



सीमा शुल्ककार्यालय का आयुक्त के (निवारक), सीमा शुल्क भवन,
जामनगर- राजकोट हाइवे, विक्टोरिया ब्रिज के पास,
जामनगर) गुजरात – (361 001

Office of the Commissioner of Customs (Preventive),
'Seema Shulk Bhavan', Jamnagar – Rajkot Highway,
Near Victoria Bridge, Jamnagar (Gujarat) – 361 001
Email: commr-custjmr@nic.in; adj-custjmr@nic.in

DIN – 20260371MM000000A022

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|----|---|--|
| 1. | फ़ाइल क्रमांक/ File Number | F. No. CUS/3880/2024-Adjn |
| 2. | मूल आदेश क्रमांक/
Order-in-Original No. | 24/Additional Commissioner/ 2025-26 |
| 3. | द्वारा पारित/ passed by | एन .सृजन कुमार / N. Srujan Kumar
अपर आयुक्त/ Additional Commissioner,
सीमा शुल्क, निवारक/Customs (Preventive)
जामनगर/ Jamnagar. |
| 4. | Date of Order /आदेश दिनांक
Date of issue / आदेश जारी
किया | 05.03.2026
05.03.2026 |
| 5. | कारण बताओ नोटिस क्रमांक
एवं दिनांक
Show Cause Notice Number
& Date | ADC-10/2025-26 dated 21.08.2025 |
| 6. | नोटिसी का नाम/
Name of Noticee | M/s. Apollo Solar Power,
B 5240, Opp Sardar Patel School Kaliyabid,
Bhavnagar-364002. |

01. इस आदेश की मूल प्रति संबन्धित व्यक्ति को निशुल्क प्रदान की जाती है।

The original copy of this order is provided free of cost to the person concerned.

02. इस मूल आदेश से व्यथित कोई भी व्यक्ति सीमा शुल्क अधिनियम, की धारा 1962 128A)(1)a सीमा शुल्क नियम (अपील), 1982 के नियम 3 के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिन के भीतर फॉर्म सीए-1 में निम्नलिखित पते पर अपील दायर कर सकता है।फॉर्म सीए-1 में अपील का प्रपत्र, दो प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। जिनमें से कम से कम एक प्रमाणित प्रति हो

आयुक्त (अपील)
चौथी मंजिल, हडको भवन,
ईश्वर भुवन रोड, नवरंगपुरा
अहमदाबाद – 380 009

Commissioner (Appeals),
4th Floor, HUDCO Building,
Ishwar Bhuvan Road,
Navrangpura,
Ahmedabad – 380 009

Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-1, within sixty days from the date of receipt of this order, under the provisions of Section 128 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals)



	Rules, 1982 before the Commissioner (Appeals) at the above mentioned address. The form of appeal in Form No. CA.-1 shall be filed in duplicate 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).
03.	अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये) 0.50पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची -I, मद 6 के तहत निर्धारित किया गया है।
	The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paise only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
04.	अपीलीय ज्ञापन के साथ शुल्क भुगतान /जुर्माना /अर्थ दंड का सबूत भी संलग्न करें अन्यथा सीमा शुल्क अधिनियम, ,1962 की धारा 128 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।
	Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 128 of the Customs Act, 1962.
05.	अपील प्रस्तुत करते समय यह सुनिश्चित करें की सीमा शुल्क अपील)) नियम, और 1982 नियम (प्रोसीजर) सिस्टेट प्रक्रिया, के सभी नियमों का पूरा पालन हुआ है। 1982
	While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.
06.	इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के 7.5% के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।
	An appeal, against this order shall lie before the Commissioner (Appeals), on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.



BRIEF FACTS OF THE CASE

M/s. Apollo Solar Power, B 5240, Opp. Sardar Patel School Kaliyabid, Bhavnagar-364002 (IEC No. 2416905953) (hereinafter referred to as “the Noticee” / “the importer”) havdimported “SEMI AUTOMATIC SOLAR PANEL LAMINATOR MODEL RO-B1, SOLAR CELL LASER DICING MACHINE MODEL : GSC-50S, SOLAR MODULE TESTER MODEL NO.: GTM-B, SOLAR PANEL FRAMING MACHINE MODEL : RO-ZKJ” at Pipavav Port under EPCG License No. 2430003823 dated 07.09.2016 having assessable value of Rs. 29,05,743.24/-. The importer filed Bill of Entry No. 8620514 dated 20.02.2017 under Zero duty EPCG Scheme claiming exemption under Notification No. 16/2015-Cus dated 01.04.2015 as per following details:

