अपर आयुक्त का कार्यालय, सीमा शुल्क
OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS
आई. सी. डी. - तुम्ब
INLAND CONTAINER DEPOT (ICD) - TUMB
सर्वे. न.: ४४/१/पी.के.२,गाँव – तुम्ब,तालुका-उमरगाँव,जिला- वलसाड,गुजरात: -३९६१५०
(S. No. 44/1/P.K. 2, Village-Tumb, Tal.: Umbergaon, Dist.: Valsad, Gujarat-396150)e-mail: cusicd-tumb@gov.in

F.No. CUS/EPCG/REGN/1117/2025-ICD-UMGN-CUS-COMMRTE-AHMEDABAD

DIN-20260871MN000005EEE9

A	फ़ाइल संख्या/ File No.	:	CUS/EPCG/REGN/1117/2025-ICD-UMGN-CUS-COMMRTE-AHMEDABAD
B	कारण बताओ नोटिस संख्या–तारीख /Show Cause Notice No. and Date	:	F.No. CUS/EPCG/REGN/1117/2025-ICD-UMGN-CUS-COMMRTE-AHMEDABAD, dated 12.11.2025
C	मूल आदेश संख्या/ Order-In-Original No.	:	**07/SRV/ADC/TUMB/2026-27**
D	आदेश तिथि/ Date of Order-In-Original	:	**07.08.2026**
E	जारी करनेकी तारीख/ Date of Issue	:	**07.08.2026**
F	द्वारा पारित/ Passed By	:	**Shree Ram Vishnoi** Additional Commissioner, Customs Ahmedabad
G	आयातक का नाम औरपता / Name and Address of Importer /Noticee	:	M/s. Laxmi Creation, Shed No.P 335, New GIDC, GIDC Sub Division 2, Fulpada Katargam, Surat, Gujarat - 395004 / B 2, Harikunj Society, Chikuwadi, Nana Varachha Road, Surat, Gujarat - 395006 Shri Pravinbhai Manhibhai Mandaviya (Adhar No.605897607076), Proprietor of M/s. Laxmi Creation, (IEC- 5209010571), Shed No.P 335, New GIDC, GIDC Sub Division 2, Fulpada Katargam, Surat, Gujarat - 395004 M/s. Polar Shipping Services, Customs Broker firm (CHA No. AAKFP101HCH003), No. 502 TO 505, D R India Textile Hub, Opp. Amazia Water Park, Parvat Patiya, Surat, Gujarat-395010
(1)	**यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे 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 मंज़िल, 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 ड्यूटी 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. Laxmi Creation, having address at Shed No.P 335, New GIDC, GIDC Sub Division 2, Fulpada Katargam, Surat, Gujarat – 395004 and also having address at B 2, Harikunj Society, Chikuwadi, Nana Varachha Road, Surat, Gujarat - 395006 (hereinafter referred to as 'the said M/s. Laxmi Creation / the notice/the importer/Licence holder'), a Proprietorship firm, are engaged in import of Capital Goods under EPCG Licence by availing of the exemption under Notification No. 16/2015-Cus dated 01.04.2015 and are holding **Import Export Code No. 5209010571.**

2. M/s. Laxmi Creation had imported Capital Goods, against the **EPCG Authorisation No. 5230023867 dated 21.03.2017,** under the below mentioned Bill of Entries availing the benefit of duty exemption under Notification No. 016/2015-Customs dated 01.04.2015. The details of import is an under:-

Sr. No.	Bill of Entry No. & Date	Description of Goods Imported	Qty. (Sets)	Assessable Value (Rs.)	Duty Foregone (Rs.)	Bond No.
1	**9513731 Dated: 01.05.2017**	Computerized Embroidery Machine Model **627 (250 × 550 × 1300)**with **DAHAO Colour Monitor**, **Triple Servo Motor**and **Standard Accessories**	01	10,46,709	2,45,092	2001204815
2	**9485049 Dated: 28.04.2017**	Computerized Embroidery Machine Model **627 (250 × 550 × 1300)**with **DAHAO Colour Monitor**, **Triple Servo Motor**and **Standard Accessories**	02	20,93,418	4,90,184	2001204815
	Total		03	**3140127**	**735276**	

3. M/s. Laxmi Creation was granted Authorisation No. **5230023867 dated 21.03.2017** under Zero duty EPCG Scheme by Directorate General of Foreign Trade (DGFT), Surat, for registration at ICD Tumb, Umbergaon (INSAJ6) **(RUD-2)**. The above said EPCG authorization was granted for import of **'6 COLOURS 27 HEADS COMPUTERIZED EMBROIDERY MACHINE AREA**

250X550X1300 WITH DAHAO COLOUR MONITOR WITH TRIPLE SERVO MOTR' for total quantity **03 Sets**, with duty saved amount of **Rs.8,10,020/- & FOB value of US$ 71,630.36, equivalent to INR 48,60,120/-** in accordance with the provisions of Foreign Trade Policy 2015-20 and the concerned Customs Notification No.016/2015 dated 01.04.2015 and subject to actual user condition; subject to conditions/parameters as laid down in Chapter 5 of the Foreign Trade Policy 2015-20 and Handbook of Procedure 2015-20 and carries an export obligation to make physical exports of the goods mentioned in condition nno.6 to the Annexure of the above authorization and realize the export proceeds in freely convertible currency. The export obligation, which is 6 times of the duty saved amount on import of the Capital Goods on FOB basis within a period of 6 years (Block Year 1 st to 4th Year – 50% and 5th to 6th year - 50%) reckoned from the date of issue of this Authorisation, should be fulfilled by the Authorisation holder through export of goods which are manufactured by them or their supporting manufacturer for which the above EPCG authorization has been granted and should have furnished proof of exports within 90 days of completion of each block. The machinery imported under the above EPCG Authorisation/ License was to be installed at **'Shed No. P 335, New GIDC, GIDC Sub Division 2, Fulpada Katargam, Surat, Gujarat - 395004'** and Installation Certificate was to be submitted to the Regional Authority within 6 months from the date of completion of imports.

4. Against the said **EPCG License No. 5230023867 dated 21.03.2017,** the Noticee had executed a **bond No.2001204815,** for availing duty exemption under EPCG Scheme, before the Assistant Commissioner of Customs, ICD, Tumb, Umbergaon (INSAJ6) for **Rs.24,00,000/-** along with Bank Guarantee No. **0306BG001742017 dated 06.04.2017**, for **Rs.1,30,000/-**, issued by **The South Indian Bank Ltd., Ring Road, Surat,** as surety to the above Bond **(RUD-3)**. The importer also provided an undertaking to fulfill the export obligation as specified in the said Customs Notification at the time of registration of the EPCG Authoirisation/License. The conditions of the above bond were as:-

(i) they fulfill all the conditions of the said Notification and shall observe and comply with all its terms and conditions;

(ii) they shall observe all the terms and conditions specified in the

licence;

(iii) they shall fulfill the export obligation as specified in the said notification and the licence and shall produce evidence of having so fulfilled the export obligation within 30 days from the expiry of the specified export obligation period to the satisfaction of the Government;

(iv) In the event of failure to fulfill or part of the export obligation as specified in the said notification and the licence, they undertook to pay the Customs duty but for the exemption and also interest @18% per annum thereon forthwith and without any demur, to the Government;

(v) they shall comply with the conditions and limitation stipulated in the said Import and Export Policy / Foreign Trade Policy as amended from time to time;

(vi) they shall not change the name and style under which they are doing business or change the location of the manufacturing premises except with the written permission of the Government.

5. 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 the duty saved on the above imported goods, as may be specified on the licence or authorization, within a period of six years from the date of issue of authorisation. Accordingly, they were required to fulfil export obligation in respect of the above EPCG

6. The Authorisation/ licences No. **5230023867 issued on 21.03.2017 by DGFT was valid till 20.03.2023 i.e six year from the date of issuance and importer** was required to submit the Export Obligation Discharge Certificate (EODC) issued by the DGFT Authority before the jurisdictional Customs authorities by the date **20.04.2023**, i.e. within 30 days from the expiry of Export Obligation period.

7. The said importer i.e M/s. Laxmi Creation has not furnished Export Obligation Discharge Certificate (EODC)/ redemption letter to be issued by the respective Regional Authority towards fulfilment of the export obligation specified under the above EPCG Authorisation / Licence. Therefore, the said M/s. Laxmi

Creation, was requested vide letter dated 12.02.2024 followed by subsequent reminder letters dated 19.09.2024 and dated 16.10.2024 to produce EODC/redemption letter. However, no reply was received from the said importer. The importer neither produced EODC issued by DGFT, Surat nor could produce any extension granted by DGFT, Surat for fulfilment of Export Obligation.

8. Letter dated 16.10.2024, followed by reminders dated 13.11.2024, 10.12.2024 and 05.03.2025 were sent to the DGFT, Regional Unit, Surat requesting them to intimate the Customs office regarding any extension/recovery proceeding against the holder of EPCG Authorisation / Licence. In response to the above correspondence, the DGFT, Regional Unit Surat vide e-mail communication dated 20.03.2025 (from e-mail id: surat-dgft@nic.in to e-mail id: cusicd-tumb@gov.in , shared a list of EPCG Authorisation holders with status, wherein the above authorization holder has been categories under the category *"SCN is being issued"*. The communication received from the DGFT Regional Unit Surat indicate that the DGFT authorities have neither endorsed any amendment including export obligation extension nor they will entertain any requests for any amendments including request of export obligation extension at this stage. Thus, it appeared, from the above that the said importer has failed to fulfill the export obligation as specified in the License and has not complied with the mandatory conditions of the Customs Notification No.16/2015-Cus dated 01.04.2015, EPCG License 21.03.2017 and conditions of the Bond executed by the importer at ICD Tumb.

