



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

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

दूरभाष : (079) 2754 4630 E-mail: cus-ahmd-adj@gov.in फैक्स : (079) 2754 2343

SHOW CAUSE NOTICE

M/s. Sterling Inc., 602, Shimoni, Malaviya Road, Vile Parle (East), Mumbai, Maharashtra - 400057 (herein after referred to as the “importer”, for the sake of brevity) is having Import Export Code 0307069991.

2. The said importer filed Bill of Entry No. 5498991 dated 15.05.2014 for re-import of “Copper Bonded Grounding Rods”, falling under Customs Tariff Item 72159020 of the First Schedule to the Customs Tariff Act, 1975, by availing benefit of Sr. No. 1 of Notification No. 158/1995-Cus. dated 14.11.1995, as amended.

3.1 Sr. No. 1 of the Notification No. 158/1995-Cus. provides exemption to the goods manufactured in India and parts of such goods whether of Indian or foreign manufacture and re-imported into India for (a) repairs; or (b) reconditioning, when such re-importation takes place within 3 year from the date of exportation and such goods are re-exported within six months of the date of re-importation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow. The relevant excerpts is as below:-

“***

S.No.	Description of goods	Conditions
(1)	(2)	(3)
1.	Goods manufactured in India and parts of such goods whether of Indian or foreign manufacture and re-imported into India for repairs or for	1. Such re-importation takes place within 3 years from the date of exportation; Provided that such re-importation takes place within 10 years from the date of exportation in case of Nepal and Bhutan;

	<p>reconditioning.</p>	<p>2. Goods are re-exported within six months of the date of re-importation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow;</p> <p>3. The Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied as regards identity of the goods;</p> <p>4. The importers at the time of importation executes a bond undertaking to-</p> <p>(a) export the goods after repairs or reconditioning within the period as stipulated;</p> <p>(b) pay, on demand, in the event of his failure to comply with any of the aforesaid conditions, an amount equal to the difference between the duty levied at the time of re-import and the duty leviable on such goods at the time of importation but for the exemption contained herein.</p>
2.	<p>Goods manufactured in India and reimported for</p> <p>(a) reprocessing; or</p> <p>(b) refining; or</p> <p>(c) re-marking; or</p> <p>(d) subject to any process similar to the processes referred to in clauses (a) to (c) above.</p>	<p>1. Such reimportation takes place within one year from the date of exportation.</p> <p>2. Goods are re-exported within six months of the date of re-importation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow;</p> <p>3. The Assistant Commissioner of Customs or Deputy Commissioner of Customs, is satisfied as regards identity of the goods.</p> <p>4. The importer executes a bond to the effect -</p> <p>(a) that such reprocessing, refining or remaking or similar processes shall be carried out in any factory under Central Excise control following the procedure laid down under rule 173MM of the Central Excise</p>

	<p>Rules, 1944 or in a Customs bond provisions of section 65 of the Customs Act, 1962 (52 of 1962);</p> <p>(b) that he shall maintain a due account of the use of the said re-imported goods received in the premises specified in item (a) above and shall produce the said accounts duly certified by the officer of Central Excise or Customs, as the case may be, incharge of the factory or the bonded premises to the effect that the goods tendered for re-import are reprocessed, refined or remade or subjected to any process, as the case may be, from the said re-imported goods;</p> <p>(c) that in case any waste or scrap arising during such operations and the importer agrees to destroy the same before the officer of Central Excise or Customs, as the case may be, or to pay on such waste or scrap the appropriate duties of customs as if such waste or scrap is imported;</p> <p>(d) that he shall pay, on demand, in the event of his failure to comply with any of the aforesaid conditions, an amount equal to the difference between the duty leviable on such goods at the time of importation but for the exemption contained herein.</p> <p>Provided that in case of reprocessing, refining or remaking or similar process, if any loss of imported goods is noticed during such operations, the quantity of such loss shall be exempted from the whole of the duties of customs (basic customs duty and additional customs duty, etc.) subject to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that such loss has occurred during such operations.</p>
--	--

3.2 As per one of the conditions of Sr. No. 1 of Notification No. 158/95-Cus., the whole of the duty of Customs specified in the First Schedule to the Customs

Tariff Act, 1975 (51 of 1975) and the whole of the additional duty leviable under section 3 of the said Customs Tariff Act, is exempted subject to the condition that Goods are re-exported within six months of the date of re-importation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow.

