



**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE: MUNDRA, KUTCH
MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421**

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A	File No.	VIII/48-44/Adj/ADC/MCH/17-18
B	Order-in-Original No.	MCH/ADC/AS/13/2019-20
C	Passed by	Shri Amarjeet Singh Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of Order	25.04.2019
E	Date of Issue	07.05.2019
F	SCN No. & Date	F.No.DRI/KZU/CF/ENQ-56(INT-05)/2017 dated 24.01.2018
G	Noticee / Party / Importer / Exporter	(1) M/s. Aangan Agrotech Exports Ltd, (IEC No. 0801007267), Registered office at No. 31, Madhuban Towers, Behind Town Hall, Ellisbridge, Ahmedabad, Gujarat-380006.

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128A के अंतर्गत प्रपत्र सीए-1 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

**“ सीमा शुल्क आयुक्त (अपील), कांडला
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर-न्यायालय शुल्क अधिनियम के तहत 5/-

रुपए का टिकट लगा होना चाहिए और इसके साथ निम्न लिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompany by -

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद्रसं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदिके भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

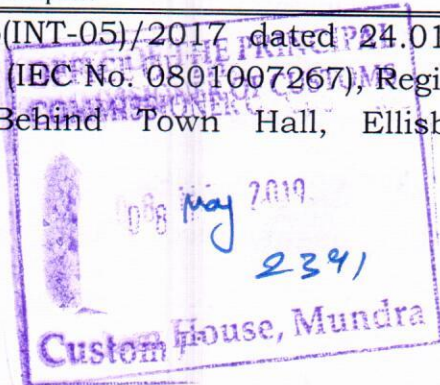
6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Subject:- SCN F.No. DRI/KZU/CF/ENQ-56(INT-05)/2017 dated 24.01.2018 issued to M/s. Aangan Agrotech Exports Ltd, (IEC No. 0801007267), Registered office at No. 31, Madhuban Towers, Behind Town Hall, Ellisbridge, Ahmedabad, Gujarat-380006.



Brief facts of the Case:

1. M/s. Aangan Agrotech Exports Ltd, an importer having IEC No. 0801007267 and having their registered office at No. 31, Madhuban Towers, Behind Town Hall, Ellisbridge, Ahmedabad, Gujarat-380006, have contravened the provisions of Customs Notification No. 96/2009, dated 11-09-2009, as amended, read with provisions of Para 4.1.3, 4.1.5 & 4.1.9 of the Foreign Trade Policy (2009-14) and Para 4.22, 4.24 & 4.28 of the Hand Book of Procedures, Volume-I, as they imported goods without payment of duty of Customs under cover of Advance Authorization No. 0810133655 dated 21-10-2014, on the strength of the subject notification but failed to comply with the conditions laid down in the subject notification by not discharging their Export Obligation (hereinafter referred to as EO). Their act of omission and/or commission appears to have resulted in non payment of duty of Customs to the extent of Rs.25,94,617/-, which appears to be recoverable under Section 28(4) of the Customs Act, 1962, and also appears to attract provision of section 111(o) of the Customs Act, 1962, making the goods liable for confiscation and the company liable to penalty under Section 114A respectively of the Act *ibid*.

2.1 Intelligence gathered by the Directorate of Revenue Intelligence, Kolkata Zonal Unit (hereinafter referred to as DRI), to the effect that M/s Aangan Agrotech Exports Ltd, (importer) had imported various Polypropylene Granules falling under Customs Tariff Item No. 39021000, for manufacture of PP woven Sacks without liner, under cover of 2 (two) Bills of Entry without payment of duty of Customs, as detailed in Table-1 below. The importer availed benefit of exemption extended by Notification No. 96/2009-Cus, dated 11-09-2009, as amended, and did not pay any Customs duty on such input materials at the time of import /local procurement on condition of using those materials for the purpose of manufacture of export goods. The intelligence further indicated that the importer could not fulfill their export obligation within the original /extended EO period. It also revealed that the importer despite having failed to complete EO, did not pay the Customs duty as stipulated under the Policy and the subject Customs Notification No. 96/2009-Cus dated 11-09-2009, as amended, which was otherwise payable.

2.2 Scrutiny of the records of import under the said Advance Authorizations by M/s Aangan Agrotech Exports Ltd, revealed the following details as in Table hereunder:-

Table-1

Bill of Entry		CTH	Description of Goods	Qty. (KG)	CIF (Rs.)	Duty saved (Rs.)
No.	Date					
5084560	28.04.2016	39021000	P.P.	99000	8135087	2149961
5084772	28.04.2016	39021000	Granules	20800	1682504	444656
Total				119800	9817591	2594617

2.3 Accordingly, investigation was initiated by way of issuance of Summons under Section 108 of the Customs Act, 1962. The importer was summoned for production of documents in connection with such imports and for giving evidence. The authorized representative of M/s Aangan Agrotech Exports Ltd, Sri Paresh Rungta, Director, appeared on 04-08-2017, and recorded his statement before the Senior Intelligence Officer of DRI, Kolkata Zonal Unit. In his statement Sri Rungta inter-alia submitted that: —

- (i) He is Director of M/s Aangan Agrotech Exports Ltd and his responsibility is to look after overall day to day activities of the company including manufacture and Sales and to take decisions relating to policy and finance.
- (ii) They obtained one Advance Authorization No. 0810133655 dtd. 21-10-2014 for import of duty free Poly Propylene Granules which is their basic raw material for the purpose of manufacture of PP Fabrics and Sacks. They were supposed to manufacture such P. P Woven Sacks without liner using these duty free materials and to export the same towards discharge of their export obligation. They imported a quantity of 119.8 MT of such P. P Granules collectively valued at Rs. 85, 75, 643/- under cover of Bills of Entry Nos. 5084560 dtd. 28-04-2016 and 5084772 dated 28-04-2016 and in the process they saved Customs duty of Rs. 25, 94, 617/-. As per condition of the Advance Authorization they were supposed to complete their export obligation within a period of 18 months. They got an extension granted by the DGFT, Ahmedabad.