9. The Importer M/s. Laxmi Creation had imported capital goods under EPCG Scheme in the month of **April/May,2017**. This period is covered under the provisions of Foreign Trade Policy 2015-2020 and Customs Notification No. 16/2015-Customs dated 01.04.2015, as amended. The legal provisions applicable in the case are:

a. Chapter 5 of Foreign Trade Policy 2015-2020 (FTP 2015-2020) titled Export Promotion Capital Goods (EPCG) Scheme.

b. Chapter 5 of Handbook of Procedures (HBoP) under FTP 2015-2020 titled Export Promotion Capital Goods (EPCG) Scheme

c. Customs Notification No. 16/2015-Customs dated 01.04.2015, as amended.

d. Sections 111 (o), 112 (a) and (b), 124, 117 and 143 of the Customs Act, 1962.

10. The Importer was allowed clearance of the aforesaid Capital Goods/machines, by the proper officer, on execution of Bond in terms of the provisions of Section 143 of the Customs Act, 1962. The importer was bound himself to discharge liability within a specified period, which he was failed to do, by not fulfilling the export obligation and also, by not paying the customs duty saved by them at the time of import under the EPCG Scheme, therefore, the Customs authorities are entitled to recover the Customs Duty not paid or short paid by the importer by raising a demand and appropriating the Bank Guarantee furnished by the Noticee against this demand. Section 143 of the Customs Act, 1962 provides that 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. The relevant text of the section 143 of the Customs Act, 1962 is reproduced as under for ease of 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.***

11. As per para 7 of Customs Notification No. 16/2015-Customs dated 01.04.2015, the importer i.e. M/s. Laxmi Creation 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 were required to pay duties of Customs equal to an amount which for the unfulfilled portion of the export obligation alongwith interest within three months from the expiry of the said block. The Noticee has also given an undertaking/Bond to this effect.

11.1 Para (7) of Customs Notification No. 16/2015-Customs dated 01.04.2015, re-produces as under:

"(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;"

12. It is observed that in response to the letters issued and referred in foregoing paras, the importer was failed to submit any documentary evidences which establishes that they have fulfilled the export obligation in respect of the above mentioned above Authorization/License. Consequently, the Noticee suppressed the fact that they had neither fulfilled their export obligation nor paid the applicable customs duty. This non-compliance came to light only when the matter was taken up with the Directorate General of Foreign Trade (DGFT). Communication from the DGFT confirmed that the Noticee had failed to submit any documentation regarding the fulfillment of their export obligation. Therefore, it appears that the Noticee neither fulfilled their export obligation nor paid the

customs duty along with interest, despite having given an undertaking to do so. By failing to disclose these facts to either the Department or the DGFT, the Noticee suppressed vital information with a clear intent to evade duty payment.

13. All the above acts on the part of M/s. Laxmi Creation appears to be in violations of various conditions of policy provisions of chapter 5 under EPCG Scheme of FTP 2015-2020 and in contravention to conditions to the above EPCG Authorization and Customs Notification No. 16/2015-Customs dated 01.04.2015. It also appears that the imported Capital Goods were not used for intended purpose for which the exemption from payment of Duty was claimed and therefore, the noticee have rendered the capital goods imported under the said EPCG Authorization, tabulated herein above, having total assessable value of **Rs.31,40,127/-** liable for confiscation under Section 111(o) of the Customs Act, 1962.

14. Further, M/s. Laxmi Creation had executed the Bond alongwith bank Guarantee at the time of import of duty-free capital Goods under EPCG Authorization binding themselves to pay the duty of customs foregone in the event of their failure to comply with the conditions of customs notification cast upon them in this behalf as per the conditions of the Notification No. 16/2015-Customs dated 01.04.2015, as amended. Therefore, the Bond and Bank Guarantee executed by them are required to be enforced and the amount of duty forgone is required to be demanded and recovered from them along with interest at the applicable rate, in terms of conditions of the said Notification No. 16/2015-Customs dated 01.04.2015 read with conditions of the Bond executed by the Noticee at the time of importation of capital goods, further read with Section 143 of the Customs Act, 1962, without limitation of any time, in as much as the said M/s. Laxmi Creation have failed to comply with the conditions of the said notification. The details of Customs Duty required to be demanded and recovered from said authorization holder/importer is as under:

Sl. No.	**EPCG Authorisation/ Licence No. and date**	**Relevant Bill of Entry No. & date**	**Amount of Customs Duty liable to be paid (Rs.)**
1	**5230023867 dated**	9513731 dated 01.05.2017	Rs.2,45,092

	21.03.2017	9485049 dated 28.04.2017	Rs,4,90,184
			Rs.7,35,276

15. The said M/s. Laxmi Creation are also liable for penalty under Section 112 (a) & 112 (b) of the Customs Act, 1962 in as much as the acts on part of the noticee, elaborated herein above, have rendered the imported goods liable for confiscation under the provisions of the Section 111(o) of the Customs Act,1962. Since the said M/s. Laxmi Creation have violated the provisions of Foreign Trade Policy 2015-2020 and conditions of Custom Notification No. 16/2015-Customs dated 01.04.2015 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, they shall also be liable to penalty under Section 117 of Customs Act, 1962.

16. Since, the Noticee could not fulfill the conditions laid down under Notification No. 16/2015-Customs dated 01.04.2015 therefore, the Bank Guarantees No. **0306BG001742017 dated 06.04.2017**, for **Rs.1,30,000/-**, issued by **The South Indian Bank Ltd., Ring Road, Surat,** pertaining to the above said EPCG Authorisation / Licence is required to be encashed and deposited in Government Account for recovery of the above Customs duty, interest, fine and penalty.

17. It also appeared that Pravinbhai Manhibhai Mandaviya (Adhar No.605897607076), Proprietor of M/s. Laxmi Creation, had intentionally taken the undue benefits of EPCG Scheme and evaded payment of Customs Duty on imported goods tabulated herein above by reason of fraud. It thus, appears that she had knowingly committed acts which rendered the said goods in question liable for confiscation under Section 111(o) of the Customs Act, 1962 and has committed an offence of the nature as described under Section 112(a) of the Customs Act,1962 and thus, has rendered herself liable to penalty under Section 112(a) of Customs Act, 1962.

18. It also appears that M/s. Polar Shipping Services, Customs Broker firm (CHA No. AAKFP101HCH003) acted on behalf of the above authorization holder/importer and handled work relating to registration of the above licence before Customs as per the authorization letter dated NIL issued by the above

authorization holder/importer. It also appears that the above Customs Broker has also acted on behalf of the above authorization holder/importer for clearance of consignments of the subject goods from customs. The importer handed over the documents to the Customs Broker for registration of the above licence and represented the authorization holder/importer before the Customs. M/s. Polar Shipping Services, the Customs Broker firm who handled all related work in the capacity as the Custom Broker appears to have been aware that the subject goods imported availing duty exemption under EPCG Scheme is subject to conditions stipulated in the respective authorization and Customs Notification and non-observance of such conditions entail the goods liable for confiscation under the provisions of Section 111(o) of the Customs Act,1962. In the present case, the authorization holder/importer has failed to comply with the conditions and thus, capital goods imported under EPCG Scheme are liable for confiscation under the provisions of Section 111(o) of the Customs Act,1962.

19. The commissions and omissions on the part of M/s. Polar Shipping Services who is Licensed Customs Broker Firm was in violation of the obligations cast on them and that the Custom Broker has not advised his client to comply with the provisions of the Customs Act,1962 and it appears that the Customs Broker has not brought this matter to the notice of Dy. Commissioner/Asstt. Commissioner; therefore, it appears that the Customs Broker has not exercise due diligence to ascertain the correctness of information with reference to the subject EPCG Licence/clearance of goods. Whereas, by this act on the part of the Custom Broker, it appears that the above Customs Broker has failed to perform its duties/obligation and therefore, appears to be rendered themselves liable for penalty in terms of provisions of Section 112(a) of Customs Act, 1962 and appears to have abetted in rendering the subject goods liable to confiscation under Section 111(o) of the Customs Act,1962.

20. M/s. Polar Shipping Services, the Customs Broker firm who handled all related work in the capacity as the Custom Broker should have advised their client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as provided under Regulation 10(d) of the Customs Brokers Licensing

Regulations,2018 (CBLR,2018). Also, the said Customs Broker firm should have informed any change of postal address, telephone number, e-mail etc. to the Deputy Commissioner of Customs/Assistant Commissioner of Customs of all Customs Stations including the concerned Deputy Commissioner or Assistant Commissioner of the Commissionerate who has granted the license immediately within two days, as provided under Regulation 10(o) of the Customs Brokers Licensing Regulations,2018 (CBLR,2018) and thereby appears to have rendered itself liable for action under the provisions of Regulation 14 of CBLR,2018. However, it appears that the above Customs Broker firm have not complied with the above provisions.

