



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

सीमा शुल्क भवन, आल इंडीया रेडीआॉ के बाजु मे, नवरंगपुरा, अहमदाबाद 380009

दुर भाष (079) 2754 46 30 फैक्स (079) 2754 23 43

**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD
CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD
380009**

PHONE : (079) 2754 46 30 FAX (079) 2754 23 43

निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./ F. No. VIII/10-43/Pr. Commr./O&A/2019

DIN-20240371MN0000005E8D

आदेशकीतारीख/Date of Order : 28.03.2024

जारीकरनेकीतारीख/Date of Issue : 28.03.2024

द्वारापारित :-
Passed by :-

शिव कुमार शर्मा, प्रधान आयुक्त
Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

**Order-In-Original No: AHM-CUSTM-000-PR.COMMR-39-2023-24 dated
28.03.2024 in the case of M/s Sandvik Asia Pvt Ltd, (Now Known as Alleima India
Pvt. Ltd.) , Mumbai Pune Road, Dapodi, Pune-411012.**

1. जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन, गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
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

3. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।
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. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।
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. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
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. केंद्रिय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
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. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमें विवाद है उसका भुक्तान करके अपील की जा शक्ती है।
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. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
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. DRI/KZU/CF/ENQ-132 (INT-09)/2018 dated 02.09.2019 issued by the Additional Director General, DRI, Kolkata to M/s Sandvik Asia Pvt Ltd, an importer having IEC No. 0388016213 (Now Known as Alleima India Pvt. Ltd.) and having their registered office at Mumbai Pune Road, Dapodi, Pune-411012

Brief Facts of the case:

M/s Sandvik Asia Pvt Ltd, an importer having IEC No. 0388016213 (Now Known as Alleima India Pvt. Ltd.) and having their registered office at Mumbai Pune Road, Dapodi, Pune-411012, have contravened the provisions of Section 17, 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 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 "Stainless Steel Extrusion Billet" required for manufacture of "Stainless Steel Seamless Tubes and Pipes" through ICD Sabarmati without payment of duty of Customs under cover of 21 (Twenty-One) 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 nonpayment of duty of Customs in the form of Integrated Goods & Service Tax (IGST) to the extent of **Rs 17,36,10,932/-**, which appears to be recoverable under Section 28(1) of the Customs Act, 1962, along with applicable interest, and also appears to attract provision of section 111(o) of the Customs Act, 1962, making the goods liable for confiscation and the company liable to penalty under Section 112 (a) of the Act ibid.

2. Intelligence developed by the Directorate of Revenue Intelligence, Kolkata, (hereinafter referred to as DRI) to the effect that M/s Sandvik Asia Pvt Ltd (importer), had imported various input materials without payment of duty of Customs under cover of a number of Advance Authorizations issued by 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 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 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 Intelligence developed by DRI, Kolkata, clearly indicated that although M/s Sandvik Asia Pvt Ltd availed such exemption in respect of 21 (Twenty-One) Advance Authorizations, but while going through the process of such imports and corresponding exports towards discharge of export obligation, at no point of time the importer complied with the pre-import condition, as demanded 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, a case was booked by DRI and investigation was initiated by way of issuance of Summons under section 108 of the Customs Act, 1962. The importer was summoned for production of documents in connection with such imports and also for giving evidence. Shri Rajaram Shetty, S/o Shri M. Chandaya Shetty Associate Vice President-Finance (Indirect Taxation) of the said company appeared on 24-08-2018, and tendered his statement before the Senior Intelligence Officer of DRI, Kolkata Zonal Unit. In his statement Sri Shetty admitted that the company had failed to comply with the pre-import condition in respect of 21 (Twenty-One) Advance Authorizations, against which they imported various input materials during the material period. In his statement dated they inter-alia submitted that:-

- i. *He has been holding the post of Associate Vice President-Finance (Indirect Taxation) of M/s Sandvik Asia Pvt Ltd, and his responsibility is to take care of matters pertaining to indirect taxation including GST, Customs & Foreign Trade Policy.*
- ii. *They imported "Stainless Steel Extrusion Billet" and used those materials for the purpose of manufacturing "Stainless Steel Seamless Tubes and Pipes". These raw materials are procured mainly from Sweden, against several Bills of Entry, under Advance Authorizations. They imported such goods against several Bills of Entry after 13-10-2017, by availing benefit of IGST by virtue of Customs Notification No. 79/2017 dated 13-10-2017. However, it was understood that while importing such materials by availing the benefit of the said Customs Notification, under 21 Nos. of Advance Authorizations, they failed to comply with the conditions of pre-import as demanded by the subject Customs notification. Followings are the details of 65 Bills of Entry against which imports were made availing benefit of IGST in violation of the conditions of the said notification. Details of such imports in which such violations have taken place are given hereunder (AA specific, BE specific etc):-*

Table-1

Advance Authorization specific Value and IGST amount saved

Sr. No	AA No	AA date	Value (Rs)	IGST (Rs)
1	810139215	05-12-2016	64859663	12275989
2	810139925	21-03-2017	26725488	5075170
3	810140047	07-04-2017	1157258	219034
4	810140221	04-05-2017	3148492	595915
5	810140279	12-05-2017	12393941	2353609
6	810140395	31-05-2017	3185332	602888
7	810140692	20-07-2017	15828892	2995934
8	810140693	20-07-2017	46455001	8792538
9	810140866	04-09-2017	50041130	9471285
10	810140952	18-09-2017	69196902	13098814
11	810140953	18-09-2017	73180585	13850889
12	810141097	06-10-2017	65740170	12447655
13	810141135	11-10-2017	125911396	23831250
14	810141216	24-10-2017	69178101	13103567
15	810141321	15-11-2017	71363584	13544830
16	810141437	01-12-2017	70690593	13424143
17	810141695	05-01-2018	31983422	6073652
18	810141895	31-01-2018	7913674	1502806
19	810142034	20-02-2018	44161458	8386260
20	810142044	21-02-2018	2206007	418921
21	810142291	05-04-2018	9091205	1726420
Grand Total				
864412294				
163791569				

