



प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद
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निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.

फा. सं./F. No.: VIII/10-03/Commr./O&A/2023-24

DIN-20240871MN0000510325

आदेशकीतारीख/Date of Order :08.08.2024

जारीकरनेकीतारीख/Date of Issue :08.08.2024

द्वारापारित :-
Passed by :-

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

मूलआदेशसंख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-37-2024-25 dated 08.08.2024 in the case of M/s. Royal Enterprise, Plot No.139 To 142, Gurukripa Ind. Soc, Nr. Safari Complex, Bhestan, Surat-395023, Gujarat.

- जिसव्यक्ति(यों) कोयहप्रतिभेजीजातीहै, उसेव्यक्तिगतप्रयोगकेलिएनिःशुल्कप्रदानकीजातीहै।
1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इस आदेशसे असंतुष्ट कोईभी व्यक्ति इस आदेशकी प्राप्तिसे तीनमाहके भीतरसीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठको इस आदेशके विरुद्ध अपील कर सकताहै। अपील सहायकरजिस्ट्रार, सीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरीमंज़िल, बहुमालीभवन गिरिधरनगर पुलके बाजुमे, गिरिधरनगर, 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 Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad - 380004.
3. उक्त अपील प्रारूपसं. सी.ए.3 में दाखिल की जानी चाहिए।उसपरसीमाशुल्क (अपील) नियमावली, 1982 केनियम 3 के उपनियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपीलको चारप्रतियोंमें दाखिल किया जाए तथा जिस आदेशके विरुद्ध अपीलकी गईहो, उसकीभी उतनीही प्रतियाँ संलग्न कीजाएँ (उनमेंसे कमसे कम एकप्रति प्रमाणित होनी चाहिए)। अपीलसे सम्बंधित सभी दस्तावेज भी चारप्रतियोंमें 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 तथ्योंका विवरण एवं अपीलके आधार शामिलहैं, चारप्रतियोंमें दाखिलकी जाएगी तथा उसके साथ जिस आदेशके विरुद्ध अपील की गईहो, उसकीभी उतनीही प्रतियाँ संलग्नकी जाएंगी (उनमेंसे कमसे 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. अपीलका प्रपत्र अंग्रेजी अथवा हिन्दीमें होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरणके बिनाअपीलके कारणोंके स्पष्टशीर्षके अंतर्गत तैयार करना चाहिए एवं ऐसे कारणोंको 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. केंद्रीय सीमाशुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धोंके अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसीभी राष्ट्रीयकृत बैंककी शाखासे न्यायाधिकरणकी पीठके सहायक रजिस्ट्रारके नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपीलके प्रपत्रके 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 आदेशके विरुद्ध सीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीयन्यायाधिकरणमें शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुर्मानाका विवादहै अथवा जुर्माना जहां शीर्ष जुर्मानाके बारेमें विवादहै उसका भुक्तान करके अपील कीजा सकतीहै।
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. न्यायालयशुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न कि एगए आदेश की प्रतिपर उपयुक्त न्यायालयशुल्क 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.

Subject: Show Cause Notice No. VIII/10-03/Commr./O&A/2023-24 dated 12.05.2023 issued by the Commissioner of Customs, Ahmedabad to M/s. Royal Enterprise, Plot No.139 To 142, Gurukripa Ind. Soc, Nr. Safari Complex, Bhestan, Surat-395023, Gujarat

Brief facts of the case:

1. M/s. Royal Enterprise, Plot No.139 To 142, Gurukripa Ind. Soc, Nr. Safari Complex, Bhestan, Surat-395023 (hereinafter referred as "the said Importer" for

the sake of brevity), holding Import Export Code No. 5212015855 had imported 20 sets of Capital Goods viz. Computerized Embroidery Machine under EPCG Licence No. 5230011565 dated 29.04.2013 by saving Duty of Rs.46,87,978/- (Actual Duty Utilized of Rs.51,55,698/-) 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-I

