प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडियो के पास, नवरंगपुरा ,अह्मदाबाद 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
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निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./ **F. No.: VIII/10-32/Pr. Commr./O&A/2023-24**

DIN- 20250171MN000000E654

आदेश की तारीख/Date of Order : 24.01.2025
जारी करने की तारीख/Date of Issue : 28.01.2025

द्वारा पारित :- **शिव कुमार शर्मा ,प्रधान आयुक्त**
Passed by :- Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या : **AHM-CUSTM-000-PR.COMMR-63-2024-25 dtd.24.01.2025**

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-63-2024-25 dtd.24.01.2025 in the case of M/s. Somnath Textile Private Limited, Block No. 130, Plot No. 137 to 146, Gopal Ind. Estate, Vill. Tatithaiya, Tal. Palsana, B/h. Venus Mill, Surat, Gujarat-394315.

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, अह्मदाबाद-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 Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.

3. उक्त अपील प्रारुप 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 प्रतियोँ 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 प्रतियोँ 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 संलगन 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 विरूद्ध 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 सिर्फ जुरमाना के बारे मे विवाद है उसका भुकतान करके अपील की जा सकती 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. VIII/10-32/Pr. Commr./O&A/2023-24 dated 28.02.2024 issued by the Principal Commissioner of Customs, Ahmedabad to M/s. Somnath Textile Private Limited, Block No. 130, Plot No. 137 to 146, Gopal Ind. Estate, Vill. Tatithaiya, Tal. Palsana, B/h. Venus Mill, Surat, Gujarat-394315.

BRIEF FACTS OF THE CASE:-

M/s. Somnath Textiles, Block No. 130, Plot No. 137 to 146, Gopal Ind. Estate, Vill. Tatithaiya, Tal. Palsana, B/h. Venus Mill, Surat-394315 (hereinafter referred as "the importer" or "the Noticee" for the sake of brevity), holding Importer Exporter Code No. 5212008719 had imported 24 Sets of capital goods viz. 828 Shuttle Less Papier Looms under EPCG Licence No. 5230013105 dated 24.12.2013 by saving duty of **Rs.1,39,19,489/-** (Actual Duty Utilized of Rs.**68,55,293**/-) and had cleared the same vide below mentioned Bill of Entry at zero duty while availing the benefit of exemption available under Notification No. 22/2013-Cus dated 18.04.2013. The details of import are as under:

Table-1

S. N.	B/E No. & Date	Qty of machinery cleared	Duty Saved/ available as per EPCG Licence	Total Duty Foregone/Debited at the time of clearance	BG Amount (Rs.)
1	4302972 dtd. 09.01.2014	24	1,39,19,489	68,55,293	
Total		**24**	**1,39,19,489**	**68,55,293**	70,00,000

2. The Importer had executed Bond dated 07.01.2014 for Rs.4,00,00,000/- backed by Bank Guarantee No. 1439614BG0000001 dated 03.01.2014 for Rs.70,00,000/- issued by the State Bank Of India, Ring Road Surat-395002, for EPCG License No. 5230013105 dated 24.12.2013. They had also undertaken to fulfill all the terms and conditions specified in the License and the said Notification and the License.

3. The necessary Installation Certificate certifying the receipt of the said machinery i.e. Sets of capital goods viz. (24 Sets of 828 Shuttle Less Papier Looms imported under the above said EPCG License were installed at the factory/business premises i.e. M/s. Somnath Textile Pvt Ltd, Block No. 130, Plot No. 137 to 146, Gopal Ind. Estate, Vill. Tatithaiya, Tal. Palsana, B/h. Venus Mill, Surat-394315, as per the Installation Certificate dated 03.02.2014 issued by Chartered Engineer Dr. P.J.Gandhi, Surat, certifying the receipt of the goods imported and its installation.

4. As per Notification No.22/2013-Cus dated 18.04.2013, the importer was required to fulfill the Export Obligation on FOB basis equivalent to six times of the Duty saved on the goods imported as may be specified on the Licence or Authorization. The relevant portion of the said Notification is produced herein below for reference:

Notification No. 22 / 2013-CUSTOMS

New Delhi, the 18th April, 2013

G.S.R. 248 (E). - In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in the Table 1 annexed hereto, from,- (i) the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and (ii) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, when specifically claimed by the importer. 2. The exemption under this notification shall be subject to the following conditions, namely:- (1) that the goods imported are covered by a valid authorisation issued under the Export Promotion Capital Goods (EPCG) Scheme in terms of Chapter 5 of the Foreign Trade Policy

permitting import of goods at zero customs duty; (2) that the authorisation is registered at the port of import specified in the said authorisation and the goods, which are specified in the Table 1 annexed hereto, are imported within eighteen months from the date of issue of the said authorisation and the said authorisation is produced for debit by the proper officer of customs at the time of clearance: Provided that the benefit of import of capital goods at concessional duty under this notification for creation of modern infrastructure shall be extended only to such retailers who have a minimum area of 1000 square metres: Provided further that the catalyst for one subsequent charge shall be allowed, under the authorisation in which plant, machinery or equipment and catalyst for initial charge have been imported, except in cases where the Regional Authority issues a separate authorisation for catalyst for one subsequent charge after the plant, machinery or equipment and catalyst for initial charge have already been imported; (3) that the importer is not issued, in the year of issuance of zero duty EPCG authorisation, the duty credit scrips under Status Holder Incentive Scrip (SHIS) scheme under para 3.16 of the Foreign Trade Policy. In the case of applicant who is Common Service Provider (herein after referred as CSP), the CSP or any of its specific users should not be issued, in the year of issuance of the zero duty EPCG authorisation, the duty credit scrips under SHIS. This condition shall not apply where already availed SHIS benefit that is unutilised is surrendered or where benefits availed under SHIS that is utilised is refunded, with applicable interest, before issue of the zero duty EPCG authorisation. SHIS scrips which are surrendered or benefit refunded or not issued in a particular year for the reason the authorisation has been issued in that year shall not be issued in future years also; (4) that the authorisation for annual requirement shall indicate export product to be exported under the authorisation. The importer shall submit a Nexus Certificate from an independent Chartered Engineer (CEC) in the format specified in Appendix 32A of HBP (vol. I) notified under the Foreign Trade Policy, certifying nexus of imported capital goods with the export product, to the Customs authorities at the time of clearance of imported capital goods. A copy of the CEC shall be submitted to the concerned Regional Authority alongwith copy of the bill of entry, within thirty days from the date of import of the Capital Goods; (5) that the goods imported shall not be disposed of or transferred by sale or lease or any other manner till export obligation is complete; (6) that the importer executes a bond in such form and for such sum and with such surety or security as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs binding himself to comply with all the conditions of this notification as well as to fulfill export obligation on Free on Board (FOB) basis equivalent to six times the duty saved on the goods imported as may be specified on the authorisation, or for such higher sum as may be fixed or endorsed by the Regional Authority in terms of Para 5.10 of the Handbook of Procedures Vol I, issued under para 2.4 of the Foreign Trade Policy, within a period of six years from the date of issue of Authorisation, in the following proportions, namely :-

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

.....

.....

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

(8) that the importer, including a CSP, produces within 30 days from the expiry of each block from the date of issue of authorisation or within such extended period

as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow, evidence to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs showing the extent of export obligation fulfilled, and where the export obligation of any particular block is not fulfilled in terms of the condition (6), the importer shall within three months from the expiry of the said block pay duties of customs equal to an amount which bears the same proportion to the duties leviable on the goods, but for the exemption contained herein, which the unfulfilled portion of the export obligation bears to the total export obligation, together with interest at the rate of 15% per annum from the date of clearance of the goods;

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

5. The aforesaid EPCG License No. 5230013105 dated 24.12.2013 was issued to the importer for a period of 6 years and the Bond dated 07.01.2014 was executed for a period of 10 years. Accordingly, the said importer was required to fulfill the Export Obligation within a period of six years from the date of EPCG Licence as per the condition laid down in the Notification and EPCG Licence itself and submit the Export Obligation Discharged Certificate (EODC) issued by the DGFT Authority to the department.

