प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडीओ के बाजु मे, नवरंगपुरा ,अह्मदाबाद 380009
दुर भाष (079) 2754 46 30 **फैक्स** (079) 2754 23 43
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD
CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009
PHONE : (079) 2754 46 30 FAX (079) 2754 23 43

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

फा. सं./ F.No. VIII/10-11/Commr./O&A/2022-23

DIN-20240471MN0000888C9B

आदेशकीतारीख/Date of Order :16.04.2024
जारीकरनेकीतारीख/Date of Issue : 16.04.2024

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

मूल आदेश संख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-07-2024-25 dated 16.04.2024 in the case of M/s. Goldstab Organics Pvt. Ltd., Plot No. 2816 Chemical Zone, GIDC 8A, Valsad, Gujarat.

1 जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन , गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अह्मदाबाद-380 004 को सम्बोधित होनी चाहिए।

2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, *Ahmedabad* – 380004.

3. उक्त अपील प्रारुप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ

(उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलगन की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।

4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रिय सीमा शुल्क अधिनियम,1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

6. The prescribed fee under the provisions of Section 129A of the Customs Act,1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेश के विरूद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमे विवाद है उसका भुकतान करके अपील की जा शकती है।

7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".

8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।

8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Subject: - Show Cause Notice File No. VIII/10-11/Commr./O&A/2022-23 dated 09/09/2022 issued by the Commissioner of Customs, Customs, Ahmedabad to M/s. Goldstab Organics Pvt. Ltd., Plot No. 2816 Chemical Zone, GIDC 8A, Valsad, Gujarat.

BRIEF FACTS OF THE CASE: -

M/s. Goldstab Organics Pvt. Ltd. Plot No. 2816, Chemical Zone, GIDC 8A, Valsad, Gujarat (IEC-0300021011) (herein after referred as 'the importer' or 'the Noticee' for the sake of brevity) is engaged in the import of goods availing the benefit of Exemption under Notification No.18/2015-Cus dated 01.04.2015 (as amended by Notification No. 79/2017-Cus dated 13-10-2017) under the Advance Authorization Scheme.

2. Whereas intelligence was developed by the Directorate of Revenue Intelligence, Kolkata, to the effect that various importers had imported various input materials without payment of Duty of Customs under cover of a number of Advance Authorizations issued by regional Directorate General of Foreign Trade (hereinafter referred to as DGFT). While executing such imports, the importer availed benefit of exemption extended by Notification No.18/2015-Cus dated 01-04-2015, as amended by the Customs Notification No.79/2017 dated 13-10-2017, and did not pay any Customs Duty in the form of Integrated Goods & Service Tax (IGST) levied under sub-section (7) of Section 3 of the Customs Tariff Act, 1975, on such input materials at the time of import. However, such exemption was extended subject to condition that the person willing to avail such benefit should comply with pre-import condition and the finished goods should be subjected to physical exports only.

2.1 During the course of scrutiny of records, it was noticed that M/s. Goldstab Organics Pvt. Ltd. Plot No. 2816, Chemical Zone, GIDC 8A, Valsad, Gujarat (IEC-0300021011) availed such exemption in respect of 17 (Seventeen) Licenses issued under Advance Authorizations Scheme, but while going through the process of such imports and corresponding exports towards discharge of export obligation, they failed to comply with the pre-import condition, as demanded under the said Notification No.79/2017-Cus dated 13-10-2017, that extended such conditional exemption. Pre-import condition simply means that the goods should be imported prior to commencement of export to enable the exporter to manufacture finished goods, which could be subsequently exported under the same Advance Authorization for discharge of Export Obligation.

2.2 Accordingly, the investigation was initiated against the importer by way of issuance of letters & summons under Section 108 of the Customs Act, 1962. The importer was summoned for production of documents in connection with such imports and also for giving evidences. Statement of Shri Sumit Shah, Authorised Representative of M/s. Goldstab Organics Pvt. Ltd. was recorded on 01.06.2022 under Section 108 of the Customs Act, 1962 wherein he interalia stated that

- he looked after the work related to accounts & finance related matters of the said Company;

- they had imported 'Polyethlene Wax/ Lead Ingots/Stearic Acid' under CTH 34049020/78011000/38231100 under 17 Advance Licenses and used these raw materials for manufacturing of 'PVC Stabilizer' classified under CTH 3812 of the Schedule 1 of the Customs Tariff Act, 1975. The details of the Licenses issued under Advance Authorisation Scheme and import and export done against the said Licenses were submitted as Annexure –A to his statement;

- when he was shown Notification No. 79/2017-Cus. dated 13.10.2017 he stated that he wasaware that Notification No.18/2015 dated 01.04.2015 was amended vide Notification No.79/2017-Cus. dated 13.10.2017 under which pre-import and physical export condition was inserted on Duty free import of goods; that for the purpose of availing the benefit of exemption from payment of IGST, one was supposed to comply with the pre-import condition; that pre-import condition demands that the entire materials should be imported under Advance Authorizations and it should be utilized exclusively for the purpose of manufacture of finished goods, which would be exported out of India; that for the purpose of availing the benefit of exemption from payment of IGST, one was supposed to comply with the pre-import condition.

- on perusal of the first date of import as well as the first date of export as submitted below made in respect of the said 17 Licenses, it can be seen that export were made first in the Licenses mentioned at Sr. No. 1 to 15, which implies that the pre-import condition imposed vide Notification No.79/2017-Cus. dated 13.10.2017 is not fulfilled.

Table-1

Sr. No.	License No.	Date	First BE No.	BE Date	First SB No.	SB date
1.	0310810968	06.02.2017	5756289	27.03.2018	3775137	30.01.2017
2.	0310811608	03.03.2017	9102627	30.03.2017	4399439	27.02.2017
3.	0310812923	27.04.2017	2560454	22.07.2017	5407339	13.04.2017
4.	0310813768	05.06.2017	3276040	18.09.2017	6492412	02.06.2017
5.	0310814383	03.07.2017	6265397	05.05.2018	6125872	17.05.2017
6.	0310815071	08.08.2017	7123369	07.07.2018	7645909	28.07.2017
7.	0310815414	29.08.2017	5409869	01.03.2018	8064323	17.08.2017
8.	0310816529	26.10.2017	6582820	29.05.2018	9440781	23.10.2017
9.	0310817801	15.12.2017	6905088	22.06.2018	1820782	27.12.2017
10.	0310818054	28.12.2017	6974958	27.06.2018	2630911	03.02.2018
11.	0310818332	09.01.2018	7986207	10.09.2018	3159534	27.02.2018
12.	0310819428	27.02.2018	8565250	23.10.2018	3159534	27.02.2018
13.	0310820484	16.04.2018	6697927	07.06.2018	8222301	13.06.2016
14.	0310824737	26.10.2018	9535069	05.01.2019	9045283	22.11.2018
15.	0310818053	28.12.2017	8749570	05.11.2018	1892600	29.12.2017
16.	0310818409	10.01.2018	5253589	17.02.2018	3883839	30.03.2018
17.	0310825110	19.11.2018	9228068	12.12.2018	5745772	23.07.2019

- that exports were done first before import under 15 Licenses (mentioned at Sr. No. 1 to 15 of the Table -1 above) issued under Advance Authorization Scheme; that Quite naturally, they did not manufacture the goods which were exported under the mentioned Advance Authorizations corresponding to the said Shipping Bills, out of the Duty-free materials imported under the subject Advance Authorization; that the materials which were exported against the Shipping Bills, were not manufactured entirely out of the Duty-free materials imported under the Advance Authorization in question.; that resulted in non-compliance of the pre-import condition; that the Licenses mentioned at Sr. No. 16 & 17 above, they had satisfied with the pre-import conditions and the goods imported Duty free in the said license were utilized for manufacturing of finished goods which were exported under the said Licenses; that they had also done physical exports in respect of Licenses mentioned at Sr. No. 16 & 17.

- that they had imported goods as per details mentioned in Annexure –B attached to his statement as details of import done through ICD Tumb under the said 15 Licenses during the period from 13.10.2017 to 10.01.2019 under Advance Authorisation Scheme; that they had imported 3085 MTs of goods having assessable value Rs. 29.25 Crores through ICD Tumb wherein IGST foregone amounts to Rs. 5.68 Crores.

- that they had recalled and got re-assessed the Bills of Entry as mentioned in Annexure-C submitted by him during the course of his statement for paying defaulted IGST; that they had recalled the Bills of Entry vide which goods were imported Duty free in Licenses issued under Advance Authorisation Scheme issued between 13.10.2017 to 10.01.2019; that they did so as per their own interpretation that pre-import condition is mandatory for Licenses issued between 13.10.2017 to 10.01.2019; that the Licenses which were issued prior to 13.10.2017 does not come under the ambit of Notification No.79/2017-Cus. dated 13.10.2017, therefore they were not bound to comply with pre-import and physical export condition; that as the said conditions were not imposed while issuing the Licenses which were prior to 13.10.2017, they were not

subjected to fulfil the said condition; that as per annexure C submitted by him, they had paid IGST of Rs. 2,67,91,052/- in respect of 38 Bills of Entry.

2.3 From the deposition made by the Authorised Representative of the importer and data submitted viz. Bills of Entry under which goods were imported, first Bill of Entry in respect of Licenses issued under Advance Authorization Scheme mentioned at Sr. No. 1 to 15 above of Table-1, it is seen that in case of all 15 (Fifteen) Advance Authorizations, the goods were exported before the commencement of imports. Therefore, it was confirmed that for manufacture of the exported goods, the importer used domestically or otherwise procured materials, thereby contravening the provision of pre-import condition and went on to avail benefit of exemption. Therefore, in terms of explanation given at Para 4.3 below, the importer failed to comply with the pre-import condition and therefore, was not eligible for IGST exemption benefit. In respect of Licenses mentioned at Sr. No. 16 & 17 of the Table-1 above and as per deposition of the Authorised Representative of the importer, it is clear that the date of first Bill of Entry was prior to the corresponding first Shipping Bill date. It shows that the importer had used the imported material in manufacturing of exported goods.

2.4 It is clear that in respect of the aforementioned 15 (Fifteen) Advance Authorizations, the importer failed to use Duty-free materials imported under the respective Advance Authorizations for the purpose of manufacture of the finished goods, which were exported towards discharge of export obligation. It is also evident that the Duty-free goods subsequently imported could not have been used for the specified purpose. Therefore, the importer failed to comply with the pre-import condition in respect of these Advance Authorizations.

2.5. From the facts of the case and the statement recorded by the Authorized Representative of the importer, it appears that –

(i) In case of above said 15 (Fifteen) Licenses issued under Advance Authorization Scheme, they started exporting finished goods even before the imports were commenced. Therefore, such input materials despite being covered by the respective Advance Authorizationsand absolutely necessary for the purpose of manufacture of the export goods, have not been used for the specified purpose.

(ii) Considerable quantity of materials exported under the impugned Advance Authorizations were manufactured out of input materials procured from the domestic market or otherwise;

(iii) Significant quantity of the Duty-free imported materials was used to manufacture goods, which were sold in the domestic market, i.e. not used for manufacture of export goods;

(iv) They could not comply with the pre-import condition imposed by virtue of Notification No. 79/2017-Cus dated 13-10-2017, but still availed benefit of exemption of IGST, in violation of the condition of the said Notification.

(v) The importer had paid defaulted IGST by way of recalling the Bills of Entry as mentioned in Annexure C to their statement, in respect of Duty free goods imported availing the benefit of Licenses issued under Advance Authorisation Scheme in respect of goods imported through ICD Tumb.

3. Legal Provisions

Following are the provisions of law, which are relevant to the Show Cause Notice.

a) Para 4.03 of the Foreign Trade Policy (2015-20);
b) Para 4.05 of the Foreign Trade Policy (2015-20);
c) Para 4.13 of the Foreign Trade Policy (2015-20);
d) DGFT Notification No. 33/2015-20 dated 13-10-2017;
e) DGFT Notification No. 31/2013 (RE-2013) dated: - 01-08-2013;
f) DGFT Circular No. 3/2013 (RE-2013) dated, 02-08-2013;
g) Notification No 18/2015-Customs dated 01-04-2015;
h) Notification No 79/2017-Customs dated 13-10-2017;
i) Section 111(o) of the Customs Act, 1962;

j) Section 112(a) of the Customs Act;
k) Section 28(4) of the Customs Act, 1962;

a) **Para 4.03 of the Foreign Trade Policy (2015-20):-**
Advance Authorisation is issued to allow Duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed / utilised in the process of production of export product, may also be allowed.

b) **Para 4.05 of the Foreign Trade Policy (2015-20):-**
4.05: Eligible Applicant / Export / Supply
(a) Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer.
(b) Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process (as indicated in paragraph 4.18 of Handbook of Procedures) shall be issued to manufacturer exporter only.
(c) Advance Authorisation shall be issued for:
(i) Physical export (including export to SEZ);
(ii) Intermediate supply; and/or
(iii) Supply of goods to the categories mentioned in paragraph 7.02 (b), (c), (e), (t), (g) and (h) of the FTP.
(iv) Supply of 'stores' on board of foreign going vessel / aircraft, subject to condition that there is specific Standard Input Output Norms in respect of item supplied.

(c) **Para 4.13 of Foreign Trade Policy 2015-20**:-
Pre-import condition in certain cases -
(i) DGFT may, by Notification, impose pre-import condition for inputs under the Chapter.
(ii) Import items subject to pre-import condition are listed in Appendix 4-J or will be as indicated in Standard Input Output Norms (SION).
(iii) Import of drugs from unregistered sources shall have pre-import condition.

(d) **Notification No.33/2015-2020** New Delhi,
Dated: 13 October, 2017
Subject: Amendments in Foreign Trade Policy 2015-20 -reg
S.O. (E): In exercise of powers conferred by Section 5 of FT (D&R) Act, 1992, read with paragraph 1.02 of the Foreign Trade Policy, 2015-2020. as amended from time to time, the Central Government hereby makes following amendments in Foreign Trade Policy 2015-20. I. Para 4.14 is amended to read as under: "4.14: Details of Duties exempted Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable. Import against supplies covered under paragraph 7.02 (c), (d) and (g) of FTP will not be exempted from payment of applicable Anti-dumping Duty, Countervailing Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, if any. However, imports under Advance Authorization for physical exports are also exempt from whole of the integrated tax and Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of Section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be provided in the Notification issued by Department of Revenue, and such imports shall be subject to pre-import condition."

(e) **NOTIFICATION NO. 31 (RE-2013)/ 2009-2014:**

NEW DELHI, DATED THE 1st August, 2013
In exercise of powers conferred by Section 5 of the Foreign Trade(Development & Regulation) Act, 1992 (No.22 of 1992) read with paragraph 1.2 of the Foreign Trade Policy, 2009-2014, the Central Government hereby notifies the following amendments in the Foreign Trade Policy (FTP) 2009-2014.

2. After para 4.1.14 of FTP a new para 4.1.15 is inserted.
"4.1.15 Wherever SION permits use of either (a) a generic input or (b) alternative inputs, unless the name of the specific input(s) [which has (have) been used in manufacturing the export product] gets indicated / endorsed in the relevant shipping bill and these inputs, so endorsed, match the

description in the relevant bill of entry, the concerned Authorisation will not be redeemed. In other words, the name/description of the input used (or to be used) in the Authorisation must match exactly the name/description endorsed in the shipping bill. At the time of discharge of export obligation (EODC) or at the time of redemption, RA shall allow only those inputs which have been specifically indicated in the shipping bill."

2. Para 4.2.3 of FTP is being amended by adding the phrase "4.1.14 and 4.1.15" in place of "and 4.7.14". The amended para would be as under:

"Provisions of paragraphs 4.1.11, 4.1.12, 4.1.13, 4.1.14 and 4.1.15 of FTP shall be applicable for DFIA holder."

3. Effect of this Notification: Inputs actually used in manufacture of the export product should only be imported under the authorisation. Similarly inputs actually imported must be used in the export product. This has to be established in respect of every Advance Authorisation / DFIA.

(f) **Policy Circular No.03 (RE-2013)/2009-2014** Dated the 2nd August, 2013

Subject: - Withdrawal of Policy Circular No.30 dated 10.10.2005 on Importability of Alternative inputs allowed as per SION.

Notification No.31 has been issued on 1st August, 2013 which stipulates "inputs actually used in manufacture of the export product should only be imported under the authorisation. Similarly inputs actually imported must be used in the export product." Accordingly, the earlier Policy Circular No.30 dated 10.10.2005 becomes infructuous and hence stands withdrawn.

(g) **Notification No. - 18/2015 - Customs, Dated: 01-04-2015-**

G.S.R. 254 (E).- in exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 88, 8C and 9A of the said Customs Tariff Act, subject to the following conditions, namely

(i) that the said authorisation is produced before the proper officer of customs at the time of clearance for debit;

(ii) that the said authorisation bears,-

(a) the name and address of the importer and the supporting manufacturer in cases where the authorisation has been issued to a merchant exporter; and

(b) the shipping bill number(s) and date(s) and description, quantity and value of exports of the resultant product in cases where import takes place after fulfillment of export obligation; or

(c) the description and other specifications where applicable of the imported materials and the description, quantity and value of exports of the resultant product in cases where import takes place before fulfillment of export obligation;

(iii) that the materials imported correspond to the description and other specifications where applicable mentioned in the authorisation and are in terms of para 4.12 of the Foreign Trade Policy and the value and quantity thereof are within the limits specified in the said authorisation;

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

interest at the rate of fifteen percent per annum from the date of clearance of the said materials;

(v)that in respect of imports made after the discharge of export obligation in full, if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or of CENVAT Credit under CENVAT Credit Rules, 2004 has been availed, then the importer shall, at the time of clearance of the imported materials furnish a bond to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture of dutiable goods and to submit a certificate, from the jurisdictional Central Excise officer or from a specified chartered accountant within six months from the date of clearance of the said materials, that the imported materials have been so used:

Provided that if the importer pays additional duty of customs leviable on the imported materials but for the exemption contained herein, then the imported materials may be cleared without furnishing a bond specified in this condition and the additional duty of customs so paid shall be eligible for availing CENVAT Credit under the CENVAT Credit Rules, 2004;

(vi) that in respect of imports made after the discharge of export obligation in full, and if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or of CENVAT credit under CENVAT Credit Rules, 2004 has not been availed and the importer furnishes proof to this effect to the satisfaction of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs as the case may be, then the imported materials may be cleared without furnishing a bond specified in condition (v);

(vii) that the imports and exports are undertaken through the seaports, airports or through the inland container depots or through the land customs stations as mentioned in the Table 2 annexed to the Notification No.16/ 2015-Customs dated 01.04.2015 or a Special Economic Zone notified under section 4 of the Special Economic Zones Act, 2005 (28 of 2005):
Provided that the Commissioner of Customs may, by special order or a public notice and subject to such conditions as may be specified by him, permit import and export through any other sea-port, airport, inland container depot or through a land customs station within his jurisdiction;

(viii) that the export obligation as specified in the said authorisation (both in value and quantity terms) is discharged within the period specified in the said authorisation or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorisation:
Provided that an Advance Intermediate authorisation holder shall discharge export obligation by supplying the resultant products to exporter in terms of paragraph 4.05 (c) (ii) of the Foreign Trade Policy;

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

(x) that the said authorisation shall not be transferred and the said materials shall not be transferred or sold;
Provided that the said materials may be transferred to a job worker for processing subject to complying with the conditions specified in the relevant Central Excise notifications permitting transfer of materials for job work;
Provided further that, no such transfer for purposes of job work shall be effected to the units located in areas eligible for area based exemptions from the levy of excise duty in terms of notification Nos. 32/1999-Central Excise dated 08.07.1999, 33/1999-Central Excise dated 08.07.1999, 39/2001-Central Excise dated 31.07.2001, 56/2002-Central Excise dated 14.11.2002,

57/2002-Central Excise dated 14.11.2002, 49/2003-Central Excise dated 10.06.2003, 50/2003-Central Excise dated 10.06.2003, 56/2003-Central Excise dated 25.06.2003, 71/2003-Central Excise dated 09.09.2003, 8/2004-Central Excise dated 21.01.2004 and 20/2007-Central Excise dated 25.04.2007

(xi)that in relation to the said authorisation issued to a merchant exporter, any bond required to be executed by the importer in terms of this Notification shall be executed jointly by the merchant exporter and the supporting manufacturer binding themselves jointly and severally to comply with the conditions specified in this Notification.

(h) Notification No. 79/2017-Cus. Dated 13.10.2017:-

Inexerciseofthepowersconferredbysub-section(1)ofsection25ofthe CustomsAct,1962(52of1962),theCentralGovernment,onbeingsatisfiedthatitis necessary in the public interest so to do, hereby makes the following further amendments in each of the notifications of the Government of India in the Ministry of Finance (Department ofRevenue),specifiedincolumn(2)oftheTablebelow,inthemanner as specifiedinthe corresponding entry in column (3) of the said Table, namely :

(Relevant Provisions only)—

Sr. No.	Notification number and date	Amendments
2.	18/2015-Customs, dated the1stApril, 2015[videnumber G.S.R. 254 (E) dated the1stApril, 2015	In the said notification, in the opening paragraph,- (a) for the words, brackets, figures and letters "fromthe whole of the additional duty leviable thereon under sub-sections(1),(3)and(5)ofsection3,safeguardduty leviablethereonundersection8Bandanti-dumping duty leviablethereonundersection9A",the words, brackets, figures and letters "from thewholeofthe additionaldutyleviablethereon undersub-sections(1), (3)and(5)ofsection3,integratedtaxleviablethereon undersub-section(7)ofsection3, goodsandservices tax compensation cess leviable thereon under sub-section (9)of section3, safeguarddutyleviablethereonunder section8B, countervailingdutyleviablethereonunder section9 andanti-dumpingduty leviablethereonunder section 9A"shall be substituted. (b)incondition(viii),after the proviso,thefollowing proviso shall be inserted, namely:-"Provided further that notwithstanding anything containedhereinaboveforthesaid authorisationswhere theexemptionfromintegratedtax and thegoodsand servicestax compensationcessleviablethereonunder sub-section(7)and sub-section(9)ofsection3 ofthe saidCustomsTariffAct, hasbeenavailed,theexport obligation shall be fulfilled by physical exports only;" c) after condition(xi), thefollowing conditions shall be inserted, namely:- "(xii)thattheexemptionfrom integratedtax and the goods and services tax compensation cess leviable thereonunder sub-section(7)and sub-section(9)of section 3 of the said Customs Tariff Act shall be subject to pre-import condition; (xiii) that theexemptionfrom integratedtax and the goods and services tax compensation cess

		leviable thereonunder sub-section(7)and sub-section(9)of section 3 of the said Customs Tariff Act shall be available up to the 31stMarch, 2018.

I. Section 111(o) of the Customs Act:-

Section 111. Confiscation of improperly imported goods, etc. –
Section 111 (o):-any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

J. SECTION 112. Penalty for improper importation of goods, etc.-

Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or
(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 1 [not exceeding the value of the goods or five thousand rupees], whichever is the greater;
2 [(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

K Section 28(4) of the Customs Act, 1962:-
Section 28[Recovery of [duties not levied or not paid or short-levied or short- paid] or erroneously refunded. –

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-
(a) collusion; or
(b) any wilful mis-statement; or
(c) suppression of facts,
by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

DISCUSSION ON PROVISIONS OF LAW:-

4.. Imposition of two conditions for availing the IGST exemption in terms of Notification No. 79/2017-Cus dated 13-10-2017:-

4.1. WhereasAdvance Authorizations are issued by the Directorate General of Foreign Trade (DGFT) to importers for import of various raw materials without payment of Customs Duty and the said export promotional scheme is governed by Chapter 4 of the Foreign Trade Policy (2015-20), applicable for subject case and corresponding Chapter 4 of the Hand Book of Procedures (2015-20). Prior to GST regime, in terms of the provisions of Para 4.14 of the prevailing Foreign Trade Policy (2015-20), the importer was allowed to enjoy benefit of exemption in respect of Basic Customs Duty as well as Additional Customs Duties, Antidumping duty and Safeguard duty, while importing such input materials under Advance Authorizations.