Bill of Entry No.	Description of the Imported goods	Assessable Value (in Rs.)	Customs duty saved as per EPCG License	Duty forgone/ Debited at the time of clearance
8620514 dated 20.02.2017	“SEMI AUTOMATIC SOLAR PANEL LAMINATOR MODEL RO-B1, SOLAR CELL LASER DICING MACHINE MODEL : GSC-50S, SOLAR MODULE TESTER MODEL NO.: GTM-B, SOLAR PANEL FRAMING MACHINE MODEL : RO-ZKJ”	29,05,743.24/-	9,05,000/-	7,67,937/-

2. Notification 16/2015-Cus dated 01.04.2015 as amended, provides for exemption from (i) the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and (ii) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, when specifically claimed by the importer for import of Capital goods and spare parts subject to conditions and obligations to export goods stipulated therein. The relevant portion of the said notification is produced herein below for reference:



Notification No. 16/2015-Cus dated 01.04.2015

"G.S.R. 248 (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 goods specified in the Table 1 annexed hereto, from,-

- (i) the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and
- (ii) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, when specifically claimed by the importer.

2. The exemption under this notification shall be subject to the following conditions, namely:-

(1) that the goods imported are covered by a valid authorization issued under the Export Promotion Capital Goods (EPCG) Scheme in terms of Chapter 5 of the Foreign Trade Policy permitting import of goods at zero customs duty;

(2) that the authorization is registered at the port of import specified in the said authorization and the goods, which are specified in the Table 1 annexed hereto, are imported within eighteen months from the date of issue of the said authorization and the said authorization is produced for debit by the proper officer of customs at the time of clearance:

(5) that the importer executes a bond in such form and for such sum and with such surety or security as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs binding himself to comply with all the conditions of this notification as well as to fulfill export obligation on Free on Board (FOB) basis equivalent to six times the duty saved on the goods imported as may be specified on the authorization, or for such higher sum as may be fixed or endorsed by the Regional Authority in terms of Para 5.10 of the Handbook of Procedures Vol I, issued under para 2.4 of the Foreign Trade Policy, within a period of six years from the date of issue of Authorization, in the following proportions, namely :-

Sr. No.	Period from the date of issue of the Authorization	Minimum Export Obligation to be fulfilled
1	Block of 1 st to 4 th Year	50%
2	Block of 5 th to 6 th Year	Balance

Provided that in case the authorisation is issued to a CSP, the CSP shall execute the bond with bank guarantee and the bank guarantee shall be equivalent to 100% of the duty foregone, and the bank



guarantee shall be given by CSP or by anyone of the users or a combination thereof, at the option of the CSP:

(6)

(7) that the importer, including a CSP, produces within 30 days from the expiry of each block from the date of issue of authorisation or within such extended period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow, evidence to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs showing the extent of export obligation fulfilled, and where the export obligation of any particular block is not fulfilled in terms of the condition (5), the importer shall within three months from the expiry of the said block pay duties of customs equal to an amount which bears the same proportion to the duties leviable on the goods, but for the exemption contained herein, which the unfulfilled portion of the export obligation bears to the total export obligation, together with interest at the rate of fifteen per cent. per annum from the date of clearance of the goods;

(9).....

(10).....

(11).....

(12)..... ”

3. The Notification No.16/2015-Cus dated 01.04.2015 provides that for availing the exemption under the said notification, the importer is required to execute a bond in such form and for such sum and with such surety or security as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs binding himself to fulfill Export Obligation on FOB basis equivalent to six times the duty saved on the goods imported as specified in the aforesaid EPCG Authorization, or for such higher sum as may be fixed or endorsed by the licensing Authority or Regional Authority, within a period of six years from the date of issuance of the authorization i.e. complete 50% export obligation within first block of 1st to 4th Year and remaining balance in second block of 5th to 6th years.

4. As per conditions of the Notification No. 16/2015-Cus dated 01.04.2015, the importer executed Bond as reflected in EDI system with Sr. No. 2001178813 dated 20.02.2017 (RUD-03) of Rs. 19,80,000/- (Rupees Nineteen Lakhs Eighty Thousand only) in respect of EPCG License No. 2430003823 dated 07.09.2016 at the time of registration of the said License at the port of import i.e. INPAV1, thereby, the importer had undertaken to fulfil the conditions of the Bond, the EPCG License and the relevant Customs Notifications read with the relevant provisions of Customs Act, 1962 and Rules and Regulations made thereunder.