6. Letters F.No.VIII/6-3419/ICD-SACHIN/2013-14 dated 11.07.2022 was issued to the said importer to either furnish the EODC issued by DGFT, Surat or any extension granted by DGFT, Surat for fulfillment of Export Obligation, but no reply was received.

6.1 As no reply was received from the importer, a letter F.No. ICD-Sachin/DGFT/07/2020-21 dated 21.10.2022 was issued to the Foreign Trade Development officer, DGFT, Surat requesting them to intimate this office, whether the importer has been issued EODC against EPCG License No. 5230013105 dated 24.12.2013 or any documents showing the fulfillment of the export obligation submitted by the aforesaid importer. The Assistant Director, Directorate General of Foreign Trade, Surat vide letter F.No. EPCG/Mis/2020-21 dated 28.10.2022 intimated that the importer had not submitted any documents to them against fulfillment of export obligation. Thus, it is evident from the above that the Importer has failed to fulfill the Export Obligation as specified in the Licence and has not complied with the mandatory conditions of the Customs Notification No.22/2013-Cus dated 18.04.2013, EPCG Licence and Bond dated 07.01.2014.

7. As per the provisions of Section 143 of the Customs Act, 1962, the aforesaid Capital Goods were allowed clearance by the proper Officer on execution of Bond by the Importer wherein the Importer has bound himself to discharge liability within a specified period in certain manner, which he has failed to do, by not fulfilling the Export Obligation. Therefore, the Department is entitled to recover the Duty less paid by raising a demand and appropriating the Bank Guarantee furnished by the Importer against this demand. The said Section is produced herein below for reference:

SECTION 143. Power to allow import or export on execution of bonds in certain cases. - *(1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the Assistant Commissioner of Customs or Deputy Commissioner of Customs approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.*

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

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

8. In view of the above, the Importer has failed to fulfill the conditions laid down under Notification No. 22/2013-Cus dated 18.04.2013 in as much as they have failed to export goods manufactured from 24 Sets of above mentioned capital goods totally valued at **Rs.68,55,293/- (Rupees Sixty Eight Lakh, Fifty Five Thousand, Two Hundred and Ninety Three only)** imported under EPCG License No. 5230013105 dated 24.12.2013 which was equivalent to six times of the Duty saved amount on the goods imported and also did not produce EODC issued by DGFT, Surat or any extension granted by DGFT, Surat for fulfillment of Export Obligation. They are therefore liable to pay Customs Duty of **Rs.68,55,293/- (Rupees Sixty Eight Lakh, Fifty Five Thousand, Two Hundred and Ninety Three only)** in respect of the said imported goods along with interest at the applicable rate, in terms of conditions of the said Notification read with condition of Bond executed by the Importer and Section 143 of the Customs Act,1962.

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

8.2 Since, the said Importer could not fulfill the conditions laid down under Notification No. 22/2013-Cus dated 18.04.2013, the Bank Guarantee No. 1439614BG0000001 dated 03.01.2014 for Rs.70,00,000/-issued by the State Bank Of India, Ring Road Surat-395002, for EPCG License No. 5230013105 dated 24.12.2013, encashed vide TR-6/GAR-7 Challan No. 129/23-24 Dtd. 25.01.2024 should not be appropriated against the aforesaid recovery.

8.3 As per para (8) of Customs Notification No. 22/2013-Cus dated 18.04.2013, the importer was required to produce, within 30 days from the expiry of each block from the date of issue of authorization or within such extended period, evidence to the extent of export obligation fulfilled by them, and where the export obligation of any particular

block was not fulfilled, the importer were required to pay duties of customs equal to an amount which for the unfulfilled portion of the export obligation along with interest within three months from the expiry of the said block. The Importer had also given an Undertaking/Bond to this effect. The letter dated 11.07.2022 was written to the Importer to intimate the extent of Export obligation fulfilled by them but they did not reply to the letter. Thus, the fact that they had neither completed their Export obligation nor paid the Duty on import as per law & procedure is on record. The DGFT also informed that the Importer has not submitted any documents regarding fulfillment of Export Obligation. Thus, it appears that the said Importer has neither fulfilled their Export Obligation nor paid the Customs Duty alongwith interest for non-fulfillment of Export Obligation. These facts were not disclosed to the Department or DGFT, thereby, suppressing the facts with a malafide intention to evade the payment of Duty.

8.4 It also appears that **Shri Parul Pareshbhai Patel, Director of M/s. Somnath Textile Private Limited, "17, Shanti Vihar Society, Magob, Surat-394211** has intentionally taken the undue benefits of EPCG Scheme and evaded payment of Customs Duty of **Rs.68,55,293/- (Rupees Sixty Eight Lakh Fifty Five Thousand Two Hundred and Ninety Three only)** in respect of the above capital goods by not fulfilling the Export Obligations as envisaged in Notification No.22/2013-Cus dated 18.04.2013. Thus he has knowingly committed acts which rendered the said goods in question liable for confiscation under Section 111(o) of the Customs Act, 1962 by committing an offence of the nature as described under Section 112(a) of the Customs Act,1962. Resultantly, he has rendered himself liable to penalty under Section 112(a) of the Customs Act, 1962.

9. In view of the above, Show Cause Notice No. VIII/10-32/Pr. Commr/O&A/2023-24 issued to M/s.Somnath Textiles, Block No. 130, Plot No. 137 to 146, Gopal Ind. Estate, Vill. Tatithaiya, Tal. Palsana, B/h. Venus Mill, Surat, 394315 calling upon to show cause to the Principal Commissioner of Customs, Ahmedabad as to why:

(i) The benefit of Zero Duty for EPCG Scheme under Notification No. 22/2013-Cus dated 18.04.2013 on the subject imported 828 Shuttle Less Papier Looms in the name of M/s.Somnath Textiles Pvt. Ltd., should not be denied.

(ii) Customs Duty totally amounting to **Rs.68,55,293/- (Rupees Sixty Eight Lakh Fifty Five Thousand Two Hundred and Ninety Three only)** being the Duty forgone at the time of import under EPCG Licence, should not be demanded and recovered from them in terms of Notification No.22/2013-Cus dated 18.04.2013 as amended, read with the Conditions of Bond executed and furnished by them in term of Section 143 of the Customs Act, 1962 by enforcing the terms of the said Bond.

(iii) As to why the Bank Guarantee No. 1439614BG0000001 dated 03.01.2014 for Rs.70,00,000/- issued by the State Bank Of India, Ring Road Surat, 395002 already encashed vide TR-6/GAR-7 Challan No.129/23-24 dtd.25.01.2024, should not be appropriated and adjusted towards the Duty liability as mentioned above.

(iv) Interest at the applicable rate should not be recovered from them on the Customs Duty as mentioned at (ii) above in term of Notification No. 22/2013-Cus dated 18.04.2013 as amended from time to time read with Conditions of the Bond executed in term of Section 143 of the Customs Act, 1962.

(v) The imported Capital Goods should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962 read with conditions of Bond executed, in terms of Section 143 of the Customs Act, 1962 read with Notification No. 22/2013-Cus dated 18.04.2013 as amended from time to time.

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

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

10. Shri Parul Pareshbhai Patel, Director of M/s. Somnath Textile Private Limited, "17, Shanti Vihar Society, Magob, Surat-394211 is called upon to show cause to the Principal Commissioner of Customs, Ahmedabad having his office at 1st Floor, Customs House, Near All India Radio, Navrangpura, Ahmedabad-380009, as to why Penalty should not be imposed on him under the provisions of Section 112(a) of the Customs Act, 1962 for the acts of omission & commission mentioned above.

DEFENSE SUBMISSION:

11. The Show Cause Notice No. VIII/10-32/Pr. Commr./O&A/ 2023-24 dated 28.02.2024 was sent on the available address of the importer as well its Director Shri Parul Pareshbhai Patel. However, no reply to the Show Cause Notice is filed by the importer as well as its Director Shri Parul Pareshbhai Patel till date.