4.2. With the introduction of GST w.e.f 01-07-2017, Additional Customs Duties (CVD & SAD) were subsumed into the newly introduced Integrated Goods and Service Tax (IGST). Therefore, at the time of imports, in addition to Basic Customs Duty, IGST was made payable instead of such Additional Duties of Customs. Accordingly, Notification No. 26/2017-Customs dated 29 June 2017, was issued to give effect to the changes introduced in the GST regime in respect of imports under Advance Authorization. It was a conscious decision to impose IGST at the time of import, however, at the same time, importers were allowed to either take credit of such IGST for payments of Duty during supply to DTA, or to take refund of such IGST amount within a specified period. The corresponding changes in the Policy were brought through Trade Notice No. 11/2018 dated 30-06-2017. It is pertinent to note here that while in pre-GST regime blanket exemption was allowed in respect of all Duties leviable when goods were being imported under Advance Authorizations, contrary to that, in post-GST regime, for imports under Advance Authorization, the importers were required to pay such IGST at the time of imports and then they could get the credit of the same.

4.3. However, subsequently, the Government of India decided to exempt imports under Advance Authorizations from payment of IGST, by introduction of the Customs Notification No. 79/2017 dated 13-10-2017. However, such exemption from the payment of IGST was made conditional. The said Notification No. 79/2017 dated 13-10-2017, was issued with the intent of incorporating certain changes/ amendment in the principal Customs Notifications, which were issued for extending benefit of exemption to the goods when imported under Advance Authorizations. The said Notification stated that the Central Government, on being satisfied that it is necessary in the public interest so to do, made the following further amendments in each of the Notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below, in the manner as specified in the corresponding entry in column (3) of the said Table. Only the relevant portion pertaining to the Customs Notification No. 18/2015 dated 01-04-2015 is reproduced in Para 3(j) above, which may be referred to.

4.4 Therefore, by issuing the subject Notification No. 79/2017-Cus dated 13-10-2017, the Government of India amended inter-alia Notification No. 18/2015-Cus dated 01-04-2015, and extended exemption from the payment of IGST at the time of import of input materials under Advance Authorizations. But such exemption was not absolute. As a rider, certain conditions were incorporated in the subject Notification. One being the condition that such exemption can only be extended so long as exports made under the Advance Authorization are physical exports in nature and the other being the condition that to avail such benefit one has to follow the pre-import condition.

5. The Director General of Foreign Trade, in the meanwhile, issued one Notification No. 33/2015-20 dated 13-10-2017, which amended the provision of Para 4.14 of the Foreign Trade Policy (2015-20), to incorporate the exemption from IGST, subject to compliance of the pre-import and physical export conditions. It is pertinent to mention, that the principal Customs Notification No. 18/2015-Cus, being an EXIM Notification, was amended by the Notification No. 79/2017-Cus dated 13-10-2017, in tandem with the changed Policy by integrating the same provisions for proper implementation of the provisions of the Foreign Trade Policy (2015-20).

5.1 Therefore, conscious legislative intent is apparent in the changes made in the Foreign Trade Policy (2015-20) and corresponding changes in the relevant Customs Notifications, that to avail the benefit of exemption in respect of Integrated Goods and Service Tax (IGST), one would require to comply with the following two conditions: -

i) All exports under the Advance Authorization should be physical exports, therefore, debarring any deemed export from being considered towards discharge of export obligation;

ii) Pre-import condition has to be followed, which requires materials to be imported first and then be used for manufacture of the finished goods, which could in turn be exported for discharge of EO;

6. Physical Export condition in relation to the Foreign Trade Policy (2015-20) and the Notification No. 79/2017-Cus dated 13-10-2017:

6.1 The concept of physical export is derived from Para 4.05(c) and Para 9.20 of the Foreign Trade Policy (2015-20) read with section 2(e) of the Foreign Trade (DR) Act, 1992. Para 9.20 of the Policy refers to section 2(e) of the Foreign Trade (DR) Act, 1992, which defines 'Export' as follows:-

> (e)"import" and 'export" means respectively bringing into, or taking out of, India any goods by land, sea or air;
> Therefore, primarily, export involves taking out goods out of India, however, in Chapter 4 of the Policy, Para 4.05 defines premises under which Advance Authorizations could be issued and states that -
> (c) Advance Authorization shall be issued for:
> *(i)* Physical export (including export to SEZ);
> *(ii)* Intermediate supply; and/or
> (iii) Supply of goods to the categories mentioned in paragraph 7,02 (b), (c), (e), (f), (g) and (h) of this FTP.
> (iv) Supply of 'stores' on board of foreign going vessel / aircraft, subject to condition that there is specific Standard Input Output Norms in respect of item supplied.

6.2. Therefore, the definition has been further extended in specific terms under Chapter 4 of the Policy and the supplies made to SEZ, despite not being an event in which goods are being taken out of India, are considered as Physical Exports. However, other three categories defined under (c) (ii), (iii) & (iv) do not qualify as physical exports. Supplies of intermediate goods are covered by Letter of Invalidation, whereas, supplies covered under Chapter 7 of the Policy are considered as Deemed Exports. None of these supplies are eligible for being considered as physical exports. Therefore, any category of supply, be it under letter of Invalidation and/or to EOU and/or under International Competitive Bidding (ICB) and/or to Mega Power Projects, other than actual exports to other country and supply to SEZ, cannot be considered as Physical Exports for the purpose of Chapter 4 of the Foreign Trade Policy (2015-20).

6.3 This implies that to avail the benefit of exemption as extended through amendment of Para 4.14 of the Policy by virtue of the DGFT Notification No. 33/2015-20 dated 13-10-2017, one has to ensure that the entire exports made under an Advance Authorization towards discharge of Export Obligation are physical exports. In case the entire exports made, do not fall in the category of physical exports, the Advance Authorization automatically sets disqualified for the purpose of exemption.

7. Pre-import condition in relation to the Foreign Trade Policy (2015-20) and the Notification No. 79/2017-Cus dated 13-10-2017; Determination of whether the goods imported under the impugned Advance Authorization comply with the pre-import condition:-

7.1 Pre-import condition has been part of the Policy for long. In terms of Para 4.13 of the Policy, there are certain goods for which pre-import condition was made applicable through issuance of DGFT Notification way before the Notification dated 13-10-2017 came into being.

7.2 The definition of pre-import directly flows from Para 4.03 of the Foreign Trade Policy (2015-20). It demands that Advance Authorizations are issued for import of inputs, which are physically incorporated in the export goods allowing legitimate wastage. This Para specifically demands for such physical incorporation of imported materials in the export goods. And the same is only possible, when imports are made prior to export. Therefore, such Authorizations principally do have the pre-import condition in-built, which is required to be followed, barring where otherwise use has been allowed in terms of Para 4.27 of the Foreign Trade Policy (2015-20).

7.3 Advance Authorizations are issued for import of Duty-free materials first, which would be used for the purpose of manufacture of export goods, which would be exported out of India or be supplied under deemed export, if allowed by the Policy or the Customs Notification. The very name Advance Authorization was coined with prefix 'Advance', which illustrates and indicates the basic purpose as aforesaid. Spirit of the scheme is further understood, from the bare fact that while time allowed for import is 12 months (conditionally extendable by another six months) from the date of issue of the Authorization, and time allowed for export is 18 months (conditionally extendable by 6 months twice) from the date of issue of the Authorization. The reason

for the same was the practical fact that conversion of input materials into finished goods ready for export, takes considerable time depending upon the process of manufacture.

7.4 DGFT Notification No. 31/2013 (RE-2013) dated: - 01-08-2013, was issued to incorporate a new Para No. 4.1.15 in the Foreign Trade Policy. The said Para is an extension of the 4.03 of the Policy (2015-2020] and stipulated further condition which clarified the ambit of the aforesaid Para 4.03. Inputs actually imported must be used in the export product.

7.5 A Circular No.3/2013 (RE-2013) dated 02.08.2013, was also issued by the Ministry of Commerce in line with the aforesaid Notification. The Circular reiterates that Duty free import of inputs under Duty Exemption/Remission Schemes under Chapter-4 of FTP shall be guided by the Notification No.31 issued on 01.08.2013.

7.6. Therefore, combined reading of Para 4.03 of the Foreign Trade Policy, in force at the time of issuance of the Authorizations, and the Notification aforesaid, makes it obvious, that benefit of exemption from payment of Customs Duty is extended to the input materials subject to strict condition, that such materials would be exclusively used in the manufacture of export goods which would be ultimately exported.Therefore, the importer does not have the liberty to utilize such Duty-free materials otherwise, nor do they have freedom to export goods manufactured out of something, which was not actually imported.

7.7. Therefore, such Authorizations principally do have the pre-import condition in-built, which is required to be followed, barring where otherwise use has been allowed in terms of Para 4.27 of the Foreign Trade Policy (2015-20). Para 4.27 of the Hand Book of Procedures for the relevant period allows exports/supplies in anticipation of an Authorization. This provision has been made as an exception to meet the requirement in case of exigencies. However, the importers/exporters have been availing the benefit of the said provision without exception and the export goods are made out of domestically or otherwise procured materials and the Duty-free imported goods are used for purposes other than the manufacture of the export goods. However, Para 4.27 (d) has barred such benefit of export in anticipation of Authorization for the inputs with pre-import condition.

7.8. Specific provision under the said Para 4.27 (d) was made, which states that -

(d) Exports/ supplies made in anticipation of authorization shall not be eligible for inputs with pre-import condition.

Therefore, whenever pre-import condition is applicable in respect of the goods to be imported, the Advance Authorization holder does not have any liberty to export in anticipation of Authorization. The moment input materials are subject to pre-import condition, they become ineligible for export in anticipation of Authorization, by virtue of the said provision of Para 4.27 (d).

7.9. The pre-import condition requires the imported materials to be used for the manufacture of finished goods, which are in turn required to be exported towards discharge of export obligation, and the same is only possible when the export happens subsequent to the commencement of imports after allowing reasonable time to manufacture finished goods out of the same. Therefore, when the law demands pre-import condition on the input materials to be imported, goods cannot be exported in anticipation of Advance Authorization. Provisions of Para 4.27(a) & (b), i.e. export in anticipation of Authorization and the pre-import condition on the input materials are mutually exclusive and cannot go hand in hand.

8. Whereas Advance Authorization Scheme is not just another scheme, where one is allowed to import goods Duty free, for which the sole liability of the beneficiary is to complete export obligation only by exporting goods mentioned in the Authorization. It is not a scheme that gives carte blanche to the importer, so far as utilization of imported materials is concerned. Rather, barring a few exceptions covered by the Policy and the Notification, it requires such Duty-free imported materials to be used specifically for the purpose of manufacture of export goods. As discussed above, the scheme requires physical incorporation of the imported materials in the export goods after allowing normal wastage. Export

goods are required to be manufactured out of the very materials which have been imported Duty free. The law does not permit replenishment.The High Court of Allahabad in the case of *Dharampur Sugar Mill* reported in *2015 (321) ELT 0565 (All.)* has observed that:-

> *" From the records we find that the import authorization requires the physical incorporation of the imported input in export product after allowing normal wastage, reference clause 4.1.3.In the instant case, the assessee has hopelessly failed to establish the physical incorporation of the imported input in the exported sugar. The Assessing Authority and the Tribunal appears to be correct in recording a finding that the appellant has violated the provisions of Customs Act, in exporting sugar without there being any 'Export Release Order' in the facts of this case."*

8.1 The Hon'ble Supreme Court in the case of *Pennar Industries* reported in *TIOL-2015-(162)-SC-CUS* has held that :-

> *"It would mean that not only the raw material imported (in respect of which exemption from duty is sought) is to be utilized in the manner mentioned, namely, for manufacture of specified products by the importer/assessee itself, this very material has to be utilized in discharge of export obligation. It, thus, becomes abundantly clear that as per this Notification, in order to avail the exemption from import duty, it is necessary to make export of the product manufactured from that very raw material which is imported. This condition is admittedly not fulfilled by the assessee as there is no export of the goods from the raw material so utilized. Instead, export is of the product manufactured from other material, that too through third party. Therefore, in strict sense, the mandate of the said Notification has not been fulfilled by the assessee."*

8.2 The High Court of Madras (Madurai Bench) in the case of M/s. Vedanta Ltd. on the issue under consideration held that:-

> "pre-import simply means import of raw materials before export of the finished goods to enable the physical export and actual user condition possible and negate the revenue risk that is plausible by diverting the imported goods in the local market".

8.3 Conditions No. (v) & (vi) of the Notification No. 18/2015-Cus dated 01-04-2015, prescribe the modalitiesto be followed for import of Duty-free goods under Advance Authorization, in cases, where export obligation is discharged in full, before the commencement of imports. This is to ensure that the importer does not enjoy the benefit of Duty exemption on raw materials twice for the same export. It is but natural that in such a situation the importer would have used domestically procured materials for the purpose of manufacture of goods that have been exported and on which required duties would have been paid and credit of the same would also have been availed by the importer. The importer has in this kind of situation, two options in terms of the above Notification:

8.4. The first option is elucidated in condition No. (v) of the notification, which is as under-

> *"(v) that in respect of imports made after the discharge of export obligation in full, if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or of CENVAT Credit under CENVAT Credit Rules, 2004 has been availed, then the importer shall, at the time of clearance of the imported materials furnish a bond to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture of dutiable goods and to submit a certificate, from the jurisdictional Central Excise officer or from a specified chartered accountant within six months from the date of clearance of the said materials, that the imported materials have been so used.•*
> *Provided that if the importer pays additional duty of customs leviable on the imported materials but for the exemption contained herein, then the imported materials may be cleared without furnishing a bond specified in this condition and the additional duty of customs so paid shall be eligible for availing CENVAT Credit under the CENVAT Credit Rules, 2004;"*

8.4.1 The second option is similarly elaborated in condition no. (vi) of the notification, as under-

that in respect of imports made after the discharge of export obligation in full, and if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or of CENVAT credit under CENVAT Credit Rules, 2004 has not been availed and the importer furnishes proof to this effect to the satisfaction of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs as the case may be, then the imported materials may be cleared without furnishing a bond specified in condition (v);"

8.5 Thus, the purport of the above conditions in the erstwhile Notification is to ensure that if domestically procured inputs have been used for manufacture of the exported goods and the inputs are imported Duty-free after the exports, then the benefit of "zero-rating" of exports is not availed by the exporter twice.

8.6 Thus, insertion of such conditions in the Notification, is indicative of legislative intent of keeping check on possible misuse of the scheme. However, ensuring compliance of these two conditions is not easy, on the other hand, such conditions are vulnerable to be mis-used and have the inherent danger to pave way for 'rent-seeking'. Therefore, to plug the loop-hole, and to facilitate & streamline the implementation of the export incentive scheme, in the post-GST scenario the concept of "Pre-Import" and "Physical Export" was introduced in the subject Notification, which make the said conditions (v) & (vi) infructuous. This is also in keeping with the philosophy of GST legislation to remove as many conditional exemptions as possible and instead provide for zero-rating of exports through the option of taking credit of the IGST Duties paid on the imported inputs, at the time of processing of the said inputs.

8.7 It is the duty of an importer seeking benefits of exemption extended by Customs Notifications issued by the Government of India/ Ministry of Finance, to comply with the conditions imposed in the Notification, which determines, whether or not one becomes eligible for the exemption. Exemption from payment of Duty is not a matter of right, if the same comes with conditions which are required to be complied with. It is a pre-requisite that only if such conditions are followed, that one becomes eligible for such benefit. As discussed above, such conditions have been brought in with the objective of facilitating zero-rating of exports with minimal compliance and maximum facilitation.

9. WhereasIGST benefit is available against Advance Authorizations subject to observance of pre-import condition in terms of the condition of the Para 4.14 of the Foreign Trade Policy (2015-20) and also the conditions of the newly introduced condition (xii) of Customs Notification No. 18/2015 dated 01-04-2015 as added by Notification No. 79/2017-Cus dated 13-10-2017. Such pre-import condition requires goods to be imported prior to commencement of exports to ensure manufacturing of finished goods made out of the Duty-free inputs so imported. These finished goods are then to be exported under the very Advance Authorization towards discharge of export obligation. As per provision of Para 4.03 of the Foreign Trade Policy (2015-20), physical incorporation of the imported materials in the export goods is obligatory, and the same is feasible only when the imports precedes export.

9.1 The following tests enables one to determine whether the pre-import condition in respect of the Duty-free imported goods have been satisfied or not:

(i) If the importer fulfils a part or complete export obligation, in respect of an Advance Authorization, even before commencement of any import under the subject Advance Authorization, it is implied that such imported materials have not gone into production of goods that have been exported, by which the export obligation has been discharged. Therefore, pre-import condition is violated.

(ii) Even if the date of the first Bill of Entry under which goods have been imported under an Authorization is prior to the date of the first Shipping Bill through which exports have been made, indicating exports happened subsequent to import, but if documentary evidences establish that the consignments, so imported, were received at a later stage in the factory after the commencement of exports, then the goods exported

under the Advance Authorization could not have been manufactured out of the Duty free imported goods. This aspect can be verified from the date of the Goods Receipt Note (GRN), which establishes the actual date on which materials are received in the factory. Therefore, in absence of the imported materials, it is implied that the export goods were manufactured out of raw materials, which were not imported under the subject Advance Authorization. Therefore, pre-import condition is violated.

(iii) In cases, where multiple input items are allowed to be imported under an Advance Authorization and out of a set of import items, only a few are imported prior to commencement of export, it implies that in the production of the export goods, except for the item already imported, the importer had to utilize materials other than the Duty-free materials imported under the subject Advance Authorization. The other input materials are imported subsequently, which do not and could not have gone into production of the finished goods exported under the said Advance Authorization. Therefore, pre-import condition is violated.

(iv) In some cases, preliminary imports are made prior to export. Subsequently, exports are effected on a scale which is not commensurate with the imports already made. If the quantum of exports made is more than the corresponding imports made during that period, then it indicates that materials used for manufacture of the export goods were procured otherwise. Rest of the imports are made later which never go into production of the goods exported under the subject Advance Authorization. It is then implied that the imported materials have not been utilized in entirety for manufacture of the export goods, and therefore, pre-import condition is violated.

10. Whether the Advance Authorizations issued prior to 13-10-2017 should come under purview of investigation:

10.1 Whereas it is but natural that the Advance Authorizations which were issued prior to 13-10-2017, would not and could not contain condition written on the body of the Authorization, that one has to fulfil pre-import condition, for the bare fact that no such pre-import condition was specifically incorporated in the parent Notification 18/2015 dated 01-04-2015. The said condition was introduced by the Notification No. 79/2017-Cus dated 13-10-2017, by amending the principal Customs Notification. Therefore, for the Advance Authorizations issued prior to 13-10-2017, logically there was no obligation to comply with the pre-import condition. At the same time, there was no exemption from the IGST either during that period. Notifications are published in the public domain, and every individual affected by it is aware of what benefit it extends and in return, what conditions are required to be complied with. To avail such benefits extended by the Notification, one is duty bound to observe the formalities and/or comply with the conditions imposed in the Notification.

10.2 While issuing the subject Notification, the Government of India instead of imposing a condition that such benefit would be made available for Advance Authorizations issued on and after the date of issuance of the Notification, kept the doors wide open for those, who obtained such Advance Authorization in the past too, subject to conditions that such Authorizations are valid for import, and pre-import and physical export conditions have also been followed in respect of those Advance Authorizations. Therefore, instead of narrowing down the benefit to the importers, in reality, it extended benefit to many Advance Authorizations, which could have been out of ambit of the Notification, had the date of issue been made the basic criterion for determination of availment of benefit. Further, the Notification did not bring into existence any new additional restriction, rather it introduced new set of exemption, which was not available prior to issue of the said Notification. However, as always, such exemptions were made conditional. Even the parent Notification, did not offer carte blanche to the importers to enjoy benefit of exemption, as it also had set of conditions, which were required to be fulfilled to avail such exemption. As such, an act of the Government is in the interest of the public at large, instead of confining such benefits for the Advance Authorizations issued after 13-10-2017, the option was left open, even for the Authorizations, which were issued prior to the issuance of the said Notification. The Notification never demanded that the previously issued Authorizations have to be pre-import compliant, but definitely, it made it compulsory

that benefit of exemption from IGST can be extended to the old Advance Authorizations too, so long, the same are pre-import compliant. The importers did have the option to pay IGST and avail other benefit, as they were doing prior to introduction of the said Notification without following pre-import condition. The moment they opted for IGST exemption, despite being an Advance Authorization issued prior to 13-10-2017, it was necessary for the importer to ensure that pre-import/physical export conditions have been fully satisfied in respect of the Advance Authorization under which they intended to import availing exemption.

10.3 Therefore, it is not a matter of concern whether an Advance Authorization was issued prior to or after 13-10-2017, to ascertain whether the same is entitled for benefit of exemption from IGST, the Advance Authorization should pass the test of complying with both the pre-import and physical export conditions.

11. Whether the Advance Authorizations can be compartmentalized to make it partly compliant to pre-import/ physical export and partly otherwise.

11.1 WhereasAdvance Authorization Scheme has always been Advance Authorization specific. The goods to be imported/exported, quantity of goods required to be imported/exported, value of the goods to be imported/exported, nos. of items to be allowed to be imported/exported, everything is determined in respect of the Advance Authorization issued. Advance Authorization specific benefits are extended irrespective of the fact whether the importer chooses to import the whole materials at one go or in piece meal. Therefore, such benefit and/or liabilities are not Bills of Entry specific. Present or the erstwhile Policy has never had any provision for issuance of Advance Authorizations, compartmentalizing it into multiple sections, part of which may be compliant with a particular set of conditions and another part compliant with a different set of conditions. Agreeing to the claim of considering part of the imports in compliance with pre-import condition, when it is admitted by the importer that pre-import condition has been violated in respect of an Advance Authorization, would require the Policy to create a new provision, to accommodate such diverse set of conditions in a single Authorization. Neither the present set of Policy nor the Customs Notification has any provision to consider imports under an Advance Authorization by hypothetically bifurcating it into an Authorization, simultaneously compliant to different set of conditions. As of now, the Advance Authorizations are embedded with a particular set of conditions only. An Authorization can be issued either with pre-import condition or without it. Law doesn't permit splitting it into two imaginary set of Authorizations, for which requirement of compliances are different.

11.2 Allowing exemption for part compliance is not reflective in the Legislative intent. For proportional payment of Customs Duty in case of partial fulfilment of EO, specific provisions have been made in the Policy, which, in turn has been incorporated in the Customs Notification. No such provision has been made in respect of imports w.r.t Advance Authorizations with "pre-import and physical exports" conditions. In absence of the same, compliance is required in respect of the Authorization as a whole. In other words, if there are multiple shipments of import & multiple shipments of export, then so long as there are some shipments in respect of which Duty-free imports have taken place later & exports corresponding to the same have been done before, then, the pre-import condition stipulated in the IGST exemption Notification gets violated. Once that happens, then even if there are some shipments corresponding to which imports have taken place first & exports made out of the same thereafter, the IGST exemption would not be available, as the benefits of exemption applies to the license as a whole. Once an Advance Authorization has been defaulted, there is no provision to consider such default in proportion to the offence committed.

11.3 Para 4.49 of the Hand Book of Procedures (2015-20), Volume-I, demands that if export obligation is not fulfilled both in terms of quantity and value, the Authorization holder shall, for the regularization, pay to Customs Authorities, Customs Duty on unutilized value of imported/ indigenously procured material along with interest as notified; which implies that the Authorization holder is legally duty bound to pay the proportionate amount of Customs Duty corresponding to the unfulfilled export obligation.Customs Notification too, incorporates the same provision.

11.4 Para 5.14 (c) of the Hand Book of Procedures, Volume-I, (2015-20) in respect of EPCG Scheme stipulates that where export obligation of any particular block of years is not fulfilled in terms of the above proportions, except in such cases where the export

obligation prescribed for a particular block of years is extended by the Regional Authority, such Authorization holder shall, within 3 months from the expiry of the block of years, pay as Duties of Customs, an amount that is proportionate to the unfulfilled portion of the export obligation vis-a-vis the total export obligation. In addition to the Customs Duty calculatable, interest on the same is payable. Customs Notification too, incorporates the same provision.

