प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद
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निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.

फा. सं./F. No.: VIII/10-21/Commr./O&A/2022-23

DIN- 20240471MN000091919D

आदेशकीतारीख/Date of Order : 10.04.2024
जारीकरनेकीतारीख/Date of Issue :10.04.2024

द्वारापारित :- **शिवकुमारशर्मा, प्रधानआयुक्त**

Passed by :- Shiv Kumar Sharma, Principal Commissioner

मूलआदेशसंख्या :

Order-In-OriginalNo:AHM-CUSTM-000-PR.COMMR-04-2024-25 Dated 10.04.2024,
in the case of **M/s. Sun Mark Stainless Private Limited,** 310, Ashirvad Paras, Opp.Krishna Bungalow,Nr.Prahladnagar Garden,Ahmedabad.

1 जिसव्यक्ति(यों) कोयहप्रतिभेजीजातीहै, उसेव्यक्तिगतप्रयोगकेलिएनिःशुल्कप्रदानकीजातीहै।

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इसआदेशसेअसंतुष्टकोईभीव्यक्तिइसआदेशकीप्राप्तिसेतीनमाहकेभीतरसीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीयन्यायाधिकरण, अहमदाबाद पीठको इस आदेशके विरुद्ध अपील कर सकताहै।अपील सहायक रजिस्ट्रार,सीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमालीभवन,गिरिधरनगरपुलकेबाजुमे, गिरिधरनगर, असारवा, अह्मदाबाद-380 004 को सम्बोधित होनी चाहिए।

2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, *Ahmedabad* – 380004.

3. उक्तअपीलप्रारुपसं. सी.ए.3 मेंदाखिलकीजानीचाहिए।उसपरसीमाशुल्क (अपील) नियमावली, 1982 केनियम 3 केउपनियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे।उक्तअपीलको चारप्रतियोँमें दाखिल किया जाए तथा जिस आदेशके विरुद्ध अपीलकी गई हो, उसकीभी उतनीही प्रतियाँ संलग्नकी जाएँ (उनमेंसे कमसेकम एक प्रति प्रमाणित होनी चाहिए)। अपीलसे सम्बंधित सभी दस्तावेजभी चारप्रतियोँमें अग्रेषित किएजाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपीलजिसमेंतथ्योंकाविवरणएवंअपीलकेआधारशामिलहैं, चारप्रतियोंमें दाखिल की जाएगी तथा उसके साथ जिस आदेशके विरुद्ध अपील की गईहो, उसकी भी उतनी ही प्रतियाँ संलगनकी जाएंगी (उनमेंसे कमसे कम एक प्रमाणित प्रति होगी)।

4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5.अपीलकाप्रपत्रअंग्रेजीअथवाहिन्दीमेंहोगाएवंइससेसंक्षिप्तएवंकिसीतर्कअथवाविवरणकेबिनाअपीलकेकारणोंके स्पष्टशीर्षोंकेअंतर्गततैयारकरनाचाहिएएवंऐसेकारणोंकोक्रमानुसारक्रमांकितकरनाचाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रिय सीमाशुल्क अधिनियम, 1962 कीधारा 129 ऐके उपबन्धोंके अंतर्गत निर्धारित फीस जिस स्थानपर पीठस्थित है, वहां के किसीभी राष्ट्रीयकृतबैंककी शाखासे न्यायाधिकरणकी पीठके सहायक रजिस्ट्रारके नाम पर रेखांकित माँगड्राफ्टके जरिए अदाकी जाएगी तथा यह माँगड्राफ्ट अपीलके प्रपत्रके साथ संलग्न किया जाएगा।

6. The prescribed fee under the provisions of Section 129A of the Customs Act,1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेशके विरूद्ध सीमा शुल्क, उत्पादशुल्क एवं सेवाकर अपीलीयन्यायाधिकरणमें शुल्क7.5%, जहां शुल्क अथवा शुल्क एवं जुर्मानाका विवादहै अथवा जुर्माना जहां केवल जुर्मानाके बारेमे विवादहै, का भुगतान करके अपीलकी जा सकतीहै।

7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".

8. न्यायालयशुल्कअधिनियम, 1870 केअंतर्गत निर्धारित किए अनुसार संलग्न किएगए आदेशकी प्रतिपर उपयुक्त न्यायालयशुल्क टिकट लगाहोना चाहिए।

8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice No. VIII/10-21/Commr./O&A/2022-23 dated 23.09.2022 issued by the Commissioner, Customs, Ahmedabad to **M/s. Sun Mark Stainless Private Limited,** 310, Ashirvad Paras, Opp.Krishna Bungalow, Nr.Prahladnagar Garden, Ahmedabad.

BRIEF FACTS:

M/s. Sun Mark Stainless Private Limited, an importer having IEC No.0813026181and having their registered office at 310, Ashirvad Paras, Opp.Krishna Bungalow, Nr.Prahladnagar Garden,Ahmedabad (hereinafter referred to as 'the importer' or 'the Noticee' for the sake of brevity) are engaged in the import of "Hot Rolled Stainless Steel Coils" for manufacture of "Stainless Steel Welded Round Tubes/Pipes" through several ports, without payment of Duty of Customs under cover of Advance Authorizations, under the provisions of CustomsNotification No.18/2015-Cus dated 01.04.2015,as amended by the Customs Notification No. 79/2017 dated 13.10.2017.

2. Whereas it appears that M/s.Sun Mark Stainless Private Limitedhave contravened the provisions of Section 17, 46 of the Customs Act, 1962, and also the provisions of CustomsNotification No.18/2015-Cus dated 01.04.2015,as amended by the Customs Notification No.79/2017 dated 13.10.2017,read with provisions of Para 4.03, 4.13 and 4.14of the Foreign Trade Policy(2015-20), as amended by the DGFT Notification No.33/2015-20 dated 13.10.2017, issued in terms of the provision of Para 4.13 of the Foreign Trade Policy (2015-20), as they imported "Hot Rolled Stainless Steel Coils"for manufacture of "Stainless Steel Welded Round Tubes/Pipes"throughseveral ports,without payment of Duty of Customs under cover of Advance Authorizations,on the strength of the subject Notification and availed benefit of exemption from payment of IGST and/or Compensation Cess on the goods so imported, leviable in terms of Sub-section (7) & Sub-section (9) of Section 3 of the Customs Tariff Act, 1975, but failed to comply with the pre-import and/or physical exportconditions laid down in the subject Notification.

2.1 Intelligence developed by the Directorate of Revenue Intelligence, Kolkata,(hereinafter referred to as DRI) to the effect that M/s. Sun Mark Stainless Private Limited(importer), had imported various input materialswithout payment of Duty of Customsunder cover of a number of Advance Authorizationsissued by the Regional DirectorateGeneral of Foreign Trade (hereinafter referred to as DGFT). While executing such imports, theimporter availed benefit of exemption extended by Notification No.18/2015-Cus dated 01.04.2015, as amended by the Customs Notification No. 79/2017 dated 13.10.2017, and did not pay any CustomsDuty in the form of Integrated Goods & Service Tax (IGST) levied under Sub-section (7) of Section 3 of the Customs Tariff Act, 1975, on such input materials at the time of import.However, such exemption was extended subject to the condition that the person willing to avail such benefit should comply with pre-import condition and the finished goods should be subjected to physical exports only.

2.2 However, the intelligence developed by DRI, Kolkata, clearly indicated that although M/s. Sun Mark Stainless Private Limitedavailed such exemption in respect of 15Advance Authorizations, but while going through the process of such imports and corresponding exports towards discharge of export obligation, they failed to comply with the pre-import condition, as demanded under the said Notification No. 79/2017-Cus dated 13.10.2017, that extended such conditional exemption. Pre-import condition simply means that the goods should be imported prior to commencement of export to enable the exporter to manufacture finished goods, which could be subsequently exported under the same Advance Authorization for discharge of Export Obligation.

2.3 Accordingly, investigation was initiated by way of issuance of Summons under section 108 of the Customs Act, 1962. The importer was summoned by the Superintendent of Customs (Imports), ICD Khodiyar on 10.01.2022for production of documents in connection with such imports. **Shri Ankur Patwa, Authorized Signatory**of the said Company submitted the information on 01.07.2022. Shri

AnkurPatwa also submitted that input-output ratio is 1.20/1.00 (SION-61/837). The summary of the details are as under:-

Table-1

Advance Authorization specific No. & date of the first Bill of Entry and first Shipping Bill						
Sr. No	AA No.	AA Date	First BE no.	First BE date	First Shipping Bill No.	First Shipping Bill Date
1	810135995	07-09-2015	All the imports are done before GST introduction	-	All the exports are done before GST introduction	-
2	810138128	08-06-2016	All the imports are done before GST introduction	-	All the exports are done before GST introduction	-
3	810138127	08-06-2016	9150672	03-04-2017	5303702	08-04-2017
4	810140320	19-05-2017	2040947	10-06-2017	6205284	20-05-2017
5	810140426	02-06-2017	2377656	10-07-2017	6271270	24-05-2017
6	810141463	05-12-2017	4328828	10-12-2017	1696343	21-12-2017
7	810139676	07-02-2017	3285968	18-09-2017	5303726	08-04-2017
8	810138981	26-10-2016	2377624	10-07-2017	All the exports are done before GST introduction	-
9	810141503	08-12-2017	4511985	22-12-2017	1659708	19-12-2017
10	810141665	03-01-2018	4740722	09-01-2018	2385728	23-01-2018
11	810141596	22-12-2017	4740725	09-01-2018	4371674	21-04-2018
12	810142055	23-02-2018	5477346	07-03-2018	3532932	16-03-2018
13	810142259	28-03-2018	6535079	25-05-2018	5692658	20-06-2018
14	810143036	18-07-2018	7386560	27-07-2018	6540909	30-07-2018
15	810144064	12-12-2018	9489468	01-01-2019	9613027	13-12-2018

2.4 It could be seen from the above chart that in case of 02(Two) Advance Authorizations at Sr.No.9 and 15, they made exports first before imports after said Notification No.79/2017-Cus dated 13.10.2017. Quite naturally, they did not manufacture the goods which were exported under the subject Advance Authorization corresponding to the said Shipping Bills, out of the Duty-free materials imported under the subject Advance Authorization. Therefore, the materials which were exported against those Shipping Bills, were not manufactured of the Duty-free materials imported under the Advance Authorization in question. This prima facie resulted in non-compliance of the pre-import condition.

2.5 Further, after detailed study of the data submitted in RUD-1to the SCN, Two Annexuresi.e.Annexure-A and Annexure-B to the SCNwere prepared by the Office of ICD, Khodiyar. Study of the same revealed that in respect of the Advance Authorizations mentioned at Sr. No. 4, 5, 6,10, 11, 12, and 14against these Advance Authorizations, many of the raw materials were imported subsequent to significant quantity of exports. Therefore, the subject imported goods could not have been used for the purpose of manufacture of export products under respective Advance Authorizations and the importer failed to comply with the pre-import condition in respect of these Advance Authorizations.The License wise assessable value and IGST benefit taken for the period from 13.10.2017 to 10.01.2019, for which pre-import conditions were vitiated, are as under:-

Table-2
Advance License wise and port-wise IGST saved Amount

Sr. No	Adv. License No.	Adv. License Date.	Port of Import	Assessable Value in Rs.	IGST Saved in Rs.
1	810140320	19-05-2017	INSBI6	7,86,89,390	1,53,17,791
			INNSA1	26,23,131	5,08,638
2	810140426	02-06-2017	INSBI6	6,64,22,153	1,29,04,177
			INNSA1	3,43,79,589	66,66,374
			INMUN1	14,29,78,375	2,78,59,336
3	810141463	05-12-2017	INSBI6	4,04,41,321	78,41,774
			INNSA1	2,20,49,867	42,75,579
4	810141503	08-12-2017	INSBI6	4,24,81,767	82,48,087
			INNSA1	5,02,38,362	97,41,470
5	810141665	03-01-2018	INSBI6	16,20,80,265	3,14,77,998
	810141596	22-12-2017	INSBI6	3,54,40,603	69,04,961
6	810142055	23-02-2018	INSBI6	20,19,86,195	3,93,57,010
			INMUN1	6,69,99,343	1,30,54,821
7	810143036	18-07-2018	INSBI6	7,97,22,536	1,55,33,936
8	810144064	12-12-2018	INMUN1	3,74,46,071	72,96,367
Total				**1,06,39,78,969/-**	**20,69,83,322/-**

Table-3
Port-wise IGST saved Amount

Port of Import	Assessable Value in Rs.	IGST Saved in Rs.
ICD Khodiyar	70,72,64,230	13,75,80,735
Mundra Port	24,74,23,789	4,82,10,525
JNPT, NhavaSheva	10,92,90,950	2,11,92,062
Total	**1,06,39,78,969/-**	**20,69,83,322/-**

2.6 As evident from Annexure-Bto the SCN, the importer have violated such pre-import condition, leading to non-payment of IGST in 71 (Seventy one) Bills of Entry under cover of which imports were made involving IGST amount of **Rs.20,69,83,322/-** against the 09 (Nine) Advance Authorizations. Out of these 71 Bills of Entry, 54 (Fifty Four) Bills of Entry pertain to ICD Khodiyar, Ahmedabad involving IGST amount of **Rs.13,75,80,735/-**,10 (Ten) Bills of Entry pertain to JNPT, Nhava Sheva involving IGST amount of **Rs.2,11,92,062/-**and 07 (Seven) Bills of Entry pertain to Mundra Port involving IGST amount of **Rs.4,82,10,525/-.Copies of 15 Advance Authorizations are annexed as RUD-2to the SCN and copies of 54 Nos. Bills of Entry pertaining to ICD Khodiyar are annexed as RUD-3 to the SCN.**

3. Following provisions of law are relevant to the Show Cause Notice.

a) Para 4.03 of the Foreign Trade Policy (2015-20);
b) Para 4.05 of the Foreign Trade Policy (2015-20);
c) Para 4.13 of the Foreign Trade Policy (2015-20);
d) Para 4.14 of the Foreign Trade Policy (2015-20);
e) 9.20 of the Foreign Trade Policy (2015-20);
f) Para 4.27 of the Hand Book of Procedures (2015-20);
g) Section 2(e) of the Foreign Trade (DR) Act, 1992;
h) DGFT Notification No. 33/2015-20 dated 13.10.2017;
i) DGFT Notification No. 31/2013 (RE-2013) dated 01.08.2013;
j) DGFT Circular No. 3/2013 (RE-2013) dated, 02.08.2013;
k) Notification No 18/2015-Customs dated 01.04.2015;
l) Notification No 79/2017-Customs dated 13.10.2017;
m) Section 17 of the Customs Act, 1962;
n) Section 46 (4) of the Customs Act, 1962;
o) Section 111(o) of the Customs Act, 1962;
p) Section 112(a) of the Customs Act;

q) Section 124 of the Customs Act, 1962;

a) Para 4.03 of the Foreign Trade Policy (2015-20) inter-alia states that :-

An Advance Authorisation is issued to allow duty free import of inputs, which are physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, energy, catalysts which are consumed/ utilised to obtain export product, may also be allowed DGFT, by means of Public Notice, may exclude any product(s) from purview of Advance Authorisation.

b) Para 4.05 of the Foreign Trade Policy (2015-20) inter-alia states that :-

4.05 Eligible Applicant / Export / Supply
(a) Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer.
(b) Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process (as indicated in paragraph 4.18 of Handbook of Procedures) shall be issued to manufacturer exporter only.
(c) Advance Authorisation shall be issued for:
(i) Physical export (including export to SEZ);
(ii) Intermediate supply; and/or
(iii) Supply of goods to the categories mentioned in paragraph 7.02 (b), (c), (e), (f), (g) and (h) of this FTP. (iv) Supply of 'stores' on board of foreign going vessel / aircraft, subject to condition that there is specific Standard Input Output Norms in respect of item supplied.

c) Para 4.13 Foreign Trade Policy (2015-20) inter-alia states that :-

4.13 Pre-import condition in certain cases-

(i) DGFT may, by Notification, impose pre-import condition for inputs under this Chapter.

(ii) Import items subject to pre-import condition are listed in Appendix 4J or will be as indicated in Standard Input Output Norms (SION).

(iii) Import of drugs from unregistered sources shall have pre-import condition.

d) Para 4.14 Foreign Trade Policy (2015-20) inter-alia states that :-

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.

e) Para 9.20 Foreign Trade Policy (2015-20) inter-alia states that :-

9.20
"Export" is as defined in FT (D&R) Act, 1992, as amended from time to time.

f) *4.27 Exports/Supplies in anticipation or subsequent to issue of an Authorisation.*

(a) Exports / supplies made from the date of EDI generated file number for an Advance Authorisation, may be accepted towards discharge of EO. Shipping / Supply document(s) should be endorsed with File Number or Authorisation Number to establish co-relation of exports / supplies with Authorisation issued. Export/supply document(s) should also contain details of exempted materials/inputs consumed.

(b) If application is approved, authorisation shall be issued based on input / output norms in force on the date of receipt of application by Regional Authority. If in the intervening period (i.e. from date of filing of application and date of issue of authorisation) the norms get changed, the authorization will be issued in proportion to provisional exports / supplies already made till any amendment in norms is notified. For remaining exports, Policy / Procedures in force on date of issue of authorisation shall be applicable.

(c) The export of SCOMET items shall not be permitted against an Authorisation until and unless the requisite SCOMET Authorisation is obtained by the applicant.

(d) Exports/supplies made in anticipation of authorisation shall not be eligible for inputs with pre-import condition.

g) ***Section 2(e) of the Foreign Trade (DR) Act, 1992 states that :-***

(e) "import" and 'export" means respectively bringing into, or taking out of, India any goods by land, sea or air;

h) *Notification No.33/2015-2020 New Delhi,*
Dated: 13 October, 2017
Subject: Amendments in Foreign Trade Policy 2015-20 -reg

S.O. (E): In exercise of powers conferred by Section 5 of FT (D&R) Act, 1992, read with paragraph 1.02 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby makes following amendments in Foreign Trade Policy 2015-20. 1. Para 4.14 is amended to read 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 Authorization 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."

.....

i) ***<u>NOTIFICATION NO. 31 (RE-2013)/ 2009-2014</u>***
NEW DELHI, DATED THE 1st August, 2013

In exercise of powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No.22 of 1992) read with paragraph 1.2 of the Foreign Trade Policy, 2009-2014, the Central Government hereby notifies the following amendments in the Foreign Trade Policy (FTP) 2009-2014.

