



## प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन”, पहली मंजिल, पुराने हाई कोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380009

### OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD

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### PREAMBLE

A	फ़ाइल संख्या / File No.	:	F. No. VIII/10-34/ICD-SND/O&A/2022-23
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	F. No. VIII/10-34/ICD-SND/O&A/2022-23 dated 17.08.2023
C	मूल आदेश संख्या / Order-In-Original No.	:	71 /ADC/VM/O&A/2024-25
D	आदेश तिथि / Date of Order-In-Original	:	21.06.2024
E	जारी करनेकी तारीख / Date of Issue	:	21.06.2024
F	द्वारापारित / Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	M/s HJM Metals LLP, 4, Harekishna Bungalows, Opp. Fatehpura Police Chowki, Paldi, Ahmedabad- 380007, Gujarat
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील, ४वीं मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (5.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५ %अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

**BRIEF FACTS OF THE CASE:**

M/s HJM Metals LLP, 4, Harekishna Bungalows, Opp. Fatehpura Police Chowki, Paldi, Ahmedabad- 380007, Gujarat, India (holder of IEC No. 0815904657) (hereinafter referred to as "the Importer" for the sake of brevity) are engaged in manufacturing of 'Lead Alloy/Lead based Alloys' falling under ITCHS 78019990. M/s. HJM Metals LLP, Ahmedabad imported their required raw materials namely 'Lead Scrap Rails as per ISRI' against Advance Authorization. M/s. HJM Metals LLP, Ahmedabad (hereinafter referred to as the "importer") availed the benefit of exemption from payment of all applicable Customs duties against Advance Authorization Scheme for duty free imports of the inputs (raw materials) namely 'Lead Scrap Rails as per ISRI'.

**2.** During scrutiny of the records, it is observed that M/s HJM Metals LLP, Ahmedabad had been issued Advance Authorization No. 0810139936 dated 23.03.2017 for duty free imports of their inputs (raw materials) in terms of Notification No. 18/2015-Cus. dated 01/04/2015 and Chapter 4 of the Foreign Trade Policy 2015-2020 (FTP 2015-2020). The said notification exempts materials imported into India against an Advance Authorisation issued in terms of paragraph 4.03 of the Foreign Trade Policy from the whole of the Duty of Customs leviable thereon specified in the First Schedule to the Customs Tariff Act, 1975 and from the whole of the Additional Duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act, subject to certain conditions. As per the Para 4.03 of the FTP 2015-2020, Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). Further, as per the Notification No. 18/2015-Cus. Dated 01/04/2015 the licence and/or material imported thereunder are not transferable.

**3.** The Importer had imported 116.110 MT of 'Lead Scrap Rails as per ISRI' at ICD-Sanand by availing exemption of all applicable Customs duties against the said Advance Authorization issued by the Regional Authority, Directorate General of Foreign Trade, Rajkot vide the following Four (4) Bills of Entry. It is further observed that, as per the details mentioned in the below Table, a total quantity of 116.110 MT of 'Lead Scrap Rails as per ISRI' was imported under four Bills of Entry against the Advance Authorization License No. 0810139936 dated 23.03.2017. The Port of Registration of the said Advance Authorization/Advance License was ICD-Sanand and the amount of duty exemption availed was debited against the Bond mentioned in the below table. Other details like Items & quantity imported, Advance Authorization/ Bond Number are given in the table below:

**TABLE-1**

(Figures in Rs.)

Sr. No.	B/E No. & Date	Advance License No. & date	Bond No. & date	Item Imported [CTH]	Quantity of good imported	Declared Assessable value	Duty Forgone 23.4155% [5% BCD + 12.5% CVD + 3% EC + 4% SAD]
1.	9182656 / 05.04.2017	0810139936 / 23.03.2017	2001199079 / 01.04.2017	Lead scrap 'Rails' [78020010]	25.250 MT	Rs. 21,92,120/-	Rs. 5,13,296/-
2.	9464862 / 26.04.2017	0810139936 / 23.03.2017	2001199079 / 01.04.2017	Lead scrap 'Rails' [78020010]	51.600 MT	Rs. 44,35,753/-	Rs. 10,38,654/-
3.	9698500 / 15.05.2017	0810139936 / 23.03.2017	2001199079 / 01.04.2017	Lead scrap 'Rails' [78020010]	25.260 MT	Rs. 21,56,548/-	Rs. 5,04,967/-
4.	2278214 / 29.06.2017	0810139936 / 23.03.2017	2001199079 / 01.04.2017	Lead scrap 'Rails' [78020010]	14.000 MT	Rs. 11,96,155/-	Rs. 2,80,086/-
<b>Total</b>					116.110 MT	Rs. 99,80,576/-	Rs. 23,37,003/-