11.5 Thus. in both the cases, Advance Authorization under Chapter 4 & EPCG under Chapter 5 of the HBP, the statutory provisions have been made for payment of Duty in proportion to the unfulfilled EO. This made room for part compliance and has offered for remedial measures. The same provisions have been duly incorporated in the corresponding Customs Notifications.

11.6. Contrary to above provisions, in the case of imports under Advance Authorisation with pre-import and physical export conditions for the purposes of availing IGST exemptions, both the Policy as well as the Customs Notifications are silent on splitting of an Advance Authorisation. This clearly indicates that the legislative intent is totally different in so far as exemption from IGST is concerned. It has not come with a rider allowing part compliance. Therefore, once vitiated, the IGST exemption would not be applicable on entire imports made under the Authorisation.

12. Violations in respect of the Foreign Trade Policy (2015-20) and the condition of the Notification No. 79/2017-Cus dated 13-10-2017 in respect of the imports made by the importer:-

12.1 Whereas Customs Notification No.79/2017 dated 13-10-2017, was issued extending benefit of exemption of IGST (Integrated Goods & Service Tax), on the input raw materials, when imported under Advance Authorizations. The original Customs Notifications No.18/2015 dated 01-04-2015, that governs imports under Advance Authorizations, has been suitably amended to incorporate such additional benefit to the importers, by introduction of the said Notification. It was of course specifically mentioned in the said Notification that "the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of Section 3 of the said Customs Tariff Act shall be subject to pre-import condition;" therefore, for the purpose of availing the benefit of exemption from payment of IGST, one is required to comply with the pre-import condition. Pre-import condition demands that the entire materials imported under Advance Authorizations should be utilized exclusively for the purpose of manufacture of finished goods, which would be exported out of India. Therefore, if the goods are exported before commencement of import or even after commencement of exports, by manufacturing such materials out of raw materials which were not imported under the respective Advance Authorization, the pre-import condition is violated.

12.2 DGFT Notification No. 33/2015-20 dated 13-10-2017 amended the Para 4.14 of the Foreign Trade Policy (2015-20). It has been clearly stated in the said Para 4.14 of the Policy that-

> *" imports under Advance Authorisation for physical exports are also exempt from whole of the integrated tax and Compensation Cess leviable under subsection (7) and sub-section (9) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be provided in the notification issued by Department of Revenue, and such imports shall be subject to pre-import condition."*

Basically, the said notification brought the same changes in the Policy, which have been incorporated in the Customs Notification by the aforementioned amendment.

12.3 For the purpose of availing the benefit of exemption from payment of IGST in terms of Para 4.14 of the Foreign Trade Policy (2015-20) and the corresponding Customs Notification No.79/2017-Cus dated 13-10-2017, it is obligatory to comply with the pre-import as well as physical export conditions. Therefore, if for reasons as elaborated in Paragraph 4.3 above, the Duty-free materials are not subjected to the process of manufacture of finished goods, which are in turn exported under the subject Advance Authorization, condition of pre-import gets violated.

12.4 Combined provisions of the Foreign Trade Policy and the subject Customs Notifications, clearly mandate that only imports under pre-import condition would be

allowed with the benefit of such exemption subject to physical exports. Therefore, no such exemption can be availed, in respect of the Advance Authorizations, against which exports have already been made before commencement of import or where the goods are supplied under deemed exports. The importer failed to comply with the aforementioned conditions.

13. Quantification of Duty foregone: -

From the discussion made in the foregoing paras, it appears that M/s. Goldstab Organics Pvt. Ltd., Plot No. 2816 Chemical Zone, GIDC 8A, Valsad, Gujarat imported Duty free goods availing the benefit of 17 Licenses issued under Advance Authorisation Scheme during the period from 13.10.2017 to 10.01.2019. The details of the Licenses and goods imported availing the benefit of these Licenses are mentioned as per Annexure I attached to the Show Cause Notice. Further, on scrutiny of data and import details, it is noticed that the importer had imported 2981.079 MT of Duty free goods having assessable value of **Rs.27,74,86,711/-** vide 61 Bills of Entry wherein IGST foregone is **Rs.5,39,34,351/-** (details as per Annexure IIA, IIB & II attached to the Show cause Notice). Out of the said Duty amount of IGST foregone, the importer had paid **Rs. 2,67,91,052/-** in respect of 38 Bills of Entry (Details as per Annexure III attached to the Show Cause Notice).

14. Contravention of the statutory Provisions: -

14.1 Whereas in terms of Section 46 of the Customs Act, 1962, while presenting the Bills of Entry before the Customs Authority for clearance of the imported goods, it was the duty of the importer to declare whether or not they complied with the conditions of pre-import and/or physical export in respect of the Advance Authorizations under which imports were being made availing benefit of IGST exemption. The law demands true facts to be declared by the importer. It was the duty of the importer to pronounce that the said pre-import and/or physical exports conditions could not be followed in respect of the subject Advance Authorizations.As the importer has been working under the regime of self-assessment, where they have been given liberty to determine every aspect of an imported consignment from classification to declaration of value of the goods, it was the sole responsibility of the importer to place correct facts and figures before the Assessing Authority. In the material case, the importer has failed to comply with the requirements of law and incorrectly availed benefit of exemption of Notification No.79/2017-Cus dated 13-10-2017. This has therefore, resulted in violation of Section 46 of the Customs Act, 1962.

14.2 M/s. Goldstab Organics Pvt. Ltd., appear to have wilfully suppressed the facts that they had not used Duty free imported materials in manufacturing of exported goods. It was the duty of the importer to declare whether or not they complied with the conditions of pre-import and/or physical export in respect of the Advance Authorizations under which imports were being made availing benefit of IGST exemption. The above acts of omission and commission on the part of the importer appear to have rendered the imported goods cleared under Sixty One Bills of Entry as listed in Annexure 'II' to the Show Cause Notice having a total assessable value of **Rs.27,74,86,711/-**(Rupees Twenty Seven Crore, Seventy Four Lakh, Eighty Six Thousand, Seven Hundred and Eleven Only)liable to confiscation under Section 111(o) of the Customs Act, 1962 as detailed above. The IGST amounting to **Rs.Rs.5,39,34,351/-**(Rupees Five Crore, Thirty Nine Lakh, Thirty Four Thousand, Three Hundred and Fifty One only)not paid by the importer is liable to be recovered under Section 28(4) of the Customs Act, 1962.

14.3 The importer failed to comply with the conditions laid down under the relevant Customs Notification as well as the DGFT Notification and the provisions of the Foreign Trade Policy (2015-20), as discussed in the foregoing paras. Therefore, the amount of IGST not paid, is recoverable under Section 28(4) of the Customs Act, 1962 along with interest.

14.4 With the introduction of self-assessment under the Customs Act, more faith is bestowed on the importer, as the practice of routine assessment, concurrent audit and examination has been dispensed with and the importers have been assigned with the responsibility of assessing their own goods under Section 17 of the Customs Act, 1962. As a part of self-assessment by the importer, it was the duty of the importer to present correct facts and declare to the Customs Authority about their inability to comply with the conditions laid down in the Customs Notification, while seeking

benefit of exemption under Notification No. 79/2017-Cus dated 13-10-2017. However, contrary to this, they availed benefit of the subject Notification for the subject goods, without complying with the conditions laid down in the exemption Notification in violation of Section 17 of the Customs Act, 1962. Amount of Customs Duty attributable to such benefit availed in the form of exemption of IGST, is therefore, recoverable from them under Section 28(4) of the Customs Act, 1962 along with appropriate interest under Section 28AA of the Customs Act, 1962.

14.5 The importer failed to comply with the pre-import condition of the Notification and imported goods Duty free by availing benefit of the same without observing condition, which they were duty bound to comply. This has led to contravention of the provisions of the Notification No. 79/2017-Cus dated 13-10-2017, and the Foreign Trade Policy (2015-20), which rendered the goods liable to confiscation under Section 111(o) of the Customs Act, 1962.

14.6 Section 114A of the Customs Act, 1962, stipulates that where the Duty has not been levied or has been short-levied by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the Duty or interest, as the case may be, as determined under sub-section (8) of Section 28 shall also be liable to pay a penalty equal to the Duty or interest so determined. It appears that the Noticee has deliberately suppressed the fact of their failure to comply with the conditions of pre-import/physical export in respect of the impugned Advance Authorizations, which they were well aware of at the time of commencement of import itself, from the Customs Authority. Such an act of deliberation appears to have rendered them liable to penalty under Section 114A of the Customs Act, 1962.

14.7 Section 124 of the Customs Act, 1962, states that no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person:

(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter;

14.8 Therefore, while Section 28 gives authority to recover Customs Duty, short paid or not-paid, and Section 111(o) of the Act, hold goods liable for confiscation in case such goods are imported by availing benefit of an exemption Notification and the importer fails to comply with and/or observe conditions laid down in the Notification, Section 124 & Section 28 of the Customs Act, 1962, authorise the proper Officer to issue Show Cause Notice for confiscation of the goods, recovery of Customs Duty and imposition of penalty in terms of Section 112(a) of the Customs Act, 1962.

15. As recorded hereinabove, a Show Cause Notice dated 09/09/2022 from File No. VIII/10-11/Commr./O&A/2022-23 was issued by the Commissioner of Customs, Customs, Ahmedabad to M/s. Goldstab Organics Pvt. Ltd., Plot No. 2816 Chemical Zone, GIDC 8A, Valsad, Gujarat. In the show cause notice so issued following proposals were made on the noticee:

(a) Customs Duty amounting to **Rs.5,39,34,351/-**(Rupees Five Crore, Thirty Nine Lakh, Thirty Four Thousand, Three Hundred and Fifty One only)in the form of IGST saved in course of imports of the goods through ICD Tumb under the Advance Authorizations and the corresponding Bills of Entry as mentioned in Annexure-I, IIA & IIB (consolidated in Annexure-II) attached to the Show Cause Notice, in respect of which benefit of exemption under Customs Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017, was incorrectly availed, without complying with the obligatory pre-import condition as stipulated in the said Notification, and also for contravening provisions of Para 4.14 of the Foreign Trade Policy (2015-20), should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 and theCustoms Duty amounting to **Rs. 2,67,91,052/-**(Rupees Two Crore, Sixty Seven Lakh, Ninety One Thousand and Fifty Two only)inthe form of IGST,paid by

them(as per details in Annexure III attached to the said Show Cause Notice) should not be appropriated against the above demand;

(b) Subject goods having assessable value of **Rs.27,74,86,711/-**(Rupees Twenty Seven Crore, Seventy Four Lakh, Eighty Six Thousand, Seven Hundred and Eleven Only)imported through ICD Tumb, under the subject Advance Authorizations shall not be held liable for confiscation under Section 111(o) of the Customs Act, 1962 for being imported availing incorrect exemption of IGST in terms of the Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017, without complying with obligatory pre-import condition laid down under the said Notification;

(c) Interest should not be demanded and recovered from them under Section 28AA of the Customs Act, 1962 on the Customs Duty demanded at (a) above;

(d) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962, for improper importation of goods availing exemption of Notification and without observance of the conditions set out in the Notification, and also by reasons of misrepresentation and suppression of facts with an intent to evade payment of Customs Duty as elaborated above resulting in non-payment of Duty,which rendered the goods liable to confiscation under Section 111(o) of the Customs Act, 1962, and also rendered Customs Duty recoverable under Section 28(4) of the Customs Act, 1962;

(e) Penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962 for improper importation of goods availing exemption under Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017, without observance of the pre-import and/or physical export conditions set out in the Notification, resulting in non-payment of Customs Duty, which rendered the goods liable to confiscation under Section 111(o) of the Customs Act, 1962.

(f) Bonds executed by them at the time of import should not be enforced in terms of Section 143(3) of the Customs Act, 1962, for recovery of the Customs Duty as mentioned above and interest thereupon.

TRANSFER OF CASE IN CALL-BOOK AND RETRIEVAL OF CASE FROM CALL-BOOK FOR ADJUDICATION PROCEEDINGS:

16. On the similar issue, the Hon'ble High Court, Gujarat in the case of M/s. Shri Jagdamba Polymers Ltd. Vs. Union of India and in the case of M/s. Maxim Tubes Company Pvt. Ltd. had held that mandatory fulfilment of a 'pre-import condition', during October 13, 2017 to January 9, 2019, incorporated in the Foreign Trade Policy of 2015-2020 ("FTP") and Handbook of Procedures 20152020 ("HBP) by Notification No. 33/2015-20 and Notification No. 79/2015-Customs, both dated 13.10.2017, in order to claim exemption of Integrated Goods and Services Tax ("IGST") and GST compensation cess on input imported into India for the production of goods to be exported from India, on the strength of an advance authorization ("AA") was arbitrary and unreasonable. However, the aforesaid judgment and order of Hon'ble Gujarat High Court was challenged by the department before Hon'ble Supreme Court and the Hon'ble Apex Court had stayed the Hon'ble Gujarat High Court decision ibid. During the pendency of SLP/appeals filed by the department, all the Show Cause Notices issued (SCNs) by the department on the similar grounds (including the subject Show Cause Notice) were ordered to be kept in abeyance and transferred to call book. The Noticee vide letter File No. VIII/10-11/Commr./ O&A/2022-23 dated 03/10/2022 was accordingly informed about the reason for non-determination in terms of provisions of Section 28(9A) of the Customs Act, 1962

16.1 Further, the Hon'ble Supreme Court in the case of Union of India Vs. M/s. Cosmos Films Ltd. reported as 2023 (72) GSTL 147 (SC) has overruled judgement of Hon'ble High Court of Gujarat and has held that pre-import condition, during October, 2017 to January, 2019 in Advance Authorization Scheme was valid. In pursuance of the said judgement passed by the Hon'ble Supreme Court the subject Show Cause

Notice was retrieved from Call Book for adjudication proceedings. Accordingly, the time limit specified in Section 28 (9) ibid shall apply from the date when the reason specified under Section 28 (9A) has been ceased to exist i.e. 28.04.2023.

DEFENSE SUBMISSIONS

17. M/s. Goldstab Organics Pvt. Ltd., Plot No. 2816 Chemical Zone, GIDC 8A, Valsad, Gujarat (Noticee) had furnished their written submissions dated 15/03/2023, wherein the following was submitted: –

17.1 The disputed issue is duly decided by Hon'ble Gujarat High court in case of M/s. Maxim Tubes Company Pvt.Ltd V/s. Union of India by holding that "pre-import" condition imposed wef.13.10.2017 under Advance Authorization Noti No.18/2015-Cus dated 1.4.2015 as amended by Noti. No.79/2017-Cus dated 13.10.2017 is not applicable to Advance Authorizations issued prior to 13.10.2017 and therefore the captioned SCN is not maintainable.

17.1.1 that the Hon'ble Gujarat Court in the case of Maxim Tubes Company Pvt.Ltd. V/s. Union of India, reported in 2019 (368) ELT 337 (Guj) is pleased to strike down the "pre-import condition" in paragraph 4.14 of the Foreign Trade Policy. 2015-2020 inserted vide clause (xii) in Notification 0.18/2015-Cus vide Notification No.79/2017-Cus dated 13.10.2017. This Hon'ble Court, inter alia, pleased to hold as follows:

"The "pre-import condition" contained in paragraph 4.14 of the Foreign Trade Policy, 2015-2020 inserted vide Notification No.33/2015-2020 dated 13.10.2017 and inserted vide clause (xii) in Notification 0.18/2015-Cus vide Notification No.79/2017-Cus dated 13.10.2017, are hereby struck down as being ultra vires the Advance Authorisation Scheme as contained in the Foreign Trade Policy, 2015-2020 as well as the provisions of the Handbook of Procedures. Consequently, all proceedings initiated for violation of "pre-import condition" would no longer survive. Rule is made absolute accordingly in each of the petitions, with no order as to costs."

17.1.2 That the effect of the judgment of the Hon'ble Court in the case of Maxim Tubes Company Pvt. Ltd. (supra) is that the pre-import condition was never in force at any time and the show cause notice seeking to deny the exemption under Notification No.18/2015-Cus dated 01.04.2015, as amended by Noti. No.79/2017-Cus dated 13.10.2017 for the alleged contravention of pre-import condition is not valid in law.

17.1.3 That, any show cause notice contrary to the binding judgment of the Hon'ble Gujarat High Court is not maintainable and is liable to be quashed and set aside.

17.1.4 Without prejudice to the aforesaid and in any event, it was submitted that the pre-import condition and Condition of Physical export introduced by DGFT Noti. No. 33/2015 dated 13.10.2017 and Noti. No.79/2017-Cus dared 13.10.2017 cannot and ought not to have been applied to the Advance Authorizations issued prior to 13.10.2017.

17.1.5 That in the present case, out of 15 Advance Authorizations, 13 (Thirteen) Advance Authorizations were issued before 13.10.2017 (for disputed balance liability).

17.1.6 That it is settled law that provisions of the FTP, as applicable on the date of issue of Authorizations are relevant and not any change subsequent to the issue of Authorizations.

17.1.7 The Hon'ble Apex Court in the case of **Jain Exports Private Limited-V/S UOI 1992 (61) E.L.T. 173 (S.C.)** has held that the policy provision of 1980-81 when the licenses were issued will apply and not when the actual import took place and the synopsis of the judgment reads as follows.

"Import policy Licence issued in 1980-81 Policy provisions of 1980-81 applicable and not of the time when import actually took place. –

It is not in dispute that the relevant import policy to be referred to is of the year 1980-81 as all the licences were issued during that period. The Collector found and the High Court has not recorded a different finding that when the licence was first revalidated on 18-1-1982, such revalidation was subject to paragraph 215 of the Import Policy of 1981-82. Again, while revalidating some of the licences on 25-9-1982, it was stipulated that during the extended period, items which do not appear in Appendix 5 and 7 of Import Policy of 1982-83 could not be allowed to be imported and items which appear in Appendix 26 of the Import Policy of 1982-83 will also not be allowed to be imported. The Collector turned down the plea that the licences allowed the import of items appearing in Appendix 5 and 7 of 1979-80 Policy and 1982-83 Policy in addition to the items appearing in the 0. G.L. and industrial coconut oil. In the instant case, the licences were of either of 1980 or 1981 and were revalidated from time to time. The High Court has come to the correct conclusion that the terms of the Import Policy of 1980-81 would apply to the facts of these cases, [paras 2, 3]"

Para No.2 and 3 of judgment are reproduced below for sake of reference.

2. The following common contentions have been advanced by learnedcounsel for the appellants :-

(1) The Import Policy of which year would be applicable to the facts of the present case the period during which the licences were issued or the time when import actually took place.

(2) Whether "coconut oil" appearing in para 5 of Appendix 9 of the Import Policy of 1980-81 was confined to the edible variety or covered the individuali[4] variety.

(3) Whether in the face of the decision of the Board and Central Government as the statutory appellate and revisional authorities, it was open to the Collector functioning in lower tier to take a contrary view of the matter in exercise of quasi-judicial jurisdiction; and

(4) Whether the order of the Collector was vitiated for breach of rules of natural justice, and collateral considerations in the making of the orders.

It is not in dispute that the relevant import policy to be referred to is of the year 1980-81 as all the licences were issued during that period. The Collector found and theHigh Court has not recorded a different finding that when the licence was firstrevalidated on 18-1-1982, such revalidation was subject to paragraph 215 of theImport Policy of 1981-82. Again while revalidating some of the licences on 25-9-1982, it was stipulated that during the extended period, items which do not appear inAppendix 5 and 7 of Import Policy of 1982-83 could not be allowed to be importedand items which appear in Appendix 26 of the Import Policy of 1982-83 will also notbe allowed to be imported. The Collector turned down the plea that the licencesallowed the import of items appearing in Appendix 5 and 7 of 1979-80 Policy and1982-83 Policy in addition to the items appearing in the O.G.L. and industrialcoconut oil. In the instant case, the licences were of either of 1980 or 1981 and wererevalidated from time to time. For convenience we may refer to a sample order ofrevalidation dated 28-6-1982. Revalidation was subject to the following conditions :-

"This licence is revalidated for a further period of six months from the date ofrevalidation with the condition that during the extended period of validity the itemswhich do not appear in Appendix 5 and 7 of the Import Policy of 1982-83 will not beimported. This licence will also not be valid for the import of items appearing inAppendix 26 of the Import Policy of 1982-83 during the extended period of validity."

3. The High Court has come to the correct conclusion that the terms of the Import Policy of 1980-81 would apply to the facts of these cases.

17.1.8 The Hon'ble Bombay High Court, following the judgment of the Hon'ble Apex Court, in the case of **Lactose (I) Private Limited reported in 2017 (355) E.L.T. 541 (Bom.)** is pleased to hold thus:

EXIM - Duty Free Import Authorization (DFIA) Licences Clearance of lactose against DFIA Licence issued against export of biscuits - Policy Circular No. 13/2011, dated 31-1-2011 issued by Director General of Foreign Trade clarifying that import of Lactose/Mannitol Sodium Saccharine and other artificial sweetening agent not allowed under sugar - Circular not applicable to DFIA Licence bearing endorsement of transfer was issued prior to issuance of Circular Notification No. 98/2009-Cus. applicable to import of lactose Order of Appellate Tribunal affirmed. [1997 (90) E.L.T. 22 (Bom.); 1996 (82) E.L.T. 164 (S.C.); 2016 (344) E.L.T. 161 (Bom.) relied on]. [para 6]

6. Having heard the arguments we are of the considered view that the issue of the Policy Circular being applicable provided it is issued prior to the date of issuance of licence is no longer res integra. We place our reliance upon the judgment of the Supreme Court of India in S.B. International Limited (supra) and the judgment of the Division Bench of this Court in Sonia Fisheries (supra) which will apply to the facts of the present case. In a recent judgment of this Court in Commissioner of Customs (Export) v. USMS Saffron Co. Inc. reported in 2016 (344) E.L.T. 161 (Bom.), it was held that it is the DFIA Licence in question is material and where the DFIA does not contain any entry restricting saffron and the Licensing Authority did not deem it proper to impose any liability, there was no violation of any of the conditions of the DFIA and the Notification No. 98/2009 allowing the duty free import is applicable. In the present case it is an admitted fact that the DFIA Licence bearing endorsement of transfer was issued prior to the issuance of the Circular dated 31-1-2011 and hence, the Notification No. 98/2009, dated 11-9-2009 was applicable in the case of the import of lactose. The CESTAT upon considering the facts of the present case is justified in arriving at the finding that the change in Policy would not be applicable to the licence issued prior thereto and hence the respondents are entitled to the benefit of Notification No. 98/2009- Cus., in terms of the DFIA present to the Customs. We concur with the impugned order.

17.1.9 The Hon'ble Punjab and Haryana High court in case of **Pushpanjali Floriculture Pvt.Ltd V/s. Union of India, 2016 (340) E.L.T. 32 (P & H)** has also held that the export obligation discharged prior to issuance of DIFA license will be governed by the provisions prevailing at the time of exports and any subsequent amendment will not apply. The synopsis of the pronouncements reads as follows.