2. After para 4.1.14 of FTP a new para 4.1.15 is inserted.

"4.1.15 Wherever SION permits use of either (a) a generic input or (b) alternative inputs, unless the name of the specific input(s) [which has (have) been used in manufacturing the export product] gets indicated / endorsed in the relevant shipping bill and these inputs, so endorsed, match the description in the relevant bill of entry, the concerned Authorisation will not be redeemed. In other words, the name/description of the input used (or to be used) in the Authorisation must match exactly the name/description endorsed in the shipping bill. At the time of discharge of export obligation (EODC) or at the time of redemption, RA shall allow only those inputs which have been specifically indicated in the shipping bill."

3. Para 4.2.3 of FTP is being amended by adding the phrase "4.1.14 and 4.1.15" in place of "and 4.1.14". The amended para would be as under:

"Provisions of paragraphs 4.1.11, 4.1.12, 4.1.13, 4.1.14 and 4.1.15 of FTP shall be applicable for DFIA holder."

4. ***Effect of this Notification:*** *Inputs actually used in manufacture of the export product should only be imported under the authorisation. Similarly inputs actually imported must be used in the export product. This has to be established in respect of every Advance Authorisation / DFIA.*

j) Policy Circular No.03 (RE-2013)/2009-2014
Dated the 2nd August, 2013

Subject: Withdrawal of Policy Circular No.30 dated 10.10.2005 on Importability of Alternative inputs allowed as per SION.

Notification No.31 has been issued on 1st August, 2013 which stipulates "inputs actually used in manufacture of the export product should only be imported under the authorisation. Similarly inputs actually imported must be used in the export product." Accordingly, the earlier Policy Circular No.30 dated 10.10.2005 becomes infructuous and hence stands withdrawn.

2. This is to reiterate that duty free import of inputs under Duty Exemption/Remission Schemes under Chapter-4 of FTP shall be guided by the Notification No. 31 issued on 1.8.2013. Hence any clarification or notification or communication issued by this Directorate on this matter which may be repugnant to this Notification shall be deemed to have been superseded to the extent of such repugnancy.

k) Notification No. 18/2015 - Customs, Dated: 01.04.2015-

G.S.R. 254 (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 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 the following conditions, namely :-

(i) that the said authorisation is produced before the proper officer of customs at the time of clearance for debit;

(ii) that the said authorisation bears,-

(a) the name and address of the importer and the supporting manufacturer in cases where the authorisation has been issued to a merchant exporter; and

(b) the shipping bill number(s) and date(s) and description, quantity and value of exports of the resultant product in cases where import takes place after fulfillment of export obligation; or

(c) the description and other specifications where applicable of the imported materials and the description, quantity and value of exports of the resultant product in cases where import takes place before fulfillment of export obligation;

(iii) that the materials imported correspond to the description and other specifications where applicable mentioned in the authorisation and are in terms of para 4.12 of the Foreign Trade Policy and the value and quantity thereof are within the limits specified in the said authorisation;

(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;

(v) that in respect of imports made after the discharge of export obligation in full, if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or of CENVAT Credit under CENVAT Credit Rules, 2004 has been availed, then the importer shall, at the time of clearance of the imported materials furnish a bond to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture of dutiable goods and to submit a certificate, from the jurisdictional Central Excise officer or from a specified chartered accountant within six months from the date of clearance of the said materials, that the imported materials have been so used:

Provided that if the importer pays additional duty of customs leviable on the imported materials but for the exemption contained herein, then the imported materials may be cleared without furnishing a bond specified in this condition and the additional duty of customs so paid shall be eligible for availing CENVAT Credit under the CENVAT Credit Rules, 2004;

(vi) that in respect of imports made after the discharge of export obligation in full, and if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or of CENVAT credit under CENVAT Credit Rules, 2004 has not been availed and the importer furnishes proof to this effect to the satisfaction of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs as the case may be, then the imported materials may be cleared without furnishing a bond specified in condition (v);

(vii) that the imports and exports are undertaken through the seaports, airports or through the inland container depots or through the land customs stations as mentioned in the Table 2 annexed to the Notification No.16/ 2015- Customs dated 01.04.2015 or a Special Economic Zone notified under section 4 of the Special Economic Zones Act, 2005 (28 of 2005):
Provided that the Commissioner of Customs may, by special order or a public notice and subject to such conditions as may be specified by him, permit import and export through any other sea-port, airport, inland container depot or through a land customs station within his jurisdiction;

(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:

Provided that an Advance Intermediate authorisation holder shall discharge export obligation by supplying the resultant products to exporter in terms of paragraph 4.05 (c) (ii) of the Foreign Trade Policy;

(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;

Provided that the said materials may be transferred to a job worker for processing subject to complying with the conditions specified in the relevant Central Excise notifications permitting transfer of materials for job work;

Provided further that, no such transfer for purposes of job work shall be effected to the units located in areas eligible for area based exemptions from the levy of excise duty in terms of notification Nos. 32/1999-Central Excise dated 08.07.1999, 33/1999-Central Excise dated 08.07.1999, 39/2001- Central Excise dated 31.07.2001, 56/2002- Central Excise dated 14.11.2002, 57/2002- Central Excise dated 14.11.2002, 49/2003- Central Excise dated 10.06.2003, 50/2003- Central Excise dated 10.06.2003, 56/2003- Central Excise dated 25.06.2003, 71/03- Central Excise dated 09.09.2003, 8/2004- Central Excise dated 21.01.2004 and 20/2007-Central Excise dated 25.04.2007;

(xi) that in relation to the said authorisation issued to a merchant exporter, any bond required to be executed by the importer in terms of this notification shall be executed jointly by the merchant exporter and the supporting manufacturer binding themselves jointly and severally to comply with the conditions specified in this notification.

l) Notification No.79/2017 - Customs, Dated: 13.10.2017-

Central Government, on being satisfied that it is necessary in the public interest so to do, made the following further amendments in each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in

column (2) of the Table below, in the manner as specified in the corresponding entry in column (3) of the said Table:-

-: Table:-

S. No.	***Notification number and date***	***Amendments***
(1)	***(2)***	***(3)***
1	*16/2015-Customs, dated the 1 st April, 2015 [vide number G.S.R. 252(E), dated the 1 st April, 2015]*	*In the said notification,- (a) in the opening paragraph, after clause (ii), the following shall be inserted, namely:- "(iii) the whole of integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act: Provided that the exemption from integrated tax and the goods and services tax compensation cess shall be available up to the 31st March, 2018."; (b) in the Explanation C (II), for the words "However, the following categories of supplies, shall also be counted towards fulfilment of export obligation:", the words "However, in authorisations where exemption from integrated tax and goods and service tax compensation cess is not availed, the following categories of supplies, shall also be counted towards fulfilment of export obligation:" shall be substituted.*
2.	*18/2015-Customs, dated the 1 st April, 2015 [vide number G.S.R. 254 (E), dated the 1 st April, 2015]*	*In the said notification, in the opening paragraph,- (a) for the words, brackets, figures and letters "from the whole of the additional duty leviable thereon under sub- 2 sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A", the words, brackets, figures and letters "from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, integrated tax leviable thereon under sub-section (7) of section 3, goods and services tax compensation cess leviable thereon under sub-section (9) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A" shall be substituted;* *(b) in condition (viii), after the proviso, the following proviso shall be inserted, namely:-* *"Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9)* ***of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports only;";*** *(c) after condition (xi), the following conditions shall be inserted, namely :-* *"(xii) that the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section* ***3 of the said Customs Tariff Act shall be subject to pre-import condition;*** *(xiii) that the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of*

		section 3 of the said Customs Tariff Act shall be available up to the 31st March, 2018.".

m) Section 17 (1) of the Customs Act, 1962 reads as:-

[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.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation.- For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.

n) Section 46 (4) of the Customs Act, 1962 reads as:-

"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, relating to the imported goods....."

o) Section 111 (o) of the Customs Act, 1962 inter alia stipulates-

"111. Confiscation of improperly imported goods, etc. -
The following goods brought from a place outside India shall be liable to confiscation: -

.....

(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;"

p) ***Further section 112 of the Customs Act, 1962 provides for penal action and inter-alia stipulates:-***

Any person shall be liable to penalty for improper importation of goods,-

(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, ..."

q) ***Section 124 of the Customs Act, 1962 inter alia stipulates :-***

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person

(a) is given a notice in writing with the prior approval of the officer of customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

4. Imposition of two conditions for availing the IGST exemption in terms of Notification No. 79/2017-Cus dated 13.10.2017:-

4.1 Whereas Advance Authorizations are issued by the Directorate General of Foreign Trade (DGFT) to importers for import of various raw materials without payment of Customs Duty and the said export promotional scheme is governed by Chapter 4 of the Foreign Trade Policy (2015-20), applicable for subject case and corresponding Chapter 4 of the Hand Book of Procedures (2015-20). Prior to GST regime, in terms of the provisions of Para 4.14 of the prevailing Foreign Trade Policy (2015-20), the importer was allowed to enjoy benefit of exemption in respect of Basic Customs Duty as well as Additional Customs Duties, Anti-dumping Duty and Safeguard Duty, while importing such input materials under Advance Authorizations.

4.2 With the introduction of GST w.e.f 01.07.2017, Additional Customs Duties (CVD & SAD) were subsumed into the newly introduced Integrated Goods and Service Tax (IGST). Therefore, at the time of imports, in addition to Basic Customs Duty, IGST was made payable instead of such additional duties of Customs. Accordingly, Notification No.26/2017-Customs dated 29 June 2017, was issued to give effect to the changes introduced in the GST regime in respect of imports under Advance Authorization. It was a conscious decision to impose IGST at the time of import, however, at the same time, importers were allowed to either take credit of such IGST for payments of Duty during supply to DTA, or to take refund of such IGST amount within a specified period. The corresponding changes in the Policy were brought through Trade Notice No.11/2018 dated 30.06.2017. It is pertinent to note here that while in pre-GST regime blanket exemption was allowed in respect of all Duties leviable when goods were being imported under Advance Authorizations, contrary to that, in post-GST regime, for imports under Advance Authorization, the importers were required to pay such IGST at the time of imports and then they could get the credit of the same.

4.3 However, subsequently, the Government of India decided to exempt imports under Advance Authorizations from payment of IGST, by introduction of the Customs Notification No.79/2017 dated 13.10.2017. However, such exemption from the payment of IGST was made conditional. The said Notification No.79/2017 dated 13.10.2017, was issued with the intent of incorporating certain changes/ amendment in the principal Customs Notifications, which were issued for extending benefit of exemption to the goods when imported under Advance Authorizations. The said Notification stated that the Central Government, on being satisfied that it is necessary in the public interest so to do, made the following further amendments in each of the Notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below, in the manner as specified in the corresponding entry in column (3) of the said Table. Only the relevant portion pertaining to the Customs Notification No.18/2015 dated 01.04.2015 is reproduced in Para 3(j) above, which may be referred to.

4.4 Therefore, by issuing the subject Notification No.79/2017-Cus dated 13.10.2017, the Government of India amended inter-alia Notification No.18/2015-Cus dated 01.04.2015, and extended exemption from the payment of IGST at the time of import of input materials under Advance Authorizations. But such exemption was not absolute. As a rider, certain conditions were incorporated in the subject Notification. One being the condition that such exemption can only be extended so long as exports made under the Advance Authorization are physical exports in nature and the other being the condition that to avail such benefit one has to follow the pre-import condition.

5.The Director General of Foreign Trade, in the meanwhile, issued one Notification No.33/2015-20 dated 13.10.2017, which amended the provision of Para 4.14 of the Foreign Trade Policy (2015-20), **to incorporate the exemption from IGST, subject to compliance of the pre-import and physical export conditions**. It is pertinent to mention, that the principal Customs Notification No.18/2015-Cus, being an EXIM notification, was amended by the Notification No.79/2017-Cus dated 13.10.2017, in tandem with the changed Policy by integrating the same provisions for proper implementation of the provisions of the Foreign Trade Policy (2015-20).

5.1 Therefore, conscious legislative intent is apparent in the changes made in the Foreign Trade Policy (2015-20) and corresponding changes in the relevant Customs Notifications, that to avail the benefit of exemption in respect of Integrated Goods and Service Tax (IGST), one would require to comply with the following two conditions: -

i) All exports under the Advance Authorization should be physical exports, therefore, debarring any deemed export from being considered towards discharge of export obligation;

ii) Pre-import condition has to be followed, which requires materials to be imported first and then be used for manufacture of the finished goods, which could in turn be exported for discharge of EO;

6. Physical Export condition in relation to the Foreign Trade Policy (2015-20) and the Notification No.79/2017-Cus dated 13.10.2017, and whether it was followed by the importer

6.1 Whereas the concept of physical export is derived from Para 4.05(c) and Para 9.20 of the Foreign Trade Policy (2015-20) read with Section 2(e) of the Foreign Trade (DR) Act, 1992. Para 9.20 of the Policy refers to Section 2(e) of the Foreign Trade (DR) Act, 1992, which defines 'Export' as follows:-

(e)"import" and 'export" means respectively bringing into, or taking out of, India any goods by land, sea or air;

Therefore, primarily, export involves taking out goods out of India, however, in Chapter 4 of the Policy, Para 4.05 defines premises under which Advance Authorizations could be issued and states that -

(c) Advance Authorization shall be issued for:

(i) Physical export (including export to SEZ);
(ii) Intermediate supply; and/or
(iii) Supply of goods to the categories mentioned in paragraph 7.02 (b), (c), (e), (f), (g) and (h) of this FTP.
(iv) Supply of 'stores' on board of foreign going vessel / aircraft, subject to condition that there is specific Standard Input Output Norms in respect of item supplied.

6.2 Therefore, the definition has been further extended in specific terms under Chapter 4 of the Policy and the supplies made to SEZ, despite not being an event in which goods are being taken out of India, are considered as Physical Exports. However, other three categories defined under (c) (ii), (iii) & (iv) do not qualify as physical exports. Supplies of intermediate goods are covered by Letter of Invalidation, whereas, supplies covered under Chapter 7 of the Policy are considered as Deemed Exports. None of these supplies are eligible for being considered as physical exports. Therefore, any category of supply, be it under letter of Invalidation and/or to EOU and/or under International Competitive Bidding (ICB) and/or to Mega Power Projects, other than actual exports to other country and supply to SEZ, cannot be considered as Physical Exports for the purpose of Chapter 4 of the Foreign Trade Policy (2015-20).

6.3 This implies that to avail the benefit of exemption as extended through amendment of Para 4.14 of the Policy by virtue of the DGFT Notification No. 33/2015-20 dated 13.10.2017, one has to ensure that the entire exports made under an Advance Authorization towards discharge of EO are physical exports. In case the entire exports made, do not fall in the category of physical exports, the Advance Authorization automatically sets disqualified for the purpose of exemption.

7. Pre-import condition in relation to the Foreign Trade Policy (2015-20) and the Notification No.79/2017-Cus dated 13.10.2017; Determination of whether the goods imported under the impugned Advance Authorization comply with the pre-import condition, and whether it was followed by the importer

7.1 Pre-import condition has been part of the Policy for long. In terms of Para 4.13 of the Policy, there are certain goods for which pre-import condition was made applicable through issuance of DGFT Notification way before the Notification dated 13.10.2017 came into being.

7.2 The definition of pre-import directly flows from Para 4.03 of the Foreign Trade Policy (2015-20)[erstwhile Para 4.1.3 of the Policy (2009-14)]. **It demands that Advance Authorizations are issued for import of inputs, which are physically incorporated in the export goods allowing legitimate wastage.This Para specifically demands for such physical incorporation of imported materials in the export goods. And the same is only possible, when imports are made prior to export. Therefore, such Authorizations principally do have the pre-import condition in-built,** which is required to be followed, barring where otherwise use has

been allowed in terms of Para 4.27 of the Foreign Trade Policy (2015-20)[erstwhile Para 4.12 of the Policy (2009-14)].

7.3 Advance Authorizations are issued for import of Duty-free materials first, which would be used for the purpose of manufacture of export goods, which would be exported out of India or be supplied under deemed export, if allowed by the Policy or the Customs Notification. The very name Advance Authorization was coined with prefix 'Advance', which illustrates and indicates the basic purpose as aforesaid. Spirit of the scheme is further understood, from the bare fact that while time allowed for import is 12 months (conditionally extendable by another six months) from the date of issue of the Authorization, the time allowed for export is 18 months (conditionally extendable by 6 months twice) from the date of issue of the Authorization. The reason for the same was the practical fact that conversion of input materials into finished goods ready for export, takes considerable time depending upon the process of manufacture.

7.4 DGFT Notification No.31/2013 (RE-2013) dated 01.08.2013, was issued to incorporate a new Para No. 4.1.15 in the Foreign Trade Policy. The said Para is an extension of the Para 4.1.3[Para 4.03 of the Policy (2015-200] and stipulated further condition which clarified the ambit of the aforesaid Para 4.1.3. **Inputs actually imported must be used in the export product.**

7.5 A Circular No.3/2013 (RE-2013) dated 02.08.2013, was also issued by the Ministry of Commerce in line with the aforesaid Notification. The Circular reiterates that Duty free import of inputs under Duty Exemption/Remission Schemes under Chapter-4 of FTP shall be guided by the Notification No.31 issued on 01.08.2013.

7.6 Therefore, combined reading of Para 4.03 of the Foreign Trade Policy, in force at the time of issuance of the Authorizations, and the Notification aforesaid along with the Circular as mentioned above, makes it obvious, that **benefit of exemption from payment of Customs Duty is extended to the input materials subject to strict condition, that such materials would be exclusively used in the manufacture of export goods which would be ultimately exported.** Therefore, the importer does not have the liberty to utilize such Duty-free materials otherwise, nor do they have freedom to export goods manufactured out of something, which was not actually imported.

7.7 Therefore, such Authorizations principally do have the pre-import condition in-built, which is required to be followed, barring where otherwise use has been allowed in terms of Para 4.27 of the Foreign Trade Policy (2015-20) [erstwhile Para 4.12 of the Policy (2009-14)]. Para 4.27 of the Hand Book of Procedures for the relevant period allows exports/supplies in anticipation of an Authorization. This provision has been made as an exception to meet the requirement in case of exigencies. However, the importers/exporters have been availing the benefit of the said provision without exception and the export goods are made out of domestically or otherwise procured materials and the Duty-free imported goods are used for purposes other than the manufacture of the export goods. However, Para 4.27 (d) has barred such benefit of export in anticipation of Authorization for the inputs with pre-import condition.