Sr. No.	B/E No. & Date	Number of machinery cleared	Ass. Value of Goods (as per BE)(in Rs.)	Duty Saved/ available as per EPCG Licence	Total Duty Foregone/ Debited at the time of clearance (in Rs.)	BG Amount (Rs.)
1	2283087 dtd. 30.05.2013	2	20,50,922/-	46,87,978/-	4,68,700/-	7,50,000/-
2	2288476 dtd. 31.05.2013	2	21,64,862/-		4,94,739/-	
3	2287020 dtd. 31.05.2013	2	21,64,862/-		4,94,739/-	
4	2283034 dtd. 30.05.2013	2	21,07,892/-		4,81,719/-	
5	2283002 dtd. 30.05.2013	2	21,64,862/-		4,94,739/-	
6	2287024 dtd. 31.05.2013	2	24,15,531/-		5,52,024/-	
7	2286906 dtd. 31.05.2013	2	24,15,531/-		5,52,024/-	
8	2286907 dtd. 31.05.2013	2	24,15,531/-		5,52,024/-	
9	2288609 dtd. 31.05.2013	2	23,01,590/-		5,25,985/-	
10	2290830 dtd. 31.05.2013	2	23,58,560/-		5,39,005/-	
	TOTAL	20 sets	2,25,60,143/-	46,87,978/-	51,55,698/-	
As per para 5.10 of Handbook of Procedures, 10% enhancement in CIF value of duty saved amount is admissible.						

2. The Importer had executed Bond dated 23.05.2013 for Rs. 1,50,00,000/- backed by Bank Guarantee No.139/2013 dated 17.05.2013 for Rs.7,50,000/- issued by the South Bank Ltd, Ring Road, Surat & Paid Rs.24,000/- vide TR-6 Challan No.18/13-14 dated 01.06.2013 for EPCG License No.5230011565 dated 29.04.2013. They had also undertaken to fulfill all the terms and conditions specified in the License and the said Notification.

3. Total 20 sets of Computerized Embroidery Machine imported under the above said EPCG License have been installed at the factory/business premises i.e. M/s. Royal Enterprise, Plot No. 139 To 142, Gurukripa Ind Soc, Nr. Safari Complex, Bhestan, Surat-395023., as per the Installation Certificate dated 17.10.2013 issued by Chartered Engineer H.C.Dave, Surat, certifying the receipt of the goods imported and its installation.

4. As per Notification No.22/2013-Cus dated 18.04.2013 as amended, the said Importer was required to fulfill the export obligation on FOB basis

equivalent to six times of the Duty saved on the goods imported as may be specified on the 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 said Importer was required to execute a Bond in such form and for such sum and with such surety or security as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs binding himself to fulfill export obligation on FOB basis equivalent to six times the Duty saved on the goods imported as may be specified on the Licence or Authorization, or for such higher sum as may be fixed or endorsed by the Licencing Authority or Regional Authority, within a period of six years from the date of issuance of Licence or Authorization i.e. complete 50% export obligation within first Block of 1st to 4th years and remaining 50 % in second Block of 5th to 6th years.

5. The aforesaid EPCG License No. 5230011565 dated 29.04.2013 was issued to the said Importer and the Bond dated 23.05.2013 was executed. Accordingly, the said Importer was required to fulfill the export obligation within a period of 6 years from the date of EPCG Licence as per the condition laid down in the Notification and EPCG Licence itself and submit the Export Obligation Discharge Certificate issued by the DGFT Authority to the Department.

6. Letter F.No.ICD-SACHIN/571/2013-14 dated 18.03.2021 and letter F. No.VIII/6-571/ICD-SACHIN/2013-14 dated 11.07.2022 were issued to the said Importer asking them 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 said 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 whether the said

Importer has been issued EODC against EPCG License No. 5230011565 dated 29.04.2013 or any documents showing the fulfillment of the Export Obligation have been 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 said Importer had not submitted any documents to them against fulfillment of Export Obligation. Thus, it appears, from the above that the said 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 conditions of the Bond dated 23.05.2013.