EXIM-DFIAs Issued on post-export basis Exports in fulfilment of Export Obligation thereunder effected by exporter/licence holder prior to issuance of DFIAs Para 4.1.15 inserted in FTP by DGFT Notification No. 31 (RE-2013)/2009-14, dated 1-8-2013 stipulating that DFIA would not be redeemed wherever SION permitted use of generic input or alternative inputs, unless name of specific inputs was indicated/endorsed in relevant Shipping Bills (S/Bs), and inputs, so endorsed, matched description in relevant S/Bs Same point found in Para 2 of consequent DGFT Public Notice No. 35 (RE-2013)/2009-14, dated 30-10-2013-DGFT Notification No. 90 (RE-2013)/2009-14, dated 21-8-2014 stipulating that quantities or inputspermitted for import have to be indicated inshipping bill HELD: Above notifications, circular and public notice were unsustainable, illegal, and struck down It is impossible for any additional indication/endorsement to be entered in SB where exports had already been effected Hence, requiring holder/transferee of such DFIAs to comply with new stipulations was impossibility and insistence thereon was against principle that no person could be required, by law, to perform impossible Para 4 ibid was absurd and showed non-application of mind of issuing authority Same absurdity was found in Para 2 ibid Also, neither Section 5 of Foreign Trade (Development and Regulation) Act, 1992, nor Para 1.2 of FTP allow retrospective divesting of rights available to Licence holder/subsequent transferee, of DFIA. This also flows from principle of promissory estoppel. Importer could be required only to import inputs which have actually been used in products which already stand exported. SION norms are notified to prescribe permissible inputs against any export product. The DFIA is issued on such standard basis. It cannot be argued that what is contemplated by these clauses is only replenishment, as replenishment is an entirely independent concept, in respect of which the FTP and the HOP

contains separate clauses. We can only understand these clauses, i.e., Para 4 of the impugned Notification dated 1- 8-2013, and Para 2 of the impugned Public Notice dated 30-10-2013, as stipulating that, from the product which already stands exported, the inputs used in the manufacture of thereof should somehow be extracted, and only such inputs be allowed to be subsequently imported into India. To say the least, such requirement is manifestly absurd, and it's very incorporation, in the impugned Notification and Public Notice, reflective, as the learned Senior Counsel has correctly emphasized, of total non-application of mind, on the part of the authorities issuing the said Notification/Public Notice. Indeed, on the face of it, it appears that these covenants, by their very nature were never intended to cover the cases of post-export DFIA or transferees of such DFIAs. Else, the DFIAs would be rendered worthless for all such holders/transferees of the DFIAs. This, in our view, could never have been the intention of a beneficial schemes such as the DFIA Scheme. This would also flow from the principle of promissory estoppel, inasmuch as, at the time of issuance of the DFIAs, it was held out by the respondent to the DFIA holders as well as, consequently, to the transferees thereof, that all benefits accruing under the said DFIAs read with the then existing FTP, HOP and DGFT Circulars, etc., would be available thereunder. It was on the basis of this promise, as held out by the respondent, that the petitioner invested considerable amounts in purchasing the said DFIAs from the original holders thereof in the belief that import benefits available to the said DFIAs at the time of issuance thereof would not be denied to it merely by erroneously applying the restrictions which were introduced thereafter. Any other interpretation would also render the statutory SION norms a dead letter.DFIA is issued in terms of the SION norms. Duty free import benefits on all items referred to in the said licences as per the SION as on date of its issuance have, therefore, to be guaranteed to the licence holder as well as to all bona fide transferees thereof. Such benefit cannot be whittled down and truncated on the basis of any notification or executive instructions that may be subsequently issued after issuance of the DFIA. All such notifications or instructions would, therefore, be inapplicable or liable to be struck down. In view of the above discussion, the writ petition of the petitioner is partially allowed in the following terms: (i) Clause 4 of Notification No. 31 (RE-2013)/2009-14, dated 1-8-2013, Clause 2 of Public Notice No. 35 (RE-2013)/2009-14, dated 30-10-2013, and Clause 3 of Notification No. 90 (RE-2013)/2009-14, dated 21-8- 2014 are struck down. (ii) It is declared that the rest of the said impugned Notification No. 31 (RE-2013)/2009-14, dated 1-8-2013, Public Notice No. 35 (RE-2013)/2009-14, dated 30-10-2013, and Notification No. 90 (RE-2013)/2009-14, dated 21-8-2014, would not apply to DFIAs issued prior to 1-8-2013, whether they be in the hands of the holders or of transferees thereof, provided, of course, that the transfer of the DFIAs has been effected after securing necessary permission of the DGFT therefor. The entitlement under the DFIA shall be as per the SION as it existed on the date of issuance of the DFIAS. [paras 25, 27, 28, 29, 34, 35, 37]

17.1.10 That the impugned show cause notice seeking to demand duty of customs under Section 3 of the Customs Tariff Act, 1975 in respect of goods covered by the Advance Authorization issued prior to 13.10.2017 for alleged contravention of pre-import and physical exports is clearly invalid and unsustainable in law.

17.2 **On introduction of GST from July 2017 the exemption from payment of CVD (IGST) was withdrawn for imports under Advance Authorization Scheme vide Noti.No.18/2015-Cus dated 1.4.2015 as amended by Noti. No.26/2017-Cus dated 29.6.2017, however the Hon'ble Delhi High court in many cases and subsequently also affirmed by Hon'ble Supreme court has allowed the exemption in respect of Advance Authorization issued prior to July 2017.**

17.2.1 On introduction of GST from July 2017, the government has withdrawn the exemption of CVD (IGST) against import under Advance Authorization Scheme vide Noti. No. 18/2015-Cus dated 1.4.2015 as amended by Noti. No.26/2017-Cus dated 29.6.2017.

17.2.2 As the exemption was available prior to introduction of GST, many taxpayers challenged the withdrawal of exemption in respect of Advance Authorization issued prior to July 2017 where export orders were already obtained and are required to be fulfilled and prayed for status quo in respect of Advance Authorizations issued earlier.

17.2.3 The Hon'ble Delhi High court in many cases allowed the exemption in respect of Advance Authorization issued prior to July 2017 and also subsequently affirmed by Hon'ble Supreme court. The relevant pronouncements are summarized as under.

S. No.	Citation and Head Notes
1	**2017 (4) G.S.T.L. 439 (Del.)** **NARENDRA PLASTIC PRIVATE LIMITED V/S. UNION OF INDIA** EXIM-GST vis-à-vis FTP-IGST on imports under Advance Authorisation Scheme Stay thereon Exemptions available to petitioner on imports under said scheme prior to 1st July, 2017 curtailed by levy of IGST from this date Petitioner not challenging levy of IGST per se, but seeking status quo in respect of Advance Authorisations issued earlier in respect of which export orders already obtained are required to be fulfilled - Evidently export order pending as on said date would get hit if petitioner is required to pay IGST as additional burden on account of new levy cannot be passed on to exporters in this global competitive market - In view of this, as an interim measure, Customs Authorities directed to release consignments imported said scheme, without charging IGST- A list of Advance Authorisations issued prior to said date and export orders pending against such Authorizations be submitted to Customs - Petitioner also directed to give an undertaking that in case, decision of Court goes against him or he fails to fulfil export obligation, he would pay entire IGST with interest on already cleared consignments Section 3 of Customs Tariff Act, 1985 Article 226 of Constitution of India. (paras 10, 11, 12, 13)
2	**2017 (6) G.S.T.L. 449 (Del.) CHEMICO SYNTHETICS LIMITED V/s. UNION OF INDIA** EXIM-GST vis-à-vis FTP-IGST on imports under Advance Authorisation Scheme - Application seeking permission to make duty free imports against Advance Authorization (AA) licences issued to petitioner prior to 1st July, 2017 where period of validity of licences remained unexpired - Interim directions that petitioners be permitted to clear consignments of imports constituting inputs for fulfillment of exportorders placed on it prior to 1st July, 2017 without any additional levies subject to conditions - Petitioner liable to pay entire IGST as was leviable, together with whatever interest as Court may determine at time of final disposal of writ petition - Interim direction to only apply to those imports which are made by petitioner for fulfillment of its export orders placed with it prior to 1st July, 2017 and not to any export order thereafter Section 3 of Customs Tariff Act, 1985 - Article 226 of Constitution of India. (paras 10, 11, 12, 13)
3	**018 (11) G.S.T.L. 27 (Del.)** **NARENDRA PLASTIC PVT. LTD V/s. UNION OF INDIA** Integrated Goods and Services Tax (IGST) Import of raw material under Advance Authorization - Levy - Despite being informed of Court's earlier interim orders dated 11-9-2017 by petitioner, IGST still being levied on aforesaid imports - Petitioner directed to furnish a complete list of Advance Authorisations to departmental counsel so that same may be circulated to all Customs Commissionerates along with aforesaid interim order for necessary compliance - Section 5 of Integrated Goods and Services Tax Act, 2017 - Article 226 of Constitution of India. (paras 2, 3) Order of High Court Compliance thereof Impleading of C.B.E. & C. Since interim order dated 11-9-2017 not being complied with by

	Commissionerates, CBEC impleaded as respondent - Said interim order on issue of levy of IGST on import of raw material under Advance Authorization, be sent to CBEC for circulation amongst all Customs Commissionerates for compliance - Article 226 of Constitution of India. (para 4)
4	**018 (17) G.S.T.L. 222 (Del.)** **JINDAL DYECHEM INDUSTRIES (P) LTD V/s. UNION OF INDIA** Import - Advance licence Imports after introduction of GST Regime - Assessee beneficiary of advance license issued on 17-7-2017 prior to amendment of exemption notification issued on 29-6-2017 and exemption of IGST - Benefit of exemption existed at time of import - Authorities to verify whether assessee fulfilled export obligations pursuant to advance license - To make appropriate and necessary assessment within four months only if assessee did not fulfil obligation. [para 4]
5	**2019 (29) G.S.T.L. 303 (Del.)** **J.T.L. INFRA LIMITED V/s. UNION OF INDIA** IGST Exemption on imports made in GST regime - Advance Authorisation Customs Notification dated 29-6-2017 amended only on 13-10-2017 and prior to said date, exemption to IGST was not in force - Importer eligible to benefit of IGST exemption in terms of order of Delhi Court in Jindal Dyechem (P) Ltd. [2018 (17) G.S.T.L. 222 (Del.)) - Section 25 of Customs Act, 1962. [paras 2, 3]
6	**2019 (29) G.S.T.L. J72 (S.C.)** **Union of India v/s. J.T.L. Infra Ltd. IGST Exemption available on imports made under Authorization in GST regime** The Supreme Court Bench comprising Hon'ble Mr. Justice A.K. Sikri and Hon'ble Mr. Justice S. Abdul Nazeer on 14-12-2018 after condoning the delay dismissed the Special Leave Petition (Civil) Diary No. 40434 of 2018 filed by Union of India against the Judgment and Order dated 4-7-2018 of Delhi High Court in W.P. (C) No. 9949 of 2017 as reported in 2019 (29) G.S.T.L. 303 (Del.) (J.T.L. Infra Ltd. v. Union of India). While dismissing the petition, the Supreme Court passed the following order: "Delay condoned. The Special Leave Petition is dismissed. Pending application(s), if any, stands disposed of accordingly." The Delhi High Court in its impugned order had followed its order passed in Jindal Dyechem (P) Ltd. v. Union of India [2018 (17) G.S.T.L. 222 (Del.)] and had allowed IGST Exemption in terms of the said order in respect of imports made under Advance Authorization in GST regime.
7	**2020 (32) G.S.T.L. J118 (Del.)** **Jindal Dyechem Industries (P) Ltd. V/s. Union of India** Advance Authorization Scheme - Imports made under Advance Licence issued in GST regime but prior to 13-10-2017 whether eligible to IGST exemption? The Delhi High Court Bench comprising Hon'ble Mr. Justice Vipin Sanghi and Hon'ble Mr. Justice A.K. Chawla on 11-10-2019 issued notice in Review Petition No. 426 of 2019 and CM Appl. No. 44837 of 2019 in Writ Petition (C) No. 8677 of 2017 filed by Jindal Dyechem Industries (P) Ltd. against the Judgment and Order dated 16-4-2018 in W.P. (C) No. 8677 of 2017 as reported in 2018 (17) G.S.T.L. 222 (Del.) (Jindal Dyechem Industries (P) Ltd. v. Union of India). While issuing notice, the High Court passed the following order: "The submission of Mr. Bansal is that there is an error apparent on the

	face of the order dated 16-4-2018 inasmuch as, while on the other hand, this Court rightly took note of the fact that the exemption from IGST was granted, for the first time, vide notification dated 13-10-2017 and that such an exemption was not in force on the implementation of the Goods and Services Tax Act w.e.f. 1-7- 2017, on the other hand, this Court recorded in the order dated 16-4-2018 that "In these circumstances, this Court is of the opinion that since the benefit of exemption in fact existed at that point of time..... Issue notice to the petitioner returnable on 6-12-2019." The High Court in its impugned order had held that as the petitioner had made imports in GST regime under Advance Authorization issued on 17-7-2017 and the IGST exemption was not available on that date as same was made available only on 13-10-2017 by amending Customs Notification dated 29-6-2017, it would be most appropriate course for the Departmental authorities to verify as to whether the petitioner in fact had fulfilled the export obligations pursuant to the Advance Authorization. If it did, there is no need for any further action. However, if it did not, then the appropriate and necessary assessment in accordance with law may be resorted to.
8	**2020 (33) G.S.T.L. J128 (S.C.)** **Union of India v/s. India Glycols Limited** Union of India v. India Glycols Limited IGST exemption available on imports made under Advance Licence issued in GST regime The Supreme Court Bench comprising Hon'ble Mr. Justice A.M. Khanwilkar and Hon'ble Mr. Justice Ajay Rastogi on 29-3-2019 disposed of the Petition for Special Leave to Appeal (Civil) No. 452 of 2019 with SLP (C) Nos. 453, 456, 454- 455 and 457 of 2019. The Petition for Special Leave to Appeal No. 425 of 2019 filed by Union of India against the Judgment and Order dated 16-7-2018 of Delhi High Court in Writ Petition (C) No. 8423 of 2017 (India Glycols Limited v. Union of India) and The SLP (C) Nos. 454-455 of 2019 filed against Judgment and Order dated 16-4-2018 of Delhi High Court in W.P. (C) No. 8677 of 2017 and C.M. Appl. No. 35637 of 2017 as reported in 2018 (17) G.S.T.L. 222 (Del.) (Jindal Dyechem Industries (P) Ltd. v. Union of India). While disposing of the petition, the Supreme Court passed the following order: "Considering the fact that Special Leave Petition against the relied upon judgment has already been dismissed on 14-12-2018 being SLP (C) Diary No. 40434 of 2018 [2019 (29) G.S.T.L. J72 (S.C.), for the same reasons, this Special Leave Petition must follow the same suit. Accordingly, the Special Leave Petition is disposed of in the same terms. Pending applications, if any, stand disposed of." The Delhi High Court in its impugned order had followed its order passed in Jindal Dyechem (P) Ltd. v. Union of India [2018 (17) G.S.T.L. 222 (Del.)] and had allowed IGST exemption in terms of the said order in respect of the imports made under Advance Licence issued in GST regime.

17.2.4 As per the aforesaid pronouncement also the condition of "pre-import" imposed w.e.f.13.10.2017 cannot be made applicable to Advance Authorization issued prior to 13.10.2017 and based on the aforesaid pronouncement also the captioned SCN is not maintainable.

17.3 Finally the unconditioned exemption from payment of IGST on imports under Advance Authorization Scheme was restored from 10.1.2019 by removing the "pre-import" condition vide Noti. No. 18/2015-Cus dated 1.4.2015 as amended by Noti.No.1/2019-Cus dated 10.1.2019 and the said amendment is to be treated as clarificatory/curative in nature and applicable prior to 10.1.2019 also.

17.3.1 Noti. No.16/2015-Cus dated 1.4.2015 pertains to import under EPGC Scheme.

17.3.2 The above Notification was amended by Noti. No.26/2017-Cus dated 29.6.2017 and on introduction of GST from July 2017 the exemption from the payment of IGST was also withdrawn for importation under EPGC scheme and same was restored only w.e.f. 13.10.2017 by issue of amending Noti. No.79/2017-Cus dated 13.10.2017.

17.3.3 The Hon'ble Gujarat High court in case of **Prince Spintex Pvt. Ltd V/s. Union of India, 2020 (35) GSTL 261(Guj)** and in case of **Radheshyam Spinning Pvt.Ltd V/s. Union of India, 2022 (57) GSTIL 8(Guj)** allowed the exemption against importations made between July 2017 to 13.10.2017 by holding that the amendment carried out on 13.10.2017 is clarificatory /curative in nature and directed the department to refund of IGST paid on reversal thereof. The Synopsis of both the pronouncements reads as follows.

S. No.	Citation and Head Notes
1	**2020 (35) G.S.T.L. 261 (Guj.)** **PRINCE SPINTEX PVT. LTD V/s. UNION OF INDIA** Import under Export Promotion Capital Goods (EPCG) Scheme - Levy of IGST - Amendment to Notification No. 16/2015-Cus. with effect from 1-7-2017 by Notification No. 26/2017-Cus. Validity Requirement for importers to pay IGST and take Input Tax Credit as applicable under GST Rules - Notification No. 16/2015-Cus. though statutory notification issued in exercise of powers under Section 25 of Customs Act, 1962 but not an exemption notification simpliciter Said notification issued to give effect to EPCG Scheme floated under Foreign Trade Policy, an incentive scheme Said notification and amending notifications cannot be equated with statutory notifications ordinarily issued - Commercial invoice issued by exporter on 16-5-2017 but Goods and Services Acts coming into force before actual import of goods - Notification No. 79/2017-Cus. amending Notification No. 16/2015-Cus. with effect from 13-10-2017 and import of capital goods covered by a valid authorisation under EPCG Scheme exempted from payment of Integrated Tax and Goods and Services Tax Compensation Cess No express provision exempting import of goods under EPCG Scheme from payment of Integrated Tax for short-period from 1-7-2017, when Integrated Goods and Services Tax Act, 2017 came into force till 13-10-2017 Clear that intention of Central Government was to grant that total exemption from payment of additional duty under EPCG Scheme - Notification No. 26/2015-Cus. to extent it limited exemption from payment of additional duty under Section 3 of Customs Tariff Act, 1975 to sub-sections (1), (3) and (5) thereof, repugnant to policy declared by Central Government under Chapter 5 of Foreign Trade Policy, 2015-20-Action of Authorities in levying Integrated Tax and Compensation Cess on import of capital goods by assessee under a valid authorisation under EPCG Scheme not being in consonance with Foreign Trade Policy, 2015-20 not sustainable - Addl. D.G.F.T. Trade Notice No. 11/2018, dated 30-6-2017, to extent it states therein that under Chapter 5 importers would need to pay IGST also rendered unsustainable Consequently, subject to fulfilment of conditions contained in Foreign Trade Policy, 2015-20 and exemption Notification No. 16/2015-Cus. as amended from time to time, assessee continue to enjoy exemption from payment of additional duty under sub- section (7) and sub-section (9) of Section 3 of Customs Tariff Act, 1975 even during period 1-7-2017 to 13-10-2017 Assessee entitled to refund of additional duty paid by it during said period. Though the exemption notification has been issued under Section 25 of the Customs Act, it has been issued for the purpose of implementing the EPCG Scheme which holds out a promise that import of capital goods under the scheme would be exempt from payment of additional duty under Section 3 of the Customs Tariff Act. Therefore, the notification has to be read in the context of the EPCG policy keeping in mind the object envisaged by the policy and not in the strict sense as in

	the case of a general exemption under Section 25 of the Customs Act. It was always the intention of the Central Government to exempt imports of capitalgoods under the EPCG Scheme from payment of additional duty under Section 3 of the Customs Tariff Act. Notification No. 79/2017, dated 13th October, 2017, therefore, has to be read as clarificatory or curative in nature, inasmuch as, otherwise it would leave as whole class of importers who had imported capital goods, uncovered during the period 1-7-2017 to 13-10- 2017, allowing the department to levy additional duty under sub-sections (7) and (9) of the Customs Tariff Act on such imports, despite the fact that the Foreign Trade Policy 2015-2020 envisages imports under the EPCG Scheme at zero customs duty. [paras 12, 13, 14, 20, 21, 22, 23, 24, 25, 26, 27, 31, 34, 35, 36, 37, 38, 40, 42] Export Promotion Capital Goods Scheme Exemption from payment of Customs duty under Scheme not an exemption simpliciter Authorisation holder having corresponding obligation to export goods equivalent to six times duty saved on import of such capital goods. [para 10]
2	**2022 (57) G.S.T.L. 8 (Guj.)** **RADHESHYAM SPINNING PVT. LTD V/s. UNION OF INDIA** **R/Special Civil Application No. 20759 of 2018, decided on 29-1-2021** **GST: In respect of Export Promotion Capital Goods (EPCG) Scheme, amendment to Notification No. 16/2015-Cus. exempting IGST paid on import of capital goods would applicable also to imports made during period from 1-7-2017 to 13-10-2017; refund of ITC of IGST under EPCG Scheme would be admissible only after debiting such credit from Electronic Credit Ledger** Export Promotion Capital Goods (EPCG) Scheme - Refund of Input Tax Credit of IGST paid on import of capital goods during period from 1-7-2017 to 13-10- 2017 High Court in Prince Spintex Pvt. Ltd. [2020 (35) G.S.T.L. 261 (Guj.)] holding that amendment made to Notification No. 16/2015-Cus. vide Serial No. 1 of Notification No. 79/2017-Cus. exempting IGST on import of capital goods under aforesaid Scheme also applies to imports made during period from 1-7-2017 to 13-10-2017 and Trade Notice No. 11/2018, dated 30-6-2017 issued by Addl. D.G.F.T. stating that importers need to pay IGST under Chapter 5 of Foreign Trade Policy, 2015-20, not sustainable - In view of such decision, provisions of Section 49A of Central Goods and Services Tax Act, 2017 inserted w.e.f. 1-2-2019 read with Rule 88A of Central Goods and Services Tax Act, 2017 stipulating utilization of Input Tax Credit of IGST first for payment of CGST/SGST and since accumulated ITC of IGST started getting utilized automatically w.e.f. 1-6-2019, date when GST portal started functioning as per amended provisions, Department directed to refund ITC of IGST only after reversing entries of utilization of such credit and debiting said amount from Electronic Credit Ledger. (paras 2 to 5).

17.3.4 That on similar disputed issue the Hon'ble Mumbai High court in the matter of **WP No.157 of 2019 filed by Ms. Sanathan Textiles Pvt.Ltd delivered an order dated 14.11.2022** and in the matter of **WP No.12730 of 2022 filed by M/s. D'décor Home Fabrics Pvt.Ltddelivered and order dated 14.11.2022** also allowed both the petitions by holding that the amendment carried out on 13.10.2017 is clarificatory/curative in nature and exemption was available and further directed the department to refund the payment of IGST along with the interest thereon on reversal thereof and it is gathered that the department has already refunded the amount to both the petitioners.

17.3.5 It was also pointed out that the Hon'ble Mumbai High court has delivered the above pronouncement after considering the minutes of the 22ndGST council meeting recorded along with the discussion notes, file notings which was submitted during the case proceedings by the representative of Union of India and same is recorded in para no.2 to para no.7 of the said pronouncements.

17.3.6 The Hon'ble Mumbai High court after considering the minutes of the 22ndGST council meeting and the intention of the government to avoid financial blockage for exporters under Advance Authorization/EPGC Scheme held that the amendment was clarificatory/curative in nature and ordered for refund of IGST paid by the importers under EPGC scheme.

17.3.7 That the ratio of the aforesaid pronouncements delivered by Hon'ble Gujarat High court and Hon'ble Mumbai High court can be extended to hold that the unconditional exemption restored from 10.1.2019 is clarificatory/curative in nature and same is Mu applicable to imports under Advance Authorization scheme prior to 10.1.2019 also.

17.3.8On the above said ground also the captioned SCN is not maintainable.

17.4 Submissions against proposed confiscation of imported goods under Sec. 111(0) of Customs Act, 1962.

17.4.1 There is no involvement of any improper importation and therefore powers regarding confiscation cannot be exercised.

17.4.2 It is also held in following pronouncements that powers regarding confiscation cannot be exercised when there is no involvement of seizure of goods with provisional release thereof against enforceable security.

