



सीमा शुल्क के आयुक्त का कार्यालय (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 – 20250271MM0000818184

1.	फाइल क्रमांक/ File Number	F. No. CUS/3251/2023-Adjn. (Comp. no. 890853)
2.	मूल आदेश क्रमांक/ Order-in-Original No.	18/ Additional Commissioner/ 2024-25
3.	द्वारा पारित/ passed by	अमित कुमार सिंह /Amit Kumar Singh अपरआयुक्त/ Additional Commissioner, सीमा शुल्क, निवारक/Customs (Preventive) जामनगर/ Jamnagar.
4.	Date of Order /आदेश दिनांक	28.02.2025
	Date of issue / आदेश जारी किया	28.02.2025
5.	कारण बताओ नोटिस क्रमांक एवं दिनांक Show Cause Notice Number & Date	ADC-22/2023-24 dated 06.03.2024
6.	नोटिसी का नाम/ Name of Noticee	M/s Hanuman Industries, Jesingpara Road, Bagasar Road, Near Old Ice Factory, Amreli (Gujarat) – 365 601

01.	इस आदेश की मूल प्रति संबंधित 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 व्यक्ति कोई भी व्यक्ति सीमा शुल्क अधिनियम, की धारा 1962128A(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) वी मंजिल 7, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद – 380 009	
	Commissioner (Appeals), 7 th Floor, Mrudul Tower, Behind Times of India, Ashram Road, 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 paisa 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 करे 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 करे की सीमा शुल्क अपील)) नियम, और सिस्टेट प्रक्रिया 1982 नियम (प्रोसीजर), पालन हुआ है। के सभी नियमों का पूरा 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. Hanuman Industries, Jesingpara Road, Bagasar Road, Old- Ice Factory, Amreli (Gujarat) – 365601 (IEC No. 2403002119) (hereinafter referred to as “the Noticee”) have imported 2 sets of Capital goods i.e. Sortex Automatic Colour Sorting Machine Complete with essential spare parts at Pipavav Port under EPCG License No. 2430002158 dated 11.11.2013 having assessable value of Rs. 49,00,116/- . The Noticee filed the Bill of Entry No. 4520133 dated 31.01.2014 under Zero duty EPCG Scheme claiming the exemption under Notification No. 22/2013-Cus dated 18.04.2013 as per the following details:

Bill of Entry No.	Description of the Imported goods	Assessable Value (in Rs.)	Customs duty available to be saved as per EPCG License	Duty forgone/ Debited at the time of clearance
4520133 dated 31.01.2014	2 Sets of “Sortex Automatic Colour Sorting Machine Complete with essential spare parts”	49,00,116/-	9,55,548/-	5,89,680/-

2. The Notification No. 22/2013-Cus dated 18.04.2013 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 follows for reference:

Notification No. 22/2013-Customs, Dated – 18th April, 2013

“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;*

(6) 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	50%

(7)

(8) that the importer, including a CSP, produces within 30 days from the expiry of each block from the date of issue of authorization 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 (6), 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 15% per annum from the date of clearance of the goods.

....."

3. Further, the Notification No. 22/2013-Cus dated 18.04.2013 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 50% in second block of 5th to 6th years.

4. As per the conditions of the Notification No. 22/2013-Cus dated 18.04.2013, the Noticee executed the Bond as reflected in EDI system with Serial No. 2000596857 dated 28.01.2014 of Rs. 16,51,103/- (Rupees sixteen lakh, fifty one thousand, one hundred and three only) in respect of the EPCG License no. 2430002158 dated 11.11.2013 at the time of registration of the said License at the port of import i.e. INPAV1, thereby, the Noticee had undertaken to fulfill the conditions of the Bond, the EPCG License and the relevant Customs Notifications read with the relevant provisions of the Customs Act, 1962 and Rules and Regulations made thereunder.

5. The aforesaid EPCG License No. 2430002158 dated 11.11.2013 was issued to the Noticee for a period of 6 years valid upto 11.11.2019 and accordingly, the bond dated 28.01.2014 was executed. The Noticee 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. 22/2013-Cus dated 18.04.2013 as well as EPCG License itself. The Noticee was also required to submit the installation certificate within 06 months from the date of import and to produce the proof of fulfillment of export obligation within the periods as prescribed in the said notification. Since, the EPCG Authorization was issued to the Noticee on 11.11.2013, as per the condition of the said Notification, they were required to fulfill the export obligation by 11.11.2019 and submit the Export Obligation Discharge Certificate issued by the DGFT Authority to the department. The Noticee was required to fulfill the Export Obligation on FOB basis, equivalent to 6 times the duty of customs saved on the goods imported as specified in the license within the time limit specified therein.

