

	<p>प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद सीमाशुल्कभवन, आलइंडीयारेडीऑकेबाजुमे, नवरंगपुरा, अहमदाबाद 380009 दुरभाष (079) 2754 46 30 फैक्स (079) 2754 23 43</p> <p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD</p> <p>CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009</p> <p>PHONE : (079) 2754 46 30 FAX (079) 2754 23 43 E-mail: cus-ahmd-adj@gov.in</p>	 <p>आजादी का अमृत महोत्सव</p>
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DIN-20240471MN000018825

SHOW CAUSE NOTICE

M/s Panama Petrochem Ltd., Survey No. 78/2, Village Kadaiya, Daman Industrial Estate, Nani Daman, Daman-396210 having (IEC-039301969) (hereinafter referred to as "The Importer" for the sake of brevity) are engaged in manufacturing of petroleum specialty products viz., Ink oils, Rubber process oils, Textile Oils and other grades of Oils, and they import various grades of Base oil.

2. On the basis of Analytic Report No. 04/2022-23 dated 10.05.2022 issued by the Directorate General of Analytics and Risk Management, National Customs Targeting Centre, Mumbai, on the subject of 'Wrong availment of IGST duty for goods imported claiming benefit of Notification No.021/2015-Cus dtd 01.04.2015', an Investigation was initiated by SIIB, Customs-Surat on the subject of Advance Authorizations issued under Notification No.021/2015-Cus dtd 01.04.2015 obtained by the Importer from Directorate General of Foreign Trade (DGFT).

2.1 During the investigation it has been observed that M/s Panama Petrochem Ltd., Survey no. 78/2, Village Kadaiya, Daman Industrial Estate, Nani Daman, had obtained Advance Authorization License No. 0311004991 & 0311004993 both dated 29.06.2021 (**RUD- 01**) issued by the DGFT in the name of M/s Panama Petrochem Limited. These Advance Authorizations were issued under Notification No.21/2015-Cus dated 01.04.2015 to the Importer for procuring Imported Goods i.e. "BASE OIL" which was to be used in manufacturing of their final product to be sold as deemed exports (in Advance Authorization items to be exported/supplied is mentioned as PANOILTW 255 (PETROLEUM DISTILLATE)/ PAN Oil TS/SH 150/Spindle Oil). These Advance Authorizations were issued under Notification No.21/2015-Cus dated 01.04.2015, which exempts the whole of the duty of customs leviable thereon specified in the First Schedule to the Customs Tariff Act, 1975 and from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act. However, this notification nowhere allows the exemption on the Integrated tax i.e. IGST on Imports levied thereon under sub-section (7) of section 3 of the said Customs Tariff Act.

2.2 Whereas, on verifying the Imports against these Advance Authorization License No. 0311004991 & 0311004993 both dated 29.06.2021, it was found that the Importer had imported Base Oil (different grades) vide Bill of Entry No. 5131600 dated 21.08.2021 with utilization of Advance License No. 0311004993 dated 29.06.2021 and Bill of Entry No. 5131286 dated 21.08.2021 with utilization of Advance License No. 0311004991 dated 29.06.2021 (**RUD- 02**). The details of the Import vide the above said Bills of Entry are as follows:

TABLE- I

Sr. No.	Bill of Entry No. & Date	Item No.	Details of Goods Imported	Quantity (in MT)	Assessable Value (in Rs.)	Import duty paid	Advance Authorization License No
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						(in Rs.)	
1	5131600 dated 21.08.2021	1	Base Oil 70N (CTH 27101971)	510	34037946.99	NIL	0311004993 dated 29.06.2021
2	5131286 dated 21.08.2021	1	Base Oil 225N (CTH 27101971)	510	27854641.82	NIL	0311004991 dated 29.06.2021

2.3 The Importer has claimed exemption from all kind of Import Duties and paid NIL Import duty on the Imports made vide above referred Bills of Entry Nos. 5131600 & 5131286 both dated 21.08.2021. On examining the said Bills of Entry, it has been noticed that while filing both the Bills of Entry the Importer had availed exemption from payment of Basic Customs Duty by availing the benefit of Notification No. 21/2015-Cus dated 01.04.2015 and the Importer had also availed exemption from payment of IGST by availing the benefits of Notification No. 18/2015-Cus dated 01.04.2015, however the benefits of the Notification No. 18/2015-Cus dated 01.04.2015 were not available to them as both the Advance Authorizations 0311004993 dated 29.06.2021 & 0311004991 dated 29.06.2021 were issued to them under Notification No. 21/2015-Cus dated 01.04.2015. Therefore, the Importer had wrongly availed the exemption of Notification No. 18/2015-Cus dated 01.04.2015. There is no exemption from payment of IGST on the imports done under Advance Authorization issued under Notification No. 21/2015-Cus dated 01.04.2015. The exemption is available from payment of IGST on the imports done under Advance Authorization issued under Notification No. 18/2015-Cus dated 01.04.2015 only. Therefore, it appears that the Importer intentionally had wrongly availed exemption from payment of IGST on the said imports.

