



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. Bisazza India Pvt. Ltd., 372/2, Near Plot No. 17 and Gail's Office, GIDC, Kadi, North Gujarat - 382715 (herein after referred to as the “importer”, for the sake of brevity) is having Import Export Code 0895003341.

2. The said importer filed Bill of Entry No. 5182641 dated 14.11.2011 for import of “Coffee Table VTR” falling under Customs Tariff Item 94033090 of the First Schedule to the Customs Tariff Act, 1975 by availing benefit of Sr. No. 1 of Notification No. 153/1994-Cus. dated 13.07.1994, as amended, which provides exemption to goods imported for repairing and re-export.

3.1 Sr. No. 1 of Notification No. 153/1994-Cus. provided as follows –

“In exercise of the powers conferred under sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do hereby exempts goods (hereinafter referred to as the said goods) of the description specified in column (2) of the Table hereto annexed and falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) when imported into India, from the whole of the duty of customs leviable thereon specified in the said Schedule and from the whole of the additional duty leviable thereon under section 3 of the second mentioned Act subject to the conditions, if any, laid down in the corresponding entry in column (3) thereof.

TABLE

S.No.	Description of goods	Conditions
(1)	(2)	(3)
1.	Articles of foreign origin	<p>(i) <i>The importer makes a declaration at the time of import that the said goods are being imported for repairs and return.</i></p> <p>(ii) <i>The said goods are re-exported within six months of the date of importation or within such extended period not exceeding one year, as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may allow;</i></p> <p>(iii) <i>The Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied as regards the identity of the said goods; and</i></p> <p>(iv) <i>The importer executes a bond undertaking –</i></p> <p>(a) <i>To re-export the said goods after repairs within six months of the date of importation or within aforesaid extended period;</i></p> <p>(b) <i>To produce the goods before the Assistant Commissioner of Customs or Deputy Commissioner of Customs for identification before re-export;</i></p> <p>(c) <i>To pay the duty if the re-export does not take place within the stipulated period.</i></p>

3.2. Thus, as per Sr. No. 1 of Notification No. 153/1994-Cus., exemption is available to “articles of foreign origin” which are imported for repairs and return. Further the said goods were required to be re-exported within six months of the date of importation or within such extended period, not exceeding one year, as the Deputy / Assistant Commissioner of Customs may allow and the Deputy / Assistant Commissioner of Customs is satisfied as regards the identity of the said goods.

3.3 In terms of the conditions of Notification No. 153/1994-Cus., the importer is also required to execute a bond, undertaking (a) to re-export the said goods after repairs within six months of the date of importation or within the aforesaid extended period; (b) to produce the goods before the Deputy / Assistant Commissioner of Customs for identification before re-export; and (c) to pay the duty if the re-export does not take place within the stipulated period. As per the condition of the said Notification, the said importer submitted Bond for Rs. 19,50,000/- which has been registered with Bond No. 2000190287 dated 17.11.2011 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. 153/1994-Cus.

4. Therefore, as the benefit of Notification No. 153/1994-Cus. does not appear admissible to the said importer, consultative clarification letters F.No. VIII/22-12/ICD/Audit/2015 dated 28.07.2020, 21.12.2022 and 05.12.2023 have been issued to the said importer informing that the re-export bond was still pending for closure, requesting to submit all the documents pertaining to re-export of the goods within prescribed time limit, failing which action under the provisions of the Customs Act, 1962 would be initiated. However, as per the available records, the said importer has not submitted the required documents and therefore the aforesaid Bonds have not been closed.

5. 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.

6. Thus, it appears that the said importer is liable to pay duty forgone of **Rs 4,12,254/-**, 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:

7. 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.]”

8. 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.

9. In the present case, it appears that the said importer has failed to discharge the conditions laid down under Notification No. 153/1994-Cus. dated 13.07.1994 inasmuch as they have not submitted documentary evidence pertaining to re-export within prescribed time limit of the said goods. Thus, the said importer appears to have not complied with the conditions of the said Notification, and undertaking given in the Re-export Bond. Thus, 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. 4,12,254/- (Rupees Four Lakh Twelve Thousand Two Hundred Fifty Four 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.

10. 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. 153/1994-Cus. was granted to the said 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 goods totally valued at **Rs. 15,35,471/- (Rupees Fifteen Lakh Thirty Five Thousand Four Hundred Seventy One Only)**, as mentioned in **Annexure-A** to this show cause notice, appear liable for confiscation under Section 111(o) 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 whichever 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 be 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 partly 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.]*

It appears that through the acts of omission and commission on the part of the said importer, they have rendered themselves liable to penalty as provided under Section 112(a) / 114A of the Customs Act, 1962.

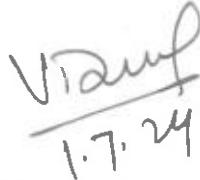
12. Now, therefore, **M/s. Bisazza India Pvt. Ltd.**, is hereby called upon to show cause to the Additional Commissioner of Customs, having office at 2nd Floor, Custom House, Near All India Radio, Navrangpura, Ahmedabad – 380009, within 30 days of receipt of this notice as to why:-

- (i) The exemption under Notification No. 153/1994-Cus. dated 13.07.1994, claimed and availed in respect of Bill of Entry No. 5182641 dated 14.11.2011 should not be denied;
- (ii) The imported goods of declared Assessable value of **Rs. 15,35,471/- (Rupees Fifteen Lakh Thirty Five Thousand Four Hundred Seventy One 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 Sr. No. 1 of Notification No. 153/1994-Cus. dated 13.07.1994 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. 4,12,254/- (Rupees Four Lakh Twelve Thousand Two Hundred Fifty Four 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 with Sr. No. 1 of Notification No. 153/1994-Cus. dated 13.07.1994, as amended / applicable.
- (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 and Provisional Duty Bond furnished by the importer should not be enforced for recovery of duty, interest, penalty and Redemption Fine, if any.

13. 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.

14. 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.

15. 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.



1.7.24

(Vishal Malani)
Additional Commissioner

DIN : 20240771MN0000015684
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. Bisazza India Pvt. Ltd.,
372/2, Near Plot No. 17 and Gails Office,
GIDC, Kadi,
North Gujarat - 382715

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. BISAZZA INDIA PVT. LTD.

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	5182641	14.11.2011	Coffee Table VTR	94033090	1535471	153547	173969	6550	3275	74913	412254
			TOTAL		1535471	153547	173969	6550	3275	74913	412254

RK