7.8 Specific provision under the said Para 4.27 (d) was made, which states that –

> ***(d) Exports/supplies made in anticipation of authorization shall not be eligible for inputs with pre-import condition.***

Therefore, whenever pre-import condition is applicable in respect of the goods to be imported, the Advance Authorization holder does not have any liberty to export in anticipation of Authorization. The moment input materials are subject to pre-

import condition, they become ineligible for export in anticipation of Authorization, by virtue of the said provision of Para 4.27 (d).

7.9 The pre-import condition requires the imported materials to be used for the manufacture of finished goods, which are in turn required to be exported towards discharge of export obligation, and the same is only possible when the export happens subsequent to the commencement of imports after allowing reasonable time to manufacture finished goods out of the same. Therefore, when the law demands pre-import condition on the input materials to be imported, goods cannot be exported in anticipation of Advance Authorization. **Provisions of Para 4.27(a) & (b), i.e export in anticipation of Authorization and the pre-import condition on the input materials are mutually exclusive and cannot go hand in hand**.

8. Whereas Advance Authorization Scheme is not just another scheme, where one is allowed to import goods Duty free, for which the sole liability of the beneficiary is to complete export obligation only by exporting goods mentioned in the Authorization. **It is not a scheme that gives carte blanche to the importer, so far as utilization of imported materials is concerned. Rather, barring a few exceptions covered by the Policy and the Notification, it requires such Duty-free imported materials to be used specifically for the purpose of manufacture of export goods.** As discussed above, the scheme requires physical incorporation of the imported materials in the export goods after allowing normal wastage. Export goods are required to be manufactured out of the very materials which have been imported Duty free. **The law does not permit replenishment**. The High Court of Allahabad in the case of *Dharampur Sugar Mill* reported in *2015 (321) ELT 0565 (All.)* has observed that:-

> *"**From the records we find that the import authorization requires the physical incorporation of the imported input in export product after allowing normal wastage, reference clause 4.1.3.** In the instant case, the assessee has hopelessly failed to establish the physical incorporation of the imported input in the exported sugar. The Assessing Authority and the Tribunal appears to be correct in recording a finding that the appellant has violated the provisions of the Customs Act, in exporting sugar without there being any 'Export Release Order' in the facts of this case."*

8.1 The Hon'ble Supreme Court in the case of *Pennar Industries* reported in *TIOL-2015-(162)-SC-CUS* has held that :-

> *"It would mean that not only the raw material imported (in respect of which exemption from duty is sought) is to be utilized in the manner mentioned, namely, for manufacture of specified products by the importer/assessee itself, this very material has to be utilized in discharge of export obligation. **It, thus, becomes abundantly clear that as per this Notification, in order to avail the exemption from import duty, it is necessary to make export of the product manufactured from that very raw material which is imported.** This condition is admittedly not fulfilled by the assessee as there is no export of the goods from the raw material so utilized. Instead, export is of the product manufactured from other material, that too through third party. Therefore, in strict sense, the mandate of the said Notification has not been fulfilled by the assessee."*

8.2 The High Court of Madras (Madurai Bench) in the case of M/s. Vedanta Ltd. on the issue under consideration held that:-

> "pre-**import simply means import of raw materials before export of the finished goods to enable the physical export and actual user condition possible and negate the revenue risk that is plausible by diverting the imported goods in the local market".**

8.3 Conditions No. (v) & (vi) of the Notification No. 18/2015-Cus dated 01.04.2015, prescribe the modalities to be followed for import of Duty-free goods under Advance Authorization, in cases, where export obligation is discharged in full, before the commencement of imports. This is to ensure that the importer does not enjoy the benefit of Duty exemption on raw materials twice for the same export. It is but natural that in such a situation the importer would have used domestically procured materials for the purpose of manufacture of goods that have been exported and on which required Duties would have been paid and credit of the same would also have been availed by the importer. The importer has in this kind of situation, two options in terms of the above Notification:

8.4. The first option is elucidated in condition No.(v) of the Notification, which is as under-

> *"(v) that in respect of imports made after the discharge of export obligation in full, if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or of CENVAT Credit under CENVAT Credit Rules, 2004 has been availed, then the importer shall, at the time of clearance of the imported materials furnish a bond to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture of dutiable goods and to submit a certificate, from the jurisdictional Central Excise officer or from a specified chartered accountant within six months from the date of clearance of the said materials, that the imported materials have been so used:*
>
> *Provided that if the importer pays additional duty of customs leviable on the imported materials but for the exemption contained herein, then the imported materials may be cleared without furnishing a bond specified in this condition and the additional duty of customs so paid shall be eligible for availing CENVAT Credit under the CENVAT Credit Rules, 2004;"*

8.4.1 The second option is similarly elaborated in condition No.(vi) of the Notification, as under-

> *"(vi) that in respect of imports made after the discharge of export obligation in full, and if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or of CENVAT credit under CENVAT Credit Rules, 2004 has not been availed and the importer furnishes proof to this effect to the satisfaction of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs as the case may be, then the imported materials may be cleared without furnishing a bond specified in condition (v);"*

8.5 Thus, the purport of the above conditions in the erstwhile Notification is to ensure that if domestically procured inputs have been used for manufacture of the exported goods and the inputs are imported Duty-free after the exports, then the benefit of "zero-rating" of exports is not availed by the exporter twice.

8.6 Thus, insertion of such conditions in the Notification, is indicative of legislative intent of keeping check on possible misuse of the scheme. However, ensuring compliance of these two conditions is not easy, on the other hand, such conditions are vulnerable to be mis-used and have the inherent danger to pave way for 'rent-seeking'. Therefore, to **plug the loop-hole, and to facilitate and streamline the implementation of the export incentive scheme, in the post-GST scenario the**

concept of "Pre-Import" and "Physical Export" was introduced in the subject Notification, which make the said conditions (v) & (vi) infructuous. This is also in keeping with the philosophy of GST legislation to remove as many conditional exemptions as possible and instead provide for zero-rating of exports through the option of taking credit of the IGST Duties paid on the imported inputs, at the time of processing of the said inputs.

8.7 It is the duty of an importer seeking benefits of exemption extended by Customs Notifications issued by the Government of India/Ministry of Finance, to comply with the conditions imposed in the Notification, which determines, whether or not one becomes eligible for the exemption. **Exemption from payment of Duty is not a matter of right, if the same comes with conditions which are required to be complied with. It is a pre-requisite that only if such conditions are followed, that one becomes eligible for such benefit. As discussed above, such conditions have been brought in with the objective of facilitating zero-rating of exports with minimal compliance and maximum facilitation.**

9. Whereas IGST benefit is available against Advance Authorizations subject to observance of pre-import condition in terms of the condition of the Para 4.14 of the Foreign Trade Policy (2015-20) and also the conditions of the newly introduced condition (xii) of Customs Notification No.18/2015 dated 01.04.2015 as added by Notification No.79/2017-Cus dated 13.10.2017. Such pre-import condition requires goods to be imported prior to commencement of exports to ensure manufacturing of finished goods made out of the Duty-free inputs so imported. These finished goods are then to be exported under the very Advance Authorization towards discharge of export obligation. As per the provisions of Para 4.03 of the Foreign Trade Policy (2015-20), physical incorporation of the imported materials in the export goods is obligatory, and the same is feasible only when the imports precedes export.

9.1 The following tests enables one to determine whether the pre-import condition in respect of the Duty-free imported goods have been satisfied or not:

i) If the importer fulfils a part or complete export obligation, in respect of an Advance Authorization, even before commencement of any import under the subject Advance Authorization, **it is implied that such imported materials have not gone into the production of goods that have been exported**, by which the export obligation has been discharged. Therefore, pre-import condition is violated.

ii) Even if the date of the first Bill of Entry under which goods have been imported under an Authorization is prior to the date of the first Shipping Bill through which exports have been made, indicating exports happened subsequent to import, but if documentary evidences establish that the consignments, so imported, were received at a later stage in the factory after the commencement of exports, then the goods exported under the Advance Authorization could not have been manufactured out of the Duty free imported goods. This aspect can be verified from the date of the Goods Receipt Note (GRN), which establishes the actual date on which materials are received in the factory. Therefore, in absence of the imported materials, it is implied that the export goods were manufactured out of raw materials, which were not imported under the subject Advance Authorization. Therefore, pre-import condition is violated.

iii) In cases, where multiple input items are allowed to be imported under an Advance Authorization, and out of a set of import items, only a few are imported prior to commencement of export, this implies that in the

production of the export goods, except for the item already imported, the importer had to utilize materials other than the Duty-free materials imported under the subject Advance Authorization. The other input materials are imported subsequently, **which do not and could not have gone into the productionof the finished goods exported under the said Advance Authorization**. Therefore, pre-import condition is violated.

iv) In some cases, preliminary imports are made prior to export. Subsequently, exports are effected on a scale which is not commensurate with the imports already made. If the quantum of exports made is more than the corresponding imports made during that period, then it indicates that materials used for manufacture of the export goods were procured otherwise. Rest of the imports are made later which never go into production of the goods exported under the subject Advance Authorization. **It is then implied that the imported materials have not been utilized in entirety for manufacture of the export goods,** and therefore, pre-import condition is violated.

10.Whether the Advance Authorizations issued prior to 13.10.2017 should come under purview of investigation

10.1 It is but natural that the Advance Authorizations which were issued prior to 13.10.2017, would not and could not contain condition written on the body of the Authorization, that one has to fulfil pre-import condition, for the bare fact that no such pre-import condition was specifically incorporated in the parent Notification No.18/2015 dated 01.04.2015. The said condition was introduced by the Notification No.79/2017-Cus dated 13.10.2017, by amending the principal Customs Notification. Therefore, for the Advance Authorizations issued prior to 13.10.2017, logically there was no obligation to comply with the pre-import condition. **At the same time, there was no exemption from the IGST either during that period. Notifications are published in the public domain, and every individual affected by it is aware of what benefit it extends and in return, what conditions are required to be complied with. To avail such benefits extended by the Notification, one is duty bound to observe the formalities and/or comply with the conditions imposed in the Notification.**

10.2 While issuing the subject Notification, the Government of India instead of imposing a condition that such benefit would be made available for Advance Authorizations issued on and after the date of issuance of the Notification, kept the doors wide open for those, who obtained such Advance Authorization in the past too, subject to conditions that such Authorizations are valid for import, and pre-import and physical export conditions have also been followed in respect of those Advance Authorizations. Therefore, instead of narrowing down the benefit to the importers, in reality, it extended benefit to many Advance Authorizations, which could have been out of ambit of the Notification, had the date of issue been made the basic criterion for determination of availment of benefit. Further, the Notification did not bring into existence any new additional restriction, rather it introduced new set of exemption, which was not available prior to issue of the said Notification. **However, as always, such exemptions were made conditional. Even the parent Notification, did not offer carte blanche to the importers to enjoy benefit of exemption,** asit also had set of conditions, which were required to be fulfilled to avail such exemption. As such, an act of the Government is in the interest of the public at large, instead of confining such benefits for the Advance Authorizations issued after 13.10.2017, the option was left open, even for the Authorizations, which were issued prior to the issuance of the said Notification. **The Notification never demanded that the previously issued Authorizations have to be pre-import compliant, but definitely, it made it**

compulsory that benefit of exemption from IGST can be extended to the old Advance Authorizations too, so long, the same are pre-import compliant.The importers did have the option to pay IGST and avail other benefit, as they were doing prior to introduction of the said Notification without following pre-import condition. The moment they opted for IGST exemption, despite being an Advance Authorization issued prior to 13.10.2017, it was necessary for the importer to ensure that pre-import/physical export conditions have been fully satisfied in respect of the Advance Authorization under which they intended to import availing exemption.

10.3 Therefore, it is not a matter of concern whether an Advance Authorization was issued prior to or after 13.10.2017, to ascertain whether the same is entitled for benefit of exemption from IGST, the Advance Authorization should pass the test of complying with both the pre-import and physical export conditions.

11. Whether the Advance Authorizations can be compartmentalized to make it partly compliant to pre-import/ physical export and partly otherwise.

11.1 Whereas Advance Authorization Scheme has always been Advance Authorization specific. The goods to be imported/exported, quantity of goods required to be imported/exported, value of the goods to be imported/exported, nos. of items to be allowed to be imported/exported, everything is determined in respect of the Advance Authorization issued. Advance Authorization specific benefits are extended irrespective of the fact whether the importer chooses to import the whole materials at one go or in piecemeal. Therefore, such benefit and/or liabilities are not Bills of Entry specific. Present or the erstwhile Policy has never had any provision for issuance of Advance Authorizations, compartmentalizing it into multiple sections, part of which may be compliant with a particular set of conditions and another part compliant with a different set of conditions. Agreeing to the claim of considering part of the imports in compliance with pre-import condition, when it is admitted by the importer that pre-import condition has been violated in respect of an Advance Authorization, would require the Policy to create a new provision, to accommodate such diverse set of conditions in a single Authorization. Neither the present set of Policy nor the Customs Notification has any provision to consider imports under an Advance Authorization by hypothetically bifurcating it into an Authorization, simultaneously compliant to different set of conditions. As of now, the Advance Authorizations are embedded with a particular set of conditions only. An authorization can be issued either with pre-import condition or without it. **Law doesn't permit splitting it into two imaginary set of Authorizations, for which requirement of compliances are different.**

11.2 Allowing exemption for part compliance is not reflective in the Legislative intent. For proportional payment of Customs Duty in case of partial fulfilment of EO, specific provisions have been made in the Policy, which, in turn has been incorporated in the Customs Notification. No such provision has been made in respect of imports w.r.t Advance Authorizations with **"pre-import and physical exports" conditions.In absence of the same, compliance is required in respect of the Authorization as a whole.** In other words, if there are multiple shipments of import and multiple shipments of export, then so long as there are some shipments in respect of which Duty-free imports have taken place later and exports corresponding to the same have been done before, then, the pre-import condition stipulated in the IGST exemption Notification gets violated. **Once that happens, then even if there are some shipments corresponding to which imports have taken place first & exports made out of the same thereafter, the IGST exemption would not be available, as the benefits of exemption applies to the license as a whole.** Once an Advance Authorization has been defaulted, there is no provision to consider such default in proportion to the offence committed.

11.3 Para 4.49 of the Hand Book of Procedures (2015-20), Volume-I, demands that if export obligation is not fulfilled both in terms of quantity and value, the Authorization holder shall, for the regularization, **pay to Customs Authorities, Customs Duty on unutilized value of imported/ indigenously procured material along with interest** as notified; which implies that the Authorization holder is legally duty bound to pay the proportionate amount of Customs Duty corresponding to the **unfulfilled export obligation.**Customs Notification too, incorporates the same provision.

11.4 Para 5.14 (c) of the Hand Book of Procedures, Volume-I, (2015-20) in respect of EPCG Scheme stipulates that where export obligation of any particular block of years is not fulfilled in terms of the above proportions, except in such cases where the export obligation prescribed for a particular block of years is extended by the Regional Authority, such Authorization holder shall, within 3 months from the expiry of the block of years,pay as Duties of Customs, an amount that is proportionate to the unfulfilled portion of the export obligationvis-a-vis the total export obligation. In addition to the Customs Duty calculatable, interest on the same is payable. Customs Notification too, incorporates the same provision.

11.5 Thus. in both the cases, Advance Authorization under Chapter 4 and EPCG under Chapter 5 of the HBPv1, the statutory provisions have been made for payment of Duty in proportion to the unfulfilled EO. This made room for part compliance and has offered for remedial measures. The same provisions have been duly incorporated in the corresponding Customs Notifications.

11.6 Contrary to the above provisions, in the case of imports under Advance Authorisation with pre-import and physical export conditions for the purposes of availing IGST exemptions, **both the Policy as well as the Customs Notifications are silent on splitting of an Advance Authorisation. This clearly indicates that the legislative intent is totally different in so far as exemption from IGST is concerned. It has not come with a rider allowing part compliance**. Therefore, once vitiated, the IGST exemption would not be applicable on entire imports made under the Authorisation.

12. Violations in respect of the Foreign Trade Policy (2015-20) and the condition of the Notification No.79/2017-Cus dated 13.10.2017 in respect of the imports made by the importer:-

12.1 Customs Notification No.79/2017 dated 13.10.2017, was issued extending benefit of exemption of IGST (Integrated Goods & Service Tax), on the input raw materials, when imported under Advance Authorizations. The original Customs Notifications No.18/2015 dated 01.04.2015, that governs imports under Advance Authorizations, has been suitably amended to incorporate such additional benefit to the importers, by introduction of the said Notification. It was of course specifically mentioned in the said Notification that "the exemption from integrated tax and the goods and services tax compensation cessleviable thereon under Sub-section (7) and Sub-section (9) of Section 3 of the **said Customs Tariff Act shall be subject to pre-import condition;"**therefore, for the purpose of availing the benefit of exemption from payment of IGST, one is required to comply with the pre-import condition. Pre-import condition demands that the entire materials imported under Advance Authorizations should be utilized exclusively for the purpose of manufacture of finished goods, which would be exported out of India. **Therefore, if the goods are exported before commencement of import or even after commencement of exports, by manufacturing such materials out of raw materials which were not imported under the respective Advance Authorization, the Pre-import condition is violated.**

12.2 DGFT Notification No.33/2015-20 dated 13.10.2017 amended Para 4.14 of the Foreign Trade Policy (2015-20). It has been clearly stated in the said Para 4.14 of the Policy that-

> *" imports under Advance* ***Authorization for physical exports*** *are also exempt from whole of the integrated tax and Compensation Cessleviable 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.****"*

Basically, the said Notification brought the same changes in the Policy, which have been incorporated in the Customs Notification by the aforementioned amendment.

12.3 For the purpose of availing the benefit of exemption from payment of IGST in terms of Para 4.14 of the Foreign Trade Policy (2015-20) and the corresponding Customs Notification No.79/2017-Cus dated 13.10.2017, it is obligatory to comply with the pre-import as well as physical export conditions. Therefore, if for reasons as elaborated in the foregoing paras, the Duty-free materials are not subjected to the process of manufacture of finished goods, which are in turn exported under the subject Advance Authorization, condition of pre-import gets violated.