2.4 In view of the above, it appears that the Importer had short paid/ not paid the IGST on the Imports done vide Bills of Entry Nos. 5131600 & 5131286 both dated 21.08.2021. The amount of short paid/ not paid import duty i.e. IGST is calculated in the following table:-

TABLE- 2

S. No.	Bill of Entry No. & Date	Item No.	Details of Goods Imported	Assessable Value (in Rs.)	IGST Payable (in Rs.)	IGST paid (in Rs.)	Difference (in Rs.)
1	5131600 dated 21.08.2021	1	Base Oil 70N (CTH 27101971)	34037946.99	6463806.00	NIL	6463806.00
2	5131286 dated 21.08.2021	1	Base Oil 225N (CTH 27101971)	27854641.82	5289597.00	NIL	5289597.00
TOTAL				61,892,588.81	11753403	NIL	11753403

Therefore, the Importer had short paid/ not paid IGST of Rs. **1,17,53,403/-** on the above imports which is required to be recovered from the Importer as per provisions of Section 28 of the Customs Act, 1962.

3. Enquiry Conducted With M/s Panama Petrochem Ltd.,

3.1 During the course of Enquiry, Summons dated 08.10.2022 (**RUD- 03**) was issued to M/s Panama Petrochem Ltd., for recording the Importer's version of facts. Shri Pradip kumar Vishwanath Nikam, Vice President of M/s Panama Petrochem Ltd., appeared before the Superintendent (SIIB) on 12.10.2022 and his statement dated 12.10.2022 (**RUD- 04**) was recorded which is reproduced hereunder:-

“Q. No.1:- Please explain in details of business activity of M/s Panama Petrochem Limited?

Answer: M/s Panama Petrochem Limited is engaged in manufacturing of petroleum specialty products viz., Ink oils, Rubber process oils, Textile Oils and other grades of Oils since 1982. We import various grades of Base oil. Our manufacturing facility is at Survey No: 78/2, Village – Kadalya, Daman Industrial Estate, Nani Daman, Daman – 396210, Plot No.3303 & 3311, GIDC, Ankleshwar and at H-12, MIDC, Taloja, District- Raigad.

Q.No. 02:- Please give the details of imports made under Advance Authorization Scheme since April, 2017.

Answer:- We are regularly importing various grades of Base Oil. We are submitting the details of imports made under Advance Authorization Scheme since April, 2017 to till date. We are also submitting the import dockets pertaining to the imports made under Advance Authorization Scheme.

Q. No. 03:-Kindly peruse the copies of Bills of Entry No. 5131286 and 5131600 both dated 21.08.2021 and Advance Authorization license Nos. 0311004991 and 0311004993 both dated 29.06.2021 and explain the exemption benefits taken?

Answer: I have perused the Bills of Entry No. 5131286 and 5131600 both dated 21.08.2021 and Advance Authorization license Nos. 0311004991 and 0311004993 both dated 29.06.2021 and state that the exemption of Basic Customs Duty (BCD) was availed by claiming the benefit of Notification of No.21/2015-Cus dated 01.04.2015 and the exemption of IGST was claimed under No.18/2015-Cus dated 01.04.2015.

Q. No. 04:-Kindly peruse the Customs Notification No. 18/2015 dated 01.04.2015; Customs Notification No. 21/2015 dated 01.04.2015and Customs Notification No. 79/2017 dated 13.10.2017 and offer your comments regarding the applicability of IGST.

Answer: I have perused the Customs Notification No. 18/2015 dated 01.04.2015, Customs Notification No. 21/2015 dated 01.04.2015 and Customs Notification No. 79/2017 dated 13.10.2017 and in token of perusal I put my dated signature on the said Notifications. As per the conditions of Notification No. 18/2015 dated 01.04.2015 and amendment of the said notification vide Notification No.79/2017 dated 13.10.2017, there is exemption from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3,integrated tax leviable thereon under sub-section (7)of section 3, goods and services tax compensation cess leviable thereon under sub-section (9) of section 3,safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under Section 9A.