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

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

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

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

8. The Importer appears to have failed to fulfill the conditions laid down under Notification No.22/2013-Cus dated 18.04.2013 in as much as they failed to export goods manufactured from 20 sets of Computerized Embroidery Machine imported under EPCG Licence No.5230011565 dated 29.04.2013 which was equivalent to six times the Duty saved on the goods imported and also neither produced EODC issued by DGFT, Surat nor produced any extension granted by DGFT, Surat for fulfillment of Export Obligation. Hence, they appear liable to pay the Duty of **Rs. 51,55,698/-** in respect of the said imported goods along with interest at the applicable rate, in terms of conditions of the said Notification read with condition of Bond executed by the said Importer read with Section 143 of the Customs Act, 1962.

8.1 It appears that the imported Capital Goods have not been used for 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.139/2013 dated 17.05.2013 for Rs.7,50,000/- issued by the South Bank Ltd, Ring Road, Surat & and the amount of Rs.24,000/- paid vide TR-6 Challan No.18/13-14 dated 01.06.2013 in favor of the Deputy/Asstt. Commissioner of Customs, ICD-Sachin, Surat against the EPCG License No. 5230011565 dated 29.04.2013 are required to be appropriated against the proposed demand.

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 was required to pay Duties of Customs equal to an amount for the unfulfilled portion of the Export Obligation along with interest within three months from the expiry of the said Block. The said Importer have also given Bond to this effect. The letter dated 18.03.2021 was written to the Importer to intimate the extent of Export Obligation fulfilled by them. Further letter dated 11.07.2022 was also written to them but they did not reply to these letters. Thus, the fact that they had neither completed their Export Obligation nor paid the Duty on import as per law & procedure is on record. The DGFT also informed that the Importer has not submitted any documents regarding fulfillment of Export Obligation. Thus, it appears that the said Importer has neither fulfilled their Export Obligation nor paid the Customs Duty along with interest for non-fulfillment of EO. These facts were not disclosed to the Department or DGFT, thereby suppressing the facts with a clear intent to evade the payment of Duty.

8.4 It also appears that, Shri Alpesh Dhami, Partner of M/s. Royal Enterprise, Plot No.139 To 142, Gurukripa Ind. Soc, Nr. Safari Complex, Bhestan, Surat-395023 has intentionally taken the undue benefits of EPCG Scheme and evaded payment of Customs Duty of **Rs.51,55,698/- (Rupees Fifty One Lakhs Fifty Five Thousand Six Hundred and Ninety Eight only)** in respect of the above Computerized Embroidery Machines 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/10-03/Commr./O&A/2023-24 dated 12.05.2023 issued to **M/s. Royal Enterprise**, Plot No.139 To 142, Gurukripa Ind. Soc, Nr. Safari Complex, Bhestan, Surat-395023 calling upon him to show cause to the Commissioner of Customs, Ahmadabad 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 Computerized Embroidery Machines in the name of M/s. Royal Enterprise, should not be denied;
- (ii) Customs Duty totally amounting to **Rs.51,55,698/- (Rupees Fifty One Lakhs Fifty Five Thousand Six Hundred and Ninety Eight only)** being the Duty forgone at the time of import under EPCG Licence, should not be demanded and recovered from them in terms of Notification No.22/2013-Cus dated 18.04.2013 as amended, read with the Conditions of Bond executed and furnished by them in terms of Section 143 of the Customs

Act, 1962 by enforcing the terms of the said Bond and as to why the Bank Guarantee No.139/2013 dated 17.05.2013 for Rs.7,50,000/- issued by the South Bank Ltd, Ring Road, Surat & the amount of Rs.24,000/- paid vide TR-6 Challan No.18/13-14 dated 01.06.2013 backed against the Bond, should not be appropriated and adjusted towards the Duty liability as mentioned above;