Table-2

Bills of Entry specific Value and IGST amount saved				
Sr. No.	BE No	BE Date	Value (Rs)	IGST Amount saved (Rs)
1	3745441	25-10-2017	10978552	2077911
2	3782984	28-10-2017	3690968	698589
3	3783573	28-10-2017	23713737	4488299
4	3783707	28-10-2017	27548531	5214111
5	3783930	28-10-2017	4714805	892371
6	3783996	28-10-2017	4679638	885715
Sr. No.	BE No	BE Date	Value (Rs)	IGST Amount saved (Rs)
35	4471702	19-12-2017	22917911	433767
36	4510628	22-12-2017	19949442	377583
37	4562820	26-12-2017	9611871	181923
38	4562822	26-12-2017	31763526	601188
39	4657521	03-01-2018	14009383	265155
40	4731085	09-01-2018	21612075	409051

7	3784216	28-10-2017	4710499	891556
8	3784499	28-10-2017	5662886	1071814
9	3784747	28-10-2017	4703322	890198
10	3785025	28-10-2017	5289019	1001053
11	3785104	28-10-2017	6466856	1223982
12	3866983	03-11-2017	5894811	1115711
13	3889405	06-11-2017	9622948	1821335
14	3889409	06-11-2017	9497124	1797521
15	3889413	06-11-2017	5059842	957676
16	3889417	06-11-2017	5490652	1039216
17	3919994	08-11-2017	15666229	2965147
18	3952362	10-11-2017	8077840	1528893
19	3952365	10-11-2017	5411002	1024140
20	3952367	10-11-2017	4602093	871038
21	3952370	10-11-2017	4620834	874585
22	3952377	10-11-2017	5487606	1038639
23	3952380	10-11-2017	5466054	1034560
24	3989886	14-11-2017	19142301	3623063
25	4171283	27-11-2017	5875396	1112036
26	4198821	29-11-2017	8274296	1566076
27	4198822	29-11-2017	14609291	2765101
28	4226451	27-11-2017	5558468	1052051
29	4249412	04-12-2017	10462258	1980192
30	4314450	08-12-2017	13559109	2566333
31	4314456	09-12-2017	13738105	2600211
32	4416858	15-12-2017	28611132	5415229
33	4420495	15-12-2017	27789750	5259766
34	4450301	18-12-2017	24263550	4592362

41	4850466	18-01-2018	21151715	4003385
42	4997934	30-01-2018	11955490	2262816
43	4997969	30-01-2018	19043157	3604298
44	4997983	30-01-2018	25811997	4885437
45	4998574	30-01-2018	15175602	2872286
46	5227225	15-02-2018	16235012	3083029
47	5279305	19-02-2018	28562360	5423992
48	5311279	22-02-2018	25168366	4779473
49	5313207	22-02-2018	8659335	1644408
50	5313388	22-02-2018	16554968	3143788
51	5406046	01-03-2018	8740080	1659741
52	5462943	06-03-2018	5053492	959658
53	5485108	07-03-2018	31983422	6073652
54	5485424	07-03-2018	5286544	1003915
55	5570630	14-03-2018	5079542	964605
56	5570643	14-03-2018	11551393	2193609
57	5649221	20-03-2018	16080101	3053611
58	5747371	27-03-2018	13239375	2514157
59	5757093	27-03-2018	4614920	876373
60	5757957	27-03-2018	25076729	4762071
61	5889613	07-04-2018	9418642	1788600
62	5962818	13-04-2018	13691373	2599992
63	5964058	13-04-2018	7941928	1508171
64	6086420	23-04-2018	30441831	5780903
65	6134950	26-04-2018	9091205	1726420
Grand Total			864412294	163791569

iii. It was submitted that all Bills of Entry were cleared from the Ports of ICD Khodiyar (Ahmedabad) only. All Bills of Entry were finally assessed. They have calculated total amount of IGST benefit taken by them **in violation of the condition of the notification** No. 79/2017 dated 13-10-2017, stands at Rs 16, 37, 91, 569/- . They undertook to make payment of the said amount of IGST.

iv. Out of several Advance Authorizations used by them after introduction of the said Customs notification, against 21 such Advance Authorizations, they clearly failed to follow the pre-import condition. In all cases exports were made even before the commencement of the import. Therefore, in case of all these 21 Advance Authorizations, the imported materials could not be used for manufacture of export goods, which were exported under the respective Advance Authorization. Significant portion of the goods exported, were made

out of materials other than the duty-free materials imported under the respective Advance Authorizations. They considered individual Advance Authorization and as to whether all along pre-import condition was fulfilled against such Advance Authorizations. In case it was not followed, the Advance Authorization has been considered as in violation of the Pre-import condition, and all Bills of Entry under cover of which goods have been imported by availing benefit of IGST, have been taken into consideration in totality for determination of their liability. Following Chart shows Advance Authorization specific No. & date of the first Bill of Entry and first Shipping Bill.

