

	सीमा शुल्क के आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात OFFICE OF THE COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62, Email-adj-mundra@gov.in	 आजादीका अमृत महोत्सव
A. File No.	:	GEN/ADJ/COMM/598/2024-Adjn -O/o Pr. Commr- Cus-Mundra
B. Order-in-Original No.	:	MUN-CUSTM-000-COM- 016 -25-26
C. Passed by	:	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	:	28.07.2025; 28.07.2025
E. SCN No. & Date	:	SCN F.No. GEN/ADJ/COMM/598/2024-Adjn dated 31.12.2024.
F. Noticee(s)/ Party/ Importer	:	1. M/s KPM Udyog (IEC- 3016915391), Village- Benra, Kakarwal Road, Dhuri, Punjab – 148024. 2. Shri Mohit Jindal , Controller of the importer firm M/s KPM Udyog (IEC- 3015900749) – House No. 122, Ward No. 5B, Sodhian Mohalla, Dhuri, Punjab-148024
G. DIN	:	20250771MO0000333B9A

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ 1000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो, 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो, 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs.1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs.5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं.-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ इयूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

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.

1. INTRODUCTION

M/s KPM Udyog, Village- Benra, Kakarwal Road, Dhuri, Punjab – 148024 [IEC-3016915391] is engaged in imports of PVC Resins under Advance Authorization (Licenses no. No. 3011000040 dated 17.12.2020 & 3011000209 dated 05.02.2021, both registered at ICD Patparganj, and License no. 3011000389 dated 22.03.2021 registered at Delhi Air Cargo) through Mundra Port (INMUN1). Intelligence was received that the importer-M/s KPM Udyog had obtained Advance Authorisations for import of duty-free raw material i.e. Poly Vinyl Chloride (PVC) Resins with actual user conditions for export of Pipe made out of aforesaid PVC Resin but had failed to fulfil their export obligation and the period to fulfil the said export obligation had also expired. M/s KPM Udyog is a partnership firm where Smt. Annu Jindal w/o Shri Mohit Jindal and Smt. Kanta Jindal, mother of Shri Mohit Jindal are Partners. As it turned out, Shri Mohit Jindal is the de-facto controller of M/s KPM Udyog (**RUD-1 & RUD-2**) and looks after all the business-related activity of the said firm.

2. The details of three Advance Authorisations are as per Table-1 below and the name and address of the factory wherein the imported duty-free PVC resin is to be actually processed is M/s KPM Udyog, Village- Benra, Kakarwal Road, Dhuri, Punjab – 148024:-

Table 1

Sr No.	Advance Authorisation No	Port of Registration	Import Item name, with Actual User condition	Quantity permitted	Customs Notification	Export Item name	Export obligation period
1	3011000040 dtd 17.12.2020 (RUD-3)	ICD Patparganj	PVC [Poly Vinyl Chloride] Resin – ITCHS Code 39041020	300.00 MT, CIF Rs. 3,47,35,500/-	No.18/2015-Cus Dated 01.04.2015	Pipe made of PVC Resin – ITCHS Code 39172390	18 months i.e. till 17.06.2022
2	3011000209 dtd 05.02.2021 (RUD-4)	ICD Patparganj	PVC [Poly Vinyl Chloride] Resin – ITCHS Code 39041020	300.00 MT, CIF Rs. 3,47,35,500/-	No.18/2015-Cus Dated 01.04.2015	Pipe made of PVC Resin – ITCHS Code 39172390	18 months i.e. till 05.08.2022
3	3011000389 dtd 22.03.2021 (RUD-5)	Delhi Air Cargo	PVC [Poly Vinyl Chloride] Resin – ITCHS Code 39041020	300.00 MT, CIF Rs. 3,47,35,500/-	No.18/2015-Cus Dated 01.04.2015	Pipe made of PVC Resin – ITCHS Code 39172390	18 months i.e. till 22.09.2022

2.1 Using above Advance Authorisations, the importer- M/s KPM Udyog, imported 900 MT of duty-free PVC Resin under CTI 39041020, valued at Rs.9,09,83,419/-, vide 7 Bills of Entry, all at port-INMUN1, through High Seas Sale, as detailed in Table -2 below and thereby total duty foregone on such imports is Rs.3,52,68,289/- (Basic Customs Duty of Rs.90,98,342/-, SWS of Rs.9,09,834/-, ADD of Rs.70,81,626/- and IGST of Rs.1,81,78,487/-) -

Table-2

Sr No	High Seas Seller	BE No.	Date	QTY (MT)	Assessable value [in Rs.]	BCD 10% (in Rs)	SWS 10% (in Rs)	Anti-Dumping Duty	IGST 18%	Total Duty FG
1	Subhash*	2503912	25.01.2021	85.00	7939466	793947	79395	N.A.	1586305	2459647
2	Subhash*	2503585	25.01.2021	74.25	8053963	805396	80540	N.A.	1609182	2495118
3	Subhash*	2579438	31.01.2021	99.00	10528056	1052806	105281	N.A.	2103506	3261592
4	Subhash*	3765338	29.04.2021	225.75	25512959	2551296	255130	2543560	5097489	10447475
5	Subhash*	3172452	16.03.2021	130.00	12199929	1219993	121999	1421452	2437546	5200990
6	Subhash*	3166915	16.03.2021	156.00	14639915	1463992	146399	1705742	2925055	6241188
7	Subhash*	3307819	26.03.2021	130.00	12109131	1210913	121091	1410873	2419404	5162281
				TOTAL	900	90983419	9098342	7081626	18178487	35268289

* M/s Subhash Trading Co., Barnala, Punjab

2.2 M/s KPM Udyog Co. has executed Bond of Rs.1,18,37,200/- for Advance Authorization No. 3011000040 dt. 17.12.2020 (**RUD-6**), Bond of Rs.1,18,37,200/- for Advance Authorization No. 3011000209 dt. 05.02.2021 (**RUD-7**) and Bond of Rs.4,91,61,000/- for Advance Authorization No. 3011000389 dt. 22.03.2021 (**RUD-8**) for availing duty exemption. One of the conditions of the said Bond are:-

In the event of failure of fulfill full or part of the export obligations as specified in said notification(s) and the License, we the obligor(s), hereby undertake to pay the customs duty but for the exemption and also interest @15% per annum thereon forthwith and without any demur, to the Government.”