4. As the raw material i.e. 116.110 MT of 'Lead Scrap Rails as per ISRI' was imported by the importer under Advance Authorisation, the Office of the Deputy Commissioner of Customs, ICD-Sanand, vide their letters dated 28.03.2019, 28.09.2019, 19.11.2019, 10.02.2020, 25.02.2020, 28.04.2020 and 06.06.2020, requested the importer to submit Export Obligation Discharge Certificate [EODC] issued against Advance Authorization No. 0810139936 dated 23.03.2017 issued by the Directorate General of Foreign Trade, Rajkot. However, the importer submitted neither any proof of fulfillment of export obligation against the license nor any document of extension/renewal of the license from the competent authority.

5. Since, the Advance Authorization No. 0810139936 was issued to the importer on 23.03.2017, as per the condition of the said Notification they were required to fulfil the export obligation by **22.09.2018** and to submit the Export Obligation Discharged Certificate issued by the DGFT Authority to the department i.e. port of registration of Advance Authorisation. However, even after several requests the importer submitted neither any proof of fulfillment of export obligation against the license nor any document proving extension of the license granted from the competent authority.

6. It is also evident from Table-1 that while the importer had imported input (Raw material) having total Assessable Value of Rs. 99,80,576/- had saved total customs duty amounting to Rs. 23,37,003/- under the said Advance Authorization.

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

**TABLE-2**

Sr. No.	Advance Authorization No. & Date	Bank Guarantee No./ date	Amount (In Rs.)	Name of Bank
1.	0810139936, dated 23.03.2017	102IBG170197 dated 28.03.2017	3,75,000/-	The Kalupur Commercial Co-operative Bank Ltd, "Kalupur Bannk Bhavan", Near Income Tax Circle, Ashram Road, Ahmedabad

**Correspondence with Bank and Encashment of Bank Guarantee:**

8. Whereas, since the importer neither turned up to produce any proof of fulfillment of export obligation against the Advance Authorization nor submitted any extension of the Advance Authorization from the competent authority, the Deputy Commissioner of Customs, ICD-Sanand vide letters dated 27.05.2022 and 01.08.2023, requested the Manager of the Kalupur Commercial Co-operative Bank Ltd, "Kalupur Bank Bhavan", Near Income Tax Circle, Ashram Road, Ahmedabad renew/ extend the Bank Guarantee.

**LEGAL PROVISIONS IN RESPECT OF IMPORT UNDER ADVANCE AUTHORIZATION:**

9.1 In terms of Para 4.03 of Chapter 4 of the Foreign Trade Policy, 2015-2020, an Advance Authorisation can be issued to allow duty free import of inputs meant to be physically incorporated in export products (making normal allowance for wastage). In addition, fuel, oil, catalysts meant to be consumed / utilized to obtain such export products, may also be allowed. As per **Para 4.14** the imports under Advance Authorisations were exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-Dumping Duty, Safeguard duty and Transition Product Specific Safeguard Duty, wherever applicable. Further, as per Para 4.16 Advance Authorisation and/or materials imported under Advance Authorisation would be subject to 'Actual User' condition and the same would not be transferable even after

completion of export obligation. However, the Authorisation holder would have option to dispose off product manufactured out of duty free input on completion of export obligation. Also, as per **Para 4.22(i) the Period for fulfillment of export obligation under Advance Authorisation should be 18 months from the date of issue of Authorisation or as notified by DGFT.**

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

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

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

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

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

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

**11.** Further, M/s. HJM Metals LLP, Ahmedabad executed the Bond and bank Guarantee at the time of import of duty Free inputs under Advance Authorization

binding themselves to pay the duty of customs foregone in the event of their failure to fulfill the obligation cast upon them in this behalf as per the conditions of the Notification No. 18/2015-Cus dated 01/04/2015 (as detailed above in **Table -1**). Therefore, the Bond and Bank Guarantee executed by M/s. HJM Metals LLP, Ahmedabad are required to be enforced and the amount of duty forgone is required to be recovered from them along with interest at @15% rate, without limitation of any time, as per the conditions of the Notification No. 18/2015-Cus dated 01/04/2015.

**12.** Further, as per the provisions of Section 143 of the Customs Act, 1962, the Assistant or Deputy Commissioner of Customs, on his satisfaction, can allow duty free clearance on execution of a Bond with surety or Security subject to such conditions as the Assistant Commissioner of Customs or Deputy Commissioner of Customs approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond. Also, as per sub-section (3) of Section 143, it has been specified that, if the condition, which in present case is fulfillment of Export obligation, is not adhered to within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.