Table-3

Advance Authorization specific No. & Date of first Bills of Entry and first Shipping Bill						
Sr No.	AA No	AA date	First BE No	BE Date	First SB No	SB Date
1	810139215	05-12-2016	4249412	04-12-2017	1771090	21-10-2016
2	810139925	21-03-2017	9386486	20-04-2017	3823714	01-02-2017
3	810140047	07-04-2017	2121530	16-06-2017	4607305	08-03-2017
4	810140221	04-05-2017	2414021	12-07-2017	5885608	05-05-2017
5	810140279	12-05-2017	9728444	17-05-2017	6003904	11-05-2017
6	810140395	31-05-2017	2821245	11-08-2017	6359967	29-05-2017
7	810140692	20-07-2017	3197584	12-09-2017	7273411	11-07-2017
8	810140866	04-09-2017	3541157	09-10-2017	7892836	08-08-2017
9	810140952	18-09-2017	3784747	28-10-2017	8331128	30-08-2017
10	810140953	18-09-2017	3952370	10-11-2017	8582505	11-09-2017
11	810141097	06-10-2017	4562822	26-12-2017	8996997	29-09-2017
12	810141135	11-10-2017	3785104	28-10-2017	9528918	27-10-2017
13	810141216	24-10-2017	4998574	30-01-2018	9200795	10-10-2017
14	810141321	15-11-2017	4997969	30-01-2018	9566813	30-10-2017
15	810141437	01-12-2017	5279305	19-02-2018	9789537	08-11-2017
16	810141695	05-01-2018	5485108	07-03-2018	1620017	18-12-2017
17	810141895	31-01-2018	5964058	13-04-2018	2407811	24-01-2018
18	810142034	20-02-2018	5964058	13-04-2018	2407811	24-01-2018
19	810142044	21-02-2018	5889613	07-04-2018	2650013	05-02-2018
20	810142291	05-04-2018	6134950	26-04-2018	3796451	27-03-2018
21	810140693	20-07-2017	3414955	28-09-2017	7425486	18-07-2017

v. It can be seen from the above Chart, that in case of all Advance Authorizations, they made exports first, which proves that the materials were received in the factory after completion of exports. Quite naturally, they could not manufacture the goods which were exported under the subject Advance Authorization against the aforementioned Shipping Bills, out of the duty-free materials imported under the subject Advance Authorization. This resulted in non-compliance of the pre-import condition. For the purpose of determination of

their liability they have taken into consideration all Bills of Entry covered by those 21 Advance Authorizations except those against which they have already paid IGST during import.

vi. For the purpose of availing the benefit of exemption from payment of IGST, one was supposed to comply with the Pre-import condition. It was admitted that the 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. It was also admitted that the said Notification further stipulates that such benefit is only available for physical exports. **Therefore, it was admitted that in case goods are exported before commencement of import, by manufacturing such materials out of raw materials which were not imported under the respective Advance Authorization, or the materials procured from the domestic market, the Pre-import condition is violated.**

vii. It was admitted that in case of all Advance Authorizations, as aforesaid, involved with respect to the imports made under the several Bills of Entry, they could not utilize the entire materials imported for the purpose of manufacture of export goods and the export goods were manufactured out of raw materials other than the duty free materials imported under the respective Advance Authorizations. It was admitted that the goods manufactured out of the excess quantity of duty-free materials imported under the respective Advance Authorizations are subsequently used for manufacture of goods, which are sold in the domestic market on payment of applicable duty. Therefore, it was admitted in case of all those consignments covered by the Bills of Entry mentioned above and the corresponding Advance Authorizations, they failed to comply with the basic pre-import condition of the Customs notification No. 79/2017 dated 13-10-2017.

viii. However, immediately after receipt of the letter of DRI, Kolkata dated 28-02-2018, communicated under F. No. DRI/KZU/CF/INT-09/2018/1137, they understood their failure / mis-interpretation and decided to pay up the entire amount of IGST alongwith interest. At the time of import, they did not disclose it to the Customs authority, that pre-import condition was not followed in respect of the Advance Authorizations under consideration. As a matter of fact, they were not aware of the fact that for taking benefit of IGST, they were required to comply with such pre-import condition.

ix. DGFT Notification No. 33/2015-20 dated 13-10-2017 was shown to him. The said notification amended the Foreign Trade Policy (2015-20) and Para 4.14 was also amended.

x. Customs Notification 79/2017 dated 13-10-2017 was also shown to him. He said notification was introduced, to extend relief to the importers from payment of the whole of integrated tax. It was admitted that such exemption is not absolute. Specific conditions have been imposed, which requires compliance, to avail the benefit of exemption from such integrated tax and the compensation cess.

xi. Therefore, combined provisions of the Policy and the subject Customs Notification, clearly mandate, only imports under pre-import condition would be allowed with the benefit of such exemption. **Therefore, no such exemption can be availed, in respect of the Advance Authorizations, against which exports have already been made before commencement of import.** It was admitted that while commencing imports against the Advance Authorizations under consideration, they failed to comply with the aforementioned conditions. They did not declare to the Customs authority

while availing such benefit of IGST, that the subject authorizations involved exports, which were made even before the import commenced.

xii. The newly introduced condition No. (xii) of the Customs notification No. 18/2015 dated 01-04-2015, demands that for availing benefit of the exemption of IGST, one is required to follow pre-import condition. However, in their case they failed to follow the same, as some of the export goods were manufactured out of raw materials, not imported against the respective Advance Authorizations. Therefore, it was admitted that they failed to observe the conditions laid down in the Policy as well as in the Customs notification and they accepted their mistake and are ready to make the payments of IGST along with interest.

xiii. They should not have taken the benefit as the basic condition in respect of the exemption was not fulfilled. The benefit was availed wrongly because of incorrect interpretation of the notification, which they understood after receipt of the letter from DRI, Kolkata. It was a bonafide mistake which is being corrected now.