S. No.	Particulars
1	**2000 (115) ELT 278 (S.C.)** **Weston Components Ltd. V/s. CC, New Delhi.** Redemption fine imposable even after release of goods on execution of bond - Mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods - Section 125 of Customs Act, 1962
2	**2003 (156) ELT 122 (Tri.-Del.)** **Ram Khazana Electronic V/s. CC, Air Cargo, Jaipur** Redemption fine Goods not available for confiscation - No enforceable security available with department - HELD: Redemption fine could not be imposed-Section 125 of Customs Act, 1962. (para 10)
3	**2004 (169) ELT 68 (Tri.-Del.)** **Mahalaxmi International Export. V/s. CC, Jaipur** Redemption fine Goods neither available for confiscation, nor originally cleared against bond Hence, imposition of redemption not permissible under law Section 125 of Customs Act, 1962. [2003 (156) E.L.T. 122 (Tribunal) followed). [para 10]
4	**004 (175) ELT 880 (Tri.- Kolkata.)** **Rakesh Mehta V/s. CC, Kolkata.** Confiscation of currency - Customs - Currency not available for confiscation nor any bond executed by appellant in favour of Department - Confiscation of currency or imposition of redemption fine not warranted Sections 111(d) and 125 of Customs Act, 1962. (2003 (156) E.L.T. 122 (Tribunal); 2003 (158) E.L.T. 316 (Tribunal) relied on). (Para 5)
5	**2005 (180) ELT 483 (Tri.-Del.)** **Sunsui India Ltd. V/s. CC, Jaipur** Confiscation of goods - Imported goods cleared out of Customs charge after assessment of Bills of Entry and payment of duty - Investigation

	subsequent to release of goods pointed out undervaluation - Goods never seized, thus though liable to confiscation, was never available with Department for actual confiscation - No question arises of confiscation and giving option to importer to pay fine in lieu of confiscation under Section 125 of Customs Act, 1962. (Para 4] Penalty - Actual confiscation of goods not required for imposition of penalty under Section 112 of Customs Act, 1962. (Para 6)
6	**2009 (235) E.E.T. 623 (Tri. - LB)** **Shiv Kripa Ispat Pvt. Ltd., V/s. CCE. Nashik** Confiscation and redemption fine Non-availability of goods Whether goods can be confiscated and redemption fine imposed even if they are not available for confiscation Identical issue considered in 2008 (229) E.E.T. 185 (P&H) and such order is binding High Court in said order held that redemption fine in lieu of confiscation was not imposable when goods were allowed to be cleared without execution of bond/undertaking - Similar view taken by Tribunal also in 1999 (112) E.L.T. 400 (Tribunal) and affirmed by Supreme Court [2005 (184) E.L.T. A36 (S.C.)) Binding precedents under Customs Act, 1962 applicable to impugned case relating to excisable goods - Goods cannot be confiscated when not available and redemption fine not imposable -Sections 111 and 125 ibid - Rule 25 of Central Excise Rules. 2002. (paras 2, 3, 9, 10,11, 12, 13]
7	**2012 (280) ELT 88 (Tri. - Ahmd.)** **CCE, Vadodara-II Vs. Asoj Soft Caps Pvt. Ltd.** Redemption fine - Imposition of - Goods ordered to be confiscated, though entire goods were not available - Part of the goods already cleared - HELD: Redemption fine can be imposed only in respect of goods seized and provisionally released - Rules 25 and 26 of Central Excise Rules, 2002. [para 3]
8	**2017 (357) E.E.T. 1264 (Tri. - Mumbai)** **JAGSON INTERNATIONAL LTD V/s. COMMR. OF CUS. (PREVENTIVE), MUMBAI** Redemption fine Customs Section 125 of Customs Act, 1962 not empowers determination of assessment and not to be resorted to except when duty already been assessed but foregone at the time of import - Imported platform rigs being no longer available at the time of commencement of investigations and never seized nor available for confiscation, redemption on payment of fine not possible. [para 17]
9	**2017 (358) E.L.T. 358 (Tri. - Mumbai)** **COMMISSIONER OF CUSTOMS (IMP.), NHAVA SHEVA V/s.S.B. IMPEX** Redemption fine Imposition of Goods not available for confiscation Goods not seized and released under any bond or undertaking Redemption fine not imposable Section 125 of Customs Act, 1962. [para 6]
10	**2018 (362) E.E.T. 376 (Tri. - Mumbai)** **BHARATHI RUBBER LINING & ALLIED SERVICES P. LTD V/s. C.C. (IMPORT), NHAVA SHEVA** Confiscation and fine It is not sustainable if goods not available for confiscation - Sections 111 and 125 of Customs Act, 1962. (para 7)
11	**2018 (363) E.L.T. 277 (Tri. - Chennai)** **BRAMHANI INDUSTRIES LTD V/s. C.C. (AIRPORT & AIR CARGO), CHENNAI** Confiscation and fine Import When imported goods evidently found as not corresponding in respect of value, confiscation under Section 111(m) of Customs Act, 1962 ordinarily very permissible Also no bar for imposition of redemption fine under Section 125 ibid if no duty liability determined -

	Impugned Section 125 ibid provides for giving owner of goods option to pay in lieu of confiscation such fine as adjudicating officer thinks fit Only proviso to be, such fine shall not exceed market price of goods confiscated less in case of imported good duty chargeable thereon Sections 111(m) and 125 of Customs Act, 1962. [para 10.1] Confiscation/Redemption fine Offending goods already cleared out of Customs charge - When goods not available, no confiscation to be ordered, unless goods cleared under bond, etc. Ordering confiscation as also redemption fine under Section 125 of Customs Act, 1962 not justified by law and therefore set aside Sections 111(m) and 125 of Customs Act, 1962. [para 10.4]
12	**2018 (363) E.L.T. 497 (Tri. - Mumbai)** **MACNAIR EXPORTS PVT. LTD /s. COMMISSIONER OF CUSTOMS (EP), MUMBAI** EXIM Diversion of goods imported under DEEC Scheme to domestic market No evidence to support plea of assessee that goods came to its unit was proof of use of goods in manufacture by itself or supporting manufacturer Existence of any machinery or infrastructure facility of its own carrying out manufacturing activity or manufacturing facility of supporting manufacturer not established Assessee had not come with clean hands to establish its claim that goods imported were not diverted to the market - Demand of duty, imposition of fine as goods are not available for confiscation and imposition of penalties affirmed - Sections 28, 111, 112 and 125 of Customs Act, 1962. (paras 3, 4)
13	**2018 (363) E.L.T. 526 (Tri. - Mumbai)** **PANKAJ KUMAR & CO V/S. COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI** Confiscation, redemption fine and penalty Import of Thiourea Requirement of registration under Insecticides Act, 1968 Import immediately after order of Commissioner (Appeals) classifying goods under Chapter 29 as chemicals and holding that there was no need for registration under Insecticides Act, 1968 Goods not detained or seized and not available for confiscation or released against bond or bank guarantee Confiscation cannot be ordered, consequently no redemption can be imposed - Imposition of penalty also not justified Sections 111, 112 and 125 of Customs Act, 1962. [paras 4, 5]
14	**2018 (363) E.E.T. 908 (Tri. - Mumbai)** **N.K. CHAUDHARI V/s. COMMISSIONER OF CUSTOMS (EP), MUMBAI** Confiscation and redemption fine Non-availability of goods In view of Larger Bench's decision in 2009 (235) E.L.T. 623 (Tri.-LB.), redemption fine not imposable when goods not available for confiscation Accordingly, redemption fine set aside - Section 125 of Customs Act, 1962. (para 4)
15	**2018 (363) E.E.T. 996 (Tri. - Mumbai)** **TRANSWORLD POLYMERS PVT. LTD V/s. COMMR. OF CUS., NHAVA SHEVA** Valuation (Customs) Undervaluation Documents obtained from foreign supplier on enquiry from Italian Customs showing higher value found to be genuine, invoices, bill of exports, bill of lading matching with those invoices submitted by appellants Undervaluation of goods by appellants established Accordingly, enhancement of value and confirmation of differential duty demand and penalty related to such demand upheld - Section 14 of Customs Act, 1962. Rule 4 of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. (paras 6, 6.1, 6.2, 6.3, 6.4] Confiscation and redemption fine Non-availability of goods - Goods neither available nor the same released on provisional basis therefore, redemption

	fine imposed by adjudicating authority not legal and proper - Sections 111 and 125 of Customs Act, 1962. [para 6.4]
16	**2018 (363) E.L.T. 1021 (Tri. - Mumbai)** **GENX ENTERTAINMENT LTD V/s. COMMISSIONER OF CUS. (AIRPORT), MUMBAI** Demand Limitation Suppression Goods having been cleared in the normal course, proceedings for recovery and confiscation initiated much later Goods when not available for confiscation, no question of redemption of goods under Section 125 of Customs Act, 1962 arises. [para 12]
17	**2018 (364) E.E.T. 407 (Tri. - Mumbai)** **TEJ OVERSEAS V/s. COMMISSIONER OF CUSTOMS, MUMBAI** Confiscation and redemption fine - Non-availability of goods - Redemption fine not imposable, goods not being available for confiscation - Sections 111(m), 111(0) and 125 of Customs Act, 1962. [para 6]
18	**2019 (365) E.L.T. 572 (Tri. - Mumbai)** **HI-TECH ENGINEERS V/s. COMMISSIONER OF CUS. (ACC & IMPORT),** **MUMBAI** Demand - Confiscation of goods - Fraud - Diversion of duty free imports in local markets under garb of Naval clearances Import of goods under exemption Notification No. 150/94-Cus., for intended supply to Indian Navy diverted in open market and never consigned for intended purpose - Store-keeper in Naval Dockyard falsely certified that imported goods meant for use on Board Indian Naval Ship and given receipt on reverse of shipping bill without physically receiving and storing goods in Naval Stores or supplying same on Indian Navy Ships HELD: Controller of Procurement, Material Organization's statement clarifying that shipping bills always signed by Controller personally and Store-keeper not authorized to sign any of documents except giving receipt of items Also, illegal diversion of goods stands accepted by partners in their statements - Further, goods exempted from duty in terms of impugned notification only when goods procured by Government of India or shipped on order of department of Govt. of India - None of impugned conditions followed by assessee firms Clear case of evasion of duty by frauds - However, demand for period beyond five years not sustainable - Also, since goods not available for confiscation, no ground to confiscate same and therefore no redemption fine may be imposed - Impugned order upheld except setting aside redemption fine and demands beyond 5 years. [para 5]

174.4.3 Accordingly, powers regarding confiscation cannot be exercised under the provision of Sec. 111(O) of Customs Act, 1962 in this case.

17.5 Submission against proposed imposition of penalty and recovery of interest.

17.5.1 The disputed issue involved in this case is regarding interpretation of the provisions of Exim Policy and exemption Notification which is evident from the various disputed case laws summarized here in above.

17.5.2 There is no involvement of any malafide intention to contravene any of the provisions of Customs Act 1962 or Exim Policy with a deliberate intention to avoid payment of customs duty.

17.5.3 Therefore, the question of imposition of penalty does not arise.

17.5.4 There is no liability and therefore the recovery of intention also does not arise.

17.6 That the captioned SCN is not maintainable based on the above submissions and same may be dropped forthwith.

17.7 That they reserve their right to add, amend or alter the submissions at the time of PH.

18. M/s. Goldstab Organics Pvt. Ltd., Plot No. 2816 Chemical Zone, GIDC 8A, Valsad, Gujarat (Noticee)in continuation of his earlier defence submission dated 15/03/2023, made additional submissions in support of his case vide letter **dated 28/06/2023** as under:

18.1 For implementation of directions of the Hon'ble Supreme Court contained in judgement dated 28th April 2023, passed in Civil Appeal No.290 of 2023 (UOI& Others V/s. Cosmo Films Ltd.,) relating to mandatory fulfillment of pre-import condition, the CBIC has issued Circular No.16/2023-CUS dated 7th June 2023 and for the purpose of carrying forward the direction of Hon'ble Supreme Court, CBIC prescribed procedure in para No.5.2 to be adopted at the port of import (POI) and by all the concerned importers for the purpose of dischargement of liability of IGST with applicable interest thereon through reassessment of Bill of Entry and dischargement of liability against challan generated in the Customs EDI system.

18.2 Accordingly, they decided to opt for the procedure prescribed by CBIC in the above circular for the purpose of dischargement of liability of Rs.3,06,73,018/- in respect of 34 Bills of Entry, in respect of which department had issued SCN No. VIII/10-11/COMMR/O& A/2022-23 dated 9th Sept 2023 issued by Commissioner of Customs, Ahmedabad.

18.3 They accordingly, requested to follow the procedure of reassessment in respect of above Bills of Entry to enable them to make the payment of IGST amount of Rs.3,06,73,018/- through electronic challan to be generated in the Customs EDI system.

18.4 They submitted that no interest is payable on the IGST to be paid by them in view of the recent judgment of the Hon'ble Bombay High Court in the case of **Mahindra and Mahindra Limited reported in 2023-3-CENTAX- 261 (Bombay).** In the said judgement, the Hon'ble High Court considering the provisions contained in Section 3(6), 3A (4) and the amended provisions of Section 9A(8) of the Customs Act, 1975, held that there was no provision for levy of interest and penalty.

18.5 The Hon'ble High Court in paragraphs 35 to 39 held that interest and penalty cannot be imposed in absence of specific provisions for levying and recovering the same. Further, the Hon'ble High Court has observed that levy of interest and penalty is substantive provision which requires clear authority of law and cannot be imposed in absence of specific provisions. Further, the court has also observed that the provisions of Section 28AB of the Customs Act, 1962 cannot be borrowed for levy of interest on CVD or SAD. The relevant extract is reproduced below:

> *"23. In another matter before the Apex Court in Collector of Central Excise, Ahmedabad V/s. Orient Fabrics Pvt. Ltd. 2003 (158) E.L.T. 545 (SC) 2003-TIOL-32-SC-CX, cited by Mr. Sridharan, the question that came up for consideration was as regards to jurisdiction of the authorities under the Central Excise Act, whether it is permissible to resort to penalty proceedings or forfeiture of goods for non-payment of additional duty in terms of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 by taking recourse to the provisions of the Central Excise Act and Rules framed thereunder. There also Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 was similar to the provisions of sub- section (6) of Section 3 and sub-section (4) of Section 3A of the Customs Tariff Act, 1975. While interpreting the provisions, the Court held that it is no longer res integra that when the breach of the provision of the Act is penal in nature or a penalty is imposed by way of additional tax, the constitutional mandate requires a clear authority of law for imposition for the same. Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. The authority has to be specific, explicit and expressly provided.*
>
> *In Orient Fabrics (Supra), the Apex Court interpreted Section 3(3) of Additional Duties of Excise (Goods of Special Importance) Act, 1957 which is pari-materia to Section 3, 3A of the Customs Tariff Act, 1975 and Section 90(4) of the Finance Act, 2000. Hence, the decision of the Hon'ble Apex Court in Orient Fabrics (Supra) would directly apply.*

34. Section 9A(8) of the Customs Tariff Act, 1975 which borrowed provisions from Customs Act, 1962 did not borrow provisions relating to interest and penalty. The Hon'ble Courts, in judgments cited supra, held that in view of no specific borrowing, no interest and penalty can be imposed on anti-dumping duty. Later on, Finance (No.2) Act, 2004 amended sub-section (8) of Section 9A suitably to include interest and penalty. However, similar amendments have not been made to Section 3(6) of the Customs Tariff Act, 1975 relating to CVD, i.e., additional duty equal to excise duty or Section 3A(4) of Customs Tariff Act, 1975 relating to SAD, i.e., special additional duty or surcharge under Section 9(3) of the Finance Act, 2000.

35...

37. In view of the above, imposing interest and penalty on the portion of demand pertaining to surcharge or additional duty of customs or special additional duty of customs is incorrect and without jurisdiction."

18.6 They further submitted that the ratio of the above decision of the Hon'ble High Court is squarely applicable to levy of interest on IGST as the Hon'ble High Court has examined the very provisions contained in Section 3(12) of the Customs Tariff Act, 1975.

18.7 Based on the binding judgment of the Hon'ble High Court of Bombay, no interest under section 3(12) can be demanded on the IGST levied u/s. 3(7) of the Customs Tariff Act, 1975.

18.8 In view of above, they requested to generate E-challan for payment of IGST on above listed BOE's.

PERSONAL HEARING: -

19. The noticee vide letter File No. VIII/10-11/O&A/2022-23 dated 15/01/2024 and 23/01/2024 were granted opportunity to be heard in person on 23/01/2024. Shri Sumit Shah, CFO of M/s. Goldstab Organics Pvt. Ltd., Valsad, Gujarat appeared before me on 23/01/2024 for Personal Hearing.

19.1 Shri Sumit Shah, CFO of M/s. Goldstab Organics Pvt. Ltd., Valsad, Gujarat had attended the Personal Hearing on 23/01/2024 in the matter and submitted additional submissions in support of their case vide letter **dated 22/01/2024**. Shri Sumit Shah during Personal Hearing reiterated the submission made vide their letter dated 22/01/2024.

20. M/s. Goldstab Organics Pvt. Ltd., Plot No. 2816 Chemical Zone, GIDC 8A, Valsad, Gujarat (Noticee)in reference to the personal hearing letter File No. dated 15/01/2024 and 23/01/2024 made additional submissions in support of his case vide letter **dated 22/01/2024** as under:

20.1 They have already filed detailed reply letter dated 15.3.2023 and rely upon all the submissions made therein for the purpose of defense.

20.2 The disputed issue is regarding demand of customs duty of Rs.5,39,34,351/- (correct amount is Rs.5,31,43,074/- based on the reassessment of Bills of Entry) for alleged violation of pre-import condition for imports under Advance Authorization Scheme during 13.10.2017 to 9.1.2019 and for proposed appropriation of customs duty of Rs.2,67,91,052/-(correct amount is Rs.2,24,70,056/-) together with proposal for confiscation/recovery of interest and for imposition of penalty.

20.3 In para no.4 of the reply letter they had relied upon the judgment of Hon'ble Gujarat High court in case of Maxim Tubes Company Pvt. Ltd. V/s. UOI, 2019 (368) ELT 337 (Guj) where under the Hon'ble court was pleased to strike down the pre-import condition imposed wef. 13.10.2017.

20.4 Alternatively in para no.5 of reply letter they had relied upon compilation of 8 pronouncements where under the Hon'ble Delhi High court repeatedly held that the exemption of IGST withdrawn from 1.7.2017 for Advance Authorization Scheme was not applicable to Advance Authorization already issued prior to July 2017 and

repeatedly affirmed by Hon'ble Supreme court.The upto date compilation reads as follows.

	Citation and Head Notes
1	2017 (4) G.S.T.L. 439 (Del.) **NARENDRA PLASTIC PRIVATE LIMITED V/s. UNION OF INDIA** EXIM - GST vis-à-vis FTP - IGST on imports under Advance Authorisation Scheme - Stay thereon - Exemptions available to petitioner on imports under said scheme prior to 1st July, 2017 curtailed by levy of IGST from this date - Petitioner not challenging levy of IGST per se, but seeking status quo in respect of Advance Authorisations issued earlier in respect of which export orders already obtained are required to be fulfilled - Evidently export order pending as on said date would get hit if petitioner is required to pay IGST as additional burden on account of new levy cannot be passed on to exporters in this global competitive market - In view of this, as an interim measure, Customs Authorities directed to release consignments imported said scheme, without charging IGST - A list of Advance Authorisations issued prior to said date and export orders pending against such Authorizations be submitted to Customs - Petitioner also directed to give an undertaking that in case, decision of Court goes against him or he fails to fulfil export obligation, he would pay entire IGST with interest on already cleared consignments - Section 3 of Customs Tariff Act, 1985 - Article 226 of Constitution of India. *[paras 10, 11, 12, 13]*
2	2017 (6) G.S.T.L. 449 (Del.) **CHEMICO SYNTHETICS LIMITED V/s. UNION OF INDIA** EXIM - GST vis-à-vis FTP - IGST on imports under Advance Authorisation Scheme - Application seeking permission to make duty free imports against Advance Authorization (AA) licences issued to petitioner prior to 1st July, 2017 where period of validity of licences remained unexpired - Interim directions that petitioners be permitted to clear consignments of imports constituting inputs for fulfillment of export orders placed on it prior to 1st July, 2017 without any additional levies subject to conditions - Petitioner liable to pay entire IGST as was leviable, together with whatever interest as Court may determine at time of final disposal of writ petition - Interim direction to only apply to those imports which are made by petitioner for fulfillment of its export orders placed with it prior to 1st July, 2017 and not to any export order thereafter - Section 3 of Customs Tariff Act, 1985 - Article 226 of Constitution of India. *[paras 10, 11, 12, 13]*
3	2018 (11) G.S.T.L. 27 (Del.) **NARENDRA PLASTIC PVT. LTD V/s. UNION OF INDIA** Integrated Goods and Services Tax (IGST) - Import of raw material under Advance Authorization - Levy - Despite being informed of Court's earlier interim orders dated 11-9-2017 by petitioner, IGST still being levied on aforesaid imports - Petitioner directed to furnish a complete list of Advance Authorisations to departmental counsel so that same may be circulated to all Customs Commissionerates along with aforesaid interim order for necessary compliance - Section 5 of Integrated Goods and Services Tax Act, 2017 - Article 226 of Constitution of India. *[paras 2, 3]* Order of High Court - Compliance thereof - Impleading of C.B.E. & C. - Since interim order dated 11-9-2017 not being complied with by Commissionerates, CBEC impleaded as respondent - Said interim order on issue of levy of IGST on import of raw material under Advance Authorization, be sent to CBEC for circulation amongst all Customs Commissionerates for compliance - Article 226 of Constitution of India. *[para 4]*

4	2018 (17) G.S.T.L. 222 (Del.) **JINDAL DYECHEM INDUSTRIES (P) LTD V/s. UNION OF INDIA** Import - Advance licence - Imports after introduction of GST Regime - Assessee beneficiary of advance license issued on 17-7-2017 prior to amendment of exemption notification issued on 29-6-2017 and exemption of IGST - Benefit of exemption existed at time of import - Authorities to verify whether assessee fulfilled export obligations pursuant to advance license - To make appropriate and necessary assessment within four months only if assessee did not fulfil obligation. *[para 4]*
5	2019 (29) G.S.T.L. 303 (Del.) **J.T.L. INFRA LIMITED V/s. UNION OF INDIA** IGST Exemption on imports made in GST regime - Advance Authorisation - Customs Notification dated 29-6-2017 amended only on 13-10-2017 and prior to said date, exemption to IGST was not in force - Importer eligible to benefit of IGST exemption in terms of order of Delhi Court in Jindal Dyechem (P) Ltd. [2018 (17) G.S.T.L. 222 (Del.)] - Section 25 of Customs Act, 1962. *[paras 2, 3]*
6	**2019 (29) G.S.T.L. J72 (S.C.)** Union of India v/s. J.T.L. Infra Ltd. IGST Exemption available on imports made under Authorizationin GST regime The Supreme Court Bench comprising Hon'ble Mr. Justice A.K. Sikri and Hon'ble Mr. Justice S. Abdul Nazeer on 14-12-2018 after condoning the delay **dismissed** the Special Leave Petition (Civil) Diary No. 40434 of 2018 filed by Union of India against the Judgment and Order dated 4-7-2018 of Delhi High Court in W.P. (C) No. 9949 of 2017 as reported in **2019 (29) G.S.T.L. 303 (Del.)***(J.T.L. Infra Ltd. v. Union of India)*. While dismissing the petition, the Supreme Court passed the following order : "Delay condoned. The Special Leave Petition is dismissed. Pending application(s), if any, stands disposed of accordingly." The Delhi High Court in its impugned order had followed its order passed in *Jindal Dyechem (P) Ltd.* v. *Union of India* [2018 (17) G.S.T.L. 222 (Del.)] and had allowed IGST Exemption in terms of the said order in respect of imports made under Advance Authorization in GST regime.
7	2020 (32) G.S.T.L. J118 (Del.) Jindal Dyechem Industries (P) Ltd. V/s. Union of India **Advance Authorization Scheme — Imports made underAdvance Licence issued in GST regime but prior to 13-10-2017 whether eligible to IGST exemption?** The Delhi High Court Bench comprising Hon'ble Mr. Justice Vipin Sanghi and Hon'ble Mr. Justice A.K. Chawla on 11-10-2019 **issued notice** in Review Petition No. 426 of 2019 and CM Appl. No. 44837 of 2019 in Writ Petition (C) No. 8677 of 2017 filed by Jindal Dyechem Industries (P) Ltd. against the Judgment and Order dated 16-4-2018 in W.P. (C) No. 8677 of 2017 as reported in **2018 (17) G.S.T.L. 222 (Del.)***[Jindal Dyechem Industries (P) Ltd. v. Union of India]*. While issuing notice, the High Court passed the following order: "The submission of Mr. Bansal is that there is an error apparent on the face of the order dated 16-4-2018 inasmuch as, while on the other hand, this Court rightly took note of the fact that the exemption from