### **SCRUTINY OF DOCUMENTS & ALLEGATIONS**

**13.1** From the records and evidences discussed in the foregoing paras it appeared that M/s. HJM Metals LLP, Ahmedabad was engaged in the business of manufacturing of 'Lead Alloy/Lead based Alloys' falling under ITCHS 78019990. M/s. HJM Metals LLP, Ahmedabad had imported their required raw materials against Advance Authorization issued under Notification No. 18/2015-Cus dated 01/04/2015, as amended.

**13.2** From the above, it appeared that M/s. HJM Metals LLP, Ahmedabad obtained Advance Authorization (AA) No. 0810139936, dated 23.03.2017 to import **158.70** MT of duty free raw material i.e. 'Lead Scrap Rails as per ISRI' and the export obligation against the said import quantity of raw material was **100.00** MT of finished goods i.e. '**Antimonial Lead Alloy/ Lead Calcium Alloy/ Lead Based Alloy (minimum Lead Content 98%)**' as per SION norms. M/s. HJM Metals LLP, Ahmedabad had imported **116.110** MT of duty free raw material against said Advance Authorization No. 0810139936 dated 23.03.2017 vide 04 Bills of Entry as detailed in '**Table-1**' above.

**13.3** It also appeared that M/s. HJM Metals LLP, Ahmedabad had imported 116.110 MT of duty free raw material, however they had not fulfilled export obligation as specified in the said Notification No. 18/2015-Cus dated 01/04/2015 and under the provisions of FTP 2015-2020 within stipulated time period. Since the importer failed to produce Export Obligation Discharge Certificate [EODC], it appeared that importer either cleared the imported material in domestic market as such or utilized the imported material in manufacture of finished goods and which were subsequently cleared in domestic market, thereby violating the conditions of Advance Authorization Licenses. The Importer, thus availed irregular Customs duty exemption of Rs.12,65,858/-, as detailed above.

**13.4** M/s. HJM Metals LLP, Ahmedabad had submitted and executed Bank Guarantee No. 102IBG170197 dated 28.03.2017 for Rs. 3,75,000/- and Bond No. 2001199079 dated 01.04.2017 of Rs. 33,00,000/- as a surety/security to the government at the time of import of inputs under AA Scheme, binding themselves to pay the amount equal to the duty leviable, in respect of which the conditions specified in the said notification of customs are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials.

**14.** In view of the facts as narrated hereinabove, it is apparent that M/s. HJM Metals LLP, Ahmedabad had imported 116.110 MT of duty free raw material against the

Advance Authorization No. 0810139936 dated 23.03.2017 by availing the benefit of notification No. 18/2015-Cus dated 01/04/2015. The conditions to the Advance Authorization and Notification No. 18/2015-Cus dated 01/04/2015, which require that the input imported duty free under AA should be physically incorporated in export product (making normal allowance for wastage) and the said materials shall not be transferred or sold, have been contravened. The condition that the export obligation be fulfilled within 18 months or within the extended time period has also been contravened.

**15.** Therefore, the said 116.110 MT of inputs i.e. 'Lead Battery Plates Covered by ISRI Code Word 'Rails', imported duty free, valued at **Rs. 99,80,576/-** are liable for confiscation under Section 111(o) of the Customs Act, 1962 and the duty leviable on the said inputs amounting to **Rs. 23,37,003/-** (as detailed in **Table-1 above**) liable to be demanded / recovered from M/s. HJM Metals LLP, Ahmedabad under the provisions of Notification No. 18/2015-Cus dated 01/04/2015 read with Section 143 of the Customs Act, 1962 in as much as M/s. HJM Metals LLP, Ahmedabad failed to comply with the above said conditions of the said notification. Also, interest at the prescribed rate liable to be demanded / recovered from M/s. HJM Metals LLP, Ahmedabad under Notification No. 18/2015-Cus dated 01/04/2015 read with Section 143 of the Customs Act, 1962. M/s. HJM Metals LLP, Ahmedabad are also liable for penalty under Section 112(a) of the Customs Act, 1962. Since the importer violated the conditions of Notification No. 18/2015-Cus dated 01/04/2015, for which no express penalty is elsewhere provided, they shall also be held liable to penalty under Section 117 of Customs Act, 1962.