- (iii) As per the Advance Authorization they were supposed to import 119.8 MT of such P.P. Granules for a CIF value of Rs 1,13,78,450/- and were also supposed to export P.P Woven Sacks for a quantity of 108.910 MT collectively valued at Rs. 1,30,85,300/-. Although they imported the entire quantity of the raw materials they did not export any goods manufactured out of the said duty free materials. They did not have proper export orders and they could not fulfill their export obligation.
- (iv) It was admitted that as they did not have any export orders, they were left with no other option but to use the materials for manufacture of finished goods, which were subsequently sold in the domestic market. In absence of any export order, they did not see any possibility of exporting such goods even in the near future; therefore, they decided to consume the entire duty free materials for the purpose of manufacture of finished goods which were disposed of in the domestic market.
- (v) Provisions of Notification No.96/2009-Cus dated 11-09-2009 are shown to him, Condition (viii) of the said notification demands that Export Obligation should be fulfilled within the Export Obligation period as mentioned in the authorization, further Condition (ix) of the said notification requires importer to produce evidence of discharge of export obligation to the Custom Authority. Condition (x) of the Notification stipulates that material imported under advance authorization should not be sold or transferred.
- (vi) It was admitted that for reason beyond their control, they could not Export any goods manufactured out of the said duty free materials imported under cover of the subject Advance Authorization. It was not possible for them to fulfill export obligation, which resulted in violation of condition No (viii). For the same reason it was not feasible for them to furnish documents evidencing fulfillment of export obligation to the Customs authority. Such failure has resulted in contravention of condition No (ix) of the notification. It was also admitted that the imported materials were used by them for manufacture of goods which were sold in the domestic market. Such an act on their part has also resulted in violation of condition No (x) of the Notification No. 96/2009-Cus dated 11-09-2009.

- (vii) Para 4.1.3 of the HBP was shown to him. The said Para requires the duty free imported materials to be physically incorporated in the export goods. It was admitted that as they could not export any goods manufactured out of those duty free materials, they were unable to comply with the subject Para 4.1.3 of the policy.
- (viii) Para 4.22 and 4.24 of the HBP were also shown to him. The subject para requires an importer to fulfill export obligation within this stipulated period of time and also to submit documents before the Customs authority as a proof of fulfillment of export obligation. As they could not export any goods there was no possibility of furnishing documents pertaining to discharge of export obligation. It was admitted that the duty free imported materials could not be used for specified purpose.
- (ix) Provision of Para 4.28 was also shown to him, the same demands that in case of failure to fulfill Export Obligation, the importer should pay the amount of Customs duty attributable to the unfulfilled EO alongwith interest. It was admitted that they did not inform the Customs authority about their failure to fulfill EO as they approached the Policy Relaxation Committee (PRC) of DGFT, Delhi, for clubbing. In the meeting dated 31-05-2017, No. 7/AM18, their request was rejected. Therefore, they were left with no option but to pay Customs duty.
- (x) They received Summons from DRI on 22-06-2017, and immediately on 30-06-2017, they paid the entire amount of Duty saved Rs 25,94,617/- along with interest of Rs 4,61, 700/- calculated @ of 15% vide Challan No. 737 dated 30-06-2017.
- (xi) It was submitted that they have executed a Bond under Section 143 of the Customs Act,1962, along with Bank Guarantee of Rs 29, 70, 972/- to the competent authority.

3.1 From the submission of the Director of the company, it is evident that the importer enjoyed the benefit of exemption of the Customs Notification No.96/2009, dated 11-09-2009, but failed to fulfill the conditions of the subject notification in as much as they could not/did not export any finished goods manufactured out of the imported duty free raw materials.

3.2 What is further evident that instead of using such duty free materials for the purpose of manufacture of export goods, the importer consumed the entire materials and sold the goods produced out of the same in the domestic market, in total violation of the conditions of the Policy as well as the Customs notification.

4. The authorized representative of the importer, in his submission accepted and admitted their omission on account of reasons beyond their control which ultimately led to non fulfillment of conditions of the notification resulting in non-payment of duty of Customs to the extent of Rs.25,94,617/-. The importer principally agreed to pay the said amount and deposited amount of Rs.30,56,317/- consisting of Rs.25,94,617/- of Customs duty and Rs.4,61,700/- towards interest vide TR-6 Challan No. 737 dated 30-06-2017.

5.1 Advance Authorizations are issued by the Directorate General of Foreign Trade (DGFT) to importers for import of mainly various raw materials without payment of Customs duty and the said export promotion scheme is governed by Chapter 4 of the Foreign Trade Policy (2009-14) and corresponding Chapter 4 of the Hand Book of Procedures (2009-14), Volume-I & II. Para 4.1.3 of the Foreign Trade Policy allows duty free import of inputs which are to be physically incorporated in the export products. Further Para 4.1.5 of the Policy restricts use of such duty free imported goods and stipulates that such import will be with actual user condition. It will not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty free inputs once export obligation is completed.