As per Customs Notification No. 21/2015 dated 01.04.2015 and amendment of the said notification vide Notification No.79/2017 dated 13.10.2017, there is exemption from safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under Section 9A of Customs Tariff Act, 1975.

From the explanation to the notifications shown to me above, it is clear that there is no exemption of IGST when the goods are imported by claiming the benefit of under Customs Notification No. 21/2015 dated 01.04.2015 and amendment of the said notification vide Notification No.79/2017 dated 13.10.2017.

Q. No. 05:- On scrutiny of the Bills of Entry No. 5131286 and 5131600 both dated 21.08.2021 and also Advance Authorization license nos. 0311004991 and 0311004993 both dated 29.06.2021, it is noticed that at the time of seeking clearance from Customs Authorities at Hazira Port, the exemption of Basic Customs Duty (BCD) was availed by claiming the benefit of Notification of No.21/2015-Cus dated 01.04.2015 and the exemption of IGST was claimed under No.18/2015-Cus dated 01.04.2015. As per the provisions of Foreign Trade Policy and also as per the conditions laid down in both the aforesaid Notifications amended by Notification No.79/2017 dated 13.10.2017, it appears that an importer who has been granted Advance Authorization in the respective Notifications can avail the benefit of the said Notification only. However, in the instant case it is noticed that M/s. Panama Petrochem Ltd have claimed the benefit of Notification No.021/2015-Cus dtd.01.04.2015 for goods imported, and have claimed the benefit of IGST duty under Notification No.018/2015- Cus dtd.01.04.2015 which is not permitted, as exemption claimed under notification No21/2015-Cus does not give exemption for payment of IGST duty as explained by you above. It may be noted that Notification No 018/2015-Cus dtd 01.04.2015 is applicable for advance licenses for physical export whereas notification No 21/2015-Cus dtd 01.04.2015 is applicable for advance licenses for deemed exports. Kindly offer your comments.

Answer:- Yes, we agree that we have sought the clearance of the goods imported by our company under the aforesaid bills of entry by wrongly claiming the exemption of IGST under Notification No. 18/2015 dated 01.07.2015. I confirm that we are liable to pay IGST alongwith applicable interest and the applicable penalty for the purpose of concluding the proceedings under Section 28 of Customs Act, 1962. In token of it, I hereby produce letter dated 12.10.2022 signed by me as per the directions of the Director of the company for the payment of the said Government dues.

This statement of mine has been voluntarily given by me which have been typed by the recording officer on computer on my request. I have not been subjected to any pressure, threat, coercion, duress etc. by the recording officer during recording of my statement. None of my religious feelings were hurt during recording of my statement. I have once again gone through my above statement and I confirm the facts stated above are true and correct and as per my say and version. In token of its correctness, I put my dated signatures on all the pages of my said statement. I also assure that I will remain present before the officers of Customs as and when required".

3.2 Further, Summons dated 08.10.2022 was issued to M/s ACT Inraport Pvt. Ltd. (CHA of M/s Panama Petrochem Ltd. for Hazira Port)(**RUD- 05**) for recording their version of facts. Shri Sandeep T S, Branch Manager of M/s ACT Inraport Pvt. Ltd. appeared before the Superintendent (SIIB) on 08.10.2022 and his statement dated 08.10.2022 (**RUD- 06**) was recorded which is reproduced hereunder:-

"On being asked, I state that M/s ACT Shipping Ltd, Gandhidham, Kandla was established in the year 1983 as Clearing & Forwarding agent and

later on the firm name was changed to M/s ACT Infraport Pvt. Ltd. in 2011 and I state that Surat Branch was started in the year 2012. On being asked regarding Directors of the company, I state that Shri Gopal Sujan Thundathil is the Managing Director and Ms. Wilma, Shri Bharat Thacker, Shri Sudhir Kumar Satapathy and Shri Rajan Narikutty are other directors of the company, On being asked, I state that M/s. ACT Infraport Ltd is holding CHA licence No. KDL/CHA/R/34/2011 since 2011 and the company's PAN based no. is AAECA9098HCH005.

On being asked, I state that M/s ACT Infraport Pvt Ltd, Surat Branch is operating bank accounts from (i) ICICI Bank, L.P. Savani Road Branch, Adajan, Surat having account No. 183705001230 (Current Account) (ii) ICICI Bank, Sevasram Road Branch, Bharuch (Current Account No. 017805006013) and (iii) State Bank of India, Bhai Pratap Circle Branch, Gandhidham (OD Account No. 66012793483).