3. Acting upon the intelligence, simultaneous searches were conducted on 03.01.2023 at the following business and residential premises of the importer:

Sr No.	Address at which search conducted	Panchnama Dated	RUD No.
1	Residential premises of Sh. Mohit Jindal i.e. H. No. 122, Ward No.- 5B, Sodhiyan Mohalla, Dhuri, Distt. Sangrur, Punjab	03.01.2023	RUD-9
2	Business premises of M/s KPM Udyog Co., Kakarwal Benra Kacha Paha, Village Benra, Dhuri-148024.	03.01.2023	RUD-10

3.1 During the search proceedings of the above said Importer's premises, no stock of PVC Resin was found. However, 570 PVC Pipes each having weight of approx. 11 kgs were found lying in the business premises. Further, no export of PVC pipe had been made by the importer till date. Further, the authorized signatory and de-facto controller Shri Mohit Jindal admitted that he clandestinely sold off all the duty free imported PVC resin in domestic market and he had not maintained any records of the such domestic sale. He further stated that till date there was no export of pipes made from M/s KPM Udyog as he did not had any export orders for the pipes and he had no intention to export the same.

4. The statement dated 04.01.2023 (**RUD-11**) of Smt. Kanta Jindal (age-62 years), Partner in M/s KPM Udyog was recorded under Section 108 of the Customs Act, 1962 wherein Smt. Kanta Jindal inter alia stated that:-

- she didn't have any knowledge about the working of the firm and her daughter in law- Smt. Annu Jindal used to operate the firm being the active partner.
- she had made some signatures on the documents related to the firm only when Smt. Annu Jindal was not available for the same.
- her son Shri Mohit Jindal used to be one of the partners in the firm but he left the partnership in the year 2018 due to engagement in some other firm.
- all the firm related information may be sought from Smt. Annu Jindal.

4.1 Thereafter, Summon dated 04.01.2023 was issued to Smt. Annu Jindal w/o Shri Mohit Jindal, Partner in M/s KPM Udyog, and her statement dated 04.01.2023 (**RUD-12**) was recorded under Section 108 of the Customs Act, 1962 wherein Smt. Annu Jindal inter alia stated that:

- She got married to Shri Mohit Jindal in November 2016 and in the year 2017, she joined the firm M/s KPM Udyog as one of the partner where

her husband Shri Mohit Jindal and her mother-in-law Smt Kanta Jindal were already the partners.

In the year 2018, her husband Shri Mohit Jindal left the partnership of the firm.

M/s KPM Udyog is a partnership firm that deals in the sale/purchase/import of PVC pipes and its raw materials, with the partners being her and her mother-in-law Smt. Kanta Jindal.

she used to sign all the business-related documents of the firm and her mother-in-law Smt. Kanta Jindal was just the silent partner.

she had been shown the panchnamas of the searches conducted at the business and residential premises on 03.01.2023 and on being asked about the non-availability of stocks of imported raw material i.e. PVC resin imported by her firm under the three advance authorizations issued by the DGFT, she stated that her husband Shri Mohit Jindal would be knowing about the same as he was looking after the business of the firm.

tomorrow she would come to DRI office alongwith Shri Mohit Jindal and Smt. Kanta Jindal so that queries of DRI could be answered.

4.2 Thereafter, further Summon dated 04.01.2023 was issued to Smt. Annu Jindal w/o Shri Mohit Jindal, Partner in M/s KPM Udyog, and her statement dated 05.01.2023 (**RUD-1**) was recorded under Section 108 of the Customs Act, 1962 wherein Smt. Annu Jindal inter alia stated that:

day to day working of the firm was looked after by her husband Shri Mohit Jindal. She, being the active partner of the firm, used to sign the documents related to the firm wherever necessary.

she has brought two files related to High seas sale import documents.

4.3 Thereafter, Summon dated 26.06.2023 was issued to Shri Mohit Jindal, authorised signatory and de-facto controller of M/s KPM Udyog, and statement dated 26.06.2023 (**RUD-2**) was recorded under Section 108 of the Customs Act, 1962 wherein Shri Mohit Jindal inter alia stated that:

he has opened the firm M/s KPM Udyog at vill. Benra, Kakkarwal road, Dhuri, Punjab in the year 2010 with Smt Kanta Jindal, his mother, as one of the partner and thereafter after his marriage, he made his wife Smt. Annu Jindal the other partner in the year 2017 and he left the partnership of the said firm in year 2018.

M/s KPM Udyog deals in sale/purchase/import of PVC pipes and its raw materials. At present, his mother Smt Kanta Jindal and my Smt Annu Jindal are the partners in M/s KPM Udyog.

he is looking after and controlling all the activities of M/s KPM Udyog from the very first day of the incorporation of the firm and his mother and his wife were the just signing authorities in M/s KPM Udyog.

he has been shown the panchnama dated 03.01.2023 and he signed on it in token of its correctness. In regard to non-availability of stocks of imported raw material i.e. PVC resin imported by his firm under three advance authorisations issued by DGFT as per the provisions of Notification no. 18/2015-Customs dated 01.04.2015, he stated that he had clandestinely sold of all the duty free imported PVC resin in domestic

market and he has not maintained any records of the such domestic sale.

till date there is no export of pipes made from M/s KPM Udyog as he did not have any export orders for the pipes and he had no intention to export the same.

on being asked about the transactions between his firm M/s KPM Udyog and M/s Jindal Trading Co., Dhuri, he stated that M/s Jindal Trading Co. is a proprietorship firm opened by him in the year 2014 and its business nature is same as M/s KPM Udyog. A similar case against his firm M/s Jindal Trading Co. was booked in the year 2022 by DRI only in regard to diversion of duty free imported goods i.e. PVC resin in domestic market. He has made the financial transactions between his firms M/s KPM Udyog and M/s Jindal Trading Co., Dhuri. and he would submit the balance sheet of M/s Jindal Co. for the year 2020 within two days.

5. The investigation thus far established that the importer M/s KPM Udyog imported 900 MT of PVC Resins, without payment of duty, in terms of Advance Authorization, during the period January, 2021 to March, 2021 vide a total 7 Bills of Entry at Mundra Port. All the goods imported against said 7 Bills of Entry were purchased by M/s KPM Udyog on High Sea Sales basis from M/s Subhash Trading Co., Barnala, Punjab. The aforesaid PVC Resins was to be used for manufacture and subsequent export of PVC pipes towards export obligation fulfilment but till the day of search i.e. 03.01.2023, not a single unit of PVC pipes had been exported. Further, the export obligation period in respect of Advance licenses (3011000040 dated 17.12.2020, 3011000209 dated 05.02.2021 and 3011000389 dated 22.03.2021) stood expired already on 17.06.2022, 05.08.022 and 22.09.2022 respectively. Further, the importer had not filed any application before DGFT for extension of export obligation fulfilment period. Thus, there was a clear failure to fulfil the export obligation as specified in the Advance Authorisation read with Notification No 18/2015-Cus dated 01.04.2015 and importer thus became liable for payment of duty foregone, which totals to **Rs.3,52,68,289/- (Three Crore Fifty-Two Lakhs Sixty-Eight Thousand Two Hundred and Eighty-Nine Only)**.