PERSONAL HEARING:

12. The importer as well its Director Shri Parul Pareshbhai Patel were granted opportunity of personal hearing on 06.01.2025, 15.01.2025 and 23.01.2025 in compliance with the Principles of Natural Justice and the letter for personal hearing was sent to the following addresses available, however, noticees did not attend the Personal Hearing. Further, letters of Personal Hearing were pasted on the Notice Board of the Office of the Principal Commissioner of Customs, Ahmedabad-380009. Details of letter for Personal Hearing issued are mentioned in below mentioned Table-2.

Table-2

Name of Noticee	Address of the Noticees	Date of issue of Personal Hearing letter	Date of Personal Hearing Fixed
M/s Somnath Textile Pvt. Ltd.	M/s. Somnath Textile Private Limited, Block No. 130, Plot No. 137 to 146, Gopal Ind. Estate, Vill. Tatithaiya, Tal. Palsana, B/h. Venus Mill, Surat-394315	26.12.2024 07.01.2025 16.01.2025	06.01.2025 15.01.2025 23.01.2025
Shri Parul Pareshbhai Patel, Director of M/s Somnath Textile Pvt. Ltd	Director of M/s. Somnath Textile Pvt. Ltd., 17, Shanti Vihar Society, Magob, Surat-394211	26.12.2024 07.01.2025 16.01.2025	06.01.2025 15.01.2025 23.01.2025

From the aforesaid facts, it is observed that sufficient opportunity has been granted to the Importer and its Director, Shri Parul Pareshbhai Patel but they

choose not to join the personal hearing. It is observed that the letters of Personal hearing were sent on the addresses as mentioned in Show Cause Notice.

DISCUSSION AND FINDINGS:

13. I have carefully gone through the facts of the case, the relevant records available in the case file as well as compilation of statutory provisions.

13.1 I find that as per Section 122A of the Customs Act, 1962, the Adjudicating Authority shall give an opportunity of being heard to the Noticee in a proceeding, if the Noticee so desires. Accordingly, in the present case ample opportunities were granted to the importer and its Director Shri Parul Pareshbhai Patel but they did not participate in the adjudication proceedings inspite of the fact that service of letters for personal hearings were done in terms of Section 153 of Customs Act, 1962.

Section 153 of the Customs Act reads as under -

(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:—

a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;

b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;

c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;

d) by making it available on the common portal;

e) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or;

f) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.

(2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).

(3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.]

Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that Personal Hearing letters were duly served to the Noticee, but they did not respond as if they did not have anything to submit in their defence.

13.2 I find that the importer and its Director Shri Parul Pareshbhai Patel have failed to appear for Personal Hearing, inspite of being given opportunity to appear in person several times as detailed in foregoing para for defending their case. Under such circumstance, there is no option left for me but to proceed with the adjudication proceedings ex-parte in terms of merit of the case.

13.3 With regard to proceeding to decide the case ex-parte, support is drawn from the following case laws:

13.3.1 Hon'ble High Court of Kerala in the case of United Oil Mills Vs. Collector of Customs & C.Ex. Cochin reported in 2000 (124) ELT 53 (Ker.) has held that:

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

21. It may be recalled here that the requirement of natural justice varies from cases to cases and situations to situations. Courts cannot insist that under all circumstances personal hearing has to be afforded. Quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the persons concerned but it cannot be held that before dismissing such applications in all events the quasi-judicial authorities must hear the applicants personally. When principles of natural justice require an opportunity before an adverse order is passed, it does not in all circumstances mean a personal hearing. The requirement is complied with if the person concerned is afforded an opportunity to present his case before the authority. Any order passed after taking into consideration the points raised in such applications shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters. See *Union of India and Another* v. *M/s. Jesus Sales Corporation* [1996 (83) E.L.T. 486 (S.C.) = J.T. 1996 (3) SC 597].

13.3.2 Hon'ble Tribunal of Mumbai in the case of Sumit Wool Processors v. CC, Nhava Sheva reported in 2014 (312) E.L.T. 401 (Tri. - Mumbai) has observed as under:

"8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the

adjudicating authority. Thus the argument taken is only an *alibi* to escape the consequences of law. Accordingly, we reject the plea made by them in this regard."

13.3.3 Hon'ble High Court of Delhi in the case of Saketh India Ltd Vs. Union of India reported in 2002 (143) ELT 274 (Del), has observed that:

"Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992. - Admittedly, the appellant herein did not respond to the show cause notice. Thereafter, the appellant was called for personal hearing on six subsequent dates. According to the Additional DGFT nobody appeared on behalf of the appellant inspite of various dates fixed for personal appearance of the appellant and in these circumstances, the Additional DGFT proceeded with the matter ex parte and passed the impugned order. The appellant had the knowledge of the proceedings but neither any reply to the show cause notice was given nor it chose to appear before the Additional DGFT to make oral submissions. Thus it is a clear case where proper opportunity was given to the appellant to reply to show cause notice and to make oral submissions, if any. However, fault lies with the appellant in not availing of these opportunities. The appellant cannot now turn around and blame the respondents by alleging that the Additional DGFT violated principles of natural justice or did not give sufficient opportunity to the appellant to present its case."

13.3.4 The Hon'ble CESTAT, Mumbai in the case of Gopinath Chem Tech. Ltd Vs. Commissioner of Central Excise, Ahmedabad-II reported in 2004 (171) ELT 412 (Tri. Mumbai) has held that:

"Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated."

13.3.5 The Hon'ble Supreme Court in the case of Jethmal Vs. Union of India reported in 1999 (110) ELT 379 (S.C.) has held as under:

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

13.3.6 Hon'ble Delhi Tribunal in the case of Commissioner of C.Ex. Vs. Pee Iron & Steel Co. (P) Ltd. reported in as 2012 (286) E.L.T. 79 (Tri. – Del) [upheld by Hon'ble Punjab & Haryana High Court reported in **2015 (316) E.L.T. A118 (P&H.)]** has observed that:

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

14. In view of the discussion held in Para 13 to 13.3.6 above, I proceed to adjudicate the Show Cause Notice No. VIII/10-32/Pr. Commr/O&A/2023-24 dated 28.02.2024 ex parte. Issues for consideration in the Show Cause Notice are as under:

(i) Whether, the benefit of Zero Duty for EPCG Scheme under Notification No. 22/2013-Cus dated 18.04.2013 on the imported '828 Shuttle Less Rapier Looms' in the name of M/s. Somnath Textiles Pvt. Ltd. under EPCG Licence No. 5230013105 dated 24.12.2013 is admissible?

(ii) Whether the Customs Duty totally amounting to Rs. 68,55,293/- (Rupees Sixty Eight Lakh, Fifty Five Thousand, Two Hundred and Ninety Three only) being the Duty forgone at the time of import under EPCG Licence, should be demanded and recovered from the importer in terms of Notification No. 22/2013-Cus dated 18.04.2013 as amended, and by enforcing the Bond and encashing the Bank Guarantee for Rs. 70,00,000/- furnished by the Importer?

(iii) Whether, interest at the applicable rate should be recovered from the importer on the Customs Duty as mentioned at (ii) above in term of Notification No 22/2013-Cus dated 18.04.2013 as amended and as per the conditions of Bond executed in term of Section 143 of the Customs Act,1962?

(iv) Whether, the imported Capital Goods should be held liable for confiscation under Section 111(o) of the Customs Act, 1962?

(v) Whether, penalty should be imposed on the importer under Section 112(a) of the Customs Act, 1962?

(vi) Whether, penalty should be imposed on the Importer under Section 117 of the Customs Act, 1962?

(vii) Whether, penalty should be imposed on Shri Parul Pareshbhai Patel, Director of the importer, under Section 112(a) of the Customs Act, 1962?

15. Whether, the benefit of Zero Duty for EPCG Scheme under Notification No. 22/2013-Cus dated 18.04.2013 on the imported '828

Shuttle Less Rapier Looms' in the name of M/s. Somnath Textiles Pvt. Ltd. under EPCG Licence No. 5230013105 dated 24.12.2013 is admissible?