5.2 From the wordings of the Policy it is clear that the benefit of such free import has been extended on specific condition that materials so imported before fulfillment of export obligation is used in the manufacture of export products only, after allowing normal wastage. Physical incorporation of such materials in the export goods have also been made mandatory by the said provision of Para 4.1.3. Para 4.1.5 further demands that even if the export obligations have been fulfilled, such goods remaining have to be used for the purpose of manufacture of dutiable goods only, the same cannot be transferred or sold.

5.3 DGFT Notification No. 31/2013 (RE-2013) / (2009-14) dated: - 01-08-2013, was issued to incorporate a new Para No. 4.1.15 in the Foreign Trade Policy. The said Para is an extension of the Para 4.1.3 and stipulates further condition which clarified the ambit of the aforesaid Para 4.1.3. The said Para set out that the inputs actually used in manufacture of the export product should only be imported under the Authorisation. Similarly inputs actually imported must be used in the export product. This has to be established in respect of every Advance Authorisation / DFIA.

5.4 A Circular No. 3/2013 (RE-2013) / (2009-14) dated, 02-08-2013, was also issued by the Ministry of Commerce in the line of the aforesaid notification. The circular reiterated that duty free import of inputs under Duty Exemption/Remission Schemes under Chapter-4 of FTP shall be guided by the Notification No. 31 issued on 1.8.2013.

6.1 Therefore, Para 4.1.3 of the Foreign Trade Policy, in force at the time of issuance of the Authorizations read with the Circular mentioned above, makes it obvious that benefit of exemption from payment of Customs duty is extended to the input materials subject to strict condition, that such materials would be exclusively used in the manufacture of export goods which would be ultimately exported.

6.2 Para 4.22 of the Hand Book of Procedures (2009-14), Volume-1, requires an importer to fulfill export obligation under an Advance Authorisation within a period of 18 months from the date of issue of the Authorization. M/s. Aangan Agrotech Exports Ltd, was issued with the subject Advance Authorization, and as per provision of the Foreign Trade Policy in force at that point of time and as confirmed from the copy of the subject Authorizations, they were supposed to complete their export obligation within 18 months from that date of issue of the Authorizations, unless they were granted extension by the Directorate General of Foreign Trade for such fulfilment of export obligation.

6.3 M/s Aangan Agrotech Exports Ltd, could not complete their export obligation liability within the stipulated period and approached Directorate General of Foreign Trade for extension of EO and even after being granted

with extension, they could not fulfill their export obligation within that extended period.

6.4 Para 4.24 of the Hand Book of Procedures (2009-14), Volume-I, makes it mandatory on the part of the authorisation holder to submit requisite evidence in support of discharge of export obligation in accordance with law within a period of two months from the date of expiry of EO.

6.5 Sub Para (iii) of Para 4.28 of the Hand Book of Procedures (2009-14), Volume-I, demands that if export obligation is not fulfilled both in terms of quantity and value, the Authorisation holder shall, for the regularization, pay to Customs authorities, Customs duty on unutilized value of imported/indigenously procured material along with interest as notified; which implies that the authorisation holder is legally duty bound to pay the proportionate amount of Customs duty corresponding to the unfulfilled export obligation.

7.1 The importer approached the Policy Relaxation Committee (PRC) for clubbing of the Authorization under consideration with two other Authorizations for the purpose of regularization. In the Policy Relaxation Committee meeting No. 7/AM18 held on 31-05-2017, the committee rejected appeal of the importer on the ground that the validity period of the Authorizations under which exports were made were already over. And allowing clubbing would amount to revalidation of the Advance Authorization which would defeat the basic purpose of the clubbing.

7.2 Therefore, from the foregoing, it appears that the importer grossly failed to comply with the provisions of the Foreign Trade Policy, read with the Hand Book of Procedures, Volume-1, in force for the relevant period. While they were supposed to utilize the duty free materials for the purpose of manufacture of export goods, they deliberately consumed the entire materials and sold the same in the domestic market. They grossly failed to fulfill export obligation and did not pay Customs duty voluntarily, despite of their failure.

8.1 Condition (viii) of the Notification No. 96/2009-Cus, dated 11-09-2009, as amended, requires an importer to discharge the export obligation as specified in the Authorization both in terms of value and quantity within the period as specified in the Authorization or within the extended period as may be granted by the Regional Authority by exporting resultant products manufactured out of the duty free materials imported.

8.2 Condition (ix) of the Notification No. 96/2009-Cus, dated 11-09-2009, as amended, requires an importer to produce evidence of discharge of export obligation to the satisfaction of the Customs authority within a period of sixty days of the expiry of period allowed for fulfillment of export obligation. Failure on the part of the importer to furnish such particulars indicates that they could not complete their export obligation within the stipulated period of time allowed under the Policy and the Customs notification. Such failure led to outright violation of the conditions of the notification read with the Policy in vogue rendering goods, so imported, duty free, and liable to confiscation under Section 111 (o) of the Customs Act, 1962.