6. As the imported duty-free PVC resins was not used for export obligation fulfilment, the DRI officers made an attempt to find out the whereabouts of the said PVC resins. During search at the factory premises of M/s Jindal Trading Co on 03.01.2023, not a single gram of imported PVC resin was found in the premises. Upon questioning Shri Mohit Jindal stated that he had clandestinely sold of all the duty-free imported PVC resin in domestic market and he has not maintained any records of the such domestic sale.

6.1. As disclosed by him in statement dated 26.06.2023, Shri Mohit Jindal was proprietor of another firm- M/s Jindal Trading Co., Dhuri, Punjab-wherein he has committed identical fraud. In that case, he imported duty free PVC Resin (Grade: Suspension KV67) against Advance Authorisations and the imported goods were diverted to domestic market, instead of being used for manufacture of export goods toward export fulfilment obligation. He was arrested in that case on 30.07.2022 and a Show Cause Notice F. No. GEN/ADJ/COMM/278/2024-Adjn/3093 has been issued to M/s Jindal Trading Co., Dhuri on 23.07.2024 by the Principal Commissioner of Customs, Custom House, Mundra (**RUD-13**).

7. In view of the above, it appeared that M/s KPM Udyog, having imported duty free PVC Resin as per Table No. 2, have failed to account for the said PVC Resin and also failed to fulfil their export obligation. Shri Mohit Jindal who was the de-facto controller of M/s KPM Udyog was well aware of consequences for default in fulfil of export obligation and yet he outrightly diverted and sold duty free imported PVC resin in domestic market clandestinely. Thus, it is evident that Shri Mohit Jindal is mastermind of entire scam.

8. CONTRAVENTIONS & LEGAL PROVISIONS:-

8.1. Following are the provisions of law, which are relevant to the Investigation Report.

- (i) Para 4.03 of Foreign Trade Policy (2015-20);
- (ii) Para 4.05 of Foreign Trade Policy (2015-20);
- (iii) Para 4.16 of Foreign Trade Policy (2015-20);
- (iv) Notification No 18/2015-Customs dated 01-04-2015;

i. Para 4.03 of the Foreign Trade Policy (2015-20):-

“(a) Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed / utilized in the process of production of export product, may also be allowed.”

ii. Para 4.05 of the Foreign Trade Policy (2015-20):-

(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.”

iii. Para 4.16 (Actual User Condition for Advance Authorisation) of Foreign Trade Policy (2015-20):

4.16 Actual User Condition for Advance Authorisation

- i. *Advance Authorisation and / or material imported under Advance Authorisation shall be subject to ‘Actual User’ condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty-free input once export obligation is completed.*
- ii. *In case where CENVAT/input tax credit facility on input has been availed for the exported goods, even after completion of export obligation, the*

goods imported against such Advance Authorisation shall be utilized only in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer). For this, the Authorisation holder shall produce a certificate from Chartered Accountant at the time of filing application for Export Obligation Discharge Certificate to Regional Authority concerned. An AEO having valid certificate has the option to produce self-declaration to this effect.

iii. *Waste / Scrap arising out of manufacturing process, as allowed, can be disposed off on payment of applicable duty even before fulfillment of export obligation.*

iv. 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, 88, 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)

(iii).....

(iv).....

(v).....

(vi).....

(vii).....

(viii).....

(ix).....

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

8.2. Whereas, SECTION 28(4) provides for Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. - Where any duty has not been levied or not paid

8.3. Whereas, SECTION 28AA provides for Interest on delayed payment of duty.-(1) Notwithstanding anything contained shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed

8.4. Whereas, SECTION 114A provides for Penalty for short-levy or non-levy of duty in certain cases.—Where the duty has not been levied or shall, also be liable to pay a penalty equal to the duty or interest so determined:]

8.5. Whereas, SECTION 114AA provides for Penalty for use of false and incorrect material. —If a person knowingly shall be liable to a penalty not exceeding five times the value of goods.

8.6. Whereas, Section 111 of the Customs Act, 1962 provides for Confiscation of improperly imported goods, etc.

The following goods brought from a place outside India shall be liable to confiscation: -

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.....

.....

(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;

9. A combined reading of Para 4.03, 4.05 and 4.16 (Actual User Condition for Advance Authorization) of Foreign Trade Policy (2015-20) read with Notification No. 18/2015-Cus dated 01.04.2015, reveals that benefit of exemption from payment of Customs Duty is available on the input material subject to the "Actual User" conditions and the duty free imported inputs must be physically incorporated in export product and the input material cannot be transferred or sold or used for manufacturing any domestic products/DTA sale. However, M/s KPM Udyog imported 900 MT of duty-free material i.e. Poly Vinyl Chloride (PVC) Resins under Advance License with actual user conditions for export of Pipe made of PVC Resin, but not a single unit of PVC pipe was exported. Thus, the importer failed to comply with the requirements of law and incorrectly availed benefit of exemption of Notification No. 18/2015-Cus dated 01.04.2015. The aforesaid used of raw material is in contravention of Notification No. 18/2015-Cus dated 01.04.2015 as well as Para 4.03, 4.05 and 4.16 of Foreign Trade Policy (2015-20) rendering the aforesaid raw material/goods, which although not physically available for confiscation, liable for confiscation under Section 111(o) of Customs Act 1962 and in terms making importer i.e. M/s KPM Udyog liable for penalty under section 112(a) of Customs Act 1962. Further, the duty evaded on the raw material is recoverable under Section 28(4) of Customs Act, 1962 and penalty is leviable for duty evasion under section 114A of Customs Act, 1962.

10. DRI Ludhiana vide letter dated 27.12.2023 informed the DGFT, Ludhiana that the importer has diverted the imported goods to local market, which were imported against the Advance licenses (3011000040 dated 17.12.2020, 3011000209 dated 05.02.2021 and 3011000389 dated 22.03.2021) and DGFT (Directorate General of Foreign Trade, Ludhiana) has issued SCNs vide (i) ECA File No. LDAECAAPPLY00000926AM24 dated 17.01.2024 in regard to Advance Authorisation no. 3011000040 (**RUD-14**) (ii) ECA File No. LDAECAAPPLY00000928AM24 dated 17.01.2024 in regard to Advance Authorisation no. 3011000209 (**RUD-15**) and (iii) ECA File No. LDAECAAPPLY00000929AM24 dated 17.01.2024 in regard to Advance Authorisation no. 3011000389 (**RUD-16**) under Section 14 for taking action under Section 11, 12 & 13 of the Foreign Trade (Development and Regulation) Act, 1992, as amended and the Foreign Trade (Regulations) Rules 1993, for non-fulfillment of export obligation.