5. Further, as per Para 2.1 of Circular No. 17/2009-Cus. dated 25.05.2009, the importer submitted the bank guarantee dated 28.03.2016 @15% of the duty saved



amount which is amounting to Rs. 1,35,750/- issued by the Bank of Baroda, Bhavnagar Branch, Bhavnagar (RUD-4). The relevant portion of Circular No. 17/2009-Cus. dated 25.05.2009 is reproduced as follows:

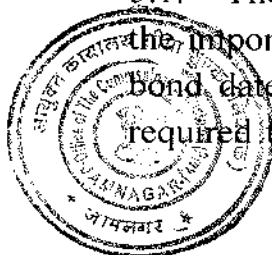
“

2.1. In view of the modifications proposed at para-2 above, the table in para-3.1 of the circular No.58/2004-Cus shall be replaced with the following table and the note.

Table

Category of Importer	Quantum of BG/cash security
(a) All exporters who have an export turnover of Rs 5 crores of goods exported physically or of services in current or preceding financial year and having a good track record of three years of exports	Nil
(b) Public Sector Undertaking	Nil
(c) Star Export House	Nil
(d) Manufacturer exporters / Service Providers registered with Central Excise or the Service Tax authorities, as the case may be, who have been exporting during the previous two financial years and have minimum export of Rs. 1 crore or more during the preceding financial year.	Nil
(e) Manufacturer exporter / Service Provider registered with Central Excise or the Service Tax authorities, who has paid central excise duty/ Service Tax of Rs.1 crore or more, as the case may be, during the preceding financial year.	Nil
(f) (1) Manufacturer exporters who are not covered under (a), (b),(c),(d) & (e) above, (2) Units in Agri Export Zones (AEZs), (3) Established Service Providers who have free foreign Exchange earnings of Rs.50 lakhs or more during the preceding financial year and have a clean track record.	15%
(g) service providers in the port handling sector who are appointed as Custodians by the jurisdictional Customs / Central Excise authorities	25%
(h) Others	100%

5.1. The aforesaid EPCG License No. 2430003823 dated 07.09.2016 was issued to the importer for a period of 6 years and valid upto 07.09.2022 and accordingly the bond dated 20.02.2017 and the bank guarantee were executed. The importer was required to fulfill the entire Export Obligation within a period of 6 years from the



date of issuance of the said EPCG Authorization as per condition laid down in the Notification No.16/2015-Cus dated 01.04.2015 and EPCG License itself. The importer was also required to submit the installation certificate within 06 months from the date of import and to produce proof of fulfillment of export obligation within the periods as prescribed in the said notification. Since, the EPCG Authorization was issued to the importer on 07.09.2016, as per condition of the said Notification, they were required to fulfill the export obligation by 07.09.2022 and submit the Export Obligation Discharge Certificate issued by the DGFT Authority to the department. The importer was required to fulfill the Export Obligation on FOB basis, equivalent to 6 times the duty saved on the goods imported as specified in the license within the specified time limit.

6. Vide letter F. No. GEN/EPC/MISC/24/2024 dated 07.03.2024 & reminder letters dated 21.03.2024 & 28.03.2024, the Assistant Commissioner, C.H. Pipavav asked the importer asked the importer M/s. Apollo Solar Power, Bhavnagar to produce the Export Obligation Discharge Certificate (EODC) or status of the communication made with concerned DGFT with regard to issuance of EODC. However, no reply was received from the importer.

7. It appeared that the importer failed to fulfill the export obligation as specified in the License and did not comply with the mandatory conditions of the Customs Notification 16/2015-Cus dated 01.04.2015, EPCG Authorization and conditions of the bond dated 20.02.2017.

7.1 The importer had imported the "SEMI AUTOMATIC SOLAR PANEL LAMINATOR MODEL RO-B1, SOLAR CELL LASER DICING MACHINE MODEL : GSC-50S, SOLAR MODULE TESTER MODEL NO.: GTM-B, SOLAR PANEL FRAMING MACHINE MODEL : RO-ZKJ" without payment of duties of Customs in terms of Notification No. 16/2015-Cus dated 01.04.2015 subject to fulfillment of conditions namely:-

(5) that the importer executes a bond in such form and for such sum and with such surety or security as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs binding himself to comply with all the conditions of this notification as well as to fulfill export obligation on Free on Board (FOB) basis equivalent to six times the duty saved on the goods imported as may be specified on the authorization, or for such higher sum as may be fixed or endorsed by the Regional Authority in terms of Para 5.10 of the Handbook of Procedures Vol I, issued under para 2.4 of the Foreign Trade Policy, within a period of six years from the date of issue of Authorization, in the following proportions, namely :-

Sr. No.	Period from the date of issue of the Authorization	Minimum Export Obligation to be fulfilled
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1	Block of 1 st to 4 th Year	50%
2	Block of 5 th to 6 th Year	Balance

7.2 It appeared that the importer failed to submit documents evidencing fulfillment of Export Obligation against the duty saved at the time of clearance of the imported capital goods even after time limit to fulfill export obligation was over.

