



भारत 2023 INDIA

प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन,” पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद - 380 009.

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PREAMBLE

A	फाइल संख्या/ File No.	:	F. No. VIII/10-01/ICD-Sanand/O&A/2022-23
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	F. No. VIII/10-01/ICD-Sanand/O&A/2022-23 dated 17.08.2023
C	मूल आदेश संख्या/ Order-In-Original No.	:	32/ADC/VM/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	:	15.05.2024
E	जारी करनेकी तारीख/ Date of Issue	:	15.05.2024
F	द्वारापारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	M/s. Canvera Exim LLP, Block Number A/14, Mira Nagar, Jamnavad Road, Dhoraji, Rajkot-360410
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील, छवि मंजिल, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (5.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५ % अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

BRIEF FACTS OF THE CASE:

M/s. Canvera Exim LLP, Block Number A/14, Mira Nagar, Jamnavad Road, Dhoraji, Rajkot-360410, Gujarat, India (holder of IEC No. 2416503197 & RCMC No. PLEPC/C/372/2018-19) (hereinafter referred to as "the Importer" for the sake of brevity) are engaged in manufacturing of 'PVC Compound products' with filler Resin falling under ITCHS 39041090. M/s. Canvera Exim LLP, Rajkot are importing their required raw materials against Advance Authorization as well as on payment of Duty. M/s. Canvera Exim LLP, Rajkot availed the benefit of exemption from payment of all applicable Customs duties against Advance Authorization Scheme for duty free imports of the inputs (raw materials) namely 'PVC Floor Sweeping (PVC Resin)'.

2. During scrutiny of the records, it is observed that M/s. Canvera Exim LLP, Rajkot had imported Duty free Goods under Advance Authorization No. 2410042456 dated 13.07.2018 and not fulfilled the export obligation within stipulated time period. M/s. Canvera Exim LLP, Rajkot had been issued Advance Authorization No. 2410042456 dated 13.07.2018 for Duty free imports of their inputs (raw materials) in terms of Notification No. 18/2015-Cus. Dated 01/04/2015 and Chapter 4 of the Foreign Trade Policy 2015-2020 (FTP 2015-2020). The said Notification exempts materials imported into India against an Advance Authorisation issued in terms of paragraph 4.03 of the Foreign Trade Policy from the whole of the Duty of Customs leviable thereon specified in the First Schedule to the Customs Tariff Act, 1975 and from the whole of the Additional Duty, Safeguard Duty, Transitional Product Specific Safeguard Duty and Anti-dumping Duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act, 1975, subject to certain conditions. As per the Para 4.03 of the FTP 2015-2020, Advance Authorisation is issued to allow Duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). Further, as per the Notification No. 18/2015-Cus. Dated 01/04/2015, the licence and/or material imported thereunder are not transferable.

3. The Importer had imported 110 MT of PVC Floor Sweeping at ICD-Sanand by availing exemption of all applicable Customs Duties against the said Advance Authorization issued by the Regional Authority, Directorate General of Foreign Trade, Rajkot vide the following three (3) Bills of Entry. It is further observed that, as per the details mentioned in the below Table, a total quantity of 110.000 MT of PVC Floor Sweeping was imported under three Bills of Entry against the Advance Authorization License No. 2410042456 dated 13.07.2018. The Port of Registration of the said Advance Authorization/Advance License was ICD-Sanand and the amount of Duty exemption availed was debited against the Bond mentioned in the below table. Other details like Items & quantity imported, Advance Authorization/ Bond Number are given in the table below:

TABLE-1

Sr. No.	B/E No. & Date	Advance License No. & date	Bond No. & date	Item Imported [CTH]	Quantity of good imported	Declared Assessable value	Duty Forgone 27.735% [(7.5% Eff. Duty + 0.75% SWS)+18% GST]
1.	8358693/ 06.10.2018	2410042456/ 13.07.2018	2001469227/ 28.09.2018	PVC Floor Sweeping [39041090]	36.667 MT	Rs. 15,21,372/-	Rs. 4,21,953/-
2.	8358489/ 06.10.2018	2410042456/ 13.07.2018	2001469227/ 28.09.2018	PVC Floor Sweeping [39041090]	36.667 MT	Rs. 15,21,372/-	Rs. 4,21,953/-
3.	8358326/ 06.10.2018	2410042456/ 13.07.2018	2001469227/ 28.09.2018	PVC Floor Sweeping [39041090]	36.667 MT	Rs. 15,21,372/-	Rs. 4,21,953/-
Total				110.00 MT	Rs. 45,64,116/-	Rs.12,65,859/-	

4. As the raw material i.e. 110.00 MT of PVC Floor Sweeping was imported by the importer under Advance Authorisation, the Office of the Deputy Commissioner of Customs, ICD-Sanand, vide their letters dated 28.09.2019, 10.02.2020, 25.02.2020, 28.04.2020, 06.06.2020, 13.08.2020, 25.09.2020, 07.10.2021 and 05.01.2022, requested the Importer to submit Export Obligation Discharge Certificate [EODC] under Advance License No. 2410042456, dated 13.07.2018 issued by the Directorate General of Foreign Trade, Rajkot. However, the Importer submitted neither any proof of fulfillment of Export Obligation against the license nor any document of extension/renewal of the license from the competent authority.