11 In view of the above, **M/s KPM Udyog**, (IEC- 3016915391) village- Benra, Kakarwal Road, Dhuri, Punjab – 148024, were called upon to show cause in writing to the Pr. Commissioner of Customs, Customs House Mundra, having his office at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421, in terms of the provisions of Customs Act, 1962, as to why: -

(i) The subject goods 900 MTs of PVC resin (as mentioned in Table-2) having assessable value of Rs.9,09,83,419/- (Nine Crore Nine Lakh

Wighty-Three Thousand Four Hundred Nineteen Only imported duty free under Notification no. 18/2015-Cus 01.04.2015, as amended, should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under Notification no. 18/2015-Cus 01.04.2015;

- (ii) The Customs Duty amounting to **Rs.3,52,68,289/- (Three Crore, Fifty-Two Lakh Sixty-Eight Thousand Two Hundred Eighty-Nine Only)** (Basic Customs Duty of **Rs.90,98,342/-**, SWS of **Rs.9,09,834/-**, Anti-dumping duty of **Rs. 70,81,626/-** and IGST of **Rs.1,81,78,487/-**) (as per Table-2 supra) should not be demanded and recovered under Section 28(4) of the Customs Act, 1962 from M/s KPM Udyog (IEC- 3015900749) read with conditions of the Bond(s) executed by them;
- (iii) Interest under **Section 28AA** of the Customs Act, 1962 on the Customs Duty demanded at (i) above should not be demanded and recovered from M/s KPM Udyog (IEC- 3015900749);
- (iv) Penalty under **Section 114A and Section 114AA** of the Customs Act, 1962, should not be imposed upon M/s KPM Udyog (IEC- 3015900749).

11.1 Further, in view of the above, Shri Mohit Jindal, being the de-facto controller of the importer firm - M/s KPM Udyog (IEC- 3015900749), for willfully committing the above fraud as he was fully aware that the duty free PVC Resin is meant for fulfilling export obligation and not for domestic sale and further suppressed the fact of their failure to comply with the conditions of import/export in respect of the impugned Advance Authorizations, which he was well aware of at the time of commencement of import itself, from the Customs Authorities, was also called upon to show cause in writing to the Pr. Commissioner of Customs, Customs House Mundra, having his office at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421, in terms of the provisions of Customs Act, 1962 as to why:-

(i) Penalty should not be imposed upon him under Section 114A and 114AA of Customs Act, 1962 for the reasons mentioned at **11.1** above.

12. The noticees were also asked to submit their written submission to Show Cause Notice within 30 days from the date of receipt of the Notice and appear before the adjudicating authority, when the case is posted for hearing, failing which the case is liable to be decided Ex-Parte on the basis of material evidence available on record.

13. No reply to notice or defence submission was received from the noticee even after a year from the date of issuance of Show Cause Notice, despite due service of the SCN and sufficient opportunity being provided.

14. Personal Hearings :-

14.1 I observe that 'Audi alteram partem', is an important principal of natural justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was granted to the noticee on 12.06.2025, 27.06.2025, 08.07.2025, 17.07.2025 and 21.07.2025. The letters were sent to the noticee, via speed post and emails. Details of the PH are as under:

14.2 For the personal hearing to be held on 12.06.2025, this office received an email on 09.06.2025, at 06.37 PM, from Shri Mohit Jindal, via email id -

'jindalmohit45@gmail.com'. The contents of the said email are reproduced below –

"To
The Pr. Commissioner of Customs
Custom House
Mundra
Subject: Request for Extension of Time to Respond to Show Cause Notice
Respected Sir/Madam,
With due respect, this is to bring to your kind attention that I have recently come to know about the issuance of a Show Cause Notice of Personal Hearing vide reference no. GEN/ADJ/COMM/598/2024, dated 31.12.2024, (DIN: 20250671MO0000052E52/2004) dated 03.06.2025 by your esteemed office. Unfortunately, due to a sudden and unfortunate mishappening in my family, I was preoccupied with urgent personal matters and could not check my official emails on time. As a result, I could not view or act upon the said notice within the prescribed period. Additionally, given the short timeframe and prevailing personal circumstances, I have not been able to engage or appoint a suitable authorized representative to properly address and respond to the contents of the notice. In light of the above genuine and unavoidable difficulties, I humbly request your good office to kindly grant me an extension of 20 days to enable me to prepare and submit an appropriate and well-considered reply.
I assure you that there is no intention of non-compliance, and I remain committed to fully cooperating with the department in this regard. Your kind understanding and favourable consideration of this request will be sincerely appreciated.
Thanking you,
Yours faithfully,
M/s KPM Udyog
Village Benra, Dhuri, Sangrur,
Punjab- 148024
Mohit Jindal S/o Barinder Kumar."

14.3 For the PH scheduled for 27.06.2025, no letter or adjournment request was received. Thereafter, 3rd PH was scheduled for 08.07.2025. In reply an email dated 08.07.2025 at 10.20 AM, was once again received from Shri Mohit Jindal, wherein a letter was attached, which is reproduced as under -

"To
The Pr. Commissioner of Customs
Custom House
Mundra
Subject: Request for Adjournment of the Hearing dated 08/07/2025
Respected Sir/Madam,
I am writing to respectfully request an adjournment of the hearing scheduled for tomorrow, i.e., 08/07/2025, due to certain urgent and unavoidable personal commitments. Owing to unforeseen personal reasons, I will be unable to remain present at the hearing. I sincerely apologize for the inconvenience this may cause and assure you that this request is made purely out of necessity, with no intention to delay the proceedings.
I humbly request your kind consideration in granting an adjournment and rescheduling the hearing to any date after 10 days. I assure you that either I

or an authorized Advocate/Counsel will be present on the rescheduled date to represent our side appropriately.

Thank you for your understanding and kind consideration.

Thanking you,

Yours faithfully,

M/s KPM Udyog
Village Benra, Dhuri, Sangrur,
Punjab- 148024
Mohit Jindal S/o Barinder Kumar”

14.4 On the date of Personal Hearing scheduled on 17.07.2025, yet again no response was received from Shri Mohit Jindal or M/s KPM Udyog ((IEC-3016915391). Further, a last opportunity to appear and present his case was given to M/s KPM Udyog & Shri Mohit Jindal on 21.07.2025. On 21.07.2025, Shri Puru Gupta, Advocate & Authorised Representative of M/s KPM Udyog and Shri Mohit Jindal, appeared and attended scheduled personal hearing via virtual mode. During the personal hearing, Shri Puru Gupta, Advocate, requested for leniency in the matter and requested for some time to arrange funds (for payment of Government dues). He attributed this inability to a shortage of funds, primarily due to the freezing of the firm's bank accounts and the ongoing litigations against both the firm and its proprietor. Shri Gupta further submitted that the business operations of the concerned firm have been completely shut down since 2022, primarily due to the adverse impact of the COVID-19 pandemic. In light of these circumstances, he requested that the authorities consider his plea with leniency.