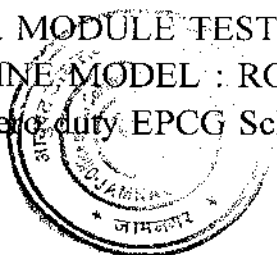
8. Section 143 of the Customs Act, 1962 provides for allowing import on execution of bonds in certain cases. Section 143 of the Customs Act, 1962 reads as under:

“Section 143: Power to allow import or export on execution of bonds in certain cases: - (1) Where this act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of the officers of customs and the 1[Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import such import , export or clearance without detriment to that person, the 2[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 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.

(2) if the thing is done within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.

(3) If the thing is not done within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall, without prejudice to any other action that may be taken under this Act or any other law for time being in force, be entitled to proceed upon the bond in accordance with law.”

8.1 The capital goods i.e. “SEMI AUTOMATIC SOLAR PANEL LAMINATOR MODEL RO-B1, SOLAR CELL LASER DICING MACHINE MODEL : GSC-50S, SOLAR MODULE TESTER MODEL NO.: GTM-B, SOLAR PANEL FRAMING MACHINE MODEL : RO-ZKJ” imported by the importer were allowed clearance under zero duty EPCG Scheme by the proper officer on execution of bond in terms



of Notification No. 16/2015-Cus dated 01.04.2015 by the importer wherein the importer bound themselves to discharge required export obligation within a specified period in certain manner. The importer executed Bond dated 20.02.2017 along with the bank guarantee and the same is registered in EDI with Sr No. 2001178813 dated 20.02.2017 (RUD-03) of Rs. 19,80,000/- (Rupees Nineteen Lakhs Eighty Thousand only).

9. As per Sr. No. (7) of the Notification No. 16/2015-Cus dated 01.04.2015, supra, the importer was required to produce within 30 days from the expiry of each block from the date of issue of authorization or within such extended period, evidence to the extent of export obligation fulfilled by them, and where the export obligation of any particular block was not fulfilled, the importer is required to pay duties of Customs equal to an amount which bears the same proportion to the duties leviable on the goods, but for the exemption contained herein, which the unfulfilled portion of the export obligation bears to the total export obligation, together with interest at the rate of 15% per annum from the date of clearance of the goods.

9.1 The importer did not submit documents to the Assistant Commissioner/ Deputy Commissioner, Customs House, Pipavav evidencing fulfillment of Export obligation and thereby, failed to disclose the fact of non-fulfillment of Export Obligation to the department with intention to evade the payment of customs duty.

9.2 It therefore appeared that the importer failed to fulfil the condition laid down under Notification No. 16/2015-Cus dated 01.04.2015 as they failed to fulfill export obligation against import of capital goods i.e. "SEMI AUTOMATIC SOLAR PANEL LAMINATOR MODEL RO-B1, SOLAR CELL LASER DICING MACHINE MODEL : GSC-50S, SOLAR MODULE TESTER MODEL NO.: GTM-B, SOLAR PANEL FRAMING MACHINE MODEL : RO-ZKJ" under Zero rated EPCG Authorization 2430003823 dated 07.09.2016 inasmuch as they neither produced documents evidencing exports nor produced EODC issued by DGFT, Rajkot or any extension granted by DGFT, Rajkot.

9.3 The importer failed to fulfill the conditions of the Bond executed and failed to pay the duty along with interest at their own. It therefore appeared that the exemption of duty of Rs 7,67,937/- in respect of the said imported goods was wrongly availed by the importer in violation of the conditions of Notification No. 16/2015-Cus dated 01.04.2015. Hence, the importer appeared to be not eligible for the exemption and liable to pay the customs duty amounting to Rs. 7,67,937/- saved at the time of importation along with interest in terms of Notification No. 16/2015-Cus dated 01.04.2015 and the same appeared recoverable by enforcing the bond and bank guarantee executed by the importer read with provisions of Section 143 of Customs Act, 1962.