6. In view of the above, a letter F. No. VIII/48-10/EPCG-Misc/GPPL/21-22 dated 10.01.2022 was issued by the Deputy Commissioner, C.H. Pipavav addressed to the Noticee i.e. M/s. Hanuman Industries, Jesingpara Road, Bagasara Road, Old- Ice Factory, Amreli Gujarat 365601 requesting them to produce the Export Obligation Discharge Certificate (EODC) or status of the communication made with concerned DGFT with regard to issuance of EODC. However, the said letter was returned undelivered by the courier agency with remarks that "Party not available".

7. Further, the Joint Director of Foreign Trade, Rajkot, vide letter F. No. 24/21/021/00304/AM-14 dated 11.01.2022 has informed that a penalty of Rs. 10,00,000/- has been imposed vide Order-in-Original (OIO) dated 27.10.2021 on the Noticee/license holder for failure to produce documents evidencing fulfillment of Export Obligation against the Zero duty EPCG Authorization No. 2430002158 dated 11.11.2013. It was also mentioned in the said Order-in-Original (OIO) dated 27.10.2021 that the fiscal penalty imposed was in addition to the customs duty and interest thereon, which the firm was required to pay in respect of the imports effected by the Noticee against the aforesaid EPCG Authorization.

7.1 From the above said Order in Original issued by the Joint Director of Foreign Trade, Rajkot it appeared that the Noticee failed to fulfill the export obligation as specified in the License and did not comply with the mandatory conditions of the Customs Notification No. 22/2013-Cus dated 18.04.2013, EPCG Authorization and conditions of the bond dated 28.01.2014.

7.2 The Noticee had imported the 2 Sets of "Sortex Automatic Colour Sorting Machine Complete with essential spare parts" without payment of duties of Customs in terms of Notification No. 22/2013 dated 18.04.2013 subject to fulfillment of the conditions namely:-

(6) 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 Handbook of Procedure Vol. I, issued under para 2.4 of Foreign Trade Policy, within a period of six years for the date of issue of Authorization, in the following proportions, namely:

Sr. No.	Period from the date of issue of Authorisation.	Proportion of total export obligation
1.	Block of 1 st to 4 th year	50%
2	Block of 5 st to 6 th year	50%

7.3 Further, the Noticee failed to submit the 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 the import on execution of bonds in certain cases. Section 143 of the Customs Act, 1962, reads as follows:

"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 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 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. "two sets of Sortex Automatic Colour Sorting Machine Complete with essential spare parts" imported by the Noticee were allowed clearance under zero duty EPCCG Scheme by the proper officer on execution of Bond in terms of the Notification No. 22/2013-Cus dated 18.04.2013 by the Noticee, wherein the Noticee bound themselves to discharge required export obligation within a specified period in certain manner. The Noticee executed Bond as reflected in EDI with Serial No. 2000596857 dated 28.01.2014 of Rs. 16,51,103/-.

9. As per Sr. No. (8) of the Notification No. 22/2013-Cus dated 18.04.2013 *supra*, the Noticee 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 Noticee 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 Noticee had not submitted documents to the Assistant Commissioner/ Deputy Commissioner, Customs House, Pipavav evidencing fulfillment of Export obligation and the Joint Director of Foreign Trade, Rajkot also issued OIO dated 27.10.2021 imposing penalty for non-fulfillment of export obligation. The Noticee 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 Noticee failed to fulfill the condition as laid down under Notification No. 22/2013-Cus dated 18.04.2013 as they failed to fulfill the export obligation against import of capital goods i.e. 2 set of "Sortex Automatic Colour Sorting Machine Complete with essential spare parts" under Zero rated EPCG Authorization No. 2430002158 dated 11.11.2013 inasmuch as they neither produced documents evidencing exports nor produced EODC issued by the DGFT, Rajkot or any extension granted by DGFT, Rajkot as the Joint Director of Foreign Trade, Rajkot imposed penalty for non-fulfillment of export obligation towards authorization no. 2430002158 dated 11.11.2013.