15.1 I find that the importer had imported 24 Sets of Capital Goods viz. '828 Shuttle Less Rapier Looms' under EPCG Licence No. 5230013105 dated 24.12.2013 claiming the benefit of exemption available under Notification No. 22/2013-Cus dated 18.04.2013 and cleared under Bills of Entry at zero duty under the said Notification No. 22/2013-Cus dated 18.04.2013. I find it worth to reproduce the relevant content of the Notification No. 22/2013-Cus dated 18.04.2013 as under:

Notification No. 22 / 2013-CUSTOMS

New Delhi, the 18th April, 2013

G.S.R. 248 (E). - In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in the Table 1 annexed hereto, from,- (i) the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and (ii) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, when specifically claimed by the importer. 2. The exemption under this notification shall be subject to the following conditions, namely:-

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

(2) that the authorisation is registered at the port of import specified in the said authorisation and the goods, which are specified in the Table 1 annexed hereto, are imported within eighteen months from the date of issue of the said authorisation and the said authorisation is produced for debit by the proper officer of customs at the time of clearance: Provided that the benefit of import of capital goods at concessional duty under this notification for creation of modern infrastructure shall be extended only to such retailers who have a minimum area of 1000 square metres: Provided further that the catalyst for one subsequent charge shall be allowed, under the authorisation in which plant, machinery or equipment and catalyst for initial charge have been imported, except in cases where the Regional Authority issues a separate authorisation for catalyst for one subsequent charge after the plant, machinery or equipment and catalyst for initial charge have already been imported;

(3) that the importer is not issued, in the year of issuance of zero duty EPCG authorisation, the duty credit scrips under Status Holder Incentive Scrip (SHIS) scheme under para 3.16 of the Foreign Trade Policy. In the case of applicant who is Common Service Provider (herein after referred as CSP), the CSP or any of its specific users should not be issued, in the year of issuance of the zero duty EPCG authorisation, the duty credit scrips under SHIS. This condition shall not apply where already availed SHIS benefit that is unutilised is surrendered or where benefits availed under SHIS that is utilised is refunded, with applicable interest, before issue of the zero duty EPCG authorisation. SHIS scrips which are surrendered or benefit refunded or not issued in a particular year for the reason the authorisation has been issued in that year shall not be issued in future years also;

(4) that the authorisation for annual requirement shall indicate export product to be exported under the authorisation. The importer shall submit a Nexus Certificate

from an independent Chartered Engineer (CEC) in the format specified in Appendix 32A of HBP (vol. I) notified under the Foreign Trade Policy, certifying nexus of imported capital goods with the export product, to the Customs authorities at the time of clearance of imported capital goods. A copy of the CEC shall be submitted to the concerned Regional Authority alongwith copy of the bill of entry, within thirty days from the date of import of the Capital Goods;

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

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

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

.....

.....

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

(8) that the importer, including a CSP, produces within 30 days from the expiry of each block from the date of issue of authorisation or within such extended period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow, evidence to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs showing the extent of export obligation fulfilled, and where the export obligation of any particular block is not fulfilled in terms of the condition (6), the importer shall within three months from the expiry of the said block pay duties of customs equal to an amount which bears the same proportion to the duties leviable on the goods, but for the exemption contained herein, which the unfulfilled portion of the export obligation bears to the total export obligation, together with interest at the rate of 15% per annum from the date of clearance of the goods;

15.2 Para 5.8 of the Handbook of Procedure Vol. I of Foreign Trade Policy (FTP) 2019-2014 stipulates that the Authorization holder under EPCG Scheme shall fulfill the export obligation over the specified period in following proportion:

Period from the date of issue of Authorization	Minimum export obligation to be fulfilled
Block of 1st to 4th year	*50%*
Block of 5th and 6th year	*50%*

15.3 Para 5.8.3 of the Handbook of Procedure Vol. I of Foreign Trade Policy (FTP) 2019-2014 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 subject to payment of composition fee of 2% on duty saved amount equal to unfulfilled portion of EO, such Authorization holder shall, within 3 months from the expiry of the block of years, pay duties of customs (alongwith applicable interest as notified by DoR) of an amount equal to that proportion of the duty leviable on the goods which bears the same proportion as the unfulfilled portion of the export obligation bears to the total export obligation."

15.4 Para 5.14 of the Handbook of Procedure Vol. I of the Foreign Trade Policy (FTP) 2019-2014 stipulates that "In case, EPCG authorization holder fails to fulfill prescribed Bonafide Default export obligation, he shall pay duties of Customs plus interest as prescribed by Customs authority. Such facilities can also be availed by EPCG authorization holder to exit at his option. The authorization holder will have the option to furnish valid duty credit scrips, issued under Chapter 3 of FTP for payment of the customs duty component."

15.5. On combined reading of the conditions of the Notification No. 22/2013-Cus dated 18.04.2013 and Para 5.8., 5.8.3 and 5.14 of the Handbook of Procedure Vol. I of Foreign Trade Policy (FTP) 2019-2014, I find that the Importer was obliged to fulfill the export obligation against the import of 24 Sets of Capital Goods viz. '828 Shuttle Less Rapier Looms' cleared under EPCG Licence No. 5230013105 dated 24.12.2013 by availing benefit of exemption Notification No. 22/2013-Cus dated 18.04.2013.

15.6 I find that as per condition (6) of the Notification No. 22/2013-Cus dated 18.04.2013, the importer has executed a Bond dated 07.01.2014 binding himself to comply with all the conditions of this notification as well as to fulfill export obligation on Free on Board (FOB) basis equivalent to six times the duty saved on the goods imported within a period of six years from the date of issue of EPCG Licence No. 5230013105 dated 24.12.2013 . I also find that the Importer has also furnished Bank Guarantee No. 1439614BG0000001 dated 03.01.2014 for Rs.70,00,000/-issued by the State Bank of India, Ring Road Surat, 395002.

15.7 I find that letter was issued from F.No. VIII/6-3419/ICD-SACHIN/2013-14 dated 11.07.2022 to the Importer to either furnish the Export Obligation Discharge Certificate (EODC) issued by Directorate General of Foreign Trade (hereinafter referred to as "DGFT"), Surat or any extension granted by DGFT, Surat for fulfillment of Export Obligation, but they have not submitted any reply in this regard. Further, as no reply was received from the importer, a letter from F.No. ICD-Sachin/DGFT/07/2020-21 dated 21.10.2022 was written to the Foreign Trade Development Officer, DGFT, Surat requesting them to intimate whether the importer has been issued EODC against EPCG License No. 5230013105 dated 24.12.2013 or any documents showing the fulfillment of the Export Obligation have been submitted by the importer or otherwise. The Assistant Director, DGFT, Surat vide letter issued from F.No. EPCG/Mis/2020-21 dated 28.10.2022 intimated that the importer had not submitted any documents to them against fulfillment of Export Obligation. Thus, it is established that the importer has failed to fulfill the Export Obligation as specified in the EPCG Authorization No. 5230013105 dated 24.12.2013 as well as not complied with the mandatory conditions of the Customs Notification No.22/2013-Cus dated 18.04.2013, EPCG Licence and Bond dated 07.01.2014 executed at the time of importation.

15.8 I find that as per Conditions No. 6 of the Notification No.22/2013-Cus dated 18.04.2013, the importer was required to fulfill export obligation on Free on Board (FOB) basis equivalent to six times the duty saved on the goods imported under EPCG Authorization No. 5230013105 dated 24.12.2013 within a period of six years from the date of issuance of EPCG Authorization. I find that the said importer has neither submitted any evidence regarding fufiflment of export obligation nor submitted any extension granted to them by the DGFT. Further, the DGFT vide their letter F.No. EPCG/Mis/2020-21 dated 28.10.2022 intimated that the importer had not submitted any documents to them against fulfillment of Export Obligation.