5. Since, the Advance Authorization No. 2410042456, dated 13.07.2018 was issued to the Importer on 13.07.2018, as per the condition of the said Notification they were required to fulfil the Export Obligation by 13.01.2020 and to submit the Export Obligation Discharged Certificate issued by the DGFT Authority to the Department i.e. port of registration of Advance Authorisation. However, even after several requests the Importer submitted neither any proof of fulfilment of export obligation against the license nor any document proving extension of the license from the competent authority.

6. It is also evident from Table-1 that the Importer had imported input (Raw material) having total Assessable Value of Rs. 45,64,116/- and had saved total duty amounting to Rs. 12,65,859/- under the said Advance Authorization.

7. Further scrutiny of the documents indicated that M/s. Canvera Exim LLP, Rajkot executed the below mentioned Bank Guarantee before the Deputy Commissioner of Customs, ICD-Sanand for the import of goods under the said Advance Authorisation. The details of the same is as under: -

Sr. No.	Advance Authorization No. & Date	Bank Guarantee No. / date	Amount (In Rs.)	Name of Bank
1.	2410042456, dated 13.07.2018	101GT01182680003 dated 25.09.2018	3,50,000/-	HDFC Bank Ltd, Wholesale Banking Operations, Trade Finance Department, 1st Floor, "Shri Harish", 40/A, Bhaktinagar Society, Bhaktinagar Circle, Rajkot- 3600022

Correspondence with Bank and Encashment of Bank Guarantee:

8. Whereas, since the Importer neither turned up to produce any proof of fulfillment of export obligation against the Advance Authorization nor submitted any extension of the Advance Authorization from the competent authority, the Deputy Commissioner of Customs, ICD-Sanand requested the Manager of M/s. HDFC Bank Ltd, Wholesale Banking Operations, Trade Finance Department, 1st Floor, "Shri Harish", 40/A, Bhaktinagar Society, Bhaktinagar Circle, Rajkot- 3600022 for encashment of Bank Guarantee. The Manager, HDFC Bank Ltd, Rajkot issued the Demand Draft No. 007179, dated 05.03.2022 vide which encashment of Bank Guarantee No. 101GT01182680003 dated 25.09.2018 for Rs. 3,50,000/- was allowed. Hence, the said demand draft was deposited in the Govt. exchequer vide TR-6 Challan No. 624, dated 16.03.2022 in the Bank of Baroda, Jamiyatpura, Gandhinagar for appropriation and adjustment towards the Duty liability against the Advance License No.2410042456, dated 13.07.2018.

LEGAL PROVISIONS IN RESPECT OF IMPORT UNDER ADVANCE AUTHORIZATION:

9.1 In terms of Para 4.03 of Chapter 4 of the Foreign Trade Policy, 2015-2020, an Advance Authorisation can be issued to allow Duty free import of inputs meant to be physically incorporated in export products (making normal allowance for wastage). In addition, fuel, oil, catalysts meant to be consumed / utilized to obtain such export products, may also be allowed. As per **Para 4.14** the imports under Advance Authorisations were exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-Dumping Duty, Safeguard duty and Transition Product Specific Safeguard Duty, wherever applicable. Further, as per Para 4.16 Advance Authorisation and/or materials imported under Advance Authorisation would

be subject to 'Actual User' condition and the same would not be transferable even after completion of Export Obligation. However, the Authorisation holder would have option to dispose off product manufactured out of Duty free input on completion of export obligation. Also, as per **Para 4.22(i) the Period for fulfillment of export obligation under Advance Authorisation should be 18 months from the date of issue of Authorisation or as notified by DGFT.**

9.2 Import of materials under Advance Authorization Scheme was governed by **Notification No. 18/2015-Cus dated 01/04/2015** (as amended during the relevant time period). The said notification exempted the materials imported into India against an Advance Authorisation issued in terms of paragraph 4.03 of the Foreign Trade Policy from the whole of the Duty of Customs leviable thereon specified in the First Schedule to the Customs Tariff Act, 1975 and from the whole of the Additional Duty, Safeguard Duty, Transitional Product Specific Safeguard Duty and Anti-dumping Duty leviable thereon, respectively, under Sections 3, 8B, 8C and 9A of the said Customs Tariff Act, 1975 subject to the certain conditions. The relevant conditions in this regard are as under:-

*(iv) that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, **binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials;***

(viii) that the export obligation as specified in the said authorisation (both in value and quantity terms) is discharged within the period specified in the said authorisation or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorisation:

