulfillment of the export obligation submitted by the aforesaid importer. The Assistant Director, Directorate General of Foreign Trade, Surat. The Foreign Trade Development officer, DGFT, Surat has not submitted any reply.

6.2. Thus, it appears, from the above that the said importer has failed to fulfill the export obligation as specified in the License and has not complied with the mandatory conditions of the Customs Notification No.16/2015-Cus dated 01.04.2015, EPCG License and conditions of the Bond.

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

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

for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the Assistant Commissioner of Customs or Deputy Commissioner of Customs approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.

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

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

8. Since, the said importer appears to fail to fulfill the conditions laid down under Notification No. 16/2015-Cus dated 01.04.2015 in as much as they failed to export goods manufactured from 03 Sets of Computerized Embroidery Machine imported under EPCG License No. 5230020840 dated 24.05.2016 which was equivalent to six times the duty saved on the goods imported and also neither produced EODC issued by DGFT, Surat nor could produce any extension granted by DGFT, Surat for fulfillment of Export Obligation. Hence, they appears liable to pay duty of **Rs.13,21,957/-** in respect of the said imported goods along with interest at the applicable rate, in terms of conditions of the said Notification read with condition of Bond executed by the said importer read with Section 143 of the Customs Act, 1962.

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

8.2 Since, the said importer could not fulfill the conditions laid down under Notification No.16/2015-Cus dated 01.04.2015, the Bank Guarantee No. 518/2016-17 Dated 27.05.2016

for Rs. 65,000/- issued by the Lakshmi Vilas Bank, Surat and BG No. 828/2016-17 Dated 21.09.2016 For Rs. 1,55,000/- issued by the Lakshmi Vilas Bank, Surat in favor of the Deputy/Asstt. Commissioner of Customs, ICD-Sachin, Surat against the EPCG License No. 5230020840 dated 24.05.2016 appears required to be appropriated against the proposed demand.

8.3 As per para (7) of Customs Notification No. 16/2015-Cus dated 01.04.2015, the importer was required to produce, within 30 days from the expiry of each block from the date of issue of authorization or within such extended period, evidence to the extent of export obligation fulfilled by them, and where the export obligation of any particular block was not fulfilled, the importer were required to pay duties of customs equal to an amount which for the unfulfilled portion of the export obligation along with interest within three months from the expiry of the said block. The said importer has also given bond to this effect. The letter dated 20.07.2023 was written to the importer to intimate the extent of export obligation fulfilled by them but no reply received. Thus, the fact that they had neither completed their Export obligation nor paid the duty on import as per law & procedure is on record. The DGFT also informed that the importer has not submitted any documents regarding fulfillment of Export obligation. Thus, it appears that the said importer has neither fulfilled their Export obligation nor paid the customs duty along with interest for non-fulfillment of EO. These facts were not disclosed to the department or DGFT, thereby suppressing the facts with a clear intent to evade the payment of duty.

9. In view of the above, **M/s. Eva Creation, B/2, 808, Megh Malhar Residency, Nr. Hare Krishna Impex, Sarthana, Surat-395010** was issued a show cause notice bearing F. No. VIII/6-888/ICD-Sachin/2016-17 dated 26.03.2025 by the Additional Commissioner of Customs, Surat, as to why:

- (i) The benefit of Zero Duty for EPCG Scheme under Notification No. 16/2015-Cus dated 01.04.2015 on the subject imported Computerized Embroidery Machine in the name of **M/s. Eva Creation, B/2, 808, Megh Malhar Residency, Nr. Hare Krishna Impex, Sarthana, Surat-395010**, should not be denied.
- (ii) Customs Duty totally amounting to **Rs. 13,21,957/- (Rupees Thirteen Lakh Twenty One Thousand Nine Hundred Fifty Seven only)** being the Duty forgone at the time of import under EPCG License, should not be demanded and recovered from them in terms of Notification No.16/2015-Cus dated 01.04.2015 as amended, read with the Conditions of Bond executed and furnished by them in term of Section 143 of the Customs Act, 1962 by enforcing the terms of the said Bond and as to why the Bank Guarantee No. 518/2016-17 Dated 27.05.2016 For Rs. 65,000/- issued by the Lakshmi Vilas Bank, Surat and Bank Guarantee No.

828/2016-17 Dated 21.09.2016 for Rs. 1,55,000/- issued by the Lakshmi Vilas Bank, Surat backed against the Bond, should not be appropriated and adjusted towards the Duty liability as mentioned above.