8.3 Until the investigation was taken up by DRI, Kolkata, the importer M/s Aangan Agrotech Exports Ltd, did not pay the Customs duty voluntarily despite the fact that they could not fulfill export obligation within the stipulated period of 18 months and even within the extended period. It was within the knowledge of the importer that they failed to comply with the conditions of the Notification No. 96/2009-Cus dated 11-09-2009, as amended, but still they did not disclose the same to the Customs authority and did not pay the proportionate amount of duty equivalent to the unfulfilled export obligation. The importer grossly failed to comply with the legal provisions laid down under the notification and the Policy and suppressed the fact of such failure by not submitting documents before the Customs authority and/or the DGFT evidencing quantum of exports made by them and enabling the Customs authority to determine the amount of Customs duty to be recovered for their failure to complete export obligation. This clearly indicates their malafide intent of evading duty of Customs. It appears that for their act of deliberate suppression of facts, provision of Section 28(4) of the Customs Act, 1962, is invocable in this case.

9.1 The Condition (ix) of the Notification No. 96/2009-Cus dated 11-09-2009, as amended requires an importer to produce evidence of discharge of

export obligation. The importer could not make any export within the stipulated period of time allowed under the Policy and the Customs notification for fulfillment of export obligation. Such a failure lead to outright violation of the conditions of the notification read with the Policy in vogue rendering goods so imported duty free, liable to confiscation under section 111(o) of the Customs Act, 1962.

9.2 As a part of self assessment by the importer, it was duty of the importer to present correct facts and declare to the Customs authority about their inability to fulfill export obligation and also they should have volunteered to pay duty, the moment statutory 60 days from the expiry of the EO period was over. The importer did not come forward to pay such duty voluntarily on their own. But for the intervention of DRI the said duty evasion would have remained undetected due to suppression of facts by the importer. Therefore, Section 28 (4) of the Customs Act, 1962, appears invocable in this case for demanding duty & interest for extended period.

9.3 It appears that Customs duty has not been paid in respect of the portion of the goods so imported under Notification No. 96/2009-Cus dated 11-09-2009, as amended, for which export obligation has not been fulfilled. Therefore an amount of Rs. 25,94,617/- appears to be recoverable from the said importer forthwith under Section 28 (4) of the Customs Act, 1962.

9.4 It further appears that for such non-payment of duty of Customs, section 28AA of the Customs Act, 1962 is applicable and interest on the said amount of duty not paid becomes payable.

9.5 The authorised representative of the importer in his statements admitted their failure. The importer accordingly paid an amount of Rs.25,94,617/- towards payment of Customs duty and also an amount of Rs.4,61,700/- towards interest.

9.6 The amount of Rs.25,94,617/- so paid towards Customs duty and Rs.4,61,700/-, so paid towards interest by the importer are liable to be

appropriated and adjusted against the Customs duty payable and interest payable thereupon respectively.

9.7 It appears that the importer for their acts of omission and/or commission, which resulted in non levy of duty and rendered the goods liable for confiscation for improper importation of goods by availing exemption under notification without observing conditions laid down under such notification also rendered the importer liable to penalty under Section 112(a) of the Customs Act, 1962.

9.8 Their acts of omission and/or commission, which resulted in non levy of duty by reasons of deliberate suppression of facts causing issuance of notice under section 28 (4) of the Customs Act, 1962, appears to have also rendered the importer liable to penalty under Section 114A of the Customs Act, 1962, for improper importation of goods by availing exemption under notification without observing conditions laid down under such notification.

10. Therefore, a show cause notice dated 24.01.2018 was issued to M/s Aangan Agrotech Exports Ltd, having their registered office at No. 31, Madhuban Towers, Behind Town Hall, Ellisbridge, Ahmedabad, Gujarat-380006, as to why:-

a) Subject goods imported duty free under the subject Advance Authorizations in terms of Notification No. 96/2009-Cus, dated 11-09-2009, as amended, having assessable value of Rs.98,17,591/- shall not be held liable for confiscation under Section 111(o) of the Customs Act, 1962, for being imported under the exemption Notification No. 96/2009-Cus, dated 11-09-2009, as amended, without observing various conditions laid down under the said notification as well as for contraventions of the provisions of the Foreign Trade Policy (2009-14) read with the Hand Book of Procedures (2009-14), Volume-I;

b) Duty of Customs amounting to Rs 25,94,617/-(Rs. Twenty Five lakh Ninety Four thousand Six hundred Seventeen only) payable on the goods imported under the subject Advance Authorization, by availing the benefit of exemption of Customs Notification No. 96/2009-Cus, dated 11-09-2009, as amended, in respect of which export obligation could not be fulfilled, and also for non-observance of the various conditions stipulated in the said notification and contravention of the provisions of the Foreign Trade Policy

(2009-14), read with the Hand Book of Procedures (2009-14), Volume-I, should not be demanded and recovered from them under section 28(4) of the Customs Act, 1962, read with Notification No. 96/2009-Cus dated 11-09-2009;

c) Interest under provision of Section 28 AA should not be demanded and recovered from them for such delayed payment of duty of Customs on the offending goods;

d) Amount of Rs 30, 56, 317/- deposited vide TR-6 Challan No. 737 dated 30-06-2017, should not be appropriated and adjusted towards payment of Customs duty of Rs 25, 94, 617/- and interest payable thereupon;

e) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962, for improper importation of goods availing exemption of notification and without observance of the conditions set out in the notification, and also by reasons of misrepresentation and suppression of facts as elaborated above, resulting in non-payment of duty, and also rendered Customs duty recoverable under Section 28(4) of the Customs Act, 1962;

f) Penalty should not be imposed upon them under Section 112 (a) of the Customs Act, 1962, for improper importation of goods wrongfully availing exemption of notification No. 96/2009-Cus, dated 11-09-2009, as amended, and without observance of the conditions set out in the notification, resulting in non-payment of Customs duty, which rendered the goods liable to confiscation under section 111 (o) of the Customs Act, 1962.