2.3 Therefore, the importer admittedly contravened the pre-import condition as stipulated under the subject Customs Notification, during imports under cover of 21 (Twenty-One) Advance Authorizations for the reason that in case of all Advance Authorizations export was made prior to import. Therefore, in case of all of them such duty-free imported materials imported under respective Advance Authorizations, have not been used for manufacture of goods, which were exported towards discharge of export obligation of the respective Advance Authorization. During recording of statement, the authorized representatives of the company submitted data on the basis of which their liability was determined. However, at a later stage, when the payment was made by the importer, it was seen that in respect of a few Bills of Entry amount of IGST involved considered at the time of tendering statement, was less than the actual IGST payable. Following Table reflects actual IGST liability of the importer, and they have paid such IGST accordingly. Therefore, their actual liability in respect of the 65 Bills of Entry covered by the aforementioned 21 (Twenty-One) Advance Authorizations stands at Rs 17, 36, 10, 932/-.

Table-4

Bills of Entry specific Actual Liability of IGST							
Sr No	BE No	BE Date	IGST Saved (Rs)	Sr No	BE No	BE Date	IGST Saved (Rs)
1	5964058	13-04-2018	1508172	35	4198822	29-11-2017	3593417
2	6086420	23-04-2018	5780904	36	3889409	06-11-2017	1797521
3	5962818	13-04-2018	4388643	37	5649221	20-03-2018	3053611
4	5757093	27-03-2018	876373	38	5570643	14-03-2018	2193610
5	5747371	27-03-2018	2514157	39	5570630	14-03-2018	964605
6	3952380	10-11-2017	1064560	40	5485424	07-03-2018	1003915
7	3952377	10-11-2017	1038639	41	5485108	07-03-2018	6073652
8	3952370	10-11-2017	874585				

9	3952367	10-11-2017	871038	42	5462943	06-03-2018	959658
10	3952365	10-11-2017	1024140	43	6134950	26-04-2018	4590
11	4198821	29-11-2017	2531651	44	5889613	07-04-2018	1915762
12	5406046	10-03-2018	1659741	45	5757957	27-03-2018	5124119
13	5313388	22-02-2018	3143788	46	4731085	09-01-2018	4090517
14	5313207	22-02-2018	1644408	47	4657521	03-01-2018	2651556
15	5311279	22-02-2018	4779473	48	4314456	08-12-2017	4053876
16	5279305	19-02-2018	5423992	49	3889413	06-11-2017	957676
17	5227225	15-02-2018	3083029	50	3889405	06-11-2017	1821335
18	4998574	30-01-2018	2872286	51	3866983	03-11-2017	1115711
19	4997983	30-01-2018	4885437	52	3785104	28-10-2017	1223982
20	4997969	30-01-2018	3608742	53	3785025	28-10-2017	1001053
21	4997934	30-01-2018	2262816	54	3784747	28-10-2017	890198
22	4850466	18-01-2018	4003385	55	3784499	28-10-2017	1071814
23	4562822	26-12-2017	6011883	56	3784216	28-10-2017	891556
24	4171283	27-11-2017	1112036	57	3783996	28-10-2017	885715
25	3989886	14-11-2017	3623063	58	3783930	28-10-2017	892371
26	4562820	26-12-2017	1821482	59	3783707	28-10-2017	5214111
27	4510628	22-12-2017	3780486	60	3783573	28-10-2017	4488299
28	4471702	19-12-2017	4343021	61	3782984	28-10-2017	698589
29	4450301	18-12-2017	4592362	62	3745441	25-10-2017	2077911
30	4420495	15-12-2017	5259766	63	3889417	06-11-2017	1039216
31	4416858	15-12-2017	5415229	64	3952362	10-11-2017	1528893
32	4314450	08-12-2017	2569496	65	3919994	08-11-2017	2965147
33	4249412	04-12-2017	1980192	TOTAL		17,36,10,932	
34	4226451	11-02-2017	2432424				

2.4 Thus, from the facts of the case and admission of the authorized representatives of the importer, it appears that –

- i) In case of all 21 (Twenty-One) Authorizations, they started exporting finished goods even before the imports were commenced, and also used domestically or otherwise procured materials for the manufacture of the export goods in absence of having stock of duty-free raw materials imported under the respective Advance Authorization. Naturally, duty-free imported goods could not be used for the purpose of manufacture of the export goods resulting in violation of pre-import condition.

- ii) Considerable quantity of materials exported under the impugned Advance Authorizations were manufactured out of input materials procured from the domestic market or otherwise, i.e not imported under the respective Advance Authorization;
- iii) Significant quantity of the duty-free imported materials was used to manufacture goods, which were sold in the domestic market, i.e not used for manufacture of export goods;
- iv) They could not comply with the pre-import condition imposed by virtue of Notification No. 79/2017-Cus dated 13-10-2017, but still availed benefit of exemption of IGST, in violation of the condition of the said Notification.
- v) After being pointed out by DRI, the importer admitted having violated such condition and paid the entire amount of **Rs 17, 36, 10, 932/- towards IGST along with interest of Rs 60, 76, 772/-**. However, it appears that in case of a number of Bills of Entry either interest has not been paid or less amount of interest has been paid.

3. LEGAL PROVISIONS:

3.1 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.

3.2 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.

3.3 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.

3.4 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.

3.5 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.

3.6 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.

3.7 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;

3.8 Notification No.33/2015-2020 New Delhi, dated 13.10.2017
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."

**3.9 NOTIFICATION NO. 31 (RE-2013)/ 2009-2014 , DATED
1.08.2013:**

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.

3.10 Policy Circular No.03 (RE-2013)/2009-2014 Dated the 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.

3.11 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.

