

DIN: 20240571MN000000E04A

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| <p>अपर आयुक्त कार्यालय सीमा शुल्क मण्डल, सूरत सीमा शुल्क भवन, अलथान भीमराड रोड, एसएमसी वार्ड ऑफिस के पास मे, अलथान, सूरत - 395017, Email – custech.surat@gov.in</p> |  <p>सत्यमेव जयते</p> | <p>OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOMS DIVISION, SURAT CUSTOM HOUSE, ALTHAN BHIMRAD ROAD, NR. SMC WARD OFFICE, ALTHAN, SURAT - 395017. Phone: 0261-2260113 email: custech.surat@gov.in</p> |
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SHOW CAUSE NOTICE

(Under Section 28(1) of Customs Act, 1962)

M/s MADHAVI CONSTRUCTION, located at, BHADKODRA ANKLESHWAR, B 75 VAIBHAV PARK SOCIETY, KAPODARA PATIYA VALIA ROAD, ANKLESHWAR, ANKLESHWAR, Bharuch, Gujarat, 393002 bearing GST Registration No. 24AGDPR1396P1ZT (herein after referred to as "the Exporter" for the sake of brevity) are engaged in WORKS CONTRACT SERVICES and supplied TMT BARS etc. falling under Chapter heading 72 of ITC (HS) to SEZ unit M/s JUBILANT INGREVIA LIMITED, situated within Jubilant SEZ at Plot No 5, Village – Vilayat, GIDC, Taluka - Vagra Dist. - Bharuch, Gujarat-392012, (hereinafter referred to as "the SEZ Unit" for the sake of brevity).

2) As per Section 53(1) : A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations and as per SEZ Act, 2005 Section 2. (m)(ii) 'export' means "*Supplying goods, or providing services, from Domestic Tariff Area to a Unit or Developer*".

3) Further, third proviso to Rule 27 of SEZ Rules, 2006 inserted vide Notification 19th Sep'2018, wherein it read as follows:

"Provided also that supplies from Domestic Tariff Area to Special Economic Zones shall attract Export Duty, in case, export duty is leviable on items attracting export duty."

4) The details of Invoices (**RUD-1**) wherein the said exporter has exported various items during 22.05.2022 to 18.11.2022 falling under heading of Chapter 7214 without payment of export duty to the M/s JUBILANT INGREVIA LIMITED, situated within Jubilant SEZ at Plot No 5, Village – Vilayat, GIDC, Taluka - Vagra Dist. - Bharuch, Gujarat-392012, are tabulated below:

| Sr. No. | INVOICE NO. | INVOICE Date | Item Description | INVOICE VALUE | Notification / Serial Number | EXPORT DUTY payable @15% |
|---------|-------------|--------------|------------------|---------------|------------------------------------|--------------------------|
| 1 | 77 | 18.08.2022 | TMT BARS 08MM | 1065570 | Notification No. 29/2022-Cus dated | 159836 |

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|---|----|------------|------------------|---------|--|-----------------------|
| 2 | 60 | 15.07.2022 | TMT BARS 20MM | 963498 | 21.05.2022 which amended the Notification No. 27/2011- Customs dated 1st March, 2011 against S. No. 58, in column (4), for the entry, the entry “15%” shall be substituted; | 144525 |
| 3 | 30 | 29.05.2022 | TMT BARS 20MM | 1929032 | | 289355 |
| | | | | | | TOTAL 593715/- |

5) The Notification No. 29/2022-Cus dated 21.05.2022 (w.e.f. 22.05.2022) amended the Notification No. 27/2011-Customs dated: 01.03.2011 and imposed Customs duty on export of goods falling under HSN 7214 @ 15% w.e.f. May 22, 2022. Notifications No. 29/2022-Cus dated 21.05.2022 is produced herein below for reference:

Notification No. 29/2022-Customs
New Delhi, the 21st May, 2022

G.S.R. (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, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 27/2011- Customs dated the 1st March, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 153(E), dated the 1st March, 2011, namely :-*