(iii) Interest at the applicable rate should not be recovered from them on the Customs Duty as mentioned at (ii) above in term of Notification No. 16/2015-Cus dated 01.04.2015 as amended from time to time read with Conditions of the Bond executed in term of Section 143 of the Customs Act, 1962.

(iv) The imported Capital Goods should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962 read with conditions of Bond executed, in terms of Section 143 of the Customs Act, 1962 read with Notification No.16/2015-Cus dated 01.04.2015 as amended from time to time.

(v) Penalty should not be imposed on the Importer under Section 112(a) of the Customs Act, 1962 for the acts of omission & commission mentioned above.

(vi) Penalty should not be imposed on the Importer under Section 117 of the Customs Act, 1962 for the acts of omission & commission mentioned above.

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

DEFENSE SUBMISSION AND PERSONAL HEARING:

10. In response to the show cause notice, the said Importer have not submitted any written submission till date.

11. Opportunities for Personal hearing were given to the importer on 14.07.2025, 24.07.2025 and 05.08.2025 in compliance with Principle of Natural Justice. However, noticee did not attend any of the Personal Hearing.

11.1 From the foregoing facts, it is evident that adequate opportunities were provided to the Noticee; however, they failed to avail themselves of the same by choosing not to appear for the personal hearing.

DISCUSSIONS AND FINDINGS:

12. I have carefully examined the show cause notice, the records, and the facts of the

present case. I find that that the Noticee has neither appeared for the personal hearing nor submitted any written submissions, despite being granted multiple opportunities, as detailed in the foregoing paragraphs, to present their case. In view of this, I am constrained to proceed with the adjudication proceedings *ex parte*, based on the merits of the case.

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

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

"19. No doubt hearing includes written submissions and personal hearing as well but the principle of Audi Alteram Partem does not make it imperative for the authorities to compel physical presence of the party concerned for hearing and go on adjourning the proceeding so long the party concerned does not appear before them. What is imperative for the authorities is to afford the opportunity. It is for the party concerned to avail the opportunity or not. If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice. In the instant case as stated in detail in preceding paragraphs, repeated adjournments were granted to the petitioners, dates after dates were fixed for personal hearing, petitioners filed written submissions, the administrative officer of the factory appeared for personal hearing and filed written submissions, therefore, in the opinion of this Court there is sufficient compliance of the principles of natural justice as adequate opportunity of hearing was afforded to the petitioners.

21. It may be recalled here that the requirement of natural justice varies from cases to cases and situations to situations. Courts cannot insist that under all circumstances personal hearing has to be afforded. Quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the persons concerned but it cannot be held that before dismissing such applications in all events the quasi-judicial authorities must hear the applicants personally. When principles of natural justice require an opportunity before an adverse order is passed, it does not in all circumstances mean a personal hearing. The requirement is complied with if the person concerned is afforded an opportunity to present his case before the authority. Any order passed after taking into consideration the points

raised in such applications shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters. See Union of India and Another v. M/s. Jesus Sales Corporation [1996 (83) E.L.T. 486 (S.C.) = J.T. 1996 (3) SC 597].

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

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

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

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

12.1.4 Hon'ble Delhi Tribunal in the case of **COMMISSIONER OF C.EX. VS. PEE IRON**

& STEEL CO. (P) LTD. REPORTED IN AS 2012 (286) E.L.T. 79 (TRI. – DEL) [upheld by Hon'ble Punjab & Haryana High Court reported in **2015 (316) E.L.T. A118 (P&H.)**] has observed that:

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

13. I have carefully gone through the Show cause notice and documents of the case on record. The issues for consideration before me are as follows:

- i. Whether the zero duty for EPCG scheme under the said Notification No. 16/2015-Cus dated 01.04.2015 is admissible to the Noticee in absence of non-fulfillment of the export obligation prescribed therein.
- ii. Whether the Capital Goods under consideration are liable to confiscation .
- iii. Whether the Noticee is liable for penalty as invoked in the SCN.

14. I now proceed to determine whether the benefit of zero duty under the EPCG Scheme, as provided in Notification No. 16/2015-Cus dated 01.04.2015, is admissible to the Noticee in light of the non-fulfillment of the prescribed export obligation.

14.1 The EPCG Licence was issued to the Noticee on 24.05.2016. In accordance with the conditions stipulated under Notification No. 16/2015-Cus dated 01.04.2015, the Noticee was required to fulfill the export obligation by 23.05.2022, i.e., within six years from the date of issuance of the licence. However, the Noticee has not submitted any documents indicating that an extension for fulfilling the export obligation was granted, nor have they produced an Export Obligation Discharge Certificate (EODC) issued by the DGFT. Further, no documentary evidence has been submitted to establish that the export obligation has been fulfilled, or that requisite documents have been submitted to the DGFT, Surat, for the issuance of an EODC. I find that ample opportunity and sufficient time were provided to the Noticee to furnish proof of fulfillment of the export obligation and the EODC. I also note that the Noticee has failed to appear for any of the personal hearings granted to them, thereby not availing themselves of the opportunity provided in adherence to the principles of natural justice.