3.12 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]	<i>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.</i>
2.	18/2015- Customs, dated	<i>In the said notification, in the opening paragraph,- (a) for the words, brackets, figures and letters “from</i>

<p>the 1 st April, 2015 [vide number G.S.R. 254 (E), dated the 1 st April, 2015]</p>	<p>the whole of the additional duty leviable thereon under sub- 2 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>
--------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

3.13 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.

3.14 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.....”

3.15 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;”

3.16 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,

3.17 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. DISCUSSION OF PROVISIONS OF LAW:

4.1 Imposition of two conditions for availing the IGST exemption in terms of Notification No. 79/2017-Cus dated 13-10-2017:- 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 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 01-01-2017, 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 29 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 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 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. 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 below, 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 Therefore, 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.

5.1 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 principal 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).

5.2 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:-

(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 -

(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, and 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 (2015-200] 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.

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 notification aforesaid 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.**

8.1 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.”

8.2 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."

8.3 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".

8.4 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:

8.4.1 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;"

8.4.2 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.**

9.1 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) & also the conditions of the newly introduced condition (xii) of Customs Notification No. 18/2015 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.

9.2 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. This 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 18/2015 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, Nos. 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 calculatable, 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 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 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 notifications No 18/2015 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 section D-3 above, 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 Violations of the provisions of the Customs Act, 1962:-

13.1 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 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 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 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.

13.2 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 at section E of this notice. The amount of IGST not paid, is recoverable under Section 28(1) of the Customs Act, 1962 along with interest.

13.3 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 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 Section 28(1) of the Customs Act, 1962.

13.4 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. 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.

13.5 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;*

13.6 Therefore, while Section 28 gives authority to recover Customs duty, short paid or not-paid, and Section 110(o) of the Act, 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, Section 124 & Section 28 of the Customs Act, 1962, authorise 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 OMISSION AND COMMISSION BY THE IMPORTER AND CHARGES FRAMED:

14.1 In the present case, there has been no violation of the physical export condition by the noticee, as their entire exports were physical export and under the subject Advance Authorizations, no deemed exports were made.

14.2 However, admittedly in case all 21 (Twenty-One) Advance Authorizations exports were made first, which implies that for the manufacture of the goods

which were exported under the respective Advance Authorizations, they actually utilized raw materials other than duty free raw materials imported under the respective Advance Authorizations. Therefore, they could not import all materials required for the purpose of manufacture of the export goods before commencement of exports, which resulted in failure to comply with the pre-import condition. Therefore, the importer could not use the duty-free materials for the purpose of manufacture of the export goods. Therefore, in terms of explanation given at Para 9.2(i), above, the importer failed to comply with the pre-import condition and was not eligible for IGST exemption benefit.

14.3 In the voluntary statement recorded under Section 108 of the Customs Act, 1962, the authorized representative of the company admitted having failed to comply with such pre-import condition laid down in the amended Policy as well as the amended Customs notification.

14.4 On being pointed out by DRI and after initiation of the present investigation, the importer paid an amount of **Rs 17, 36, 10, 932/- towards IGST and another amount of Rs 60, 76, 772/- towards interest** vide Challan Nos. as detailed in the **Table-5 below**. However, it appears that in case of a number of Bills of Entry either no interest has been paid or less amount of interest has been paid in comparison to their actual interest liability. Amount of IGST as calculated by the EDI system, was paid along with appropriate amount of interest after each Bill of Entry was recalled and re-assessed by the competent authority. During investigation, the liability of the importer was also ascertained on the basis of findings of the investigation. It is found that the liability declared by the authorized representative of the importer are in harmony with the liability so ascertained.

Table-5

Details of Payments made											
Sr No	BE No	BE Date	IGST Paid	Interest Paid	Challan No	Sr No	BE No	BE Date	IGST Paid	Interest Paid	Challan No
1	5964058	13-04-2018	1508172	1859	2024306727						
2	6086420	23-04-2018	5780904	7127	2024306728	35	4198822	29-11-2017	3593417	4430	2024307974
3	5962818	13-04-2018	4388643	5411	2024306729	36	3889409	06-11-2017	1797521	237864	2024306213
4	5757093	27-03-2018	876373	1080	2024306730	37	5649221	20-03-2018	3053611	3765	2024306737
5	5747371	27-03-2018	2514157	3100	2024306731	38	5570643	14-03-2018	2193610	2704	2024306741
6	3952380	10-11-2017	1064560	105627	2024308333	39	5570630	14-03-2018	964605	1189	2024306744
7	3952377	10-11-2017	1038639	136161	2024308334	40	5485424	07-03-2018	1003915	1238	2024306746
8	3952370	10-11-2017	874585	114655	2024308337	41	5485108	07-03-2018	6073652	7488	2024306748
9	3952367	10-11-2017	871038	114190	2024308343	42	5462943	06-03-2018	959658	1183	2024306795

