

अपर आयुक्त सीमा शुल्क कार्यालय, हजीरा पोर्ट प्रा. लिमिटेड हजीरा बाय-पास रोड, चोरियाशी पोस्ट हजीरा- 394270. दूरभाष: 0261-2207685	 सत्यमेव जयते	OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS, HAZIRA PORT PVT. LTD. HAZIRA BY- PASS ROAD, CHORIYASHI AT & POST HAZIRA - 394270. PHONE : 0261-2207685
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DIN:20240171MN00002202FC

SHOW CAUSE NOTICE

M/s.Sonal Tex Fab, 62-A, Mota Borasara, Near Kim Char Rasta, Surat-394110 (hereinafter referred as “the said importer” for the sake of brevity), holding Import Export Code No. 5213013716 had imported 18 Sets of capital goods viz. Brand New Shuttle Less Rapier Looms under EPCG Licence No. 5230013044 dated 11.12.2013 by saving duty of **Rs.13,19,952/-** (Actual Duty Utilized of **Rs.13,12,653/-**) and had cleared the same vide below mentioned Bill of Entry at zero duty while availing the benefit of exemption available under Notification No. 22/2013-Cus dated 18.04.2013. The details of import are as under:

S. N.	B/E No. & Date	Qty machinery cleared	Duty Saved/ available as per EPCG Licence	Total Duty Foregone/Debited at the time of clearance	BG Amount (Rs.)
1	4646838 dtd. 15.02.2014	18	1319952	1312653	
	Total	18	1319952	1312653	13,25,000

2. As per Notification No. 22/2013-Cus dated 18.04.2013 as amended, the said importer was required to fulfill the export obligation on FOB basis equivalent to six times of the duty saved on the goods imported as may be specified on the licence or authorization. The relevant portion of the said notification is produced herein below for reference:

Notification No. 22 / 2013-CUSTOMS

New Delhi, the 18th April, 2013

G.S.R. 248 (E). - In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in the Table 1 annexed hereto, from,-

- (i) *the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and*
- (ii) *the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, when specifically claimed by the importer.*

2. The exemption under this notification shall be subject to the following conditions, namely:-

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

(2) that the authorisation is registered at the port of import specified in the said authorisation and the goods, which are specified in the Table 1 annexed hereto, are imported within eighteen months from the date of issue

of the said authorisation and the said authorisation is produced for debit by the proper officer of customs at the time of clearance:

Provided that the benefit of import of capital goods at concessional duty under this notification for creation of modern infrastructure shall be extended only to such retailers who have a minimum area of 1000 square metres:

Provided further that the catalyst for one subsequent charge shall be allowed, under the authorisation in which plant, machinery or equipment and catalyst for initial charge have been imported, except in cases where the Regional Authority issues a separate authorisation for catalyst for one subsequent charge after the plant, machinery or equipment and catalyst for initial charge have already been imported;

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

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

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

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

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

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(7) that if the importer does not claim exemption from the additional duty leviable under section 3 of the Customs Tariff Act, 1975, the additional duty so paid by him shall not be taken for computation of the net duty saved for

the purpose of fixation of export obligation provided the Cenvat credit of additional duty paid has not been taken;

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

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

3. Accordingly, the said importer had executed Bond dated 06.02.2014 for Rs. 42,00,000/- backed by Bank Guarantee No. 40/2 Dated 05.02.2014 For Rs. 13,25,000. -issued by the Central Bank Of India, Nanapura Branch Surat-395001, for EPCG License No. 5230013044 dated 11.12.2013. They had also undertaken to fulfill all the terms and conditions specified in the License and the said Notification.

4. The said machinery i.e. 18 Sets of Brand New Shuttle Less Rapier Looms imported under the above said EPCG License were installed at the factory/business premises i.e. M/s. Sonal Tax Fab, 62-A, Mota Borasara, Near Kim Char Rasta, Mangrol, Surat-394110, as per the Installation Certificate dated 28.05.2014 issued by Chartered Engineer Dr.P.J.Gandhi, Surat, certifying the receipt of the goods imported and its installation.

5. The aforesaid EPCG License No. 5230013044 dated 11.12.2013 was issued to the said importer and the Bond dated 06.02.2014 was executed. Accordingly, the said importer was required to fulfill the export obligation within a period of six years from the date of EPCG Licence as per the condition laid down in the Notification and EPCG Licence itself and submit the Export Obligation Discharged Certificate issued by the DGFT Authority to the department.