(ix) that the importer produces evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, within a period of sixty days of the expiry of period allowed for fulfillment of export obligation, or within such extended period as the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow;

(x) that the said authorisation shall not be transferred and the said materials shall not be transferred or sold;

10. Thus, from above, it is evident that the import of inputs under Advance Authorization Scheme would be allowed, subject to condition that such inputs should be used in the export product with actual user condition and same should not be transferred even after completion of Export Obligation. Further, the Export Obligation as specified in the said authorization (both in value and quantity terms) should be discharged within the period of 18 months as specified in the FTP 2015-2020 and the said authorisation or within such extended period as may be granted by the Regional Authority by exporting resultant products. Further, the inputs so imported and resultant product exported should be in accordance with the prescribed SION norms.

11. Further, M/s. Canvera Exim LLP, Rajkot executed the Bond and bank Guarantee at the time of import of Duty Free inputs under Advance Authorization binding themselves to pay the Duty of Customs foregone in the event of their failure to fulfill the obligation cast upon them in this behalf as per the conditions of the Notification No. 18/2015-Cus dated 01/04/2015 (as detailed above in **Table -1**). Therefore, the Bond and Bank Guarantee executed by M/s. Canvera Exim LLP, Rajkot

are required to be enforced and the amount of Duty forgone is required to be recovered from them along with interest at @15% rate, without limitation of any time, as per the condition of the Notification No. 18/2015-Cus dated 01/04/2015`.

12. As per the provisions of Section 143 of the Customs Act, 1962, the Assistant/ Deputy Commissioner of Customs, on his satisfaction, can allow Duty free clearance on execution of a Bond with Surety or Security 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. Also, as per Sub-section (3) of Section 143, it has been specified that, if the condition, which in present case is fulfillment of Export obligation, is not adhered to 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.

SCRUTINY OF DOCUMENTS & ALLEGATIONS:

13.1 From the records and evidences discussed in the foregoing paras it appeared that M/s. Canvera Exim LLP, Rajkot engaged in the business of manufacturing of 'PVC Compound products' with filler Resin falling under ITCHS 39041090. M/s. Canvera Exim LLP, Rajkot imported their required raw materials against Advance Authorization issued under Notification No. 18/2015-Cus dated 01/04/2015, as amended.

13.2 From the above, it also appeared that M/s. Canvera Exim LLP, Rajkot obtained Advance Authorization (AA) No. 2410042456, dated 13.07.2018 to import 110.000 MT of Duty free raw material i.e. 'PVC Floor Sweeping (PVC Resin)' and the export obligation against the said import quantity of raw material was 92.400 MT of finished goods i.e. '**PVC Compound with filler for Agriculture pipe**' as per SION norms. M/s. Canvera Exim LLP, Rajkot had imported 110.00 MT of Duty free raw material against said Advance Authorization No. 2410042456 dated 13.07.2018 vide 03 Bills of Entry as detailed in '**Table-1**' above.

13.3 It also appeared that M/s. Canvera Exim LLP, Rajkot had imported 110.000 MT of Duty free raw material. However, they had not fulfilled Export Obligation as specified in the said Notification No. 18/2015-Cus dated 01/04/2015 and under the provisions of FTP 2015-2020 within stipulated time period. Since the Importer failed to produce Export Obligation Discharge Certificate [EODC], it appeared that Importer either cleared the imported material in domestic market as such or utilized the imported material in manufacture of finished goods and which were subsequently cleared in domestic market, thereby violating the conditions of Advance Authorization Licenses. The Importer, thus availed irregular Customs duty exemption of Rs.12,65,858/-, as detailed above.

13.4 M/s. Canvera Exim LLP, Rajkot had submitted and executed Bank Guarantee No.101GT01182680003 dated 25.09.2018 of Rs. 3,50,000/- and Bond No. 2001469227 dated 28.09.2018 of Rs. 23,05,000/- as a surety/security to the Government at the time of import of inputs under AA Scheme, binding themselves to pay the amount equal to the Duty leviable, in respect of which the conditions specified in the said Notification of customs are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials.

14. In view of the facts as narrated hereinabove, it is apparent that M/s. Canvera Exim LLP, Rajkot had imported 110.00 MT of Duty free raw material against the Advance Authorization No. 2410042456 dated 13.07.2018 by availing the benefit of Notification No. 18/2015-Cus dated 01/04/2015. The conditions to the Advance Authorization and Notification No. 18/2015-Cus dated 01/04/2015, which require that the input imported duty free under AA should be physically incorporated in export product (making normal allowance for wastage) and the said materials shall not be transferred or sold, have been contravened. The condition that the Export Obligation be fulfilled within 18 months or within the extended time period has been contravened.