	IGST was granted, for the first time, vide notification dated 13-10-2017 and that such an exemption was not in force on the implementation of the Goods and Services Tax Act w.e.f. 1-7-2017, on the other hand, this Court recorded in the order dated 16-4-2018 that *"In these circumstances, this Court is of the opinion that since the benefit of exemption in fact existed at that point of time....."* Issue notice to the petitioner returnable on 6-12-2019." The High Court in its impugned order had held that as the petitioner had made imports in GST regime under Advance Authorization issued on 17-7-2017 and the IGST exemption was not available on that date as same was made available only on 13-10-2017 by amending Customs Notification dated 29-6-2017, it would be most appropriate course for the Departmental authorities to verify as to whether the petitioner in fact had fulfilled the export obligations pursuant to the Advance Authorization. If it did, there is no need for any further action. However, if it did not, then the appropriate and necessary assessment in accordance with law may be resorted to.
8	2020 (33) G.S.T.L. J128 (S.C.) **Union of India v/s. India Glycols Limited** ***Union of India* v. *India Glycols Limited*IGST exemption available on imports made under Advance Licence issued in GST regime** The Supreme Court Bench comprising Hon'ble Mr. Justice A.M. Khanwilkar and Hon'ble Mr. Justice Ajay Rastogi on 29-3-2019 **disposed of** the Petition for Special Leave to Appeal (Civil) No. 452 of 2019 with SLP (C) Nos. 453, 456, 454-455 and 457 of 2019. The Petition for Special Leave to Appeal No. 425 of 2019 filed by Union of India against the Judgment and Order dated 16-7-2018 of Delhi High Court in Writ Petition (C) No. 8423 of 2017 *(India Glycols Limited* v. *Union of India)* and The SLP (C) Nos. 454-455 of 2019 filed against Judgment and Order dated 16-4-2018 of Delhi High Court in W.P. (C) No. 8677 of 2017 and C.M. Appl. No. 35637 of 2017 as reported in **2018 (17) G.S.T.L. 222 (Del.)***[Jindal Dyechem Industries (P) Ltd.* v. *Union of India].* While disposing of the petition, the Supreme Court passed the following order: "Considering the fact that Special Leave Petition against the relied upon judgment has already been dismissed on 14-12-2018 being SLP (C) Diary No. 40434 of 2018 [2019 (29) G.S.T.L. J72 (S.C.), for the same reasons, this Special Leave Petition must follow the same suit. Accordingly, the Special Leave Petition is disposed of in the same terms. Pending applications, if any, stand disposed of." The Delhi High Court in its impugned order had followed its order passed in *Jindal Dyechem (P) Ltd.* v. *Union of India* [2018 (17) G.S.T.L. 222 (Del.)] and had allowed IGST exemption in terms of the said order in respect of the imports made under Advance Licence issued in GST regime.
9	2020 (35) G.S.T.L. 261 (Guj.) **PRINCE SPINTEX PVT. LTD V/s. UNION OF INDIA** Import under Export Promotion Capital Goods (EPCG) Scheme - Levy of IGST - Amendment to Notification No. 16/2015-Cus. with effect from 1-7-2017 by Notification No. 26/2017-Cus. - Validity - Requirement for importers to pay IGST and take Input Tax Credit as applicable under GST Rules - Notification No. 16/2015-Cus. though statutory notification issued in exercise of powers under Section 25 of Customs Act, 1962 but not an exemption notification simpliciter - Said notification issued to give effect to EPCG Scheme floated under Foreign

	Trade Policy, an incentive scheme - Said notification and amending notifications cannot be equated with statutory notifications ordinarily issued - Commercial invoice issued by exporter on 16-5-2017 but Goods and Services Acts coming into force before actual import of goods - Notification No. 79/2017-Cus. amending Notification No. 16/2015-Cus. with effect from 13-10-2017 and import of capital goods covered by a valid authorisation under EPCG Scheme exempted from payment of Integrated Tax and Goods and Services Tax Compensation Cess - No express provision exempting import of goods under EPCG Scheme from payment of Integrated Tax for short-period from 1-7-2017, when Integrated Goods and Services Tax Act, 2017 came into force till 13-10-2017 - Clear that intention of Central Government was to grant that total exemption from payment of additional duty under EPCG Scheme - Notification No. 26/2015-Cus. to extent it limited exemption from payment of additional duty under Section 3 of Customs Tariff Act, 1975 to sub-sections (1), (3) and (5) thereof, repugnant to policy declared by Central Government under Chapter 5 of Foreign Trade Policy, 2015-20 - Action of Authorities in levying Integrated Tax and Compensation Cess on import of capital goods by assessee under a valid authorisation under EPCG Scheme not being in consonance with Foreign Trade Policy, 2015-20 not sustainable - Addl. D.G.F.T. Trade Notice No. 11/2018, dated 30-6-2017, to extent it states therein that under Chapter 5 importers would need to pay IGST also rendered unsustainable - Consequently, subject to fulfilment of conditions contained in Foreign Trade Policy, 2015-20 and exemption Notification No. 16/2015-Cus. as amended from time to time, assessee continue to enjoy exemption from payment of additional duty under sub-section (7) and sub-section (9) of Section 3 of Customs Tariff Act, 1975 even during period 1-7-2017 to 13-10-2017 - Assessee entitled to refund of additional duty paid by it during said period. - Though the exemption notification has been issued under Section 25 of the Customs Act, it has been issued for the purpose of implementing the EPCG Scheme which holds out a promise that import of capital goods under the scheme would be exempt from payment of additional duty under Section 3 of the Customs Tariff Act. Therefore, the notification has to be read in the context of the EPCG policy keeping in mind the object envisaged by the policy and not in the strict sense as in the case of a general exemption under Section 25 of the Customs Act. It was always the intention of the Central Government to exempt imports of capital goods under the EPCG Scheme from payment of additional duty under Section 3 of the Customs Tariff Act. Notification No. 79/2017, dated 13th October, 2017, therefore, has to be read as clarificatory or curative in nature, inasmuch as, otherwise it would leave as whole class of importers who had imported capital goods, uncovered during the period 1-7-2017 to 13-10-2017, allowing the department to levy additional duty under sub-sections (7) and (9) of the Customs Tariff Act on such imports, despite the fact that the Foreign Trade Policy 2015-2020 envisages imports under the EPCG Scheme at zero customs duty. [paras 12, 13, 14, 20, 21, 22, 23, 24, 25, 26, 27, 31, 34, 35, 36, 37, 38, 40, 42] Export Promotion Capital Goods Scheme - Exemption from payment of Customs duty under Scheme not an exemption simpliciter- Authorisation holder having corresponding obligation to export goods equivalent to six times duty saved on import of such capital goods. [para 10]
10	2020 (371) E.L.T. 391 (P & H) **EASTMAN INDUSTRIES LTDV/s. UNION OF INDIA** Duty Free Import Authorization (DFIA) - Import of inputs i.e. Natural Rubber subsequent to export of goods i.e. Automobile Tyre reinforced with Nylon Tyre Cord Warp Sheet as per Serial No. A1667 of Standard Input and Output Norms (SION) - Clause 4.29(VIII) of DFIA amended w.e.f. 21-3-2017 i.e. subsequent to export of goods providing that no DFIA shall be issued for import of an input where SION prescribes actual user condition or pre-import condition for such inputs - Since

	DFIA licence which was issued on the basis of exports, having no such condition and same introduced only w.e.f. 21-3-2017 i.e. subsequent to export, duty free import of inputs i.e. Natural Rubber cannot be denied on the basis of such amendment particularly when said item specifically prescribed as an import item against Serial No. A1667 of SION - DFIA licence issued on 3-10-2016 also directed to enure for a period of six months. *[paras 8, 9]*
11	**2022 (57) G.S.T.L. 8 (Guj.)** **RADHESHYAM SPINNING PVT. LTD V/s. UNION OF INDIA** **R/Special Civil Application No. 20759 of 2018, decided on 29-1-2021** **GST : In respect of Export Promotion Capital Goods (EPCG) Scheme, amendment to Notification No. 16/2015-Cus. exempting IGST paid on import of capital goods would applicable also to imports made during period from 1-7-2017 to 13-10-2017; refund of ITC of IGST under EPCG Scheme would be admissible only after debiting such credit from Electronic Credit Ledger** Export Promotion Capital Goods (EPCG) Scheme - Refund of Input Tax Credit of IGST paid on import of capital goods during period from 1-7-2017 to 13-10-2017 - High Court in Prince Spintex Pvt. Ltd. [2020 (35) G.S.T.L. 261 (Guj.)] holding that amendment made to Notification No. 16/2015-Cus. vide Serial No. 1 of Notification No. 79/2017-Cus. exempting IGST on import of capital goods under aforesaid Scheme also applies to imports made during period from 1-7-2017 to 13-10-2017 and Trade Notice No. 11/2018, dated 30-6-2017 issued by Addl. D.G.F.T. stating that importers need to pay IGST under Chapter 5 of Foreign Trade Policy, 2015-20, not sustainable - In view of such decision, provisions of Section 49A of Central Goods and Services Tax Act, 2017 inserted w.e.f. 1-2-2019 read with Rule 88A of Central Goods and Services Tax Act, 2017 stipulating utilization of Input Tax Credit of IGST first for payment of CGST/SGST and since accumulated ITC of IGST started getting utilized automatically w.e.f. 1-6-2019, date when GST portal started functioning as per amended provisions, Department directed to refund ITC of IGST only after reversing entries of utilization of such credit and debiting said amount from Electronic Credit Ledger. [paras 2 to 5]
12	2022 (59) G.S.T.L. J8 (S.C.)] Union of India v. Prince Spintex Private Limited **1) EPCG Scheme — Import of capital goods during period from 1-7-2017 to 13-10-2017 whether liable to IGST and Compensation Cess though invoices issued by foreign exporter in pre-GST regime? (2) EPCG Scheme — Trade Notice No. 11/2018, dated 30-6-2017 issued by Additional D.G.F.T., requiring to pay IGST on import of capital goods, whether sustainable?** The Supreme Court Bench comprising Hon'ble Mr. Justice A.M. Khanwilkar and Hon'ble Mr. Justice C.T. Ravikumar on 8-11-2021 **granted leave** in the Petition for Special Leave to Appeal (C) No. 12936 of 2020 with SLP Nos. 8534 and 7713 of 2021. The Petition for Special Leave to Appeal (C) No. 12936 of 2020 filed by Union of India against the Judgment and Order dated 3-2-2020 of Gujarat High Court in S.C.A. No. 20756 of 2018 (Prince Spintex Private Limited v. Union of India) as reported in **2020 (35) G.S.T.L. 261 (Guj.)**. The SLP No. 8534 of 2021 filed by Union of India against the Judgment and Order dated 16-12-2020 of Gujarat High Court in R/Special Civil Application No. 20761 of 2018 (Super Spintex Pvt. Ltd. v. Union of India). The SLP No. 7713 of 2021 filed by Union of India against the Judgment and Order dated 29-1-2021 of Gujarat High Court in R/Special Civil Application No. 20759 of 2018 as reported in **2022 (57) G.S.T.L. 8 (Guj.)**.

	(Radheyshyam Spinning Pvt. Ltd. v. Union of India). The Gujarat High Court in its impugned order had held that in cases where the commercial invoices were issued by the foreign exporter in pre-GST regime but actual imports of capital goods under Export Promotion Capital Goods (EPCG) Scheme undertaken during period from 1-7-2017 to 13-10-2017, levy of IGST and Compensation Cess on such imports under Notification No. 16/2015-Cus. as amended with effect from 1-7-2017 by Notification No. 26/2017-Cus., being contrary to the provisions of the Foreign Trade Policy, 2015-20, is not sustainable. The High Court had also held that the Trade Notice No. 11/2018, dated 30-6-2017 issued by the Additional D.G.F.T., to the extent it stated that the importers under the EPCG Scheme are required to pay IGST, is also not sustainable.

20.5 As per Sr.No.6, 8 ofabove compilation the Hon'ble Supremecourt affirmed the judgment of Hon'ble Delhi High court allowing the exemption of IGST in respect of Advance Authorization already issued prior to July 2017.

20.6 Based on the aforesaid pronouncement and certain pronouncements referred in para 4.7, 4.8, 4.9 they claimed in para no.5 of reply letter that the condition of "pre-import" imposed w.e.f. 13.10.2017 vide Noti.No.79/2017-Cus dated 13.10.2017 further amending Advance Authorization Noti.No.18/2015-Cus dated 1.4.2015 cannot be made applicable to Advance Authorization already issued by DGFT prior to 13.10.2017.

20.7 On 28.4.2023 the Hon'ble Supremecourt allowed the appeal filed by the department against the judgment of Hon'ble Gujarat High court in case of **Maxim Tubes Company Pvt. Ltd vide UOI V/s. Cosmo Films Ltd, 2023 (72) GSTL 417 (SC) (Maxim Tubes Group)** and as per the directions provided by Hon'ble Supreme court in the said pronouncement, CBIC issued Cir.No.16/2023-Cus dated 7.1.2023 and for the purpose of carry forwarding the judgment of Hon'ble Supremecourt, CBIC issued guidelines for all importers involved for regularization of issue by making payment of disputed amount of customs duty along with the interest and availment of ITC if eligible.

20.8 As they are entitled for ITC, they applied for reassessment of pending 28 Bill of Entries (33 Bill of Entry were reassessed earlier while making payment of Rs.2,24,70,056/- along with the interest amount of Rs. 1,11,05,432/-) vide their application dated 28th June 2023.Further in the said application they made a request that the reassessment of relevant Bill of Entries may be allowed without payment of interest by relying upon the judgment of Hon'ble Mumbai High court in case of Mahindra & Mahindra Ltd, 2023-3-CENTAX-261(Bombay) where under the Hon'ble court after considering the provisions of Sec.3(6), 3a(4) and amended provision of Customs Act 9A(8) held that there was no provision for levy of interest and penalty and they claimed that the said decision was squarely applicable for levy of interest of IGST levied under Sec.3(7) of Customs Act 1975.Accordingly, specific request was made for reassessment of Bill of Entry without payment of interest in terms of law settled by Hon'ble Bombay High court Mahindra & Mahindra Ltd.

20.9 During the course of follow up with procedure of reassessment they were verbally informed that the reassessment cannot be allowed without payment of interest and therefore they agreed under protest to pay the interest and accordingly they discharged the liability of customs duty of Rs.3,06,73,018/- as per reassessed Bill of Entry along with the payment of interest of Rs.2,50,19,015/- + Rs.2,08,800/- (Total payment of Rs.5,59,00,832/-) vide payment challans dated 3rd Jan 2024. This was intimated about the payment of interest under protest.

20.10 They submitted that although the appeal filed by the department in the case of Cosmo Films Ltd (Maxim Tubes Group) is allowed by the Hon'ble Supreme court the issue as to whether the importer is liable for payment of customs duty in respect of Advance Authorization already issued prior to 13.10.2017 was not involved and accordingly they say and submit that they are not liable for payment of customs duty for alleged violation of contravention of pre-import condition in respect of Advance

Authorization already issued prior to 13.10.2017 and same is covered by compilation of pronouncements referred in para no.5 of reply letter and summarized in above para.

20.11 In their case the duty demand for the Advance Authorization issued prior to July 2017/prior to 13.10.2017 after 13.10.2017 works out to Rs.1,42,72,940/-, Rs.1,74,85,944/- and Rs.2,13,84,190/- respectively (Total Rs.5,31,43,074/-).Based on the relied upon pronouncement referred in para above they are not liable for payment of customs duty of Rs.1,42,72,940/- and Rs.1,74,85,944/- which is towards Advance Authorization issued prior to July 2017 and prior to 13.10.2017 respectively. Further they are not liable for payment of any interest amount in light of the law settled by Hon'ble Bombay High court in case of Mahindra & Mahindra Ltd and interest amount of Rs. 1,11,05,432 paid while making payment of Rs.2,24,70,056/- and interest amount of Rs.2,52,27,815/- paid while making payment of Rs.3,06,73,018/- (Total payment of interest amount of Rs. 3,63,33,246/-) was not due to the government.

20.12 Besides above, the invocation of Sec.28(4) in the captioned SCN is patently illegal.The disputed issue involved is regarding interpretation of provisions of Exim policy and exemption Notification which is evident from various disputed case laws being disputed by various importer from July 2017 onwards.The DRI, Kolkata initially initiated investigation with many importers for recovery of customs duty for alleged violation of pre-import conditions with subsequent issue of SCN under Section 28(1) of Customs Act 1962 with invocation of normal period of limitation.Many importers opted for closure of proceedings with payment of IGST/Interest applicable and O/o the DRI as well as other adjudicating authorities, adjudicated the case with order for closure of proceedings.They also enclosed specimen copy of such order being OIO dated 18/12/2019 issued in case of M/s. Wellknown Polyester LtdMumbai.

20.13 Accordingly it has been prayed that the customs duty of Rs. 2,13,84,190/- paid against Advance Authorization issued after 13.10.2017 may be appropriated and payment of Rs.1,42,72,940/- and Rs.1,74,85,944/- may be ordered to be refunded subject to reversal of ITC.Further entire amount of interest of Rs. 3,63,33,246/- paid by them may be ordered to be refunded.

DISCUSSION AND FINDINGS

21. I have carefully gone through the facts of the case and the submissions made by the noticee in writing as well as the record of personal hearing held on 23/01/2024.

22. The issues for consideration in the Show Cause Notice File No. VIII/10-11/Commr./O&A/2022-23 dated 09/09/2022 before me are as under: -

(i) Whether the Noticee, during October 13, 2017 to January 9, 2019, was eligible to claim exemption of Integrated Goods and Services Tax ("IGST") and GST compensation cess on inputs imported into India for the production of goods to be exported from India, on the strength of an advance authorization, without fulfilment of such mandatory 'pre-import condition';

(ii) If not, whether such Duty amounting to Rs. 5,39,34,351/- (Rupees Five Crore, Thirty Nine Lakh, Thirty Four Thousand, Three Hundred and Fifty One only) in the form of IGST saved in course of imports of the goods through ICD Tumb under the Advance Authorizations is liable to be demanded and recovered from them under Section 28 of the Customs Act, 1962 along with interest thereon under Section 28AA ibid;

(iii) whether such goods having assessable value of Rs. 27,74,86,711/- (Rupees Twenty Seven Crore, Seventy Four Lakh, Eighty Six Thousand, Seven Hundred and Eleven Only) are liable for confiscation under Section 111(o) of the Customs Act, 1962;

(iv) Whether the Customs Duty amounting to Rs. 2,67,91,052/- (Rupees Two Crore, Sixty Seven Lakh, Ninety One Thousand and Fifty Two only) in the form of IGST, paid by them is liable forappropriation against the above demand;

(v) Whether the Noticee is liable for penalty under Section 114A &Section 112(a) of the Customs Act, 1962;

(vi) Whether Bonds executed by them at the time of import is liable to be enforced in terms of Section 143(3) of the Customs Act, 1962, for recovery of the Customs Duty and interest as mentioned above.

23. I find that Duty liability with interest and penal liabilities would be relevant only if the bone of the contention that whether the Importer has violated the obligatory pre-import condition as stipulated in Notification No.79/2017-Cus, dated 13-10-2017 is answered in the affirmative. Thus, the main point is being taken up firstly for examination.

24. Genesis of Pre-Import Condition:

24.1 Before proceeding for adjudication of the Show Cause Notice, let us firstly go through relevant provisions which will give genesis of 'Pre-Import Condition'.

24.1.1 Relevant Para 4.03 of the Foreign Trade Policy (2015-20) inter-alia states that: -

An Advance Authorisation is issued to allow duty free import of inputs, which are physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, energy, catalysts which are consumed/ utilised to obtain export product, may also be allowed. DGFT, by means of Public Notice, may exclude any product(s) from purview of Advance Authorisation.

24.1.2 Relevant Para 4.13 of the Foreign Trade Policy (2015-20) inter-alia states that: -

4.13 Pre-import condition in certain cases-

(i) DGFT may, by Notification, impose pre-import condition for inputs under this Chapter.

(ii) Import items subject to pre-import condition are listed in Appendix 4-J or will be as indicated in Standard Input Output Norms (SION).

24.1.3 Relevant Para 4.14 of the Foreign Trade Policy (2015-20) inter-alia states that: -

4.14 Details of Duties exempted-

Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable. Import against supplies covered under paragraph 7.02 (c), (d) and (g) of FTP will not be exempted from payment of applicable Anti-dumping Duty, Countervailing Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, if any. However, imports under Advance Authorisation for physical exports are also exempt from whole of the integrated tax and Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be provided in the notification issued by Department of Revenue, and such imports shall be subject to pre-import condition. Imports against Advance Authorisations for physical exports are exempted from Integrated Tax and Compensation Cess upto 31.03.2018 only.

24.1.4 NOTIFICATION NO. 31 (RE-2013)/ 2009-2014 dated 1st August, 2013:

In exercise of powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No.22 of 1992) read with paragraph 1.2 of the Foreign Trade Policy, 2009-2014, the Central Government hereby notifies the following amendments in the Foreign Trade Policy (FTP) 2009-2014.

2. After para 4.1.14 of FTP a new para 4.1.15 is inserted.

"4.1.15 Wherever SION permits use of either (a) a generic input or (b) alternative inputs, unless the name of the specific input(s) [which has (have) been used in manufacturing the export product] gets indicated / endorsed in the relevant shipping bill and these inputs, so endorsed, match the description in the relevant bill of entry, the concerned Authorisation will not be redeemed. In other words, the name/description of the input used (or to be used) in the Authorisation must match exactly the name/description endorsed in the shipping bill. At the time of discharge of export obligation (EODC) or at the time of redemption, RA shall allow only those inputs which have been specifically indicated in the shipping bill."

3. Para 4.2.3 of FTP is being amended by adding the phrase "4.1.14 and 4.1.15" in place of "and 4.1.14". The amended para would be as under:

"Provisions of paragraphs 4.1.11, 4.1.12, 4.1.13, 4.1.14 and 4.1.15 of FTP shall be applicable for DFIA holder."

*4. **Effect of this Notification:** Inputs actually used in manufacture of the export product should only be imported under the authorisation.* ***Similarly inputs actually imported must be used in the export product.This has to be established in respect of every Advance Authorisation / DFIA.***

24.2 With the introduction of GST w.e.f. 01-07-2017,Additional Duties of Customs (CVD & SAD) were subsumed into the newly introduced Integrated Goods and Service Tax (IGST). Therefore, at the time of imports, in addition to Basic Customs Duty, IGST was made payable instead of such Additional Duties of Customs. Accordingly, Notification No.26/2017-Customs dated 29 June 2017, was issued to give effect to the changes introduced in the GST regime in respect of imports under Advance Authorization. The corresponding changes in the Policy were brought through Trade Notice No.11/2018 dated 30-06-2017. I find that it is pertinent to note here that while in pre-GST regime blanket exemption was allowed in respect of all Duties leviable when goods were being imported under Advance Authorizations, contrary to that, in post-GST regime, for imports under Advance Authorization, the importers were required to pay such IGST at the time of imports and then they could get the credit of the same.

However, subsequently, the Government decided to exempt imports under Advance Authorizations from payment of IGST, by introduction of the Customs Notification No.79/2017 dated 13-10-2017. However, such exemption from the payment of IGST was made conditional. The said Notification No.79/2017 dated 13-10-2017, was issued with the intent of incorporating certain changes/ amendment in the principal Customs Notifications, which were issued for extending benefit of exemption to the goods when imported under Advance Authorizations.