10. Section 111(o) provides confiscation of imported goods for non-observance of conditions specified for exemption from duty. Section 111(o) reads as under:-



SECTION 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;”

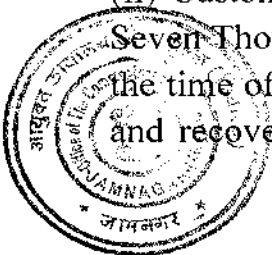
The import of capital goods i.e. “SEMI AUTOMATIC SOLAR PANEL LAMINATOR MODEL RO-B1, SOLAR CELL LASER DICING MACHINE MODEL : GSC-50S, SOLAR MODULE TESTER MODEL NO.: GTM-B, SOLAR PANEL FRAMING MACHINE MODEL : RO-ZKJ” imported by the importer are exempted subject to condition of export obligation and executing Bond. The importer availed the exemption however failed to fulfil export obligation and in that case payment of customs duty along with interest as bound by themselves by executing bond. Hence, conditions stipulated under Notification No. 16/2015-Cus dated 01.04.2015 read with conditions attached to EPCG License 2430003823 dated 07.09.2016 issued by the DGFT under Foreign Trade Policy/ Foreign Trade Development Act, 1992 is not observed by the importer attracting the provisions of Section 111(o) of the Customs Act, 1962. Therefore, the goods imported by the importer appeared liable to confiscation under Section 111(o) of Customs Act, 1962.

11. It further appeared that all the aforesaid acts of omission and commission on the part of the Noticee have rendered the subject imported goods totally valued at Rs 29,05,743.24/- liable to confiscation under Section 111(o) of the Customs Act, 1962 and the Noticee appeared to have rendered themselves liable to penalty under Section 112 and Section 117 of the Customs Act, 1962.

12. Accordingly, a Show Cause Notoce No. ADC-10/2025-26 dated 21.08.2025 was issued to the importer asking them, as to why:

(i) the benefit of Zero rated duty of EPCG Scheme under Notification No. 16/2015-Cus dated 01.04.2015 availed on import of “SEMI AUTOMATIC SOLAR PANEL LAMINATOR MODEL RO-B1, SOLAR CELL LASER DICING MACHINE MODEL : GSC-50S, SOLAR MODULE TESTER MODEL NO.: GTM-B, SOLAR PANEL FRAMING MACHINE MODEL : RO-ZKJ” vide Bill of Entry No. 8620514 dated 20.02.2017 should not be denied;

(ii) Customs duty amounting to Rs 7,67,937/- (Rupees Seven Lakhs Sixty-Seven Thousand Nine Hundred thirty-Seven only) being the duty foregone at the time of import under Zero rated EPCG License, should not be demanded and recovered from them in terms of Notification No. 16/2015-Cus dated



01.04.2015 as amended, read with conditions of the Bond Executed along with the bank guarantee furnished by them and by enforcing the terms of the Bond under Section 143 of the Customs Act, 1962;

(iii) Interest at the applicable rate should not be recovered from them on the Customs duty as mentioned at (ii) above in terms of Customs Notification No. 16/2015-Cus dated 01.04.2015 as amended read with conditions of Bond executed along with the bank guarantee by enforcing the terms of the Bond under Section 143 of Customs Act, 1962.

(iv) the imported capital goods i.e. "SEMI AUTOMATIC SOLAR PANEL LAMINATOR MODEL RO-B1, SOLAR CELL LASER DICING MACHINE MODEL : GSC-50S, SOLAR MODULE TESTER MODEL NO.: GTM-B, SOLAR PANEL FRAMING MACHINE MODEL : RO-ZKJ" valued at Rs 29,05,743.24/- should not be confiscated under Section 111(o) of Customs Act, 1962 read with Customs Notification No. 16/2015-Cus dated 01.04.2015 as amended read with conditions of Bond executed along with the bank guarantee, in terms of Section 143 of the Customs Act, 1962.

(v) Penalty should not be imposed on the Importer under Section 112(a) of the Customs Act, 1962 for the acts of omission & commission mentioned above.

(vi) Penalty should not be imposed on the Importer under Section 117 of the Customs Act, 1962 for the acts of omission & commission mentioned above.

DEFENCE REPLY & PERSONAL HEARING:

13. The Noticee did not file any written reply to the Show Cause Notice. Personal hearing opportunities were granted to them on multiple occasions i.e. on 15.01.2026, 27.01.2026, 11.02.2026 and 24.02.2026. However, the Noticee neither appeared for personal hearing nor submitted defense reply in the matter. Therefore, I proceed to decide the case *ex-parte* on merit on the basis of available records.