6. Letter F.No.VIII/6-3629/ICD-SACHIN/2013-14 dated 11.07.2022 was issued to the said importer to either furnish the EODC issued by DGFT, Surat or any extension granted by DGFT, Surat for fulfillment of Export Obligation, but no reply received.

6.1. As no reply was received from the said importer, a letter letter F.No. ICD-Sachin/DGFT/07/2020-21 dated 21.10.2022 was issued to the Foreign Trade Development officer, DGFT, Surat requesting them to intimate this office, whether the said importer has been issued EODC against EPCG License No. 5230013044 dated 11.12.2013 or any documents showing the fulfillment of the export obligation submitted by the aforesaid importer. The Assistant Director, Directorate General of Foreign Trade, Surat vide letter F.No. EPCG/Mis/2020-21 dated 28.10.2022 intimated that the said importer had not submitted any documents to them against fulfillment of export obligation.

6.2. Thus, it appears, from the above that the said importer has failed to fulfill the export obligation as specified in the Licence and has not complied with the mandatory conditions of the Customs Notification No.22/2013-Cus dated 18.04.2013, EPCG Licence and conditions of the Bond dated 06.02.2014.

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

SECTION 143. Power to allow import or export on execution of bonds in certain cases.

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

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

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

8. Since, the said importer appears to have failed to fulfill the conditions laid down under Notification No. 22/2013-Cus dated 18.04.2013 in as much as they failed to export goods manufactured from 18 Sets of Brand New Shuttle Less Rapier Looms imported under EPCG Licence No. 5230013044 dated 11.12.2013 which was equivalent to six times the duty saved on the goods imported and also neither produced EODC issued by DGFT, Surat nor could produce any extension granted by DGFT, Surat for fulfillment of Export Obligation. Hence, they appears liable to pay duty of **Rs.13,12,653/-** in respect of the said imported goods along with interest at the applicable rate, in terms of conditions of the said Notification read with condition of Bond executed by the said importer read with Section 143 of the Customs Act, 1962.

8.1 It appears that the imported capital goods have not been used for intended purpose for which the exemption from payment of duty was claimed and therefore, the

aforesaid Capital goods appears liable for confiscation under Section 111(o) of the Customs Act, 1962 and thus the said importer appears to have rendered itself liable for penal action under the provisions of Section 112(a) and Section 117 of the Customs Act, 1962.

8.2 Since, the said importer could not fulfill the conditions laid down under Notification No.22/2013-Cus dated 18.04.2013, the Bank Guarantee No. 40/2 Dated 05.02.2014 For Rs. 13,25,000. -issued by the Central Bank Of India, Nanapura Branch Surat-395001 in favor of the Deputy/Asstt. Commissioner of Customs, ICD-Sachin, Surat against the EPCG License No. 5230013044 dated 11.12.2013 appears required to be appropriated against the proposed demand.

8.3 As per para (8) of Customs Notification No. 22/2013-Cus dated 18.04.2013, the importer was required to produce, within 30 days from the expiry of each block from the date of issue of authorization or within such extended period, evidence to the extent of export obligation fulfilled by them, and where the export obligation of any particular block was not fulfilled, the importer were required to pay duties of customs equal to an amount which for the unfulfilled portion of the export obligation along with interest within three months from the expiry of the said block. The said importer have also given bond to this effect. The letter dated 11.07.2022 was written to the importer to intimate the extent of export obligation fulfilled by them but no reply received. Thus, the fact that they had neither completed their Export obligation nor paid the duty on import as per law & procedure is on record. The DGFT also informed that the importer has not submitted any documents regarding fulfillment of Export obligation. Thus, it appears that the said importer has neither fulfilled their Export obligation nor paid the customs duty along with interest for non-fulfillment of EO. These facts were not disclosed to the department or DGFT, thereby suppressing the facts with a clear intent to evade the payment of duty.