15. Therefore, the said 110.00 MT of inputs i.e. 'PVC Floor Sweeping (PVC Resin)', imported Duty free, valued at **Rs. 45,64,116/-** are liable for confiscation under Section 111(o) of the Customs Act, 1962 and the duty leviable on the said inputs amounting to **Rs. 12,65,859/-** (as detailed in **Table-1 above**) liable to be demanded / recovered from M/s. Canvera Exim LLP, Rajkot under the provisions of Notification No. 18/2015-Cus dated 01/04/2015 read with Section 143 of the Customs Act, 1962 in as much as M/s. Canvera Exim LLP, Rajkot failed to comply with the above said conditions of the said notification. Also, interest at the prescribed rate liable to be demanded / recovered from M/s. Canvera Exim LLP, Rajkot under Notification No. 18/2015-Cus dated 01/04/2015 read with Section 143 of the Customs Act, 1962. M/s. Canvera Exim LLP, Rajkot are also liable for penalty under Section 112(a) of the Customs Act, 1962. Since the importer violated the conditions of Notification No. 18/2015-Cus dated 01/04/2015, for which no express penalty is elsewhere provided, they shall also be held liable to penalty under Section 117 of Customs Act, 1962.

16. Further, the Surety Bond, as detailed above, executed by M/s. Canvera Exim LLP, Rajkot at the time of import of Duty free inputs under AA Scheme against AA no. 2410042456 dated 13.07.2018 is required to be enforced and the amount of Duty and interest involved in the inputs for which they could not fulfill the Export Obligation is required to be recovered as per clause of the said Surety Bond executed before the Deputy/Assistant Commissioner of Customs, ICD Sanand, Ahmedabad and as per the conditions of the Notification No. 18/2015-Cus dated 01/04/2015.

17. During the course of investigation, a Bank Guarantee of Rs. 3,50,000/- was encashed and same was deposited in the Govt. exchequer vide TR-6 Challan No. 624 dated 16.03.2022, which can be appropriated against the total Customs duty to be recovered from them.

SHOW CAUSE NOTICE:-

18. Accordingly, A show Cause Notice dated 17.08.2023 was issued to M/s. Canvera Exim LLP, Block Number A/14, Mira Nagar, Jamnavad Road, Dhoraji, Rajkot-360410, Gujarat, India (holder of IEC No. 2416503197), wherein they were called upon to show cause to the Additional / Joint Commissioner of Customs, In-charge ICD Sanand, Custom House, Ahmedabad having his office at Custom House, Near All India Radio, Navrangpura, Ahmedabad-380009, as to why:-

- (a) The imported goods having declared assessable value of **Rs.45,64,116/- (Rupees Forty Five Lakhs Sixty Four Thousand One Hundred Sixteen 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 the Notification No.18/2015-Cus. dated 01/04/2015;
- (b) The Customs Duty involved on duty free Import of goods amounting to **Rs.12,65,859/- (Rupees Twelve Lakhs Sixty Five Thousand Eight Hundred Fifty Nine only)** being duty forgone at the time of import should not be demanded & recovered under Section 143 of the Custom Act, 1962, by invoking the conditions of Bond executed by the Importer read with the Notification No. 18/2015-Cus dated 01/04/2015.
- (c) The Bank Guarantee No. 101GT01182680003, dated 25.09.2018 for Rs.3,50,000/- issued by the HDFC Bank Ltd, Wholesale Banking Operations, Trade Finance Department, 1st Floor, "Shri Harish", 40/A, Bhaktinagar Society, Bhaktinagar Circle, Rajkot- 360 0022 encashed vide TR-6 Challan No. 624, dated 16.03.2022 deposited in the Bank of Baroda, Jamiyatpura, Gandhinagar should not be appropriated and adjusted towards the Duty liability.
- (d) Interest at the applicable rate should not be recovered from them on the Customs duty as mentioned at (b) above in term of Notification No. Notification No. 18/2015-Cus dated 01/04/2015 as amended from time

to time read with Conditions of Bond executed in term of Section 143 of Customs Act,1962.

- (e) Penalty should not be imposed on them under Section 112(a) of the Customs Act 1962 for the acts of omission & commission mentioned above.
- (f) Penalty should not be imposed on them under Section 117 of the Customs Act, 1962 for the acts of omission & commission mentioned above.
- (g) The Bond furnished by the Importer should not be enforced for recovery of outstanding amount of Duty foregone along with the applicable interest, penalties, redemption fine imposed, if any.

SUBMISSIONS: -

19. Post issuance of the Show Cause Notice, the importer made no submission before the adjudication authority.

PERSONAL HEARING: -

20. Opportunity to be heard in person was granted to the importer on 19/10/2023, 12/01/2024, 16/03/2024 and 16/04/2024. However, the importer neither appeared in person or through their authorised representative to put forth their viewpoint in the incident matter.