3.3 In terms of the conditions of Notification No. 158/1995-Cus., the importer is also required to execute a bond, undertaking *inter-alia* to (a) export the goods after repairs or reconditioning within the period as stipulated; and (b) pay, on demand, in the event of his failure to comply with any of the conditions, an amount equal to the difference between the duty levied at the time of re-import and the duty leviable on such goods at the time of importation but for the exemption contained in the said Notification. As per the condition of the said Notification, the said importer submitted Bond for Rs. 21,77,843/- at ICD - Khodiyar.

3.4 It has been observed during the course of audit from the EDI Systems and available records that the said importer had neither applied for extension of the period for re-export, nor such extension of period for re-export has been allowed to them. However, even after expiry of one year from the import of the said goods, the said importer had not submitted proof of re-exportation of the said goods to the satisfaction of the Deputy / Assistant Commissioner of Customs, as required under the conditions of Notification No. 158/95-Cus.

4. As per the provisions of Section 143 of the Customs Act, 1962, the said imported goods were allowed clearance by proper officer on execution of bond by the importer wherein the importer bounded themselves to discharge liability in certain manner, which they have failed to do so inasmuch as the said importer has not submitted documentary evidence pertaining to re-export of the subject goods within prescribed time limit. Thus, the said importer appears to have not complied with the conditions of the said Notification, and undertaking given in the Re-export Bond.

5. Thus, it appears that the said importer is liable to pay duty forgone of **Rs 4,97,705/-**, as mentioned in **Annexure-A** to this show cause notice, on the said imported goods along with interest at the applicable rate on the imported goods in terms of conditions of the said Notification and conditions of the bond executed by the importer read with Section 143 of the Customs Act, 1962.

LEGAL PROVISIONS IN RESPECT OF IMPORTED GOODS:

6. The relevant provisions of the Customs Act, 1962 and the rules made there under are as follows:-

(A) 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.*

(B) SECTION 17. 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.

(C) **Section 46(4)** 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].

Section 46(4A) 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.]”

7. Vide Finance Act, 2011 w.e.f. 08.04.2011 “Self-Assessment” has been introduced under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a bill of entry or shipping bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit, or exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, it is evident that the actual facts were only known to the importer and aforesaid fact came to light only subsequent to the in-depth investigation. Whereas, Section 17(1) of the Customs Act, 1962 provides that “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.

8. In the present case, it appears that the said importer has failed to discharge the conditions laid down under Notification No. 158/1995-Cus. dated 14.11.1995 inasmuch as they have not submitted documentary evidence pertaining to re-export of the said re-imported goods within prescribed time limit. Thus, the said importer appears to have not complied with the conditions of the said Notification, and undertaking given in the Re-export Bond. Therefore, the said importer appears to

have wrongly claimed and availed the benefit of the above-mentioned notification and therefore contravened the above said provisions with an intent to evade payment of Customs Duty leviable and payable on the import of subject goods. It appears that the said importer had contravened the provisions of sub-section (4) and (4A) of Section 46 of the Customs Act, 1962 inasmuch as while filing Bill of Entry, they had to ensure the accuracy and completeness of the information given therein for assessment of Customs duty. Therefore, the said importer appears liable to pay duty amounting to **Rs. 4,97,705/- (Rupees Four Lakh Ninety Seven Thousand Seven Hundred Five Only)**, as mentioned in **Annexure-A** to this show cause notice, in respect of the said imported goods along with interest at the applicable rate, in terms of the condition of Re-export Bond executed by the importer and Section 143 of the Customs Act, 1962 and also the Re-export Bond furnished by the importer is required to be enforced / appropriated for such recovery.

9. Whereas, as per clause (o) of Section 111 of the Customs Act, 1962, any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under the Customs Act, 1962 or any other law for the time being in force, in respect of which the condition is not observed, shall be liable to confiscation. As the exemption under Notification No. 158/1995-Cus. was granted to the said re-imported goods subject to the condition of their re-exportation within prescribed time limit, whereas the said condition has not been observed, therefore, the aforesaid goods appear liable for confiscation under Section 111(o) of the Customs Act, 1962. Therefore, the said re-imported goods totally valued at **Rs. 21,77,843/- (Rupees Twenty One Lakh Seventy Seven Thousand Eight Hundred Forty Three Only)**, as mentioned in **Annexure-A** to this show cause notice, appear liable for confiscation under Section 111(o) of the Customs Act, 1962.

