

GEN/ADJ/ADC/1399/2025-ICD-SRT-CUS-COMMRTE-AHMEDABAD
70/ADC/SR/O&A/2025-26



प्रधान आयुक्त का कार्यालय, सीमा शुल्क,अहमदाबाद

“सीमाशुल्क भवन ,”पहली मंजिल ,पुराने हाईकोर्ट के सामने ,नवरंगपुरा ,अहमदाबाद – 380 009.

दूरभाष :(079) 2754 4630 E-mail: cus-ahmd-adj@gov.in फैक्स :(079) 2754 2343

DIN: 20250671MN000000A094

PREAMBLE

A	फाइल संख्या/ File No.	:	GEN/ADJ/ADC/1399/2025-ICD-SRT-CUS-COMMRTE-AHMEDABAD
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/6-4016/ICD-Sachin/2015-16 dated:28.10.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	70/ADC/SR/O&A/2025-26
D	आदेश तिथि/ Date of Order-In-Original	:	30.06.2025
E	जारी करनेकी तारीख/ Date of Issue	:	30.06.2025
F	द्वारापारित/ Passed By	:	SHRAVAN RAM, Additional Commissioner, Customs Ahmedabad.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	M/S. SAMBHAV ENTERPRISE, PLOT NO. 47, 48, 2ND FLOOR, CITY IND. ESTATE, B/H SWAMINARAYAN TEMPLE, UDHNA, SURAT-394210. SHRI VIRAL PRAKASHCHANDRA SHAH, PROPRIETOR OF M/S. SAMBHAV ENTERPRISE, 5-C, SIDDHSHILA APARTMENT, OPP. JIVAN BHARTI SCHOOL, NANPURA, SURAT-395001.
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हें यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क(अपील), चौथी मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

BRIEF FACTS OF THE CASE:

M/s. Sambhav Enterprise, Plot No. 47, 48, 2nd Floor, City Ind. Estate, B/h Swaminarayan Temple, Udhna, Surat-394210 (hereinafter referred as “the noticee” for the sake of brevity), holding Import Export Code No.5215916365 had imported 04 Sets of capital goods viz. Computerised Embroidery Machine under EPCG Licence No. 5230019789 dated 26.02.2016 **[RUD-1 TO SCN]**, as amended, by saving duty of **Rs.16,63,257/- (Actual Duty Utilized of Rs. 16,45,377/-) [RUD-2 TO SCN]** and had cleared the same vide below mentioned Bill of Entry at zero duty while availing the benefit of exemption available under Notification No. 16/2015-Cus dated 01.04.2015. The details of import are as per Table-1 below:

Table-1

S. N.	B/E No. & Date	Qty machinery cleared	Assessable Value (Rs.)	Duty Saved/ available as per EPCG Licence (Rs.)	Total Duty Foregone/Debited at the time of clearance (Rs.)	BG Amount (Rs.)
1	4648258 dtd: 21.03.2016	04	70,26,872/-	16,63,257/-	16,45,377/-	2,75,000/-
Total		04	70,26,872/-	16,63,257/-	16,45,377/-	2,75,000/-
As per para 5.16 of Handbook of Procedures, 10% enhancement in CIF Value of duty saved amount is admissible.						

2. The importer had executed Bond dated 16.03.2016 for Rs. 52,00,000/- **[RUD-3 TO SCN]** backed by Bank Guarantee No. 067GT01160650005 dated 05.03.2016 for Rs. 2,75,000/- issued by HDFC bank Limited, 1st Floor, Crossway mall, Ghod Dod Road, Surat-395007 for EPCG License No. 5230019789 dated 26.02.2016. They had also undertaken to fulfill all the terms and conditions specified in the License and the said Notification.

3. The 04 Sets of Computerised Embroidery Machine imported under the above said EPCG License were installed at the factory/business premises i.e **M/s. Sambhav Enterprise**, Plot No. 47, 48, 2nd Floor, City Ind. Estate, B/h Swaminarayan Temple, Udhna, Surat-394210 per the Installation Certificate dated 11.02.2017 issued by Chartered Engineer, Ranjitsinh G Gohil, Surat, certifying the receipt of the goods imported and its installation**[RUD-4 TO SCN]**.

4. In terms of the conditions of Notification No. 16/2015-Cus dated 01.04.2015, the Noticee was required to fulfill the export obligation on FOB basis equivalent to Six times of the duty saved on the goods imported as specified on the license or authorization.

4.1 Further, the Noticee was 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 may be specified on the license or 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

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from the date of issuance of license or authorization, i.e. complete 50% export obligation within first block of 1st to 4th years and remaining 50 % in second block of 5th to 6th years.

