

	<p>प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद सीमाशुल्कभवन, आलइंडीयारेडीअँकेबाजुमे, नवरंगपुरा,अहमदाबाद 380009</p> <p>दुरभाष (079) 2754 46 30 फैक्स (079) 2754 23 43</p> <p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD</p> <p>CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009</p> <p>PHONE : (079) 2754 46 30 FAX (079) 2754 23 43</p> <p>E-mail: cus-ahmd-adj@gov.in</p>	 <p>आज़ादी का अमृत महोत्सव</p>

DIN- 20240571MN000000A0D7

SHOW CAUSE NOTICE

M/s. Thavki Sarees Pvt. Ltd., O-2790 to 2793, Millenium Market, Ring Road, Surat-395002 and Plot No. F528 to F531 & F632 to F635, Laxmi Textile Park, Nr. Sachin GIDC, Surat-394230 (hereinafter referred to as “the importer” or “the Noticee” for the sake of brevity), holding Importer Exporter Code (IEC) No. 5215909059 had imported 36 Sets of capital goods viz. Computerized Embroidery Machine under EPCG Licence No. 5230019195 dated 22.01.2016 by saving duty of **Rs.1,73,61,823/- (Actual Duty Utilized of Rs. 1,75,02,738/-)** 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	Number of machinery cleared	Ass. Value of Goods as per BE (Rs.)	Duty Saved/ available as per EPCG Licence (Rs.)	Total Duty Forgone/Debited at the time of clearance (Rs.)	BG Amount (Rs.)
1	4539102 dtd.10.03.2016	16	29999424	17361823	7024515	2750000
2	4594816 dtd.16.03.2016	04	14093136		3299978	
3	4655737 dtd.21.03.2016	02	3269976		765681	
4	4865675 dtd.11.04.2016	02	5181300		1213227	
5	5088899 dtd.29.04.2016	02	5027134		1177129	
6	6155453 dtd.28.07.2016	01	5791207		1356040	
7	6526763 dtd.29.08.2016	04	11386336		2666168	
TOTAL		31	74748513	17361823	17502738	2750000

2. Whereas the Importer had executed Bond dated 10.03.2016 for Rs. 4,73,00,000/- backed by Bank Guarantee No. 0306BG001002016 dated 23.02.2016 for Rs.27,50,000/-issued by the South Indian Bank, Guru Krupa House, Upper Ground Floor, 21st Century Business Centre, Near Empire Estate Building, Udhna Darwaja, Ring Road, Surat-395002, for EPCG License No. 5230019195 dated 22.01.2016. They had undertaken to fulfill the Export Obligation as specified in the Notification and the License.

3. Whereas the importer has not furnished the required Installation Certificate as mandated in the Foreign Trade Policy and Notification No. 16/2015-Cus dated 01.04.2015 certifying that the imported goods under EPCG Licence has been installed at the declared premises for intended purpose.

4. Whereas as per Notification No.16/2015-Cus dated 01.04.2015, the importer was required to fulfill the Export Obligation on FOB basis equivalent to six times of the Duty saved on the goods imported as may be specified on the Licence or Authorization. The relevant portion of the said Notification is re-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 :

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

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 decentralised 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 licensing 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.

5. Whereas the aforesaid EPCG License No. 5230019195 dated 22.01.2016 was issued to the Importer for a period of 6 years and the Bond dated 10.03.2016 was executed for a period of 08 years. Accordingly, the Importer was required to fulfill the Export Obligation within a period of 6 years from the date of EPCG Licence as per the condition laid down in the Notification and EPCG Licence itself and submit the Export Obligation Discharge Certificate issued by the DGFT Authority to the Department.

6. Whereas letters F.No.ICD-Sachin/Misc./01/2022-23 dated 13.01.2023 was issued to the Importer to either furnish the EODC issued by DGFT, Surat or any extension granted by DGFT, Surat for fulfillment of Export Obligation, but the same was returned undelivered.

6.1 As no information was received from the Importer, a letter F.No. ICD-Sachin/DGFT/07/2020-21 dated 02.03.2023 was written to the Foreign Trade Development Officer, DGFT, Surat requesting them to intimate whether the Importer has been issued EODC against EPCG License No. 5230019195 dated 22.01.2016 or any documents showing the fulfillment of the Export Obligation have been submitted by the aforesaid Importer. However, no response from the DGFT, Surat has been received till date. Thus, it is evident from the above that the Importer has failed to fulfill the Export Obligation as specified in the Licence and has not complied with the mandatory conditions of the Customs Notification No.16/2015-Cus dated 01.04.2015, EPCG Licence and Bond dated 10.03.2016.