On being asked regarding the activities carried out by M/s ACT Infraport Pvt Ltd, I state that we approach the importer / exporter for Customs clearance of their goods from various ports in Kandla, Mundra, Mumbai, Nhava Sheva, Mangalore, Pipavav, Vizag, Cochin, Chennai, Dahej, and Surat.

On being asked regarding CHA norms followed by us, I state that we have taken authorization letters from importers/exporters for the clearance of the goods from Customs. Further, I state that as per new policy of Government, we started to fill up the KYC form of our new clients and we do have the KYC form of our old clients.

On being asked regarding KYC form of M/s. Panama Petrochem Ltd., I state that I will produce the same within 02-03 days.

On being asked regarding the commodities dealt with by us, I state that we deal with the clearances of all legal commodities. On being asked regarding CHA charges taken by us, I state that we charge based on our clients. For 20' container, it ranges between Rs. 2500-3000 and for 40' container; it ranges between Rs. 4000-4500.

On being asked specifically regarding clearance & consignments of M/s. Panama Petrochem Ltd, I state that I have handled the imports of the above mentioned company. On being asked regarding mode of payment received from M/s. Panama Petrochem Ltd, I state that payment is received either by Cheque, NEFT or RTGS.

On being asked regarding the goods imported by M/s. Panama Petrochem Ltd, I state that the said company is engaged in imports of various grades of Base Oil.

Today I produce copies of Bill of Entry No. 5131286 dated 21.08.2021 and Bill of Entry No. 5131600 dated 21.08.2021 along with all import documents and copies of Advance Licence No. 0311004991 and 0311004993 both dated 29.06.2021 of M/s. Panama Petrochem Ltd and I undertake that I will recheck regarding the imports made by the said company under Advance Authorization scheme and I will submit the relevant import documents within few days time. In token of above submission, I put my dated signature on all page of the documents by M/s. Panama Petrochem Ltd, submitted by me.

This statement of mine has been voluntarily given by me which have been typed by the recording officer on computer on my request. I have not been subjected to any pressure, threat, coercion, duress etc. by the recording officer during recording of my statement. None of my religious feelings were hurt during recording of my statement. I have once again gone through my statement and finding the same to be true and correct and as per my say and version I put my dated signatures on all the pages of my statement".

3.3 The Importer vide their letter dated 12.10.2022 (**RUD- 07**) addressed to the Superintendent, SIIB Surat, submitted that they had imported the goods "Base Oil" under CTH 27101971 vide BE Nos. 5131286 & 5131600 both dated 21.08.2021. They further stated that they do not want any show cause notice and they are ready to pay the IGST with Interest and Penalty. Therefore, they requested to allow them payment of IGST with applicable interest and penalty.

3.4 On the request of the Importer, the Additional Commissioner of Customs, SIIB Surat, vide letter F. No. VIII/09-04/SIIB/Inq.-Noti.21-2015/2022-23 dated 12.10.2022, requested the Deputy Commissioner of Customs (Imports), Adani Hazira Port, to recall and re-assess the Bills of Entry Nos. 5131286 & 5131600 both dated 21.08.2021, so as to enable the Importer to pay the IGST on the imports vide these Bills of Entry. The Bills of Entry Nos. 5131286 & 5131600 both dated 21.08.2021, were recalled and re-assessed and the Importer has paid the IGST Rs.1,17,53,403/- along with Interest Rs.22,33,738/- and penalty Rs.17,63,010/- vide Challans Nos. 2041265419(Total amounting to Rs. 72,32,981/-Icegate Ref. ID-IG131022025909598225) & 2041266685(Total amounting to Rs.85,17,171/-Icegate Ref. ID-IG131022025554640008)both dated 13.10.2022 on the re-assessed Bills of Entry.

LEGAL PROVISIONS RELEVANT TO THE CASE:-

4. The following legal provisions are applicable to the case, which are detailed hereunder:

- 4.1 Para 4.03 of the Foreign Trade Policy (2015-20);
- 4.2 Para 4.05 of the Foreign Trade Policy (2015-20);
- 4.3 Para 4.14 of the Foreign Trade Policy (2015-20);
- 4.4 DGFT Notification No.16/2015-20 dated 01.07.2022;
- 4.5 Notification No. 37/2022- Customs dated 30.06.2022;
- 4.6 Notification No. 18/2015-Customs dated 01.04.2015;
- 4.7 Notification No. 21/2015-Customs dated 01.04.2015;
- 4.8 Notification No. 79 /2017-Customs dated 13.10.2017;
- 4.9 Section 17 (1) of the Customs Act. 1962;