10	3952365	10-11-2017	1024140	134261	2024308361	43	6134950	26-04-2018	4590137	5659	2024309423
11	4198821	29-11-2017	2531651	3121	2024308012	44	5889613	07-04-2018	1915762	0	2024309428
12	5406046	10-03-2018	1659741	2046	2024307530	45	5757957	27-03-2018	5124119	0	2024309432
13	5313388	22-02-2018	3143788	3876	2024307531	46	4731085	09-01-2018	4090517	442112	2024310408
14	5313207	22-02-2018	1644408	2027	2024307533	47	4657521	03-01-2018	2651556	293124	2024310422
15	5311279	22-02-2018	4779473	5893	2024307534	48	4314456	08-12-2017	4053876	486465	202431042
16	5279305	19-02-2018	5423992	6687	2024307538	49	3889413	06-11-2017	957676	126728	2024308989
17	5227225	15-02-2018	3083029	3801	2024307540	50	3889405	06-11-2017	1821335	241015	2024308998
18	4998574	30-01-2018	2872286	3541	2024307541	51	3866983	03-11-2017	1115711	147641	2024309002
19	4997983	30-01-2018	4885437	6023	2024307552	52	3785104	28-10-2017	1223982	166998	2024309005
20	4997969	30-01-2018	3608742	0	2024307554	53	3785025	28-10-2017	1001053	136582	2024309008
21	4997934	30-01-2018	2262816	2790	2024307556	54	3784747	28-10-2017	890198	121457	2024309012
22	4850466	18-01-2018	4003385	4936	2024307557	55	3784499	28-10-2017	1071814	146237	2024309021
23	4562822	26-12-2017	6011883	7412	2024307560	56	3784216	28-10-2017	891556	121642	2024309032
24	4171283	27-11-2017	1112036	1371	2024308095	57	3783996	28-10-2017	885715	120846	2024309036
25	3989886	14-11-2017	3623063	4467	2024308128	58	3783930	28-10-2017	892371	121754	2024309041
26	4562820	26-12-2017	1821482	0	2024307936	59	3783707	28-10-2017	5214111	711405	2024309059
27	4510628	22-12-2017	3780486	0	2024307938	60	3783573	28-10-2017	4488299	612376	2024309085
28	4471702	19-12-2017	4343021	0	2024307939	61	3782984	28-10-2017	698589	95314	2024309105
29	4450301	18-12-2017	4592362	5662	2024307942	62	3745441	25-10-2017	2077911	283507	2024309109
30	4420495	15-12-2017	5259766	6485	2024307944	63	3889417	06-11-2017	1039216	137518	2024308833
31	4416858	15-12-2017	5415229	6676	2024307949	64	3952362	10-11-2017	1528893	200432	2024308796
32	4314450	08-12-2017	2569496	0	2024307963	65	3919994	08-11-2017	2965147	392374	2024308798
33	4249412	04-12-2017	1980192	2441	2024307971						
34	4226451	11-02-2017	2432424	2999	2024307972	TOTAL			17,36,10,932	60,76,772	

15. In view of the above Show Cause Notice No. DRI/KZU/CF/ENQ-132(INT-09)/2018 dated 02.09.2019 were issued to M/s Sandvik Asia Pvt Ltd, having their registered office at Mumbai Pune Road, Dapodi, Pune-411012, calling upon to Show Cause in writing to the **Principal Commissioner/Commissioner of Customs, Custom House, Near All India Radio, Navrangpura, Ahmedabad, Gujarat-380009**, within 30 days of receipt of this notice issued as to why:-

- a) Duty of Customs amounting to **Rs 17,36,10,932/-** in the form of IGST saved in course of imports of the goods through the ICD Sabarmati, under the subject Advance Authorizations and corresponding Bills of Entry as detailed above, in respect of which 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, was incorrectly availed, without complying with the obligatory pre-import condition as stipulated in the said notification, and also for contravening provisions of Para 4.14 of the Foreign Trade Policy (2015-20), should not be demanded and recovered from them under Section 28(1) of the Customs Act, 1962;
- b) Subject goods having assessable value of **Rs 86,44,12,294/-** imported through ICD Sabarmati, under the subject Advance Authorizations **shall not be held liable for confiscation** under Section 111(o) of the Customs Act, 1962, for being imported availing incorrect exemption of IGST in terms of the Notification No. 18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017, without complying with obligatory pre-import condition laid down under the said notification;
- c) Interest should not be demanded and recovered under Section 28AA of the Customs Act, 1962, from them on such duty of Customs in the form of IGST, benefit of exemption of which was incorrectly availed;
- d) Amount of **Rs 17,36,10,932/-** deposited by them towards Customs duty in the form of IGST vide Challan Nos. as detailed in **Table-5**, should not be appropriated towards payment of appropriate amount Customs duty payable;
- e) Amount of **Rs 60,76,772/- deposited** by them towards interest vide Challan Nos. as detailed in **Table-5**, should not be appropriated towards payment of appropriate amount of interest;
- f) 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 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;

g) 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 **Rs. 17,36,10,932/- and interest thereupon.**

16. Defence Reply submitted by the importer:

Importer vide their letter dated 08.01.2020 submitted the reply to the Show Cause Notice No. DRI/KZU/CF/ENQ-132(INT-09)/2018 dated 02.09.2019 wherein they interalia stated that the pre-import condition introduced by Notification No. 79/2017-Cus dated 13.10.2017 is violative of general scheme of Advance authorization and is ultra vires as it excludes the replenishment characteristics of the Scheme and Hon'ble Gujarat High Court in the case of Maxim Tubes Company Pvt. Ltd 2019 (2) TMI 1445- Gujarat High Court have held that the scheme is ultra vires as it does not meet with the test of reasonableness and are not in consonance with the scheme of Advance Authorization; that concept of pre-import and physical export has been removed by the clarificatory Notification no. 01/2019 dated 10.01.2019 in the interest of public; that the Notification No. 01/2019 dated 10.01.2019 will be construed to be retrospective in nature and consequently, no pre-import condition needs to be satisfied; that they relied on judgement in the case of Ralson India Ltd. vs. CCE, Chanidgarh, 2015 (319) ELT 234 (SC); that once the duty itself cannot be demanded, the corresponding interest and penalty is also held to be not payable; that they placed reliance on case of Hon'ble Supreme Court in case of Pratibha Processors Vs. Union of India, 1996 (88) ELT 12 (S.C.); that Section 3(12) of the Customs Tariff Act, 1975 does not borrow interest and penalty provisions from the Customs Act, 1962 and thus interest and penalty cannot be imposed

17. Personal Hearing: The Personal Hearing was fixed on 26.03.2024 for M/s. Sandvik Asia Pvt. Ltd. Shri Rajaram Shetty, Advisor (Indirect Taxation) and Shri Ashok Jani, Business Controller of Sandvik Asia Pvt. Ltd attended Personal Hearing held on 26.03.2024 wherein they submitted that they have paid duty alongwith interest prior to the issue of the Show Cause Notice and requested for non imposition of the penalty and conclude their proceeding in terms of Section 28 (2) of the Customs Act, 1962.