21. Accordingly, a Show Cause Notice bearing CUS/EPCG/REGN/1117/2025-ICD-UMGN-CUS-COMMRTE-AHMEDABAD dated 12.11.2025 was issued to M/s. Laxmi Creation, (IEC- 5209010571) having address at Shed No.P 335, New GIDC, GIDC Sub Division 2, Fulpada Katargam, Surat, Gujarat - 395004 / B 2, Harikunj Society, Chikuwadi, Nana Varachha Road, Surat, Gujarat - 395006, calling upon to show cause to the Additional Commissioner/Joint Commissioner of Customs, ICD, Tumb, having his office at 1st Floor, ICD, Tumb, S. No. 44/1/P.K. 2, Village-Tumb, Tal.: Umbergaon, Dist.: Valsad, Gujarat-396150, as to why:-

i. Exemption from payment of duty in respect of EPCG Authorization No. **5230023867 dated 21.03.2017** under EPCG scheme read with Customs Notification No. 16/2015-Cus dated 01.04.2015, as amended, for capital goods imported vide Bill of Entry No. 9513731 dated 01.05.2017 & 9485049 dated 28.04.2017 should not be denied to them;

ii. The Capital Goods imported under the above EPCG Authorization by availing exemption under Customs Notification No. 16/2015-Cus dated 01.04.2015, as amended, totally valued at **Rs.31,40,127/- (Rs. Thirty One Lakh, Forty Thousand, One Hundred and Twenty Seven Only)** should not be confiscated under Section 111 (o) of the Customs Act, 1962.

iii. The duty saved amount of **Rs.7,35,276/- (Rupee Seven Lakh, Thirty Five Thousand, Two Hundred and Seventy Six only)**, as tabulated in the SCN at the time of import of aforesaid capital goods under the above EPCG Authorizations, 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 at the time of import in terms of Section 143 of the Customs Act,1962 by enforcing the terms of the said Bond;

iv. Interest as applicable, on the duty demanded above, should not be charged 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 at the time of import in terms of Section 143 of the Customs Act,1962 by enforcing the terms of the said Bond;

v. Penalty should not be imposed upon them under Section 112(a) and 112(b) of the Customs Act, 1962;

vi. Penalty should not be imposed upon them under the provisions of Section 117 of the Customs Act, 1962.

vii. The Bank Guarantee No. **0306BG001742017 dated 06.04.2017**, for **Rs.1,30,000/-**, issued by **The South Indian Bank Ltd., Ring Road, Surat,** furnished in the name of the notice should not be encashed and deposited in Government Account towards the Duty liability, interest and penalty;

22. Also Show Cause Noticee dated 12.11.2025 was issued to Shri Pravinbhai Manhibhai Mandaviya (Adhar No.605897607076), Proprietor of M/s. Laxmi Creation, (IEC- 5209010571), Shed No. P 335, New GIDC, GIDC Sub Division 2, Fulpada Katargam, Surat, Gujarat - 395004, calling upon to show cause to the Additional Commissioner/Joint Commissioner of Customs, ICD, Tumb, having his office at 1st Floor, ICD, Tumb, S. No. 44/1/P.K. 2, Village-Tumb, Tal.: Umbergaon, Dist.: Valsad, Gujarat-396150, as to why:-

i. Penalty should not be imposed upon her under Section 112(a) of the Customs Act,1962;

23. Further, Show Cause Notice dated 12.11.2025 was also issued to M/s. Polar Shipping Services, Customs Broker firm (CHA No. AAKFP101HCH003), No. 502 TO 505, D R India Textile Hub, Opp. Amazia Water Park, Parvat Patiya, Surat, Gujarat-395010, calling upon them to show cause to the Additional Commissioner/Joint Commissioner of Customs, ICD, Tumb, having his office at 1st Floor, ICD, Tumb, S. No. 44/1/P.K. 2, Village-Tumb, Tal.: Umbergaon, Dist.:

Valsad, Gujarat-396150, as to why :-

i. Penalty should not be imposed upon her under Section 112(a) of the Customs Act, 1962;

ii. Action should not be initiated against them under the provisions of Regulation 14 of the Customs Brokers Licensing Regulations,2018 (CBLR,2018).

24. Written Defense submission:

The Show Cause Notice No. CUS/EPCG/REGN/1117/2025-ICD-UMGN-CUS-COMMRTE-AHMEDABAD dated 12.11.2025 was sent on the available address of the importer. However, no reply to the Show Cause Notice has been filed by the importer till date.

24.1 Further, Shri Haresh Gadhiya of M/s. Polar Shipping Services has filed their written submission dated 13.03.2026 received on 18.03.2026 wherein he denies all the allegation made against him in the Show Cause Notice. As regard to allegation of Violation of Regulation 10(d) of CBLR regulations & the authorization letter issued by the Importer, he submitted that they have advised the Importer to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof during importation of Capital Goods under EPCG license handled by them since they are not expected to check any activities of the Importer subsequent to clearance of the Capital Goods from ICD as to whether the Importer has exported the goods manufactured using the imported Capital Goods, or not, and most importantly there is no role of CHA as to see whether the Importer has fulfilled the Export Obligation as per EPCG license issued to them, or not, since such responsibilities are of the Importer to comply with provisions of Customs & DGFT. Thus, there is no reason to allege them that they have failed to impart proper information to the Importer and violate any provisions of the CBLR, 2018. The authorization provided by the Importer was up to clearance of goods covered by the Bill of Entry and once such goods received by the importer thereafter there's no responsibility of the CHA.

He further submitted that without prejudice to the above, to allege violation of ibid Regulation, prior knowledge regarding illegality intended to be committed by the Importer is a mandatory ingredient and the same is missing in the present

case. There's no dispute that the CHA had undertaken the clearance of Capital Goods as per Bill of Entry only after compliance with KYC documents (as already informed vide letter dated 11.02.2026 submitted in your office on 23.02.2026) provided by the Importer and the responsibility of the CHA ceases subsequent to clearance of goods (as per Bill of Entry) as there's no role of the CHA thereafter. Even there is no allegation of undue monetary gain by the CHA through said import when goods are imported. Thus, there is no reason to allege that the CHA failed to verify the facts and report to the Deputy/Assistant Commissioner regarding violation of any Regulation to allege violation of Regulation 10(d) of the CBLR, 2018 and hence, the CHA prays for taking lenient view and requesting for not to take any action on the CHA under Regulation 14 of CBLR, 2018.

In respect of the proposed penalty under Section 112 of Customs Act, 1962 against them, he submitted that the wordings of Section 112 starts with "penalty for improper importation of goods", however, there's no dispute in the impugned SCN with respect to improper importation of goods in the instant case but the instant case is pertaining to non-fulfillment of Export Obligation by the Importer (which are beyond the control of the CHA) and when there's no dispute about importation of goods, the provisions of Section 112 cannot be made applicable to the impugned SCN and therefore the CHA prays to kindly drop the impugned SCN with consequential relief to the CHA. He placed reliance on the OIO bearing no. OIO-KND-CUSTM-000-COM-03-2020-21 dated 17.06.2021 passed by the Commissioner of Customs, Kandla, in the similar matter wherein the proceeding against the CHA was dropped by the Adjudicating Authority and accordingly prayed to drop the proceeding initiated against them and requested to grant personal hearing in the matter before deciding.

25. Personal Hearing: -

The noticees were granted opportunity of personal hearings on 29.01.2026, 11.02.2026, 19.02.2026 and 20.07.2026 in compliance with the Principles of Natural Justice and the letters for personal hearing were sent to the available addresses of the noticees, however, the noticee M/s. Laxmi Creation and Shri Pravinbhai Manhibhai Mandaviya (Adhar No.605897607076), Proprietor of M/s. Laxmi Creation did not attend the Personal Hearing on any of provided dates. In the instant case, the noticee M/s. Laxmi Creation and Shri Pravinbhai Manhibhai

Mandaviya (Adhar No.605897607076), Proprietor of M/s. Laxmi Creation has been granted sufficient opportunity of being heard in person on four occasions, but they failed to appear on any of them. In view of the above, it is evident that the Noticees are indifferent to the ongoing adjudication proceedings and does not have anything to say in their defence. Therefore, I am of the opinion that sufficient opportunities have been offered to the Noticee M/s. Laxmi Creation and Shri Pravinbhai Manhibhai Mandaviya (Adhar No.605897607076), Proprietor of M/s. Laxmi Creation in accordance with the principles of natural justice, and there is no prudence in keeping the matter in abeyance indefinitely.

Shri Haresh Haresh Gadhiya of M/s Polar Shipping Services (CHA) attended the personal hearing on 20.7.2026 and re-iterated his submission dated 13.03.2026 received on 18.03.2026 and requested to take the same on record and duly considered while deciding the case. He further prayed that no penalty be imposed upon M/s Polar Shipping Services, as they had acted only in the capacity of a Customs Broker.

25. Discussion and Findings:

I have carefully gone through the facts of the case, the relevant records available in the case file as well as compilation of statutory provisions.

25.1 I find that as per Section 122A of the Customs Act, 1962, the Adjudicating Authority shall give an opportunity of being heard to the Noticee in a proceeding, if the Noticee so desires. Accordingly, in the present case ample opportunities were granted to the importer but they did not participate in the adjudication proceedings in spite of the fact that the personal hearing letters were sent at the available address of the importer as well and service of letters for personal hearings were done in terms of Section 153 of Customs Act, 1962.

Section 153 of the Customs Act reads as under -

(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely :—

a) *by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;*

b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;

c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;

d) by making it available on the common portal;

e) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or;

f) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.

(2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).
(3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.]

Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that Personal Hearing letters were duly served to the Noticee, but they did not respond as if they did not have anything to submit in their defence.

25.2 I find that the importer has failed to appear for Personal Hearing, in spite of being given opportunity to appear in person several times as detailed in foregoing para for defending their case. Under such circumstance, there is no option left for me but to proceed with the adjudication proceedings ex-parte in terms of merit of the case for Noticee M/s. Laxmi Creation and his proprietor Shri Pravinbhai Manhibhai Mandaviya.

25.2.1 Hon'ble Tribunal of Mumbai in the case of ***Sumit Wool Processors Vs. CC, Nhava Sheva Reported In 2014 (312) E.L.T. 401 (TRI. - MUMBAI)*** has observed as under:

"8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them.

When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus, the argument taken is only an alibi to escape the consequences of law. Accordingly, we reject the plea made by them in this regard."

25.2.2 Hon'ble High Court of Kerala in the case of ***United Oil Mills Vs. Collector of Customs & C. Ex. Cochin Reported In 2000 (124) ELT 53 (KER.)*** has held that:

"19. No doubt hearing includes written submissions and personal hearing as well but the principle of Audi Alteram Partem does not make it imperative for the authorities to compel physical presence of the party concerned for hearing and go on adjourning the proceeding so long the party concerned does not appear before them. What is imperative for the authorities is to afford the opportunity. It is for the party concerned to avail the opportunity or not. If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice. In the instant case as stated in detail in preceding paragraphs, repeated adjournments were granted to the petitioners, dates after dates were fixed for personal hearing, petitioners filed written submissions, the administrative officer of the factory appeared for personal hearing and filed written submissions, therefore, in the opinion of this Court there is sufficient compliance of the principles of natural justice as adequate opportunity of hearing was afforded to the petitioners.