DISCUSSION AND FINDINGS:

14. I have carefully gone through the Show Cause Notice, the documents available on record, the relevant statutory provisions, and the conditions stipulated under Notification No. 16/2015-Cus dated 01.04.2015. Since the Noticee has neither filed any written reply nor appeared for personal hearing despite repeated opportunities, the matter is decided *ex-parte* on merit on the basis of available records and evidences.

15. I find that the Zero Duty EPCG Scheme permits import of capital goods at nil rate of customs duty subject to strict fulfillment of export obligation. The exemption



under Notification No. 16/2015-Cus dated 01.04.2015 is conditional and the essential conditions of the Notification relevant to the present case are:

- (i) The importer must hold a valid EPCG Authorization.
- (ii) The importer must execute a bond binding itself to fulfill export obligation equivalent to six times the duty saved.
- (iii) The export obligation must be fulfilled within six years from the date of issue of authorization.
- (iv) 50% of export obligation must be completed in the first block (1st to 4th year) and the balance in the second block (5th to 6th year).
- (v) The importer must submit documentary evidence of export obligation fulfillment within 30 days from expiry of each block.
- (vi) In case of failure, proportionate customs duty along with interest @15% per annum from the date of clearance becomes payable.

Thus, the exemption is clearly conditional upon fulfillment of post-importation conditions and non-fulfillment of the same results in automatic withdrawal of the benefit.

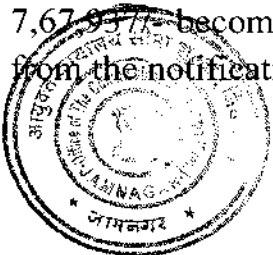
16. In the instant case, the Noticee imported capital goods valued at Rs 29,05,743.24/- vide Bill of Entry No. 8620514 dated 20.02.2017 and availed exemption of Customs duty amounting to Rs 7,67,937/- under the Zero Duty EPCG Scheme. The EPCG Authorization was issued on 07.09.2016 and was valid up to 07.09.2022. Therefore, the entire export obligation was required to be fulfilled on or before 07.09.2022. The importer executed Bond No. 2001178813 dated 20.02.2017 for Rs. 19,80,000/- under Section 143 of the Customs Act, 1962 and furnished Bank Guarantee of Rs. 1,35,750/-.

17. From the records available in case file, I find that the importer has neither submitted Export Obligation Discharge Certificate (EODC) issued by DGFT nor produced documentary proof of exports. There is also nothing on record showing extension granted by the DGFT to the importer for fulfilling export obligation.

18. The Department issued letters seeking submission of EODC which were returned undelivered. The importer has not responded at any stage though the burden to establish fulfillment of export obligation lies squarely upon the importer who has availed conditional exemption. However, in the present case:

- (i) No evidence of exports has been submitted.
- (ii) No EODC has been produced.
- (iii) No communication from DGFT granting extension is available.
- (iv) The importer has not contested the allegations.

19. In view of above, I hold that the importer has failed to fulfill the export obligation prescribed under the EPCG Authorization and Notification No. 16/2015-Cus dated 01.04.2015 and consequently, the entire duty foregone amounting to Rs 7,67,937/- becomes recoverable. The liability to pay interest is automatic and flows from the notification itself.



20. I further observe that Section 143(1) of the Customs Act, 1962 permits provisional clearance upon execution of bond to secure compliance of post-import conditions. Section 143(3) clearly provides that if the condition is not fulfilled within the specified time, the proper officer shall be entitled to proceed upon the bond in accordance with law. The importer voluntarily executed the bond undertaking to fulfill the export obligation and to pay duty with interest in case of default. Therefore, enforcement of the bond is legally justified and warranted.

21. With regard to confiscation under Section 111(o) of the Customs Act, 1962 which provides that goods exempted from duty subject to any condition become liable to confiscation if such condition is not observed, I find that the exemption granted to the imported capital goods was conditional upon fulfillment of export obligation. Since the importer has failed to observe the essential condition of export obligation, I hold that the goods are rendered liable to confiscation under Section 111(o) of the Customs Act, 1962 and accordingly, I confiscate the capital goods "SEMI AUTOMATIC SOLAR PANEL LAMINATOR MODEL RO-B1, SOLAR CELL LASER DICING MACHINE MODEL : GSC-50S, SOLAR MODULE TESTER MODEL NO.: GTM-B, SOLAR PANEL FRAMING MACHINE MODEL : RO-ZKJ" imported under Zero rated duty of EPCG Scheme relying upon the following decisions:

NCS SUGARS LTD. Versus COMMISSIONER OF CUSTOMS, VISAKHAPATNAM [2011 (265) E.L.T. 136 (Tri. - Bang.)]