In the said notification, in the Table,

- i. *S. No. 20A and the entries relating thereto shall be omitted;*
- ii. *against S. No. 23, in column (4), for the entry, the entry “45%” shall be substituted;*
- iii. *against S. No. 48, in column (4), for the entry, the entry “15%” shall be substituted;*
- iv. *against S. No. 54, in column (4), for the entry, the entry “15%” shall be substituted;*
- v. *against S. No. 55, in column (4), for the entry, the entry “15%” shall be substituted;*
- vi. *for S. No. 56 and the entries relating thereto, the following S. Nos. and entries shall be substituted, namely: -*

| (1) | (2) | (3) | (4) |
|-----|-----|-----|-----|
|-----|-----|-----|-----|

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| “56. | 7210 | <i>Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or Coated</i> | 15% |
| 56A. | 7212 | <i>Flat rolled products of iron or non-alloy steel, clad, plated or Coated</i> | Nil”; |

against S. No. 57, in column (4), for the entry, the entry “15%” shall be substituted;

vii. ***against S. No. 58, in column (4), for the entry, the entry “15%” shall be substituted;***

2. *This notification shall come into effect on the 22nd day of May, 2022.*

6) Further, Central Government vide Notification No. 58/2022-Customs dated 18.11.2022 (w.e.f. 19.11.2022) amended the Notification No. 27/2011-Customs dated: 01.03.2011 as *against S. No. 58, in column (4), for the entry “15%”, the entry “Nil” shall be substituted;*

7) Thus, with effect from 19th November export duty on iron or pellets and steel products, including pig iron, flat-rolled products of carbon steel and stainless steel, bars, rods and non-alloy steel, *vide* Notification No. 58/2022-Customs, dated 18 November 2022. Export duty on iron ores with a grade higher than 58% has been reduced from 50% to 30%, while the lower grade iron ores no longer attract export duty restoring back the exemption granted up to 21 May 2022. ***In other words, the supply of flat-rolled products of carbon steel and stainless steel, bars, rods and non-alloy steel to SEZ attracted levy of export duty during the period from 22.05.2022 to 18.11.2022.*** M/s MADHAVI CONSTRUCTION has supplied various items during 22.05.2022 to 18.11.2022 falling under heading of Chapter 72 without payment of export duty amounting to Rs. 5,93,715/- (details as per Annexure-A attached herewith) and it appears in contravention of the said Notifications. Accordingly, the Specified Officer of Jubilant SEZ, *vide* letter dated 26.02.2024 (**RUD-2**) requested the Exporter to provide the duty payments documents to this office. However, exporter has not provided any duty paid documents wherein they confirmed that export duty payment is done by them, so it appears that they have not discharged the duty liability.

8) Whereas the provisions of law applicable for exports are as under:-

Customs Act, 1962

Section 2: Definitions:

(18): "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(19) "export goods" means any goods which are to be taken out of India to a place outside India;

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Section 17(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.

Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. -

(1) Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts,-

(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

Section 28AA. Interest on delayed payment of duty. -

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

Section 50. Entry of goods for exportation. -

(1) The exporter of any goods shall make entry thereof by presenting electronically on the customs automated system to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in such form and manner as may be prescribed:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner.

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(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

(3) The exporter who presents a shipping bill or bill of export under this section 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.

SECTION 51. Clearance of goods for exportation. –

(1) Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation :

Provided that the Central Government may, by notification in the Official Gazette, permit certain class of exporters to make deferred payment of said duty or any charges in such manner as may be provided by rules.

(2) Where the exporter fails to pay the export duty, either in full or in part, under the proviso to sub-section (1) by such due date as may be specified by rules, he shall pay interest on said duty not paid or short-paid till the date of its payment at such rate, not below five per cent. and not exceeding thirty-six per cent. per annum, as may be fixed by the Central Government, by notification in the Official Gazette.

SEZ Act, 2005

Section 2. Definitions :

i. "Domestic Tariff Area" means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones;

(m)(ii) 'export' means "Supplying goods, or providing services, from Domestic Tariff Area to a Unit or Developer".

(za) "Special Economic Zone- SEZ" means each Special Economic Zone notified under the proviso to sub-section (4)

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of section 3 and sub-section (1) of section 4 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone;

Section 53(1) : A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside **the customs territory of India** for the purposes of undertaking the authorised operations.

SEZ Rules, 2006

Rule 30(6) : The Bill of Export shall be assessed in accordance with the instructions and procedures, including examination norms, laid down by the Department of Revenue as applicable to export goods: Provided that at the time of assessment, it shall be specifically examined whether the goods are required for the authorized operations by the Unit or Developer, with reference to the Letter of Approval or the list of goods approved by the Approval Committee for the Developer.