DISCUSSION AND FINDINGS:

21. I have carefully gone through the entire case material available on record. I find that importer did not appear for personal Hearing, though enough opportunities were given to them. Under the circumstances, there appears no option except to proceed to decide the case *ex-parte*. In this regard, I rely upon the case of Saketh India Ltd Versus Union of India 2002 (143) ELT 274 (Del.) of the Hon'ble Tribunal wherein it was held that-

"Thus it is a clear case where a proper opportunity was given to the appellant to reply to show cause notice and to make oral submission, if any. However, fault lies with the appellant in not availing of these opportunities. For this appellant has to blame itself. The appellant cannot turn around and blame the respondents by alleging that the ADDI, DGFT violated principles of natural justice or did not give sufficient opportunity to the appellant to present its case."

21.1 I also find that Hon'ble Tribunal in the case of V.K. Thampi v/s CCE, Cochin 1988(33) ELT 424 (Tri.), relying on the decision of the Apex Court reported in (AIR 1962 SC 646 and AIR 1957 SC 842) have held that an adjudicating authority is entitled to proceed *ex-parte* if the person concerned does not appear before it in response to notice issued by it. In view thereof, I have to proceed to decide the case in hand *ex-parte* based upon the evidence available on record.

22. The main allegation against the noticee are that the Importer, M/s Canvera Exim LLP, Rajkot, availing duty free import facility under Advance Authorisation scheme and Notification No. 18/2015-Cus dated 01/04/2015 (as amended) on licenses issued by DGFT in terms of Para 4.16 of FTP 2015-2020, imported 110.000 MT duty free 'PVC Floor Sweeping (PVC Resin)' of an aggregate assessable value of Rs. 45,64,116/- involving a total duty liability on of Rs.12,65,859/- and cleared them without payment of customs duty under 03 B/Es through ICD Sanand, Ahmedabad. However, the importer had not fulfilled their export obligation in terms of the conditions to the Advance Authorization and Notification No. 18/2015-Cus dated 01/04/2015 and thus grossly misused the facility of duty free imports allowed to them under the said advance licence. As such the key issues before me to be decided are: -

- (i) Whether, subject goods having assessable value of **Rs. 45,64,116/- (Rupees Forty-Five Lakhs, Sixty Four Thousand, One Hundred and Sixteen only)** are liable for confiscation under Section 111(o) of the Customs Act, 1962?
- (ii) Whether the Duty of Customs amounting to **Rs. 12,65,859/- (Rupees Twelve Lakhs, Sixty-Five Thousand, Eight Hundred and Fifty Nine only)** along with applicable interest is required to be demanded and recovered from them under Section 143 of the Customs Act, 1962 (read with Notification No.18/2015 dated 01-04-2015)?
- (iii) Whether the noticee is liable to penalty under Section 112(a) of the Customs Act, 1962?
- (iv) Whether the noticee is liable to penalty under Section 117 of the Customs Act, 1962?
- (v) Whether Bonds executed by them at the time of import is enforceable in terms of Section 143(3) of the Customs Act, 1962, for recovery of the Customs Duty as mentioned above alongwith interest?

23. The fact here is that, M/s. Canvera Exim LLP, Rajkot had imported 'PVC Floor Sweeping (PVC Resin)' through ICD Sanand Port vide three Bills of Entry under cover of a single Advance Authorisation No. 2410042456 dated 13/07/2018 issued by DGFT by availing benefit of Notification No.18/2015-Cus dated 01/04/2015, as amended. As per Foreign Trade Policy in force at that point of time and as mentioned on the subject license, the importer was supposed to complete their export obligation within 18 months from the date of issuance of authorisation unless they were granted an extension of time for such fulfilment of export obligation.

23.1 I find that Advance Authorization was issued by the Directorate General of Foreign Trade (DGFT) to importer for import of 'PVC Floor Sweeping (PVC Resin)' without payment of Customs duty and the said export promotion scheme is governed by Chapter 4 of the Foreign Trade Policy (2015-20) and corresponding Chapter 4 of the Hand Book of Procedures (2015-20), Volume-I & II. I find that Para 4.03 of the Foreign Trade Policy 2015-20 allow duty free import of inputs which are to be physically incorporated in the export products. I further find that the Para 4.16 of the Foreign Trade Policy 2015-20 restrict the use of such duty free imported goods and stipulates that such import will be with actual user condition. It will not be transferable even after completion of export obligation. However, Authorization holder will have option to dispose-off product manufactured out of duty free inputs once export obligation is completed.

23.2 I also observed that Advance Authorisation Scheme introduced vide Notification No. 18/2015-Customs dated 01/04/2015 was intended to grant upfront exemption on the import of inputs which would be used in the manufacture of goods that are exported.

23.3 The Condition (viii) of the Notification No. 18/2015-Cus, dated 01/04/2015 requires an importer to discharge the export obligation as specified in the Authorization both in terms of value and quantity within the period as specified in the Authorization or within the extended period as may be granted by the Regional Authority, by exporting resultant products manufactured out of the duty free materials imported.