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 Importer wherein the 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 Importer against this demand. The said Section is re-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. Whereas in view of the above, the Importer has failed to fulfill the conditions laid down under Notification No. 16/2015-Cus dated 01.04.2015 in as much as they failed to export goods manufactured from 31 Sets of Computerized Embroidery Machine totally valued at **Rs. 7,47,48,513/- (Rupees Seven Crore, Forty Seven Lakh, Forty Eight Thousand, Five Hundred and Thirteen only)** imported under EPCG License No. 5230019195 dated 22.01.2016 which was equivalent to six times of the Duty saved amount on the goods imported and also did not produce EODC issued by DGFT, Surat or any extension granted by DGFT, Surat for fulfillment of Export Obligation. They are therefore liable to pay Customs Duty of **Rs. 1,75,02,738/- (Rupees One Crore, Seventy Five Lakh, Two Thousand, Seven Hundred and Thirty Eight only)** 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 Importer and Section 143 of the Customs Act, 1962.

8.1 Whereas, it appears that imported Capital Goods have not been used for the 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 themselves liable for penal action under the provisions of Section 112 (a) of the Customs Act, 1962

Since, the said Importer could not fulfill the conditions laid down under Notification No. 16/2015-Cus dated 04.04.2015, the Bank Guarantee No. 0306BG001002016 dated 23.02.2016 for Rs.27,50,000/- issued by the South Indian Bank Ltd., 21st Century Business Centre, Nr. Empire Estate Building, Udhna Darwaja, Ring Road, Surat-395002, for EPCG License No. 5230019195 dated 22.01.2016 is required to be encashed and appropriated against the aforesaid recovery.

8.2 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 Importer had also given an Undertaking/Bond to this effect. The letter dated 13.01.2023 was written to the Importer to intimate the extent of Export obligation fulfilled by them but they did not reply to the letter. Thus, the fact that they had neither completed their Export obligation nor paid the Duty on import as per law & procedure is on record. Thus, it appears that the said Importer has neither fulfilled their Export Obligation nor paid the Customs Duty alongwith interest for non-fulfillment of Export obligation. These facts were not disclosed to the Department or DGFT, thereby, suppressing the facts with a clear intent to evade the payment of Duty.

8.3 It, therefore, appears that the imported Capital Goods have not been used for the intended purpose for which the exemption from payment of Duty was claimed and therefore, the aforesaid Capital Goods are liable for confiscation under Section 111(o) of the Customs Act, 1962, thus rendering the Importer liable for penal action under the provisions of Section 112(a) of the Customs Act, 1962. The Importer had also not disclosed the fact of non-fulfillment of Export Obligation by them as envisaged in Notification No.16/2015-Cus dated 01.04.2015 to the Department. No other penalty has been prescribed for such contravention and therefore the Importer is liable to penalty under Section 117 of the Customs Act, 1962.

8.4 It also appears that **Shri Alpesh Dhami, Director of M/s. Thavki Sarees Pvt. Ltd.**, having his residential address at 1001, Om Terrace, New City Light, Vesu, Surat-395007 and **Shri Rakeshkumar Patel, Director of M/s. Thavki Sarees Pvt. Ltd.**, having his residential address at 50, Purvi Soccity, Street No. Purvi Society, Hira Baug, Surat-395006 have intentionally taken the undue benefits of EPCG Scheme and evaded payment of Customs Duty of **Rs. 1,75,02,738/- (Rupees One Crore, Seventy Five Lakh, Two Thousand, Seven Hundred and Thirty Eight only)** in respect of the above Computerized Embroidery Machines by not fulfilling the Export Obligations as

envisaged in Notification No.16/2015-Cus dated 01.04.2015. Thus they have knowingly committed acts which rendered the said goods in question liable for confiscation under Section 111(o) of the Customs Act, 1962 by committing an offence of the nature as described under Section 112(a) of the Customs Act, 1962. Resultantly, they have rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

9. In view of the above, **M/s. Thavki Sarees Pvt. Ltd., O-2790 to 2793, Millenium Market, Ring Road, Surat-395002 and Plot No. F528 to F531 & F632 to F635, Laxmi Textile Park, Nr. Sachin GIDC, Surat-394230** are hereby called upon to show cause to the Principal Commissioner of Customs, Ahmedabad having his office at 1st Floor, Customs House, Near All India Radio, Navrangpura, Ahmedabad-380009, as to why:

- (i) The benefit of Zero Duty for EPCG Scheme under Notification No. 16/2015-Cus dated 01.04.2015 on the imported Computerized Embroidery Machines in the name of **M/s. Thavki Sarees Pvt. Ltd. Under EPCG Licence No. 5230019195** dated 22.01.2016 should not be denied.
- (ii) Customs Duty totally amounting to Rs. **1,75,02,738/- (Rupees One Crore, Seventy Five Lakh, Two Thousand, Seven Hundred and Thirty Eight only)** being the Duty forgone at the time of import under EPCG Licence, should not be demanded and recovered from them in terms of Notification No.16/2015-Cus dated 01.04.2015 as amended, read with the Conditions of Bond dated 10.03.2016 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. 0306BG001002016 dated 23.02.2016 for Rs.27,50,000/- issued by the South Indian Bank Ltd., 21st Century Business Centre, Nr. Empire Estate Building, Udhna Darwaja, Ring Road, Surat-395002 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 Bond executed in term of Section 143 of the Customs Act, 1962.
- (iv) The imported Capital Goods valued at **7,47,48,513/- (Rupees Seven Crore, Forty Seven Lakh, Forty Eight Thousand, Five Hundred and Thirteen only)** 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 at ICD, Sachin 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.

10. **Shri Alpesh Dhami, Director of M/s. Thavki Sarees Pvt. Ltd.**, having his residential address at 1001, Om Terrace, New City Light, Vesu, Surat-395007 and **Shri Rakeshkumar Patel, Director of M/s. Thavki Sarees Pvt. Ltd.**, having his residential address at 50, Purvi Soccity, Street No. Purvi Society, Hira Baug, Surat-395006 are called upon to show cause to the Principal Commissioner of Customs, Ahmedabad having his office at 1st Floor, Customs House, Near All India Radio, Navrangpura, Ahmedabad-380009, as to why Penalty should not be imposed on them under the provisions of Section 112(a) of the Customs Act, 1962 for the acts of omission & commission mentioned above.


11. The above Noticees are required to file their reply within thirty days from the receipt of this Notice. They are also directed to produce at the time of showing cause, all the evidences upon which they intend to rely in support of their defence. They are further required to indicate in their written reply as to whether they desire to be heard in person before the case is adjudicated.

12. If no reply is received from them within 30 (Thirty) days of the receipt of this Notice or if they do not appear before the Adjudicating Authority when the case is posted for hearing, the case will be decided ex-parte, on the basis of available records without any further reference to them.

13. This Notice is issued without prejudice to any other action that may be taken against them under the provisions of the Customs Act, 1962 or under any other law for the time being in force.

14. The Department reserves its right to amend, modify or supplement this Notice at any time on the basis of evidences available/evidences gathered later on, prior to the adjudication of the case.

15. The relied upon documents are listed in Annexure-A appended to this Notice.


30.05.2024
(Shiv Kumar Sharma)
Principal Commissioner,
Customs, Ahmedabad

DIN- 20240571MN000000AOD7

F.No.VIII/10-38/Pr.Commr/O&A/2023-24

Date: 30.05.2024

BY SPEED POST A.D

To,
M/s. Thavki Sarees Pvt. Ltd.,
O-2790 to 2793, Millenium Market,
Ring Road, Surat-395002.

M/s. Thavki Sarees Pvt. Ltd.,
Plot No. F528 to F531 & F632 to F635,
Laxmi Textile Park, Nr. Sachin GIDC,
Surat-394230

Shri Alpesh Dhami,
Director of M/s. Thavki Sarees Pvt. Ltd.,
At 1001, Om Terrace, New City Light,
Vesu, Surat-395007.

Shri Rakeshkumar Patel,
Director of M/s. Thavki Sarees Pvt. Ltd.,
50, Purvi Soccity, Street No. Purvi Society,
Hira Baug, Surat-395006

Copy to:-

1. The Joint Director General, DGFT, 6th Floor, Resham Bhavan, Lal Darwaja, Surat-395003 for information and necessary action.
2. The Deputy/Assistant Commissioner of Customs, ICD-Sachin, Surat.
3. The Superintendent (System), Customs HQ, Ahmedabad for uploading on the official website of Customs Commissionerate, Ahmedabad.

~~4.~~ Guard File.