14.5 Since, the Noticee has not submitted any defence reply in the matter but have availed the last opportunity for personal hearing, I will now proceed to decide the case on the basis of evidences available on record.

15. Discussion and Findings

15.1 I have carefully examined the contents of Show Cause Notice No. GEN/ADJ/COMM/598/2024-Adjn dated 31.12.2024, issued in respect of M/s KPM Udyog (IEC- 3016915391), Punjab (hereinafter referred to as “the Noticee No. 1”) and Shri Mohit Jindal (hereinafter referred to as “the Noticee No. 2”), along with the relied upon documents (RUDs), the investigation report submitted by the Directorate of Revenue Intelligence (DRI), the statements recorded under Section 108 of the Customs Act, 1962, and all other evidentiary material placed on record. I have also considered the relevant provisions of the Customs Act, 1962, the Foreign Trade Policy (FTP) 2015–2020, Notification No. 18/2015-Cus dated 01.04.2015 (as amended), and the various judicial precedents laid down by the Hon’ble Supreme Court and CESTAT. Based on above, I observe the issues before me to decide are as under:

- a) Whether the subject goods 900 MTs of PVC resin (as mentioned in Table-2) having assessable value of Rs.9,09,83,419/- (Nine Crore Nine Lakh Eighty-Three Thousand Four Hundred Nineteen Only) imported duty free under Notification no. 18/2015-Cus 01.04.2015, as amended, are liable to confiscation under Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under the Notification no. 18/2015-Cus 01.04.2015;

- b) Whether, Customs Duty amounting to Rs.3,52,68,289/- (Three Crore, Fifty-Two Lakh Sixty-Eight Thousand Two Hundred Eighty-Nine Only) (Basic Customs Duty of Rs.90,98,342/-, SWS of Rs.9,09,834/-, Anti-dumping duty of Rs. 70,81,626/- and IGST of Rs.1,81,78,487/-) as per Table-2 to the show cause notice is liable to be demanded and recovered from M/s KPM Udyog (IEC- 3015900749) under Section 28(4) of the Customs Act, 1962 read with condition No. 4 of Bond No. 2001756130;
- c) Whether, Interest at an applicable rate is liable to be demanded and recovered from M/s KPM Udyog (IEC- 3015900749) under Section 28AA of the Customs Act, 1962;
- d) Whether, Penalties under Section 114A and Section 114AA of the Customs Act, 1962 are liable to be imposed upon M/s KPM Udyog (IEC- 3015900749);
- e) Whether, Penalties under Section 114A and Section 114AA of the Customs Act, 1962 are liable to be imposed upon Shri Mohit Jindal, being the de-facto controller of the importer firm - M/s KPM Udyog (IEC- 3015900749).

16. I find that the present proceedings arise out of Show Cause Notice (SCN) issued to M/s. KPM Udyog (IEC- 3015900749), a partnership. The Noticee imported 900 MTs of duty-free PVC resin valued at approximately Rs.9,09,83,419/- (Nine Crore Nine Lakh Eighty-Three Thousand Four Hundred Nineteen Only) between Jan. 2021 to March 2021 under Advance Authorizations No. 3011000040 dated 17.12.2020, 3011000209 dated 05.02.2021 and 3011000389 dated 22.03.2021, issued under the Foreign Trade Policy 2015-2020 and availed exemption under Notification No. 18/2015-Cus dated 01.04.2015. As per the conditions, the imports were permitted duty-free subject to fulfilment of export obligations (EO) by exporting finished PVC pipes within 18 months.

16.1 The core issue in the present case pertains to the failure of the Noticee to fulfill the export obligations mandated under the Advance Authorization Scheme, and the consequent diversion of duty-free imported materials into the domestic market. Advance Authorizations No. 3011000040 dated 17.12.2020, 3011000209 dated 05.02.2021 and 3011000389 dated 22.03.2021 were issued by the DGFT, Ludhiana in favour of the Noticee, permitting the import of 900 MTs of PVC resin for the manufacture and export of PVC pipes. The said authorization expressly required the fulfillment of the stipulated export obligation within a period of 18 months from the date of its issuance, i.e., on or before 17.06.2022, 05.08.2022 and 22.09.2022 respectively.

16.2 It is observed that the Noticee imported the entire authorized quantity of 900 MTs of PVC Resin availing duty exemption under Notification No. 18/2015-Cus dated 01.04.2015, by filing 7 Bills of Entry at Mundra Port. The total duty foregone on such imports has been computed at Rs.3,52,68,289/- (Basic Customs Duty of Rs.90,98,342/-, SWS of Rs.9,09,834/-, Anti-dumping duty of Rs.70,81,626/- and IGST of Rs.1,81,78,487/-).

16.3 As per Paragraph 4.16 of the Foreign Trade Policy (FTP) 2015-20, Advance Authorizations are issued subject to the 'Actual User Condition', which stipulates that duty-free imported goods shall be utilized solely for the manufacture and export of the specified resultant products and shall not be transferred, sold, or otherwise disposed of in the domestic market.

16.3.1 M/s KPM Udyog Co. has executed Bond of Rs.1,18,37,200/- for Advance Authorization No. 3011000040 dt. 17.12.2020 (RUD-6 of the Notice), Bond of Rs.1,18,37,200/- for Advance Authorization No. 3011000209 dt. 05.02.2021 (RUD-7 of the Notice) and Bond of Rs.4,91,61,000/- for Advance Authorization No. 3011000389 dt. 22.03.2021 (RUD-8 of the Notice) for availing duty exemption. One of the conditions of the said Bond are:-

"In the event of failure of fulfill full or part of the export obligations as specified in said notification(s) and the License, we the obligor(s), hereby undertake to pay the customs duty but for the exemption and also interest @15% per annum thereon forthwith and without any demur, to the Government."

16.4 It is observed that an investigation was initiated by the Directorate of Revenue Intelligence (DRI), Ludhiana, on the basis of specific intelligence indicating that the duty-free imported PVC Resin was not being utilized for the intended purpose, but was instead diverted and sold in the domestic market. Pursuant to the said intelligence, a search was conducted at the business premises of the Noticee no. 1 on 03.01.2023. During the course of the search, no stock of PVC Resin was found. However, 570 PVC Pipes each having weight of approx. 11 kgs were found lying in the business premises. In the course of the proceedings, the authorized signatory and de-facto controller Shri Mohit Jindal admitted that he clandestinely sold off all the duty free imported PVC resin in domestic market and he had not maintained any records of the such domestic sale. He further stated that till date there was no export of pipes made from M/s KPM Udyog as he did not have any export orders for the pipes and he had no intention to export the same under Advance licenses (3011000040 dated 17.12.2020, 3011000209 dated 05.02.2021 and 3011000389 dated 22.03.2021) nor did he have any intention to fulfill the export obligation or comply with the conditions stipulated therein.