9.3 As the Noticee 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. 5,89,680/- in respect of the said imported goods was wrongly availed by the Noticee in violation of the conditions of Notification No. 22/2013-Cus dated 18.04.2013. Hence, the Noticee appeared not to be eligible for the exemption and liable to pay the customs duty amounting to Rs. 5,89,680/- saved at the time of importation along with interest in terms of the Notification No. 22/2013-Cus dated 18.04.2013 and the same is required to be recovered by enforcing the bond executed by the Noticee read with provisions of Section 143 of Customs Act, 1962.

10. Section 111(o) of the Customs Act, 1962, provides confiscation of the imported goods for non-observance of the conditions specified for exemption from duty. Section 111(o) reads as follows:-

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. "two sets of Sortex Automatic Colour Sorting Machine Complete with essential spare parts" imported by the Noticee are exempted subject to the condition of fulfillment of export obligation and execution of Bond. The Noticee availed the exemption however, failed to fulfill the export obligation and in that case is liable for payment of customs duty along with interest as bound by them by executing the bond. Hence, conditions stipulated under Notification No. 22/2013-Cus dated 18.04.2013 read with conditions attached to EPCG License No. 2430002158 dated 11.11.2013 issued by the DGFT under Foreign Trade Policy/ Foreign Trade Development Act, 1992, is not observed by the Noticee attracting the provisions of Section 111(o) of the Customs Act, 1962. Therefore, the goods imported by the Noticee appear 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. 49,00,116/- liable to confiscation under Section 111(o) of the Customs Act, 1962 and the Noticee appears to have rendered themselves liable to penalty under Section 112 and Section 117 of the Customs Act, 1962.

12. In view of the above, a Show Cause Notice No. ADC-22/2023-24 dated 06.03.2024 was issued to the Noticee i.e. M/s Hanuman Industries, Jesingpara Road, Bagsara Road, Old-Ice factory, Amreli, Gujarat-365601 (IEC No. 2403002119), as to why:

- (i) the benefit of Zero rated duty of EPCG Scheme under Notification No. 22/2013-Cus dated 18.04.2013 availed on import of "2 sets of Sortex Automatic Colour Sorting Machine Complete with essential spare parts" vide Bill of Entry No. 4520133 dated 31.01.2014 should not be denied;
- (ii) Customs duty amounting to Rs. 5,89,680/- (Rupees five lakh, eighty nine thousand, six hundred and eighty 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. 22/2013-Cus dated 18.04.2013 as amended, read with conditions of the Bond Executed and 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. 22/2013-Cus dated 18.04.2013 as amended read with the conditions of Bond executed under Section 143 of Customs Act, 1962.
- (iv) the imported capital goods i.e. 2 set of "Sortex Automatic Colour Sorting Machine Complete with essential spare parts" valued at Rs. 49,00,116/- should not be held liable to confiscation under Section 111(o) of Customs Act, 1962 read with Customs Notification No. 22/2013-Cus dated 18.04.2013 as amended read with conditions of the Bond executed in terms of Section 143 of the Customs Act, 1962.
- (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.

Defense reply and records of personal hearing:

13. The Noticee vide their letter ref. no. nil dated 27.04.2024 had submitted that they had received the subject Show Cause Notice No. ADC-22/2023-24 and in this regard they wish to inform that their Export Obligation has already been fulfilled and they are in process of preparing file to submit to the DGFT for redemption of EPCG License. For the purpose, they require two months' time to prepare the file and do redemption of license and accordingly, requested two months' time for submission of all redemption documents of License within this time limit. However, thereafter no response was received from the Noticee and accordingly, letter dated 22.10.2024 was issued by the department to the Noticee for reminding them to submit their defense reply in reference to the said Show Cause Notice, which was also not responded to, by the Noticee. Further, the intimation for attending the personal hearing was sent vide letter dated 06.11.2024, 07.11.2024, 04.02.2025 and 19.02.2025 via Speed Post on the address of the Noticee alongwith on the Email ID i.e. *hanumanindustries2003@yahoo.com* as mentioned on their letter head vide which the said letter dated 27.04.2024 was submitted to the department, but the same were also not responded to as all the letters dispatched vide speed post were returned undelivered with the postal remarks as "Left". Similarly, none of the emails were responded to. Thus, no personal hearing could be conducted in the instant case.

