

कार्यालय, आयुक्त, सीमा शुल्क (निवारक), जामनगर
 सारदा हाऊस, पंचवटी के सामने, बेदी बंदर मार्ग, जामनगर 361 002 (गुजरात)
Office of the Commissioner of Customs (Preventive)
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1	फाइल नम्बर / File Number	VIII/10-155/JC/O&A/2017
2	मूल आदेश संख्या Order-in-Original No.	8. संयुक्त आयुक्त 2017-18 8. Joint Commissioner/2017-18
3	द्वारा पारित Passed by	श्री प्रभात कमल रामेश्वरम, संयुक्त आयुक्त, सीमा शुल्क (नि), जामनगर Shri Prabhat Kamal Rameshwaram, Joint Commissioner, Customs (Preventive), Jamnagar
4	आदेश दिनांक / आदेश जारी करने की तिथि Date of Order / Date of Issue	31/08/2017 / 28/09/2017
5	कारण बताओ नोटिस संख्या और दिनांक Show Cause Notice No. & date	VIII/ 10-155/JC/O&A/2017 DATED 28/07/2017
6	नोटिसी का नाम / Name of Noticee	M/s. Bhavani Sea Foods, Plot No. 12/13, Fisheries Harbour, Veraval - 362 267

- 01 इस आदेश को मूल प्रांति सम्बन्धित व्यक्ति को बिना शुल्क प्रदान की जाती है
 This Order in-Original is granted to the concerned free of charge.
- 02 Any person being aggrieved by this order may file an appeal against this order before the Commissioner of Customs (Appeals), 7th floor, Mrudul Tower, Behind Time of India, Ashram Road, Ahmedabad-380 009 within 60 days from the date of receipt of this order
- 03 उक्त अपील पर भारतीय स्टाम्प अधिनियम, 1989 (जिसे राज्य की विधायिका द्वारा सुधार किया गया हो)के अंतर्गत प्रायः 50/- का टिकट न्यायालय की फीस के रूप में लगा होना चाहिए जबकि इस अपील के साथ संलग्न की गई प्रांति पर न्यायालय फीस अधिनियम, 1870 के अनुच्छेद-1 मद 6 के अनुसार 50 पैसे का टिकट न्यायालय फीस के रूप में लगा होना चाहिए
 The appeal should bear Court Fee Stamp of Rs. 50/- as provided under Indian Stamp Act, 1989, modified as may be by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty Paise only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.
- 04 अपीलीय ज्ञापन के साथ शुल्क भुगतान/ जुर्माना/ अर्थदंड का सबूत भी संलग्न करें अन्यथा सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन न होने के कारण अपील को खारिज किया जा सकता है
 Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non compliance of the provisions of Section 129 of the Customs Act, 1962.
- 05 अपील प्रस्तुत करते समय यह सुनिश्चित करें कि सीमा शुल्क (अपील) नियम, 1982 और सीस्टेट प्रकिया (प्रोसीजर) नियम, 1982 के सभी नियमों का पूरी तरह पालन हुआ है
 While submitting the Appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.
- 06 इस आदेश के खिलाफ आयुक्त (अपील)क समक्ष अपील करने समय, शुल्क या शुल्क और जुर्माना विवाद या दंड में है, जहां अकेले दंड विवाद में है, जहां विवाद या दंड में भाग की है उस विवाद की राकम के 7.5%के भुगतान करना होगा।
- 06 An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE:

M/s. Bhavani Sea Foods, Plot No. 12/13, Fisheries Harbour, Veraval - 362 267 (IEC No. 1496002386) (hereinafter referred to as "the Noticee") was issued the following EPCG License Number from DGFT (hereinafter referred to as "the said license") and allowed to import goods vide Notification No. 102/2009-Cus dated 11.09.2009 (herein after referred to as "the said Notification") for amount of Duty saved as mentioned below without payment of Customs Duty as per Import Export Policy 2009-14.

Sr. No.	EPCG Licence No. Date	Duty saved (in Rs.) EPCG Lic.
1	2430001102 dtd. 06-11-2009	9,90,000/-

2. As per condition No. 2(6) of Notification No. 102/2009-Cus dated 11.09.2009 the importer executes a bond in such form and for such sum and with such surety or security as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs binding himself to comply with all the conditions of this notification as well as to fulfill export obligation on Free On Board (FOB) basis equivalent to six times the duty saved on the goods imported as may be specified on the authorization, or for such higher sum as may be fixed or endorsed by the Licensing Authority or Regional Authority in terms of Para 5.10 of the Handbook of Procedures Vol I, issued under para 2.4 of the Foreign Trade Policy, within a period of six years from the date of issue of Authorization. Accordingly the Noticee had registered the aforesaid EPCG licenses at port Pipavav, with the registration number mentioned below with date for importing the goods as per said licenses on execution of the below mentioned Bond Numbers & amount (Covering the duty foregone) and bank guarantee if any as security.

Sr No.	REGN. NO	DATE	BOND NO.	BOND AMOUNT (In Rs.)
1.	F-06/09-10	25.11.2009	F-07/09-10 dtd 25.11.09	Rs. 9,90,000/- (Duty saved amount) + Rs. 14,85,000/- (Interest @ 15% per annum)

The conditions of the bond are:

- That the Noticee should 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.