- (iii) Interest at the applicable rate should not be recovered from them on the Customs Duty as mentioned at (ii) above in terms 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;
- (iv) The imported Capital Goods valued at Rs. **2,25,60,143/- (Rupees Two Crores Twenty Five Lakhs Sixty Thousand One Hundred and Forty Three only)** should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962 read with conditions of Bond executed, in terms of Section 143 of the Customs Act, 1962 read with Notification No.22/2013-Cus dated 18.04.2013 as amended from time to time;
- (v) Penalty should not be imposed on the said Importer under Section 112(a) of the Customs Act, 1962 for the acts of commission and omission mentioned above;
- (vi) Penalty should not be imposed on the said Importer under Section 117 of the Customs Act, 1962 for the acts of commission and omission mentioned above;
- (vii) Bond executed by them at the time of import should not be enforced in terms of Section 143(3) of the Customs Act, 1962 and the Bank Guarantee thereof should not be encashed for recovery of the Customs Duty as mentioned above and interest thereupon.

10. Further Show Cause Notice No. VIII/10-03/Commr./O&A/2023-24 dated 12.05.2023 also issued to **Shri Alpesh Dhami, Partner of M/s. Royal Enterprise**, Plot No.139 To 142, Gurukripa Ind. Soc, Nr. Safari Complex, Bhestan, Surat-395023 calling upon to show cause to the Commissioner of Customs, Ahmedabad, 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 commission & omission mentioned above.

11. Written submission: Importer vide letter dated nil submitted their defence reply subsequent to Personal Hearing held on 18.01.2024 wherein they interalia stated that due to non availability of export demand they could not fulfilled the export obligation; that they were liable to fulfill the export obligation of \$562951.55 (5155698*6=30934188/54.95) within the period of 8 years with extension; that they were not able to fulfill their stipulated EO within the specified period, but they have made a proposition of total export obligation through third parties in the year 2017-18 of \$166591.93 which is not sufficient for achieve their export obligation and submitted details of S/Bs.; that as per public notice no. 02/2023, they have opted for an amnesty scheme and applied for the same on 12.06.2023 having file no. **52EEEP01266AM24**; that as per public notice no. 02/2023, DGFT, they have time to pay the customs duty and applicable interest by 31.03.2024 and they have already pay customs duty and interest, therefore they requested to consider their reply against Show Cause Notice; that they requested to drop the adjudication process in light of the public notice no. 02/2023,DGFT.

12. Personal Hearing: Personal Hearing was held on 18.01.2024 wherein Shri Alpesh Ranchhodbhai Dhami, Partner of M/s. Royal Enterprise and Shri Manoj Gadhiya, consultant appeared for Personal Hearing on 18.01.2024 and submitted that they have applied for Amnesty Scheme before DGFT. Once the EODC/RA letter is received from DGFT, they would submit the same and further stated that they would be submitting additional written submission by

21.01.2024 and further asked not to adjudicate the SCN as EODC/RA letter from DFGT will take time.

13. Discussion and findings: I find that moot issue involved in the case is whether duty is required to be recovered from the importer for non fulfilment of Export obligation against the duty saved vide Notification No. 22/2013-Cus dated 18.04.2013 against import of 20 sets of Computerized Embroidery Machine under EPCG Authorization No..5230011565 dated 29.04.2013.