18. Findings: I have carefully gone through the Show Cause Notice dated 02.09.2019 written submission dated 08.01.2020 filed by Advocate of M/s. Sandvik Asia Pvt. Ltd. and records of personal hearing held on 26.03.2024.

19. I find from the records that the present Show Cause Notice dated 02.09.2019 has been retrieved from Call Book for adjudication in view of Hon'ble Supreme Court decision dated 28.04.2023 in case of M/s. Cosmo Films Ltd. I also find that after issuance of Show Cause Notice on 02.09.2019, the importer was informed vide letter F.No. VIII/10-43/Pr. Commr./O&A/2019 dated 23.01.2020 the reason for transfer of Show Cause Notice to Call Book as stipulated under Sub -Section 9A of Section 28 of the Customs Act, 1962. Further, Chief Commissioner of Customs, extended the time limit for further six months under Section 28 (9) of the Customs Act, 1962 and the importer was informed of the same vide letter dated 18.01.2024.

20. The issues for consideration before me in the present SCN are as under:-

(i) Whether, the importer, during October 13, 2017 to January 9, 2019 was eligible for availing 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 fulfillment of mandatory 'Pre Import Condition'?

- (ii) Whether the Duty of Customs amounting to **Rs 17,36,10,932/- (Rupees Seventeen Crore, Thirty Six Lakh, Ten Thousand, Nine Hundred and Thirty Two only)** as detailed in Show Cause Notice is required to be demanded and recovered from them under Section 28(1) of the Customs Act, 1962 alongwith Interest under Section 28AA of the Customs Act, 1962?
- (iii) Whether, subject goods having assessable value of **Rs. 86,44,12,294/- (Rupees Eighty Six Crore, Forty Four Lakh, Twelve Thousand, Two Hundred and Ninety Four only)** as detailed in Show Cause Notice, are liable for confiscation under Section 111(o) of the Customs Act, 1962?
- (iv) Whether the Duty of Customs amounting to **Rs 17,36,10,932/- (Rupees Seventeen Crore, Thirty Six Lakh, Ten Thousand, Nine Hundred and Thirty Two only)** deposited by them towards Customs Duty in the form of IGST vide Challan mentioned in Table-5 should be appropriated towards payment of Customs Duty of **Rs. 17,36,10,932/-**?
- (v) Whether amount of **Rs 60,76,772/-** deposited by them towards interest vide Challan Nos. as detailed in Table-5, should be appropriated towards payment of amount of interest?
- (vi) Whether the noticee is liable to penalty under Section 112(a) of the Customs Act, 1962?
- (vii) Whether Bonds executed by them at the time of import is enforceable in terms of Section 143(3) of the Customs Act, 1962, for recovery of the Customs Duty as mentioned above alongwith interest?

21. I find that Duty liability with interest and penal liabilities would be relevant only if the bone of the contention that whether the Importer has violated the mandatory 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 to 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. I find that 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,-</i> (a)</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</i></p>

	<p>section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports only;”;</p> <p>(c)</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 cessleviable 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>
--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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 the Importer has taken plea that meaning of phrase ‘Pre-import Condition’ was neither defined in the FTP policy nor in the notification. 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 no longer *res-Integra* 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 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.

22.8 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".

22.9 Thus, from the findings and discussion in Para 22 to 22.8 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.

22.10. I find that the said importer has cited the decision of Hon'ble Gujarat High Court in case of Maxim Tubes Company Pvt. Ltd. v. Union of India —reported as 2019 (368) E.L.T. 337 (Guj.) and have contended that the 'Pre import conditions is ultra vires as held by the Hon'ble Gujarat High Court. This plea is not tenable as the Hon'ble Supreme Court has turned down this decision of Maxim Tubes Company Pvt. Ltd. v. Union of India in case of Union of India Vs. Cosmo Film Ltd.

23. Whether the Duty of Customs amounting to Rs 17,36,10,932/- (Rupees Seventeen Crore, Thirty Six Lakh, Ten Thousand, Nine Hundred and Thirty Two only) as detailed in Table-5 of the SCN is required to be demanded and recovered from them under Section 28(1) of the Customs Act, 1962 and whether Bonds executed by 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. Further, I find that Importer is well aware of the rules and regulation of Customs as well as Exim Policy as they are regularly importing the goods under Advance Authorisation and they were fully aware that the goods being cleared from Customs was not fulfilling pre import condition as they have already filed the Shipping Bill to this effect and goods have already been exported. Thus, it proves beyond doubt that goods imported under subject Bills of Entry were never used in the goods already exported. Thus, I find that the Importer is liable to pay the differential Customs Duty amounting to **Rs. 17,36,10,932/- (Rupees Seventeen Crore, Thirty Six Lakh, Ten Thousand, Nine Hundred and Thirty Two only)** as proposed under Section 28 (1) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

23.2 Further, without prejudice to the demand under Section 28 (1) of the Customs Act, 1962, 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 one 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** (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) fulfill 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 no time limit is prescribed for recovery of any liability in case of Bond filed under Section 143 (1) of the Customs Act,1962 as it is continuous liability on the part of the importer to follow the conditions prescribed in the Bond. 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 without prejudice to the time limit envisaged under Section 28 (1) of the Customs Act, 1962, said Importer is liable to pay differential duty alongwith interest without any time limit. Therefore, I find that without prejudice to the Provisions of Section 28 (1) of the Customs Act,1962, the Bond may be enforced under Section 143 (3) of the Customs Act, 1962 for the recovery of differential Customs Duty **Rs. 17,36,10,932/-** alongwith interest.