10. The aforesaid acts of omission and commission on the part of the said importer appear to have rendered them liable to penalty as provided under Section 112(a) / 114A of the Customs Act, 1962.

11. Provisions regarding penalty-

11.1. "Section 112. Penalty for improper importation of goods, etc.

- Any person,-

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,-

- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [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 per cent of the duty sought to be evaded or five thousand rupees which ever is higher;
Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty , the amount of the penalty liable to be paid by such person under this section shall ne twenty-five percent of the penalty so determined]*
- (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 hereinafter 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 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.]*

11.2. "Section 114A. Penalty for short-levy or non-levy of duty in certain cases.

- Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:]

[Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28-AA, 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 in a case 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, alongwith the interest payable thereon under section 28-AA, 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 (8) 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.]*

12. Now, therefore, M/s. **Sterling Inc.**, is hereby called upon to show cause to the Additional Commissioner of Customs, having office at 2nd Floor, Custom House, Near All India Radio, Navrangpura, Ahmedabad – 380009, within 30 days of receipt of this notice as to why:-

- (i) The exemption under Notification No. 158/1995-Cus dated 14.11.1995, claimed and availed in respect of Bill of Entry No. 5498991 dated 15.05.2014 should not be denied;
- (ii) The imported goods of declared Assessable value of **Rs. 21,77,843/- (Rupees Twenty One Lakh Seventy Seven Thousand Eight Hundred Forty Three 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 Notification No. 158/1995-Cus dated

14.11.1995 as amended / applicable and why redemption fine should not be imposed in lieu of confiscation under Section 125 of the Customs Act, 1962;

(iii) Duty Forgone amount of **Rs. 4,97,705/- (Rupees Four Lakh Ninety Seven Thousand Seven Hundred Five Only)** along with applicable interest (from the date of clearance of goods to the date of payment of duty) should not be demanded and recovered from them in terms of conditions of Bond executed under section 143 of the Customs Act, 1962 read Notification No. 158/1995-Cus. dated 14.11.1995, as amended;

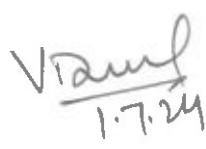
(iv) Penalty should not be imposed on the importer under Section 112(a) / 114A of the Customs Act, 1962 for the acts of omission and commission.

(v) Re-export Bond furnished by the importer should not be enforced for recovery of duty, interest, penalty and Redemption Fine, if any.

12. The Importer is further directed to produce all the evidences on which they intend to rely upon in support of their defence at the time of showing cause. They should also clearly mention in their written reply as to whether they wish to be heard in person or through their legal representative before the case is adjudicated.

13. If no cause is shown against the action proposed to be taken in the Show Cause Notice within the stipulated time or if they or their legal representatives 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 evidences already available on records.

14. This notice is issued without prejudice to any other action that may be taken against the Person(s)/Firm(s) whether mentioned herein or not in respect of this case under the Customs Act, 1962 or any other law for the time being in force. The department reserves its right to amend the show cause notice in case new facts emerge at a later stage.


(Vishal Malani)
Additional Commissioner

DIN : 20240771MN0000222F90
F.No. VIII/22-12/ICD/Audit/2015

Date : 01/07/2024.

BY SPEED POST / E-MAIL / HAND DELIVERY / THROUGH NOTICE BOARD

To,
M/s. Sterling Inc., 602,
Shimoni, Malaviya Road, Vile Parle (East),
Mumbai, Maharashtra - 400057

Copy to :

- (i) The Deputy Commissioner, Customs, ICD – Khodiyar.
- (ii) The Superintendent, Customs, H.Q. (Systems), Ahmedabad, in PDF format for uploading on website of Customs Commissionerate, Ahmedabad.
- (iii) Guard File.

ANNEXURE - A
TO SHOW CAUSE NOTICE ISSUED TO
M/S. STERLING INC.

in Rs.

Sr. No.	BE No.	BE Date	Description of Goods	CTH	Assessable Value	Duty leviable					
						BCD	Ad. Duty (C.Ex.)	Edu Cess	SHE Cess	SAD 4%	Total
1	5498991	15.05.2014	Copper Bonded Grounding Rods	72159020	2177843	108892	274408	7666	3833	102906	497705
			TOTAL		2177843	108892	274408	7666	3833	102906	497705