23.4 The Condition (ix) of the Notification No. 18/2015-Cus, dated 01/04/2015, requires an importer to produce evidence of discharge of export obligation to the satisfaction of Customs authority within a period of sixty days of the expiry of period allowed for fulfillment of export obligation. Failure on the part of the importer to furnish such particulars indicates that they could not complete their export obligation within the stipulated period of time allowed under the Policy and the Customs notification. Such failure led to outright violation of the conditions of the notification read with the Policy in vogue rendering goods, so imported, duty free, are liable to confiscation under section 111(o) of the Customs Act, 1962.

23.5 Further, the Condition (x) of the Notification No. 18/2015-Cus, dated 01/04/2015, stipulate that the said authorisation shall not be transferred and the said materials shall not be transferred or sold.

23.6 In the present case, I find that as per Advance Authorization No. 2410042456 dated 13/07/2018, against the proposed import of 100 MT (in value terms Rs. 45,64,116/-) of PVC Floor Sweeping (PVC Resin), M/s. Canvera Exim LLP, Rajkot was under obligation to export the final manufactured goods in accordance with the prescribed SION norms (Standard Input-Output Norms). However, the importer had not exported the required quantity of resultant manufactured goods out of imported duty free goods (inputs). Thus, I find that the importer was obliged to fulfil the export liability, but could not do so.

23.7 I find that the importer was issued Advance Authorisation by DGFT for duty free import of aforesaid goods/raw materials/inputs. It is the duty of importer seeking benefit of exemption extended by Custom Notifications issued by the Government of India to comply with the condition imposed vide Notification No.18/2015-Cus dated 01/04/2015.

23.8 Further, I observed as per Para 4.14 of the Foreign Trade Policy (2015-20) Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable. Import against supplies covered under paragraph 7.02 (c), (d) and (g) of FTP will not be exempted from payment of applicable Anti-dumping Duty, Countervailing Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, if any. However, imports under Advance Authorisation for physical exports are also exempt from whole of the integrated tax and Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be provided in the notification issued by Department of Revenue, and such imports shall be subject to pre-import condition.

23.9 I also find that as per Para 4.22 (i) of the Foreign Trade Policy (2015-20) *the Period for fulfillment of export obligation under Advance Authorisation should be 18 months from the date of issue of Authorisation or as notified by DGFT.*

23.10 Further, I observed as per sub para (d) of Para 4.49 of the Hand Book of Procedures (2015-20), Volume-1 demands that if export obligation is not fulfilled both in terms of quantity and value, the Authorization holder shall, for the regularization, pay to Customs authorities, customs duty on unutilized value of imported/ indigenously procured material along with interest as notified; which implies that the authorization holder is legally duty bound to pay the proportionate amount of Customs duty corresponding to the unfulfilled export obligation.

23.11 I find that no extension has been granted by DGFT to importer for fulfilment of export obligation, as the importer had not produced any such documents. I also find that in Para 4.44 of the Hand Book of Procedures (2015-20), Volume-1 makes it mandatory on the part of the authorization holder to submit requisite evidence in support of discharge of export obligation in accordance with law within a period of two months from the date of expiry of export obligation to concerned Regional Authority for verification.

24. I find from the records available that it is amply clear that there is no dispute that the said importer has failed to comply with the mandatory condition of fulfilment of export w.r.t. time period of such fulfilment i.e. 18 months from date of issue of the Authorisation. This is in violation to Para 4.22(i) of the Foreign Trade Policy (2015-20) read with Notification 18/2015-Cus. dated 01/04/2015. Even after multiple communications sent to them, they neither submitted any proof of fulfilment of export obligation against the Advance License no. 2410042456 dated 13/07/2018 nor they submitted any document proving extension of the license from the competent authority. Such failure led to outright violation of the conditions of the notification read with the Policy in vogue rendering goods, so imported, duty free, are liable to confiscation under section 111(o) of the Customs Act, 1962.

25. Whether the Duty of Customs amounting to Rs.12,65,859/- (Rupees Twelve Lakhs, Sixty Five Thousand, Eight Hundred and Fifty Nine only) is required to be demanded and recovered from them and whether Bonds executed by Importer at the time of import should be enforced in terms of Section 143 of the Customs Act, 1962, for recovery of the Customs Duty alongwith interest?

25.1 I find that the department is well within the right to enforce bond as provided under Section 143 of the Customs Act, 1962. The section is reciprocated as under:

"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 ¹ [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 ¹ [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 ¹ [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 ¹ [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 ¹ [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."