9) Whereas it appears on combined reading of the above provisions of Customs Act & SEZ Act, a Special Economic Zone shall be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations and once the goods reached SEZ Area, means, goods sent to outside the Customs territory of India from DTA (Domestic Tariff Area), hence attracts Export duty, as they are termed as physical exports. Further, with effect from 19.09.2018, a proviso was inserted under Rule 27(1) of SEZ Rules, 2006, by which the supplies from Domestic Tariff Area to Special Economic Zones shall attract export duty, in case, export duty is leviable on items attracting export duty.

10) As per the provisions of Section 17(1) Exporter, entering any export goods under Section 50 shall Self assess the duty, if any leviable on such goods. Therefore it appears that the Exporter failed in presenting accurate and correct facts of applicability of export duty and also appears to have contravene of provisions of Section 51(2) of the Customs Act, 1962 read with Notification No. 28/2022-Customs & 29/2022-Customs both dated 21.05.2022 and thus, it appears that the aforesaid demand of export duty along with interest under the provisions of Section 28(1) of the Customs Act, 1962 is liable to be demanded and recovered from the said exporter.

11) In view of the above, it appears that the export duty is leviable on the goods exported by the Exporter located in DTA to an SEZ unit/Developer with effect from 22.05.2022 as per Notification No. 28/2022-Customs & 29/2022-Customs both dated 21.05.2022.

12) Whereas it appears that the export duty amounting to Rs. 5,93,715/- leviable on goods exported by the Exporter to the SEZ unit w.e.f 22.05.2022 to 18.11.2022 as detailed in Annexure-A is required to be recovered from the Exporter under Section 28(1) read with Section 51(2) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. A Consultative Letter dtd. 09.05.2024 was issued to the exporter, issued as per

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the Pre-Notice Consultation Regulations, 2018. No reply/written Submission received from M/s. Madhavi Construction, Bhadkodra Ankleshwar B 75 Vaibhav Park Society, Kapodara Patiya Valia Road, Ankleshwar, Bharuch, Gujarat – 393002.

13) Now, therefore, M/s MADHAVI CONSTRUCTION, located at, BHADKODRA ANKLESHWAR, B 75 VAIBHAV PARK SOCIETY, KAPODARA PATIYA VALIA ROAD, ANKLESHWAR, ANKLESHWAR, Bharuch, Gujarat, 393002 bearing GST Registration No. 24AGDPR1396P1ZT are hereby called upon to show cause to the Additional Commissioner of Customs, Customs Division- Surat, Bhimrad Althan Raod, Near SMC Ward Office, Surat- 395007 so as to why :-

(a) The Export duty amounting to Rs. 5,93,715/- (Rupees Five Lakh Ninety Three Thousand Seven Hundred Fifteen Only) as detailed in Annexure-A attached herewith should not be demanded from them under Section 28(1) of the Customs Act, 1962.

(b) Interest at appropriate rate on the total duty demanded at Sr. No. (a) above should not be recovered from them under Section 28AA of the Customs Act 1962.

14) The Exporter are further advised to indicate in their written explanation whether they desire to be heard in person before the case is adjudicated. If no mention is made about this in their written submission, it would be presumed that they do not desire to be heard in person.

15) If no written submission is shown by them against the action proposed to be taken within 30 days of the date of receipt of this notice or if they do not appear before the adjudicating authority when the case is posted for hearing, the case would be liable to be adjudicated ex-parte on the basis of material evidence available on records.

16) This notice is issued without prejudice to any other action that may be taken against the Exporter under any other law for the time being in force.

17) The documents relied upon to this Show Cause Notice and copies thereof are available with the Exporter.

Encl: Annexure-A & R

[Arun Richard]
Additional Commissioner
Customs- Division, Surat

By Speed Post / R.P.A.D./ Email
F. No. GEN/ADJ/ADC/872/2024-DIV-SRT-CUS-COMMRTE-AHMEDABAD
DIN: 20240571MN000000E04A

To

DIN: 20240571MN000000E04A

M/s MADHAVI CONSTRUCTION,
BHADKODRA ANKLESHWAR,
B 75 VAIBHAV PARK SOCIETY,
KAPODARA PATIYA VALIA ROAD,
ANKLESHWAR, Bharuch, Gujarat,

Copy to –

1. The Specified Officer, Jubilant SEZ, Bharuch.