14. I find that the importer imported of 20 sets of Computerized Embroidery Machine under EPCG Authorization No..5230011565 dated 29.04.2013 involving duty amounting to Rs. **2,25,60,143/-** saved vide No. 22/2013-Cus dated 18.04.2013. As per the said notification, 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 in 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. Further, 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 was required to pay Duties of Customs equal to an amount for the unfulfilled portion of the Export Obligation along with interest within three months from the expiry of the said Block. The said Importer have also given Bond to this effect. The letter dated 18.03.2021 was written to the Importer to intimate the extent of Export Obligation fulfilled by them. Further, letter dated 11.07.2022 was also written to them but they did not reply to these letters. The Assistant Director, Directorate General of Foreign Trade, Surat vide letter F.No. EPCG/Mis/2020-21 dated 28.10.2022 intimated that the said Importer had not submitted any document to them against fulfillment of Export Obligation. Thus, it proves that the said Importer has neither fulfilled their Export Obligation nor paid the Customs Duty along with interest for non-fulfilment of Export Obligation. Therefore, duty is required to be recovered from the importer for non fulfilment of Export obligation against the duty saved vide Notification No. 22/2013-Cus dated 18.04.2013 against import of 20 sets of Computerized Embroidery Machine under EPCG Authorization No..5230011565 dated 29.04.2013.

15. I find that during the personal hearing held on 18.01.2024, the importer has stated that they have applied for Amnesty Scheme before DGFT and they would submit once the EODC/RA letter is received from DGFT. The DGFT vide Public Notice No. 2/2023 dated 01.04.2023 has introduced Amnesty Scheme having subject as "Amnesty Scheme for one time settlement of default in export obligation by Advance and EPCG authorization holder."

16. I find that during the personal hearing held on 18.01.2024, the importer had stated that they have opted for an Amnesty scheme and applied for the same on 12.06.2023 having file no. 52EEPC01266AM24 and the importer submitted copies of TR 6 Challan No. 85/22-23 dated 03.03.2023, 64/23-25 dated 04.07.2024 and 65/23-24 dated 04.07.2024 for the payment towards Customs Duty of Rs. 18,14,940/-, Interest of Rs. 8,78,068/- and Customs duty of Rs. 18,15,053/-. Thus total Rs. 45,08,061/- is paid by the importer. Further, the importer vide E mail dated 12.07.2024 submitted that the DGFT, Surat has issued "FINAL DUTY PAID REGULARISATION LETTER" dated 08.07.2024 issued from F.No. 52EEPC01266AM24 in respect of EPCG Authorisation No. 5230011565 dated 29.04.2023. I find it worthwhile to re-produce the "FINAL DUTY PAID REGULARISATION LETTER" issued by the office of Joint Director General of Foreign Trade, Surat.



Government of India / भारत सरकार
 Ministry of Commerce and Industry / बाणिज्य और उद्योग मंत्रालय
 Department of Commerce / बाणिज्य विभाग
 Directorate General of Foreign Trade / विदेश व्यापार महानिदेशालय
 Office of the Joint Director General of Foreign Trade, Surat / संयुक्त महानिदेशक, विदेश व्यापार का कार्यालय, सुरत
 6th Floor, Resham Bhavan, Lal Darwaja, SURAT, GUJARAT, 395003 / छठी मंजिल, रेशम भवन, लाल दरवाजा, सुरत,
 सुरत, गुजरात, 395003
 Email Office : surat-dgft@nic.in , Phone Office : 0261-2423381

FILE NO: S2EEPC01266AM24

Date: (Refer Date of Digital Signature)

FINAL DUTY PAID REGULARIZATION LETTER

To,

ROYAL ENTERPRISE ,
 PLOT NO. 139 TO 142, GURUKRIPA INDUSTRIAL SOCIETY. ,
 SURAT - 395023 .

SUBJECT : Payment of Customs Duty with Interest against EPCG Authorization No. 5230011565 DATED : 29/04/2013 regularization and Closer of the case.

With reference to your letter dated 29/04/2013 , I write to inform you the your case stands Closed against payment of Customs Duty for Rs. 3629993/- with interest of Rs.878068/- Total Rs. 4508061/- For regularization of the case.

1. Issued from File Number S2EEPC01266AM24 Date 16/05/2024

2. Copy forwarded to Commissioner of Customs,

EEC Cell,

Commissioner customs, (130) SURAT DIAMOND PARK, GIDC, SACHIN, SURAT-394230 .

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

Note: If digitally signed, the date of digital signature may be taken as date of document.