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21. It may be recalled here that the requirement of natural justice varies from cases to cases and situations to situations. Courts cannot insist that under all circumstances personal hearing has to be afforded. Quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the persons concerned but it cannot be held that before dismissing such applications in all events the quasi-judicial authorities must hear the applicants personally. When principles of natural justice require an opportunity before an adverse order is passed, it does not in all circumstances mean a personal hearing. The requirement is complied with if the person concerned is afforded an opportunity to present his case before the authority. Any order passed after taking into consideration the points raised in such applications shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters. See Union of India and Another v. M/s. Jesus Sales Corporation [1996 (83) E.L.T. 486 (S.C.) = J.T. 1996 (3) SC 597]."

25.2.3 Hon'ble Supreme Court in the case of ***Jethmal Vs. Union of India Reported In 1999 (110) ELT 379 (S.C.)*** has held as under:

"7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well-known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to

inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly, he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality."

26. I have carefully gone through the Show cause notice and documents of the case on record. The issues for consideration before me are as follows:

(i) Whether, the benefit of Zero Duty for EPCG Scheme under Notification No. 16/2015-Cus dated 01.04.2015 on the Computerized Embroidery Machines in the name of M/s. Laxmi Creation, under EPCG Licence No. 5230023867 dated 21.03.2017 is admissible?

(ii) Whether the Customs Duty totally amounting to **Rs.7,35,276/- (Rupee Seven Lakh, Thirty Five Thousand, Two Hundred and Seventy Six only)** being the Duty forgone at the time of import under EPCG Licence, should be demanded and recovered from the importer in terms of Notification No. 16/2015-Cus dated 01.04.2015 as amended, and by enforcing the Bond and encashing the Bank Guarantee of Rs. 1,30,000/- furnished by the Importer?

(iii) Whether, interest at the applicable rate should be recovered from the importer on the Customs Duty as mentioned at (ii) above in term of Notification No. 16/2015-Cus dated 01.04.2015 as amended and as per the conditions of Bond executed in term of Section 143 of the Customs Act,1962?

(iv) Whether, the imported Capital Goods valued at **Rs.31,40,127/- (Rs. Thirty One Lakh, Forty Thousand, One Hundred and Twenty Seven Only)** should be held liable for confiscation under Section 111(o) of the Customs Act, 1962?

(v) Whether, penalty should be imposed on the importer under Section 112(a) and 112(b) of the Customs Act, 1962?

(vi) Whether, penalty should be imposed on the Importer under Section 117 of the Customs Act, 1962?

(vii) Whether, penalty should be imposed on Shri Pravinbhai Manhibhai Mandaviya Prop. of M/s. Laxmi under Section 112(a) of the Customs Act, 1962?

(viii) Whether, penalty should be imposed on CHA i.e M/s. Polar Shipping Services under Section 112(a) of the Customs Act, 1962?

(ix) Whether action should be initiated against CHA under the provisions of Regulation 14 of the Customs Brokers Licensing Regulations,2018 (CBLR,2018) ?

27. Now I would proceed to determine Whether, the benefit of Zero Duty for EPCG Scheme under Notification No. 16/2015-Cus dated 01.04.2015 on the Computerized Embroidery Machines in the name of M/s. Laxmi Creation, under EPCG Licence No. 5230023867 dated 21.03.2017 is admissible?

27.1 I find that the importer had imported 3 Sets of capital goods viz. **'6 COLOURS 27 HEADS COMPUTERIZED EMBROIDERY MACHINE AREA 250X550X1300 WITH DAHAO COLOUR MONITOR WITH TRIPLE SERVO MOTR'** under EPCG Licence No. **5230023867 dated 21.03.2017** claiming the benefit of exemption available under Notification No. 16/2015-Cus dated 01.04.2015 and cleared under Bills of Entry at zero duty under the said Notification No. 16/2015-Cus dated 01.04.2015. I find it would be worth to reproduce the relevant content of the Notification No. 16/2015-Cus dated 01.04.2015 as under:

Notification No. 16 / 2015-CUSTOMS

New Delhi, the 1st April, 2015

G.S.R. 252 (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 of1975) (hereinafter referred to as the said Customs Tariff Act) , and

(ii) (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 authorisation 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 authorisation is registered at the port of import specified in the said authorisation and the goods, which are specified in the Table 1 annexed hereto, are imported within validity of the said authorisation and the said authorisation is produced for debit by the proper officer of customs at the time of clearance: Provided that the goods imported should not fall under clause (f) of paragraph 5.01 of Foreign Trade Policy: Provided further that the catalyst for one subsequent charge shall be

allowed, under the authorisation in which plant, machinery or equipment and catalyst for initial charge have been imported, except in cases where the Regional Authority issues a separate authorisation for catalyst for one subsequent charge after the plant, machinery or equipment and catalyst for initial charge have already been imported;

(3) that the importer is not issued, in the year of issuance of zero duty EPCG authorisation, the duty credit scrips under the erstwhile Status Holder Incentive Scrip (SHIS) scheme. In the case of applicant who is Common Service Provider (herein after referred as CSP), the CSP or any of its specific users should not be issued, in the year of issuance of the zero duty EPCG authorisation, the duty credit scrips under SHIS. This condition shall not apply where already availed SHIS benefit that is unutilised is surrendered or where benefits availed under SHIS that is utilised is refunded, with applicable interest, before issue of the zero duty EPCG authorisation. SHIS scrips which are surrendered or benefit refunded or not issued in a particular year for the reason the authorisation has been issued in that year shall not be issued in future years also;

(4) that the goods imported shall not be disposed of or transferred by sale or lease or any other manner till export obligation is complete;

(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 authorisation, or for such higher sum as may be fixed or endorsed by the Regional Authority in terms of Para 5.16 of the Handbook of Procedures, within a period of six years from the date of issue of Authorisation, in the following proportions, namely :***

S. No.	*Period from the date of issue of Authorisation*	*`Proportion of total export obligation*
1	*Block of 1st to 4th year*	*Minimum 50%*
2	*Block of 5th and 6th year*	*Balance*

……

…….

(6) that if the importer does not claim exemption from the additional duty leviable under section 3 of the Customs Tariff Act,1975, the additional duty so paid by him shall not be taken for computation of the net duty saved for the purpose of fixation of export obligation provided the Cenvat credit of additional duty paid has not been taken;

(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 percent per annum from the date of clearance of the goods****;***

27.2 Para 5.8 of the Handbook of Procedure Vol. I of Foreign Trade Policy (FTP) 2019-2014 stipulates that the Authorization holder under EPCG Scheme shall fulfill the export obligation over the specified period in following proportion:

Period from the date of issue of Authorization	Minimum export obligation to be fulfilled
Block of 1st to 4th year	*50%*
Block of 5th and 6th year	*50%*

27.3 Para 5.8.3 of the Handbook of Procedure Vol. I of Foreign Trade Policy (FTP) 2015-20 stipulates that "Where export obligation of any particular block of years is not fulfilled in terms of the above proportions, except in such cases where the export obligation prescribed for a particular block of years is extended by the Regional Authority subject to payment of composition fee of 2% on duty saved amount equal to unfulfilled portion of EO, such Authorization holder shall, within 3 months from the expiry of the block of years, pay duties of customs (alongwith applicable interest as notified by DoR) of an amount equal to that proportion of the duty leviable on the goods which bears the same proportion as the unfulfilled portion of the export obligation bears to the total export obligation."

27.4 Para 5.14 of the Handbook of Procedure Vol. I of Foreign Trade Policy (FTP) 2015-20 stipulates that "In case, EPCG authorization holder fails to fulfill prescribed Bonafide Default export obligation, he shall pay duties of Customs plus interest as prescribed by Customs authority. Such facilities can also be availed by EPCG authorization holder to exit at his option. The authorization holder will have the option to furnish valid duty credit scrips, issued under Chapter 3 of FTP for payment of the customs duty component."

27.5. On combined reading of the conditions of the Notification No. 16/2015-Cus dated 01.04.2015 and Para 5.8., 5.8.3 and 5.14 of the Handbook of Procedure Vol. I of Foreign Trade Policy (FTP) 2015-20, I find that the importer was obliged to fulfill the export obligation against the import of 3 Sets of Capital Goods viz. 'Computerized Embroidery Machine' cleared under EPCG Licence No. **5230023867 dated 21.03.2017** by availing benefit of exemption Notification No. 16/2015-Cus dated 01.04.2015.

27.6 I find that as per condition (5) of the Notification No. 16/2015-Cus

dated 01.04.2015, the importer has executed a Bond dated **06.04.2017** 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 within a period of six years from the date of issue of EPCG Licence No. **5230023867 dated 21.03.2017**. I also find that the Importer has also furnished Bank Guarantee No. **0306BG001742017 dated 06.04.2017** for **Rs.1,30,000/-**issued by **The South Indian Bank Ltd., Ring Road, Surat**.

27.7 I find that letter dated 12.02.2024 followed by subsequent reminder letters dated 19.09.2024 and dated 16.10.2024 were issued to the importer to either furnish the Export Obligation Discharge Certificate (EODC) issued by Directorate General of Foreign Trade (hereinafter referred to as "DGFT"), Surat or any extension granted by DGFT, Surat for fulfillment of Export Obligation, but no reply was received. Further, as no reply was received from the importer, letters 16.10.2024, followed by reminders dated 13.11.2024, 10.12.2024 and 05.03.2025 were written to the Foreign Trade Development Officer, DGFT, Surat requesting them to intimate whether the importer has been issued EODC against EPCG License No. **5230023867 dated 21.03.2017** or any documents showing the fulfillment of the Export Obligation have been submitted by the importer or otherwise. In response to letters, DGFT Regional Unit, Surat vide mail dated 20.03.2025 (from e-mail id: surat-dgft@nic.in to e-mail id: cusicd-tumb@gov.in), shared a list of EPCG Authorisation holders with status, wherein the above authorization holder has been categories under the category ***"SCN is being issued".*** The communication received from the DGFT indicate that the DGFT authorities have neither endorsed any amendment including export obligation extension nor they will entertain any requests for any amendments including request of export obligation extension at this stage. Thus, it is established that the importer has failed to fulfill the Export Obligation as specified in the EPCG Authorization No. **5230023867 dated 21.03.2017** as well as not complied with the mandatory conditions of the Customs Notification No. 16/2015-Cus dated 01.04.2015, EPCG Licence and Bond dated 06.04.2017 executed at the time of import.