- 4.10 Section 46(4) of the Customs Act, 1962;
- 4.11 Section 111(o) of the Customs Act, 1962;
- 4.12 Section 112(a) of the Customs Act, 1962;
- 4.13 Section 28(4) of the Customs Act, 1962;
- 4.14 Section 114A of the Customs Act, 1962;
- 4.15 Section 114AA of the Customs Act, 1962;

4.1 *Para 4.03 of the Foreign Trade Policy(2015-20):-*

- (a) Advance Authorization 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 / utilized in the process of production of export product, may also be allowed.
- (b) Advance Authorization is issued for inputs in relation to resultant product, on the following basis:
 - (i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures); OR
 - (ii) On the basis of self declaration as per paragraph 4.07 of Handbook of Procedures. OR
 - (iii) Applicant specific prior fixation of norm by the Norms Committee OR
 - (iv) On the basis of Self Ratification Scheme in terms of Para 4.07A of Foreign Trade Policy

4.2 *Para 4.05 of the Foreign Trade Policy (2015-20):-*

Eligible Applicant / Export / Supply

- (a) Advance Authorization can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer.
- (b) Advance Authorization 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 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), (d), (e), (f) and (g) 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.

4.3 *Para 4.14 of the Foreign Trade Policy (2015-20)*

Imports under Advance Authorization are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Antidumping 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. Imports against Advance Authorizations for physical exports are exempted from Integrated Tax and Compensation Cess upto 31.03.2018 only.

The Para 4.14 was later amended vide Notification No.16/2015-20 dated 01.07.2022, which after amendment reads as:

Details of Duties exempted

Imports under Advance Authorization 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) & (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 as well as deemed 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).¹⁵

¹⁵ (Para 4.14 amended vide Notification No.16/2015-20 dated 01.07.2022)

4.4 DGFT Notification No.16/2015-20 dated 01.07.2022

In exercise of powers conferred by Section 5 of FT(D&R) Act, 1992, read with Paragraph 1.02 of the Foreign Trade Policy, 2015-20, as amended from time to time, the Central Government hereby makes the following amendments in Foreign Trade Policy 2015-20.

1. Integrated Tax and Compensation Cess under Advance Authorization as per Para 4.14 of FTP 2015-20 is exempted as provided in the Notification No. 37/2022-Customs dated 30th June 2022 issued by Department of Revenue.
2. -----
3. -----

4.5 Notification No. 37/2022- Customs dated 30.06.2022;

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 makes the following further amendments in each of the notifications of the Government of India, 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, namely :-

TABLE S. No.	Notification number and date	Amendments
(1)	(2)	(3)
1.	16/2015-Customs, dated the 1st April, 2015 [vide number G.S.R. 252(E), dated the 1st April, 2015]	In the said notification, in the opening paragraph, the proviso to clause (iii) shall be omitted.
2.	18/2015-Customs, dated the 1st April, 2015 [vide number G.S.R. 254 (E), dated the 1st April, 2015]	In the said notification, in the opening paragraph, clause (xiii) shall be omitted.
3.	20/2015-Customs, dated the 1st April, 2015 [vide number G.S.R. 256 (E), dated the 1st April, 2015]	In the said notification, in the opening paragraph, clause (xiv) shall be omitted.
4.	22/2015-Customs, dated the 1st April, 2015 [vide number G.S.R. 258 (E), dated the 1st April, 2015]	In the said notification, in the opening paragraph, clause (xiii) shall be omitted.
5.	45/2016-Customs, dated the 13th August 2016 [vide number G.S.R. 795(E), dated the 13th August, 2016]	In the said notification, in the opening paragraph, clause (xii) shall be omitted.
6.	52/2003-Customs, dated the 31st March, 2003 [vide number G.S.R. 274(E), dated the 31st March, 2003]	In the said notification, in the opening paragraph, in the proviso, for the brackets, letters and figures "nothing contained in clause (B) above shall apply on or after the 01st July, 2022, subject to the following conditions" the words "exemption under this

		notification shall be subject to the following conditions" shall be substituted.
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4.6 Notification No. 18/2015-Customs dated 01.04.2015

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 Authorization issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy (hereinafter referred to as the said Authorization) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act, subject to the following conditions, namely :-

4.7 Notification No. 21/2015-Customs dated 01.04.2015

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 required or the manufacture of the final goods when imported into India, from whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as Customs Tariff Act) and from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon respectively under sections 3, 8B, 8C and 9A of the said Customs Tariff Act, except to the extent specified in para 2 to this notification, subject to the following conditions, namely:-

4.8 Notification No. 79 /2017-Customs dated 13.10.2017

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is 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 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, namely :-

(Relevant Provisions only)