- That in the event of failure on the part of the export obligations as specified in the said Notification and the license, the Noticee had undertaken to pay the Customs Duty for the exemption and also interest @15% per annum forthwith from the date of the clearance of the imported goods till the date of payment of duty.
- That Noticee should comply with the conditions and limitations stipulated in the said Import and Export Policy as amended from time to time.
- The Government through the Deputy Commissioner of Customs, Custom House, Pipavav, or any other officer authorized on this behalf may recover the amount due under the Bond in the manner laid down in Section 142(1) of Customs Act, 1962, without prejudice to any other mode of recovery.

3. The Noticee imported the dutiable goods i.e. "Air Cooler" and sought clearance thereof in terms of EPCG Licence Scheme notified vide Notification No. 64/2008-Cus dated 09.05.2008 (herein after referred to as "the said Notifications") as detailed below :

Sl No	Bill of Entry No. & Date	Description of Goods	EPCG Licence No. Date	Duty Saved in Rs. of EPCG. Lic.	Qty of EPCG Licence	Total Qty. imported and cleared
1	491/09-10 dated 25.11.09	AIR COOLER	2430001102 dtd. 24.10.2008	5,58,511	15 UNITS	15 UNITS

4. The Noticee have imported the said goods and sought clearance thereof claiming exemption from payment of duty to the tune of Rs. 5,58,511/- on filing Bill of Bill of Entry No. 491/09-10 dated 25.11.09.

5. As per point 2(8) of the notification no. 102/2009-Cus dated 11.09.2009 the importer produces within 30 days from the expiry of each block from the date of issue of authorization or within such extended period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow, evidence to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs showing the extent of export obligation fulfilled, and where the export obligation of any particular block is not fulfilled in terms of the preceding condition, 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.

6. The Noticee have to fulfill the export obligation within a period of 6 years from the date of issue of EPCG Licence as per the condition laid down in the notification and EPCG licence itself. The EPCG licence was issued to the Noticee on 06.11.2009 and they have to fulfill the export obligation, as per the condition of the notification, on 05.11.2015. The Noticee has to submit the Export Obligation Discharged Certificate issued by the DGFT Authority who had issued the EPCG Licence. A letter dated 23.01.2016 was issued to the Noticee for submitting Export Obligation Discharged Certificate issued by the DGFT Authority as proof of fulfillment of Export Obligation. Further, Reminder letter was served upon the noticee on 30.12.2016. No submission has been made by the notice till date. Whereas it therefore, appears that in case of their failure on this account, the benefit of exemption from payment of the Customs Duty availed by the Noticee on their imported goods under the said Notification is required to be denied as it appears that they have not fulfilled the required Export Obligation. By this way, it appears the Noticee has violated the conditions of Notification No. 102/2009-Cus dated 11.09.2009 under which the Noticee has to submit the Export Obligation Discharged Certificate within a period of 6 years from issuance of the EPCG Licence.

7. It was therefore, M/s. Bhavani Sea Foods, Plot No. 12/13, Fisheries Harbour, Veraval - 362 267 was issued F. No. VIII/10-155/JC/O&A/2017 dated 28-07-2017 requiring them to show cause to the Joint Commissioner of Customs, Customs (Prev.), Headquarter, Jamnagar within 30 days from the date of receipt of this notice, as to why:

- (i) Customs duty amounting to **Rs. 5,58,511/- (Rupees Five Lakh Fifty Eight Thousand Five Hundred Eleven only)** involved on duty free import of goods as mentioned hereinabove should not be demanded in terms of Para 2(8) of the said Notification read under Section 143 of Customs Act, 1962 /invoking the conditions of the bond executed by the Noticee.
- (ii) Interest @15% on the Customs duty should not be recovered in terms of Para 2(8) of the said Notification read under Section 143 of Customs Act, 1962 /invoking the conditions of the bond executed by the Noticee.
- (iii) Penalty should not be imposed under section 117 of the Customs Act, 1962 for violating the conditions of Notification No. 102/2009-

Cus dated 09.11.2009 by not submitting Export Obligation Discharge Certificate within stipulated time period.

8. DEFENCE REPLY SUBMITTED BY THE NOTICEE:

8.1 The noticee vide their letter dated 28-08-2017 stated that they were issued EPCG License No. 2430001102 dated 06.11.2009 from DGFT, Rajkot for import of capital goods against said zero duty EPCG Licence vide Notification No. 102/2009-Cus. dated 11.09.2009 for amount of duty saved of Rs. 9,90,000/- under Chapter 5 of Foreign Trade Policy 2009-14.

8.2 As per condition No. 2 of the said notification, they have to fulfill the export obligation equivalent to 6 times the duty saved of capital goods allowed for import under Licence within a period of six years from the date of issue of the said licence. Thereafter DGFT, Rajkot has issued a "REDEMPTION LETTER" vide File No. 24/21/021/00059/AM dated 26.10.2009 issued on 04.03.2016. A copy of this redemption letter is also submitted.