(g) The Bonds/Bank Guarantee executed by them, should not be enforced for recoveries and payments as may be ordered.

PERSONAL HEARING AND DEFENCE SUBMISSIONS

11. M/s. Aangan Agrotech Exports Ltd. vide their letters dated nil received on 27.02.2018 and 06.03.2018 have requested for extension time for their submissions. Further, vide letter dated nil received on 26.03.2018 they have submitted their written submission. The personal hearing was fixed on 27.03.2019, Shri. Paresh Rungta, Director of M/s. Aangan Agrotech Exports Ltd. appeared and reiterated the contents of the letter dated 27.03.2019 submitted at the time of personal hearing and contents of their earlier written submission on 26.03.2018.

12. M/s. Aangan Agrotech Exports Ltd. vide their letter submitted on 26.03.2018 made following submissions;

(i) that they had obtained the Advance Authorisation (AA for short) in good faith that they shall be able to export the goods. The AA is valid for 12 months for import and 18 months for exports, effectively from the date of issue of the AA, as per Foreign Trade Policy (FTP for short) and Hand Book of Procedures (HBP for short) conditions and provisions and both are inscribed on the AA too.

(ii) that manufacturing process is an ongoing process and so they believed that they could cater to the need of international buyers at any time they received orders.

(iii) that they held two more AA which are not mentioned in the SCN and they had approached to the DGFT Policy relaxation committee to avail the provisions for clubbing. If all the three advance authorizations were allowed to be clubbed, they would have been able to avail the replenishment of duty free inputs against the exports they have already made.

(iv) that when they were informed vide DGFT's email dated 20.06.2017 that their request got rejected then they realized that they have to forego the duty free benefits against the exports made under the other two advance authorization and to remit the duty with its penal interest to Customs and produce the evidence thereof.

(v) that the official information from the DGFT came on 20.06.2017 in the form of email and summons dated 16.06.2017 from DRI, Kolkata received by them on 22.06.2017 by speed post. They initiated the process to remit the duty with interest and instructed their bankers to prepare a demand draft after arranging the required funds and paid the said amount on 30.06.2017.

(vi) that they held three advance authorizations and against the exports effected under authorization No. 08101102876 dated 29.08.2011 and 0810102894 dated 29.08.2011 they have not imported any materials and not got the benefit of replenishment. In the other authorization No. 0810133655 dated 21.10.2014 they had no exports but only imports which became liability due to rejection of their request for clubbing.

13. Further, M/s. Aangan Agrotech Exports Ltd. vide their letter dated 27.03.2019 submitted at the time of hearing made following submissions;

(i) that they accept that they have obtained the authorizations but failed to export which made them liable to pay the duty with its interest, which was paid subsequently when they were informed by the DGFT office that their request for clubbing is rejected.

(ii) that on enquiry from DRI they have co-operated fully with them and did not conceal any facts and figures. They have also stated that there is no mistake at either at DRI end or at their end. They have also requested to waive the penalty.

DISCUSSION AND FINDINGS:

14. I have carefully gone through the records of the case, including the Show Cause Notice dated 24.01.2018, the written submissions received on 26.03.2018 and 27.03.2019 as well as the oral submissions made during the course of Personal Hearing held on 27.03.2019.

15. The issue before me to be decided in the instant case is whether M/s. Aangan Agrotech Exports Ltd have failed to comply with the conditions of the Notification No. 96/2009-Cus dated 11.09.2009, as amended, read with provisions of Para 4.1.3, 4.1.5 & 4.1.9 of the Foreign Trade Policy (2009-14) and Para 4.22, 4.24 & 4.28 of the Hand Book of Procedures, Volume-I with respect to discharge of export obligation on the 'P.P. Granules' imported by them under Advance Authorization.

16. On going through the case records and the SCN, I find that, the fact of the case is M/s. Aangan Agrotech Exports Ltd had imported 119.800 MTs of P.P. Granules, having CIF value of Rs.98,17,591/-, vide 02 (two) Bills of Entry, without payment of Customs duty on the basis of 01 (one) Advance Authorization issued by the DGFT under Notification No. 96/2009-Cus dated 11.09.2009, as amended. As per the conditions of the Foreign Trade Policy and the aforesaid Customs Notification, such duty free imported goods were required to be exclusively used by the importer in the manufacture of export goods which was required to be ultimately exported. However, M/s. Aangan Agrotech Exports Ltd failed to complete the Export Obligation within the stipulated period of time allowed under the Foreign Trade Policy and the aforesaid Customs Notification. Consequently, M/s. Aangan Agrotech Exports Ltd were required to pay the Customs duty

amounting to Rs.25,94,617/- foregone on the said imported goods, along with interest.

17. The investigating agency (DRI) has adduced the following evidences to substantiate the allegation of wrong availment of Notification No. 96/2009-Cus dated 11.09.2009 by M/s. Aangan Agrotech Exports Ltd:

17.1 In his statement dated 04-08-2017 the authorized representative of M/s Aangan Agrotech Exports Ltd, Sri Paresh Rungta, Director, stated that he looks after overall day to day activities of the company including manufacture and sales and to take decisions relating to policy and finance. M/s Aangan Agrotech Exports Ltd. have obtained one Advance Authorization No. 0810133655 dated 21-10-2014 for import of duty free Poly Propylene Granules which is their basic raw material for the purpose of manufacture of PP Fabrics and Sacks. They were supposed to manufacture such P. P Woven Sacks without liner using these duty free materials and to export the same towards discharge of their export obligation. They imported a quantity of 119.800 MT of such P. P Granules vide Bills of Entry Nos. 5084560 dated 28-04-2016 and 5084772 dated 28-04-2016 and in the process they saved Customs duty of Rs.25,94,617/-. As per condition of the Advance Authorization they were supposed to complete their export obligation within a period of 18 months. They got an extension granted by the DGFT, Ahmedabad.