Discussions and Findings:

14. I have carefully gone through the facts available on records. I observe that ample opportunities were given to the Noticee to defend themselves in the case on hand, but the Noticee had neither submitted any written defense nor appeared for personal hearing to represent his side at any point of time. Thus, I am confined to conclude that the principles of natural justice as provided under Section 122A of the Customs Act, 1962, have been complied with. As the matter could not be kept in abeyance for infinite period and in view of Section 28BB of the Customs Act, 1962, I have no other option except to decide the instant case on the basis of the documentary evidences available on records and therefore, I proceed further to decide the case on hand accordingly. I find that the following points are to be decided in the instant case, as to whether:

- i) the benefit of Zero rated duty of EPCG Scheme under Notification No. 22/2013-Cus dated 18.04.2013 availed on import of "2 sets of Sortex Automatic Colour Sorting Machine Complete with essential spare parts" vide Bill of Entry No. 4520133 dated 31.01.2014 should be denied or otherwise;
- ii) Customs duty amounting to Rs. 5,89,680/- (Rupees five lakh, eighty nine thousand, six hundred and eighty only) being the duty foregone at the time of import under Zero rated EPCG License, should be demanded and recovered from them in terms of Notification No.

22/2013-Cus dated 18.04.2013 as amended, read with conditions of the Bond executed under Section 143 of the Customs Act, 1962, or otherwise;

- iii) Interest at the applicable rate should be recovered from them on the Customs duty as mentioned at (ii) above in terms of Customs Notification No. 22/2013-Cus dated 18.04.2013 as amended read with the conditions of Bond executed under Section 143 of Customs Act, 1962, or otherwise;
- iv) the imported capital goods i.e. 2 set of "Sortex Automatic Colour Sorting Machine Complete with essential spare parts" valued at Rs. 49,00,116/- should be held liable to confiscation under Section 111(o) of Customs Act, 1962 read with Customs Notification No. 22/2013-Cus dated 18.04.2013 as amended read with conditions of the Bond executed, in terms of Section 143 of the Customs Act, 1962, or otherwise;
- v) Penalty should be imposed on the Noticee under Section 112(a) and Section 117 of the Customs Act, 1962 for the acts of omission & commission mentioned above, or otherwise.

15. I observe that, the Noticee had imported 2 sets of Capital goods i.e. Sortex Automatic Colour Sorting Machine Complete with essential spare parts at Pipavav Port under EPCG License No. 2430002158 dated 11.11.2013 having assessable value of Rs. 49,00,116/. The Noticee had filed the Bill of Entry No. 4520133 dated 31.01.2014 under Zero duty EPCG Scheme claiming the exemption under Notification No. 22/2013-Cus dated 18.04.2013 as per the following details:

Bill of Entry No.	Description of the Imported goods	Assessable Value (in Rs.)	Customs duty available to be saved as per EPCG License	Duty forgone/ Debited at the time of clearance
4520133 dated 31.01.2014	2 Sets of "Sortex Automatic Colour Sorting Machine Complete with essential spare parts"	49,00,116/-	9,55,548/-	5,89,680/-

16. I observe that, the Notification No. 22/2013-Cus dated 18.04.2013 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.

17. I further observe that, the Notification No. 22/2013-Cus dated 18.04.2013 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 50% in second block of 5th to 6th years.

18. I observe that, the Noticee as per the conditions of the aforesaid Notification No. 22/2013-Cus dated 18.04.2013 had executed the Bond as reflected in EDI system with Serial No. 2000596857 dated 28.01.2014 of Rs. 16,51,103/- (Rupees sixteen lakh, fifty one thousand, one hundred and three only) in respect of the EPCG License no. 2430002158 dated 11.11.2013 at the time of registration of the said License at the port of import i.e. INPAV1, thereby, the Noticee had undertaken to fulfill the conditions of the Bond, the EPCG License and the relevant Customs Notifications read with the relevant provisions of the Customs Act, 1962 and Rules and Regulations made thereunder.

19. I observe that, the aforesaid EPCG License No. 2430002158 dated 11.11.2013 was issued to the Noticee for a period of 6 years valid upto 11.11.2019 and accordingly, the bond dated 28.01.2014 was executed. The Noticee 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. 22/2013-Cus dated 18.04.2013 as well as EPCG License itself. The Noticee was also required to submit the installation certificate within 06 months from the date of import and to produce the proof of fulfillment of export obligation within the periods as prescribed in the said notification. Since, the EPCG Authorization was issued to the Noticee on 11.11.2013, as per the condition of the said Notification, they were required to fulfill the export obligation by 11.11.2019 and submit the Export Obligation Discharge Certificate issued by the DGFT Authority to the department. The Noticee was required to fulfill the Export Obligation on FOB basis, equivalent to 6 times the duty of customs saved on the goods imported as specified in the license within the time limit specified therein.