4.2. The Noticee was, thus, required to fulfill the export obligation within a period of Six years from the date of issuance of EPCG Licence in terms of the condition laid down in the Notification and in the EPCG License itself. In the instant case, the EPCG Licence was issued to the Noticee on 26.02.2016 and accordingly, the said Noticee was required to fulfill export obligation by 25.02.2022 i.e. within a period of six years from the date of issuance of license or authorization. Further, the Noticee was also required to submit the Export Obligation Discharge Certificate (EODC) issued by the Regional DGFT Authority before the jurisdictional Customs authorities by the date as specified above.

5. A letter was issued vide F. No. ICD-Sachin/Misc./01/2022-23 dated 13.01.2023 **[RUD-5 TO SCN]** to the Noticee requesting them to furnish the copy of EODC or any extension issued by the Regional Authority, DGFT, Surat for fulfillment of Export Obligation. However, the Noticee has not responded to the above communication.

5.1 A letter dated 02.03.2023 vide F. No. ICD-Sachin/DGFT/07/2020-21 **[RUD-6 TO SCN]** was issued to the Foreign Trade Development Officer, DGFT, Surat requesting them to inform this office whether the EODC has been issued or any extension granted to the said Noticee or any documents showing the fulfillment of the export obligation have been received by their office against the aforesaid EPCG Licence No. 5230019789 dated 26.02.2016. Foreign Trade Development Officer, DGFT, Surat has not submitted any reply.

5.2 In view of the above, it is evident that the Noticee had failed to fulfill the export obligation as specified in the License and did not comply with the mandatory condition of the Notification No.16/2015-Cus dated 01.04.2015, the condition of EPCG License and also the conditions of the Bond executed and furnished by them.

6. LEGAL PROVISIONS:

6.1 The said section is produced herein below for reference:

“SECTION 143. Power to allow import or export on execution of bonds in certain cases. - (1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the Assistant Commissioner of Customs or Deputy Commissioner of Customs approves, for the doing of that

thing within such time after the import, export or clearance as may be specified in the bond.

(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 the time being in force, be entitled to proceed upon the bond in accordance with law.”

6.2 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;”

6.3 SECTION 112: It provides for penalty for improper importation of goods according to which,

“Any person, -

(a) who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or

...

Shall be liable;-

...

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114 A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher:

PROVIDED that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty five per cent of the penalty so determined;

...”

6.4 SECTION 117:

“Penalties for contravention, etc., not expressly mentioned. -

Any person who contravenes any provision of this 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, shall be liable to a penalty not exceeding 1[four lakh rupees].”

7. The Noticee was allowed clearance of the aforesaid capital Goods/machines, by the proper officer, on execution of a Bond in terms of the provisions of section 143 of the Customs Act, 1962. By executing the Bond before the Deputy/Assistant Commissioner of Customs, ICD-Sachin, Surat, the Noticee had bound themselves to discharge liability within a specified period, however, it appeared the said noticee has failed to do, by not fulfilling the export obligation. Therefore, the Customs authorities are entitled to recover the Duty not paid or short paid by the Noticee by raising a demand and appropriating the Bank Guarantee furnished by them against the proposed demand.

7.1 Therefore, it appeared that the noticee failed to fulfill the conditions laid down under Notification No. 16/2015-Cus dated 01.04.2015 in as much it appeared that the noticee has failed to fulfill export obligations against the goods imported by using the aforesaid EPCG License No. 5230019789 dated 26.02.2016. The Noticee neither submitted the EODC issued by the DGFT, Surat nor could produce any documents showing extension granted to them for fulfillment of Export Obligation.

7.2 The Noticee was, therefore, liable to pay Customs Duty not paid (i.e. saved) by them amounting to Rs. 16,45,377/- at the time of import/clearance along with interest at the applicable rate, in terms of conditions of the said Notification read with condition of the Bond executed by them read with Section 143 of the Customs Act, 1962.

8. It also appeared that the imported capital goods were not used for intended purpose for which the exemption from payment of duty was claimed and therefore, the aforesaid capital goods imported against the above said EPCG License were liable for confiscation under Section 111(o) of the Customs Act, 1962. It therefore appeared that the Noticee had rendered themselves liable to penalty under Section 112 (a) and Section 117 of the Customs Act, 1962.

9. Since, the Noticee could not submit the said EODC and therefore appears to have failed to fulfill the conditions laid down under Notification No. 16/2015-Cus dated 01.04.2015 as well as under the EPCG License and the Bond; the Bank Guarantee No.

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067GT01160650005 dated 05.03.2016 for Rs. 2,75,000/- issued by HDFC bank Limited, 1st Floor, Crossway mall, Ghod Dod Road, Surat-395007 furnished by the Noticee against the aforesaid EPCG License No. 5230019789 dated 26.02.2016 appears liable to be encashed and deposited in the Government exchequer.