16.5 In the statement dated 04.01.2023 recorded under Section 108 of the Customs Act, 1962 (RUD-11 of the Notice), Smt. Kanta Jindal (age-62 years), Partner in M/s KPM Udyog inter alia stated as under: -

- she didn't have any knowledge about the working of the firm and her daughter in law- Smt. Annu Jindal used to operate the firm being the active partner.
- she had made some signatures on the documents related to the firm only when Smt. Annu Jindal was not available for the same.
- her son Shri Mohit Jindal used to be one of the partners in the firm but he left the partnership in the year 2018 due to engagement in some other firm.
- all the firm related information may be sought from Smt. Annu Jindal.

16.6 Further, Smt. Annu Jindal w/o Shri Mohit Jindal, Partner in M/s KPM Udyog in his statement dated 04.01.2023 (RUD-12 of the Notice) inter alia submitted that:

- She got married to Shri Mohit Jindal in November 2016 and in the year 2017, she joined the firm - M/s KPM Udyog as one of the partners where her husband Shri Mohit Jindal and her mother-in-law Smt. Kanta Jindal were already the partners.

- In the year 2018, her husband Shri Mohit Jindal left the partnership of the firm.
- M/s KPM Udyog is a partnership firm that deals in the sale/purchase/import of PVC pipes and its raw materials, with the partners being her and her mother-in-law Smt. Kanta Jindal.
- she used to sign all the business-related documents of the firm and her mother-in-law Smt. Kanta Jindal was just the silent partner.
- she had been shown the panchnamas of the searches conducted at the business and residential premises on 03.01.2023 and on being asked about the non-availability of stocks of imported raw material i.e. PVC resin imported by her firm under the three advance authorizations issued by the DGFT, she stated that her husband Shri Mohit Jindal would be knowing about the same as he was looking after the business of the firm.
- tomorrow she would come to DRI office alongwith Shri Mohit Jindal and Smt. Kanta Jindal so that queries of DRI could be answered.

16.7 In his statement dated 26.06.2023 (RUD-2 of the Notice) Sh. Mohit Jindal admitted to his wrongdoings. His statement is reproduced below:

Statement of Mohit Jindal s/o Shri Barinder Kumar, (age- 33 years), authorised signatory and de-facto controller of M/s KPM Udyog, Dhuri and home address- H.no. 122, ward no. 5B, Sodhian Mohalla, Dhuri, Punjab, tendered before Senior Intelligence Officer, Directorate of Revenue Intelligence on 26.06.2023 Under Section 108 of the Customs Act, 1962. Mobile Number 7298300045

In compliance to the Summons dated 26.06.2023, I, Mohit Jindal, today i.e. 26.06.2023 appeared before the SIO, DRI in his office situated at 213, Rani Jhansi Road, Civil lines, Ludhiana to record my statement. Before recording my statement, I have been explained the provisions of Section 108 of the Customs Act, 1962 that I have to make a true and correct statement which can be used as an evidence against me or any other person/firm in any departmental or court proceedings anywhere in India. I also understand that giving a false statement is a punishable offence under IPC. Accordingly, I state as under:

On being asked, I state that I am voluntarily tendering this statement before SIO, DRI Ludhiana under Section 108 of the Customs Act, 1962. I have been born and brought up in Dhuri, Punjab only. I have done Diploma in Pharmacy and Bachelor in Arts. I opened the partnership firm M/s KPM Udyog in the year 2010 and another firm M/s Jindal Trading Co, proprietorship firm, in the year 2014. I can read and write English and Punjabi language very well. This statement of mine is typed by the DRI officer on the Laptop as requested and being dictated by me.

Question 1) Please give a brief detail about the firm M/s KPM Udyog, vill. Benra, Kakkawal road, Dhuri, Punjab.

Answer 1): I have opened the Firm M/s KPM Udyog at vill. Benra, Kakkawal road, Dhuri, Punjab in the year 2010 with Smt Kanta Jindal, my mother, as one of the partner and thereafter after my marriage, I made my wife Smt Annu Jindal the other partner in the year 2017 and I left the partnership of the said firm in year 2018. M/s KPM Udyog deals in sale/purchase/import of PVC pipes and its raw materials. At present, my mother Smt Kanta Jindal and my Smt Annu Jindal are the partners in M/s KPM Udyog. M/s KPM Udyog I further state that from the very first day of the incorporation of the firm M/s KPM Udyog, I am looking after and controlling all the activities of M/s KPM Udyog and my mother and my wife are the just signing authorities in M/s KPM Udyog.

Question 2) You are being shown the panchnama dated 03.01.2023 drawn at the factory premises of your firm M/s KPM Udyog vill. Benra, Kakkawal road, Dhuri. The said panchnama does not show physical availability of stocked raw material either imported or domestic whereas your firm imported ample quantity of PVC resins under three advance authorisations issued by DGFT as per the provisions of Notification no. 18/2015-Customs dated 01.04.2015. Only very small quantity of finished goods i.e. PVC pipes 570 in numbers were found. Where is the import goods stock?

Answer 2): I state that I have seen the panchnama dated 03.01.2023 and signed on it in token of its correctness. In regard to non-availability of stocks of imported raw material i.e. PVC resin imported by my firm under three advance authorisations issued by DGFT as per the provisions of Notification no. 18/2015-Customs dated 01.04.2015, I state that I had clandestinely sold of all the duty free imported PVC resin in domestic market and I have not maintained any records of the such domestic sale. I further state till date there is no export of

Mohit Jindal
26/6/23

pipes made from M/s KPM Udyog as I did not have any export orders for the pipes and I had no intention to export the same.

Question 3) Please state about the transactions between your firm M/s KPM Udyog and M/s Jindal Trading Co., Dhuri.

Answer 3): I state that M/s Jindal Trading Co. is a proprietorship firm opened by me in the year 2014 and its business nature is same as M/s KPM Udyog. I further state a similar case against my firm M/s Jindal Trading Co. was booked in the year 2022 by DRI only in regard to diversion of duty free imported goods i.e. PVC resin in domestic market. I have made the financial transactions between my firms M/s KPM Udyog and M/s Jindal Trading Co., Dhuri. and I would submit the balance sheet of M/s Jindal Co. for the year 2020 within two days.

Question 4): Do you have anything else to say in this regard?

Answer 4): I don't have any other thing to say in this regard. I will cooperate with the investigation and would join the investigation whenever my presence is needed.