17.2 It was further stated by Sri. Paresh Rungta that, as per the Advance Authorization they were supposed to import 119.8 MT of such P.P. Granules for a CIF value of Rs 1,13,78,450/- and were also supposed to export P.P Woven Sacks for a quantity of 108.910 MT collectively valued at Rs. 1,30,85,300/-. Although they imported the entire quantity of the raw materials they did not export any goods manufactured out of the said duty free materials. They did not have proper export orders and they could not fulfill their export obligation. It was admitted by him that as they did not have any export orders, they were left with no other option but to use the materials for manufacture of finished goods, which were subsequently sold in the domestic market. In absence of any export order, they did not see any possibility of exporting such goods even in the near future; therefore, they decided to consume the entire duty free materials for the purpose of

manufacture of finished goods which were disposed-off in the domestic market.

17.3 It was admitted by Sri Paresh Rungta that, for reason beyond their control, they could not export any goods manufactured out of the said duty free materials imported under cover of the subject Advance Authorization. It was not possible for them to fulfill export obligation, which resulted in violation of condition No (viii) of the notification. For the same reason it was not feasible for them to furnish documents evidencing fulfillment of export obligation to the Customs authority. Such failure has resulted in contravention of condition No (ix) of the notification. It was also admitted that the imported materials were used by them for manufacture of goods which were sold in the domestic market. Such an act on their part has also resulted in violation of condition No (x) of the Notification No. 96/2009-Cus dated 11-09-2009. It was also admitted that as they could not export any goods manufactured out of those duty free materials, they were unable to comply with the subject Para 4.1.3 of the policy.

17.4 Further he stated that in terms of the Para 4.22 and 4.24 of the HBP they were required to fulfill export obligation within this stipulated period of time and also to submit documents before the Customs authority as a proof of fulfillment of export obligation. As they could not export any goods there was no possibility of furnishing documents pertaining to discharge of export obligation. It was admitted that the duty free imported materials could not be used for specified purpose. It was also admitted that they did not inform the Customs authority about their failure to fulfill Export Obligation as they approached the Policy Relaxation Committee (PRC) of DGFT, Delhi, for clubbing. In the meeting dated 31-05-2017, No. 7/AM18, their request was rejected. Therefore, they were left with no option but to pay Customs duty. They received Summons from DRI on 22-06-2017, and immediately on 30-06-2017, they paid the entire amount of Duty saved Rs.25,94,617/- along with interest of Rs.4,61,700/- vide Challan No. 737 dated 30-06-2017. It was also submitted that they have executed a Bond under Section 143 of the Customs Act, 1962, along with Bank Guarantee of Rs 29,70,972/- to the competent authority.

17.5 It is evident from the submission of the Director of the company, that the importer enjoyed the benefit of exemption of the Customs Notification

No.96/2009, dated 11-09-2009, but failed to fulfill the conditions of the subject notification in as much as they could not/did not export any finished goods manufactured out of the imported duty free raw materials instead of using such duty free materials for the purpose of manufacture of export goods, the importer consumed the entire materials and sold the goods produced out of the same in the domestic market, in total violation of the conditions of the Policy as well as the Customs notification.

17.6 I find that the authorized representative of the importer, in his statement accepted and admitted their omission on account of reasons beyond their control which ultimately led to non fulfillment of conditions of the notification resulting in non-payment of duty of Customs to the extent of Rs.25,94,617/-. The importer principally agreed to pay the said amount and deposited amount of Rs.30,56,317/- consisting of Rs.25,94,617/- of Customs duty and Rs.4,61,700/- towards interest vide TR-6 Challan No. 737 dated 30-06-2017.

18 In order to decide the matter, it would be necessary to read through the relevant text of Notification No. 96/2009-Cus dated 11.09.2009, which reads as under:

“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 materials imported into India against an Advance Authorisation issued in terms of paragraph 4.1.3 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B and 9A of the said Customs Tariff Act, subject to the following conditions, namely :-

- (i) that the said authorisation is produced before the proper officer of customs at the time of clearance for debit;*
....
- (iii) that the materials imported correspond to the description and other specifications where applicable mentioned in the authorisation and the value and quantity thereof are within the limits specified in the said authorisation*
- (iv) that in respect of imports made before the discharge of export obligation, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in*

such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials;

....

- (viii) that the export obligation as specified in the said authorization (both in value and quantity terms) is discharged within the period specified in the said authorization or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorization and in respect of which facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed:

Provided that an Advance Intermediate authorization holder shall discharge export obligation by supplying the resultant products to exporter in terms of paragraph 4.1.3 (ii) of the Foreign Trade Policy;

- (ix) that the importer produces evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, within a period of sixty days of the expiry of period allowed for fulfilment of export obligation, or within such extended period as the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow;
- (x) that the said authorisation shall not be transferred and the said materials shall not be transferred or sold;

Provided that the said materials may be transferred to a job worker for processing subject to complying with the conditions specified in the relevant Central Excise notifications permitting transfer of materials for job work;

....