12.4 Combined provisions of the Foreign Trade Policy and the subject Customs Notifications, clearly mandate, only imports under pre-import condition would be allowed with the benefit of such exemption subject to physical exports. **Therefore, no such exemption can be availed, in respect of the Advance Authorizations, against which exports have already been made before commencement of import or where the goods are supplied under deemed exports.** The importer failed to comply with the aforementioned conditions.

13. Pre-import has to be put in respect of input, which should find place in paragraph 4.13 of the Foreign Trade Policy, which is not so in the present case;

13.1 Para 4.13 (i) states that:-

> *"DGFT may, by Notification, impose pre-import condition for inputs under this Chapter."*

The said Para clearly left open, the scope of imposing pre-import condition on any goods which could have been covered by the said Chapter 4 of the Policy. Therefore, imposing such condition across board for all goods imported under Advance Authorization was well within the competence and authority of the Policy makers. The only condition was to issue a Notification before imposition of such pre-import condition. In the present case DGFT has issued the Notification No. 33/2015-20, which fulfills the requirement of the said provision of law.

13.2 Para 4.13 of the Foreign Trade Policy states that to impose pre-import condition the Directorate General of Foreign Trade is required to issue Notification for that purpose. The DGFT has followed the said principle and accordingly issued Notification No.33/2015-20 dated 13.10.2017. **The said Notification is general in nature and does not exclude any goods from the purview of the same.**Only condition that is imposed for one and all goods is thatthe pre-import condition has to be followed in case the importer wants to avail the benefit of IGST exemption. In absence of any specific negative list containing specific mention of set of goods, which may not be covered by the said provision, it has been ensured that all goods are covered by the said Notification, provided that the importer intends to avail exemption of IGST. **It is a common practice and understanding that in case of general**

provision, the same is applicable to one and all except those covered by a specific clause in the form of negative list.It is neither practicable nor possible to specify each and every single item on earth for the purpose. In absence of any such negative list offered by the said Notification, such pre-import condition becomes applicable for all goods to be imported.

13.3 Therefore, the question of specific mention of a particular set of items does not arise. It is impracticable and impossible to issue a Notification mentioning all possible goods, which could be imported under Advance Authorization, to bring them within the ambit of pre-import condition. **Much simpler and conventional way to cover goods across board is to issue Notification in general, without any negative list.** The DGFT Authority has done the same, and issued the subject Notification No.33/2015-20 dated 13.10.2017, which without any shadow of doubt covers all goods including the one being imported by the Noticee. **Thus, mis-interpreting the scope of Para 4.13 of the Foreign Trade Policy, and making an attempt to confine the scope of the said Para to infer that the goods imported are not covered by the said Para is not in consonance with the Policy in vogue.**

13.4 Interpretation that the reference to "inputs with pre-import condition" in the Foreign Trade Policy and Hand Book of Procedures should be construed to mean only those inputs which have been notified under Appendix-4J also appears to be distorted, misleading and contrary to the spirit of the Policy. Para 4.13 states that "DGFT may, by Notification, impose pre-import condition for inputs...". The term Inputs has been used in general without confining its' scope to the set of limited items covered by Appendix-4J. As discussed below, **the purpose of Appendix-4J is to specify export obligation period of a few inputs, for which pre-import condition has also been imposed**. But that does not mean, the item has to be specified in Appendix-4J, for being considered as inputs having pre-import condition imposed. The basic requirement of the Para is to issue a Notification under Foreign Trade Policy, declaring goods on which such pre-import condition is imposed. Such requirement was fulfilled by the Policy makers and DGFT Notification No.33/2015-20 dated 13.10.2017, was issued accordingly. The Notification, by not incorporating any negative list or exclusion clause, made it clear that any inputs imported under Advance Authorization, would require tofollow the pre-import condition in case the importer wants to avail benefit of IGST exemption. **Appendix-4J has nothing to do with it.**

13.5 Appendix 4J issued in tandem with the provision of Para 4.22 of the Foreign Trade Policy during the material period (presently under Para 4.42 of the Hand Book of Procedures), which provides for export obligation period in respect of various goods allowed to be imported. While, Para 4.22 is the general provision, that specifies 18 months as the export obligation period in general, the said para, also provides that such export obligation period would be different for a set of goods as mentioned in Appendix-4J. **Therefore, Appendix-4J has been placed in the Policy as a part of Para 4.22 of the Policy and not as part of Para 4.13. Secondly, Appendix-4J is basically a negative list for the purpose of Para 4.22, which specifies a set of goods for which export obligation period is different from the general provision of Para 4.22. In addition to that in respect of those items additional condition has also been imposed that pre-import condition has to be followed.**

13.6 From the heading of the said Appendix-4J, which states that **"Export Obligation Period for Specified Inputs....."**it clearly refers to Para 4.22 of the Foreign Trade Policy / Para 4.42 of the Hand Book of Procedures, **it becomes clear that the purpose of the same is to define EO period of specified goods.** Simply, because Appendix 4J demands for compliance of pre-import condition, does not mean

that the same becomes the list meant for goods for which pre-import condition is applicable. Therefore, to say that the imported goods are not covered by the Appendix 4J, and therefore, are beyond the purview of the subject Notification is incorrect and baseless.

14. Violations of the provisions of the Customs Act, 1962:-

14.1 In terms of Section 46 of the Customs Act, 1962, while presenting the Bills of Entry before the Customs Authority for clearance of the imported goods, it was the duty of the importer to declare whether or not they complied with the conditions of pre-import and/or physical export in respect of the Advance Authorizations under which imports were being made availing benefit of IGST exemption. The law demands true facts to be declared by the importer. It was the duty of the importer to pronounce that the said pre-import and/or physical exports conditions could not be followed in respect of the subject Advance Authorization. As the importer has been working under the regime of self-assessment, where they have been given liberty to determine every aspect of an imported consignment from classification to declaration of value of the goods, it was the sole responsibility of the importer to place correct facts and figures before the Assessing Authority. In the material case, the importer has failed to comply with the requirements of law and incorrectly availed benefit of exemption of Notification No.79/2017-Cus dated 13.10.2017. This has therefore, resulted in violation of Section 46 of the Customs Act, 1962.

14.2 The importer failed to comply with the conditions laid down under the relevant Customs Notification as well as the DGFT Notification and the provisions of the Foreign Trade Policy (2015-20), as would be evident from the discussion at para-15 of this Notice. The amount of IGST not paid, is recoverable under Section 28(4) of the Customs Act, 1962 along with interest.

14.3 With the introduction of self-assessment under the Customs Act, more faith is bestowed on the importer, as the practice of routine assessment, concurrent audit and examination has been dispensed with and the importers have been assigned with the responsibility of assessing their own goods under Section 17 of the Customs Act, 1962. As a part of self-assessment by the importer, it was the Duty of the importer to present correct facts and declare to the Customs Authority about their inability to comply with the conditions laid down in the Customs Notification, while seeking benefit of exemption under Notification No.79/2017-Cus dated 13.10.2017. However, contrary to this, they availed the benefit of the subject Notification for the subject goods, without complying with the conditions laid down in the exemption Notification in violation of Section 17 of the Customs Act, 1962. Amount of Customs Duty attributable to such benefit availed in the form of exemption of IGST, is therefore, recoverable from them under Section 28(4) of the Customs Act, 1962.

14.4 The importer failed to comply with the pre-import condition of the Notification and imported goods Duty free by availing benefit of the same without observing condition, which they were duty bound to comply. This has led to contravention of the provisions of the Notification No.79/2017-Cus dated 13.10.2017, and the Foreign Trade Policy (2015-20), which rendered the goods liable to confiscation under Section 111(o) of the Customs Act, 1962.

14.5 Section 114A of the Customs Act, 1962, stipulates that where the Duty has not been levied or has been short-levied by reason of collusion or any willful 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. It appears that the Noticee has deliberately suppressed the fact of their failure to comply with the conditions of pre-import/physical export in respect of the impugned Advance

Authorizations, which they were well aware of at the time of commencement of import itself, from the Customs Authority. Such an act of deliberation appears to have rendered them liable to penalty under Section 114A of the Customs Act, 1962.

14.6 Section 124 of the Customs Act, 1962, states that no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person:

(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;
(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and
(c) is given a reasonable opportunity of being heard in the matter;

14.7 Therefore, while Section 28 gives authority to recover Customs Duty, short paid or not-paid, and Section 110(o) of the Act, hold goods liable for confiscation in case such goods are imported by availing benefit of an exemption Notification and the importer fails to comply with and/or observe conditions laid down in the Notification, Section 124 and Section 28 of the Customs Act, 1962, authorise the proper officer to issue Show Cause Notice for confiscation of the goods, recovery of Customs Duty and imposition of penalty in terms of Section 112(a) of the Customs Act, 1962.

14.8 In conclusion, it appears that the Noticee M/S. Sun Mark Stainless Private Limited, 310, Ashirvad Paras, Opp.Krishna Bungalow,Nr.Prahladnagar Garden,Ahmedabad,have contravened the provisions of Sections 17 and 46 of the Customs Act, 1962, and also the provisions of Customs Notification No.18/2015-Cus dated 01.04.2015, as amended by the Customs Notification No.79/2017 dated 13.10.2017, read with provisions of Para 4.03, 4.13 and 4.14 of the Foreign Trade Policy (2015-20), as amended by the DGFT Notification No.33/2015-20 dated 13.10.2017, issued in terms of the provisions of Para 4.13 of the Foreign Trade Policy (2015-20), as they imported "Hot Rolled Stainless Steel Coils"for manufacture of "Stainless Steel Welded Round Tubes/Pipes" through ICD Khodiyar Port, Mundra Port and JNPT Nhava Sheva Port, without payment of Duty of Customs, under cover of Advance Authorizations, on the strength of the subject Notification and availed benefit of exemption from payment of IGST and/or Compensation Cess on the goods so imported, leviable in terms of Sub-section (7) & Sub-section (9) of Section 3 of the Customs Tariff Act, 1975, but failed to comply with pre-import and/or physical export conditions laid down in the subject Notification. Their act of omission and/or commission appears to have resulted in nonpayment of Duty of Customs in the form of Integrated Goods & Service Tax (IGST) to the extent of **Rs.20,69,83,322/-[(Rupees Twenty Crores Sixty Nine Lakhs Eighty Three Thousand Three Hundred and Twenty Two Only)** which appears to be recoverable under Section 28(4)of the Customs Act, 1962, along with applicable interest, and also appears to attract the provisions of Section 111(o) of the Customs Act, 1962, making the goods valued at**Rs.1,06,39,78,969/- (One Hundred and Six Crores Thirty Nine Lakhs Seventy Eight Thousand Nine Hundred and Sixty Nine only)** liable for confiscation and the Noticee liable to penalty under Section 112 (a) of the Act ibid, making the goods liable for confiscation under Section 111(o) and the Company liable to penalty under Section 112 (a) of the Act ibid.

15. In view of the above, Show Cause Notice F.No.VIII/10-21/Commr./O&A/2022-23 dated 23.09.2022 was issued to **M/S. Sun Mark Stainless Private Limited,** 310, Ashirvad Paras, Opp. Krishna Bungalow, Nr.Prahladnagar Garden, Ahmedabad, were calling upon to Show Cause in writing to the Commissioner of Customs, Ahmedabad as to why:-

a) Duty of Customs amounting to **Rs.13,75,80,735/- (Rupees Thirteen Crores Seventy Five Lakhs Eighty Thousand Seven Hundred and Thirty Five Only)** in the form of IGST saved in course of imports of the goods through ICD Khodiyar Port under the subject Advance Authorizations and the corresponding Bills of Entry as detailed in the Annexure-B attached to this Notice, in respect of which benefit of exemption under Customs Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017, was incorrectly availed, without complying with the obligatory pre-import condition as stipulated in the said Notification, and also for contravening provisions of Para 4.14 of the Foreign Trade Policy (2015-20), should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;

b) Subject goods having assessable value of **Rs.70,72,64,230/- (Seventy Crores Seventy Two Lakhs Sixty Four Thousand Two Hundred and Thirty only)** imported through ICD Khodiyar Port under the subject Advance Authorizations as detailed in the Annexure-B attached to this Notice, should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962, for being imported availing incorrect exemption of IGST in terms of the Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017, without complying with obligatory pre-import condition laid down under the said Notification;

c) Duty of Customs amounting to **Rs.4,82,10,525/- (Rupees Four Crores Eighty Two Lakhs Ten Thousand Five Hundred and Twenty Five Only)** in the form of IGST saved in course of imports of the goods through MundraPort under the subject Advance Authorizations and the corresponding Bills of Entry as detailed in the Annexure-B attached to this Notice, in respect of which benefit of exemption under Customs Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017, was incorrectly availed, without complying with the obligatory pre-import condition as stipulated in the said Notification, and also for contravening provisions of Para 4.14 of the Foreign Trade Policy (2015-20), should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;

d) Subject goods having assessable value of **Rs.24,74,23,789/- (Twenty Four Crores Seventy Four Lakhs Twenty Three Thousand Seven Hundred and Eighty Nine only)** imported through Mundra Port under the subject Advance Authorizations as detailed in the Annexure-B attached to this Notice, should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962, for being imported availing incorrect exemption of IGST in terms of the Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017, without complying with obligatory pre-import condition laid down under the said Notification;

e) Duty of Customs amounting to **Rs.2,11,92,062/- (Rupees Two Crores Eleven Lakhs Ninety Two Thousand and Sixty Two Only)** in the form of IGST saved in course of imports of the goods through JNPT Nhava ShevaPort under the subject Advance Authorizations and the corresponding Bills of Entry as detailed in the Annexure-B attached to this Notice, in respect of which benefit of exemption under Customs Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-

Cus, dated 13.10.2017, was incorrectly availed, without complying with the obligatory pre-import condition as stipulated in the said Notification, and also for contravening provisions of Para 4.14 of the Foreign Trade Policy (2015-20), should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;

f) Subject goods having assessable value of **Rs.10,92,90,950/- (Ten Crores Ninety Two Lakhs Ninety Thousand Nine Hundred and Fifty only)** imported through JNPT Nhava ShevaPort under the subject Advance Authorizations as detailed in the Annexure-B attached to this Notice, should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962, for being imported availing incorrect exemption of IGST in terms of the Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017, without complying with obligatory pre-import condition laid down under the said Notification;

g) Interest should not be demanded and recovered from them under Section 28AA of the Customs Act, 1962, on such Duty of Customs as mentioned at (a) (c) and (e)above;

h) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962, for improper importation of goods availing exemption of the Notification and without observance of the conditions set out in the Notification, and also by reasons of misrepresentation and suppression of facts with an intent to evade payment of Customs Duty as elaborated above resulting in non-payment of Duty,which rendered the goods liable to confiscation under Section 111(o) of the Customs Act, 1962, and also rendered Customs Duty recoverable under Section 28(4) of the Customs Act, 1962;

i) Penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962, for improper importation of goods availing exemption under Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017, without observance of the pre-import and/or physical export conditions set out in the Notification, resulting in non-payment of Customs Duty, which rendered the goods liable to confiscation under Section 111(o) of the Customs Act, 1962;

j) Bonds executed by them at the time of import should not be enforced in terms of Section 143(3) of the Customs Act, 1962, for recovery of the Customs Duty as mentioned aboveand interest thereupon.

16. Defense submissions:-M/S. Sun Mark Stainless Private Limited submitted their reply dated 28.03.2024 to the Show Cause Notice No. VIII/10-21/Commr/O&A/2022-23 dated 23.09.2022 wherein they *inter-alia* stated as under :

At the outset, the notice denies all allegations made in the SCN, as incorrect and not sustainable in view of the submissions made in the following paragraphs which are in alternative and without prejudice to each other:

A. The ld. Commissioner of Customs, Ahmedabad does not have the proper jurisdiction to issue a SCN for goods imported through Mundra port and Nahava Sheva port. It is thus, the demand for goods imported through Mundra Port and JNPT Nhava Sheva port is liable to be dropped on this ground itself.

B. Though the Hon'ble Supreme Court has upheld the validity of 'pre-import' condition during the period in question, however, true meaning of 'pre-import is still unclear. According to the noticee, sole purpose of inserting pre-import condition was to avoid double benefit. The central Government vide notification no.01/2019-Cus dated 10.01.2019, amended the Advance Authorisation exemption notification to remove the pre-import condition. However, simultaneously inserted condition no.(vi)(a) and (vi(b). Condition (vi)(a) provided non-exempt-export inputs could be used only in supply of taxable goods and not exempted goods, if the exporter had availed ITC of inputs used in export items. Further, the exporter is required to submit a Bond to the DC/AC at the port of clearance that the said inputs would be used by him or his supporting manufacturer only in supply of taxable goods and not nil-rated or exempted goods. Further export is also required to submit a Certificate from CA that the imported inputs have been used in taxable supplies only. Further, it is also provided that if facility of ITC is not availed or if IGST/Cess is paid at the time of import, then such condition would not apply. The transactions held in the interregnum period could easily be complied with the object of the said pre-import condition if they have satisfied the new condition imposed from January, 2019, i.e. use of such inputs only in taxable supply. In other words, the omission of condition no.(xii) and insertion of condition no. (vi)(a) an (vi)(b) need to be applied retrospectively as being clarificatory or curative in nature. The stipulation imposed in January,2019 is in fact a re-introduction of the old scheme of administering the law of Customs. This amendment by integrated step itself proves that purpose of imposing initially pre-import condition was only to avoid double benefit to the assesse. In the present case the notice has complied with conditions (vi)(a) and (vi)(b) to notification 18/2015-Cus dated 01.04.2015 as amended for entire period from 13.10.2017 (i.e. when pre-import was introduced). Thus, noticee humbly submits that the transactions held in the interregnum period could be complied with the object of the said pre-import condition.