**16.** Further, the Surety Bond, as detailed above, executed by M/s. HJM Metals LLP, Ahmedabad at the time of import of duty free inputs under AA Scheme against AA no. 0810139936 dated 23.03.2017 liable to be enforced and the amount of duty and interest involved on the inputs for which they could not fulfill the export obligation liable to be recovered as per clause of the said Surety Bond executed before the Deputy/Assistant Commissioner of Customs, ICD Sanand, Ahmedabad and as per the conditions of the Notification No. 18/2015-Cus dated 01/04/2015.

#### **SHOW CAUSE NOTICE:**

**17.** Accordingly, a Show Cause Notice dated 17.08.2023 was issued to M/s. HJM Metals LLP, 4, Harekishna Bungalows, Opp. Fatehpura Police Chowki, Paldi, Ahmedabad- 380007, Gujarat, India (holder of IEC No. 0815904657), wherein they were called upon to show cause to the Additional / Joint Commissioner of Customs, In-charge ICD Sanand, Custom House, Ahmedabad having his office at Custom House, Near All India Radio, Navrangpura, Ahmedabad-380009, as to why:-

- a) The imported goods having **declared assessable value of Rs. 99,80,576/- (Rupees Ninety Nine Lakhs Eighty Thousand Five Hundred and Seventy Six only)** should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962 read with conditions of Bond executed in terms of Section 143 of the Customs Act, 1962 read with the Notification No.18/2015-Cus. dated 01/04/2015;
- b) The **Customs duty involved on duty free Import of goods amounting to Rs. 23,37,003/- (Rupees Twenty Three Lakhs Thirty Seven Thousand and Three only)** being duty forgone at the time of import should not be demanded & recovered under Section 143 of the Custom Act, 1962, by invoking the conditions of Bond executed by the importer read with the Notification No. 18/2015-Cus dated 01/04/2015.
- c) Interest at the applicable rate should not be recovered from them on the Customs duty as mentioned at (b) above in term of Notification No.

Notification No. 18/2015-Cus dated 01/04/2015 as amended from time to time read with Conditions of Bond executed in term of Section 143 of Customs Act, 1962.

- d) The Bank Guarantee No. 102IBG170197, dated 28.03.2017 for Rs. 3,75,000/- issued by the Kalupur Commercial Co-operative Bank Ltd, "Kalupur Bank Bhavan", Near Income Tax Circle, Ashram Road, Ahmedabad should not be encashed and adjusted towards the duty and interest liability.
- e) Penalty should not be imposed under Section 112(a) of the Customs Act 1962 for the acts of omission & commission mentioned above.
- f) Penalty should not be imposed on the importer under Section 117 of the Customs Act, 1962 for the acts of omission & commission mentioned above.
- g) The Bond furnished by the importer should not be enforced for recovery of outstanding amount of duty foregone along with the applicable interest, penalties, redemption fine imposed, if any.

**SUBMISSION:-**

**18.** In response to the Show Cause notice vide F.No. VIII/10-34/ICD-SANAD/O&A/HQ/2022-23 dated 17.08.2023, M/s HJM Metals LLP did neither presented any proper submission providing any justification for their acts of non-compliance with condition mentioned in Notification No. 18/2015-Cus dated 01/04/2015 nor countered queries raised therein.

**PERSONAL HEARING:-**

**19.** During the course of adjudication proceedings, personal hearings were given to M/s HJM Metals LLP, Ahmedabad on 19.10.2013, however they did not present themselves. Then, another personal hearing was given to them on 12.01.2024, to this M/s HJM Metals LLP requested for another date of personal hearing. Subsequently, another personal hearing was given to them on 16.03.2024. Although no representative of the importer appeared to present their view in this regard, the importer submitted that they intend to approach settlement commission and requested to keep the adjudication proceedings pending. However, they did not preset any copy of their application before settlement commission.

19.1. As no supporting document was attached with the letter of M/s HJM Metals LLP submitted by them on 20.03.2024 wherein they had stated that they would be approaching settlement commission, a letter dated 21.03.2024 was written to them asking them to submit a copy of the application that they have filed before the Settlement Commission. In response to this letter M/s HJM Metals LLP submitted that they are awaiting refund of excess duty paid by them before Deputy Commissioner of Customs, ICD-Thar. They hence requested another chance to submit their application before Settlement Commission.

19.2. Subsequently, a final opportunity to be heard in person was given to M/s HJM Metals LLP on 06.06.2024. However, they did not present any copy or documentary evidence in support of any application made by them before the Settlement Commission.

**DISCUSSION AND FINDINGS:-**

20. I find that M/s. HJM Metals LLP, Ahmedabad had imported raw materials namely 'Lead Scrap Rails as per ISRI' against Advance Authorization. M/s. HJM Metals LLP, Ahmedabad availed the benefit of exemption from payment of all applicable Customs duties against Advance Authorization Scheme for duty free imports of the inputs (raw materials) namely 'Lead Scrap Rails as per ISRI'.