14.2 I find that the Noticee has failed to submit the requisite Export Obligation Discharge Certificate (EODC/Redemption Certificate) issued by the DGFT, which is a mandatory requirement. At the time of importation of the Capital Goods at zero rate of duty under the EPCG Scheme, the Noticee had undertaken a binding commitment to fulfill the prescribed

export obligation. The Capital Goods were permitted clearance at zero customs duty on the basis of Notification No. 16/2015-Cus dated 01.04.2015, subject to compliance with the conditions laid down therein, as well as those specified in the Foreign Trade Policy 2015–20 and the Handbook of Procedures. In support of this, the Noticee executed a Bond, thereby legally committing to fulfill the export obligation and, in the event of failure to do so, to pay the applicable customs duty along with interest.

14.3 The condition specified at Paragraph 2(5) of Notification No. 16/2015-Cus dated 01.04.2015 stipulates that the exemption is subject to the execution of a Bond by the importer, undertaking to comply with all conditions of the said Notification and to fulfill the export obligation within a period of six years from the date of issuance of the Licence/Authorisation. For ease of reference, the relevant extract is reproduced below:

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

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

Furthermore, Paragraph 5.01 of the Foreign Trade Policy (2015–20), pertaining to the EPCG Scheme, and Paragraph 5.13 of the Handbook of Procedures (2015–20), stipulate that the export obligation, equivalent to six times the duty saved, must be fulfilled within a period of six years from the date of issuance of the Authorisation. The relevant provisions are reproduced below for reference: -

Zero Duty EPCG Scheme	5.01	<i>(a) EPCG Scheme allows import of capital goods for preproduction, production and post-production at Zero customs duty.</i>
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Block wise Fulfillment of EO	5.13	<i>(a) The Authorisation holder under the EPCG scheme shall, while maintaining the average export obligation, fulfill the specific export obligation over the prescribed block period in the following proportions:</i>	
		<i>Period from the date of issue of Authorisation</i>	<i>Minimum export obligation to be fulfilled</i>
		<i>Block of 1st to 4th year</i>	<i>50%</i>
		<i>Block of 5th and 6th year</i>	<i>Balance EO</i>

Therefore, the conjoint reading of para 5.01 of Foreign Trade Policy (2015-20), para 5.13 of Handbook of Procedure (2015-20) and Para 2(5) of Notification No. 16/2015-Cus dated 01.04.2015 makes it explicitly clear that the Noticee was bound to fulfill the stipulated export obligation within Six years unless extended by the competent authority. The 50% of export obligation was to be completed in the first block, i.e. within four years and remaining 50% export obligation was to be completed by six years from the date of issuance of licence or authorization.

In the present case, the Noticee has not submitted any document issued by the competent authority, i.e., the DGFT, Surat, indicating that an extension of the period for fulfillment of export obligation was granted. Upon completion of the stipulated period of six years, the Noticee was required to furnish the Export Obligation Discharge Certificate (EODC) issued by the said authority. However, I find that the Noticee has failed to submit the requisite EODC within the prescribed time frame. This clearly indicates that the Noticee has not fulfilled the export obligation in respect of the EPCG licences under consideration, thereby violating the conditions of Notification No. 16/2015-Cus dated 01.04.2015, as well as the provisions of the Foreign Trade Policy 2015-20 and the Handbook of Procedures. Under these circumstances, it was incumbent upon the Noticee to voluntarily discharge the customs duty liability within three months from the end of each block period.

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

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

Likewise, Paragraph 5.13(c) of the Handbook of Procedures (2015-20) clearly states that the Noticee is obligated to pay the Customs Duty along with interest in the event of non-fulfillment of the export obligation. The relevant excerpt is reproduced below:

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

By virtue of the above provisions, the Noticee was obligated to pay the Customs Duty along with interest at the rate of 15% from the date of clearance of the goods, within three months following the expiry of each respective block period. Additionally, the Noticee executed a Bond under which they committed to discharge the Customs Duty along with interest in case of non-fulfillment of the export obligation.

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

(5) “Bond” — “Bond” includes—

- (a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;
- (b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and
- (c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another:

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

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

In view of the definition of the term 'Bond', it is unequivocally clear that the Noticee has undertaken the obligation to pay Customs Duty along with interest at the rate of 15% in the event of non-fulfillment of the export obligation. The Noticee's failure to pay the Customs Duty and interest as stipulated amounts to a breach of the Bond executed by them.