Explanation, – For the purposes of this notification, -

....

- (v) “Materials” means-

(a) raw materials, components, intermediates, consumables, catalysts and parts which are required for manufacture of resultant product;”

18.1 From a plain reading of the aforesaid Notification together with the corresponding Chapter 4 of the Foreign Trade Policy (2009-2014), it is observed that benefit of duty free imports has been extended subject to the condition that the raw materials so imported have to be used in the manufacture of resultant export products only. Physical incorporation of such materials in the export goods is mandatory as per Para 4.1.3 of the FTP and DGFT Notification No. 31/2013 (RE-2013) / (2009-2014) dated 01.08.2013.

18.2 From the above, it is amply clear that the raw materials for which the duty exemption has been availed have to be processed and converted into a 'resultant product'. This is a substantial condition of the aforesaid exemption notification. There is a rationale, logic and principle behind issue of every notification. In the instant case, the raw materials are exempted as they are to be used for manufacture of export product and the policy of the Government is to zero-rate the exports and hence, no element of duty is to be loaded to the cost of goods meant for export so that the importer/manufacturer can compete in the overseas market without the input taxes getting exported. However, if the importer fails to fulfill the export obligation in respect of such imported duty free goods or diverts the finished goods in the domestic market, they are liable to pay the Customs duty along with interest. In the instant case, M/s. Aangan Agrotech Exports Ltd. failed to fulfill the export obligation and also admitted to the diversion of the finished goods manufactured out of the duty free imported goods into local market. Hence, the benefit of Notification No. 96/2009-Cus dated 11.09.2009 is required to be denied to them and the Customs duty foregone is required to be recovered, along with interest, as per the conditions of the said Notification.

19. Now, I discuss the defence submissions made by M/s. Aangan Agrotech Exports Ltd. in their written submissions received on 26.03.2018 and 27.03.2019 as well as the oral submissions made during the course of Personal Hearing held on 27.03.2019.

19.1 M/s. Aangan Agrotech Exports Ltd. vide their letter received on 26.03.2018 submitted that, they had obtained the Advance Authorisation in good faith that they shall be able to export the goods. The Advance Authorisation is valid for 12 months for import and 18 months for exports, effectively from the date of issue of the Advance Authorisation, as per Foreign Trade Policy (FTP for short) and Hand Book of Procedures (HBP for short) conditions and provisions and both are inscribed on the Advance Authorisation too. Manufacturing process is an ongoing process and so they believed that they could cater to the need of international buyers at any time they received orders.

19.2 M/s. Aangan Agrotech Exports Ltd. further submitted that they held two more Advance Authorisation which are not mentioned in the SCN and they had approached to the DGFT Policy relaxation committee to avail the provisions for clubbing. If all the three advance authorizations were allowed to be clubbed, they would have been able to avail the replenishment of duty free inputs against the exports they have already made, when they were informed vide DGFT's email dated 20.06.2017 that their request got rejected then they realized that they have to forego the duty free benefits against the exports made under the other two advance authorization and to remit the duty with its penal interest to Customs and produce the evidence thereof. They further stated that, the official information from the DGFT came on 20.06.2017 in the form of email and summons dated 16.06.2017 from DRI, Kolkata received by them on 22.06.2017 by speed post. They initiated the process to remit the duty with interest and instructed their bankers to prepare a demand draft after arranging the required funds and paid the said amount on 30.06.2017.

19.3 Further, M/s. Aangan Agrotech Exports Ltd. vide their letter dated 27.03.2019 submitted at the time of hearing accepted that, they have obtained the authorizations but failed to export which made them liable to pay the duty with its interest, which was paid subsequently when they were informed by the DGFT office that their request for clubbing is rejected. On enquiry from DRI they have co-operated fully with them and did not conceal any facts and figures. They have also stated that there is no mistake at either at DRI end or at their end. They have also requested to waive the penalty.

20. In view of the foregoing discussions, I find that the investigation conducted by the DRI and the evidences available on record clearly establish the fact of non fulfillment of the export obligation and diversion of finished goods manufactured out of duty free raw materials in the domestic market by M/s. Aangan Agrotech Exports Ltd.. Further, the authorized representative of M/s. Aangan Agrotech Exports Ltd. has also accepted the said facts in his statement given before the DRI and in the written submissions. Therefore, I find that M/s. Aangan Agrotech Exports Ltd. failed to comply with the conditions of the Notification No. 96/2009-Cus dated 11.09.2009, as amended and have violated provisions of Para 4.1.3, 4.1.5 & 4.1.9 of the Foreign Trade Policy (2009-14) and Para 4.22, 4.24 & 4.28 of the Hand Book of Procedures, Volume-I with respect to discharge of export obligation on the 'P.P. Granules' imported by them under Advance Authorization, in as much as they knowingly & willfully violated the condition of said Notification and FTP by way of selling finished goods manufactured out of duty free raw materials in the domestic market. Therefore, I find that the impugned imported goods i.e., 119.800 MTs of P.P.Granules, having CIF value of Rs.98,17,591/- are liable for confiscation under Section 111(o) of the Customs Act, 1962.

21. As the impugned 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. The 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.*

21.1 A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. First of all, I find that it is well settled legal position that when goods are not available for confiscation, redemption fine cannot be imposed. In the matter of Commissioner of Customs (Imp.), Nhava Sheva Vs. S.B. Impex [2017 (358) E.L.T. 358 (Tri. Mumbai)], it was held that:

6. It is noticed that the goods on which the Revenue has sought imposition of redemption fine were cleared and disposed of by the appellant. The said goods are not available for confiscation. The said goods were also not seized and released under any bond or undertaking. In these circumstances, the same cannot be confiscated and therefore, no redemption fine could have been imposed.