C. The demand for extended period of limitation under section 28(4) of the Customs Act,1962 not invocable. It is settled hat mere omission or inaction to do something without an intention to evade payment of duty would not attract the large period of limitation. In the present case there is no material to suggest that the noticees has made any deliberate mis-statement or suppression to mis-classify the goods. Relied upon the following case laws:

(i) Gopal Zarda Udyog Vs CCE, New Delhi reported in 2005(188) ELTm251 (SC)

(ii) Ugam Chand Bhabdaru Vs. CCE, Madras reported in 2004 (167) ELT 491 (SC)

(iii) CCE Vs. Chemphar Drugs & Liniments reported in 1989 (40) ELT 276 (SC)

(iv) Lubricahem Industries Vs. CCE Bombay reported in 73 ELT 257 (SC)

D. The noticee is eligible for benefit of exemption from payment of IGST under Notification No.18/2005-Cus dated 01.04.2015, as amended by Notification No. 79/2017-Cus dated 13.10.2017. The noticee has correctly availed the exemption and the department has failed to correctly interpret the provisions. Interpretation of the department is against the object and purpose of AA Scheme and would result in redundancy of the scheme. The term 'pre-Import condition' has neither been defined under the Customs Notification nor under the FTP. The department has interpreted this condition to mean that all import of duty-free inputs must take place prior to discharging export obligation. Interpretation adopted by the department runs contrary to the object and purpose of the AA Scheme. The general scheme of AA is also that imported item need to not be used in discharging the export obligation. The export obligation can be fulfilled by using indigenous inputs, inputs mentioned in the AA could be fulfilled by using indigenous inputs; inputs mentioned in AA could

be imported as 'replenishment' after fulfilling the export obligation. The allegation in para 7.2 to 7.6 of the SCN is incorrect in as much as para 4.00 of the FTP states that schemes of Chapter 4, which also includes AA Scheme, enable duty free imports of inputs for export production, including replenishment of inputs. In the present case, the Customs department has not sought the views from the Ministry of Commerce and/or the DGFT on the interpretation of 'Pre-import condition' proposed in the SCN. Para 4.7 of HBP itself allows for imports in anticipation of AA. If the interpretation of the department is to be accepted, then all exports made in anticipation of AA would be held to be in breach of the 'pre-import's. Inputs that are notified to be subjected to pre-import condition are the only inputs that are not allowed to be used for anticipated authorization. Such pre-import condition cannot be extended to other inputs which are not notified. If it is assumed all the inputs are subject to pre-import condition, then the purpose of AA would be defeated. The term 'physical incorporation in para 4.3 of FTP refers to the inputs which are physically incorporated in export goods, in terms of description, quality, size etc. It does not mean that the imported duty-free materials must be used in the manufacture of final product exported. Therefore, a restrictive interpretation by the department will defeat the purpose of the entire scheme. It is settled principle of interpretation of statue/position of law that any interpretation which results in the provision becoming redundant, is an incorrect interpretation. A provision of law must be interpreted keeping in mind the object and purpose of the legislature.

E. Notification No.01/2019-Cus dated 10.01.2029 is clarificatory in nature and must be given retrospective effect. Concept of pre-import and physical export has been removed by the clarificaotry Notification No.01/2019-Cus dated 10.01.2029. Thus, this notification must be construed retrospective in nature and consequently, no pre-import condition needs to be satisfied, if at all. The Noticee has relied upon the decision of the Hon'ble Supreme Court in the case of Ralson (India) Limited V. CCE, Chandigarh-I 2015(319) ELT (SC); GOI V. India Tobacco Association, 2005 (187) ELT 162; Ruia Cotex Limited v. DGFT, 2017 (347) ELT 263; CCE, Trichy V. Supreme Industries, 2009 (225) ELT 509 (Tr-Chn.); Polyplex Corp Limited UOI, 2014 (306) ELT 377 (Allahabad).

F. Noticee has complied with the conditions of the Notification, including the fulfillment of export obligation against all concerned Advance Authorizations. The interpretation extended by the Customs department in the SCN is incorrect and fallacious by the very fact that till date, no proceedings has been initiated from the office of the DGST against the noticee.

G. Entire exercise is revenue neutral and there is no loss to the Government as the IGST payable is available as credit to the notice. The Hon'ble Supreme Court has constantly held that where the demand raised by the revenue is equal to the credit available to the assesse, then the demand is not maintainable. Reliance is placed on- CCE V. Naryan Polyplst [2005 (179) ELT 20 SC]; CCE v. Narmada Chematur [2005 (179) ELT 276 (SC)] and CCE V. Coca-cola India [2007 (213) ELT 490]

H. Quantification of demand is incorrect in the present case. Advance authorization can be clubbed to make it partly compliant to pre-import condition, the requirement of complying with pre-import should be made qua mate4rial wise and not advance authorization wise. The premises and contention of the department is that all the inputs covered by AA should be imported even prior to first export. From the preamble to the Notification No.18/2015-Cus dated01.04.2015 that it gives exemption to the materials imported (goods/inputs) against an Advance Authorisation. In other words, it is the materials imported under the Advance Authorization which are subject matter of exemption under the notification. This portion of the notification when read with condition (xii) which provides that the exemption from IGST shall be subject to pre-import condition makes it evident that those materials

or inputs which satisfy the pre-import condition will be eligible for exemption from IGST. The validity of the Authorization cannot be challenged merely if some of the inputs fail to meet the pre-import condition. Thus, assuming that pre-import is not ultra-vires, in cases where inputs were imported prior to export and were utilized to manufacture the exported goods, in such cases, the pre-import condition is satisfied and the exemption from payment of IGST was rightly claimed by the notice. Demands in respect of Bills of Entry under Advance Authorizations prior to 13.10.2017 i.e. when the condition with respect to the pre-import violation was issued or post to 10.01.2019, i.e. when the condition with respect to the pre-import violation was removed or where the noticee have applied for EODC, should be set aside in any case.

I. Demand with respect to the Advance Licenses issued prior to imposition of pre-import conditions is liable to be set aside. In the SCN two Advances Licenses are issued prior to 13.10.2017.

J. In any case had the notice paid the IGST at the time of imports, they would be eligible to claim the refund of such IGST under Rule 89(4) or 96(10), a the case may be. In other words, in any circumstances, the situation would be revenue neutral. Thus, there is no loss of revenue for the Government on account of IGST on imports. They have relied upon the cases laws:
   (i) Steel Authority of India Vs. Collector of Central Excise, 1997 (90) ELT 287;
   (ii) Tvl Kashi and Sethu Vs. The Deputy Commercial Tax Officer, 2003 (131) STC 73 Mad;
   (iii) Income Tax Officer Vs. Bachu Lal Kapoor, 1966 (60) ITR 74;
   (iv) CCE Vs. Special Steel Ltd. 2015 (329) ELT 449

K. The subject goods are not liable for confiscation under Section 111(o). The goods in question, which have already been cleared for home consumption, not liabnle to confiscation under the provisions of Section 111 of the Customs Act,1962. In the case of Bussa Overseas & Properties V. C.L. Mahar, ACC, 2004, (163) ELT 304 (Bom), hon'ble Bombay High court held that once the goods are cleared for home consumption, they cease to be imported goods as defined in Section 2(25) of the Customs Act,1962 and consequently are not liable to confiscation under Section 111 of the Customs Act,1962.

L. No penalty is imposable and no interest is recoverable from the notice in the present case.

M. No penalty imposable under Section 112(a). The conduct of the noticee was bonafide, therefore, it cannot be said that the noticee has in any manner, abetted the doing or omission of an act, which act or omission rendered the goods liable to confiscation. They have relied upon case laws- Trade wings Ltd. Vs CC, Mumbai, 2009 (243) ELT 439 (Tri-Mum); EP Vs. P.D. Manjrekar, 2009 (244) ELT 51 (Bom).

N. No penalty imposable when demand itself is not-sustainable. Relied upon the case laws- CCD V. H.M.M. Limited 1995(76) ELT 497 (SC); CCE, Aurangabad V. Balakrishna Industries, 2006 (201) ELT 325 (SC); CCE & CC, Vs. Nakoda Textile Industries Ltd. 2008 (240) ELT 199 (Bom)

O. No penalty is imposable as the noticee was under bonafide belief, it is an industry practice and no dispute ever raised by the department. Relied upon on case laws- Hindustan Steel Ltd. Vs. State of Orissa, 1978 (2) ELT (J159) (SC); Trade wings Ltd. Vs CC, Mumbai, 2009 (243) ELT 439 (Tri-Mum); EP Vs. P.D. Manjrekar, 2009 (244) ELT 51 (Bom).

P. Penalty not imposable in cases involving matter of interpretation of Statutory provisions. Case laws are relied upon –
   (i) Auro Textile V/s CCE, Chandigarh, 2010 (253) ELT 35 (Tri-Del.)
   (ii) Hindustan Lever Ltd. Vs. CCE, Lucknow, 2010 (250) ELT 251 (Tri-Del.)
   (iii) Pre Fabricators V. CEE, Ahmedabad-II, ELT 260 (Tr-Ahmd)
   (iv) Whiteline Chemicals Vs. CCE, Surat, 2009 (229) ELT ELT 95 (Tri-Ahmd)
   (v) Delphi Automotive Systems V. CCE, Noida, 2004 (163) ELT 47 (Tri-Del)

Q. Interest is not recoverable from the noticee. This demand of IGST is not maintainable. Since, there is not liability to pay duty, no interest could be charged from the noticee. Case laws are relied upon –

(i) Prathibha Processors V. UOI, 1996 (88) ELT 12 (SC)

(ii) CC Chennai V. Jayathi Krishna & Co. 2000, 119 ELT 4 SC

R. Section 3(12) of the Customs Tariff Act, 1975 does not borrow interest & penal provisions from the Customs Act,1962; In absence of machinery provisions, no penalty can be imposed or interest recovered from the noticee. Case laws are relied upon –

(i) India Carbon Ltd. V. State of Assam (1997) 6 SCC, 479

(ii) JK Synthetics Ltd. V. CTO (1994) 4 SCC 276

(iii) VVS Sugars V. Govt. of A.P. &Ors (1999) 4 SCC 192

(iv) Pioneer Silk Mills Pvt. Ltd. V. UOI, 1995 (80) ELT 507 (Del.)

(v) Bajaj Health & Nutrition Pvt. Ltd. V. CC, Chennai, 2004 (166) ELT 189

(vi) Tonira Pharma Ltd. V. Commissioner, 2009 (237) ELT 65 (Tribunal)

(vii) Siddeshwar textile Mills Pvt. Ltd. Vs. Commissioner, 2009 (248)) ELT 290 (Trib)

(viii) Mahindra & Mahindra 2022 (10) TMI 212-Bombay High Court

S. The Bond executed by Noticee at the time of import shall not be enforced under Section 143 (3) of the Customs Act,1962. The IGST duty is not recoverable based on the submissions made above. Thus, the aforesaid Bond need to be released.

18. Personal Hearing: The Personal Hearing was fixed on 28.03.2024 for M/s. Sun Mark Stainless Pvt. Ltd.. Ms. Shruti Khanna, Advocate of the noticee appeared for personal hearing and reiterated the submissions as detailed in their written submission dated 28.03.2024.

19. Findings: I have carefully gone through the Show Cause Notice dated 23.09.2022, written submission dated 28.03.2024 filed by M/s. Sun Mark Stainless Pvt. Ltd.and records of personal hearing held on 28.03.2024.

20. I find from the records that the present Show Cause Notice dated 23.09.2022 has been retrieved from Call Book for adjudication in view of Hon'ble Supreme Court decision dated 28.04.2023 in case of M/s. Cosmo Films Ltd. I also find that after issuance of Show Cause Notice on23.09.2022, the importer was informed vide letter F.No. VIII/10-21/COMMR./O&A/2022-23 dated 03.10.2022 the reason for transfer of Show Cause Notice to Call Book as stipulated under Sub –Section 9A of Section 28 of the Customs Act, 1962. Accordingly, the time limit specified in Section 28 (9) ibid shall apply from the date when the reason specified under Section 28 (9A) has ceased to exist with effect from 28.04.2023.

21. The issues for consideration before me in the present SCN are as under:-

(i) Whether, the noticee /importer, during October13,2017 to January 9,2019 was eligible for availing exemption under Notification No.18/2015 dated 01-04-2015, as amended by Notification No.79/2017-Cus, dated 13-10-2017on inputs imported under Advance Authorizations without fulfillment of mandatory 'Pre Import Condition'?

(ii) Whether the duty of Customs amounting to **Rs.20,69,83,322/- [(Rupees Twenty Crore, Sixty Nine Lakh, Eighty Three Thousand, Three Hundred and Twenty Two Only) [Rs.13,75,80,735/- i.r.o. imports through ICD Khodiyar + Rs.4,82,10,525/- i.r.o. imports through Mundra Port + Rs.2,11,92,062/- i.r.o. imports through**

JNPT NhavaSheva Port] in the form of IGST saved in course of imports of the goods under the subject Advance Authorizations and the corresponding Bills of Entry as detailed in the Annexure-B to the Show Cause Notice, is required to be demanded and recovered from thenoticeeunder Section 28(4) of the Customs Act, 1962alongwith Interest under Section 28AA of the Customs Act, 1962?

(iii) Whether, subject goods having assessable value of **Rs.1,06,39,78,969/- (One Hundred and Six Crore, Thirty Nine Lakh, Seventy Eight Thousand, Nine Hundred and Sixty Nine only) [Rs.70,72,64,230/- i.r.o. imports through ICD Khodiyar +Rs.24,74,23,789/-i.r.o. imports through Mundra Port+ Rs.10,92,90,950/- i.r.o. imports through JNPT NhavaSheva Port]** imported under the subject Advance Authorizations as detailed in the Annexure-Bto the Show Cause Notice, are liable for confiscation under Section 111(o) of the Customs Act, 1962?

(iv) Whether the noticee is liable to penalty under Section 114A and Section 112(a) of the Customs Act, 1962?

(vi) Whether Bonds executed by thenoticee at the time of imports is enforceable in terms of Section 143(3) of the Customs Act, 1962, for recovery of the Customs Duty as mentioned above alongwith interest?

22. I find that Duty liability with interest and penal liabilities would be relevant only if the bone of the contention that whether the Importer has violated the mandatory pre-import condition as stipulated in Notification No.79/2017-Cus, dated 13-10-2017 is answered in the affirmative. Thus, the main point is being taken up firstly for examination.

23. Genesis of Pre Import Condition:

23.1 Before proceeding for adjudication of the Show Cause Notice, let us firstly go through relevant provisions which will give genesis of 'Pre Import Condition'.

23.1.1Relevant Para 4.03 of the Foreign Trade Policy (2015-20) inter-alia states that :-

An Advance Authorisation is issued to allow duty free import of inputs, which are physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, energy, catalysts which are consumed/ utilised to obtain export product, may also be allowed. DGFT, by means of Public Notice, may exclude any product(s) from purview of Advance Authorisation.

23.1.2 Relevant Para 4.13 of the Foreign Trade Policy (2015-20) inter-alia states that :-

4.13 Pre-import condition in certain cases-

(i) DGFT may, by Notification, impose pre-import condition for inputs under this Chapter.

(ii) Import items subject to pre-import condition are listed in Appendix 4-J or will be as indicated in Standard Input Output Norms (SION).

23.1.3 Relevant Para 4.14 of the Foreign Trade Policy (2015-20) inter-alia states that :-

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.

23.1.4 Notification NO. 31 (RE-2013)/ 2009-2014 dated 1st August, 2013:

In exercise of powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No.22 of 1992) read with paragraph 1.2 of the Foreign Trade Policy, 2009-2014, the Central Government hereby notifies the following amendments in the Foreign Trade Policy (FTP) 2009-2014.

2. After para 4.1.14 of FTP a new para 4.1.15 is inserted.

"4.1.15 Wherever SION permits use of either (a) a generic input or (b) alternative inputs, unless the name of the specific input(s) [which has (have) been used in manufacturing the export product] gets indicated / endorsed in the relevant shipping bill and these inputs, so endorsed, match the description in the relevant bill of entry, the concerned Authorisation will not be redeemed. In other words, the name/description of the input used (or to be used) in the Authorisation must match exactly the name/description endorsed in the shipping bill. At the time of discharge of export obligation (EODC) or at the time of redemption, RA shall allow only those inputs which have been specifically indicated in the shipping bill."

3. Para 4.2.3 of FTP is being amended by adding the phrase "4.1.14 and 4.1.15" in place of "and 4.1.14". The amended para would be as under:

"Provisions of paragraphs 4.1.11, 4.1.12, 4.1.13, 4.1.14 and 4.1.15 of FTP shall be applicable for DFIA holder."

4. ***Effect of this Notification:*** *Inputs actually used in manufacture of the export product should only be imported under the authorisation.* ***Similarly inputs actually imported must be used in the export product. This has to be established in respect of every Advance Authorisation / DFIA.***

23.2 With the introduction of GST w.e.f 01-07-2017, Additional Duties of Customs (CVD & SAD) were subsumed into the newly introduced Integrated Goods and Service Tax (IGST). Therefore, at the time of imports, in addition to Basic Customs Duty, IGST was made payable instead of Additional Duties of Customs. Accordingly, Notification No.26/2017-Customs dated 29 June 2017, was issued to give effect to the changes introduced in the GST regime in respect of imports under Advance Authorization. The corresponding changes in the Policy were brought through Trade Notice No.11/2018 dated 30-06-2017. I find that it is pertinent to note here that while in pre-GST regime blanket exemption was allowed in respect of all Duties leviable when goods were being imported under Advance Authorizations, contrary to that, in post-GST regime for imports under Advance Authorization, the importers were required to pay such IGST at the time of imports and then they could get the credit of the same.

However, subsequently, the Government decided to exempt imports under Advance Authorizations from payment of IGST, by introduction of the Customs Notification No.79/2017 dated 13-10-2017. However, such exemption from the payment of IGST was made conditional. The said Notification No.79/2017 dated 13-10-2017, was issued with the intent of incorporating certain changes/ amendment in the principal Customs Notifications, which were issued for extending benefit of exemption to the goods when imported under Advance Authorizations.

23.2.1 D.G.F.T. Notification No. 33/2015-2020 dated 13.10.2017 amended the provisions of Para 4.14 of the Foreign Trade Policy 2015-20 which read as under:

Para 4.14 is amended to read 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 Authorization 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.**"

23.2.2 Notification No.- 79/2017 - Customs, Dated: 13-10-2017. The relevant amendment made in Principal Notification No. 18/2015-Customs dated 01.04.2015 vide Notification No. 79/2017 - Customs, Dated: 13-10-2017 is as under:

-: Table:-

S. No.	*Notification number and date*	*Amendments*
(1)	*(2)*	*(3)*
1	.....	.....
2.	*18/2015-Customs, dated the 1 st April, 2015 [vide number G.S.R. 254 (E), dated the 1 st April, 2015]*	*In the said notification, in the opening paragraph,-* *(a) .....* *(b) in condition (viii), after the proviso, the following proviso shall be inserted, namely:-* *"Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from integrated tax and the goods and services tax compensation cessleviable thereon under sub-section (7) and sub-section (9)* ***of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports only;";*** *(c) ....* *(c) after condition (xi), the following conditions shall be inserted, namely :-* *"(xii) that the exemption from integrated tax and the goods and services tax compensation cessleviable*

		*thereon under sub-section (7) and sub-section (9) of section **3 of the said Customs Tariff Act shall be subject to pre-import condition;***

23.3 Further, I find that Notification No.01/2019-Cus. dated 10.01.2019 removed/omitted the 'Pre Import condition' laid down vide Amendment Notification No. 79/2017- Cus dated 13.10.2017 in the Principal Notification No. 18/2015-Cus dated 01.04.2015.