15.9 Further, I find that as per Condition No. 8 of the Notification No. 22/2013-Cus dated 18.04.2013, the importer was required to produce within 30 days from the expiry of each block from the date of issue of authorisation or within such extended period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow, evidence to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs showing the extent of export obligation fulfilled, and where the export obligation of any particular block is not fulfilled in terms of the condition (6), the importer

shall within three months from the expiry of the said block pay duties of customs equal to an amount which bears the same proportion to the duties leviable on the goods, but for the exemption contained herein, which the unfulfilled portion of the export obligation bears to the total export obligation, together with applicable interest from the date of clearance of the goods. However, the said importer has neither produced any evidence of the export obligation nor paid the Customs Duty alongwith interest on failure to fulfill export obligation in particular block. Thus, I find that the importer has contravened the conditions of Notification No. 22/2013-Cus dated 18.04.2013 and therefore, the importer is not eligible for duty exemption benefit under the said Notification.

15.10 In view of the discussions in Para 15 to 15.9 above, I find that the importer has failed to fulfill the export obligation, thereby contravened the prescribed conditions of the Notification No. 22/2013-Cus dated 18.04.2013 and Para 5.8., 5.8.3 and 5.14 of the Handbook of Procedure Vol. I of Foreign Trade Policy (FTP) 2019-2014. I find that the importer failed to fulfill export obligation on FOB basis equivalent to six times the duty saved on the goods imported as specified on the authorization, or for such higher sum as may be fixed or endorsed by the licencing Authority or Regional Authority, within a period of six years i.e. complete 50% export obligation within first block of 1st to 4th years and remaining 50 % in second block of 5th to 6th years from the date of issuance of EPCG Authorization No. 5230013105 dated 24.12.2013. Therefore, the importer is not admissible for the benefit of zero rated duty benefit available under Notification No. 22/2013-Cus dated 18.04.2013 for the imported 24 Sets of Capital Goods viz. '828 Shuttle Less Rapier Looms' under EPCG Licence No. 5230013105 dated 24.12.2013 imported under the Bills of Entry tabulated in Table-1 herein above.

16. Whether the Customs Duty totally amounting to Rs. 68,55,293/- (Rupees Sixty Eight Lakh, Fifty Five Thousand, Two Hundred and Ninety Three only) being the Duty forgone at the time of import under EPCG Licence, should be demanded and recovered alongwith interest from the importer in terms of Notification No. 22/2013-Cus dated 18.04.2013 as amended, and by enforcing the Bond and encashing the Bank Guarantee for Rs.70,00,000/- furnished by the Importer?

16.1 I find that as per the condition (6) of the Notification No. 22/2013-Cus dated 18.04.2013, the importer has executed a Bond dated 07.01.2014 binding himself to comply with all the conditions of this notification as well as

those mentioned in the EPCG License. Conditions of the Bond dated 07.01.2014 were interalia as under:

"Now the conditions of this bond are that:

1. I/We, the obligor (s) fulfill all the conditions of the said notification and shall observe and comply with all its terms and conditions.
2. I/We, the obligor (s) shall observe all the terms and conditions specified in the license.
3. I/We, the obligor(s) shall fulfill the export obligation as specified in the said notification within 30 days from the expiry of the specified export obligation period to the satisfaction of the Government.
4. In the event of failure to fulfill or part of the export obligation as specified in the said notification and the license, I/We, the obligor (s), hereby undertake to pay the customs duty but for the exemption and also interest @18% per annum thereon forthwith and without any demur, to the Government.
5. I/We, the obligor (s) shall comply with all the conditions and limitations stipulated in the said Import and Export Policy/Foreign Trade Policy as amended from time to time.
6. We, obligor(s), shall not change the name and style under which we, the obligor(s), are doing business or change the location of the manufacturing premises except with the written permission of the Government.

If each and every one of the above conditions are duly complied with by us, the obligor(s), the above written bond shall be void and of no effect, otherwise the same shall remain in full force and effect and virtue.

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 interested.
2. The government through the Commissioner of Customs or any other officer of Customs shall recover the sums due from the obligor(s) in the manner laid down in sub Sec. (1) of the Section 142 of the Customs Act, 1962."

16.2 In view of the discussion held in Para 15 to 15.10 above, I find that the importer has failed to fulfill the export obligation and therefore, the benefit of zero rated duty available under Notification No. 22/2013-Cus dated 18.04.2013 for the importation of Capital Goods under EPCG Authorization No. 5230013105 dated 24.12.2013 imported under the Bill of Entry tabulated in Table-1 herein above is not admissible and therefore, the duty saved (foregone) Rs. 68,55,293/- is required to be demanded and recovered along with interest. I find that duty saved is shown as Rs. 1,39,19,489/- in the item list attached to EPCG Authorization No. 5230013105 dated 24.12.2013 whereas the actual duty debited (forgone/saved) is Rs. 68,55,293/- while utilising the said Authorisation at the time of import. As per Para 5.10 of Handbook of Procedure, 10% enhancement in CIF value of duty saved is admissible. Thereore, actual duty saved Rs. 68,55,293/- is required to be recovered from the importer. The

importer has unequivocally and unconditionally undertaken to pay the duty amount saved on the import of Capital Goods together with interest at the agreed rate in the event of its failure to discharge the export obligations at the time of import by executing the Bond dated 07.01.2014 for Rs. 4,00,00,000/-. Therefore, the said Bond dated 07.01.2014 is required to be enforced in terms of Section 143 (3) of the Customs Act, to recover the Customs Duty of Rs. 68,55,293/- alongwith applicable interest from the date of clearance of Capital Goods as per the condition of Notification No. 22/2013-Cus dated 18.04.2013. I also find that apart from the said Bond dated 07.01.2014, the Importer has furnished the Bank Guarantee No. 1439614BG0000001 dated 03.01.2014 for Rs.70,00,000/- issued by the State Bank of India, Ring Road Surat-395002 as surety at the time of import. Therefore, I find that the said Bank Gurantee of Rs. 70,00,000/- is also required to be encashed and appropriated, against the aforesaid duty liability. Thus, recovery of the duty debited (foregone/saved) of Rs. 68,55,293/- alongwith interest at applicable rate is liable to be recovered by initiation of action as per Section 142 of the Customs Act, 1962. Further, I find that ratio of decision of Hon'ble Supreme Court rendered in case of Daewoo Motors India Ltd Vs. Union of India reported in 2003 (153) ELT (SC) is squarely applicable in the present case. In the said, decision, Hon'ble Supreme Court has held that "*when it becomes apparent on the facts and circumstances of the case that there is no chance of the appellant fulfilling its export obligation, the action of the first respondent in invoking the bank guarantee cannot be said to be premature and unjustified, much less arbitrary and illegal so as to warrant any interference by this Court*".

16.3 Further, I fortify my stand on confirmation of duty alongwith interest by relying on the decision of the Tribunal, Mumbai in case of Sanghi Industries Ltd Vs. Commissioner of Customs (Export Promotion), Mumbai reported in 2012 (277) ELT (Tr. Mumbai) wherein it has been held as under:

6.5 In the case of export promotion scheme, the Exim Policy and the Customs Notification form an integrated scheme as a whole and they have to be interpreted and applied in a harmonious manner so that the Policy objectives are achieved. At the relevant time while the importer was required to execute the bond and bank guarantee with the Customs for payment of duty, in case export obligations are not fulfilled, in respect of interest on the duty amount saved on failure to fulfill the export obligation, bond and bank guarantee was executed before the licensing authorities. Merely because two separate bonds and bank guarantees have been executed, one with the Customs authorities and another with the licensing authorities, it does not imply that these cannot be invoked together when there is a failure to fulfill the terms and conditions of the exemption. Further the DGFT vide letter dated 8-9-2000, had intimated the appellant that they are liable to pay the duty saved amount with 24% interest to be calculated right from the date of first clearance of the imported machinery, in respect of the imports made under the EPCG licence issued in the instant case. Thus both the

authorities, DGFT and Customs have taken the necessary steps for the recovery of the duty amount saved along with interest @ 24% p.a.