24 I find that the importer has paid the differential Customs Duty of Rs. 17,36,10,932/- alongwith interest of Rs 60,76,772/- prior to the issuance of the

Show Cause Notice and details of payment of duty alongwith interest have been mentioned in Table-5 of the SCN herein above. The importer during the personal hearing held on 26.03.2024 have stated that they have paid the differential duty alongwith interest prior to issuance of SCN, penalty should not be imposed and requested for concluding the proceeding initiated against them.

24.1 As the importer has paid the differential Customs Duty of Rs. 17,36,10,932/- alongwith interest of Rs 60,76,772/- during the investigation, I find that proceeding against the importer can be concluded under proviso to Section 28(2) of the Customs Act, 1962. Section 28 (2) of the Customs Act, 1962 read as under:

Section 28 (2) of the Customs Act, 1962:

“(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest :

[**Provided** that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (a) of sub-section (1) shall be deemed to be concluded.]”

24.2 I find that the proviso to Section 28(2) of the Customs Act, 1962 ibid provides for concluding the proceeding initiated, if Show Cause Notice has been issued under clause (a) of sub-section (1) of the Customs Act, 1962 and if the amount of duty alongwith interest payable thereon, as specified in the notice, has been paid in full within 30 days from the date of receipt of the notice, no penalty ibid is leviable and show cause notice shall be deemed to be concluded.

24.3 I find that importer has paid the entire amount of differential Customs Duty of Rs. 17,36,10,932/- alongwith interest of Rs 60,76,772/- during the investigation as detailed in Table- 5 of the SCN. I find that Show Cause Notice No. DRI/KZU/CF/ENQ-132 (INT-09)/2018 is issued on 02.09.2019 and aforesaid stated differential Duty of Rs. 17,36,10,932/- alongwith interest of Rs 60,76,772/- has been paid prior to the issuance of the Show Cause Notice. Thus, as the importer has paid the Duty demand alongwith interest before issuance of Show Cause Notice as envisaged under Section 28(2) of the Customs Act, 1962, I find that proceeding initiated against the importer is required to be concluded under Section 28(2) of the Customs Act, 1962. Therefore, I find that proceeding initiated against the importer is liable to be concluded and differential Duty of Rs. 17,36,10,932/- paid is required to be appropriated against the duty demanded in Show Cause Notice and further, interest of Rs. 60,76,772/- paid the importer is also required to be appropriated against the interest liable to be paid on the short paid differential duty of Rs. 17,36,10,932/. Further, as the importer has paid the entire duty alongwith interest, I refrain to order to enforce the Bond filed by the importer. In terms of explicit provisions of Section 28 (2) of the Customs Act, 1962, I do not impose any penalty under Section 112 (a) of the Customs Act, 1962 and do not impose any Redemption Fine in lieu of confiscation as Proviso to Section 28(2) of Customs Act, 1962 clearly stipulates that no penalty shall be levied and proceeding shall be deemed to be concluded.

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

::ORDER::

- (i) I confirm the demand of Duty of Customs amounting to Rs. 17,36,10,932/- (Rupees Seventeen Crore, Thirty Six Lakh, Ten Thousand, Nine Hundred and Thirty Two only) as detailed in Table-5

of the Show Cause Notice, under Section 28 (8) of the Customs Act, 1962 and order appropriation of already deposited duty against the demand of Rs. 17,36,10,932/-.

- (ii) I order to recover the interest at appropriate rate in respect of demand confirmed at Para (i) above under Section 28AA of the Customs Act, 1962 and order to appropriate already paid interest of Rs 60,76,772/- as detailed in Table-5 of the Show Cause Notice, against the interest liable to paid against the confirmed demand at Para (i) above deposited by them towards interest vide Challan as detailed in Table-5 of the SCN and order to appropriate towards interest liability.
- (iii) For the reasons discussed in foregoing paras and in view of the provisions of proviso to Section 28(2) of the Customs Act, 1962, I do not order for confiscation of the goods under Section 111 (o) of the Customs Act, 1962 and also do not impose penalty under Section 112(a) of the Customs Act, 1962.
- (iv) As the importer has paid the entire amount of differential Customs Duty of Rs. 17,36,10,932/- alongwith interest of Rs. Rs 60,76,772/-, I refrain to order to enforce the Bond filed by the importer.

26. 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.

27. The Show Cause Notice No. DRI/KZU/CF/ENQ-132(INT-09)/2018 dated 02.09.2019 is disposed off in above terms.



28.03.2024

(Shiv Kumar Sharma)
Principal Commissioner

DIN- 20240371MN0000005E8D

F. No. VIII/10-43/Pr. Commr./O&A/2019

Date: 28.03.2024

M/s Sandvik Asia Pvt Ltd,
(Now Known as Alleima India Pvt. Ltd.)
Mumbai Pune Road,
Dapodi, Pune-411012

Copy to:-

1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad for information and necessary action.
2. The Additional Director General, DRI, Kolkata Zonal Unit, Kolkata-700071.
3. The Deputy Commissioner of Customs House, Dahej for information please and necessary action.
4. The Additional Commissioner of Customs(TRC), Ahmedabad for necessary action.
5. The Superintendent of Customs(Systems), Ahmedabad in PDF format for uploading on the Official Website of Customs, Commisionerate, Ahmedabad.
6. Guard File.