27.8 I find that as per Condition No. 5 of the Notification No. 16/2015-Cus dated 01.04.2015, the importer was required to fulfill export obligation on Free on

Board (FOB) basis equivalent to six times the duty saved on the goods imported under EPCG Authorization No. **5230023867 dated 21.03.2017** within a period of six years from the date of issuance of EPCG Authorization. I find that the said importer has neither submitted any evidence regarding fufiflment of export obligation nor submitted any extension granted to them by the DGFT.

27.9 Further, I find that as per Condition No. 7 of the Notification No. 16/2015-Cus dated 01.04.2015, 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 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 15% per annum from the date of clearance of the goods. However, the said importer has neither produced any evidence of the export obligation nor paid the Customs Duty alongwith interest on failure to fulfill export obligation in particular block. Thus, I find that the importer has contravened the conditions of Notification No. 16/2015-Cus dated 01.04.2015 and therefore, the importer is not eligible for duty exemption benefit under the said Notification.

27.10 In view of the discussions in Para 27 to 27.9 above, I find that the importer has failed to fulfill the export obligation, thereby contravened the prescribed conditions of the Notification No. 16/2015-Cus dated 01.04.2015 and Para 5.8., 5.8.3 and 5.14 of the Handbook of Procedure Vol. I of Foreign Trade Policy (FTP) 2015-20. I find that the importer failed to fulfill export obligation on FOB basis equivalent to six times the duty saved on the goods imported as specified in the 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 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 from the date of issuance of

EPCG Authorization No. **5230023867 dated 21.03.2017**. Therefore, the importer is not admissible for the benefit of zero rated duty benefit available under Notification No. 16/2015-Cus dated 01.04.2015 for the imported capital goods viz. 03 Sets of 'Computerized Embroidery Machine' under EPCG Licence No. **5230023867 dated 21.03.2017** imported under the Bills of Entries as tabulated in Table at Para 2 herein above.

28. Whether the Customs Duty totally amounting to Rs.7,35,276/- (Rupee Seven Lakh, Thirty Five Thousand, Two Hundred and Seventy Six only) being the Duty forgone at the time of import under EPCG Licence, should be demanded and recovered alongwith interest from the importer in terms of Notification No. 16/2015-Cus dated 01.04.2015, as amended, and by enforcing the Bond and encashing the Bank Guarantee of Rs.1,30,000/- furnished by the Importer?

28.1 I find that as per the condition (5) of the Notification No. 16/2015-Cus dated 01.04.2015, the importer has executed a Bond dated **06.04.2017** binding himself to comply with all the conditions of this notification as well as those mentioned in the EPCG License. Conditions of the Bond dated 06.04.2017 were interalia as under:

"Now the conditions of this bond are that:

1. I/We, the obligor (s) fulfill all the conditions of the said notification and shall observe and comply with all its terms and conditions.
2. I/We, the obligor (s) shall observe all the terms and conditions specified in the license.
3. I/We, the obligor(s) shall fulfill the export obligation as specified in the said notification within 30 days from the expiry of the specified export obligation period to the satisfaction of the Government.
4. In the event of failure to fulfill or part of the export obligation as specified in the said notification and the license, I/We, the obligor (s), hereby undertake to pay the customs duty but for the exemption and also interest @18% per annum thereon forthwith and without any demur, to the Government.
5. I/We, the obligor (s) shall comply with all the conditions and limitations stipulated in the said Import and Export Policy/Foreign Trade Policy as amended from time to time.
6. We, obligor(s), shall not change the name and style under which we, the

obligor(s), are doing business or change the location of the manufacturing premises except with the written permission of the Government.

If each and every one of the above conditions are duly complied with by us, the obligor(s), the above written bond shall be void and of no effect, otherwise the same shall remain in full force and effect and virtue.

It is hereby declared by us, the obligor(s) and the Government as follows:

1. The above written bond is given for the performance of an Act in which the public are interested.
2. The government through the Commissioner of Customs or any other officer of Customs shall recover the sums due from the obligor(s) in the manner laid down in sub Sec. (1) of the Section 142 of the Customs Act, 1962."

28.2 In view of the discussion held in Para 27 to 27.10 above, I find that the importer has failed to fulfill the export obligation and therefore, the benefit of zero rated duty available under Notification No. 16/2015-Cus dated 01.04.2015 for the importation of Capital Goods under EPCG Authorization No. **5230023867 dated 21.03.2017** imported under the Bills of Entry tabulated in Table at Para 2 herein above is not admissible and therefore, the duty saved (foregone) Rs. 7,35,276/- is required to be demanded and recovered along with interest. I find that duty saved is shown as Rs. 8,10,020/- in the item list attached to EPCG Authorization No. **5230023867 dated 21.03.2017**, whereas the actual duty debited (forgone/saved) is Rs. 7,35,276/- while utilising the said Authorisation at the time of import. As per Para 5.16 of Handbook of Procedure, 10% enhancement in CIF value of duty saved is admissible. Thereore, actual duty saved Rs. 7,35,276/- is required to be recovered from the importer. The importer has unequivocally and unconditionally undertaken to pay the duty amount saved on the import of Capital Goods together with interest at the agreed rate in the event of its failure to discharge the export obligations at the time of import by executing the Bond dated 06.04.2017 for Rs. 24,00,000/-. Therefore, the said Bond No. **2001204815** dated 06.04.2017 is required to be enforced in terms of Section 143 (3) of the Customs Act, to recover the Customs Duty of Rs. 7,35,276/-alongwith interest @ 15% from the date of clearance of Capital Goods as per the condition of Notification No. 16/2015-Cus dated 01.04.2015. I also find that apart from the said Bond dated 06.04.2017, the Importer has furnished the Bank Guarantee No. **0306BG001742017 dated 06.04.2017** for Rs.1,30,000/-issued by **The South Indian Bank Ltd., Ring Road, Surat** as surity at the time of import. Therefore, I find that the said Bank Gurantee of Rs.

1,30,000/- is also required to be encashed and appropriated, against the aforesaid duty liability. Thus, recovery of the duty debited (foregone/saved) of Rs. 7,35,276/- alongwith interest at the rate of 15% as stipulated under Notification No. 16/2015-Cus dated 01.04.2015 is liable to be recovered by initiation of action as per Section 142 of the Customs Act, 1962. Further, I find that ratio of decision of Hon'ble Supreme Court rendered in case of Daewoo Motors India Ltd Vs. Union of India reported in 2003 (153) ELT (SC) is squarely applicable in the present case. In the said, decision, Hon'ble Supreme Court has held that "*when it becomes apparent on the facts and circumstances of the case that there is no chance of the appellant fulfilling its export obligation, the action of the first respondent in invoking the bank guarantee cannot be said to be premature and unjustified, much less arbitrary and illegal so as to warrant any interference by this Court*".

28.3 Further, I fortify my stand on confirmation of duty alongwith interest by relying on the decision of the Tribunal, Mumbai in case of Sanghi Industries Ltd Vs. Commissioner of Customs (Export Promotion), Mumbai reported in 2012 (277) ELT (Tr. Mumbai) wherein it has been held as under:

6.5 In the case of export promotion scheme, the Exim Policy and the Customs Notification form an integrated scheme as a whole and they have to be interpreted and applied in a harmonious manner so that the Policy objectives are achieved. At the relevant time while the importer was required to execute the bond and bank guarantee with the Customs for payment of duty, in case export obligations are not fulfilled, in respect of interest on the duty amount saved on failure to fulfill the export obligation, bond and bank guarantee was executed before the licensing authorities. Merely because two separate bonds and bank guarantees have been executed, one with the Customs authorities and another with the licensing authorities, it does not imply that these cannot be invoked together when there is a failure to fulfill the terms and conditions of the exemption. Further the DGFT vide letter dated 8-9-2000, had intimated the appellant that they are liable to pay the duty saved amount with 24% interest to be calculated right from the date of first clearance of the imported machinery, in respect of the imports made under the EPCG licence issued in the instant case. Thus both the authorities, DGFT and Customs have taken the necessary steps for the recovery of the duty amount saved along with interest @ 24% p.a.

6.6 A similar issue was considered extensively by the Hon'ble High Court of Delhi in *Rai Agro Industries Ltd.* v. *DGFT* reported in 2006 (206) E.L.T. 123 (Del.) and the Hon'ble High Court held as follows :

> "15. There are two facets of this question that call for an examination. The first aspect that needs to be examined is whether this court ought to interfere at the instance of a party who has unequivocally and unconditionally undertaken to pay the duty amount saved on the import of equipment together with interest at the agreed rate in the event of its failure to discharge the export obligations. The second

aspect relates to the chargeability of interest on duty which was payable but was not paid in view of an exemption granted subject to fulfilment of the conditions prescribed for such exemption.

16. In so far as the first aspect is concerned, there is no dispute that the petitioner had unequivocally undertaken to pay the differential amount of duty saved on the import, if it failed to comply with its export obligations. The provisions of para 105 of the Handbook and the legal undertaking/agreement executed by the petitioner created in no uncertain terms a legal and enforceable obligation against the petitioner to pay interest on the amount of duty saved by it on the import of the equipments. That position was not disputed before us as indeed the same could not be disputed in the light of the terms of the policy and the provisions of the Handbook of Procedures to which it made a reference and the undertaking contained in the agreement executed between the parties. It is also not in dispute that the condition subject to which the petitioner could have availed of a reduced rate of duty, namely, performance of the export obligation has not been complied with. The question then is whether a party who has availed of a benefit on a solemn assurance and a legal undertaking that it shall perform certain acts necessary for the enjoyment of the benefit being extended in its favour could continue enjoying those benefits while the conditions subject to which the benefit was extended are violated. Our answer is in the negative. *No party can avail of a benefit which was available subject to its performing conditions prescribed for the same, without performing such conditions. If the conditions fail, the party cannot retain the benefit. There is no equity in favour of a person who has availed of a benefit but failed to perform the obligation subject to which alone it could take such benefit.* If that be so, as it indeed is, we see no reason why this court should come to the rescue of a party who fails to do equity in exercise of our equitable jurisdiction. It is trite that one who seeks equity must do equity. The petitioner having failed to discharge its part of the obligation despite the assurance and undertaking furnished cannot be granted any relief in the equitable jurisdiction of this court.