21. I find that during scrutiny of the records, it was observed that M/s HJM Metals LLP, Ahmedabad had been issued Advance Authorization No. 0810139936 dated 23.03.2017 for duty free imports of their inputs (raw materials) in terms of Notification No. 18/2015-Cus. dated 01/04/2015 and Chapter 4 of the Foreign Trade Policy 2015-2020 (FTP 2015-2020). The said notification exempts materials imported into India against an Advance Authorisation issued in terms of paragraph 4.03 of the Foreign Trade Policy from the whole of the Duty of Customs leviable thereon specified in the First Schedule to the Customs Tariff Act, 1975 and from the whole of the Additional Duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act, subject to certain conditions. As per the Para 4.03 of the FTP 2015-2020, Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). Further, as per the Notification No. 18/2015-Cus. Dated 01/04/2015 the licence and/or material imported thereunder are not transferable.

22. I find that the M/s HJM Metals LLP, Ahmedabad had imported 116.110 MT of 'Lead Scrap Rails as per ISRI' at ICD-Sanand by availing exemption of all applicable Customs duties against the said Advance Authorization issued by the Regional Authority, Directorate General of Foreign Trade, Rajkot vide the following Four (4) Bills of Entry. It has been further observed that, a total quantity of 116.110 MT of 'Lead Scrap Rails as per ISRI' was imported under the aforesaid four Bills of Entry against the Advance Authorization License No. 0810139936 dated 23.03.2017. The Port of Registration of the said Advance Authorization/Advance License was ICD-Sanand and the amount of duty exemption availed was debited against a Bond (details are mentioned in para 3, Table -1).

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

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

*(viii) that the export obligation as specified in the said authorisation (both in value and quantity terms) is discharged within the period specified in the said authorisation or within such extended period as*

*may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorisation:*

- (ix) that the importer produces evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, within a period of sixty days of the expiry of period allowed for fulfillment of export obligation, or within such extended period as the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow;*
- (x) that the said authorisation shall not be transferred and the said materials shall not be transferred or sold;*

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

24. I find that the Office of the Deputy Commissioner of Customs, ICD-Sanand, vide their letters dated 28.03.2019, 28.09.2019, 19.11.2019, 10.02.2020, 25.02.2020, 28.04.2020 and 06.06.2020, requested the importer to submit Export Obligation Discharge Certificate [EODC] issued against Advance Authorization No. 0810139936 dated 23.03.2017 issued by the Directorate General of Foreign Trade, Rajkot. As, the Advance Authorization No. 0810139936 was issued to the importer on 23.03.2017, as per the condition of the aforesaid Notification, they were required to fulfil the export obligation by **22.09.2018** and to submit the Export Obligation Discharged Certificate issued by the DGFT Authority to the department i.e. port of registration of Advance Authorisation. However, from the records available it is evident that even after several requests, the importer submitted neither any proof of fulfilment of export obligation against the license nor any document proving extension of the license granted from the competent authority.

25. I find that the importer had imported input (Raw material) having total Assessable Value of Rs. 99,80,576/- and had saved total customs duty amounting to Rs. 23,37,003/- under the said Advance Authorization.

26. I find that M/s. HJM Metals LLP, Ahmedabad had submitted and executed Bank Guarantee No. 102IBG170197 dated 28.03.2017 for Rs. 3,75,000/- and Bond No. 2001199079 dated 01.04.2017 of Rs. 33,00,000/- as a surety/security before the Deputy Commissioner of Customs, ICD-Sanand for the import of goods under the said Advance Authorisation No. 0810139936 dated 23.03.2017, thereby binding themselves to pay the amount equal to the duty leviable, in respect of which the conditions specified in the said notification of customs are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials.

27. I find that it is evident from the records available that the importer neither turned up to produce any proof of fulfilment of export obligation against the Advance Authorization nor submitted any extension of the Advance Authorization from the competent authority. Hence forth, the Deputy Commissioner of Customs, ICD-Sanand vide letters dated 27.05.2022 and 01.08.2023, requested the Manager of the Kalupur

Commercial Co-operative Bank Ltd, "Kalupur Bank Bhavan", Near Income Tax Circle, Ashram Road, Ahmedabad renew / extend the Bank Guarantee.