This document has been digitally signed by PRAMOD MUKUNDAN NAMBIAR, FTDO, RA SURAT on 08-Jul-2024.

1

Signature Not Verified

Digitally Signed
 Name: PRAMOD MUKUNDAN
 NAMBIAR, FTDO, RA
 Date: 08-Jul-2024 14:44:14
 Reason:
 PRAMOD NAMBIAR@GOV.IN
 Location: RA SURAT

17. I find that to confirm genuineness "FINAL DUTY PAID REGULARISATION LETTER" issued by the office of Joint Director General of Foreign Trade, Surat, this office had sent mail on 16.07.2024 to E mail address:

pramod.nambiar@gov.in which is E mail ID of Shri Pramod Mukundan Nambiar, FTDO, RA, Surat. Shri Pramod Mukundan Nambiar, FTDO, RA responded vide E mail dated 24.07.2024 whereby he forwarded the copy of EODC issued to M/s. Royal Enterprise. On perusal of the said EODC forwarded by the FTDO, DGFT, Surat, it is observed that FTOD has forwarded the copy of aforesaid "FINAL DUTY PAID REGULARISATION LETTER" submitted by the importer vide their E-mail dated 12.07.2024.

18. I find that the importer has complied with the procedure as laid down by the DGFT for "Amnesty Scheme for one time settlement of default in export obligation by Advance and EPCG authorization holder" introduced vide Public Notice No. 2/2023- dated 01.04.2023 for the EPCG Authorisation No. 5230011565 dated 29.04.2023 and have paid the Customs Duty of Rs.36,29,993/- alongwith Interest of Rs. 8,78,068/- for regularization of their case.

19. Sub Para (vi) of Para II of the said Public Notice No. 2/2023 dated 01.04.2023, reads as " The applicant thereafter can pay Customs duty plus interest with the Jurisdictional Customs Authorities concerned and submit proof thereof to the regional authority of DGFT concerned". I find that the importer vide TR 6 Challan No. 85/22-23 dated 03.03.2023, 64/23-25 dated 04.07.2024 and 65/23-24 dated 04.07.2024 have made payment towards Customs Duty of Rs. 18,14,940/-, Interest of Rs. 8,78,068/- and Customs duty of Rs. 18,15,053/-. Thus total Rs. 45,08,061/- is paid by the importer which is also mentioned in the FINAL DUTY PAID REGULARISATION LETTER" issued from F.No. 52EEPC01266AM24. Thus, I find that total Customs duty of Rs. 36,29,993/- and Interest of Rs. 8,78,068/- has been paid by the importer is required to be appropriated against the total demand of **Rs.51,55,698/- (Rupees Fifty One Lakh, Fifty Five Thousand, Six Hundred and Ninety Eight only)** and remaining amount is required to be dropped in view of the FINAL DUTY PAID REGULARISATION LETTER dated 08.07.2024 issued by the DGFT, Surat.

20. Further, I find that since the importer has complied with the conditions of 'Amnesty Scheme for one time settlement of default in export obligation against EPCG Authorisation No. 5230011565 dated 29.04.2023 in accordance with Public Notice No. 2/2023 dated 01.04.2023 issued by the DGFT, I do not find it worth to held the goods liable for confiscation under Section 111 (o) of the Customs Act, 1962 as proposed in the Show Cause Notice and consequent penalty proposed under Section 112 (a) and 117 of the Customs Act, 1962.