25.2 Further, I find that the importer was well aware of the rules and regulation of Customs as well as Exim Policy as they had obtained the Advance Authorization after going through the provisions under Foreign Trade Policy and conditions of the customs Notification and they were fully aware that the goods being cleared from Customs has to fulfill export obligation within 18 months from the date of issue of Authorisation. Further, it proves beyond doubt that the importer had not fulfilled export obligation against the goods/inputs/raw material imported under subject Bills of Entry. Further, I find that in the present case, the importer has also filed Bond under Section 143 of the Customs Act, for the clearance of imported goods under Advance Authorization availing the benefit of exemption under Customs Notification No.18/2015 dated 01/04/2015. As mentioned above, sub-section (1) of Section 143 explicitly says that "*Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the [Assistant Commissioner of Customs or Deputy Commissioner of*

Customs] approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond". I also find that certain conditions are required to be explicitly mentioned in Bond. The wording and condition of Bond inter alia is reproduced below:

NOW THE CONDITIONS OF THE ABOVE BOND ARE THAT:-

- 1. I/We, the obligor(s) fulfil all the conditions of the said notification and shall observe and comply with its terms and condition.**
- 2. We the obligor shall observe all the terms and conditions specified in the license.**

3....

4....

- 5. We, the obligor, shall comply with the conditions stipulated in the said Import & Export Policy as amended from time to time.**

6....

It is hereby declared by us, the obligor(s) and the Government as follows:-

- 1. The above written Bond is given for the performance of an act in which the public are interest.**

- 2. The Government through the commissioner of customs or any other officer of the Customs recover the same due from the Obligor(s) in the manner laid sub-section (1) of the section 142 of the customs act,1962.**

25.3 I find that no time limit is prescribed for recovery of any liability in case of Bond filed under Section 143 (1) of the Customs Act,1962 as it is continuous liability on the part of the importer to follow the conditions prescribed in the Bond. I find that the said importer is obliged to follow the conditions of the Bond. Therefore, I find that by filing the Bond under Section 143, said Importer is obliged to pay the consequent duty liabilities on non-compliance/failure to fulfill the conditions of the Notification. Therefore, the said Importer is liable to pay differential duty alongwith interest without any time limit. Therefore, I find that without prejudice, the Bond is required to be enforced under Section 143 (3) of the Customs Act, 1962 for the recovery of differential Customs Duty **Rs. 12,65,859/-** alongwith applicable interest.

25.4 Further, I find that Import of materials under Advance Authorization Scheme were governed by Notification No. 18/2015-Cus dated 01/04/2015 (as amended during the relevant time period). The said notification exempted the materials imported into India against an Advance Authorisation from the whole of the Duty of Customs leviable thereon specified in the First Schedule to the Customs Tariff Act, 1975 and from the whole of the Additional Duty, Safeguard Duty, Transitional Product Specific Safeguard Duty and Anti-dumping Duty leviable thereon, respectively, under Sections 3, 8B, 8C and 9A of the said Customs Tariff Act, 1975 subject to the certain conditions. The condition (iv) of the said Notification categorically stipulates that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in the notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials. Therefore, in view of the said condition of the said Notification I find that the Bond is required to be enforced under Section 143 (3) of the Customs Act, 1962 for the recovery of differential Customs Duty Rs. 12,65,859/- alongwith applicable interest.

26. Whether the Subject goods having assessable value of Rs. 45,64,116/- (Rupees Forty Five Lakhs, Sixty Four Thousand, One Hundred and Sixteen only) are liable for confiscation under Section 111(o) of the Customs Act, 1962?

26.1 I find that the Importer has failed to comply with the export obligation condition as stipulated under Notification No.18/2015 dated 01/04/2015 and therefore, imported goods under Advance Authorization claiming the benefit of exemption Notification No. 18/2015 dated 01/04/2015, are liable for confiscation under Section 111(o) of the Customs Act,1962.

26.2 As the impugned goods are found liable to 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 Customs Act, 1962 can be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. Section 125 (1) of the Customs Act, 1962 reads as under: -

"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..."

26.3 I find that the importer has wrongly availed the benefit of Notification No.18/2015 dated 01-04-2015 and further imported goods have been cleared after the execution of Bond for the clearance of the imported goods under Advance Authorization. I rely on the decision in the matter of Weston Components Ltd. v. Collector reported as 2000 (115) E.L.T. 278 (S.C.) 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."

26.4 I further find that even in the case where goods are not physically available for confiscation, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

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

flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).

26.5 I also find that Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.)**, has held that even in the absence of the physical availability of the goods or the conveyance, the authority can proceed to pass an order of confiscation and also pass an order of redemption fine in lieu of confiscation. In other words, even if the goods or the conveyance has been released under Section 129 of the Act and, later, confiscation proceedings are initiated, then even in the absence of the goods or the conveyance, the payment of redemption fine in lieu of confiscation can be passed.

26.6 In view of the above, I find that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of subject goods having assessable value of **Rs. 45,64,116/- (Rupees Forty Five Lakhs Sixty Four Thousand One Hundred Sixteen only)** imported through ICD Sanand port under the subject Advance Authorization.