28. I find that in terms of Para 4.03 of Chapter 4 of the Foreign Trade Policy, 2015-2020, an Advance Authorisation can be issued to allow duty free import of inputs meant to be physically incorporated in export products (making normal allowance for wastage). In addition, fuel, oil, catalysts meant to be consumed / utilized to obtain such export products, may also be allowed. As per **Para 4.14** the imports under Advance Authorisations were exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-Dumping Duty, Safeguard duty and Transition Product Specific Safeguard Duty, wherever applicable. Further, as per Para 4.16 Advance Authorisation and/or materials imported under Advance Authorisation would be subject to 'Actual User' condition and the same would not be transferable even after completion of export obligation. However, the Authorisation holder would have option to dispose off product manufactured out of duty free input on completion of export obligation. Also, as per **Para 4.22(i) the Period for fulfillment of export obligation under Advance Authorisation should be 18 months from the date of issue of Authorisation or as notified by DGFT.**

29. I find that M/s. HJM Metals LLP, Ahmedabad had imported 116.110 MT of duty free raw material against the Advance Authorization No. 0810139936 dated 23.03.2017 by availing the benefit of notification No. 18/2015-Cus dated 01/04/2015. The conditions to the Advance Authorization and Notification No. 18/2015-Cus dated 01/04/2015, which require that the input imported duty free under Advance Authorisation should be physically incorporated in export product (making normal allowance for wastage) and the said materials shall not be transferred or sold, have been contravened. The condition that the export obligation be fulfilled within 18 months or within the extended time period has also been contravened.

30. I also proceed to discuss **4.14 and Para 4.22(i) of the Foreign Trade Policy (2015-20)** inter-alia, which states 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 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.

&

**Para 4.22(i) - the Period for fulfillment of export obligation under Advance Authorisation should be 18 months from the date of issue of Authorisation or as notified by DGFT**

31. I find that from the records available it is ample clear that there is no dispute that the said importer has failed to comply with the mandatory conditions of fulfilment of export w.r.t. time period of such fulfilment i.e. 18 months from date of issue of the Authorisation. This is in violation to Para 4.22(i) of the Foreign Trade Policy (2015-20) read with Notification 18/2015-Cus. dated 01.04.2015. Even after multiple communications sent to them, they neither submitted any proof of fulfilment of export obligation against the Advance License no. 2410042456 dated 13.07.2018 nor they submitted any document proving extension of the license from the competent authority.

32. I find that post issuance of the Show Cause Notice dated 17.08.2023, M/s HJM Metals LLP, Ahmedabad had primarily presented that they intend to go to Settlement Commission. However, they did not provide any reason to their failure in non-fulfilment of export obligations under the stipulated time period. I thus proceed to discuss queries raised in the Show Cause Notice dated 17.08.2023 in the following paras.

**33. Whether the Duty of Customs amounting to Rs. 23,37,003/- (Rupees Twenty Three Lakhs Thirty Seven Thousand and Three Nine only) as detailed in the Show Cause Notice is required to be demanded and recovered from them and whether Bonds executed by Importer at the time of import should be enforced in terms of Section 143 of the Customs Act, 1962, for recovery of the Customs Duty alongwith interest?**

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

***“Section 143. Power to allow import or export on execution of bonds in certain cases. -***

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

*(2) If the thing is done within the time specified in the bond, the 1 [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.*

*(3) If the thing is not done within the time specified in the bond, the 1 [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.”*

33.2. 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 October 13, 2017 to January 9, 2019, in Advance Authorization Scheme was valid. Thus, I find that the Hon'ble Supreme Court has settled that duties involved in the Bills of Entry filed during October 13, 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. 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.

33.3. Further, I find that Importer was well aware of the rules and regulation of Customs as well as Exim Policy as they imported the goods under Advance Authorization to avail benefit of and they were fully aware that the goods being cleared from Customs has to fulfill export obligation under Advance Authorisation i.e. 18 months from the date of issue of Authorisation. However, it proves beyond doubt that goods imported under subject Bills of Entry were never used in the export of goods. Thus, I find that the Importer with clear intent to evade the payment of customs duty 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. 23,37,003/- (Rupees Twenty Three Lakhs Thirty Seven Thousand and Three Nine only)** is required to be recovered from them. **Further**, I find that in the present case, the importer has also filed Bond under Section 143 of the Customs Act, for the clearance of imported goods under Advance Authorization availing the benefit of exemption under Customs Notification No.18/2015 dated 01-04-2015. As mentioned above, sub-section (1) of Section 143 explicitly says that "*Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond*". On perusal of one 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:

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.**

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

required to be enforced under Section 143 (3) of the Customs Act, 1962 for the recovery of differential Customs Duty **Rs. 23,37,003/-** alongwith applicable interest.