10. Thereafter, **M/s. Sambhav Enterprise**, Plot No. 47, 48, 2nd Floor, City Ind. Estate, B/h Swaminarayan Temple, Udhna, Surat-394210 was issued a show cause notice bearing F. No. VIII/6-4016/ICD-Sachin/2015-16 dated 28.10.2024 by the Additional/Joint Commissioner of Customs, Surat, as to why:

- i. The benefit of Zero Duty for EPCG Scheme under Notification No. 16/2015-Cus dated 01.04.2015 on the subject imported Computerised Embroidery Machine in the name of M/s. Sambhav Enterprise, Plot No. 47, 48, 2nd Floor, City Ind. Estate, B/h Swaminarayan Temple, Udhna, Surat-394210 should not be denied.
- ii. Customs Duty totally amounting to Rs. 16,45,377/- (Rupees Sixteen Lakh Forty Five Thousand Three Hundred Seventy Seven only) being the Duty forgone at the time of import under EPCG Licence, should not be demanded and recovered from them in terms of Notification No.16/2015-Cus dated 01.04.2015 as amended, read with the Conditions of Bond executed and furnished by them in term of Section 143 of the Customs Act, 1962 by enforcing the terms of the said Bond and as to why the Bank Guarantee No. 067GT01160650005 dated 05.03.2016 for Rs. 2,75,000/- issued by HDFC bank Limited, 1st Floor, Crossway mall, Ghod Dod Road, Surat-395007 backed against the Bond, should not be appropriated and adjusted towards the Duty liability as mentioned above.
- iii. Interest at the applicable rate should not be recovered from them on the Customs Duty as mentioned at (ii) above in term of Notification No. 16/2015-Cus dated 01.04.2015 as amended from time to time read with Conditions of the Bond executed in term of Section 143 of the Customs Act, 1962.
- iv. The imported Capital Goods should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962 read with conditions of Bond executed, in terms of Section 143 of the Customs Act, 1962 read with Notification No.16/2015-Cus dated 01.04.2015 as amended from time to time.
- v. Penalty should not be imposed on the noticee 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 noticee under Section 117 of the Customs Act, 1962 for the acts of omission & commission mentioned above.

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- vii. Bond executed by them at the time of import should not be enforced in terms of Section 143(3) of the Customs Act, 1962 and the Bank Guarantee thereof should not be encashed for recovery of the Customs Duty as mentioned above and interest thereupon.

DEFENSE SUBMISSION AND PERSONAL HEARING:

11. Noticee vide their letter dated 26.12.2024 submitted that they have completed their export obligation and submitted application for EODC/Bond Waiver before DGFT, Surat. Noticee vide said letter dated 26.02.2025, further submitted that they have fulfilled all export obligation and that DGFT, Surat has issued EODC dated 28.01.2025 in this regard. They also submitted copy of EODC dated 28.01.2025 issued by DGFT, Surat.

11.1 The case was put into call book in terms of para 5 of the Board Circular No.16/2017-Customs dated 02.05.2017. Now, noticee vide letter dated 26.02.2025 has submitted EODC dated 17.01.2025 issued by DGFT, Surat and the case has been taken up for adjudication. Noticee vide said letter dated 26.02.2025 submitted that they have fulfilled their export obligation and requested to drop the SCN proceedings initiated against them. They also submitted that they do not require any Personal hearing in the case and the case may be decided on merits.

DISCUSSIONS AND FINDINGS:

12. I have carefully gone through the show cause notice, records, submissions and facts in the present case.

13. I find that in the present case a Show Cause Notice No. F. No. VIII/6-4016/ICD-Sachin/2015-16 dated 28.10.2024 was issued to the noticee/importer, holding EPCG License No. 5230019789 dated 26.02.2016, by the Additional Commissioner of Customs, Surat for non-fulfillment of export obligation as prescribed vide Notification No. 16/2015-Cus dated 01.04.2015 and non-submission of Export obligation discharge certificate (EODC), issued by DGFT authorities in this regard, to the Customs authorities. As per Notification No. 16/2015-Cus dated 01.04.2015 the importer was required to fulfill the export obligation on FOB basis equivalent to six times the duty saved on the goods imported within six years from the date of authorization, as may be specified on the License or authorization. I also find that the present case was transferred into call book in terms of para 5 of the Board Circular No.16/2017-Customs dated 02.05.2017 after the noticee informed that they have applied for EODC before DGFT and submitted proof of acknowledgment before Customs authorities. Now, in view of the submission of EODC dated 28.01.2025, issued by DGFT, Surat, by the noticee, the case has been retrieved from call book in April-2025 with the approval of competent authority and has been taken up for adjudication. Now, the issues for consideration before me are as follows:

- (i) Whether the noticee has fulfilled export obligation prescribed under EPCG scheme under the said Notification No. 16/2015-Cus dated 01.04.2015 for the EPCG license issued to them as per Table-1.