This statement is typed by the DRI officer on their PC on my request. I have given the above statement voluntarily and without any pressure, threat, greed or coercion and nothing has been concealed therein. This is my true and correct statement. I have signed all the pages of my statement running into two (02) pages.

Motilal Jindal
26/6/23

16.8 In view of above, I find that DRI investigation clearly establishes that the importer M/s KPM Udyog imported 900 MT of PVC Resins, without payment of duty, in terms of Advance Authorization, during the period January, 2021 to March, 2021 vide a total 7 Bills of Entry at Mundra Port. All the goods imported against said 7 Bills of Entry were purchased by M/s KPM Udyog on High Sea Sales basis from M/s Subhash Trading Co., Barnala, Punjab. The aforesaid PVC Resin was to be used for manufacture and subsequent export of PVC pipes towards export obligation fulfilment but till the day of the search i.e. 03.01.2023, not a single unit of PVC pipes was exported. Further, the export obligation period in respect of Advance licenses (3011000040 dated 17.12.2020, 3011000209 dated 05.02.2021 and 3011000389 dated 22.03.2021) already stood expired on 17.06.2022, 05.08.2022 and 22.09.2022 respectively. The importer had also not filed any application before the concerned DGFT for extension of export obligation fulfilment period. Thus, there was a clear failure to fulfil the export obligation as specified in the Advance Authorisation read with Notification No 18/2015-Cus dated 01.04.2015 and the total duty forgone on the said advance authorizations total

amounting to Rs.3,52,68,289/- (Three Crore Fifty-Two Lakhs Sixty-Eight Thousand Two Hundred and Eighty-Nine Only) is liable to be recovered from the importer.

16.9 I also observed that as admitted by Sh. Mohit Jindal in his statement dated 26.06.2023, he was proprietor of another firm- M/s Jindal Trading Co., Dhuri, Punjab- wherein he has committed identical fraud when he imported duty free PVC Resin (Grade: Suspension KV67) against Advance Authorisations and the imported goods were diverted to domestic market, instead of being used for manufacture of export goods toward export fulfilment obligation. He was arrested in that case on 30.07.2022 and a Show Cause Notice F. No. GEN/ADJ/COMM/278/2024-Adjn/3093 was issued to M/s Jindal Trading Co., Dhuri on 23.07.2024 by the Principal Commissioner of Customs, Custom House, Mundra and the same has been adjudicated and confirmed by the adjudicating authority for demand of non -paid customs duty (duty foregone) along with applicable interest and penalties.

16.10 The entitlement to duty exemption under Notification No. 18/2015-Cus dated 01.04.2015 is expressly conditional upon the fulfillment of prescribed export obligations. The language of the said Notification unequivocally provides that, in the event of non-fulfillment of such conditions, the importer shall be liable to pay the duty foregone along with applicable interest. This requirement is further reinforced by the provisions of the Foreign Trade Policy 2015-20, particularly Paragraphs 4.03, 4.05, and 4.16, which collectively underscore the binding and mandatory nature of the export obligations attached to Advance Authorizations.

16.11 I note that the noticee while applying for Advance Licence no. 3011000040 dated 17.12.2020, have also submitted a Bond to concerned authorities, wherein the conditions of Bond are mentioned as under –

1. I/we, the obligor(s) fulfil all the conditions of the said notification and shall observe and comply with all terms and conditions of the said Notification.
2. We the obligors(s) shall observe all the terms and condition specified license.
- 3 We, the obligor(s) shall fulfill the export obligation as specified in said notification and licensee shall produce evidence of having, so fulfilled the export obligation within 30 days from the expiry of the specified export obligation period to the satisfaction of the Government.
4. In the event of failure to fulfill full or part of the export obligation as specified in the said notification and the License, we the obligor(s), hereby undertake to pay the customs duty but for the exemption and also interest @ 18% per annum thereon forthwith and without any demur to the government.
5. We, the obligor(s), shall comply with the condition and limitation stipulated in the said import and Export Policy/Foreign Trade Policy as amended from time to time.
6. We, the obligor(s), shall not change the name and style under which we the obligor(s) are doing business or change the location of the manufacturing premises except with the written permission of the Government.

16.11.1 Further, I observe that in the Condition Sheet for Advance Licence no. 3011000040 dated 17.12.2020, one of the conditions, reads as under –

5. Authorisation Holder shall deliver or cause to deliver to the Authorisation issuing Office, within 2 months from the date of expiry of the Export Obligation period stated above, documents as prescribed under Paragraph 4.44 and 4.46 of Handbook of Procedures 2015-2020, as amended, from time to time, as evidence of fulfilment of Export Obligation imposed on this Authorisation. In case of bona fide default, provisions of Paragraph 4.49 of the Handbook of Procedures 2015-2020 as amended, from time to time, shall apply. Failure to fulfil the Export Obligation in the manner as prescribed in the Handbook of Procedures 2015-20 shall attract penal proceedings under the provisions of Foreign Trade (Development Regulation) Act, 1992.

16.12 It is also noted that the Noticee did not extend any meaningful cooperation during the course of adjudication proceedings. Although personal hearings were scheduled on multiple occasions, the Noticee initially sought an adjournment of 20 days, followed by a further request for an additional 10 days. Despite the accommodation granted, the Noticee failed to submit any written defence reply. Only the last opportunity for personal hearing was attended by the representative of both noticees.

16.13 On a conjoint reading of Para 4.03, 4.05 and 4.16 (Actual User Condition for Advance Authorisation) of Foreign Trade Policy (2015-20) read with Notification No. 18/2015-Cus dated 01.04.2015, reveals that benefit of exemption from payment of Customs Duty is available on the input material subject to the “Actual User” conditions and the duty free imported inputs must be physically incorporated in export product and the input material cannot be transferred or sold or used for manufacturing any domestic products/DTA sale. However, M/s KPM Udyog imported 900 MT of duty-free material i.e. Poly Vinyl Chloride (PVC) Resins under Advance License with actual user conditions for export of Pipe made of PVC Resin, but not a single unit of PVC pipe was exported. On the contrary, the entire quantity of imported material was found to have been diverted to the domestic market, in clear violation of the terms and conditions prescribed under the said Notification and the FTP provisions.

16.13.1 I further observe that DRI Ludhiana vide letter dated 27.12.2023 informed the DGFT, Ludhiana that the importer has diverted the imported goods to local market, which were imported against the Advance licenses (3011000040 dated 17.12.2020, 3011000209 dated 05.02.2021 and 3011000389 dated 22.03.2021) and DGFT (Directorate General of Foreign Trade, Ludhiana) has issued SCNs vide (i) ECA File No. LDAECAAPPLY00000926AM24 dated 17.01.2024 in regard to Advance Authorisation no. 3011000040 (**RUD-14**) (ii) ECA File No. LDAECAAPPLY00000928AM24 dated 17.01.2024 in regard to Advance Authorisation no. 3011000209 (**RUD-15**) and (iii) ECA File No. LDAECAAPPLY00000929AM24 dated 17.01.2024 in regard to Advance Authorisation no. 3011000389 (**RUD-16**) under Section 14 for taking action under Section 11, 12 & 13 of the Foreign Trade (Development and Regulation) Act, 1992, as amended and the Foreign Trade (Regulations) Rules 1993, for non-fulfillment of export obligation.