**34. Whether the Subject goods having assessable value of Rs. 99,80,576/- (Rupees Ninety Nine Lakhs Eighty Thousand Five Hundred and Seventy Six only) as detailed in Table-1 to the Show Cause Notice, are liable for confiscation under Section 111(o) of the Customs Act, 1962?**

34.1. I find that penalty has been proposed under section 111(o) of the Customs Act, 1962. In this regard, Section 111(o) reads as under:-

*"Section 111- Confiscation of improperly imported goods etc.*

*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;"*

34.2. I find that the terms of Advance Authorisation has not been followed in this case. Thus, by non-adherence to the terms of Advance Authorisation, the importer has rendered the goods liable for confiscation. I also rely 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 conditions. The authorization is granted on the condition that the exporter fulfills this obligation. Failure to export the finished product within the stipulated period results in the imposition of penalties and interest on the duty saved. I find that the Importer has failed to comply with the pre-import conditions as stipulated under Notification No. No.18/2015 dated 01-04-2015 and therefore, imported goods under Advance Authorization claiming the benefit of exemption Notification No. No.18/2015 dated 01-04-2015, are liable for confiscation under Section 111(o) of the Customs Act,1962.

34.3. 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..."

34.3. I find that the importer has wrongly availed the benefit of Notification No.18/2015 dated 01-04-2015 and further imported goods have been cleared after the execution of Bond for the clearance of the imported goods under Advance Authorization. I rely on the decision in the matter of Weston Components Ltd. v. Collector reported as 2000 (115) E.L.T. 278 (S.C.) wherein Hon'ble Supreme Court has held that:

*"It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an*

application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine “

34.4. 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).*

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

34.6. In view of the above, I find that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of subject goods having assessable value of **Rs. 99,80,576/- (Rupees Ninety Nine Lakhs Eighty Thousand Five Hundred and Seventy Six only)** imported through ICD Sanand port under the subject Advance Authorizations as detailed in Table -1 to the Show Cause Notice.

**35. Whether bond furnished by the importer should be enforced for outstanding amount of duty and whether Bank Gurantee No. 102IBG170197 dated 28.03.2017 for Rs. 3,75,000/- issued by Kalupur Commercial Co-operative Bank Ltd., should be encashed and adjusted towards duty and interest liability?**

35.1. I find that the importer has failed to fulfill the export obligation and therefore, the benefit of zero rated duty available under Notification No. 18/2015 dated 01-04-2015 for the importation of inputs under Advance Authorization License No. 0810139936 dated 23.03.2017 imported under the Bills of Entry tabulated in Table-1 here above is not admissible and therefore, the duty saved (foregone) Rs. 23,37,003/- is required to be demanded and recovered along with interest. The importer had

undertaken to pay the duty amount saved on the import of Goods together with interest at the agreed rate in the event of its failure to discharge the export obligations at the time of import by executing the Bond no. 2001199079 dated 01.04.2017 of Rs. 33,00,000/- . Therefore, the said Bond dated 01.04.2017 is required to be enforced in terms of Section 143 (3) of the Customs Act, to recover the Customs Duty Rs. 23,37,003/- alongwith interest is liable to be recovered by initiation of action as per Section 142 of the Customs Act, 1962. I also find that apart from the said Bond dated 01.04.2017, the Importer has furnished the Bank Guarantee No. 102IBG170197, dated 28.03.2017 for Rs. 3,75,000/- issued by the Kalupur Commercial Co-operative Bank Ltd, Ahmedabad as surty at the time of import. Therefore, I find that the said Bank Gurantee of Rs. 3,75,000/- is also required to be encashed and appropriated against the aforesaid duty liability. Thus, recovery of the duty debited (forgone/saved) of Rs.23,37,003/- alongwith interest at is liable to be recovered by initiation of action as per Section 143 of the Customs Act, 1962. Further, I find that ratio of decision of Hon'ble Supreme Court rendered in case of Daewoo Motors India Ltd Vs. Union of India reported in 2003 (153) ELT (SC) is squarely applicable. In the said, decision, Hon'ble Supreme Court has held that "when it becomes apparent on the facts and circumstances of the case that there is no chance of the appellant fulfilling its export obligation, the action of the first respondent in invoking the bank guarantee cannot be said to be premature and unjustified, much less arbitrary and illegal so as to warrant any interference by this Court".