20. I observe that, a letter F. No. VIII/48-10/EPCG-Misc/GPPL/21-22 dated 10.01.2022 was issued by the Deputy Commissioner, C.H. Pipavav addressed to the Noticee requesting them to produce the Export Obligation Discharge Certificate (EODC) or status of the communication made with concerned DGFT with regard to issuance of EODC. However, the said letter was returned undelivered by the courier agency with remarks that "Party not available".

21. I find that, although the Noticee vide letter dated 27.04.2024 intimated that there have already fulfilled export obligation and are in process of preparing file to submit to DGFT for redemption of EPCG License, however, they have unable to produce any documentary evidence with respect to fulfillment of export obligation as prescribed under condition no. 7 of EPCG License No. 2430002158 dated 11.11.2013 issued by the DGFT towards the import of 2 sets of Capital goods i.e. Sortex Automatic Colour Sorting Machine Complete with essential spare parts at Pipavav Port having assessable value of Rs. 49,00,116/- (Rupees forty nine lakh, one hundred and sixteen only) till date and has also not produced any communication made with the DGFT in this regard.

22. At the same time, I find that, the Joint Director of Foreign Trade, Rajkot, vide letter F. No. 24/21/021/00304/AM-14 dated 11.01.2022 has informed that a penalty of Rs. 10,00,000/- has been imposed vide Order-in-Original (OIO) dated 27.10.2021 on the Noticee/license holder for failure to produce documents evidencing fulfillment of Export Obligation against the Zero duty EPCG Authorization No. 2430002158 dated 11.11.2013. It was also mentioned in the said Order-in-Original (OIO) dated 27.10.2021 that the fiscal penalty imposed was in addition to the customs duty and interest thereon, which the firm was required to pay in respect of the imports effected by the Noticee against the aforesaid EPCG Authorization.

23. I therefore find that, the Noticee failed to fulfill the export obligation as specified in the License and did not comply with the mandatory conditions of the Customs Notification No. 22/2013-Cus dated 18.04.2013, EPCG Authorization and conditions of the bond dated 28.01.2014. It is therefore the exemption of duty of Rs. 5,89,680/- in respect of the said imported goods was wrongly availed by the Noticee in violation of the conditions of Notification No. 22/2013-Cus dated 18.04.2013 and EPCG License. It is therefore, the Noticee is liable to pay the customs duty amounting to Rs. 5,89,680/- saved at the time of importation of capital goods along with interest in terms of the Notification No. 22/2013-Cus dated 18.04.2013. By such act of failure to comply with the conditions of the said Notification, the Noticee renders themselves liable for the penalty under Section 117 of the Customs Act, 1962.

24. I observe that, Section 111(o) of the Customs Act, 1962 provides for confiscation of imported goods which are exempted, subject to any condition from duty or any prohibition in respect of import thereof under the Customs Act, 1962, or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition is sanctioned by the proper officer.

25. I find that, as the Noticee in instant case has failed to fulfill the export obligation as specified in the EPCG License and did not comply with the mandatory conditions of the Customs Notification No. 22/2013-Cus dated 18.04.2013, EPCG Authorization and conditions of the bond dated 28.01.2014 and Joint Director of Foreign Trade, Rajkot, vide letter F. No. 24/21/021/00304/AM-14 dated 11.01.2022 has informed that a penalty of Rs. 10,00,000/- has been imposed vide Order-in-Original (OIO) dated 27.10.2021 on the Noticee, which amply clarifies that, no relaxation with respect to non-observance of the condition is sanctioned in the instant case. I therefore find that, the goods imported by them vide Bill of Entry No. 4520133 dated 31.01.2014 under Zero duty EPCG Scheme claiming the exemption under Notification No. 22/2013-Cus dated 18.04.2013 is liable for confiscation under Section 111(o) of the Customs Act, 1962.