6.6 A similar issue was considered extensively by the Hon'ble High Court of Delhi in *Rai Agro Industries Ltd.* v. *DGFT* reported in 2006 (206) E.L.T. 123 (Del.) and the Hon'ble High Court held as follows :

"15. There are two facets of this question that call for an examination. The first aspect that needs to be examined is whether this court ought to interfere at the instance of a party who has unequivocally and unconditionally undertaken to pay the duty amount saved on the import of equipment together with interest at the agreed rate in the event of its failure to discharge the export obligations. The second aspect relates to the chargeability of interest on duty which was payable but was not paid in view of an exemption granted subject to fulfilment of the conditions prescribed for such exemption.

16. In so far as the first aspect is concerned, there is no dispute that the petitioner had unequivocally undertaken to pay the differential amount of duty saved on the import, if it failed to comply with its export obligations. The provisions of para 105 of the Handbook and the legal undertaking/agreement executed by the petitioner created in no uncertain terms a legal and enforceable obligation against the petitioner to pay interest on the amount of duty saved by it on the import of the equipments. That position was not disputed before us as indeed the same could not be disputed in the light of the terms of the policy and the provisions of the Handbook of Procedures to which it made a reference and the undertaking contained in the agreement executed between the parties. It is also not in dispute that the condition subject to which the petitioner could have availed of a reduced rate of duty, namely, performance of the export obligation has not been complied with. The question then is whether a party who has availed of a benefit on a solemn assurance and a legal undertaking that it shall perform certain acts necessary for the enjoyment of the benefit being extended in its favour could continue enjoying those benefits while the conditions subject to which the benefit was extended are violated. Our answer is in the negative. *No party can avail of a benefit which was available subject to its performing conditions prescribed for the same, without performing such conditions. If the conditions fail, the party cannot retain the benefit. There is no equity in favour of a person who has availed of a benefit but failed to perform the obligation subject to which alone it could take such benefit.* If that be so, as it indeed is, we see no reason why this court should come to the rescue of a party who fails to do equity in exercise of our equitable jurisdiction. It is trite that one who seeks equity must do equity. The petitioner having failed to discharge its part of the obligation despite the assurance and undertaking furnished cannot be granted any relief in the equitable jurisdiction of this court.

17. That brings us to the second aspect of the matter, namely, whether there is any illegality in the demand made by the respondent for payment of interest on the amount of duty recoverable from the petitioner. The answer to that question is provided by Section 28AA, which deals with interest on delayed payment of duty and *inter alia* provides that where a person chargeable with duty determined under sub-section (2) of Section 28, fails to pay such duty within three months from the date of such determination, he shall pay, in addition to the duty, interest at such rate not below 10% and not exceeding 36% per annum from the date immediately after the expiry of period of three months till the date of payment of such duty. Section 28AB deals with interest on delayed payment of duty in special cases and *inter alia* provides that where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay duty as determined under sub-section (2) or has paid the duty under sub-section (2B) of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below 10% and not exceeding 36% per annum, as is fixed by the Central Government by notification. It is, thus, evident that duty

determined as payable would earn interest in the event of a delay in the payment of the same. But for the exemption from payment of duty under the EPCG scheme, the petitioner would have been liable to pay the duty at the rate stipulated for the imports made by it. A concessional rate was, however, applied to the said imports subject to the petitioner's satisfying the requirements stipulated for the said benefit. No sooner it is found that the petitioner has failed to perform its export obligation which was one of the conditions for applying a concessional rate of duty, the exemption would cease to be effective and the liability to pay the duty at the rate ordinarily applicable re-emerge. Consequently, non-payment of the differential would attract payment of interest in terms of the statutory provisions referred to above. The provisions of the Handbook of Procedures would in such situations step in to provide for what may appear to be a grey area as to the period for which interest on such duty would be recoverable. A reading of para 105 of the Handbook which happens to be the stipulation incorporated even in the legal undertaking furnished by the petitioner would show that the liability to pay interest at the stipulated rate arises from the date of import of the first consignment till the date of payment. Regardless therefore of which, the failure of the export obligation is noticed or established against the importer, once a failure is established or admitted the obligation to pay the differential duty along with interest at the stipulated rate arises and the period for which such payment has to be made will be reckoned from the date when the first consignment was cleared till the date of actual payment. There is in that view sufficient legal sanction for the demand of interest raised against the petitioner on the amount of differential duty. Reliance upon the decisions of the Supreme Court in *Indian Carbon Ltd.* v. *State of Assam,* AIR 1997 SC 3054, *J.K. Synthetics Ltd.* v. *Commercial Taxes* Officer, AIR 1994 SC 2393, *M/s. VVS Sugars* v. *Government of Andhra Pradesh and Others*, AIR 1999 SC 2124 and *York Knitwear Ltd.* v. *Asst. Collector of Customs & Ors.*, 2006 (206) E.L.T. 86 (Del.) = 2005 (117) D.L.T. 554 are of no avail to the petitioner. Claim for interest, it is fairly settled, can arise either on the basis of a statute or a contract or trade usage. In the instant case, the claim for payment of duty is supported not only by the statutory provisions of Sections 28AA and 28AB, but also the terms of the statutory policy and the legal undertaking provided, by the petitioner in accordance with the same."

6.7 An appeal against the said decision of the Hon'ble High Court of Delhi before the Supreme Court was dismissed and, therefore, this decision of the Delhi High Court has attained finality and has the approval of the Hon'ble Supreme Court. Therefore, the contention of 1 the appellant that they are not liable to pay any interest in the absence of statutory provisions in the Customs Act has no legal basis at all and accordingly we reject the same *in toto*. The appellants' reliance on a number of judgments in this regard have been considered by the Hon'ble High Court of Delhi and thereafter, the Hon'ble High Court passed the order that interest is leviable @ 24% on the duty amount saved under the EPCG scheme, if the exporter did not fulfill the export obligation. In view of the clear and categorical finding on the issue by the Hon'ble High Court of Delhi which has been upheld by the Hon'ble Apex Court, we do not find any merit in the argument of the appellant that they are not liable to pay any interest in the instant case and accordingly, we reject the argument totally.

16.4 Further, I find that a letter was issued from F.No.VIII/6-3419/ICD-SACHIN/2013-14 dated 11.07.2022 to the importer to either furnish the Export Obligation Discharge Certificate (EODC) issued by DGFT, Surat or any extension granted by DGFT, Surat for fulfillment of Export Obligation, but the importer has not submitted any reply. Further, as no reply was received from the importer, a letter from F.No. ICD-Sachin/DGFT/07/2020-21 dated 21.10.2022 was written

to the Foreign Trade Development Officer, DGFT, Surat requesting them to intimate whether the Importer has been issued EODC against EPCG License No. 5230013105 dated 24.12.2013 or any documents showing the fulfillment of the Export Obligation have been submitted by the Importer or otherwise. The Assistant Director, DGFT, Surat vide letter F.No. EPCG/Mis/2020-21 dated 28.10.2022 intimated that the importer did not submit any document to them against fulfillment of Export Obligation. Thus, I find that the importer failed to export the goods and failed to take remedial action at the appropriate time and failed to pay the duty as soon as they were required to pay. Therefore, the Customs Duty totally amounting to Rs. 68,55,293/- (Rupees Sixty Eight Lakh, Fifty Five Thousand, Two Hundred and Ninety Three only) being the Duty forgone at the time of import under EPCG Licence, required to be demanded and recovered alongwith interest from the importer in terms of Notification No. 22/2013-Cus dated 18.04.2013 as amended, and by enforcing the Bond and encashing the Bank Guarantee for Rs. 70,00,000/- furnished by the importer. In this regard, I find that the ratio of the decision of the Tribunal, Ahmedabad rendered in case of Shrimandhar Fabrics P. Ltd. Vs. Commr. of Cus., Ahmedabad reported in 2008 (231) ELT 641 (Tri. Ahmd.) is squarely applicable in this case. Relevant para of the decision is reproduced as under:

"3. We find that the arguments advanced by the ld. Consultant are not acceptable. If the appellant deposited full amount for obtaining bank guarantee, it does not mean that the amount stands deposited in the Govt. treasury and has been credited in the Govt. account. Therefore, the fact that they have deposited the full amount to obtain bank guarantee is of no help. At the time of importation, the appellants have executed the bond and undertaken to pay the duty in case they cannot fulfill the export obligation and they have failed to fulfill the export obligation as confirmed by the DGFT who is the nodal authority to decide the same. In view of the clear cut finding by the DGFT about export obligation, action of the Department in demanding duty with interest and also encashing the bank guarantee cannot be found fault with. As regards confiscation, since export obligation has not been fulfilled, the conditions of importation under EPCG scheme have not been fulfilled and therefore the Commissioner's order confiscating the goods cannot be found fault with. In view of the fact that appellants failed to export the goods and failed to take remedial action at the appropriate time and failed to pay the duty as soon as they were required to pay, imposition of penalty also has to be upheld. However, having regard to the circumstances of the party and the quantum of duty involved and the value of the goods, the redemption fine and penalty, in our opinion, are required to be reduced and accordingly, the redemption fine imposed in lieu of confiscation is reduced to Rs. 10 lakhs (Rupees ten lakhs only) and penalty is reduced to Rs. 2 lakhs (Rupees two lakhs only). The appeal filed by the party is rejected but for the relief as mentioned above in redemption fine and penalty."

17. Whether, the imported Capital Goods should be held liable for confiscation under Section 111(o) of the Customs Act, 1962?

17.1 I find that the Show Cause Notice proposes confiscation of the impugned imported goods under Section 111(o) of the Customs Act, 1962. If any goods exempted, subject to any condition, from the duty in respect of import which the condition is not observed, such goods would come under the purview of the Section 111 (o) of the Customs Act, 1962. It is to reiterate that in the present case, it is an admitted fact that the importer has failed to fulfill the conditions of Notification No. 22/2013-Cus dated 18.04.2013 by non fulfilment of export obligation against the import of Capital goods and therefore, the imported goods viz. 24 Sets of '828 Shuttle Less Rapier Looms' valued at Rs. 13,34,94,668/- cleared under EPCG Licence No. 5230013105 dated 24.12.2013 by availing benefit of exemption Notification No. 22/2013-Cus dated 18.04.2013 is liable for confiscation.

17.2 Further, I find that the ratio of decision rendered by the Hon'ble Tribunal, Mumbai in case of Sanghi Industries Ltd Vs. Commissioner of Customs (Export Promotion), Mumbai reported in 2012 (277) ELT (Tr. Mumbai) is squarely applicable in the present case. Relevant Para of the decision is re-produced below:-

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

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

In such an eventuality, the goods imported shall be liable to confiscation. In the instant case the goods were imported availing a concessional rate of duty on the condition that the goods will be put to use for manufacture and export of certain products up to certain value within a specified period. When the importer failed to fulfill the condition by not exporting the goods of required value within the stipulated period, then he was no longer eligible for the concessional rate of duty and the duty liability has to be discharged in full without availing the benefit of the exemption. For the same conduct, the goods also became liable to confiscation under the provisions of Section 111(o). The duty liability arises on account of importation. The liability to confiscation or fine is for violation of

the conditions of the importation. The act of importation and the conditions of importation are two different things and for violation of each of them, separate consequences would follow. In the instant case the duty liability has been imposed for the import of the goods and the goods have been confiscated for violating the terms and conditions of importation. Since the goods are liable to confiscation, the liability to penalty arises under Section 112 of the Customs Act. Penalty is an action (in personam) on the importer while the duty and fine are (action in rem) on the goods. As per Section 112 of the Customs Act, liability to penalty arises when a person who in relation to any goods acts or omits any act which act or omission would render the goods liable to confiscation under Section 111. Any person who abets or aids the commission of an act or omits to such an act (which renders the goods liable for confiscation) is also liable to penalty. Similarly, when a person acquires possession or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other way dealing in goods which he knows or has reason to believe are liable to confiscation under Section 111 is also liable to penalty under Section 112. In the instant case the appellant imported the goods subject to a condition that he would fulfil the export obligation which obligation he failed to fulfill. Therefore, the goods became liable to confiscation under Section 111(o). Since the goods are liable to confiscation under Section 111(o), penalty under Section 112(a) is attracted. In this case, penalty has been imposed under Section 112(a) and there is no illegality or infirmity in imposing penalty apart from demanding differential duty and we hold accordingly. When the goods are liable to confiscation, the adjudicating authority has the power to allow the redemption of the goods on payment of fine in lieu of confiscation under section 125 of the Customs Act. The goods were released to the appellants at the time of importation under a bond executed by the appellant. The release of the goods was thus provisional. Therefore, when the assessment is finalized subsequently, even if the goods are not available for confiscation, redemption fine in lieu of confiscation can be imposed as has been held in a number of judicial pronouncements on the subject. Therefore, the imposition of redemption fine in the instant case is fully justified and is quite legal and we hold accordingly."

17.3 As the impugned imported goods are found to be liable for confiscation under Section 111 (o) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125 (1) of the Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the imported goods. Section 125 (1) ibid reads as under:

> ***"SECTION 125. Option to pay fine in lieu of confiscation.*** *— (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit"*

I find that the importer has cleared 24 Sets of '828 Shuttle Less Rapier Looms' having total value of Rs. 13,34,94,668/- by executing the Bond under Section 143 of the Customs Act,1962. I find that subsequent to executing the Bond, the importer had failed in fulfilment of export obligation and thereby contravened the conditions of Notification No. 22/2013-Cus dated 18.04.2013 and thus rendered the goods liable for confiscation and redemption fine is liable to be

imposed. In this regard, I rely on the decision in the matter of Waston Components Ltd. Vs. Commissioner of Customs, wherein Hon'ble Supreme Court has held that:

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

Therefore, in view of above findings, I find that redemption fine is imposable on the imported Capital Goods viz. 24 Set of '828 Shuttle Less Rapier Looms' having total value of Rs. 13,34,94,668/-.

18. Whether, penalty should be imposed on the Importer under Section 112(a) of the Customs Act, 1962 ?

18.1 I find that the importer had imported the Capital Goods availing the benefit of Notification No. 22/2013-Cus dated 18.04.2013 under EPCG Licence No. 5230013105 dated 24.12.2013 but failed to fulfill the export obligation condition as stipulated in Notification No. 22/2013-Cus dated 18.04.2013. Therefore, the goods became liable to confiscation under Section 111(o) of the Custom Act, 1962. Since the goods are liable to confiscation under Section 111(o) of the Custom Act, 1962, penalty under Section 112(a) (ii) of the Customs Act, 1962 is attracted. I find that the ratio of decision rendered by the Hon'ble Tribunal, Mumbai in case of Sanghi Industries Ltd Vs. Commissioner of Customs (Export Promotion), Mumbai reported in 2012 (277) ELT (Tr. Mumbai) is squarely applicable in the present case and relevant para is already re-produced at Para 17.2 above. Thus, I find that the importer is liable for penalty under Section 112 (a) of the Customs Act, 1962.

19. Whether, penalty should be imposed on the Importer under Section 117 of the Customs Act, 1962?

19.1 I find that Show Cause Notice also proposes Penalty under Section 117 of the Customs Act, 1962. Section 117 of the Customs Act, 1962 reads as under:

117. Penalties for contravention, etc., not expressly mentioned: Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no

express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [one lakh rupees].

I find that this is a general penalty which may be imposed for various contravention and failures where no express penalty is elsewhere provided in the Customs Act, 1962. In present case, express penalty under Section 112 (a) (ii) of the Customs Act,1962 for rendering the imported goods liable for confiscation under Section 111 (o) of the Customs, Act, 1962, has already been invoked and found imposable as discussed herein above. Therefore, I hold that Penalty under Section 117 of the Customs Act, is not warranted and legally not sustainable.