8.3 They have further submitted that they have also submitted original redemption letter, copy of installation certificate and copy of EPCG Licence No. 2430001102 dated 09.03.2009 to the Deputy Commissioner of Customs, Pipavav vide their letter dated 09-03-2017.

8.4 In view of the above facts, the noticee requested not to demand duty and interest under para 2(8) of the said notification read with section 143 of the Customs Act, 1962 and not to impose penalty under Section 117 of the Customs Act, 1962 on them.

8.5 Further, the noticee submitted that they did not wish personal hearing in this matter and requested to decide the case considering their reply.

9. DISCUSSIONS AND FINDINGS:

9.1 I have carefully gone through the charges leveled in the show cause notice dated 28-07-2017 and the defence reply dated 28-08-2017 submitted by the noticee. The noticee have also stated in their reply dated 28-08-2017 that they do not want personal hearing in this matter. I find that the present show cause notice was issued to the noticee for the reason that the noticee was issued EPCG License No. 2430001102 dated 06.11.2009 from DGFT, Rajkot for import of capital goods without payment of duty against EPCG Licence. Subsequently the noticee imported capital goods without

payment of customs duty of Rs. 9,90,000/-, under Notification No. 102/2009-Cus. dated 11.09.2009.

9.2 As per condition No. 2(6) of Notification No. 102/2009-Cus dated 11.09.2009 the importer executes a bond in such form and for such sum and with such surety or security as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs binding himself to comply with all the conditions of this notification as well as to fulfill export obligation on Free On Board (FOB) basis equivalent to six times the duty saved on the goods imported as may be specified on the authorization, or for such higher sum as may be fixed or endorsed by the Licensing Authority or Regional Authority in terms of Para 5.10 of the Handbook of Procedures Vol I, issued under para 2.4 of the Foreign Trade Policy, within a period of six years from the date of issue of Authorization.

9.3 In the instant case the EPCG licence was issued to the Noticee on 06.11.2009 and therefore they ought to have fulfilled the export obligation, as per the condition of the notification, on or before 05.11.2015. Further, the noticee should also submit the Export Obligation Discharged Certificate issued by the DGFT Authority who had issued the EPCG Licence. But the noticee did not comply with the conditions of the said notification despite letter dated 23.01.2016 and subsequent reminder dated 30.12.2016 sent by the Deputy/Assistant Commissioner of Customs, Pipavav requesting them to furnish the Export Obligation Discharged Certificate issued by the DGFT Authority who had issued the EPCG Licence. As the noticee have failed to submit EODC certificate from the Licensing authority within the stipulated time, the present show cause notice was issued proposing for recovery of customs duty along with interest, and for imposition of penalty.

9.4 I find that the noticee has submitted "REDEMPTION LETTER" showing subject as "EODC/REDEMPTION against EPCG Authorisation No. 2430001102 dated 04.03.2016 issued by the Foreign Trade Development Officer, Rajkot vide F. No. 24/21/021/00059/AM10 dated 26.10.2009. In the said redemption letter, it is mentioned as under: -

"With reference to your letter dated 06.11.2009 on the above mentioned subject, I write to inform you that on the basis of documents submitted towards discharge of export obligation by you, it is observed that the Export Obligation stipulated in the Licence has been met in full in proportion to duty amount utilized by you. Consequently, Export Obligation has been discharged against the said Authorization in terms of Para 5.13 of H. B. of procedures."

9.5 Comments were sought from the jurisdictional Assistant Commissioner of Customs on the fulfillment of export obligation pertaining to the noticee in light of the Export Obligation Discharge Certificate (EODC) submitted by them. The jurisdictional Assistant Commissioner, Customs, Customs House, Pipavav has also confirmed the fulfillment of the export obligation against EPCG License No. 2430001102 dated 06.11.2009 by the noticee vide his letter F. No. VIII/29-03/Licence/GPPL/2016-17 dated 27-09-2017.

9.6 From the above facts, I find that the noticee has fulfilled export obligation against EPCG License No. 2430001102 dated 06.11.2009 and produced requisite Export Obligation Discharge Certificate issued by the Licencing Authority viz., DGFT, Rajkot. Thus, the noticee has complied with the condition No. 2(6) of Notification No. 102/2009-Cus dated 11.09.2009. Therefore I find that the show cause notice issued to the noticee do not survive and the same is required to be dropped.

10. In view of the above, I pass the following order:

::ORDER::

I hereby drop show cause notice F. No. VIII/10-155/JC/O&A/2017 dated 28-07-2017 issued to M/s. Bhavani Sea Foods, Plot No. 12/13, Fisheries Harbour, Veraval.


(P. K. RAMESHWARAM)
JOINT COMMISSIONER

F. No. VIII/10-155/JC/O&A/2017

Date: 28-09-2017

To, **By Regd. Ad Post**

M/s. Bhavani Sea Foods,
Plot No. 12/13, Fisheries Harbour,
Veraval - 362 267.

Copy to

1. The Commissioner of Customs (Prev), Jamnagar (Through RRA Section)
2. The Deputy / Assistant Commissioner of Customs, GPPL, Pipavav
3. Guard File.