Table S. No.	Notification number and date	Amendments
(1)	(2)	(3)
2.	18/2015-Customs, dated the 1 st April, 2015 [vide number G.S.R. 254 (E), dated the 1 st April, 2015]	<i>In the said notification, in the opening paragraph,- (a) for the words, brackets, figures and letters "from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A", the words, brackets, figures and letters "from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5)</i>

		of section 3, integrated tax leviable thereon under sub-section (7) of section 3, goods and services tax compensation cess leviable thereon under sub-section (9) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A" shall be substituted; ----- -----
4.	21/2015-Customs, dated the 1 st April 2015 [vide number G.S.R. 257(E), dated the 1 st April, 2015]	In the said notification, (a) in the opening paragraph, for the words, figures, and letters "safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A" the words, figures and letters "safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A" shall be substituted. ----- -----

4.9 Section 17 (1) of the Customs Act, 1962

Assessment of duty. - (1) An Importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

4.10 Section 46(4) of the Customs Act, 1962

The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

The importer who presents a bill of entry shall ensure the following, namely:-

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

4.11 Section 111(o) of the Customs Act, 1962

111. Confiscation of improperly imported goods, etc. -

The following goods brought from a place outside India, shall be liable to confiscation: -
(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer.

4.12 Section 112(a) of the Customs Act;

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 not exceeding the value of the goods or five thousand rupees, whichever is the greater,

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

4.13 Section 28(4) of the Customs Act, 1962;

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.

4.14 Section 114A of the Customs Act, 1962

Penalty for short-levy or non-levy of duty in certain cases.—

Where the duty has not been levied or has not 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, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall, also be liable to pay a penalty equal to the duty or interest so determined:] 2/[Provided that where such duty or interest, as the case may be, as determined under sub-section (2) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the duty or interest, as the case may be, so determined: Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso: Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this

section, the duty or interest as reduced or increased, as the case may be, shall be taken into account: Provided also that where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five per cent. of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect: Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114. Explanation.—For the removal of doubts, it is hereby declared that—

- (i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (2) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President*;
- (ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]

4.15 Section 114AA of the Customs Act, 1962

Penalty for use of false and incorrect material. -

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

5. Discussion on provisions of Law:-

5.1 Para 4.14 of the Foreign Trade Policy (2015-20) states that Imports under Advance Authorization are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Antidumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable. Further, Para 4.14 was later amended vide Notification No.16/2015-20 dated 01.07.2022, which after amendment provides that imports under Advance Authorization for physical as well as deemed 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).

5.2 DGFT Notification No.16/2015-20 dated 01.07.2022, amended Foreign Trade Policy 2015-20, wherein Integrated Tax and Compensation Cess under Advance Authorization as per Para 4.14 of FTP 2015-20 is exempted as provided in the Notification No. 37/2022-Customs dated 30th June 2022 issued by Department of Revenue. Further, Notification No. 37/2022-Customs dated 30th June 2022 amended various Notifications of Customs but did not amend Notification No. 21/2015-Customs dated 01.04.2015

5.3 Notification No. 18/2015-Customs dated 01.04.2015 as amended by Notification No.79/2017-Customs dated 13.10.2017, exempts materials imported into India against a valid Advance Authorization issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy, from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, integrated tax leviable thereon under sub-section (7) of section 3, goods and services tax compensation cess leviable thereon under sub-section (9) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A of the said Customs Tariff Act. Therefore, the Advance Authorizations issued under Notification No. 18/2015-Customs dated 01.04.2015, provided exemptions from IGST on imports into India.

5.4 Notification No. 21/2015-Customs dated 01.04.2015 as amended by Notification No. 79 /2017-Customs dated 13.10.2017, exempts materials required or the manufacture of the final goods when imported into India, from whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A of the said Customs Tariff Act. Therefore, the Advance Authorizations issued under Notification No. 21/2015-Customs dated 01.04.2015, did not provide any exemption from payment of IGST on imports into India.

5.5 As per Section 17 (1) of the Customs Act. 1962, an Importer shall self-assess the duty leviable on imported goods under section 46. Further, as per Section 46(4) of the Customs Act, 1962, the importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall ensure (a) the accuracy and completeness of the information given therein;(b) the authenticity and validity of any document supporting it; and(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

5.6 Section 111(o) of the Customs Act, 1962 provides for Confiscation of improperly imported goods, in respect of which the condition is not observed. In the instant case, the Importer did not pay the IGST on the imports under Advance Authorization issued under Notification No. 21/2015-Customs dated 01.04.2015 which did not provide any exemption from payment of IGST on imports into India. Further, Section 112(a) of the Customs Act, 1962, provides for Penalty for improper importation of goods under Section 111 of the Act.