14.6 In light of the foregoing discussions, I find that the benefit of exemption under Notification No. 16/2015-Cus dated 01.04.2015 is not admissible to the Noticee due to their failure to fulfill the export obligation prescribed therein. Consequently, the Customs Duty along with applicable interest is liable to be recovered from the Noticee in accordance with the provisions of Notification No. 16/2015-Cus dated 01.04.2015 and the Foreign Trade Policy 2015-20. Further, the bank guarantees furnished by the Noticee against the aforesaid EPCG Licence/Authorisation must be encashed and appropriated/adjusted towards the outstanding duty liabilities. It is also on record that the Noticee has failed to pay the differential customs duty within three months from the expiry of the respective block periods, as required under the said Notification. I hold that the provisions of the Exemption Notification must be interpreted strictly, giving effect to the clear and plain meaning of the words used. The subject matter must be governed solely by the language of the Notification, leaving no room for ambiguity or intendment. My approach of strict interpretation aligns with the judicial discipline established by the Hon'ble Supreme Court. To illustrate this principle, I refer to the following landmark decisions:

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

v. CCE1995 (77) E.L.T. (474) (S.C.) (para 16)

15. Now I proceed to determine whether the Capital Goods in question are liable for confiscation.

15.1 Regarding the issue of liability of the subject Capital Goods for confiscation, I find that these Capital Goods were imported availing the benefit of exemption under Notification No. 16/2015-Cus dated 01.04.2015. One of the conditions stipulated in the said exemption Notification requires the Noticee to export goods valued at six times the amount of duty saved within a period of six years. Accordingly, the exemption was conditional upon the fulfillment of these requirements. In the present case, since the Noticee has failed to fulfill the prescribed condition, I hold that the Capital Goods in question are liable for confiscation under the provisions of Section 111(o) of the Customs Act. The relevant extract of the said provision is reproduced below:

The following goods brought from a place outside India shall be liable to confiscation:

(a) _____

(b) _____

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

Therefore, I find that the Capital Goods under consideration are liable for confiscation under the provisions of Section 111(o) of the Customs Act, 1962. Additionally, I find that the Noticee has submitted a Bond and Bank Guarantees in this case. The Bond submitted is enforceable, and accordingly, I hold that, in view of the liability of the subject goods to confiscation, a redemption fine as prescribed under Section 125(1) of the Customs Act may be imposed. Further, the imposition of redemption fine is supported by the judgment in the case of M/s Visteon Automotive Systems India Ltd., reported at 2018 (009) GSTL 0142 (Mad), where the Hon'ble High Court of Madras observed as follows:

Redemption fine - Imposition of - Availability of goods - It is not necessary for imposing redemption fine. - The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation

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

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

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

imposition of redemption fine under Section 125 of the Act. [para 23]

15.2 I find that the Noticee has failed to comply with the conditions stipulated under Customs Notification No. 16/2015-Cus dated 01.04.2015, as well as the terms of the Bond executed at the time of import. Accordingly, the demand for customs duty and interest raised in the Show Cause Notice is found to be legally sustainable and has been rightly invoked. It is a matter of serious concern that the imported capital goods, cleared at zero customs duty, have not been put to their intended use, thereby constituting a grave economic offence. The Noticee was under a clear obligation to adhere to the conditions of the said Notification, which they have failed to fulfill. This non-compliance, both with the Notification and the Bond, warrants the imposition of a higher redemption fine. Furthermore, despite availing the benefit of exemption under the said Notification, the Noticee has not fulfilled the corresponding export obligation. It is a well-settled principle of law that exemption notifications must be construed and complied with strictly, and no room for intendment can be allowed. In view of the above, I find it appropriate to impose a fine in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

16. Now I proceed to examine whether the Noticee is liable to penalties as invoked in the Show Cause Notice.

16.1 The Show Cause Notice proposes the imposition of a penalty on the Noticee under the provisions of Section 112(a) of the Customs Act, 1962. As per Section 112(a), any person who, in relation to any goods, omits to do any act which renders such goods liable to confiscation under Section 111, is liable to penalty. In the present case, I find that the Noticee, by failing to fulfill the export obligation, has rendered the subject capital goods liable to confiscation. Consequently, the Noticee has made themselves liable to penalty under Section 112(a)(ii) of the Customs Act, 1962. Accordingly, I hold that the Noticee is liable for penalty under the said provision.