"4.3 The assessee has argued that the failure to fulfill the export obligation occurred for the reason that sugar being a controlled commodity under the Essential Commodities Act, 1955, releases of all sugar by them were regulated by the orders issued by the Central Government under the above Act and Sugar (Control) Order 1966. We find that the impugned quantity of sugar was exported by Emmsons following the release order issued under the Essential Commodities Act, 1955. Therefore we reject the plea that the appellant was not able carry out the impugned export and discharge its obligation under the advance license owing to the control exercised by the Central Government under the Essential Commodities Act. In any case, the assessee cannot claim benefit of an exemption unless the conditions prescribed therefor are satisfied. It is also significant that the DGFT has not acknowledged the export as in discharge of export obligation till date though more than four years have elapsed after export by the appellant. We find that the raw sugar relatable to the sugar exported under Shipping Bill 1053189 dated 16-6-06 had been rendered liable for confiscation under Section 111(o) of the Customs Act, 1962 and that the order of confiscation and fine is in accordance with law. Penalty imposed on the importer under Section 112(a) is also sustainable in view of the confiscation ordered."



SQUARE D TEXTILES EXPORTS LTD. Versus COMMISSIONER OF CUSTOMS, TRICHY [2003 (160) E.L.T. 246 (Tri. - Chennai)]

“8. Now coming to the question as to whether confiscation of the goods and imposition of redemption and penalty is proper and legal, we are of the considered opinion that in the present case, it is an admitted fact that there is clear violation of para 38 of the Import & Export Policy for the year 1992-97 dealing with Zero duty licence as well as Customs Notification No. 111/95 dated 5-6-95 inasmuch as appellants have only imported textile machinery worth Rs 3,38,40,845/- (Three crores, thirty eight lakhs, forty thousand, eight hundred forty five) through the Tuticorin port as against the Zero duty licence of the threshold value of Rs. 20 crores. (Rupees Twenty crores). **They have thus not fulfilled the condition of the licence and of the Notification within the validity period and even after the validity period of the licence was over. In this case, the EPCG licence produced by the party at the time of clearance of the goods was for 0% duty and the goods had already been released at Nil rate of duty.** They have cited the ratio of the judgment in the case of *Suncity Syntentics Ltd. v. CC*, reported in 2001 (132) E.L.T. 684 in support of their plea for setting aside the interest. We observe that the ratio therein is not applicable to the present case, inasmuch as the facts and circumstances are different. That was a case dealing with fulfilment of Export Obligation in terms of Notification No. 110/95, whereas in this case, the appellants have not fulfilled the Import obligation cast upon them under Notification No. 111/95 (supra). It was later on that they applied for conversion of the zero duty licence into 15% duty licence. Appellants have also cited the judgment of the Hon'ble High Court of Delhi in the case of *CL Jain Woollen Mills v. UOI* reported in 1995 (79) E.L.T. 197 (Del.) in support of their plea. This decision is also not applicable to the facts of the present case, inasmuch as this judgment is on the issue of jurisdiction of the Tribunal. Appellants have also cited the order passed by the Commissioner in the case of *M/s. Ambal Processors v. Dy. Commissioner of Customs*, vide Order-in-Appeal No. C. Cus. No. 601/2001, dated 26-9-2001 wherein the Commissioner (Appeals) has passed an order for reconsidering the request of the party for reassessment, in view of the amendment permitted by the DGFT, if otherwise in order. This order also is not applicable to the present case, inasmuch as the issue dealt with in the present relates to violation of import condition envisaged under Notification No. 111/95 (supra). **We, therefore, hold that the confiscation of the goods and imposition of redemption fine is legal and proper.** However, in view of the peculiar facts and circumstances of this case, we are inclined to think that some leniency is called for in the matter of imposition of fine and penalty and accordingly we hold that interests of justice would be met if the redemption fine is reduced to Rs. 10,00,000/(Rupees Ten lakhs) and the penalty is reduced to Rs. 2,00,000/- (Rupees Two lakhs) and we order accordingly.”