21. I find that Penalty under Section 112 is also proposed on Shri Alpesh Dhami, Partner of M/s. Royal Enterprise. Since I have not find the goods liable for confiscation, consequent penalty proposed on Shri Alpesh Dhami, Partner of M/s. Royal Enterprise do not sustain. Further, I find that in the present case only the allegation of non fulfilment of export obligation is proposed and no allegation of diversion of goods imported under EPCG is made and therefore Shri Alpesh Dhami, Partner of M/s. Royal Enterprise is not liable for penalty under Section 112 (a) of the Customs Act, 1962. Further, I find that the ratio of decision of Hon'ble Supreme Court rendered in case of M/s Embio Ltd Vs. Director General of Foreign Trade reported in 2024 (18) Centax 317 (S.C.) is applicable to the present case, wherein interalia it has been held as under:

"13. In the present case, there is no allegation made by the respondents against the appellant's predecessor of making or attempting to make any export or import in contravention of the FT Act, any Rules or orders made thereunder, or the foreign trade policy. Under the license granted to the appellant's predecessor, there was an obligation to export finished goods by earning foreign exchange equivalent to USD 2,59,948 within a period of five years. The allegation is of the failure to abide by the obligation to export the finished goods within a period of five years. So, there is no allegation of attempting to make an export or import, which is covered by Section 11 (2). There is no allegation against the appellant or its predecessor of making an export or import in contravention of the export and import policy. Section 11 (2) is a penal provision. It must be strictly construed. Thus, the demand for penalty cannot be sustained. Hence, we set aside the impugned

judgments and orders of the learned Single Judge and Division Bench. We also set aside the Order-in-Original dated 16th July 2004 (Annexure P-3) by which the impugned penalty was imposed."

22. In view of the above, I pass the following order:

::ORDER::


22.1 I confirm the demand of differential duty of **Rs. 36,29,993/- -(Rupees Thirty Six Lakh, Twenty Nine Thousand, Nine Hundred and Ninety Three only)** alongwith interest for the Bills of Entry mentioned in Table-I at Para 1 hereinabove, and order recovery of the same in terms of the provisions of Section 143 (3) of the Customs Act, 1962. I order to appropriate the duty of Rs. 36,29,993/- and interest of Rs. 8,78,068/- paid by M/s. Royal Enterprise in terms of Public Notice No. 2/2023 dated 01.04.2023 issued by the DGFT. Further, I drop the remaining amount of Rs. 15,25,705/- out of total demand of Rs. 51,55,698/- proposed in Show Cause Notice.

22.2. Since M/s. Royal Enterprise had paid the duty of Rs. 36,29,993/- and interest of Rs. 8,78,068/- in terms of Public Notice No. 2/2023 dated 01.04.2023 for 'Amnesty Scheme for one time settlement of default in export obligation' issued by the DGFT and issuance of 'FINAL DUTY PAID REGULARISATION LETTER' by the DGFT, Surat vide F.No. 52EEEEPC01266AM24 dated 08.07.2024, I do not hold the goods having assessable value of Rs. **2,25,60,143/- (Rupees Two Crores Twenty Five Lakhs Sixty Thousand One Hundred and Forty Three only)** proposed in Show Cause Notice liable for confiscation under Section 111 (o) of the Customs Act, 1962 and consequently no Redemption Fine under Section 125 (1) and Penalty under Section 112 (a) is imposable.

22.3 Further, in view of the Para 22.2 stated as above, as the goods is not liable for confiscation under Section 111 (o) of the Customs Act, 1962, I refrain from imposing penalty under Section 112 (a) of the Customs Act, 1962 on Shri Alpesh Dhami, Partner of M/s. Royal Enterprise.

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

24. The Show Cause Notices F. No. VIII/10-03/Commr./O&A/2023-24 dated 12.05.2023 is disposed off in above terms.


(Shiv Kumar Sharma)
Principal Commissioner

DIN-20240871MN0000510325

F. No.VIII/10-03/Commr./O&A/2023-24

Date: 08.08.2024

BY SPEED POST A.D

To,

1. **M/s. Royal Enterprise,**
Plot No. 139 to 142,
Gurukripa Ind. Society,
Near Safari Complex,
Bhestan, Surat-395023

2. **Shri Alpesh Dhami,**
Partner of M/s. Royal Enterprise,

136, Ashirwad Villa,
New City Light Road,
Surat-395007.

Copy to:-

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