17. That brings us to the second aspect of the matter, namely, whether there is any illegality in the demand made by the respondent for payment of interest on the amount of duty recoverable from the petitioner. The answer to that question is provided by Section 28AA, which deals with interest on delayed payment of duty and *inter alia* provides that where a person chargeable with duty determined under sub-section (2) of Section 28, fails to pay such duty within three months from the date of such determination, he shall pay, in addition to the duty, interest at such rate not below 10% and not exceeding 36% per annum from the date immediately after the expiry of period of three months till the date of payment of such duty. Section 28AB deals with interest on delayed payment of duty in special cases and *inter alia* provides that where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay duty as determined under sub-section (2) or has paid the duty under sub-section (2B) of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below 10% and not exceeding 36% per annum, as is fixed by the Central Government by notification. It is, thus, evident that duty determined as payable would earn interest in the event of a delay in the payment of the same. But for the exemption from payment of duty under the EPCG scheme, the petitioner would have been liable to pay the duty at the rate stipulated for the imports made by it. A concessional rate was, however, applied to the said imports subject to the

petitioner's satisfying the requirements stipulated for the said benefit. No sooner it is found that the petitioner has failed to perform its export obligation which was one of the conditions for applying a concessional rate of duty, the exemption would cease to be effective and the liability to pay the duty at the rate ordinarily applicable re-emerge. Consequently, non-payment of the differential would attract payment of interest in terms of the statutory provisions referred to above. The provisions of the Handbook of Procedures would in such situations step in to provide for what may appear to be a grey area as to the period for which interest on such duty would be recoverable. A reading of para 105 of the Handbook which happens to be the stipulation incorporated even in the legal undertaking furnished by the petitioner would show that the liability to pay interest at the stipulated rate arises from the date of import of the first consignment till the date of payment. Regardless therefore of which, the failure of the export obligation is noticed or established against the importer, once a failure is established or admitted the obligation to pay the differential duty along with interest at the stipulated rate arises and the period for which such payment has to be made will be reckoned from the date when the first consignment was cleared till the date of actual payment. There is in that view sufficient legal sanction for the demand of interest raised against the petitioner on the amount of differential duty. Reliance upon the decisions of the Supreme Court in *Indian Carbon Ltd.* v. *State of Assam,* AIR 1997 SC 3054, *J.K. Synthetics Ltd.* v. *Commercial Taxes* Officer, AIR 1994 SC 2393, *M/s. VVS Sugars* v. *Government of Andhra Pradesh and Others*, AIR 1999 SC 2124 and *York Knitwear Ltd.* v. *Asst. Collector of Customs & Ors.*, 2006 (206) E.L.T. 86 (Del.) = 2005 (117) D.L.T. 554 are of no avail to the petitioner. Claim for interest, it is fairly settled, can arise either on the basis of a statute or a contract or trade usage. In the instant case, the claim for payment of duty is supported not only by the statutory provisions of Sections 28AA and 28AB, but also the terms of the statutory policy and the legal undertaking provided, by the petitioner in accordance with the same."

6.7 An appeal against the said decision of the Hon'ble High Court of Delhi before the Supreme Court was dismissed and, therefore, this decision of the Delhi High Court has attained finality and has the approval of the Hon'ble Supreme Court. Therefore, the contention of 1 the appellant that they are not liable to pay any interest in the absence of statutory provisions in the Customs Act has no legal basis at all and accordingly we reject the same *in toto*. The appellants' reliance on a number of judgments in this regard have been considered by the Hon'ble High Court of Delhi and thereafter, the Hon'ble High Court passed the order that interest is leviable @ 24% on the duty amount saved under the EPCG scheme, if the exporter did not fulfill the export obligation. In view of the clear and categorical finding on the issue by the Hon'ble High Court of Delhi which has been upheld by the Hon'ble Apex Court, we do not find any merit in the argument of the appellant that they are not liable to pay any interest in the instant case and accordingly, we reject the argument totally.

28.4 I further find that letter dated 12.02.2024 followed by subsequent reminder letters dated 19.09.2024 and dated 16.10.2024 were issued to the importer to either furnish the Export Obligation Discharge Certificate (EODC) issued by DGFT, Surat or any extension granted by the DGFT, Surat for fulfillment of Export Obligation, but no reply was received. Further, as no reply

was received from the importer, letter dated 16.10.2024, followed by reminders dated 13.11.2024, 10.12.2024 and 05.03.2025 were written to the Foreign Trade Development Officer, DGFT, Surat requesting them to intimate whether the importer has been issued EODC against EPCG License No. **5230023867 dated 21.03.2017** or any documents showing the fulfillment of the Export Obligation have been submitted by the Importer or otherwise. Directorate General of Foreign Trade, Surat vide mail 20.03.2025 (from e-mail id: surat-dgft@nic.in to e-mail id: cusicd-tumb@gov.in , shared a list of EPCG Authorisation holders with status, wherein the above authorization holder has been categories under the category *"SCN is being issued"*. Thus, I find that the importer failed to export the goods and failed to take remedial action at the appropriate time and failed to pay the duty as soon as they were required to pay. Therefore, the Customs Duty totally amounting to Rs. 7,35,276 being the Duty forgone at the time of import under EPCG Licence, required to be demanded and recovered alongwith interest from the importer in terms of Notification No. 16/2015-Cus dated 01.04.2015 as amended, and by enforcing the Bond and encashing the Bank Guarantee for Rs. 1,30,000/- furnished by the importer. In this regard, I find that the ratio of the decision of the Tribunal, Ahmedabad rendered in case of Shrimandhar Fabrics P. Ltd. Vs. Commr. of Cus., Ahmedabad reported in 2008 (231) ELT 641 (Tri. Ahmd.) is squarely applicable in this case. Relevant para of the decision is reproduced as under:

> "3. We find that the arguments advanced by the ld. Consultant are not acceptable. If the appellant deposited full amount for obtaining bank guarantee, it does not mean that the amount stands deposited in the Govt. treasury and has been credited in the Govt. account. Therefore, the fact that they have deposited the full amount to obtain bank guarantee is of no help. At the time of importation, the appellants have executed the bond and undertaken to pay the duty in case they cannot fulfill the export obligation and they have failed to fulfill the export obligation as confirmed by the DGFT who is the nodal authority to decide the same. In view of the clear cut finding by the DGFT about export obligation, action of the Department in demanding duty with interest and also encashing the bank guarantee cannot be found fault with. As regards confiscation, since export obligation has not been fulfilled, the conditions of importation under EPCG scheme have not been fulfilled and therefore the Commissioner's order confiscating the goods cannot be found fault with. In view of the fact that appellants failed to export the goods and failed to take remedial action at the appropriate time and failed to pay the duty as soon as they were required to pay, imposition of penalty also has to be upheld. However, having regard to the circumstances of the party and the quantum of duty involved and the value of the goods, the redemption fine and penalty, in our opinion, are required to be reduced and accordingly, the

redemption fine imposed in lieu of confiscation is reduced to Rs. l0 lakhs (Rupees ten lakhs only) and penalty is reduced to Rs. 2 lakhs (Rupees two lakhs only). The appeal filed by the party is rejected but for the relief as mentioned above in redemption fine and penalty."

29. Whether, the imported Capital Goods should be held liable for confiscation under Section 111(o) of the Customs Act, 1962?

29.1 I find that the Show Cause Notice proposes confiscation of the impugned imported goods under Section 111(o) of the Customs Act, 1962. If any goods exempted, subject to any condition, from the duty in respect of import which the condition is not observed, such goods would come under the purview of the Section 111 (o) of the Customs Act, 1962. It is to reiterate that in the present case, it is an admitted fact that the importer has failed to fulfill the conditions of Notification No. 16/2015-Cus dated 01.04.2015 by non fulfilment of export obligation against the import of Capital goods and therefore, the imported goods viz. 03 Sets of capital goods viz. "Computerized Embroidery Machine" valued at Rs. **Rs.31,40,127/- (Rs. Thirty One Lakh, Forty Thousand, One Hundred and Twenty Seven Only)** /- cleared under EPCG Licence No. **5230023867 dated 21.03.2017** by availing benefit of exemption Notification No. 16/2015-Cus dated 01.04.2015 is liable for confiscation.

29.2 Further, I find that the ratio of decision rendered by the Hon'ble Tribunal, Mumbai in case of Sanghi Industries Ltd Vs. Commissioner of Customs (Export Promotion), Mumbai reported in 2012 (277) ELT (Tr. Mumbai) is squarely applicable in the present case. Relevant Para of the decision is re-produced below:-

6.8 The appellant has also raised a point that Section 111(o) of the Customs Act for confiscation of the goods is not invokable in the present case. The argument of the appellant is that under Notification 160/92-Cus, which is a conditional exemption Notification, there are two options given to the importer, namely, either to fulfil the export obligation or on failure, pay duty. Thus by paying the duty, the appellants have fulfilled the conditions of Notification No. 160/92 and, therefore, there is no violation and consequently the goods are not liable to confiscation under Section 111(o) of the Act. This argument is totally irrational and illogical. Demand of duty and confiscation of the goods are two totally different aspects under the Customs law. Demand of duty arises on importation of the goods and if goods have been imported at a concessional rate of duty subject to fulfilment of certain conditions and such conditions are violated, then the duty concession would not be

available at all. In the case under consideration, the demand of duty has arisen under the Notification itself in terms of the bond executed by the importer at the time of importation of the goods. Confiscation of the goods arise under Section 111 of the Customs Act in certain specified situations. Section 111(o) reads as follows:

> "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."