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

Section 112 of the said Act reads as under :-

*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 [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, to a penalty<sup>7</sup> [not exceeding the duty sought to be evaded on such goods or five thousand rupees], whichever is the greater;*

*(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]*

*(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;]*

*(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]*

I find that the importer has rendered himself liable to penalty under Section 112 in view of the wilful omission and commission. They have not responded to the letters sent to them by the department seeking clarifications regarding non-furnishing of export obligation discussed in paras supra.

### **37. Whether importer is liable to Penalty under Section 117 of the Customs Act, 1962?**

I find that M/s. HJM Metals LLP has not responded to letters during the course of investigation and also during the course of adjudication. They thus have not cooperated with the department, which indicates their malafide intent.

In this regard, I find the Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged with a penalty not exceeding four lakh rupees. I find that through their wilful act of non-cooperation during the course of investigation, M/s. HJM Metals LLP has rendered themselves liable for penalty under section 117 of the Customs Act, 1962.

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

#### **::ORDER::**

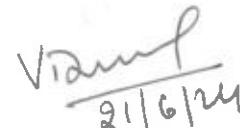
- I)** I hold the subject goods having assessable value of **Rs. 99,80,576/- (Rupees Ninety Nine Lakhs Eighty Thousand Five Hundred and Seventy Six only)** imported through ICD Sanand port under the subject Advance Authorizations as detailed in the Show Cause Notice, is liable to confiscation under Section 111 (o) of the Customs Act, 1962. However, as the goods are not physically available for confiscation, I impose redemption fine of **Rs. 10,00,000/- (Rupees Ten Lakhs only)** in lieu of confiscation under Section 125(1) of the Customs Act, 1962
- II)** I confirm the demand of Duties of Customs of Rs 5,13,296/- of B.C.D. , Rs. 10,38,654/- of C.V.D. , Rs. 5,04,967/- of E.C. and Rs. 2,80,086 of S.A.D. for a total Customs Duty amounting to **Rs. 23,37,003/- (Rupees Twenty Three Lakhs Thirty Seven Thousand and Three only)**, as detailed in Table-I of the Show Cause Notice, saved by the importer in course of imports of the goods through ICD Sanand under the subject Advance Authorizations and the corresponding Bills of Entry as detailed in the Show Cause Notice in terms of the provisions of Section 143 of the Customs Act, 1962 along with applicable interest in terms of Notification No. 18/2015-Cus dated 01.04.2015, read with Section 143 of the Customs Act, 1962 and order recovery of the same.
- III)** I order enforcement and adjustment of the Bank Guarantee No. 102IBG170197 dated 28.03.2017 for Rs. 3,75,000/- issued by Kalupur Commercial Co-operative Bank Ltd, "Kalupur Bank Bhavan", Near Income Tax Circle, Ashram Road, Ahmedabad to M/s. HJM Metals LLP, towards payment of duty and interest in terms of Section 143 of the Customs Act, 1962, for recovery of the Customs Duty as mentioned at para supra alongwith interest.
- IV)** I order to enforce the Bonds executed by M/s. HJM Metals LLP along with in terms of Section 143 of the Customs Act, 1962, for recovery of the Customs Duty as mentioned at para supra alongwith interest.

V) I impose penalty of **Rs. 2,33,000/- (Rupees Two Lakh Thirty Three Thousand only)** on M/s. HJM Metals LLP under Section 112 (a)(ii) of the Customs Act, 1962;

VI) I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** on M/s. HJM Metals LLP under Section 117 of the Customs Act, 1962;

39. 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.

40. The Show Cause Notice No. VIII/10-34/ICD-Sanand/O&A/2022-23 dated 17.08.2023 is disposed off in above terms.



21/6/24

(Vishal Malani)  
Additional Commissioner

**DIN- 20240671MN0000444EFA**

F.No. VIII/10-34/ICD-Sanand/O&A/2022-23

Date: 21.06.2024

To,

✓ M/s HJM Metals LLP, 4, Harekishna Bungalows, Opp. Fatehpura Police Chowki, Paldi, Ahmedabad- 380007

**Copy to:-**

- a) The Principal Commissioner, Customs Ahmedabad for information please (through RRA Section)
- b) The Additional Director, Office of Director General of Foreign Trade, 3<sup>rd</sup> Floor, HUDCO Bhavan, Ishar Bhuvan Road, Navrangpura, Ahmedabad- 380014
- c) The Superintendent of Customs (Systems), Ahmedabad in PDF format for uploading on the official website of Customs Commissionerate, Ahmedabad.
- d) The Assistant/Deputy Commissioner of Customs, ICD-Sanand, Near Muni Ashram, Sanand-Kadi Road, Village-Nidhrad, Sanand, Ahmedabad-382115 for information and record please.
- e) Guard File