23.4 The High Court of Madras (Madurai Bench) in the case of M/s Vedanta Ltd reported as 2018 (19) G.S.T.L. 637 (Mad.)on the issue under consideration held that:-

> **"pre-import simply means import of raw materials before export of the finished goods to enable the physical export and actual user condition possible and negate the revenue risk that is plausible by diverting the imported goods in the local market".**

23.5 I find that the Importer has taken plea that meaning of phrase 'Pre-import Condition' was neither defined in the FTP policy nor in the notification. I find that 'Pre-Import Condition' is unambiguous word/phrase. Further, I find that the definition of pre-import directly flows from Para 4.03 of the Foreign Trade Policy (2015-20)[erstwhile Para 4.1.3 of the Policy (2009-14)] wherein it is said that Advance Authorizations are issued for import of inputs, which are physically incorporated in the export goods allowing legitimate wastage. Thus, this Para specifically demands for such physical incorporation of imported materials in the export goods. And the same is only possible, when imports are made prior to export. Therefore, such Authorizations principally do have the pre-import condition in-built,which is required to be followed. In the instant case, it is undisputed fact that the Importer has not complied with the Pre-Import Condition as laid down vide Exemption Notification No. 18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017.

23.6 Further, I find that this issue is no longer *res-integra* in as much as Hon'ble Supreme Court in the case of Union of India Vs. Cosmo Films Ltd reported as 2023 (72) GSTL 147 (SC) has overruled judgment of Hon'ble High Court of Gujarat and has held that pre-import condition, during **October,2017 to January,2019**, in Advance Authorization Scheme was valid. Relevant Paras of the decision are as under:

> **69.** The object behind imposing the 'pre-import condition' is discernible from Paragraph 4.03 of FTP and Annexure-4J of the HBP; that only few articles were enumerated when the FTP was published, is no ground for the exporters to complain that other articles could not be included for the purpose of 'pre-import condition'; as held earlier, that is the import of Paragraph 4.03(i). The numerous schemes in the FTP are to maintain an equilibrium between exporters' claims, on the one hand and on the other hand, to preserve the Revenue's interests. Here, what is involved is exemption and postponement of exemption of IGST, a new levy altogether, whose mechanism was being worked out and evolved, for the first time. The plea of impossibility to fulfil 'pre-import conditions' under old AAs was made, suggesting that the notifications retrospectively mandated new conditions. The exporter respondents' argument that there is no *rationale* for differential treatment of BCD and IGST under AA scheme is without merit. BCD is a customs levy at the point of import. At that stage, there is no question of credit. On the other hand, IGST is levied at multiple points (including at the stage of import) and input credit gets into the stream, till the point of end user. As a result, there is justification for a separate treatment of the two levies. IGST is levied under the IGST Act, 2017 and is collected, for convenience, at the customs point through the machinery under the Customs Act, 1962. The impugned

notifications,therefore, cannot be faulted for arbitrariness or under classification.

70. The High Court was persuaded to hold that the subsequent notification of 10-1-2019 withdrew the 'pre-import condition' meant that the Union itself recognized its unworkable and unfeasible nature, and consequently the condition should not be insisted upon for the period it existed, *i.e.*, after 13-10-2017. This Court is of the opinion that the reasoning is faulty. It is now settled that the FTPRA contains no power to frame retrospective regulations. Construing the later notification of 10-1-2019 as being effective from 13-10-2017 would be giving effect to it from a date prior to the date of its existence; in other words the Court would impart retrospectivity. In *Director General of Foreign Trade &Ors.* v *Kanak Exports &Ors.* [2015 (15) SCR 287 = 2015 (326) E.L.T. 26 (S.C.)] this Court held that :

"Section 5 of the Act does not give any such power specifically to the Central Government to make rules retrospective. No doubt, this Section confer powers upon the Central Government to 'amend' the policy which has beenframed under the aforesaid provisions. However, that by itself would not mean that such a provision empowers the Government to do so retrospective."

71. To give retrospective effect, to the notification of 10-1-2019through interpretation, would be to achieve what is impermissible in law. Therefore, the impugned judgment cannot be sustained on this score as well.

75. *For the foregoing reasons, this court holds that the Revenue has to succeed. The impugned judgment and orders of the Gujarat High Court are hereby set aside. However, since the respondents were enjoying interim orders, till the impugned judgments were delivered, the Revenue is directed to permit them to claim refund or input credit (whichever applicable and/or wherever customs duty was paid). For doing so, the respondents shall approach the jurisdictional Commissioner, and apply with documentary evidence within six weeks from the date of this judgment. The claim for refund/credit, shall be examined on their merits, on a case-by-case basis. For the sake of convenience, the revenue shall direct the appropriate procedure to be followed, conveniently, through a circular, in this regard."*

23.7 I find that based on the decision of Hon'ble Supreme Court in aforesaid case of Union of India Vs. Cosmo Films Ltd, CBIC issued Circular No. 16/2023-Cus dated 07.06.2023 which is reproduced as below:

Import — Pre-import condition incorporated in Foreign Trade Policy and Handbook of Procedures 2015-20 — Availing exemption from IGST and GST Compensation Cess — Implementation of Supreme Court direction in Cosmo Films case

M.F. (D.R.) Circular No. 16/2023-Cus., dated 7-6-2023

F. No. 605/11/2023-DBK/569

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Indirect Taxes & Customs, New Delhi

Subject : Implementation of Hon'ble Supreme Court direction in judgment dated 28-4-2023 in matter of Civil Appeal No. 290 of 2023 relating to 'pre-import condition' - Regarding.

Attention is invited to Hon'ble Supreme Court judgment dated 28-4-2023 in matter of Civil Appeal No. 290 of 2023 (*UOI and others* v. *Cosmo Films Ltd.*) [(2023) 5 Centax 286 (S.C.) = 2023 (72) G.S.T.L. 417 (S.C.)] relating to mandatory fulfilment of a 'pre-import condition' incorporated in para 4.14 of FTP 2015-20 *vide* the Central Government (DGFT) Notification No. 33/2015-20, dated 13-10-2017, and reflected in the Notification No. 79/2017-Customs, dated 13-10-2017, relating to Advance Authorization scheme.

2. The FTP amended on 13-10-2017 and in existence till 9-1-2019 had provided that imports under Advance Authorization for physical exports are also exempt from whole of the integrated tax and compensation cess, as may be provided in the notification issued by Department of Revenue, and such imports shall be subject to pre-import condition.

3. Hon'ble Supreme Court has allowed the appeal of Revenue directed against a judgment and order of Hon'ble Gujarat High Court [2019 (368) E.L.T. 337 (Guj.)] which had set aside the said mandatory fulfilment of pre-import condition. As such, this implies that the relevant imports that do not meet the said pre-import condition requirements are to pay IGST and Compensation Cess to that extent.

4. While allowing the appeal of Revenue, the Hon'ble Supreme Court has however directed the Revenue to permit claim of refund or input credit (whichever applicable and/or wherever customs duty was paid). For doing so, the respondents shall approach the jurisdictional Commissioner, and apply with documentary evidence within six weeks from the date of the judgment. The claim for refund/credit, shall be examined on their merits, on a case-by-case basis. For the sake of convenience, the revenue shall direct the appropriate procedure to be followed, conveniently, through a circular in this regard.

5.1 The matter has been examined in the Board for purpose of carrying forward the Hon'ble Supreme Court's directions. It is noted that -

(a) ICES does not have a functionality for payment of customs duties on a bill of entry (BE) (unless it has been provisionally assessed) after giving the Out-of-Charge (OOC) to the goods. In this situation, duties can be paid only through a TR-6 challan.

(b) Under GST law, the BE for the assessment of integrated tax/ compensation cess on imports is one of the documents based on which the input tax credit may be availed by a registered person. A TR-6 challan is not a prescribed document for the purpose.

(c) The nature of facility in Circular No. 11/2015-Cus. (for *suomotu* payment of customs duty in case of *bona fide* default in export obligation) [2015 (318) E.L.T. (T11)] is not adequate to ensure a convenient transfer of relevant details between Customs and GSTN so that ITC may be taken by the importer.

(d) The Section 143AA of the Customs Act, 1962 provides that the Board may, for the purposes of facilitation of trade, take such measures for a class of importers-exporters or categories of goods in order to, *inter alia*, maintain transparency in the import documentation.

5.2 Keeping above aspects in view, noting that the order of the Hon'ble Court shall have bearing on importers others than the respondents, and for purpose of carrying forward the Hon'ble Court's directions, the following procedure can be adopted at the port of import (POI) :-

(a) **for the relevant imports that could not meet the said pre-import condition and are hence required to pay IGST and Compensation Cess to that**

extent, the importer (not limited to the respondents) may approach the concerned assessment group at the POI with relevant details for purposes of payment of the tax and cess along with applicable interest.

(b) the assessment group at POI shall cancel the OOC and indicate the reason in remarks. The BE shall be assessed again so as to charge the tax and cess, in accordance with the above judgment.

(c) the payment of tax and cess, along with applicable interest, shall be made against the electronic challan generated in the Customs EDI System.

(d) on completion of above payment, the port of import shall make a notional OOC for the BE on the Customs EDI System [so as to enable transmission to GSTN portal of, *inter alia*, the IGST and Compensation Cess amounts with their date of payment (relevant date) for eligibility as per GST provisions].

(e) the procedure specified at (a) to (d) above can be applied once to a BE.

6.1 Accordingly, the input credit with respect to such assessed BE shall be enabled to be available subject to the eligibility and conditions for taking input tax credit under Section 16, Section 17 and Section 18 of the CGST Act, 2017 and rules made thereunder.

6.2 Further, in case such input tax credit is utilized for payment of IGST on outward zero-rated supplies, then the benefit of refund of such IGST paid may be available to the said registered person as per the relevant provisions of the CGST Act, 2017 and the rules made thereunder, subject to the conditions and restrictions provided therein.

7. The Chief Commissioners are expected to proactively guide the Commissioners and officers for ironing out any local level issues in implementing the broad procedure described in paras 5 and 6 above and ensuring appropriate convenience to the trade including in carrying out consequential actions. For this, suitable Public Notice and Standing Order should be issued. If any difficulties are faced that require attention of the Board, those can be brought to the notice.

23.8 Further, I find thatDGFT have issued Trade Notice No. 7/2023-24 dated 08.06.2023, saying that "all the imports made under Advance Authorization Scheme on or after 13.10.2017 and upto and including 09.01.2019 which could not meet the pre-import condition may be regularized by making payments as prescribed in the Customs Circular".

23.9 Thus, from the findings and discussion in Para 23 to 23.8 above, I find that there is no dispute thatthe said importer has failed to comply with the mandatory conditions of 'Pre-Import' while claiming the benefit of Exemption from IGST and Compensation Cess under Exemption Notification No. 18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017 during the period from October13, 2017 to January 9,2019, in Advance Authorization Scheme.

23.10. I find that importer's plea that they have not violated the condition in FTP and Customs Act and pre-import condition is ultra vires and thus not implementable is not acceptable as the Hon'ble Supreme Court in the case of Union of India Vs. Cosmo Films Ltd reported as 2023 (72) GSTL 147 (SC) have discussed exhaustively the provisions of the Customs Act as well as the provisions of the FTP and it has been held that pre import conditions is required to be complied with.

23.11 I find that the said importer has reiterated their contention that the Pre Import condition laid down vide amendment Notification No. 79/2017-Cus, dated 13-10-

2017 in exemption Notification No. No.18/2015 dated 01-04-2015, is arbitrary and further Notification No. 01/2019 –Cus dated 10.01.2019 whereby the Pre Import conditions omitted is having retrospective effect. I find that aforesaid issue were contended before the Hon'ble Gujarat High Court in case of Maxim Tubes Company Pvt. Ltd. v. Union of India reported as 2019 (368) E.L.T. 337 (Guj.). I find that discussing all the aforesaid issue, Hon'ble Supreme Court has turned down this decision of Maxim Tubes Company Pvt. Ltd. v. Union of India in case of Union of India Vs. Cosmo Film Ltd.

23.12 I find that the said noticee has contested that Commissioner of Customs, Ahmedabad does not have the proper jurisdiction to issue a SCN for goods imported through Mundra port and Nahava Sheva port. Inthis regard I find that the Section 110AA of the Customs Act,1962, provides as under:

> **Section 110AA. Action subsequent to inquiry, investigation or audit or any other specified purpose:-**
>
> Where in pursuance of any proceeding, in accordance with Chapter XIIA or this Chapter, if an officer of customs has reasons to believe that
>
> (a) any duty has been short-levied, not levied, short-paid or not paid in a case where assessment has already been made;
> (b) any duty has been erroneously refunded;
> (c) any drawback has been erroneously allowed; or
> (d) any interest has been short-levied, not levied, short-paid or not paid, or erroneously refunded,
>
> then such officer of customs shall, after causing inquiry, investigation, or as the case may be, audit, transfer the relevant documents, along with a report in writing'
>
> (i) to the proper officer having jurisdiction, as assigned under section 5 in respect of assessment of such duty, or to the officer who allowed such refund or drawback; or
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> (ii) **in case of multiple jurisdictions, to an officer of customs to whom such matter is assigned by the Board, in exercise of the powers conferred under section 5**,
>
> and thereupon, power exercisable under sections 28, 28AAA or Chapter X, shall be exercised by such proper officer or by an officer to whom the proper officer is subordinate in accordance with sub-section (2) of section 5.]

23.13 I further find that for assigning proper officer in case of multiple jurisdictions in terms of section 110AA of Customs Act, the Central Board of Indirect Taxes and Customs has issued Notification No.28/2022-Customs (N.T.) dated 31.03.2022 under sub-sections (1) and (1A) of Section 5 and Section 110AA of the Customs Act,1962. Relevant portion of the said notification re-produced as under:

Notification No. 28/2022-Customs (N.T.) Dated 31/03/2022

Notification under 110AA for assigning proper officer for multiple Jurisdictions-

S.O. 1544(E)."In exercise of the powers conferred by sub-section (1) of section 4 read with section 3, sub-sections (1) and (1A) of section 5 and section 110AA of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as said Act), the Central Board of Indirect Taxes and Customs being satisfied that it is necessary so to do, hereby appoints the Officer of Customs, mentioned in Column (3) of the Table below to be the officer of customs specified as Principal Commissioner of Customs or

Commissioner of Customs, or Additional Commissioner of Customs or Joint Commissioner of Customs, or the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, to whom, in a case of multiple jurisdictions as referred in section 110AA of the said Act, the report in writing, after causing the inquiry, investigation or audit as the case may be, along with the relevant documents, shall be transferred, as described in column (2) of the Table, who shall also be the proper officer for the purpose of exercise of powers under sections 28, section 28AAA or Chapter X of the said Act, as the case may be, and assigns the said functions to such officers for which purpose invests them with jurisdiction over the whole of India with all the powers under the said Act :

TABLE

S.No.	Case of multiple jurisdictions covered by section 110AA in respect of "		Officer of Customs
(1)	(2)		(3)
	(A)	(B)	
1.	Clauses (a) or (b) and (d)	(i) Involving aggregate duty upto rupees five lakhs	(i) Deputy Commissioner of Customs or Assistant Commissioner of Customs who is assigned the function relating to assessment of duty or refund, as the case may be, **in the jurisdiction having highest amount of duty, or refund, at the stage of transfer.**
		(ii)Involving aggregate duty upto rupees fifty lakhs	(ii)Additional Commissioner of Customs or Joint Commissioner of Customs to whom the Officer specified at (i) above in column (3) is subordinate in accordance with sub-section (2) of section 5.
		(iii) Involving aggregate duty without limit.	**(iii)Principal Commissioner of Customs or Commissioner of Customs to whom the officer specified at (i) above in column (3) is subordinate in accordance with sub-section (2) of section 5.**

.....

23.14 From the above I find that the CBIC has extended jurisdiction of proper officers as mentioned in the above said Notification No.28/2022-(N.T.) dated 31.03.2022, in the jurisdiction having highest amount of duty at the stage of transfer with all India jurisdiction for the purpose of exercise of powers under Section 28, Section 28AAA or the Chapter X of the Customs Act,1962, as the case may be.

23.15 I further find that in the present case imports have taken place from three ports viz. ICD Khodiyar, involving duty amount of **Rs.13,75,80,735/-**; Mundra port, involving duty amount of **Rs.4,82,10,525/-**and JNCH Nhav Sheva port, involving duty amount of **Rs.2,11,92,062/-**.ICD, Khodiyar, the port of imports where highest duty is involved in this case, falls under the jurisdiction of Customs Ahmedabad Commissioner, therefore, in view of Section 110AA of the Customs Act, 1962 read with Notification No.28/2022-Customs (N.T.) dated 31.03.2022, the Ptincipal Commissioner / Commissioner of Customs Ahmedabad Commissionerate is the proper officer for issuance of SCN in the present case. Thus, I find that the contention of the noticee in this regard is notcorrect and the SCN under adjudication in respect of all imports has been issued by the proper officer.

24. Whether the Duty of Customs amounting to Rs.20,69,83,322/- in the form of IGST saved in course of imports of the goods under the subject Advance Authorizations and the corresponding Bills of Entry as detailed in the Annexure-B to the Notice [Rs.13,75,80,735/- i.r.o. imports through ICD Khodiyar + Rs.4,82,10,525/- i.r.o. imports through Mundra Port + Rs.2,11,92,062/- i.r.o.

imports through JNPT Nhava Sheva Port] as detailed in Annexure B to the Notice is required to be demanded and recovered from them (invoking extended period) under Section 28(4) of the Customs Act, 1962read with Customs Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017and whether Bonds executed by Importer at the time of import should be enforced in terms of Section 143(3) of the Customs Act, 1962, for recovery of the Customs Duty alongwith interest?

24.1 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 October13, 2017 to January 9,2019, in Advance Authorization Scheme was valid. Thus, I find that the Hon'ble Supreme Court has settled that IGST and Compensation Cess involved in the Bills of Entry filed during October13, 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, as amended by Notification No. 79/2017-Cus, dated 13-10-2017. 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, as amended by Notification No. 79/2017-Cus, dated 13-10-2017.