24.2.1 D.G.F.T. Notification No. 33/2015-2020 dated 13.10.2017 amended the provisions of Para 4.14 of the Foreign Trade Policy 2015-20 which read as under:

Para 4.14 is amended to read as under:

"4.14: Details of Duties exempted

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

24.2.2 Notification No.- 79/2017 - Customs, Dated: 13-10-2017. The relevant amendment made in Principal Notification No.18/2015-Customs dated 01.04.2015 vide Notification No. 79/2017 - Customs, Dated: 13-10-2017 is as under:

-: Table:-

S. No.	***Notification number and date***	***Amendments***
(1)	*(2)*	*(3)*
1	.....	.....
2.	*18/2015-Customs, dated the 1 st April, 2015 [vide number G.S.R. 254 (E), dated the 1 st April, 2015]*	*In the said notification, in the opening paragraph,- (a) .....* *(b) in condition (viii), after the proviso, the following proviso shall be inserted, namely:-* *"Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from integrated tax and the goods and services tax compensation cessleviable thereon under sub-section (7) and sub-section (9)* ***of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports only;";*** *(c) ....* *(c) after condition (xi), the following conditions shall be inserted, namely :-* *"(xii) that the exemption from integrated tax and the goods and services tax compensation cessleviable thereon under sub-section (7) and sub-section (9) of section* ***3 of the said Customs Tariff Act shall be subject to pre-import condition;***

24.3 Further, I find that Notification No.01/2019-Cus. dated 10.01.2019 removed/omitted the 'Pre-Import condition' laid down vide Amendment Notification No. 79/2017- Cus dated 13.10.2017 in the Principal Notification No. 18/2015-Cus dated 01.04.2015.

24.4 The High Court of Madras (Madurai Bench) in the case of M/s Vedanta Ltd reported as 2018 (19) G.S.T.L. 637 (Mad.)on the issue under consideration held that:-

> **"pre-import simply means import of raw materials before export of the finished goods to enable the physical export and actual user condition possible and negate the revenue risk that is plausible by diverting the imported goods in the local market".**

24.5 I find that 'Pre-Import Condition' is unambiguous word/phrase.Further,I find that the definition of pre-import directly flows from Para 4.03 of the Foreign Trade Policy (2015-20)[erstwhile Para 4.1.3 of the Policy (2009-14)] wherein it is said that Advance Authorizations are issued for import of inputs, which are physically incorporated in the export goods allowing legitimate wastage. Thus, this Para specifically demands for such physical incorporation of imported materials in the export goods. And the same is only possible, when imports are made prior to export. Therefore, such Authorizations principally do have the pre-import condition in-built,which is required to be followed. In the instant case, it is undisputed fact that the Importer has not complied with the Pre-Import Condition as laid down vide Exemption Notification No. 18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017.

24.6 Further, I find that this issueis no longer *res-integra* in as much as **Hon'ble Supreme Court in the case of Union of India Vs. Cosmo Films Ltd reported as 2023 (72) GSTL 147 (SC)** has overruled judgment of Hon'ble High Court of Gujarat and has held that pre-import condition, during **October,2017 to January,2019**, in Advance Authorization Scheme was valid. Relevant Paras of the decision are as under:

> **69.** *The object behind imposing the 'pre-import condition' is discerniblefrom Paragraph 4.03 of FTP and Annexure-4J of the HBP; that only few articles were enumerated when the FTP was published, is no ground for the exporters to complain that other articles could not be included for the purpose of 'pre-import condition'; as held earlier, that is the import of Paragraph 4.03(i). The numerous schemes in the FTP are to maintainan equilibrium between exporters' claims, on the one hand and on the other hand, to preserve the Revenue's interests. Here, what is involved is exemption and postponement of exemption of IGST, a new*

levy altogether, whose mechanism was being worked out and evolved, for the first time.Thepleaofimpossibilitytofulfil'pre-importconditions' under old AAs was made, suggesting that the notificationsretrospectively mandated newconditions.The exporter respondents' argument that there is no rationale for differential treatment of BCD and IGST under AA scheme is without merit. BCD is a customs levy at the point of import. At that stage, there is no question of credit. On the other hand, IGST is levied at multiple points (including at the stage of import) and input credit gets into the stream, till the point of end user. As a result, there is justification for aseparate treatment of the two levies. IGST is levied under the IGST Act, 2017 and is collected, for convenience, at the customs point through the machinery under the Customs Act, 1962. The impugned notifications, therefore, cannot be faulted forarbitrariness or under classification.

70. *The High Court was persuaded to hold that the subsequent notification of 10-1-2019 withdrew the 'pre-import condition' meant that the Union itself recognized its unworkable and unfeasible nature, and consequently the condition should not be insisted upon for the period it existed, i.e., after 13-10-2017. This Court is of the opinion that the reasoning is faulty. It is now settled that the FTPRA containsno power to frame retrospective regulations. Construing the later notification of 10-1-2019 as being effective from 13-10-2017 would be giving effect to it from a date prior to the date of its existence; in other words the Court would impart retrospectivity. In Director General of Foreign Trade &Ors. v Kanak Exports &Ors. [2015 (15) SCR 287 = 2015 (326) E.L.T. 26 (S.C.)] this Court held that :*

"Section 5 of the Act does not give any such power specifically to the Central Government to make rules retrospective. No doubt, this Section confer powers upon the Central Government to 'amend' the policy which has been framed under the aforesaid provisions. However, that by itself would notmean that such a provision empowers the Government to do soretrospective."

71. *To give retrospective effect, to the notification of 10-1-2019through interpretation, would be to achieve what is impermissible in law. Therefore, the impugned judgment cannot be sustained on this score as well.*

75. *For the foregoing reasons, this courtholds that the Revenue has to succeed. The impugned judgment and orders of the Gujarat High Court are hereby set aside. However, since the respondents were enjoying interim orders, till the impugned judgments were delivered, the Revenue is directed to permit them to claim refund or input credit (whichever applicable and/or wherever customs duty was paid). For doing so, the respondents shall approach the jurisdictional Commissioner, and apply with documentary evidence within six weeks from the date of this judgment. The claim for refund/credit, shall be examined on their merits, on a case-by-case basis. For the sake of convenience, the revenue shall direct the appropriate procedure to be followed, conveniently, through a circular, in this regard."*

24.7 Further I find that at Para 59 of the order of the Hon'ble Supreme Court dated 28-04-2023 in Civil Appeal No. 290 of 2023 in the matter of Union of India Vs Ms Cosmo Films Ltd., it is held that –

> "Therefore, any category of supply, be it under letter of invalidation and/or to EOU and/ or under International Competitive Bidding (ICB) and/ or to Mega Power Projects, other than actual exports to other country and supply to SEZ, cannot be considered as "physical exports". One of the objects behind the impugned notifications was to ensure that the entire exports made under AAs towards discharge of export orders were physical exports. In case the entire exports were not physical exports, the AAs were automatically ineligible for exemption."

Therefore, the Apex court made it crystal clear that the condition of "Physical Export" has to be complied with in respect of the entire Authorization and if the entire exports made under the authorization is not physical export, irrespective of the extent of non-compliance, the Authorization automatically becomes ineligible for exemption. This observation of the Apex court is mutatis mutandis applicable in respect of the "Pre-import" condition too. Therefore, even if in view of the Notice they had partially

complied with such condition in respect of a particular Authorization, non-compliance in respect of the other part makes it ineligible for the exemption in entirety.

24.8 I find that based on the decision of Hon'ble Supreme Court in aforesaid case of Union of India Vs. Cosmo Films Ltd, CBIC issued Circular No. 16/2023-Cus dated 07.06.2023 which is reproduced as below:

> **Import — Pre-import condition incorporated in Foreign Trade Policy andHandbook of Procedures 2015-20 — Availing exemption from IGST and GST Compensation Cess - Implementation of Supreme Court direction in Cosmo Films case**
>
> M.F. (D.R.) Circular No. 16/2023-Cus., dated 7-6-2023
> F. No. 605/11/2023-DBK/569
> Government of India
> Ministry of Finance (Department of Revenue)
> Central Board of Indirect Taxes & Customs, New Delhi
>
> **Subject:Implementation of Hon'ble Supreme Court direction in judgment dated 28-4-2023 in matter of Civil Appeal No. 290 of 2023 relating to 'pre-import condition' - Regarding.**
>
> Attention is invited to Hon'ble Supreme Court judgment dated 28-4-2023 in matter of Civil Appeal No. 290 of 2023 (*UOI and others* v. *Cosmo Films Ltd.*) [(2023) 5 Centax 286 (S.C.) = 2023 (72) G.S.T.L. 417 (S.C.)] relating to mandatory fulfilment of a 'pre-import condition' incorporated in para 4.14 of FTP 2015-20 *vide* the Central Government (DGFT) Notification No. 33/2015-20, dated 13-10-2017, and reflected in the Notification No. 79/2017-Customs, dated 13-10-2017, relating to Advance Authorization scheme.
>
> 2. The FTP amended on 13-10-2017 and in existence till 9-1-2019 had provided that imports under Advance Authorization for physical exports are also exempt from whole of the integrated tax and compensation cess, as may be provided in the notification issued by Department of Revenue, and such imports shall be subject to pre-import condition.
>
> 3. Hon'ble Supreme Court has allowed the appeal of Revenue directed against a judgment and order of Hon'ble Gujarat High Court [2019 (368) E.L.T. 337 (Guj.)] which had set aside the said mandatory fulfilment of pre-import condition. As such, this implies that the relevant imports that do not meet the said pre-import condition requirements are to pay IGST and Compensation Cess to that extent.
>
> 4. While allowing the appeal of Revenue, the Hon'ble Supreme Court has however directed the Revenue to permit claim of refund or input credit (whichever applicable and/or wherever customs duty was paid). For doing so, the respondents shall approach the jurisdictional Commissioner, and apply with documentary evidence within six weeks from the date of the judgment. The claim for refund/credit, shall be examined on their merits, on a case-by-case basis. For the sake of convenience, the revenue shall direct the appropriate procedure to be followed, conveniently, through a circular in this regard.
>
> 5.1 The matter has been examined in the Board for purpose of carrying forward the Hon'ble Supreme Court's directions. It is noted that -
>
> (a)ICES does not have a functionality for payment of customs duties on a bill of entry (BE) (unless it has been provisionally assessed) after giving the Out-of-Charge (OOC) to the goods. In this situation, duties can be paid only through a TR-6 challan.
>
> (b)Under GST law, the BE for the assessment of integrated tax/ compensation cess on imports is one of the documents based on which the input tax credit may be availed by a registered person. A TR-6 challan is not a prescribed document for the purpose.
>
> (c)The nature of facility in Circular No. 11/2015-Cus. (for *suo motu* payment of customs duty in case of *bona fide* default in export obligation) [2015 (318) E.L.T. (T11)] is not adequate to ensure a convenient transfer of

relevant details between Customs and GSTN so that ITC may be taken by the importer.

(d)The Section 143AA of the Customs Act, 1962 provides that the Board may, for the purposes of facilitation of trade, take such measures for a class of importers-exporters or categories of goods in order to, *inter alia*, maintain transparency in the import documentation.

5.2Keeping above aspects in view, noting that the order of the Hon'ble Court shall have bearing on importers others than the respondents, and for purpose of carrying forward the Hon'ble Court's directions, the following procedure can be adopted at the port of import (POI) :-

(a)**for the relevant imports that could not meet the said pre-import condition and are hence required to pay IGST and Compensation Cess to that extent, the importer (not limited to the respondents) may approach the concerned assessment group at the POI with relevant details for purposes of payment of the tax and cess along with applicable interest.**

(b)the assessment group at POI shall cancel the OOC and indicate the reason in remarks. The BE shall be assessed again so as to charge the tax and cess, in accordance with the above judgment.

(c)the payment of tax and cess, along with applicable interest, shall be made against the electronic challan generated in the Customs EDI System.

(d)on completion of above payment, the port of import shall make a notional OOC for the BE on the Customs EDI System [so as to enable transmission to GSTN portal of, *inter alia*, the IGST and Compensation Cess amounts with their date of payment (relevant date) for eligibility as per GST provisions].

(e)the procedure specified at (a) to (d) above can be applied once to a BE.

6.1 Accordingly, the input credit with respect to such assessed BE shall be enabled to be available subject to the eligibility and conditions for taking input tax credit under Section 16, Section 17 and Section 18 of the CGST Act, 2017 and rules made thereunder.

6.2 Further, in case such input tax credit is utilized for payment of IGST on outward zero-rated supplies, then the benefit of refund of such IGST paid may be available to the said registered person as per the relevant provisions of the CGST Act, 2017 and the rules made thereunder, subject to the conditions and restrictions provided therein.

7. The Chief Commissioners are expected to proactively guide the Commissioners and officers for ironing out any local level issues in implementing the broad procedure described in paras 5 and 6 above and ensuring appropriate convenience to the trade including in carrying out consequential actions. For this, suitable Public Notice and Standing Order should be issued. If any difficulties are faced that require attention of the Board, those can be brought to the notice.

24.9 Further, I find thatDGFT have issued Trade Notice No. 7/2023-24 dated 08.06.2023, saying that "all the imports made under Advance Authorization Scheme on or after 13.10.2017 and upto and including 09.01.2019 which could not meet the pre-import condition may be regularized by making payments as prescribed in the Customs Circular".

24.10 Thus, from the findings and discussion in Para 24 to 24.9 above, **I find that there is no dispute that the said importer has failed to comply withthe mandatory conditions of 'Pre-Import' while claiming the benefit of Exemption from IGST and Compensation Cess under Exemption Notification No. 18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017 during the period from October13, 2017 to January 9,2019, in Advance Authorization Scheme.**Therefore, I find that the importer was not eligible to avail exemption under Notification No. 18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017 on inputs imported under Advance Authorizations without fulfilment of mandatory 'Pre-Import Condition'.

24.11 I find that the Hon'ble Supreme Court in the case of Union of India Vs. Cosmo Films Ltd reported as 2023 (72) GSTL 147 (SC) have discussed exhaustively the

provisions of the Customs Act as well as the provisions of the FTP and it has been held that pre import conditions is required to be complied with.

24.12 In view of above discussion, I hold that in the absence of fulfilment of the mandatory 'pre-import condition', the Noticee was not eligible to claim exemption of Integrated Goods and Services Tax ("IGST") and GST compensation cess on input imported into India for the production of goods to be exported from India, on the strength of an advance authorization. Accordingly, I hold that the Noticee is liable to pay the duty as demanded in the SCN.

25. Whether the Duty of Customs amounting to Rs. 5,39,34,351/-(Rupees Five Crore, Thirty Nine Lakh, Thirty Four Thousand, Three Hundred and Fifty One only) as detailed in Annexure-I, IIA & IIB (consolidated in Annexure-II) attached to the Show Cause Noticeis required to be demanded and recovered from them (invoking extended period) under Section 28(4) of the Customs Act, 1962 and whether Bonds executed by the Importer at the time of import should be enforced in terms of Section 143(3) of the Customs Act, 1962, for recovery of the Customs Duty alongwith interest?

25.1 I find that it would be worth to reiterate that the Hon'ble Supreme Court in case of Union of India Vs. Cosmo Films Ltd has overruled judgment of Hon'ble Gujarat High Court and has held that pre-import conditions, during October13, 2017 to January 9,2019, in Advance Authorization Scheme was valid. Thus, I find that the Hon'ble Supreme Court has settled that IGST and Compensation Cess involved in the Bills of Entry filed during October13, 2017 to January 9,2019 is required to be paid on failure to compliance of 'Pre-Import Condition as stipulated under Exemption Notification No. 18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017. I find that it is undisputed fact that said Importer has failed to fulfill and comply with 'Pre-Import condition' incorporated in the Foreign Trade Policy of 2015-2020 and Handbook of Procedures 2015-2020 by DGFT Notification No. 33/2015-20 and Customs Notification No.18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017.

25.2 It is well settled principle of law that exemption notification has to be interpreted strictly. There are plethora of judgments pronounced by the different fora of courts in this regard. I rely upon the following judgments:

(i) Mars Plastic & Polymers Pvt. Ltd. V/s. Commr. of Customs Chennai reported at 2003 (156) E.L.T. 941 (Tri. - Mumbai), duly affirmed by the Apex court as reported at 2003 (158) E.L.T. A275 (S.C.)) held that:

> ***"4. We find this argument strange. It is settled law that the benefit of establishing the eligibility to an exemption is upon the person who sets it up. This was the law when the goods were imported. It was therefore reasonable to expect of the importer that it substantiated the claim for exemption. It is not required that he be invited to do so. At no such stage therefore has the claim for the exemption been substantiated in satisfactory evidence. The certificates of the sellers are totally unacceptable"***

(ii) Bharat Earth Movers Ltd. V/s Collr. Of C. Ex. Bangalore reported at2001 (136) E.L.T. 225 (Tri. - Bang.) wherein it was held :

> *"..... **condition has to be fulfilled in toto and not partially.***
> *It is the axiomatic principle of law that the exemption can be availed only if the conditions specified in a particular notfn. are fulfilled in whole and even if it is established that they have not partially fulfilled the same, the exemption cannot be availed.*
> ***There is no room for flexibility in this regard as per the wordings employed in the notification."***

(iii) The Hon'ble Supreme Court of India in the case of STAR INDUSTRIES Versus COMMISSIONER OF CUSTOMS (IMPORTS), RAIGAD reported at 2015 (324) E.L.T. 656 (S.C.), held that:

> ***"31. ..... It is rightly argued by the learned senior counsel for the Revenue that exemption notifications are to be construed***

strictly and even if there is some doubt, benefit thereof shall not enure to the assessee but would be given to the Revenue. *This principle of strict construction of exemption notification is now deeply ingrained in various judgments of this Court taking this view consistently.*

(iv) COMMISSIONER OF CUS. (IMPORT), MUMBAI Versus DILIP KUMAR & COMPANY, reported at 2018 (361) E.L.T. 577 (S.C.), **the larger bench** of the Hon'ble Supreme Court of India held that:

*"**41.** After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity* ***must bestrictly interpreted in favour of the Revenue/State.***

43. ..... *It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But,* ***in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the revenue,*** *the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view.*

44. *In Hansraj Gordhandas case (supra)-* [AIR 1970 SC 755 = (1969) 2 SCR 253 = 1978 (2) E.L.T. J350 (S.C.)], *the Constitutional Bench unanimously pointed out that an exemption from taxation is to be allowed based wholly by the language of the notification and exemption cannot be gathered by necessary implication or by construction of words; in other words,* ***one has to look to the language alone and the object and purpose for granting exemption is irrelevant and immaterial.***

45. *In Parle Exports case (supra), a Bench of two-Judges of this Court* ..... *pointed out the strict interpretation to be followed in interpretation of a notification for exemption.* .....

48. ..... *Exemptions from taxation have tendency to increase the burden on the other unexempted class of taxpayers.* ***A person claiming exemption, therefore, has to establish that his case squarely falls within the exemption notification, and while doing so, a notification should be construed against the subject in case of ambiguity.***

52. *To sum up, we answer the reference holding as under -*
(1)Exemption notification ***should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.***
(2)When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of ***such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.***
(3)The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled."

25.3 Further, I find that Importer is well aware of the rules and regulation of Customs as well as Exim Policy as they are regularly importing the goods under Advance Authorisation and they were fully aware that the goods being cleared from Customs was not fulfilling pre import condition as they have already filed the Shipping Bill to this effect and goods have already been exported. Thus, it proves beyond doubt that goods imported under subject Bills of Entry were never used in the goods already

exported. Thus, I find that the Importer with clear intent to evade the payment of IGST and Compensation Cess, have suppressed the facts of export without compliance of Pre- Import condition from the Department while filing Bills of Entry under Advance Authorisation. Further I find that by availing exemption wrongly by not completely disclosing the facts and misguiding the Department, is sufficient ground to invoke extended period, as held by the CESTAT, Bangalore Bench in the case of Bharat Earth Movers Ltd. Versus Collector of C. Ex., Bangalore, reported at 2001 (136) E.L.T. 225 (Tri. – Bang.).

> ***"Exemption wrongly availed by not completely disclosing the facts and misguiding the Department - Extended period invokable"***

I further rely upon the judgment of the Hon'ble Patna High Court in the case of Tata Iron and Steel Co. Ltd. Versus Union of India and Others, 1988 (33) E.L.T. 297 (Pat.), wherein the Hon'ble Court held that:

> *"31. ..... It is not necessary to observe that there was fraud or collusion on the part of the company, but it is obvious that there was as least mis-statement and wilful suppression of facts. The petitioner was not entitled to the benefit of the exemption notification. It is not open to the petitioner to take up the position that it could not have conceded what it was contesting,..... namely, that a crane had been manufactured. The facts are so obvious that the petitioner was required to declare it specially when the department and the assessee work on self-assessment scheme. I have not the least doubt that the five-year rule must rule this case. The steps, therefore, for realisation of the duty are obviously within time. The stand of the petitioner in regard to the bar of limitation must be squarely rejected."*

In view of above, I find that Importer is well aware of the rules and regulation of Customs as well as Exim Policy as they are regularly importing the goods under Advance Authorisation and they were fully aware that the goods being cleared from Customs was not fulfilling pre import condition as they have already filed the Shipping Bill to this effect and goods have already been exported. Thus, it proves beyond doubt that goods imported under subject Bills of Entry were never used in the goods already exported. Thus, I find that the Importer with clear intent to evade the payment of IGST and Compensation Cess, have suppressed the facts of export without compliance of Pre- Import condition from the Department while filing Bills of Entry under Advance Authorisation.Therefore, extended period is rightly invoked and therefore differential Customs Duty amounting to **Rs. 5,39,34,351/-**is required to be recovered under Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act,1962.

25.4 Further, without prejudice to the demand under Section 28 (4) of the Customs Act,1962, I find that in the present case, the importer has also filed Bond under Section 143 of the Customs Act, for the clearance of imported goods under Advance Authorization availing the benefit of exemption under Customs Notification No.18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017. Sub Section (1) of Section 143 explicitly says that *"Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond".* On perusal of language of the Bonds filed by the Importer, I find that conditions are explicitly mentioned in Bond. The wording and condition of Bond inter alia is reproduced below:

> *"WHEREAS we, the obligor (s) have imported the goods listed in annexure-1 availing customs duty exemption in terms of the notification of the Government of India in Ministry of Finance (department of revenue) No.018/2015 dated 01.04.2015 (hereinafter referred to as the said Notification) against the Advance License No. (hereinafter as the license) for the import of the goods mentioned*

there in on the terms and conditions specified in the said notification and license.

NOW THE CONDITIONS OF THE ABOVE BOND ARE THAT: -
1. I/We, the obligor(s) 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."

25.5 I find that the said importer is obliged to follow the conditions of the Bond. Therefore, I find that by filing the Bond under Section 143, said Importer is obliged to pay the consequent duty liabilities on non-compliance/failure to fulfill the conditions of the Notification. Therefore, I find that without prejudice to the extended time limit envisaged under Section 28 (4) of the Customs Act, 1962, said Importer is liable to pay differential duty alongwith interest without any time limit. Therefore, I find that without prejudice to the Provisions of Section 28 (4) of the Customs Act,1962, the Bond is required to be enforced under Section 143 (3) of the Customs Act, 1962 for the recovery of differential Customs Duty **Rs. 5,39,34,351/-**alongwith interest.

25.6 The importer has contended that imposition of interest on the proposed demand is wholly without jurisdiction and illegal as IGST on imports is leviable under Section 3(7) of the Customs Tariff Act and there is no statutory provision providing for levy of interest in case of delayed payment of duty under the Customs Tariff Act and therefore interest as proposed is not leviable. In this regard, I find that based on the discussions in the foregoing paras, I have already held that the demand in the present case is recoverable from them under the provisions of Section 28(4) of the Customs Act, 1962. Section 28AA ibid provides that when a person is liable to pay Duty in accordance with the provisions of Section 28 ibid, in addition to such Duty, such person is also liable to pay interest at applicable rate as well. Thus, the said Section provides for payment of interest automatically along with the Duty confirmed/determined under Section 28 ibid.

25.7 Further, Section 28AA ibid provides that when a person is liable to pay Duty in accordance with the provisions of Section 28 ibid, in addition to such Duty, such person is also liable to pay interest at applicable rate as well. Thus, the said Section provides for payment of interest automatically along with the Duty confirmed/determined under Section 28 ibid. I have already held that Customs Duty amounting to Rs. 5,39,34,351/- is liable to be recovered under Section 28(4) of the Customs Act, 1962. Therefore, I find that differential Customs Duty of Rs. 5,39,34,351/- is required to be demanded and recovered as determined under Section 28 (8) of the Customs Act, 1962 alongwith Interest under Section 28AA of the Customs Act, 1962.