5.7 Section 28(4) of the Customs Act, 1962 provides for Recovery of any duty which 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.

5.8 Section 114A of the Customs Act, 1962, provides for Penalty for short-levy or non-levy of duty in certain cases. Further, Section 114AA of the Customs Act, 1962 prescribes penalty for *knowingly or intentionally making, signing or using, or causing to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business.*

6. Discussion on Contraventions:

6.1 The Importer, in the instant case, had availed exemption from payment of IGST on the Imports done vide Bills of Entry Nos. 5131286 & 5131600 both dated 21.08.2021 by entering exemption Notification No. 18/2015-Cus dated 01.04.2015 in the Bills of Entry mentioned above which was not available to the Importer since the Advance Authorization was not issued under Notification No. 18/2015-Cus dated 01.04.2015 but instead it was issued under Notification No. 21/2015-Cus dated 01.04.2015. Therefore, the Importer had wrongly availed the exemption of Notification No. 18/2015-Cus dated 01.04.2015. There is no exemption from payment of IGST on the imports done under Advance Authorization issued under Notification No. 21/2015-Cus dated 01.04.2015 but exemption is available from payment of IGST on the imports done under Advance Authorization issued under Notification No. 18/2015-Cus dated 01.04.2015. Therefore, it appears that the Importer intentionally had wrongly availed exemption from payment of IGST on the said imports by mentioning the exemption notification which was not mentioned in their license issued by DGFT to avail the benefit, therefore Importer evaded payment of IGST Rs.1,17,53,403/- on the Assessable Value Rs.61,892,588.81/-.

6.2 The Importer, shall self-assess the duty leviable on imported goods under section 46, as per Section 17 (1) of the Customs Act, 1962 and as per Section 46(4) of the Customs Act, 1962, shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall ensure (a) the accuracy and completeness of the information given therein; (b) the authenticity and validity of any document supporting it; and (c) compliance with the restriction or prohibition while presenting a bill of entry. The Importer, by wrongly claiming exemption from payment of IGST on the above-mentioned imports, has contravened the provisions of Section 17 (1) and 46(4) of the Customs Act, 1962.

6.3 The Importer, by not paying the IGST on the above mentioned imports, did not follow the condition for the subject imports and therefore, as per Section 111 of the Customs Act, 1962, the goods were improperly imported which renders the goods imported vide above mentioned Bills of Entry, liable for Confiscation as per Section 111(o) of the Customs Act, 1962. Further, Section 112(a) of the Customs Act, 1962, provides for Penalty for improper importation of goods under Section 111 of the Act.

6.4 In the instant case, the Importer knew that the Advance Authorization which was issued to them, was issued under Notification No.21/2015-Customs dated 01.04.2015. The Importer had intentionally claimed exemption from payment of IGST by availing the Notification No. 18/2015-Customs dated 01.04.2015 which was not available to them. Therefore, the Importer, intentionally, by entering exemption Notification No. 18/2015-Customs dated 01.04.2015 for IGST on the imports mentioned above, has knowingly misstated in the Bills of Entry mentioned above. It appears that on being investigated by the department after being pointed out in the Analytic Report, the importer paid the duty alongwith interest and penalty, which otherwise could have not been recovered and the importer might have been successful in evasion of duty. Thus, it appears that the Importer, had willfully misstated in the Bills of Entry and evaded the payment of IGST on the said imports amounting to Rs. 1,17,53,403/- which is liable to be recovered from the Importer as per Section 28(4) of the Customs Act, 1962 along with Interest under Section 28AA of the Customs Act, 1962. The importer has rendered themselves liable for Penalty under Section 114A of the Customs Act, 1962.

6.5 The Importer tried evading the payment of IGST on the said imports by wrongly mentioning the exemption Notification No. 18/2015-Customs dated 01.04.2015 for IGST whereas the Advance Authorisation was issued to them under Notification No.21/2015-Customs dated 01.04.2015. Therefore, it appears that the Importer knowingly or intentionally used the declaration of the wrong exemption Notification for IGST payment which is incorrect and inconsistent with the Advance Authorisation issued to them. Therefore, it appears that for the said contravention, they have rendered themselves liable for Penalty under Section 114AA of the Customs Act, 1962.