26. I also find it pertinent to mention here that, since the subject goods were not notified goods but held liable for confiscation, provisions of Section 125 of the Customs Act, 1962 are

applicable in the instant case. I place reliance in the case law of Commissioner of Customs Vs. Dinesh Chhajer, reported at 2014(300) E.L.T.498(Kar.), wherein Hon'ble High Court of Karnataka has held that, when the confiscation of the goods is authorized under the Act and an order for confiscation is passed by the competent authority, it is open to such authority either to confiscate the goods and sell them or give to the owner of the goods or the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit, and I hold accordingly. The relevant paragraphs of the said case law are reproduced as under:

"11. After such confiscation, Section 125 provides for an option to pay fine in lieu of confiscation, which reads as under:

"125. Option to pay fine in lieu of confiscation:

(1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit :

Provided that, without prejudice to the provisions of the proviso to Sub-section (2) of Section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon."

27. However, as regards the goods in question i.e. 2 sets of Capital goods i.e. Sortex Automatic Colour Sorting Machine Complete with essential spare parts imported at Pipavav Port under EPCG License No. 2430002158 dated 11.11.2013 having assessable value of Rs. 49,00,116/, I find that though the said offended goods can be held liable to confiscation under Section 111(o) of the Customs Act, 1962, but the same cannot be confiscated being not physically available for confiscation and thereby I refrain from imposing redemption fine in lieu of confiscation of the goods. In this regard, I hereby rely upon, the judgment rendered with regard to confiscation by the High Court of Judicature at Bombay, wherein the Hon'ble High Court in the case of COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI Versus FINESSE CREATION INC. Customs Appeal No. 66 of 2009, decided on 25-8-2009 cited in 2009 (248) E.L.T. 122 (Bom.), has stated that,

"whether goods cleared and not available for seizure, liable to confiscation - Redemption fine arises when goods are available and are to be redeemed - No question of redemption of goods when goods not available - Customs authorities empowered to order confiscation with discretion to release them on payment of redemption fine - Confiscation not arises if goods are not available for confiscation and consequent redemption - Fine not imposable once goods cannot be redeemed - Impugned Tribunal order holding fine in lieu of confiscation not imposable when goods were not available, sustainable - Sections 111 and 125 of Customs Act, 1962. [paras 1, 5, 6]"

Further, the Hon'ble Supreme Court Bench, after condoning the delay dismissed the Petition for Special Leave to Appeal (Civil) No. CC 7373 of 2010 filed by Commissioner of Customs (Import) against the Judgment and Order dated 25-8-2009 in C.A No. 66 of 2009 of the High Court of Bombay as reported in 2009 (248) E.L.T. 122 (Bom.) held -

"The High Court vide its impugned order had distinguished the Apex Court decision in case of Weston Components Ltd. [2000 (115) E.L.T. 278 (S.C.)]. While holding that concept of redemption fine arises in the event the goods are available and are to be redeemed, and if goods are not available, there is no question of redemption of goods. The High Court held that since goods were cleared earlier, not available for confiscation nor consequently redemption, therefore, Tribunal was right in holding that fine in lieu of confiscation was not imposable."

Confiscation and redemption fine not imposable when goods not available for seizure:

[Commissioner v. Finesse Creation Inc. - 2010 (255) E.L.T. A120 (S.C.)]

28. In view of the above deliberations, I am of considered view that as the goods in question are not available for redemption, imposition of redemption fine is not possible. I also place reliance on the following case laws in support of my above findings:

- (a) In the case of Commissioner v. Indu Nissan Oxo Chemical Industries - 2015 (324) E.L.T. A30 (Guj.)], the Hon'ble High Court of Gujarat has held – "that the penalty in lieu of redemption fine was not imposable when the goods were not available for confiscation."
- (b) in the case of MANGALORE REFINERY & PETROCHEMICALS LTD. Versus C.C., MANGALORE [2014 (313) E.L.T. 353 (Tri. - Bang.)], wherein it was held that -"Redemption fine - Imposition of - Confiscation - Imported goods when not available for confiscation, question of confiscating the goods does not arise as the provision for grant of option of redemption under Section 125 of Customs Act, 1962 will be rendered meaningless - Imposition of fine under Section 125 ibid not justified - Section 125 ibid."
- (c) In the case of ELDER PHARMACEUTICALS Versus COMMR. OF CUS. (IMPORT) JNCH, NHAVA SHEVA 2019 (370) E.L.T. 1380 (Tri. - Mumbai) it was held that – "4. It is seen that the adjudication order has recorded that the goods are not available for confiscation. In the absence of the goods and relying upon the decision of the Hon'ble Supreme Court in Weston Components Ltd. v. Commissioner of Customs, New Delhi [2000 (1) SCR 26 = 2000 (115) E.L.T. 278 (S.C.)] and of the Hon'ble Bombay High Court in Commissioner of Customs (Import), Mumbai v. Finesse Creation [2009 (248) E.L.T. 122 (Bom.)], we set aside the redemption fine. However, the goods being liable to confiscation, we uphold the penalty imposed on the appellant but at the same time allow option of payment of 25% of penalty as provided for in Section 28(5) of Customs Act, 1962."
- (d) In the case of N.K. CHAUDHARI Versus COMMISSIONER OF CUSTOMS (EP), MUMBAI [2018 (363) E.L.T. 908 (Tri. - Mumbai)] it was held – "Confiscation and redemption fine - Non-availability of goods - In view of Larger Bench's decision in the case of Shiv Kripa Ispat [2009 (235) E.L.T. 623 (Tri.-LB.)], redemption fine not imposable when goods not available for confiscation - Accordingly, redemption fine set aside - Section 125 of Customs Act, 1962. [para 4]"