25.8 I find that it is not in dispute that the importer had imported the goods claiming the benefit of Notification No.18/2015 dated 01.04.2015 under Advance Authorization. Condition (iv) of the Notification No.18/2015 dated 01.04.2015 says that *"(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 per cent per annum from the date of clearance of the said materials;".

25.9 The importer has also placed reliance on the judgement of Hon. Bombay High Court in the case of Mahindra and Mahindra Ltd. vs. The Union of India and Ors. WP No. 1848 of 2009 decided on 15.9.2022. Theycontested that Duty and interest is not liable to be paid and relied on the decision of Hon'ble Mumbai High Court in case of Mahindra & Mahindra v. Union of India, 2022 (10) TMI 212 wherein penalty and interest demanded was set aside in the absence of provision under Section 3 for Additional Duty of Customs, Section 3A for Special Additional Duty under the Customs Tariff Act, 1975 or Section 90 of the Finance Act, 2000 that created a charge in nature of penalty or interest. They have further stated that this judgement has been affirmed by Hon. Supreme Court and the Special Leave Petition filed by the Union of India has been dismissed by order dated 28.7.2023 passed in Special Leave Petition (C) No. 16214 of 2023. I find that this contention is not acceptable as the said decision is with regard to pre-GST era. Period covered in the said decision was November' 2004 to January' 2007 and period covered in present case is 13.10.2017 to 09.01.2019. Said decision of Mahindra & Mahindra Ltd reported in (2023) 3 CENTAX 261 (Bom.) relied on by the importer is distinguishable on following grounds.

- In the instant case, IGST has been demanded under Section 28 of the Customs Act, 1962 as well as by enforcement of Bond under Section 143 of the Customs Act, 1962. In this case, the importer has executed Bond before the proper officer binding himself to pay duty alongwith interest in case the importer fails to comply with the condition of Bond. As the importer failed to fulfil the condition of the bond i.e failed to comply with mandatory 'pre-import' condition specified under the Notification, therefore, the importer is liable to pay duty alongwith interest in terms of the conditions of the Bond as specified under Section 143 of the Customs Act, 1962.

  In the case of Mahindra & Mahindra Ltd, no such Bond was executed before the proper officer.

- In the case of Mahindra & Mahindra Ltd, the issue under dispute was charging Section for interest and penalty. According to the Department, the charging Section for imposition of CVD, SAD & Surcharge was Section 12 of the Customs Act, 1962. Hon'ble Court held that charging section for imposition of CVD, SAD & Surcharge was Section 3(1) of Customs Tariff Act, 1975, Section 3(A) of Customs Tariff Act, 1975 and Section 19 (1) of the Finance Act, 2000 respectively which did not have provisions for imposition of penalty and interest.

  In the instant case, the demand of IGST has been made in terms of provision of IGST Act, 2017 and the charging Section for IGST on import is Section 5(1) of the IGST Act, 2017, Relevant Para of Section 5(1) of the IGST Act, 2017 is re produced as under:

  "SECTION 5. Levy and collection.
  (1) .....
  Provided that the integrated tax on goods *[other than the goods as may be notified by the Government on the recommendations of the Council]* imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962)."

- Hon'ble Supreme Court in the case of Cosmo Films Ltd has held that ***"IGST is levied under the IGST Act, 2017 and is collected, for convenience, at the* customs point through the machinery under the Customs Act, 1962."**

25.10 I also find that Hon'ble Supreme Court on 11-3-2016 **dismissed** Civil Appeal filed by Atul Kaushik (Oracle India Ltd) reported in *Oracle India Pvt. Ltd.* v. *Commissioner - 2016 (339) E.L.T. A136 (S.C.)]* against the CESTAT Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-7-2015 as reported in 2015 (330) E.L.T. 417 **(Tri.-Del.)** (Atul Kaushik v. Commissioner) holding that " We see no reason to interfere with the impugned order passed by Customs, Excise & Service Tax Appellate

Tribunal". Relevant Para of the decision of Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-7-2015 of CESTAT reported in 2015 (330) E.L.T. 417 **(Tri.-Del.)** (Atul Kaushik v. Commissioner) is re-produced as under:

> *"16. The appellants have also contended that penalty, interest and confiscation cannot be invoked in respect of evasion of countervailing duty (levied under Section 3 of the Customs Tariff Act, 1975) on the ground that the provisions relating to these aspects have not been borrowed into Section 3 of the Customs Tariff Act, 1975. In support of the principle that the penalty cannot be levied in the absence of penalty provision having been borrowed in a particular enactment, the appellants cited the judgments in the case ofKhemka& Co. (supra) and Pioneer Silk Mills Pvt. Ltd. (supra). We are in agreement with this proposition and therefore we refrain from discussing the said judgments. The appellants also cited the judgment in the case of Supreme Woollen Mills Ltd. (supra), Silkone International (supra) and several others to advance the proposition that penalty provisions of Customs Act were not applicable to the cases of non-payment of anti-dumping duty and that the same principle is applicable with regard to leviability of interest [India Carbon Ltd. (supra) and V.V.S. Sugar (supra)]. We have perused these judgments. Many of them dealt with Anti-dumping duty/Special Additional Duty (SAD) leviable under various sections (but not Section 3) of Customs Tariff Act, 1975 and in those sections of the Customs Tariff Act, 1975 or in the said Act itself, during the relevant period, there was no provision to apply to the Anti-dumping duty/SAD the provisions of Customs Act, 1962 and the rules and regulations made thereunder including those relating to interest, penalty, confiscation. In the case of Pioneer Silk Mills (supra), the duty involved was the one levied under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and its Section 3(3) only borrowed the provisions relating to levy and collection from the Central Excise Act, 1944 and in view of that it was held that the provisions relating to confiscation and penalty could not be applied with regard to the duties collected under the said Act of 1957. None of these judgments actually deal with the CVD levied under Section 3 of the Customs Tariff Act, 1975. The impugned countervailing duty was levied under Section 3 of Customs Tariff Act, 1975. Sub-section (8) of Section 3 of the said Act even during the relevant period stipulated as under : -*
>
> *"S. 3(8) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act."*
>
> *It is evident from Section 3(8) of the Customs Tariff Act, 1975 quoted above that all the provisions of Customs Act, 1962 and the rules and regulations made thereunder have been clearly borrowed into the said Section 3 to apply to the impugned CVD and so it is obvious that provisions relating to fine, penalty and interest contained in Customs Act, 1962 are expressly made applicable with regard to the impugned countervailing duty. We must, however, fairly mention that in case of Torrent Pharma Ltd. v. CCE, Surat, CESTAT set aside penalty for evasion of Anti-dumping duty, CVD and SAD (para 16 of the judgment) on the ground that penal provisions of Customs Act, 1962 had not been borrowed in the respective sections of Customs Tariff Act, 1975 under which these duties were levied, but this decision of CESTAT regarding CVD suffered from a fatal internal contraction inasmuch as CESTAT itself in para 14 of the said judgment had expressly taken note of the fact that vide Section 3(8) of the Customs Tariff Act, 1975, the provisions of Customs Act, 1962 and the rules and regulations made thereunder had been made applicable to CVD charged (under Section 3 of Customs Tariff Act, 1975). In the light of this analysis, we hold that this contention of the appellant is legally not sustainable."*

Thus, the said order of Tribunal has been affirmed by the Hon'ble Supreme Court whereas Special Leave Petition in case of Mahindra & Mahindra Ltd bearing Diary No. 18824/2023 has been dismissed by Hon'ble Supreme Court holding that "No merit found in the Special Leave Petition". Whereas, the Hon'ble Supreme Court has dismissed the **Civil Appeal** filed by Oracle India Pvt. Ltd (Atul Kaushik) against the CESTAT Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-7-2015.

In the case of **Workmen of Cochin Port Trust Vs. Board of Trustees of the Cochin Port Trust and Another 1978 AIR 1283**, the Hon'ble Three Judges Bench held as under:

> *"The effect of non-speaking order of dismissal without anything more indicating the grounds or reasons of its dismissal must by necessary implication be taken to have decided that it was not a fit case where special leave should be granted. It may be due to several reasons. It may be one or more. It may also be that the merits of the award were taken into consideration and this Court felt that it did not require any interference. But since the order is not a speaking order it is difficult to accept the argument that it must be deemed to have necessarily decided implicitly all the questions in relation to the merits of the award."*
>
> *The dismissal of special leave petition by the Supreme Court by a non-speaking order of dismissal where no reasons were given does not constitute res judicata. All that can be said to have been decided by the Court is that it was not a fit case where special leave should be granted."*

Therefore, I find that the differential Customs Duty amounting to **Rs. 5,39,34,351/-**is required to be recovered under Section 28 (4) of the Customs Act, 1962 and I also find that the Section 28AA ibid provides for payment of interest automatically along with the Duty confirmed/determined under Section 28 ibid.

26. Whether the subject goods having assessable value of Rs. 27,74,86,711/- (Rupees Twenty Seven Crore, Seventy Four Lakh, Eighty Six Thousand, Seven Hundred and Eleven Only) imported through ICD Tumb as detailed in the Show Cause Notice, are liable for confiscation under Section 111(o) of the Customs Act, 1962?

26.1 Show Cause Notice proposes confiscation of the impugned imported goods under Section 111(o) of the Customs Act, 1962. Any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, would come under the purview of Section 111(o) of Customs Act, 1962. As discussed above and relying on the decision of Hon'ble Supreme Court in case of Union of India Vs. Cosmo Films Ltd reported as 2023 (72) GSTL 147 (SC) wherein Hon'ble Supreme Court has held that pre-import condition, during October,2017 to January,2019, in Advance Authorization Scheme was valid, I find that the Importer has failed to comply with the pre-import conditions as stipulated under Notification No. 18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017 and therefore, imported goods under Advance Authorization claiming the benefit of exemption Notification No. 18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017 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 ofNotification No.18/2015 dated 01-04-2015, as amended by Notification No.79/2017-Cus, dated 13-10-2017 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 *inter alia* as under: -

> "
> .
> .
> .
>
> ***174.*** *..... In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;*
>
> *"23. 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)."

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above."

26.6 The importer has contended that the goods had already been imported and cleared for home consumption and were never seized by the authorities and therefore they cannot be confiscated. In this regard, I find that the ratio of decision rendered by Hon'ble Tribunal Mumbai in case of *ApcoInfratech Pvt. Ltd.* v. *Commissioner* reported as 2019 (368) E.L.T. 157 (Tri.-Mumbai) affirmed by the Hon'ble Supreme Court reported as *2019 (368) E.L.T. A49 (S.C.)] is squarely applicable to the present case as in the said decision it has been held as under :*

7. *Heard both the sides and perused the records of the case. We find that the appellant M/s. Apco had imported the "Hot mix plant" under Notification No. 21/2002-Cus. Sr. No. 230. It is apparent from the facts of the case that the plant was never utilized as provided under the conditions of the notification. The contention of the appellant that they were eligible for multiple road constrsites does not mean that the condition of the notification has been followed. In fact, the plant was never used for such contracts as canvassed by the appellant during the importation of goods and claiming exemption. The appellant has not adduced single evidence that they have followed the conditions of the notification. They declared that they had contracts awarded by the State of U.P wherein the imported plant would be used. However, they never used the said imported equipments in State of U.P. for construction of road. Instead, they used the plant as a sub-contractor in State of Rajasthan and Tamil Nadu, but even in these cases also they were not named as sub-contractor in the contract awarded for construction of road. As per the conditions of the exemption notification, an importer can claim the benefit of exemption provided they are named as sub-contractor for construction of road. Even this condition was not satisfied.* ***It clearly shows that the appellant never complied with the conditions of the exemption notification and has knowingly violated the conditions. We also find that since the conditions of the notification were not complied with and from the facts of the case it is very clear that the same were never intended to be complied with, we hold that the impugned order confirming demand, penalties and confiscation of goods has been rightly passed.*** *We also find that the officers had handed over the plant for safe custody after seizure and the same could not have been used without permission from the department. Having violated the conditions of Section 110 safe keeping by using the plant even after seizure makes the appellant liable for penalty under Section 117 of C.A. 1962. Further we find that Shri Anil Singh, Managing Director was fully aware about the benefits likely to accrue by availing ineligible notification and use of machine and therefore in such case his complicity in deliberate violation of the condition of notification is apparent. However, in case of Shri V.S. Rao, Chief Manager (F & A), we find that he was only concerned with the taxation matter to the extent of availing benefit of exemption notification and was not concerned/connected with the decision to*

use machine and his role in violation of condition is also not visible. We are therefore of the view that he cannot be burdened with penalty. Resultantly, in view of our above findings, we uphold the impugned order inasmuch as it has confirmed demand, confiscation of goods and penalties against M/s. Apco and Shri Anil Singh. However, the penalty imposed upon Shri V.S. Rao is set aside. The impugned order is modified to the above extent. The appeals filed by M/s. Apco Infratech and Shri Anil Kumar Singh is rejected and the appeal filed by Shri S.V. Rao is allowed.

In the present case, it is clearly apparent that the importer/noticee never complied with the conditions of the exemption notification and has knowingly violated the conditions. The importer has knowingly cleared the imported goods without observing obligatory condition of 'Pre-Import' as envisaged under Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017. In view of the above, the impugned goods imported without observing obligatory condition of "Pre-import" as envisaged in the aforementioned notification are rightly liable for confiscation. Therefore, the contention of the importer/noticee is not tenable.

26.7 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. 27,74,86,711/-** (Rupees Twenty Seven Crore, Seventy Four Lakh, Eighty Six Thousand, Seven Hundred and Eleven Only)imported through ICD Tumb port under the subject Advance Authorizations as detailed in Annexures attached to the Show Cause Notice.

27. Whether the importer is liable to Penalty under Section 114A of the Customs Act, 1962?

27.1 I find that demand of differential Customs Duty amounting to**Rs.5,39,34,351/-**has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the Importer under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in cases where the Duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the Duty or interest has been erroneously refunded by reason of collusion or any wilful mis statement or suppression of facts. In the instant case, the ingredient of suppression of facts by the importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Duty plus interest in terms of Section 114A ibid.

27.2 Further, I rely on the ratio of the decision of Hon'ble Tribunal Delhi in case of **Commissioner of Customs Vs. Ashwini Kumar Alia Amanullah reported as 2021 (376) E.L.T. 321 (Tri. - Del.),**wherein it is held as under:

*"**39.**The last contention of Shri Amanullah in his appeal is that since penalty has been imposed under Section 114A, no penalty should be imposed under Section 114AA also upon them. We find that the ingredients of Section 114A and Section 114AA are different. Section 114A provides for non-levy of duty or short levy of duty due to certain reasons. There is no dispute that no duty was levied or paid on the imported gold concealed in the UPS by mis-declaring the nature of goods. Therefore, Section 114A has been correctly invoked in this case and a penalty has been imposed."*

I find that in the present case, importer has with clear intent to evade the payment of IGST have wrongly availed the benefit of exemption Notification No.18/2015 dated 01.04.2015, as amended by Notification No. 79/2017-Cus, dated 13.10.2017 for the clearance of imported goods under Advance Authorization and did not fulfil the 'Pre-Import' condition as stipulated in Notification No.18/2015 dated 01.04.2015,as amended by Notification No.79/2017-Cus, dated 13.10.2017 and thereby short paid the duty. Therefore, Importer is liable for penalty under Section 114A of the Customs Act, 1962.

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

I find that fifth proviso to Section 114A stipulates that "where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114" Hence, I refrain from imposing penalty on the importer under Section 112 of the Customs Act, 1962 as penalty has been imposed on them under Section 114A of the Customs Act, 1962.

29. Further, I find that appellant have contended that 'Pre-Import 'condition was not laid down in Principal Notification No.18/2015-Cus dated 01-04-2015 and 'Pre-Import' condition was laid down vide Amendment Notification No. 79/2017-Cus dated 13-10-2017 and the Government vide Notification No. 01/2019-Cus. dated 10.01.2019 has omitted the 'pre-import condition'. Therefore, such amendment should be considered to be a clarificatory/curative amendment and be applied retrospectively. In this regard, I find that Advance Authorizations are governed by Chapter 4 of the FTP and it is governed by the DGFT and DGFT vide Notification No. 33/2015-20 dated 13-10-2017, amended the provision of Para 4.14 of the Foreign Trade Policy (2015-20), to incorporate the exemption from IGST, subject to compliance of the pre-import and physical export conditions. The Hon'ble Supreme Court in aforesaid case of Union of India Vs. Cosmo Films Ltd reported as 2023 (72) GSTL 147 (SC) has held that pre-import condition, during October 13, 2017 to January 9, 2019, in Advance Authorisation Scheme was valid. Thus, I find that Importer have utter disregard towards the decision of Hon'ble Supreme Court as they are contesting the same issue which have already been settled by the Hon'ble Supreme Court.

30. Further, I find that appellant have contended that the pre-import condition and Condition of Physical export introduced by DGFT Notification No. 33/2015 dated 13.10.2017 and Notification No.79/2017-Cus dared 13.10.2017 cannot and ought not to have been applied to the Advance Authorizations issued prior to 13.10.2017. In this regard, it is pertinent to mention that every Notifications are published in the public domain, and every individual affected by it is aware of what benefit it extends and in return, what conditions are required to be complied with. To avail such benefits extended by the Notification, one is duty bound to observe the formalities and/or comply with the conditions imposed in the notification. The Notification No. 79/2017-Cus dated 13.10.2017 never demanded that the previously issued Authorizations have to be pre-import compliant, but definitely, it made it compulsory that benefit of exemption from IGST can be extended to the old Advance Authorizations too, so long, the same are pre-import compliant. The moment they opted for IGST exemption, despite being an Advance Authorization issued prior to 13.10.2017, it was necessary for the importer to ensure that pre-import/physical export conditions have been fully satisfied in respect of the Advance Authorization under which they intended to import availing exemption.

30.1 With respect to issue that the pre-import condition and Condition of Physical export cannot and ought not to have been applied to the Advance Authorizations issued prior to 13.10.2017, I find that in order to pay off the government dues, the Noticee has paid the required customs duty along with applicable interest in Feb-2022, Mar-2022 and Jan-2024. Thus, the willful payment of IGST duty along with interest made by the Noticee indicates that the Noticee has accepted the violation of the pre-import condition committed by them and now has disputed the duty, interest and penalty demanded in show cause notice, in respect of Advance Authorizations issued prior to 13.10.2017.

30.2 In addition, the Hon'ble Supreme Court of India in the case of Union of India Vs. Cosmo Films Ltd reported as 2023 (72) GSTL 147 (SC) have discussed thoroughly the provisions of the Customs Act as well as the provisions of the FTP and it has been held that pre-import conditions, during October 13, 2017 to January 9, 2019, in Advance Authorisation Scheme imposed vide Notification No. 79/2017-Cus dated 13.10.2017 was valid and required to be complied with. In view of above discussion

and the judgement passed by the Hon'ble Supreme Court of India in the instant matter, I find no substance in this argument put forth by the Noticee.

31. Further, I find that in para 10 of the subject Show-Cause-Notice it has been mentioned that the importer had paid Rs. 2,67,91,052/- in respect of 38 Bills of Entry and the said amount was proposed to be appropriated against demand of duty. However, I find that Duty amounting to **Rs. 2,26,10,755/-**only was paid in respect of 33 Bills of Entry instead of shown amount Rs. 2,67,91,052/-. I find that 05 Bills of Entry have duplicate entries in Annexure-III enclosed to the subject SCN (showing Bills of Entry recalled for paying IGST). The said 05 Bills of Entry bearing Nos. 6582820 dated 29-05-2018, 6831606 dated 16-06-2018, 6905088 dated 22-06-2018, 7438251 dated 31-07-2018 and 7986207 dated 10-09-2018 having duplicate entry involve Duty Amount of Rs. 41,80,297/-. Therefore, I find that the total Duty paid during the investigation was Rs.2,26,10,755/- only and same is required to be appropriate against demand of dues. Further, I find that consequent to the judgement of Hon'ble Supreme Court in the case of Union of India Vs. Cosmo Films Ltd, the noticee vide letter dated 28/06/2023 informed that they decided to opt for the procedure prescribed by CBIC in the circular for the purpose of discharge of liability of Rs. 3,06,73,018/- in respect of 34 Bills of Entry, in respect of which department had issued SCN No. VIII/10-11/COMMR/O& A/2022-23 dated 09/09/2023 and requested to re-assess the Bills of Entry. The noticee vide letter dated 24/01/2024 informed that they had discharged the liability of customs duty of Rs.3,06,73,018/- as per reassessed Bills of Entry alongwith the payment of interest of Rs.2,50,19,015/- + Rs.2,08,800/- (Total payment of Rs. 5,59,00,832/-) vide payment challans in the month of Jan-2024. Further, ICD Tumb vide letter F. No. CUS/APR/ASS/3899/2023-ICD-UMGN-CUSdated 12-01-2024 confirmed the payment of Rs. 3,06,73,022/- as Duty and Rs. 2,52,27,810/- as interest. In view of the above, I find that the noticee had paid the amount of **Rs. 5,32,83,777/- (Rs. 2,26,10,755/- + Rs. 3,06,73,022/-)** against their Customs duty liability and amount of **Rs. 2,52,27,810/-** against their interest liability.

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

::ORDER::

a) I confirm the Duty of Customs amounting to **Rs. 5,39,34,351/-** (Rupees Five Crore, Thirty Nine Lakh, Thirty Four Thousand, Three Hundred and Fifty One only)in the form of IGST saved in course of imports of the goods through ICD Tumb port under the subject Advance Authorizations and the corresponding Bills of Entry as detailed in the Annexures attached to the Show-Cause-Notice, and order recovery of the same from M/s. Goldstab Organics Pvt. Ltd. in terms of the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962;

b) I order to appropriate the amount of **Rs. 5,32,83,777/-**deposited/paid by M/s. Goldstab Organics Pvt. Ltd. against their aforesaid confirmed Duty and to appropriate the amount of **Rs. 2,52,27,810/-**deposited/paid by M/s. Goldstab Organics Pvt. Ltd. against their aforesaid confirmed interest

c) I hold the subject goods having assessable value of **Rs. 27,74,86,711/-** (Rupees Twenty-Seven Crore, Seventy-Four Lakh, Eighty Six Thousand, Seven Hundred and Eleven Only)imported by M/s. Goldstab Organics Pvt. Ltd. through ICD Tumb port under the subject Advance Authorizations as detailed in the Annexures attached to the Show-Cause-Notice liable for confiscation under Section 111(o) of the Customs Act, 1962.However, I give them the option to redeem the goods on payment of Fine of

Rs.1,00,00,000/- (Rupees One Crore only) under Section 125 of the Customs Act, 1962;

d) I impose a penalty of **Rs. 5,39,34,351/-** (Rupees Five Crore, Thirty-Nine Lakh, Thirty-Four Thousand, Three Hundred and Fifty-One only)on M/s. Goldstab Organics Pvt. Ltd. plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at (a) above under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days;

e) I refrain from imposing penalty on M/s. Goldstab Organics Pvt. Ltd. under Section 112 (a) of the Customs Act, 1962 for the reasons discussed in para 28 supra;

f) I order to enforce the Bonds executed by M/s. Goldstab Organics Pvt. Ltd. in terms of Section 143(3) of the Customs Act, 1962, for recovery of the Customs Duty as mentioned at (a) above alongwith interest.

33. 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.

34. The Show Cause Notice No. VIII/10-11/Commr./O&A/2022-23 dated 09.09.2022 is disposed off in above terms.

16.04.2024

(Shiv Kumar Sharma)
Principal Commissioner

DIN-20240471MN0000888C9B
F. No. VIII/10-11/Commr./O&A/2022-23 Date: 16.04.2024.

M/s. Goldstab Organics Pvt. Ltd.,
Plot No. 2816, Chemical Zone,
GIDC 8A, Valsad, Gujarat
(IEC-0300021011)

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 Deputy Commissioner of Customs, ICD Tumb, Ahmedabad for information please.
4. The Superintendent of Customs (Systems), Ahmedabad in PDF format for uploading on the website of Customs Commissionerate, Ahmedabad.
5. Guard File.