9. In view of the above, M/s.Sonal Tex Fab, 62-A, Mota Borasara, Near Kim Char Rasta, Surat-394110 is hereby called upon to show cause to the Additional/Joint Commissioner of Customs, having his office at Customs House, Hazira Port Pvt. Ltd., Hazira By-Pass Road, Choriyashi at & Post Hazira – 394270, as to why:

- (i) The benefit of Zero Duty for EPCG Scheme under Notification No. 22/2013-Cus dated 18.04.2013 on the subject imported Brand New Shuttle Less Rapier Looms in the name of M/s.Sonal Tex Fab, should not be denied.
- (ii) Customs Duty totally amounting to **Rs.13,12,653/- (Rupees Thirteen Lakh Twelve Thousand Six Hundred Fifty Three only)** being the Duty forgone at the time of import under EPCG Licence, should not be demanded and recovered from them in terms of Notification No.22/2013-Cus dated 18.04.2013 as amended, read with the Conditions of Bond executed and furnished by them in term of Section 143 of the Customs Act, 1962 by enforcing the terms of the said Bond and as to why the Bank Guarantee No. 40/2 Dated 05.02.2014 For Rs. 13,25,000/- issued by the Central Bank Of India, Nanapura Branch Surat-395001 backed against the Bond, should not be appropriated and adjusted towards the Duty liability as mentioned above.
- (iii) Interest at the applicable rate should not be recovered from them on the Customs Duty as mentioned at (ii) above in term of Notification No. 22/2013-Cus dated 18.04.2013 as amended from time to time read with Conditions of the Bond executed in term of Section 143 of the Customs Act, 1962.
- (iv) The imported Capital Goods should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962 read with conditions of Bond executed, in terms of Section 143 of the Customs Act, 1962 read with Notification No.22/2013-Cus dated 18.04.2013 as amended from time to time.

- (v) Penalty should not be imposed on the Importer under Section 112(a) of the Customs Act, 1962 for the acts of omission & commission mentioned above.
- (vi) Penalty should not be imposed on the Importer under Section 117 of the Customs Act, 1962 for the acts of omission & commission mentioned above.
- (vii) Bond executed by them at the time of import should not be enforced in terms of Section 143(3) of the Customs Act, 1962 and the Bank Guarantee thereof should not be encashed for recovery of the Customs Duty as mentioned above and interest thereupon.

10. The above said importer is hereby required to file a reply to this Notice within thirty days from the receipt of this Notice. They are also required to produce all evidence upon which they intend to rely in support of their defense. They are further required to indicate in their written reply as to whether they desire to be heard in person before the case is adjudicated.

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

12. This notice is issued without prejudice to any other action that may be taken against them under the Customs Act, 1962 or under any other law for the time being in force.

13. The Department reserves its right to amend, modify or supplement this notice at any time on the basis of evidences available / evidences gathered later on, prior to the adjudication of the case.

14. The relied upon documents are listed in Annexure-A appended to this notice.


 (Anunay Bhati)
 Additional Commissioner of Customs
 In Charge of ICD, Sachin, Surat

F. No. VIII/6-3629/ICD-Sachin/2013-14

Dated: 31.01.2024

BY SPEED POST A.D

DIN:20240171MN00002202FC

To,
M/s.Sonal Tex Fab,
62-A, Mota Borasara,
Near Kim Char Rasta,
Surat-394110

*3842
3843*

Shri. Sonal Ganeshbhai Goenka,
Proprietor of M/s. Sonal Tex Fab,
4002, Shital Appt.,
City Light,
Surat-395007

Copy to:-

1. The Deputy/Assistant Commissioner of Customs, ICD-Sachin, Surat.
2. The Deputy/Assistant Commissioner (System), Customs HQ, Ahmedabad for uploading on the official website i.e. <https://www.ahmedabadcustoms.gov.in>
3. The Joint Director General, DGFT, 6th Floor, Resham Bhavan, Lal Darwaja, Surat-395003 for information and necessary action.
4. Guard File/Office copy.

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“ANNEXURE-A”

List of documents relied upon for the purpose of issuance of Show Cause Notice to
M/s.Sonal Tex Fab, 62-A, Mota Borasara, Near Kim Char Rasta, Surat-394110

Sr. No.	Name of the documents	Remarks
1	EPCG License No. 5230013044 dated 11.12.2013 issued by the DGFT, Surat.	Available with the party
2	Screen Shot taken from EDI showing the duty debited/foregone amount against the Bond	Available with the party
3	EPCG Bond dated 06.02.2014 amounting to Rs. 42,00,000/-	Available with the party
4	Installation Certificate dated 28.05.2014	Available with the party
5.	Letter F.No.VIII/6-3629/ICD-SACHIN/2013-14 dated 11.07.2022	Available for inspection
6	Letter letter F.No. ICD-Sachin/DGFT/07/2020-21 dated 21.10.2022 and reply of DGFT Surat vide F.No. EPCG/Mis/2020-21 dated 28.10.2022.	Available for inspection


Inspector


Supdt.