16.14 Accordingly, I find that by virtue of the deliberate contravention committed by the Noticee, the imported goods, though no longer available for physical confiscation, are rendered liable for confiscation under Section 111(o) of the Customs Act, 1962. In addition, in terms of the bond executed by the

Noticee with the concerned authorities, imposition of redemption fine is also warranted. The modus operandi adopted by the Noticee clearly establishes that the exemption benefits were fraudulently availed through wilful misstatement and suppression of material facts. Such conduct squarely attracts the provisions of Section 28(4) of the Customs Act, 1962, which empowers recovery of duties not levied or short-levied due to fraud, collusion, wilful misstatement, or suppression of facts. Therefore, Customs Duty amounting to Rs.3,52,68,289/- (Three Crore, Fifty-Two Lakh Sixty-Eight Thousand Two Hundred Eighty-Nine Only) (Basic Customs Duty of Rs.90,98,342/, SWS of Rs.9,09,834/-, Anti-dumping duty of Rs. 70,81,626/- and IGST of Rs.1,81,78,487/-), as detailed in Table-2 of the Show Cause Notice, is recoverable from M/s KPM Udyog (IEC- 3015900749), along with applicable interest under Section 28AA of the Customs Act, 1962. Further, in view of the established wilful suppression and evasion of duty, the Noticee is also liable for imposition of penalty under Section 114A of the Customs Act, 1962.

16.15 However, no evidence has been brought on record to establish that the Noticee has knowingly or intentionally made, signed, or used any declaration, statement, or document that is false or incorrect in any material particular before the Customs or DGFT authorities. In the absence of any such deliberate misstatement or falsification, I find no justification to invoke the penal provisions of Section 114AA of the Customs Act, 1962. Accordingly, I find that no penalty is imposable under the said section on the Noticee.

16.16 I further find that Shri Mohit Jindal, being the de-facto controller of the importer firm - M/s KPM Udyog (IEC- 3015900749), willfully committed the above fraud as he was fully aware that the duty free PVC Resin is meant for fulfilling export obligation and not for domestic sale and further suppressed the fact of their failure to comply with the conditions of import/export in respect of the impugned Advance Authorizations, which he was well aware of at the time of commencement of import itself, from the Customs Authorities. By his above acts, he has rendered M/s KPM Udyog liable to differential duty and I find him liable to penalty under Section 114A of the Customs Act, 1962. However, as no evidence has been brought on record to establish that the Noticee no. 2, has knowingly or intentionally made, signed, or used any declaration, statement, or document that is false or incorrect in any material particular before the Customs or DGFT authorities, I don't find any

16.17 In view of the above discussion and findings, I pass the following order.

ORDER:

- (i) I hold the subject goods 900 MTs of PVC resin (as mentioned in Table-2) having assessable value of Rs.9,09,83,419/- (Nine Crore Nine Lakh Eighty-Three Thousand Four Hundred Nineteen Only) imported duty free under Notification no. 18/2015-Cus 01.04.2015, as amended, liable to confiscation under Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under the said Notification. Further, in terms of conditions of bond executed by the Importer with the DGFT authorities, I impose a redemption fine of Rs.1,00,00,000/- (Rupees One Crores Only) on M/s KPM Udyog (IEC- 3015900749);
- (ii) I confirm the demand of Customs Duty amounting to Rs.3,52,68,289/- (Three Crore, Fifty-Two Lakh Sixty-Eight Thousand Two Hundred Eighty-Nine Only) (Basic Customs Duty of Rs.90,98,342/, SWS of

Rs.9,09,834/-, Anti-dumping duty of Rs. 70,81,626/- and IGST of Rs.1,81,78,487/-) (as per Table-2 of the Notice) under Section 28(4) of the Customs Act, 1962 read with conditions of the Bond(s), and order to recover the same from M/s KPM Udyog (IEC- 3015900749);

- (iii) I order recovery of interest under Section 28AA of the Customs Act, 1962, from M/s KPM Udyog (IEC- 3015900749) on the above amount confirmed at (ii) above;
- (iv) I Impose penalty of Rs.3,52,68,289/- (Three Crore, Fifty-Two Lakh Sixty-Eight Thousand Two Hundred Eighty-Nine Only) under Section 114A of the Customs Act, 1962, on M/s KPM Udyog (IEC- 3015900749); I also Impose penalty of Rs.3,52,68,289/- (Three Crore, Fifty-Two Lakh Sixty-Eight Thousand Two Hundred Eighty-Nine Only) under Section 114A of the Customs Act, 1962, on Shri Mohit Jindal, the controller of M/s KPM Udyog for the reasons as discussed above.
- (v) I refrain from imposing any penalty on M/s KPM Udyog (IEC- 3015900749) under Section 114AA of the Customs Act, 1962, for the reasons as discussed above. I also refrain from imposing any penalty on Shri Mohit Jindal the controller of M/s KPM Udyog under Section 114AA of the Customs Act, 1962 for the reasons as discussed above.

This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992, or rules made there under or under any other law for the time being in force. The Show Cause Notice F.No. GEN/ADJ/COMM/598/2024-Adjn dated 31.12.2024, issued in respect of M/s KPM Udyog (IEC- 3016915391) is accordingly disposed of.

Dated 28.07.2025



(Nitin Saini)

Commissioner of Customs
Custom House, Mundra.

To, (The Noticee):

1. M/s KPM Udyog (IEC- 3016915391),
Village- Benra, Kakarwal Road, Dhuri,
Punjab – 148024.
2. Shri Mohit Jindal,
Controller of the importer firm M/s KPM Udyog (IEC- 3015900749),
House No. 122, Ward No. 5B,
Sodhian Mohalla, Dhuri, Punjab-148024

Copy to:-

1. The Directorate of Revenue Intelligence, Ludhiana Zonal Unit, 213, Rani Jhansi Road, Civil Lines, Ludhiana (email: dri-ldh-pb@nic.in);
2. The Assistant Commissioner of Customs (RRA), CCO, Ahmedabad Zone;
3. The Deputy /Assistant Commissioner (Recovery/TRC), Customs House, Mundra for necessary action;
4. The Superintendent (EDI), Customs House, Mundra for uploading on Website;
5. Notice Board /Guard File.