27. Whether importer is liable to Penalty under Section 112 of the Customs Act, 1962?

I find that imposition of penalty has been proposed on the importer under Section 112 (a) of the Customs Act, 1962. In this regard, I find that M/s. Canvera Exim LLP, Rajkot had wrongly availed the benefit of Notification No. 18/2015-Cus dated 01/04/2015 and failed to comply with the post import condition of fulfilment of export obligation of resultant goods manufactured out of the goods imported duty free under Advance Authorization. Thus, they misused the facility of duty free importation allowed to them under licences and notification No. 18/2015-Cus., dated 01/04/2015 (as amended) in gross violation of the provisions and conditions contained therein. Thus, the impugned goods imported under 03 B/Es and valued at **Rs. 45,64,116/-** involving a total duty liability of **Rs. 12,65,859/-** are liable to confiscation under the provisions of section 111(o) of the Customs Act, 1962. Further, the Importer i.e. M/s. Canvera Exim LLP, Rajkot, for their acts of omission and commission which rendered the impugned goods liable to confiscation under section 111 of the Customs Act, 1962 are also liable to penalty under section 112(a) of the Customs Act, 1962.

28 Whether importer is liable to Penalty under Section 117 of the Customs Act, 1962?

I find that M/s. Canvera Exim LLP has not responded to letters during the course of investigation and also during the course of adjudication. They thus have not cooperated with the department, which indicates their malafide intent. In view of above, I find the Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged with a penalty not exceeding four lakh rupees. I thus, find that through their wilful act of non-cooperation, M/s. Canvera Exim LLP has rendered themselves liable for penalty under section 117 of the Customs Act, 1962.

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

::ORDER::

- (i) I confirm the demand of Duty of Customs amounting to **Rs.12,65,859/- (Rupees Twelve Lakh, Sixty Five Thousand, Eight Hundred and Fifty Nine only)** saved by the importer in course of imports of the goods through ICD Sanand under the subject Advance Authorization and the corresponding Bills of Entry in terms of the provisions of Section 143(3) of the Customs Act, 1962 read with Notification No.18/2015 dated 01/04/2015, for recovery of the Customs Duty along with applicable

interest under Section 28 AA of the Customs Act, 1962 and order recovery of the same.

- (ii) I hold the subject goods having assessable value of **Rs. 45,64,116/- (Rupees Forty Five Lakh, Sixty Four Thousand, One Hundred and Sixteen only)** imported through ICD Sanand port under the subject Advance Authorizations as detailed in the Show Cause Notice, liable to confiscation under Section 111 (o) of the Customs Act, 1962. However, as the goods are not physically available for confiscation, I impose redemption fine of **Rs. 4,50,000/- (Rupees Four Lakh Fifty Thousand only)** in lieu of confiscation under Section 125 of the Customs Act, 1962
- (iii) I order to appropriate the amount of Rs. 3,50,000/- encashed against Bank Guarantee and deposited in the Govt. exchequer vide TR-6 Challan No. 624 dated 16/03/2022 against their aforesaid confirmed Duty;
- (iv) I impose penalty of **Rs. 1,25,000/- (Rupees One Lakh Twenty Five Thousand only)** on M/s. Canvera Exim LLP, Rajkot under Section 112 (a) of the Customs Act, 1962;
- (v) I impose penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand only)** on M/s. Canvera Exim LLP, Rajkot under Section 117 of the Customs Act, 1962;
- (vi) I order to enforce the Bonds executed by M/s. Canvera Exim LLP, Rajkot in terms of Section 143(3) of the Customs Act, 1962, for recovery of the Customs Duty as mentioned at para supra alongwith interest.

30. 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.

31. The Show Cause Notice No. VIII/10-01/ICD-Sanand/O&A/2022-23 dated 17/08/2023 is disposed off in above terms.


15/5/24
(Vishal Malani)
Additional Commissioner

DIN- 20240571MN0000555D9F

F. No. VIII/10-01/ ICD-Sanand/O&A/2022-23



Date: 15/05/2024

By RPAD/Hand Delivery/Email/Speed Post/ Notice Board

To; (Noticee),

1. M/s. Canvera Exim LLP, Block Number - A/14, Mira Nagar, Jamnavad Road, Dhoraji, Rajkot, Gujarat - 360410
2. M/s. Canvera Exim LLP, National Highway - 27, Survey No. 11, Near Hotel Triveni, Dhoraji, Rajkot, Gujarat - 360410

Copy to: -

1. The Principal Commissioner, Customs – Ahmedabad, for information please.
2. The Assistant Commissioner (TRC) for information please.
3. The Deputy Commissioner of Customs, ICD-Sanand, Ahmedabad for information and record please.
4. The Superintendent, Customs, H.Q. (Systems), Ahmedabad, in PDF format for uploading on website of Customs Commissionerate, Ahmedabad.
5. Guard File.