20. Whether, penalty should be imposed on Shri Parul Pareshbhai Patel, Director of the importer under Section 112(a) of the Customs Act, 1962?

20.1 I find that Shri Parul Pareshbhai Patel, Director of M/s. Somnath Textile Pvt. Ltd executed Bond dated 07.01.2014 at the time of import of Capital Goods viz. 24 Sets of '828 Shuttle Less Rapier Looms' having total value of Rs. 13,34,94,668/-under EPCG Licence No. 5230013105 dated 24.12.2013 claiming benefit of Exemption Notification No. 22/2013-Cus dated 18.04.2013 and it was his duty to fulfill the condition of Export obligation. I find that Shri Parul Pareshbhai Patel should have been more vigilant and should have *suo motu* informed the department that they have failed to fulfill the export obligation. The said Director failed to produce the evidence of fulfilment of export and even failed to reply the Show Cause Notice and refrain to attend the Personal Hearing opportunities granted, which proves that with clear intent to evade the payment of Customs duty, he imported the Capital Goods under Notification No. 22/2013-Cus dated 18.04.2013. Therefore, his such act and omission has rendered the said imported goods liable for confiscation under Section 111 (o) of the Customs Act,1962 and consequently penalty under Section 112 (a) of the Customs Act, 1962 is liable to be imposed on Shri Parul Pareshbhai Patel. Further, I rely on the decision of Hon'ble Tribunal, Chennai rendered in the case of Jeetendra Shah Vs. Commissioner of Cus. (Sea Port), Chennai reported in 2009 (237) ELT 92 (Tri. Chennai) wherein it has been held as under:

"3. In relation to the Managing Director, it is submitted by the ld. Counsel that there was no specific allegation against him in the SCN and that he has been penalized qua Managing Director of the company. Without prejudice to this submission, the ld. Counsel also submits that the quantum of duty imposed on the Managing Director of the company is excessive. We have heard the ld. JDR also in this connection. He has relied on the Tribunal's decision in *Mohan Aluminium (P) Ltd.* v. *Commissioner,* 2007 (210) E.L.T. 513 (Tri.-Bang.), wherein, in a similar case, penalty imposed on the Managing Director of the importer-company under Section 112 of the Customs Act was sustained. After considering the submissions, we have to accept the plea made by the

ld. JDR. The penalty under Section 112(a), unlike the one under Section 114A, is related to confiscability of the offending goods. The ld. Commissioner has found, in the impugned order, that the goods imported by the company were liable to confiscation under Section 111 of the Act. The Managing Director was found to have rendered the goods so liable. This finding has not been successfully contested in his appeal. The person, who, by his commissions or omissions, renders any imported goods liable to confiscation under Section 111 of the Act, liable to be penalized under Section 112 of the Act. This is precisely what the ld. Commissioner did in this case as rightly pointed out by the ld. JDR. However, in the facts and circumstances of this case, we find that the quantum of penalty imposed on the Managing Director is harsh. We reduce it to Rs. 1,00,000/- (Rupees One lakh only) after considering the totality of facts and circumstances of the case. The appeal is disposed of accordingly."

21. In view of my findings in the foregoing paras, I pass the following order-

:: ORDER ::

21.1 I deny the benefit of Zero Duty for EPCG Scheme under Notification No. 22/2013-Cus dated 18.04.2013 on the imported '828 Shuttle Less Rapier Looms' in the name of M/s. Somnath Textile Pvt. Ltd. under EPCG Licence No. 5230013105 dated 24.12.2013.

21.2 I confirm the demand of Customs duty of Rs. 68,55,293/- (Rupees Sixty Eight Lakh, Fifty Five Thousand, Two Hundred and Ninety Three only) being the duty foregone (saved) at the time of import of Capital Goods under EPCG License No. 5230013105 dated 24.12.2013 in terms of Notification No. 22/2013-Cus dated 18.04.2013 as amended, read with conditions of Bond executed and order the same to be recovered from M/s. Somnath Textile Private Limited, Block No. 130, Plot No. 137 to 146, Gopal Ind. Estate, Vill. Tatithaiya, Tal. Palsana, B/h. Venus Mill, Surat, Gujarat-394315, in terms of Section 143(3) of the Customs Act, 1962 by enforcing the terms of the above mentioned Bond. Further, I order for recovery of the same as per Section 142 of the Customs Act, 1962.

21.3 I order to recover Interest at applicable rate on the duty demanded at Para 21.2 above from the date of clearance of the Capital Goods from M/s. Somnath Textile Private Limited, Block No. 130, Plot No. 137 to 146, Gopal Ind. Estate, Vill. Tatithaiya, Tal. Palsana, B/h. Venus Mill, Surat, Gujarat-394315 as per Notification No. 22/2013-Cus dated 18.04.2013 read with conditions of Bond executed by them, in terms of Section 143(3) of the Customs Act, 1962 by enforcing the terms of the above mentioned Bond. Further, I order for recovery of the same as per Section 142 of the Customs Act, 1962.

21.4 I order enforcement and adjustment/appropriation of Bank Guarantee No. 1439614BG0000001 dated 03.01.2014 for Rs.70,00,000/-issued by the State Bank of India, Ring Road Surat-395002 at the time of registration of the EPCG license towards the duty and interest as mentioned at Para 21.2 and 21.3 respectively.

21.5 I order confiscation of Capital Goods having assessable value at Rs. 13,34,94,668/- (Rupees Thirteen Crore, Thirty Four Lakh, Ninety Four Thousand, Six Hundred and Sixty Eight only) which were imported by the importer claiming benefit under Notification No. 22/2013-Cus dated 18.04.2013, under Section 111(o) of the Customs Act, 1962. However, I give the option for redemption under Section 125 of the Customs Act, 1962, on payment of redemption fine of Rs. 65,00,000/- (Rupees Sixty Five Lakhs only).

21.6 I impose a penalty of Rs. 5,00,000/- (Rupees Five Lakhs only) on M/s Somnath Textile Private Limited, Block No. 130, Plot No. 137 to 146, Gopal Ind. Estate, Vill. Tatithaiya, Tal. Palsana, B/h. Venus Mill, Surat, Gujarat-394315 under Section 112(a) of the Customs Act, 1962.

21.7 I impose penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) on Shri Parul Pareshbhai Patel, Director of M/s. Somnath Textile Pvt. Ltd, under Section 112 (a) of the Customs Act, 1962.

22. 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.

23. The Show Cause Notice VIII/10-32/Pr.Commr./O&A/2023-24 dated 28.02.2024 is disposed off in above terms.

24.01.2025

0/c **(Shiv Kumar Sharma)**
Principal Commissioner,
Ahmedabad Customs

DIN: 20250171MN000000E654
F. No. VIII/10-32/Pr. Commr./O&A/2023-24 Date: 24.01.2025

BY SPEED POST A.D

RECEIVED
CUSTOMS (HQ), A'BAD.
DATE : 28/01/25
SIGN. :
NAME Hcopy only.
After post may
5:15 PM

To,
M/s. Somnath Textiles Private Limited,
Block No. 130, Plot No. 137 to 146,
Gopal Ind. Estate, Vill. Tatithaiya, Tal. Palsana,
B/h. Venus Mill, Surat-394315.

Shri Parul Pareshbhai Patel,
Director of M/s. Somnath Textile Private Limited,
17, Shanti Vihar Society, Magob, Surat-394211

Copy to:-

1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad for information please.
2. The Additional Commissioner of Customs (TRC), Ahmedabad for information.
3. The Joint Director General, DGFT, 6th Floor, Resham Bhavan, Lal Darwaja, Surat-395003 for information and necessary action.
4. The Deputy Commissioner of Customs, ICD-Sachin, Surat.
5. The Superintendent (System), Customs HQ, Ahmedabad in PDF format for uploading on the official website of Customs Commissionerate, Ahmedabad.
6. The RRA, HQ, Ahmedabad Customs.
7. Guard File.