16.2 I further find that the Noticee has failed to fulfill the export obligation undertaken at the time of importing the subject capital goods under the said EPCG Authorisation. This failure indicates that the capital goods were not utilized for the intended purpose as prescribed. As a result, the Noticee has contravened the conditions of Notification No. 16/2015-Cus dated 01.04.2015 and has thereby rendered themselves liable to penalty under the provisions of Section 117 of the Customs Act, 1962.

17. I find that the Noticee had submitted the Bank Guarantee No. 518/2016-17 Dated 27.05.2016 for Rs. 65,000/- issued by the Lakshmi Vilas Bank, Surat and Bank Guarantee No. 828/2016-17 Dated 21.09.2016 for Rs. 1,55,000/- issued by the Lakshmi Vilas Bank,

Surat. Both the said Bank Guarantees are required to be appropriated and the amount is to be deposited in Government exchequer and the same may be adjusted against the aforesaid demand confirmed vide this subject Order.

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

ORDER

- i. I disallow the benefit of the zero rate of duty under the EPCG Scheme, as provided by Notification No. 16/2015-Cus dated 01.04.2015, in respect of the machines imported in the name of **M/s. Eva Creation, located at B/2, 808, Megh Malhar Residency, Near Hare Krishna Impex, Sarthana, Surat-395010.**
- ii. I confirm the demand for Customs Duty amounting to **Rs. 13,21,957/- (Rupees Thirteen Lakh Twenty One Thousand Nine Hundred Fifty Seven only)**, representing the duty foregone at the time of import of capital goods under the EPCG Licence, in terms of Notification No. 16/2015-Cus dated 01.04.2015, as amended, and in accordance with the conditions of the Bond executed. I further order the recovery of the said amount from M/s. Eva Creation, by enforcing the terms of the aforesaid Bond, in accordance with the provisions of Section 143 of the Customs Act, 1962."
- iii. I hold the capital goods under reference, having an assessable value of Rs. 56,45,651/- (Rupees Fifty Six Lakh Forty Five Thousand Six Hundred Fifty One only), imported by M/s. Eva Creation, to be liable for confiscation under the provisions of Section 111(o) of the Customs Act, 1962. However, I grant the Noticee an option to redeem the said goods on payment of a redemption fine of **Rs. 14,00,000/- (Rupees Fourteen Lakh only)** in terms of the provisions of Section 125(1) of the Customs Act, 1962.
- iv. I order to recover interest at the applicable rate on the Customs duty confirmed at (ii) above in terms of Notification No. 16/2015-Cus dated 01.04.2015 as amended read with conditions of Bond executed and furnished by them in terms of Section 143 of the Customs Act, 1962.
- v. I impose penalty of **Rs. 1,32,196/- (Rupees One Lakh Thirty Two Thousand One Hundred Ninety Six only)** on M/s. Eva Creation in terms of Section 112(a)(ii) of the Customs Act, 1962.
- vi. I impose penalty of **Rs.1,00,000/- (Rupees One Lakh only)** on M/s. Eva Creation, in terms of Section 117 of the Customs Act, 1962.
- vii. I order to appropriate the **total amount of Rs. 2,20,000/-** by encashment of the Bank Guarantee No. 518/2016-17 Dated 27.05.2016 for Rs. 65,000/- issued by the Lakshmi Vilas Bank, Surat and Bank Guarantee No. 828/2016-17 Dated 21.09.2016 for Rs. 1,55,000/- issued by the Lakshmi Vilas Bank, Surat, submitted by the Noticee. The same is required to be encashed and deposited in Government exchequer. The amount may be adjusted against the duty, interest and fine/penalty liability confirmed above.

19. The Show Cause Notice bearing No. VIII/6-888/ICD-Sachin/2016-17 dated

26.03.2025 is disposed of in above terms.

(Shravan Ram)
Additional Commissioner
Customs, Ahmedabad

F. No. GEN/ADJ/ADC/1434/2025-ICD-SRT-CUS-COMMRTE-AHMEDABAD Dated: 29.08.2025

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

DIN:20250871MN000088458A

To,

**M/s. Eva Creation,
B/2, 808, Megh Malhar Residency,
Nr. Hare Krishna Impex, Sarthana, Surat-395010**

**M/s. Eva Creation,
34, 3rd Floor, Anjani Ind. Estate-4,
Block-D, Kosad Road, Surat-390004**

**Sh. Hasmukh Mansukhbhai Pansuriya,
Proprietor of M/S. EVA CREATION,
Plot No. 34, 3rd, Floor Anjani Ind, Estate-4,
Blockd D, Kosad Road Surat-390004**

Copy to:-

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