In such an eventuality, the goods imported shall be liable to confiscation. In the instant case the goods were imported availing a concessional rate of duty on the condition that the goods will be put to use for manufacture and export of certain products up to certain value within a specified period. When the importer failed to fulfill the condition by not exporting the goods of required value within the stipulated period, then he was no longer eligible for the concessional rate of duty and the duty liability has to be discharged in full without availing the benefit of the exemption. For the same conduct, the goods also became liable to confiscation under the provisions of Section 111(o). The duty liability arises on account of importation. The liability to confiscation or fine is for violation of the conditions of the importation. The act of importation and the conditions of importation are two different things and for violation of each of them, separate consequences would follow. In the instant case the duty liability has been imposed for the import of the goods and the goods have been confiscated for violating the terms and conditions of importation. Since the goods are liable to confiscation, the liability to penalty arises under Section 112 of the Customs Act. Penalty is an action (in personam) on the importer while the duty and fine are (action in rem) on the goods. As per Section 112 of the Customs Act, liability to penalty arises when a person who in relation to any goods acts or omits any act which act or omission would render the goods liable to confiscation under Section 111. Any person who abets or aids the commission of an act or omits to such an act (which renders the goods liable for confiscation) is also liable to penalty. Similarly, when a person acquires possession or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other way dealing in goods which he knows or has reason to believe are liable to confiscation under Section 111 is also liable to penalty under Section 112. In the instant case the appellant imported the goods subject to a condition that he would fulfil the export obligation which obligation he failed to fulfill. Therefore, the goods became liable to confiscation under Section 111(o). Since the goods are liable to confiscation under Section 111(o), penalty under Section 112(a) is attracted. In this case, penalty has been imposed under Section 112(a) and there is no illegality or infirmity in imposing penalty apart from demanding differential duty and we hold accordingly. When the goods are liable to confiscation, the adjudicating authority has the power to allow the redemption of the goods on payment of fine in lieu of confiscation under section 125 of the Customs Act. The goods were released to the appellants at the time of importation under a bond executed by the appellant. The release of the goods was thus provisional. Therefore, when the assessment is finalized subsequently, even if the goods are not available for confiscation, redemption fine in lieu of confiscation can be imposed as has been held in a number of judicial pronouncements on the

subject. Therefore, the imposition of redemption fine in the instant case is fully justified and is quite legal and we hold accordingly."

29.3 As the impugned imported goods are found to be liable for confiscation under Section 111 (o) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125 (1) of the Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the imported goods. Section 125 (1) ibid reads as under:

> **"*SECTION 125. Option to pay fine in lieu of confiscation.*** *— (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the 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"*

I find that the importer has cleared 03 Sets of capital goods viz. "Computerized Embroidery Machine" having total value of **Rs.31,40,127/- (Rs. Thirty One Lakh, Forty Thousand, One Hundred and Twenty Seven Only)** by executing the Bond under Section 143 of the Customs Act,1962. I find that subsequent to executing the Bond, the importer had failed in fulfilment of export obligation and thereby contravened the conditions of Notification No. 16/2015-Cus dated 01.04.2015 and thus rendered the goods liable for confiscation and redemption fine is liable to be imposed. In this regard, I rely on the decision in the matter of Weston Components Ltd. Vs. Commissioner of Customs, wherein Hon'ble Supreme Court has held that:

> *"It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine "*

Therefore, in view of above findings, I find that redemption fine is imposable on the imported Capital Goods viz. 03 Sets of 'Computerized Embroidery Machine' having total value of **Rs.31,40,127/- (Rs. Thirty One Lakh, Forty Thousand, One Hundred and Twenty Seven Only)**.

30. Whether, penalty should be imposed on the Importer under Section 112(a) and Section 112(b) of the Customs Act, 1962 ?

30.1 I find that the importer had imported the Capital Goods availing the benefit of Notification No. 16/2015-Cus dated 01.04.2015 under EPCG Licence No. **5230023867 dated 21.03.2017** but failed to fulfill the export obligation condition as stipulated in Notification No. 16/2015-Cus dated 01.04.2015. Therefore, the goods became liable to confiscation under Section 111(o) of the Custom Act, 1962. Since the goods are liable to confiscation under Section 111(o) of the Custom Act, 1962, penalty under Section 112 of the Customs Act, 1962 is attracted. The relevant portion is reproduced below for reference:

SECTION 112. Penalty for improper importation of goods, etc.-

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

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, ***or in any other manner dealing with any goods*** *which he knows or has reason to believe are liable to confiscation under section 111,*

From the above proviso, it is clear that by failing to fulfill the export obligation required to avail of the duty exemption benefits under the EPCG license issued by the DGFT for the import of capital goods, the Noticee, M/s. Laxmi Creation, has contravened the provisions of Section 112(a) and rendered themselves liable to a penalty under Section 112(a)(ii) of the Customs Act, 1962. I find that the ratio of decision rendered by the Hon'ble Tribunal, Mumbai in case of Sanghi Industries Ltd Vs. Commissioner of Customs (Export Promotion), Mumbai reported in 2012 (277) ELT (Tr. Mumbai) is squarely applicable in the present case and relevant para is already re-produced at Para 29.2 above. Thus, I find that the importer is liable for penalty under Section 112 (a)(ii) of the Customs Act, 1962.

31. Whether, penalty should be imposed on the Importer under Section 117 of the Customs Act, 1962?

31.1 I find that Show Cause Notice also proposes Penalty under Section 117 of the Customs Act, 1962. Section 117 of the Customs Act, 1962 reads as

under:

> **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 [one lakh rupees].

I find that Section 117 of Customs Act, 1962 provide ***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. The maximum amount of penalty prescribed under Section 117 originally Rs. One lakh was enhanced to Four lakhs, with effect from 01.08.2019***. I find that this is a general penalty which may be imposed for various contravention and failures where no express penalty is elsewhere provided in the Customs Act, 1962. In terms of the conditions stipulated under Notification No. 16/2015-Cus dated 01.04.2015 and the accompanying EPCG license, the Noticee was legally mandated to fulfill the prescribed export obligation and produce conclusive evidence of such fulfillment within 30 days from the expiry of the specified export obligation period. Specifically, the Noticee was required to submit the Export Obligation Discharge Certificate (EODC) issued by the DGFT before the jurisdictional Customs authorities on or before **20.04.2023**. However, the Noticee has signally failed to meet these deadlines, nor have they produced the required EODC to date.

Furthermore, the Noticee has demonstrated a complete lack of cooperation with the department by failing to reply to any of the letters issued to them for the production of documents. They also failed to appear for the personal hearings granted to them, thereby demonstrating a deliberate disregard for statutory proceedings and principles of natural justice. Since no specific penalty is explicitly provided under any other provisions of the Act for these precise procedural lapses and non-compliance, the Noticee's acts of omission and commission directly attract the residual provisions of the law. Consequently, the

Noticee has rendered themselves liable to a penalty under **Section 117 of the Customs Act, 1962**.

32. Whether, penalty should be imposed on Shri Pravinbhai Manhibhai Mandaviya (Aadhar No.605897607076), Proprietor of M/s. Laxmi Creation, (IEC- 5209010571) under Section 112(a) of the Customs Act, 1962?

32.1 I find that the Show Cause Notice Proposes penalty on the proprietor of M/s. Laxmi Creation under Section 112(a) of Customs Act, 1962. As detailed and determined in Paragraph 30 of the foregoing findings, non fulfilment of export obligation to claim the benefit of Nil duty on import of Capital goods and the contraventions committed by the importing firm, **M/s. Laxmi Creation**, have been established. Consequently, a penalty under **Section 112(a)(ii) of the Customs Act, 1962** has already been confirmed against **M/s. Laxmi Creation** for its acts and omissions that rendered the subject goods liable to confiscation.

Having confirmed the penalty on the firm, the question arises whether a separate, simultaneous penalty can be sustained against its proprietor. Under civil and taxation jurisprudence, **a sole proprietorship concern is merely a trade name under which a natural person conducts business; it does not possess a separate legal identity, juristic personality, or existence independent of its proprietor**. Therefore, I am of the opinion that the firm and the individual proprietor are one and the same legal entity. All commercial actions, debts, liabilities, and statutory infractions attributed to the trade name **M/s. Laxmi Creation** are directly, fully, and indivisibly the liabilities of its proprietor. As the firm and its proprietor are legally identical, proposing separate penalties on both under Section 112 creates a fundamental legal error. Since a penalty under Section 112(a)(ii) has already been confirmed against **M/s. Laxmi Creation**, that financial and legal liability is already being borne entirely by the natural person who is the sole proprietor. Imposing a consecutive, separate penalty on the proprietor in their individual capacity for the very same transaction punishes the same natural person twice. This violates the principles of natural justice and mirrors the doctrine of double jeopardy, which prohibits an individual from being penalized multiple times for an identical offense or omission. This principle has been explicitly codified through a series of

authoritative rulings across multiple Courts:

- **Hon'ble High Court of Delhi** in ***Anil Kumar Mahensaria v. Commissioner of Customs*** *[2008 (228) E.L.T. 166 (Del.)]*, held that since a proprietorship firm is not a distinct legal entity from its proprietor, a separate penalty cannot be sustained on both for the identical cause of action.
- **Hon'ble High Court of Punjab & Haryana** in ***Vinod Kumar Gupta v. Commissioner of Central Excise*** *[2013 (287) E.L.T. 54 (P&H)]*, affirmed that a proprietary firm and its owner cannot be treated as separate entities for the purpose of cumulative penalization. Any statutory penalty directed at the firm operates inherently as a penalty on the owner.