7. Now, therefore, M/s Panama Petrochem Ltd., Survey no. 78/2, Village Kadaiya, Daman Industrial Estate, Nani Daman, (IEC-0393019691), are hereby called upon to Show Cause in writing to the Principal Commissioner of Customs, Ahmedabad having his Office at Custom House, Nr. All India Radio, Income Tax Circle, Navrangpura, Ahmedabad -380009, as to why:-

- (a) Customs Duty amounting to Rs. 1,17,53,403/- (Rupees One Crore, Seventeen Lakh, Fifty Three Thousand, Four Hundred and Three only) in the form of IGST saved in course of imports of the goods through Adani Hazira Port under the Advance Authorization and the corresponding Bills of Entry as mentioned in **TABLE- 2** in Para 2.4 above in this Show Cause Notice, in respect of which benefit of exemption under Customs Notification

No.18/2015 dated 01.04.2015 as amended (incorrectly availed exemption from IGST payment as the Advance Authorization was issued to under Notification No. 21/2015 dated 01.04.2015), should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 and the Customs Duty amounting to Rs. 1,17,53,403/- (Rupees One Crore Seventeen Lakh Fifty Three Thousand Four Hundred Three only) in the form of IGST, paid by them (as per details in Para 3.4 in this Show Cause Notice) should not be appropriated against the above demand;

- (b) Subject goods having assessable value of Rs.6,18,92,589/- (Rupees Six Crore, Eighteen Lakh, Ninety Two Thousand, Five Hundred and Eighty Nine only) imported through Adani Hazira Port, under the subject Advance Authorization 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, as the Advance Authorization was issued under Notification No.21/2015 dated 01.04.2015.
- (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 and the Interest amount of Rs.22,33,738/- (Rupees Twenty Two Lakh, Thirty Three Thousand, Seven Hundred and Thirty Eight only) paid should not be appropriated against Interest liability.
- (d) 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, availing exemption of Notification other than the Notification under which Advance Authorization was issued i.e. Notification No. 21/2015-Cus dated 01.04.2015, resulting in non-payment of Customs Duty, which rendered the goods liable to confiscation under Section 111(o) of the Customs Act, 1962.
- (e) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962, for improper importation of goods availing exemption of Notification other than the Notification under which Advance Authorization was issued to the Importer and also by reasons of wilful misstatement 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;
- (f) Penalty under Section 114AA of the Customs Act, 1962 for knowingly or intentionally using the declaration of the wrong exemption Notification for IGST payment which is incorrect and inconsistent with the Advance Authorisation issued to them;

8. The above noticee(s) are further required to state specifically in their written reply as to whether they wish to be heard in person before the case is adjudicated. If no specific mention is made about this in their written submissions, it shall be presumed that they do not wish to be heard in person. They should produce at the time of showing cause, all the evidences upon which they intend to rely in support of their defence.

9. If no reply is received within 30 (Thirty) days of receipt of this notice or if the noticee do not appear before the adjudicating authority when the case is posted for personal hearing, the case will be decided *ex parte* on merit, on the basis of the material available on record without further reference to them.

10. This Notice is issued without prejudice to any other action that may be taken against them, under this Act or any other law for the time being in force. The Department reserves its right to add, amend, modify or supplement this notice at any time on the basis of evidences available/gathered later on, prior to the adjudication of the case.

11. The relied upon documents for the purpose of this notice are listed in the **Annexure-A** and are enclosed with this notice.

Encl:-Annexure -'A'

Shiv Kumar Sharma
26.04.2024
(Shiv Kumar Sharma)
Principal Commissioner,

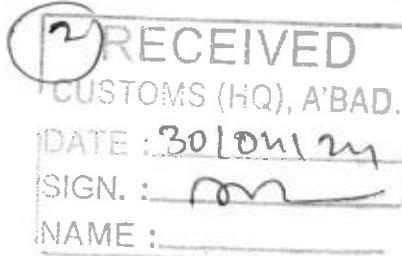
F. No. VIII/10-36/Pr.Commr/O&A/2023-24

Date: 26.04.2024

DIN: 20240471MN000018825

BY SPEED POST A.D.

To,
M/s Panama Petrochem Ltd.,
Survey no. 78/2,
Village Kadaiya,
Daman Industrial Estate,
Nani Daman.



Copy To:

- 1) The Additional/Joint Commissioner of Customs, Customs Hazira Port, Hazira-Choryashi, Surat-395007
- 2) The Deputy/ Assistant Commissioner of Customs, SIIB Surat, Customs House, Althan-Bhimrad Road, Althan, Surat-395007
- 3) The Deputy/ Assistant Commissioner of Customs, Customs Hazira Port, Hazira-Choryashi, Surat-395007
- 4) The Deputy/ Assistant Commissioner, HQ Systems, Customs Ahmedabad, for uploading on the official website;
- 5) Guard File.