22. With regard to penalty under Section 112(a) of the Customs Act, 1962, I find that the language of Section 112(a) of Customs Act, 1962 is very much clear that penalty is imposable on any person 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. Thus, once the goods are liable to confiscation, imposition of penalty under Section 112(a) becomes justified merely for doing an act or omitting to do act which renders the goods liable for confiscation. It is settled position of law that for imposing penalty under Section 112 (a) of the Customs Act, 1962, it is sufficient to prove that a default in complying with the statute has occurred rendering the impugned goods liable to confiscation under Section 111 of the Customs Act, 1962. In the instant case, by availing exemption and subsequently failing to fulfill the mandatory conditions, the importer has rendered the imported goods liable for confiscation and consequently, rendered itself liable to penalty under Section 112(a) of the Customs Act, 1962.

23. As far as penalty under Section 117 of the Customs Act, 1962 is concerned, I find that it provides for imposition of penalty on any person who contravenes any provision of the said Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, to be liable to a penalty not exceeding four lakhs rupees. Thus, it can be imposed on any person for contravention of any provision of the Act or abetting any such contravention or failing to comply with any provision of the Act with which it was his duty to comply for which no express penalty is provided. Hence, it is clear that provisions of penalty under Section 117 of the Customs Act, 1962 is residual in nature and can be relegated only in the absence of specific penalty. Once penal action under Section 112(a) of the Customs Act, 1962 is held, I find that penal action proposed under Section 117 of the Customs Act, 1962 is not sustainable as it applies for the contravention or failure which is not expressed elsewhere.

24. In view of the foregoing discussion and findings, I pass the following order:

::ORDER::

- (i) The benefit of Zero rated duty of EPCG Scheme under Notification No. 16/2015-Cus dated 01.04.2015 availed on import of "SEMI AUTOMATIC SOLAR PANEL LAMINATOR MODEL RO-B1, SOLAR CELL LASER DICING MACHINE MODEL : GSC-50S, SOLAR MODULE TESTER MODEL NO.: GTM-B, SOLAR PANEL FRAMING MACHINE MODEL : RO-ZKJ" under Notification No. 16/2015-Cus dated 01.04.2015 availed by M/s. Apollo Solar Power, B 5240, Opp Sardar Patel School Kaliyabid, Bhavnagar-364002 under Bill of Entry No. 8620514 dated 20.02.2017 is hereby denied.
- (ii) I confirm the demand of Customs duty amounting to Rs 7,67,937/- (Rupees Seven Lakhs Sixty-Seven Thousand Nine Hundred thirty-Seven only), being the duty foregone at the time of import under Zero rated



- EPCG License, and order recovery of the same from them by enforcement of the bond executed under Section 143 of the Act.
- (iii) I order recovery of applicable interest from the importer on the Customs duty as confirmed at (ii) above in terms of Customs Notification No. 16/2015-Cus dated 01.04.2015, as amended.
- (iv) I order to confiscate the imported capital goods i.e. "SEMI AUTOMATIC SOLAR PANEL LAMINATOR MODEL RO-B1, SOLAR CELL LASER DICING MACHINE MODEL : GSC-50S, SOLAR MODULE TESTER MODEL NO.: GTM-B, SOLAR PANEL FRAMING MACHINE MODEL : RO-ZKJ" valued at Rs 29,05,743.24/- under Section 111(o) of the Customs Act, 1962 and give an option to the Importer to redeem the said confiscated goods on payment of redemption fine of Rs.2,00,000/- (Rupees Two Lakhs only) under Section 125 of the Customs Act, 1962.
- (v) I impose a penalty of Rs.50,000/- (Rupees One Lakh only) on the importer under Section 112(a) of the Customs Act, 1962.
- (vi) I drop penalty proposed upon the importer under Section 117 of the Customs Act, 1962.
- (vii) The Bank Guarantee furnished shall be appropriated towards recovery of confirmed dues.

The Show Cause Notice No. ADC-10/2025-26 dated 21.08.2025 is hereby disposed of accordingly.

25. This order is issued without prejudice to any other action which may be contemplated against the Importer or any other person in terms of any of the provisions of the Customs Act, 1962 and/or any other law for the time being in force.



(N. Srujan Kumar)
Additional Commissioner

DIN - 20260371MM000000A022

Date: 05.03.2026

BY Speed Post A.D

To,

M/s. Apollo Solar Power,
B 5240, Opp Sardar Patel School Kaliyabid,
Bhavnagar-364002.

Copy to:-

- i. The Commissioner, Customs (Preventive), Jamnagar [Kind Attention: the Superintendent (Review-HQ), Customs (Preventive), Jamnagar]
- ii. The Assistant Commissioner of Custom House, Pipavav for information and further necessary action.
- iii. Guard File.