Following this settled legal position, the proposal to penalize both entities concurrently cannot stand. Since the statutory liabilities of the business operations have already been assessed and penalized under Section 112(a)(ii) against the trading name of the firm, M/s. Laxmi Creation, any separate, independent penalty levied directly on its proprietor would be redundant, legally invalid, and duplicative. In view of above, as penalty under Section 112(a)(ii) of the Customs Act, 1962 already being confirmed against the firm M/s. Laxmi Creation in the foregoing paragraphs, the proposal in the Show Cause Notice to impose a separate and independent personal penalty under Section 112(a) on Shri Pravinbhai Manhibhai Mandaviya (Aadhar No.605897607076) as the proprietor of the said firm is hereby dropped.

33. Findings regarding M/s. Polar Shipping Services, Customs Broker:-

The Show Cause Notice proposes imposition of penalty upon M/s. Polar Shipping Services, Customs Broker, under Section 112(a) of the Customs Act, 1962 and initiation of action under Regulation 14 of the Customs Brokers Licensing Regulations, 2018 on the ground that they handled registration of the EPCG Authorization and clearance of the imported goods.

33.1 I have carefully examined the allegations made in Show Cause Notice, records available in the file, Submission made by Shri Haresh Gadhiya of M/s. Polar Shipping Services in written as well as during PH. It is observed that the Customs Broker acted as an authorised Customs Broker for filing the Bills of Entry and registration of the EPCG Authorization before Customs.

33.2 I find that the instant case is regarding import of Capital Goods under EPCG Licence 5230023867 dated 21.03.2017 issued by DGFT and by availing of the exemption of duty under Notification No. 16/2015-Cus dated 01.04.2015. The above said EPCG authorization was granted for import of **'6 COLOURS 27 HEADS COMPUTERIZED EMBROIDERY MACHINE AREA 250X550X1300 WITH DAHAO COLOUR MONITOR WITH TRIPLE SERVO MOTR'** for total quantity **03 Sets**, with duty saved amount of **Rs.8,10,020/- & FOB value of US$ 71,630.36, equivalent to INR 48,60,120/-** in accordance with the provisions of Foreign Trade Policy 2015-20 and the concerned Customs Notification No.016/2015 dated 01.04.2015. The Importer M/s. Laxmi Creation through CHA M/s. Polar Shipping Service filed 02 Bills of Entries bearing no. 9513731 Dated: 01.05.2017 and 9485049 Dated: 28.04.2017 for clearance of said capital goods. The records indicate that the subject Bill of Entries were granted Out of Charge (OOC) after a formal physical examination. No misconduct, misdeclaration, or regulatory non-compliance was recorded against the CHA at the time of clearance.

33.3 The primary default highlighted in the SCN relates to the subsequent non-fulfillment of the Export Obligation by the Importer under the EPCG scheme. Under Regulation 10(d) of the Customs Brokers Licensing Regulations (CBLR), 2018, a CHA is expected to advise the importer to comply with statutory provisions at the time of importation. However, the legal responsibility of a CHA is limited to the processing and clearance of import consignments up to the grant of OOC. A CHA cannot be expected to monitor, or oversee the post-clearance manufacturing and commercial activities of an importer. The violation alleged in the present proceedings relates to the subsequent failure of the importer to fulfil the export obligation prescribed under the EPCG Scheme after importation of the capital goods. The obligation to fulfil export obligation and to obtain the Export Obligation Discharge Certificate (EODC) is entirely that of the EPCG Authorisation holder. Ensuring compliance with DGFT guidelines and fulfilling export targets are operational responsibilities that rest entirely with the importer that is in instant case is M/s. Laxmi Creation. Such obligation neither devolves upon the Customs Broker nor can the Customs Broker ensure or monitor compliance with the export obligation over a period of six years after import.

33.4 I find that the CHA M/s. **Polar Shipping Services** in his submission submitted on 23.02.2026 claimed that they have executed the clearance strictly on the basis of valid authorization and verified Know Your Customer (KYC) documentation. I find that the department has produced no evidence demonstrating that the CHA reaped any undue monetary gains or possessed advance knowledge that the importer would eventually default on their export commitments. In the absence of a fraudulent intent or deliberate omission at the time of entry, a clearance agent cannot be held vicariously liable for the independent, post-import statutory breaches of their client.

33.5 A plain reading of Section 112 establishes that it mandates a "**penalty for improper importation of goods.**" This requires the department to prove that the goods were fundamentally liable to confiscation at the moment of entry due to illicit acts, contraband nature, or active misdeclaration. There is no dispute in the impugned notice regarding the integrity of the physical importation process on 01.05.2017. Because the infraction stems entirely from post-importation non-compliance (the failure to meet export obligations), the condition precedent of an "improper importation" is missing. Consequently, the statutory provisions of Section 112 cannot be legally extended to penalize the CHA for a downstream commercial default over which they exercised no control.

33.6 Accordingly, the proceeding initiated against **M/s. Polar Shipping Services**, including the proposal to impose a personal penalty under Section 112 of the Customs Act, 1962 and to take action under Regulation 14 of the CBLR, 2018, is hereby dropped in view of above discussion and findings.

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

ORDER

i. I deny the benefit of Zero Duty for EPCG Scheme under Notification No. 16/2015-Cus dated 01.04.2015 on the imported '03 Sets of capital goods viz. **"6 COLOURS 27 HEADS COMPUTERIZED EMBROIDERY MACHINE AREA 250X550X1300 WITH DAHAO COLOUR MONITOR WITH TRIPLE SERVO MOTR"** in the name of M/s. Laxmi Creation, under EPCG Licence No. **5230023867 dated 21.03.2017**;

ii. I order confiscation of Capital Goods having assessable value at **Rs.31,40,127/- (Rs. Thirty One Lakh, Forty Thousand, One Hundred and Twenty Seven Only)** which were imported by the importer claiming benefit under Notification No. 16/2015-Cus dated 01.04.2015, under Section 111(o)

of the Customs Act, 1962. However, I give the option for redemption under Section 125 of the Customs Act, 1962, on payment of redemption fine of Rs. 6,00,000/- (Rupees Six Lakh only).

iii. I confirm the demand of Customs duty of **Rs.7,35,276/- (Rupee Seven Lakh, Thirty Five Thousand, Two Hundred and Seventy Six only)** being the duty foregone (saved) at the time of import of Capital Goods under EPCG License No. **5230023867 dated 21.03.2017** in terms of Notification No. 16/2015-Cus dated 01.04.2015 as amended, read with conditions of Bond executed and order the same to be recovered from M/s. Laxmi Creation, in terms of Section 143(3) of the Customs Act, 1962 by enforcing the terms of the above mentioned Bond. Further, I order for recovery of the same as per Section 142 of the Customs Act, 1962.

iv. I order to recover interest at the rate of 15% on the duty demanded at Para 37(iii) above from the date of clearance of the Capital Goods from M/s. Laxmi Creation, as per Notification No. 16/2015-Cus dated 01.04.2015 read with conditions of Bond executed by them, in terms of Section 143(3) of the Customs Act, 1962 by enforcing the terms of the above mentioned Bond. Further, I order for recovery of the same as per Section 142 of the Customs Act, 1962.;

v. I order enforcement and adjustment/appropriation of Bank Guarantee No. **0306BG001742017 dated 06.04.2017** for Rs.1,30,000/- issued by **The South Indian Bank Ltd., Ring Road, Surat** at the time of registration of the EPCG license. The amount shall be adjusted against the duty, interest and fine/penalty liability confirmed above

vi. I impose a penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on M/s. Laxmi Creation under Section 112(a)(ii) of the Customs Act, 1962;

vii. I impose a penalty of Rs. 50,000/- (Rupees Fifty only) on M/s. Laxmi Creation under Section 117 of the Customs Act, 1962;

viii. I hereby dropped the penalty as proposed under Section 112(a) on Shri Pravinbhai Manhibhai Mandaviya (Aadhar No.605897607076), Proprietor of M/s. Laxmi Creation, (IEC- 5209010571), Shed No.P 335, New GIDC, GIDC Sub Division 2, Fulpada Katargam, Surat, Gujarat – 395004 in terms of discussion and findings in foregoing paras.

ix. I hereby dropped the penalty as proposed under Section 112(a) on M/s. Polar Shipping Services, Customs Broker and also dropped the proposal of initiated action against the CHA under Regulation 14 of the Customs Brokers Licensing Regulations, 2018 in terms of discussion and findings in foregoing paras.

38. The Show Cause Notices CUS/EPCG/REGN/1117/2025-ICD-UMGN-CUS-COMMRTE-AHMEDABAD dated 12.11.2025 is disposed of in above terms.

Digitally signed by
SHREE RAM VISHNOI
Date: 07-08-2026
15:45:16

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F.No. CUS/EPCG/REGN/1117/2025-ICD-UMGN-CUS-COMMRTE-AHMEDABAD
DIN: 20260871MN000005EEE9

By Speed Post/E-Mail/By Hand/Notice Board

To:

1. M/s. Laxmi Creation, (IEC- 5209010571) Shed No.P 335, New GIDC, GIDC Sub Division 2, Fulpada Katargam, Surat, Gujarat - 395004 / B 2, Harikunj Society, Chikuwadi, Nana Varachha Road, Surat, Gujarat - 395006
2. Shri Pravinbhai Manhibhai Mandaviya, Proprietor of M/s. Laxmi Creation of M/s. Laxmi Creation, (IEC- 5209010571) Shed No.P 335, New GIDC, GIDC Sub Division 2, Fulpada Katargam, Surat, Gujarat - 395004 / B 2, Harikunj Society, Chikuwadi, Nana Varachha Road, Surat, Gujarat - 395006
3. M/s. Polar Shipping Services, No. 502 TO 505, D R India Textile Hub, Opp. Amazia Water Park, Parvat Patiya, Surat, Gujarat-395010

Copy to:

(1) The Principal Commissioner, Customs Ahmedabad Commissionerate, Ahmedabad(Kind Attention to RRA);

(2) The Dy. Commissioner, ICD, Tumb, Customs Ahmedabad Commissionerate;

(3). The Deputy Commissioner of Customs (Task Force), Ahmedabad.

(4). The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site i.e. http://www.ahmedabadcustoms.gov.in.

(5). Guard File.