24.2 It is well settled principle of law that exemption notification has to be interpreted strictly. There are plethora of judgments pronounced by the different fora of courts in this regard. I rely upon the following judgments:

(i) Mars Plastic & Polymers Pvt. Ltd. V/s. Commr. of Customs Chennai reported at 2003 (156) E.L.T. 941 (Tri. - Mumbai), **duly affirmed by the Apex court as reported at 2003 (158) E.L.T. A275 (S.C.))** held that:

> *"4. We find this argument strange. It is settled law that the benefit of establishing the eligibility to an exemption is upon the person who sets it up. This was the law when the goods were imported. It was therefore reasonable to expect of the importer that it substantiated the claim for exemption. It is not required that he be invited to do so. At no such stage therefore has the claim for the exemption been substantiated in satisfactory evidence. The certificates of the sellers are totally unacceptable"*

(ii) Bharat Earth Movers Ltd. V/s Collr. Of C. Ex. Bangalore reported at 2001 (136) E.L.T. 225 (Tri. - Bang.) wherein it was held :

> *" ..... **condition has to be fulfilled in toto and not partially**. It is the axiomatic principle of law that the exemption can be availed only if the conditions specified in a particular notfn. are fulfilled in whole and even if it is established that they have not partially fulfilled the same, the exemption cannot be availed.*
>
> *There is no room for flexibility in this regard as per the wordings employed in the notification."*

(iii) The Hon'ble Supreme Court of India in the case of STAR INDUSTRIES Versus COMMISSIONER OF CUSTOMS (IMPORTS), RAIGAD reported at 2015 (324) E.L.T. 656 (S.C.), held that:

> *"31. ..... **It is rightly argued by the learned senior counsel for the Revenue that exemption notifications are to be construed strictly and even if there is some doubt, benefit thereof shall not enure to the assessee but would be given to the Revenue.** This principle of strict construction of exemption notification is now deeply ingrained in various judgments of this Court taking this view consistently.*

(iv) COMMISSIONER OF CUS. (IMPORT), MUMBAI Versus DILIP KUMAR & COMPANY, reported at 2018 (361) E.L.T. 577 (S.C.), **the larger bench** of the Hon'ble Supreme Court of India held that:

> ***"41.*** *After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity* ***must bestrictly interpreted in favour of the Revenue/State.***
>
> ***43.*** *..... It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But,* ***in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the revenue,*** *the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view.*
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> ***44.*** *In Hansraj Gordhandas case (supra)-* [AIR 1970 SC 755 = (1969) 2 SCR 253 = 1978 (2) E.L.T. J350 (S.C.)], *the Constitutional Bench unanimously pointed out that an exemption from taxation is to be allowed based wholly by the language of the notification and exemption cannot be gathered by necessary implication or by construction of words; in other words,* ***one has to look to the language alone and the object and purpose for granting exemption is irrelevant and immaterial****.*
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> ***45.*** *In Parle Exports case (supra), a Bench of two-Judges of this Court ..... pointed out the strict interpretation to be followed in interpretation of a notification for exemption. .....*
>
> ***48.*** *..... Exemptions from taxation have tendency to increase the burden on the other unexempted class of taxpayers.* ***A person claiming exemption, therefore, has to establish that his case squarely falls within the exemption notification, and while doing so, a notification should be construed against the subject in case of ambiguity****.*
>
> ***52.*** *To sum up, we answer the reference holding as under -*
>
> *(1) Exemption notification* ***should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification****.*
>
> *(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of* ***such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue****.*
>
> *(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled."*

24.3 Further, I find that Importer is well aware of the rules and regulation of Customs as well as Exim Policy as they are regularly importing the goods under Advance Authorisation and they were fully aware that the goods being cleared from Customs was not fulfilling pre import condition as they have already filed the Shipping Bill to this effect and goods have already been exported. Thus, it proves beyond doubt that goods imported under subject Bills of Entry were never used in the goods already exported. Thus, I find that the Importer with clear intent to evade the payment of IGST and Compensation Cess, have suppressed the facts of export without compliance of Pre- Import condition from the Department while filing Bills of

Entry under Advance Authorisation. Further I find that by availing exemption wrongly by not completely disclosing the facts and misguiding the Department, is sufficient ground to invoke extendable period, as held by the CESTAT, Bangalore Bench in the case of Bharat Earth Movers Ltd. Versus Collector of C. Ex., Bangalore, reported at 2001 (136) E.L.T. 225 (Tri. – Bang.).

"Exemption wrongly availed by not completely disclosing the facts and misguiding the Department - Extended period invokable"

I further rely upon the judgment of the Hon'ble Patna High Court in the case of Tatalron and Steel Co. Ltd. Versus Union of India and Others, 1988 (33) E.L.T. 297 (Pat.), wherein the Hon'ble Court held that:

"31. ..... It is not necessary to observe that there was fraud or collusion on the part of the company, but it is obvious that there was as least mis-statement and wilful suppression of facts. The petitioner was not entitled to the benefit of the exemption notification. It is not open to the petitioner to take up the position that it could not have conceded what it was contesting,..... namely, that a crane had been manufactured. The facts are so obvious that the petitioner was required to declare it specially when the department and the assessee work on self assessment scheme. I have not the least doubt that the five-year rule must rule this case. The steps, therefore, for realisation of the duty are obviously within time. The stand of the petitioner in regard to the bar of limitation must be squarely rejected."

24.4 In view of the forgoing paras, I find that extended period in the present casels rightly invoked and therefore differential Customs Duty amounting to **Rs.20,69,83,322/- [Rs.13,75,80,735/- +Rs.4,82,10,525/- + Rs.2,11,92,062/-]** is required to be recovered under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act,1962.

24.5 Further, without prejudice to the demand under Section 28 (4) of the Customs Act,1962, 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 amended by Notification No. 79/2017-Cus, dated 13-10-2017. 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 language 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:

WHEREAS we, the obligor (s) have imported the goods listed in annexure-1 availing customs duty exemption in terms of the notification of the Government of India in Ministry of Finance (department of revenue) No.018/2015 dated 01.04.2015 (hereinafter referred to as the said Notification) against the Advance License No. (hereinafter as the license) for the import of the goods mentioned there in on the terms and conditions specified in the said notification and license.

NOW THE CONDITIONS OF THE ABOVE BOND ARE THAT:-

1. I/We, the obligor(s) fulfilall 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.

24.6 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 noncompliance/failure to fulfill the conditions of the Notification. Therefore, I find that without prejudice to the extended time limit envisaged under Section 28 (4) of the Customs Act, 1962, said Importer is liable to pay differential duty alongwith interest without any time limit. Therefore, I find that without prejudice to the Provisions of Section 28 (4) of the Customs Act,1962, the Bond is required to be enforced under Section 143 (3) of the Customs Act, 1962 for the recovery of differential Customs Duty of**Rs.20,69,83,322/- [Rs.13,75,80,735/- +Rs.4,82,10,525/- + Rs.2,11,92,062/-]** alongwith interest.

24.7 The importer has contended that imposition of interest on the proposed demand is wholly without jurisdiction and illegal as IGST on imports is leviable under Section 3(7) of the Customs Tariff Act and there is no statutory provision providing for levy of interest in case of delayed payment of duty under the Customs Tariff Act and therefore interest as proposed is not leviable. In this regard, I find that based on the discussions in the foregoing paras, I have already held that the demand in the present case is recoverable from them under the provisions of Section 28(4) of the Customs Act, 1962. Section 28AA ibid provides that when a person is liable to pay Duty in accordance with the provisions of Section 28 ibid, in addition to such Duty, such person is also liable to pay interest at applicable rate as well. Thus the said Section provides for payment of interest automatically along with the Duty confirmed/determined under Section 28 ibid.

24.8 Further, Section 28AA ibid provides that when a person is liable to pay Duty in accordance with the provisions of Section 28 ibid, in addition to such Duty, such person is also liable to pay interest at applicable rate as well. Thus the said Section provides for payment of interest automatically along with the Duty confirmed/determined under Section 28 ibid. I have already held that Customs Duty amounting to **Rs.20,69,83,322/- [Rs.13,75,80,735/- + Rs.4,82,10,525/- + Rs.2,11,92,062/-]** is liable to be recovered under Section 28(4) of the Customs Act, 1962. Therefore, I find that differential Customs Duty of **Rs.20,69,83,322/- [Rs.13,75,80,735/- + Rs.4,82,10,525/- + Rs.2,11,92,062/-]** is required to be

demanded and recovered as determined under Section 28 (8) of the Customs Act, 1962 alongwith Interest under Section 28AA of the Customs Act, 1962.

24.9 I find that, it is not in dispute that the importer had imported the goods claiming the benefit of Notification No.18/2015 dated 01.04.2015 under Advance Authorization. Condition (iv) of the Notification No.18/2015 dated 01.04.2015 says that "(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 per cent per annum from the date of clearance of the said materials;".

24.10 The importer has also placed reliance on the judgement of Hon. Bombay High Court in the case of Mahindra and Mahindra Ltd. vs. The Union of India and Ors. WP No. 1848 of 2009 decided on 15.9.2022contested that Duty and interest is not liable to be paid and relied on the decision of Hon'ble Mumbai High Court in case of Mahindra & Mahindra v. Union of India, 2022 (10) TMI 212 wherein penalty and interest demanded was set aside in the absence of provision under Section 3 for Additional Duty of Customs, Section 3A for Special Additional Duty under the Customs Tariff Act, 1975 or Section 90 of the Finance Act, 2000 that created a charge in nature of penalty or interest. They have further stated that this judgement has been affirmed by Hon. Supreme Court and the Special Leave Petition filed by the Union of India has been dismissed by order dated 28.7.2023 passed in Special Leave Petition (C) No. 16214 of 2023 and therefore the judgement is binding on the Department and therefore the entire proposed imposition of interest and penalty is wholly without jurisdiction and deserves to be dropped. I find that this contention is not acceptable as the said decision is with regard to pre-GST era. Period covered in the said decision was November'2004 to January'2007 and period covered in present case is 13.10.2017 to 09.01.2019. Said decision of Mahindra & Mahindra Ltd reported in (2023) 3 Centax 261 (Bom.) relied on by the importer is distinguishable on following grounds.

- In the instant case, IGST has been demanded under Section 28 of the Customs Act, 1962 as well as by enforcement of Bond under Section 143 of the Customs Act, 1962. In this case, the importer has executed Bond before the proper officer binding himself to pay duty alongwith interest in case the importer fails to comply with the condition of Bond. As the importer failed to fulfil the condition of the bond i.e failed to comply with mandatory 'pre-import' condition specified under the Notification, therefore, the importer is liable to pay duty alongwith interest in terms of the conditions of the Bond as specified under Section 143 of the Customs Act, 1962.

  In the case of Mahindra & Mahindra Ltd, no such Bond was executed before the proper officer.

- In the case of Mahindra & Mahindra Ltd, the issue under dispute was charging Section for interest and penalty. According to the Department, the charging Section for imposition of CVD, SAD & Surcharge was Section 12 of the Customs Act, 1962. Hon'ble Court held that charging section for imposition of CVD, SAD & Surcharge was Section 3(1) of Customs Tariff Act, 1975, Section 3(A) of Customs Tariff Act, 1975 and Section 19 (1) of the Finance Act,2000 respectively which did not have provisions for imposition of penalty and interest.

In the instant case, the demand of IGST has been made in terms of provision of IGST Act, 2017 and the charging Section for IGST on import is Section 5(1) of the IGST Act, 2017.Relevant Para of Section 5(1) of the IGST Act, 2017 is re produced as under:

"SECTION 5. Levy and collection.

(1) .....

Provided that the integrated tax on goods *[other than the goods as may be notified by the Government on the recommendations of the Council]* imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962)."

- Hon'ble Supreme Court in the case of Cosmo Films Ltd has held that ***"IGST is levied under the IGST Act, 2017 and is collected, for convenience, at the*** **customs point through the machinery under the Customs Act, 1962."**

24.11 I also find that Hon'ble Supreme Court on 11-3-2016 **dismissed** Civil Appeal filed by Atul Kaushik (Oracle India Ltd) reported in *Oracle India Pvt. Ltd.* v. *Commissioner - 2016 (339) E.L.T. A136 (S.C.)]* against the CESTAT Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-7-2015 as reported in 2015 (330) E.L.T. 417 **(Tri.-Del.)** (Atul Kaushik v. Commissioner) holding that " We see no reason to interfere with the impugned order passed by Customs, Excise & Service Tax Appellate Tribunal". Relevant Para of the decision of Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-7-2015 of CESTAT reported in 2015 (330) E.L.T. 417 **(Tri.-Del.)** (Atul Kaushik v. Commissioner) is re-produced as under:

"16. The appellants have also contended that penalty, interest and confiscation cannot be invoked in respect of evasion of countervailing duty (levied under Section 3 of the Customs Tariff Act, 1975) on the ground that the provisions relating to these aspects have not been borrowed into Section 3 of the Customs Tariff Act, 1975. In support of the principle that the penalty cannot be levied in the absence of penalty provision having been borrowed in a particular enactment, the appellants cited the judgments in the case ofKhemka& Co. (supra) and Pioneer Silk Mills Pvt. Ltd. (supra). We are in agreement with this proposition and therefore we refrain from discussing the said judgments. The appellants also cited the judgment in the case of Supreme Woollen Mills Ltd. (supra), Silkone International (supra) and several others to advance the proposition that penalty provisions of Customs Act were not applicable to the cases of non-payment of anti dumping duty and that the same principle is applicable with regard to leviability of interest [India Carbon Ltd. (supra) and V.V.S. Sugar (supra)]. We have perused these judgments. Many of them dealt with Anti-dumping duty/Special Additional Duty (SAD) leviable under various sections (but not Section 3) of Customs Tariff Act, 1975 and in those sections of the Customs Tariff Act, 1975 or in the said Act itself, during the relevant period, there was no provision to apply to the Anti-dumping duty/SAD the provisions of Customs Act, 1962 and the rules and regulations made thereunder including those relating to interest, penalty, confiscation. In the case of Pioneer Silk Mills (supra), the duty involved was the one levied under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and its Section 3(3) only borrowed the provisions relating to levy and collection from the Central Excise Act, 1944 and in view of that it was held that the provisions relating to confiscation and penalty could not be applied with regard to the duties collected under the said Act of 1957. None of these judgments actually deal with the CVD levied under Section 3 of the Customs Tariff Act, 1975. The impugned countervailing duty was levied under Section 3 of Customs Tariff Act, 1975. Sub-section (8) of Section 3 of the said Act even during the relevant period stipulated as under : -

"S. 3(8) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act."

It is evident from Section 3(8) of the Customs Tariff Act, 1975 quoted above that all the provisions of Customs Act, 1962 and the rules and regulations made thereunder have been clearly borrowed into the said Section 3 to apply to the impugned CVD and so it is obvious that provisions relating to fine, penalty and interest contained in Customs Act, 1962 are expressly made applicable with regard to the impugned countervailing duty. We must, however, fairly mention that in case of Torrent Pharma Ltd. v. CCE, Surat, CESTAT set aside penalty for evasion of Anti-dumping duty, CVD and SAD (para 16 of the judgment) on the ground that penal provisions of Customs Act, 1962 had not been borrowed in the respective sections of Customs Tariff Act, 1975 under which these duties were levied, but this decision of CESTAT regarding CVD suffered from a fatal internal contraction inasmuch as CESTAT itself in para 14 of the said judgment had expressely taken note of the fact that vide Section 3(8) of the Customs Tariff Act, 1975, the provisions of Customs Act, 1962 and the rules and regulations made thereunder had been made applicable to CVD charged (under Section 3 of Customs Tariff Act, 1975). In the light of this analysis, we hold that this contention of the appellant is legally not sustainable."

Thus, the said order of Tribunal has been affirmed by the Hon'ble Supreme Court whereas Special Leave Petition in case of Mahindra & Mahindra Ltd bearing Diary No. 18824/2023 has been dismissed by Hon'ble Supreme Court holding that "No merit found in the Special Leave Petition". Whereas, the Hon'ble Supreme Court has dismissed the **Civil Appeal** filed by Oracle India Pvt. Ltd (AtulKaushik) against the CESTAT Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-7-2015.

In the case of **Workmen of Cochin Port Trust Vs. Board of Trustees of the Cochin Port Trust and Another 1978 AIR 1283**, the Hon'ble Three Judges Bench held as under:

"The effect of non-speaking order of dismissal without anything more indicating the grounds or reasons of its dismissal must by necessary implication be taken to have decided that it was not a fit case where special leave should be granted. It may be due to several reasons. It may be one or more. It may also be that the merits of the award were taken into consideration and this Court felt that it did not require any interference. But since the order is not a speaking order it is difficult to accept the argument that it must be deemed to have necessarily decided implicitly all the questions in relation to the merits of the award."

The dismissal of special leave petition by the Supreme Court by a non-speaking order of dismissal where no reasons were given does not constitute res judicata. All that can be said to have been decided by the Court is that it was not a fit case where special leave should be granted."

25. Whether the Subject goods having assessable value of Rs.1,06,39,78,969/- (One Hundred and Six Crore, Thirty Nine Lakh, Seventy Eight Thousand, Nine Hundred and Sixty Nine only) [Rs.70,72,64,230/-i.r.o. imports through ICD Khodiyar +Rs.24,74,23,789/-i.r.o. imports through Mundra Port+ Rs.10,92,90,950/- i.r.o. imports through JNPT Nhava Sheva Port] under the subject Advance Authorizations as detailed in the Annexure-B to the Notice, should be held liable for confiscation under Section 111(o) of the Customs Act, 1962:

25.1 Show Cause Notice proposes confiscation of the impugned imported goods under Section 111(o) of the Customs Act, 1962. 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, would come under the purview of Section 111(o) of Customs Act, 1962. As discussed above and relying 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, 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, as amended by Notification No. 79/2017-Cus, dated 13-10-2017 and therefore,imported goods under Advance Authorization claiming the benefit of exemption Notification No. No.18/2015 dated 01-04-2015, as amended by Notification No. 79/2017-Cus, dated 13-10-2017 areliable for confiscation under Section 111(o) of the Customs Act,1962.