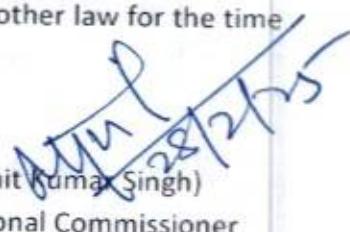
29. I find that, as the said goods are liable for confiscation under sub-section (o) of Section 111 of the Customs Act, 1962, the same falls under the category of 'smuggled goods' as defined under Section 2(39) of the Customs Act, 1962 which defines 'smuggling' as "in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 and section 113" and therefore, the Noticee has rendered himself liable for penalty for improper importation of goods, etc. under Section 112(a)(ii) of the Customs Act, 1962.

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

ORDER

- (i) I hereby deny the benefit of Zero duty EPCG Scheme claiming the exemption under Notification No. 22/2013-Cus dated 18.04.2013 with respect to goods imported vide Bill of Entry No. 4520133 dated 31.01.2014 by the Noticee;
- (ii) I hereby confirm the demand of customs duty amounting to Rs. 5,89,680/- (Rupees five lakh, eighty-nine thousand, six hundred and eighty only) availed as duty forgone at the time of import of goods vide Bill of Entry No. 4520133 dated 31.01.2014 under Zero duty EPCG Scheme claiming the exemption under Notification No. 22/2013-Cus dated 18.04.2013 and interest thereon as applicable;
- (iii) I also hold goods imported vide Bill of Entry No. 4520133 dated 31.01.2014 under Zero duty EPCG Scheme claiming the exemption under Notification No. 22/2013-Cus dated 18.04.2013 liable for confiscation under Section 111(o) of the Customs Act, 1962. Since the goods are not available for confiscation, I refrain from imposing any fine in lieu of confiscation under Section 125(1) of the Customs Act, 1962;
- (iv) I hereby impose penalty of Rs. 58,960/- (Rupees five eight thousand, nine hundred and sixty only) under Section 112(a)(ii) of the Customs Act, 1962;
- (v) I impose a penalty of Rs. 1,00,000/- (Rupees one lakh only) under Section 117 of the Customs Act, 1962.

31. This order is issued without prejudice to any other action that may be taken against the importer/Noticee or any other person under the Customs Act, 1962 or any other law for the time being in force.



(Amit Kumar Singh)
Additional Commissioner

फाइल क्रमांक: CUS/3251/2023-Adjn.

दिनांक: 28.02.2025

By Speed Post A.D. / E Mail (hanumanindustries2003@yahoo.com)

To
M/s. Hanuman Industries,
(IEC No. 2403002119)
Jesingpara Road,
Bagasara Road, Old- Ice Factory,
Amreli Gujarat 365601
Contact No: 02792-2311703/31704

Branch: (as shown in IEC details on DGFT website)

1. Shri BHARAT KUMAR SONPAL/ Shri Manoj Kumar Sonpal
M/s. Hanuman Industries,
303-306 ON 3RD FLOOR, SAKAR-II, ELLISBRIDGE,
AHMEDABAD -380006

2. Shri BHARAT KUMAR SONPAL/ Shri Manoj Kumar Sonpal
PLOT NO.127, BHERAI ROAD,
NR.DELUX, DEHYDRATION,
VADGAM - 365560
Rajula- Amreli (GUJARAT)

Copy to:

1. The Commissioner, Customs [Preventive], HQ. Jamnagar.
2. The Assistant Commissioner, Customs, Customs House, Pipavav.
3. Guard File.