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- (ii) Whether the noticee is liable for confiscation of capital goods and penalties as proposed in the SCN.

14. Now I proceed to decide whether the noticee has fulfilled export obligation prescribed under EPCG scheme under the said Notification No. 16/2015-Cus dated 01.04.2015 for the EPCG license issued to them as per Table-1.

14.1 I find that present recovery proceeding was initiated for non-submission of proof of fulfillment of export obligation and non-submission of Export obligation discharge certificate (EODC) in respect of the EPCG authorization No. 5230019789 dated 26.02.2016 against which zero rate of duty during import was availed by the noticee. Now, the noticee vide letter dated 26.02.2025 has submitted that that DGFT, Surat vide letter dated 28.01.2025 has issued Redemption/EODC Letter issued from F. No. 52EEPC05949AM25 in respect of the impugned EPCG authorization No. 5230019789 dated 26.02.2016. I also find that the neither the application for issue of EODC to DGFT by the noticee nor the Redemption/EODC Letter dated 28.01.2025 issued by DGFT, Surat was available at the time of issuance of the impugned Show cause notice.

14.2 I find that noticee vide letter dated 26.02.2025 submitted that DGFT, Surat has issued EODC dated 28.01.2025 in the case. Vide the said EODC letter 28.01.2025 issued from F. No. 52EEPC05949AM25, DGFT has communicated to the noticee-

*“on the basis of document submitted towards discharge of export obligation by you, it is observed that the Export Obligation stipulated in the Licence has been met in full in proportion to duty amount utilized by you. Consequently, **Export Obligation has been discharged against the said Authorisation** in terms of Para 5.10 of Hand Book of procedure.”*

14.3 I find that DGFT, Surat has issued Redemption/EODC Letter dated 28.01.2025 as discussed above. In view of the Redemption/EODC letter dated 28.01.2025 issued by DGFT, Surat, I find that in the present case noticee has fulfilled the export obligation as required by them and mandated under Notification No. 16/2015-Cus dated 01.04.2015 and as such eligible for Zero duty EPCG scheme under Notification No. 16/2015-Cus dated 01.04.2015. Therefore, I hold that the demand of Customs duty initiated against the noticee vide Show Cause Notice F. No. VIII/6-4016/ICD-Sachin/2015-16 dated 28.10.2024 is not sustainable.

15. Now I proceed to decide whether the noticee is liable for confiscation of capital goods and penalties as proposed in the SCN.

15.1 In view of the Redemption/EODC Letter dated 28.01.2025 issued by DGFT, Surat in respect of the impugned EPCG authorization No. 5230019789 dated 26.02.2016, I find that the noticee has fulfilled the conditions stipulated in the Customs Notification No. 16/2015-Cus dated 01.04.2015 and the conditions of the Bond executed by them by fulfilling the export obligation as stipulated vide the said EPCG authorization No. 5230019789 dated 26.02.2016. Accordingly, I find that impugned capital goods are not liable for confiscation under Section 111 (o) of the

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Customs Act, 1962 and consequently no penalty is imposable on the noticee under Section 112 (a) and 117 of the Customs Act, 1962.

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

ORDER

I drop the proceedings initiated against the noticee vide subject SCN F. No. VIII/6-4016/ICD-Sachin/2015-16 dated 28.10.2024.

(SHRAVAN RAM)

Additional Commissioner
Customs Ahmedabad

DIN: 20250671MN000000A094

F. No. GEN/ADJ/ADC/1399/2025-ICD-SRT-CUS-COMMRTE-AHMEDABAD Dated: **30.06.2025**

By Speed Post A.D./E-mail /Hand Delivery/Through Notice Board

To,

M/S. SAMBHAV ENTERPRISE,
PLOT NO. 47, 48, 2ND FLOOR,
CITY IND. ESTATE, B/H SWAMINARAYAN TEMPLE,
UDHNA, SURAT-394210.

SHRI VIRAL PRAKASHCHANDRA SHAH,
PROPRIETOR OF M/S. SAMBHAV ENTERPRISE,
5-C, SIDDHSHILA APARTMENT,
OPP. JIVAN BHARTI SCHOOL,
NANPURA, SURAT-395001.

Copy to:-

1. The Principal Commissioner, Customs, Ahmedabad.
2. The Deputy Commissioner of Customs, ICD-Sachin, Surat.
3. The System In-Charge, Customs HQ, Ahmedabad for uploading on the official website i.e. <http://www.gujaratcustoms.gov.in>
4. The Joint Director General, DGFT, 6th Floor, Resham Bhavan Lal Darwaja, Surat-395003 for information and necessary action.
5. The Assistant Commissioner (Task Force), Customs HQ, Ahmedabad
6. Guard File/Office copy.