I rely on the decision of the Hon'ble Bombay High Court in the matter of Unimark Remedies Ltd. Vs. Commr. Of Cus. (Export Promotion), Mumbai, reported in 2017 (355) E.L.T. 193 (Bom.), wherein it is held that:

*"94. ..... **The goods are liable to confiscation when they are imported relying on exemption notification, but that exemption is subject to a condition. If that condition is not observed, the Hon'ble Supreme Court held that the goods are liable to confiscation.** The power of the customs authorities is held to be absolute. In these circumstances, we do not find that the appellants can escape from the judgment in the case of Sheshank Sea Foods Pvt. Ltd. [1996 (88) E.L.T. 626 (S.C.)]"*

25.2 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 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..."

25.3 I find that the importer has wrongly availed the benefit of Notification No.18/2015 dated 01-04-2015, as amended by Notification No.79/2017-Cus, dated 13-10-2017 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 "

25.4 I 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 interalia in Para 23 as under:

" **23.***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).***"**

25.5 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 interalia as under:-

"

174. *..... In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para 23;*

> *"23. 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).“

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above.”

25.6 The importer has contended that the goods had already been imported and cleared for home consumption and were never seized by the authorities and therefore they cannot be confiscated. In this regard, I find that the ratio of decision rendered by Hon'ble Tribunal Mumbai in case of *ApcoInfratech Pvt. Ltd.* v. *Commissioner* reported as 2019 (368) E.L.T. 157 (Tri.-Mumbai) affirmed by the Hon'ble Supreme Court reported as *2019 (368) E.L.T. A49 (S.C.)] is squarely applicable to the present case as in the said decision it has been held as under :*

7. *Heard both the sides and perused the records of the case. We find that the appellant M/s. Apco had imported the "Hot mix plant" under Notification No. 21/2002-Cus. Sr. No. 230. It is apparent from the facts of the case that the plant was never utilized as provided under the conditions of the notification. The contention of the appellant that they were eligible for multiple road constrsites does not mean that the condition of the notification has been followed. In fact the plant was never used for such contracts as canvassed by the appellant during the importation of goods and claiming exemption. The appellant has not adduced single evidence that they have followed the conditions of the notification. They declared that they had contracts awarded by the State of U.P wherein the imported plant would be used. However they never used the said imported equipments in State of U.P. for construction of road. Instead they used the plant as a sub-contractor in State of Rajasthan and Tamil Nadu, but even in these cases also they were not named as sub-contractor in the contract awarded for construction of road. As per the conditions of the exemption notification, an importer can claim the benefit of exemption provided they are named as sub-contractor for construction of road. Even this condition was not satisfied.* ***It clearly shows that the appellant never complied with the conditions of the exemption notification and has knowingly violated the conditions. We also find that since the conditions of the notification were not complied with and from the facts of the case it is very clear that the same were never intended to be complied with, we hold that the impugned order confirming demand, penalties and confiscation of goods has been rightly passed.*** *We also find that the officers had handed over the plant for safe custody after seizure and the same could not have been used without permission from the department. Having violated the conditions of Section 110 safe keeping by using the plant even after seizure makes the appellant liable for penalty under Section 117 of C.A. 1962. Further we find that Shri Anil Singh, Managing Director was fully aware about the benefits likely to accrue by availing ineligible notification and use of machine and therefore in such case his complicity in deliberate violation of the condition of notification is apparent. However in case of Shri V.S. Rao, Chief Manager (F & A), we find that he was only concerned with the taxation matter to the extent of availing benefit of exemption notification and was not concerned/connected with the decision to use machine and his role in violation of condition is also not visible. We are therefore of the view that he cannot be burdened with penalty. Resultantly, in view of our above findings, we uphold the impugned order inasmuch as it has confirmed demand, confiscation of goods and penalties against M/s. Apco and Shri Anil Singh. However the penalty imposed upon Shri V.S. Rao is set aside. The impugned order is modified to the above extent. The appeals filed by M/s. ApcoInfratech and Shri Anil Kumar Singh is rejected and the appeal filed by Shri S.V. Rao is allowed.*

In the present case, it is clearly apparent that the importer/noticee never complied with the conditions of the exemption notification and has knowingly violated theconditions. The importer has knowingly cleared the imported goods without observing obligatory condition of 'Pre Import' as envisaged under Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017. In view of the above, the impugned goods imported without observing obligatory condition of "Pre-import" as envisaged in the aforementioned notification are rightly liable for confiscation. Therefore the contention of the importer/noticee is not tenable.

25.7 In view of the above, I find that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of the subject goods having assessable value of **Rs.1,06,39,78,969/-** [Rs.70,72,64,230/- i.r.o. imports through ICD Khodiyar + Rs.24,74,23,789/- i.r.o. imports through Mundra Port + Rs.10,92,90,950/- i.r.o. imports through JNPT Nhava Sheva Port] under the subject Advance Authorizations as detailed in the Annexure-B to the Notice.

26. Whether Penalty should be imposed upon them under Section 114A of the Customs Act, 1962, for improper importation of goods availing exemption of Notification and without observance of the conditions set out in the notification, and also by reasons of misrepresentation and suppression of facts with an intent to evade payment of Customs Duty as elaborated above resulting in non-payment of Duty, which rendered the goods liable to confiscation under Section 111(o) of the Customs Act, 1962.

26.1. I find that demand of differential Customs Duty totally amounting to **Rs.20,69,83,322/- [Rs.13,75,80,735/- +Rs.4,82,10,525/- + Rs.2,11,92,062/-]** has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilfulmis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the Importer under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in 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. In the instant case, the ingredient of wilful mis-statement and suppression of facts by the importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of penalty equal to the amount of Duty plus interest in terms of Section 114A ibid.

26.2 Further, I rely on the ratio of the decision of Honble Tribunal Delhi in case of Commissioner of Customs Vs. Ashwini Kumar Alia Amanullah reported as 2021 (376) E.L.T. 321 (Tri. - Del.)wherein it is held as under :

"39. The last contention of Shri Amanullah in his appeal is that since penalty has been imposed under Section 114A, no penalty should be imposed under Section 114AA also upon them. We find that the ingredients of Section 114A and Section 114AA are different. Section 114A provides for non-levy of duty or short levy of duty due to certain reasons. There is no dispute that no duty was levied or paid on the imported gold concealed in the UPS by mis-declaring the nature of goods. Therefore, Section 114A has been correctly invoked in this case and a penalty has been imposed."

I find that in present case, importer has with clear intent to evade the payment of IGST have wrongly availed the benefit of exemption Notification No. 18/2015 dated 01.04.2015, as amended by Notification No. 79/2017-Cus, dated 13.10.2017 for the clearance of imported goods under Advance Authorization and did not fulfill the 'Pre-

Import' condition as stipulated in Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017 and thereby short paid the duty. Therefore, Importer is liable for penalty under Section 114A of the Customs Act, 1962.

27. Whether Penalty should be imposed upon them under Section 112 of the Customs Act, 1962:

I find that fifth proviso to Section 114A stipulates that "where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114." Hence, I refrain from imposing penalty on the importer under Section 112 (a) and 112 (b) of the Customs Act, 1962.

28. I find that Importer has contested that the entire exercise is revenue neutral and there is no loss to the Government as the IGST payable is available as credit to the noticee or they would be eligible to claim the refund of such IGST under Rule 89(4) or 96(10). I find that ratio of decision rendered by Delhi Tribunal in the case of ACL Mobile Ltd. v. Commissioner reported as 2019 (20) G.S.T.L. 362 (Tribunal Del) is applicable here as in the said order it has been held interlia as under :

> ***13.*** *.....**We note that no such categorical assertion can be recorded in the present case. Even otherwise we note that the availability or otherwise of credit on input service by itself does not decide the tax liability of output service or on reverse charge. The tax liability is governed by the legal provisions applicable during the*** **relevant time in terms of Finance Act, 1994. The availability or otherwise of credit on the amount to be discharged as such tax liability cannot take away the tax liability itself. Further, the revenue neutrality cannot be extended to a level that there is no need to pay tax on the taxable service. This will expand the scope of present dispute itself to decide on the manner of discharging such tax liability. We are not in agreement with such proposition."**

The Hon'ble Tribunal, Bombay bench in the case of ISMT Limited Versus Commissioner Of Central Excise, Pune reported at 2017 (6) G.S.T.L. 298 (Tri. - Mumbai) held that:

> ***"9.*** *.....Admissibility of Cenvat Credit is subject to scrutiny and claimant does not get right to immunity ipso facto. There are two different jurisdictions relating to product developer and user thereof.* ***We may state that taxes paid today is more valuable for the country to fund public welfare than sacrificing public revenue on the pulpable plea of Revenue neutrality which is subject to scrutiny to grant Cenvat credit to a different unit.***

28.1 I find that the Hon'ble Supreme Court in the case of Star Industries v. Commissioner reported as 2015 (324) E.L.T. 656 (S.C.) has held as under:

> *"**35.** It was submitted by the learned counsel for the assessee that the entire exercise is Revenue neutral because of the reason that the assessee would, in any case, get Cenvat credit of the duty paid.* ***If that is so, this argument in the instant case rather goes against the assessee. Since the assessee is in appeal and if the exercise is Revenue neutral, then*** **therewas no need even to file the appeal. Be that as it may, if that is so, it is always open to the assessee to claim such a credit."**

Relying upon the above decision of the apex court, the CESTAT, Chandigarh bench in the case of Vogue Textiles Ltd. Versus Commissioner Of Central Excise, Delhi-III, reported at 2017 (351) E.L.T. 310 (Tri. - Chan.), held that:

> *"**9.**As for the plea of the revenue neutrality, that cannot be an argument to justify wrong classification and availing the benefit of an exemption notification....."*

Further, in the case of Forbes Marshall Pvt. Ltd. Versus Commissioner Of Central Excise, Pune-I, reported at 2015 (38) S.T.R. 843 (Tri. - Mumbai), the Hon'ble CESTAT observed that:

> *6. ..... **Simply because a situation leads to revenue neutrality does not imply that tax need not be paid on time**. When law requires tax to be paid it has to be paid as per time specified. ..... It cannot be said that the Government has not lost interest between the two dates, notwithstanding the fact that Cenvat credit could have been availed on the same date if duty had been paid on time. ..... I hold that interest is payable under Section 75 of the Finance Act.*

In the above judgment, the Hon'ble tribunal while deciding the revenue neutrality contention has inclined to hold that even interest is payable.

28.2 Further, I find that the Hon'ble Supreme Court in case of Union of India Vs. Cosmo Films Ltd reported as 2023 (72) GSTL 147 (SC) had directed Revenue to permit claim of refund or input credit (whichever applicable and/or wherever customs duty was paid). For doing so, the respondents shall approach the jurisdictional Commissioner, and apply with documentary evidence within six weeks from the date of this judgment. The claim for refund/credit, shall be examined on their merits, on a case-by-case basis. For the sake of convenience, the revenue shall direct the appropriate procedure to be followed, conveniently, through a circular, in this regard." Consequent to afore decision of Hon'ble Supreme Court, CBIC have issued Circular No.16/2023-Cus dated 07.06.2023 for the procedure to avail the re-credit of IGST and DGFT issuedTrade Notice No. 7/2023-24 dated 08.06.2023, saying that " all the imports made under Advance Authorization Scheme on or after 13.10.2017 and upto and including 09.01.2019 which could not meet the pre-import condition may be regularized by making payments as prescribed in the Customs Circular" However, the importer has not paid the IGST amount and therefore, in absence of the payment of IGST by the Importer, their plea of Revenue Neutrality is not tenable.

28.3 I find that the ratio of case laws relied upon by the importer in support of their contentions are not squarely applicable to the facts and circumstances of the present case. I have gone through the facts of the case laws relied upon by the importer and compared the same with the factual details of the present case in hand. I find that there is quite difference in the facts and circumstances of their own case. In addition to the other facts and circumstances, the judgment of the Hon'ble Supreme Court in the case of Union of India Vs. Cosmo Films Ltd reported as 2023 (72) GSTL 147 (SC)is the major point which distinguish the issue involved in the present case viz-a-viz the issue involved in the case lawsrelied upon by the noticee. In this regard, I would like to rely on the judgment of the Hon'ble Supreme Court of India in the case of **Escorts Ltd. Versus Commissioner Of Central Excise, Delhi-II, reported at 2004 (173) E.L.T. 113 (S.C.),** wherein the Hon'ble apex court observed that:

> *"10. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."*

Further reliance is placed on the judgment of the Hon'ble Apex court in case of **'Collector of Central excise, Calcutta Vs Alnoori Tobacco Products' (2004(170)ELT 135 SC)**, where it was observed by the Hon'ble Apex Court-

"11.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. ***Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.*** *In London Graving Dock Co. Ltd. v. Horton (1951 AC 737 at p. 761), Lord Mac Dermot observed :*

> *"The matter cannot, of course, be settled merely by treating the ipsissimavertra of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."*

12.In Home Office v. Dorset Yacht Co. [1970 (2) All ER 294] Lord Reid said. "Lord Atkin's ***speech..... is not to be treated as if it was a statute definition. It will require qualification in new circumstances."*** *Megarry, J in (1971) 1 WLR 1062 observed:* ***"One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament."*** *And, in Herrington v. British Railways Board [1972 (2) WLR 537] Lord Morris said :*

> *"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."*

*13.***Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper***.*

14.The following words of Lord Denning in the matter of applying precedents have become locus classicus :

> ***"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another****. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."*
>
> *** *** ***
>
> *"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.""*

29. In view of my findings in the paras *supra*, I pass the following order:

::ORDER::

a) I confirm the Duty of Customs amounting to **Rs.13,75,80,735/- (Rupees Thirteen Crore, Seventy Five Lakh, Eighty Thousand, Seven Hundred and Thirty Five Only)**in the form of IGST saved in course of imports of the goods through ICD Khodiyar under the subject Advance Authorizations and the corresponding Bills of Entry as detailed in the Annexure-B to the Notice, and order recovery of the same from **M/s.Sun Mark Stainless Private Limited** in terms of the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962;

b) I hold the subject goods having assessable value of **Rs.70,72,64,230/- (Seventy Crore, Seventy Two Lakh, Sixty Four Thousand, Two Hundred and Thirty only)**imported by **M/s. Sun Mark Stainless Private Limited** through ICD Khodiyar under the subject Advance Authorizations as detailed in the Annexure-B to the Notice liable for confiscation under Section 111(o) of the Customs Act, 1962.However, I give them the option to redeem the goods on payment of Fine of **Rs.5,00,00,000 (Rupees Five Crore only)** under Section 125 of the Customs Act, 1962;

c) I confirm the Duty of Customs amounting to **Rs.4,82,10,525/- (Rupees Four Crore,Eighty Two Lakh,Ten Thousand,Five Hundred and Twenty Five Only)** in the form of IGST saved in course of imports of the goods through Mundra Port under the subject Advance Authorizations and the corresponding Bills of Entry as detailed in the Annexure-B to the Notice,and order recovery of the same from **M/s.Sun Mark Stainless Private Limited**in terms of the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962 ;

d) I hold the subject goods having assessable value of **Rs.24,74,23,789/- (Twenty Four Crore, Seventy Four Lakh,Twenty Three Thousand,Seven Hundred and Eighty Nine only)**imported by **M/s.Sun Mark Stainless Private Limited**through Mundra port under the subject Advance Authorizations as detailed in the Annexure-B to the Notice, liable for confiscation under Section 111(o) of the Customs Act, 1962.However, I give them the option to redeem the goods on payment of Fine of **Rs.1,75,00,000/- (Rupees One Crore Seventy Five Lakh only)** under Section 125 of the Customs Act, 1962;

e) I confirm the Duty of Customs amounting to **Rs.2,11,92,062/- (Rupees Two Crore, Eleven Lakh, Ninety Two Thousand and Sixty Two Only)** in the form of IGST saved in course of imports of the goods through JNPT Nhava ShevaPort under the subject Advance Authorizations and the corresponding Bills of Entry as detailed in the Annexure-B to the Notice,and order recovery of the same from **M/s. Sun Mark Stainless Private Limited**in terms of the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962 ;

f) I hold the subject goods having assessable value of **Rs.10,92,90,950/- (Ten Crore, Ninety Two Lakh, Ninety Thousand, Nine Hundred and Fifty only)** imported by **M/s. Sun Mark Stainless Private Limited** through JNPT Nhava Sheva Port under the subject Advance Authorizations as detailed in the Annexure-B to the Notice, liable for confiscation under Section 111(o) of the Customs Act, 1962.However, I give them the option to redeem the goods on payment of Fine of **Rs.77,00,00/- (Rupees Seventy Seven Lakh only)** under Section 125 of the Customs Act, 1962;

g) I impose a penalty of **Rs.20,69,83,322/- [(Rupees Twenty Crore, Sixty Nine Lakh, Eighty Three Thousand, Three Hundred and Twenty Two Only)**on **M/s. Sun Mark Stainless Private Limited** plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at (a), (c) and (e) above under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty-five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days;

h) I refrain from imposing penalty on **M/s. Sun Mark Stainless Private Limited**under Section 112 (a) of the Customs Act, 1962 for the reasons discussed in para 26 supra:

i) I order to enforce the Bonds executed by **M/s. Sun Mark Stainless Private Limited,** at the time of imports under the subject Advance Authorisations, in terms of Section 143(3) of the Customs Act, 1962, for recovery of the Customs Duty as mentioned at (a), (c)and (e) above alongwith interest.

30. 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.

31. The Show Cause Notice No. VIII/10-21/Commr./O&A/2022-23 dated 23.09.2022 is disposed off in above terms.

10.04.2024

(Shiv Kumar Sharma)
Principal Commissioner

DIN-20240471MN000091919D
F.No.VIII/10-21/Commr./O&A/2022-23 Date:10.04.2024

By Speed Post/e-mail/Notice Board
To
M/s. Sun Mark Stainless Private Limited,
310, Ashirvad Paras, Opp.Krishna Bungalow,
Nr. Prahladnagar Garden,
Ahmedabad.

Copy to:-

1. The Chief Commissioner of Customs, Ahmedabad Zone, Ahmedabad for information please.
2. The Pr. Commissioner/Commissioner of Customs, JNPT, Nhava Sheva, Tal: Uran, District-Raigadh, Maharashtrafor information please.
3. The Commissioner of Customs, Mundra Custom House, Mundra for information please.
4. The Deputy Commissioner of Customs, ICD Khodiyar, Ahmedabad for information please.
5. The Superintendent of Customs(Systems), Ahmedabad in PDF format for uploading on the Official Website of Customs Commissionerate, Ahmedabad.
6. Guard File.