The above view has been consistently reiterated by various higher forums/courts in various cases.

21.2 Further, in the matter of Weston Components Ltd. Vs. Commissioner of Customs, New Delhi [2000 (115) E.L.T. 278 (SC)], it was held by the Hon'ble Supreme Court 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.

21.3 The above judgment was delivered on specific issue by the Hon'ble Supreme Court in Civil Appeal No. 7144 of 1999, filed against the order of Hon'ble Tribunal reported at 1999 (84) ECR 259 (Tri Delhi). In the said order, Hon'ble Tribunal discussed the issue in brief wherein it is mentioned that the goods involved in that case were provisionally released. Therefore, it emerges from the said judicial pronouncements that redemption fine can be imposed against those goods also which are not physically available but were provisionally released against bond.

21.4 In the matter of Lubrizol Advanced materials India Pvt. Ltd. Vs. C.C.E. Vadodara-I [2013 (290) E.L.T. 453 (Tri.-Ahmd.)], it was held by the Hon'ble Tribunal that:

Moreover, in the case of Weston Components reported in 2000 (115) E.L.T. 278 (S.C.), the goods had been released provisionally under a bond and it is nobody's case in this case that goods were seized and released provisionally under a bond. In the absence of seizure, the decision of the Hon'ble Supreme Court in the case of Weston Components cannot be applied.

21.5 Further, in the matter of Commissioner of Central Excise, Surat-II Vs. Citizen Synthesis [2010 (261) E.L.T. 843 (Tri.Ahmd.)], it was held by the Hon'ble Tribunal that:

Learned SDR on behalf of the Revenue submits that Revenue is in appeal against the conclusion of Commissioner that clandestinely cleared goods which are not available for confiscation, cannot be confiscated and setting aside redemption fine of Rs. 50,000/- imposed. He relies on the decision of Hon'ble Supreme Court in the case of M/s. Weston Components as reported in 2000 (115) E.L.T. 278 (S.C.), in support of his contention that redemption fine is imposable even when the goods are not available for confiscation. I find that the decision of Hon'ble Supreme Court in the case of M/s. Weston Components was rendered wherein the goods had been released to the appellant after execution of bond. Obviously, it was the case of provisional release. Learned SDR fairly admitted that in this case, the goods had not been provisionally released, but removed clandestinely. Therefore, the judgment cited by the learned SDR is not relevant.

21.6 In the matter of Commissioner of Central Excise, Surat Vs. Gunjan Exports [2013 (295) E.L.T. 733 (Tri. Ahmd.)], it was held that:

5. I have considered the submissions and I find myself unable to appreciate the submissions. The Hon'ble Supreme Court had clearly held in the case of Weston Components Limited that when the goods are released provisionally on execution of bond, confiscation can be affected even if the goods are not available. The natural conclusion is that the goods should have been released on bond which would mean that the goods have been taken possession of by way of seizure and subsequently released on execution of bond. Admittedly that is not the situation in this case also. In this case, respondents themselves have diverted the goods and after diversion, proceedings have been initiated. There is no seizure of the diverted goods and release of the same provisionally on execution of bond. Therefore, the issue is covered by the decision of the Hon'ble Supreme Court and in the absence of release on the basis of execution of a bond, goods could not have been confiscated. The decision of the Larger Bench of the Tribunal relied upon by the learned Commissioner is also applicable since in this case also there is no bond with a security is available. The B-17 Bond is a general purpose bond undertaking to fulfil the conditions of notification and other requirements and does not help the Revenue to confiscate the goods not available and impose the redemption fine in lieu of confiscation. Further, the confiscation always presumes availability of goods and presumption normally is that goods have been seized and thereafter the proceedings would culminate into confiscation or release. Confiscation would mean that seized goods become the property of the Government and the party to whom it is ordered to be released on payment of fine, will have to pay fine and redeem the goods. When the goods have been diverted and not released on execution of bond with conditions, the question of confiscation of the same does not arise since goods have already become someone else's property. Under these

circumstances, I find no merits in the appeal filed by the Revenue and accordingly, reject the same.

21.7 In view of the above discussion and judicial pronouncements, I find that redemption fine can be imposed only in those cases where goods are either available or the goods have been released provisionally under Section 110A of the Customs Act, 1962, against appropriate bond binding concerned party in respect of recovery of amount of redemption fine as may be determined in the adjudication proceedings. In the instant case, the impugned goods were neither seized nor released provisionally. Hence, neither the goods are physically available nor bond for provisional release under Section 110A *ibid* covering recovery of redemption fine is available. Therefore, I find that redemption fine cannot be imposed in this case.

22. Further, I find that demand of Customs duty amounting to Rs.25,94,617/-, under Section 28(4) of the Customs Act, 1962, has been proposed in the Show Cause Notice. The sub-section (4) of section 28 provides for demand of duty not levied or short levied by reason of collusion or willful mis-statement or suppression of facts. In the instant case, I find that the material evidence available on record clearly shows that M/s. Aangan Agrotech Exports Ltd. failed to observe the conditions of FTP and Notification No. 96/2009-Cus dated 11.09.2009 for duty free import of raw materials under Advance Authorization, in as much as they failed to fulfill the Export Obligation and they knowingly & willfully sold finished goods manufactured out of duty free raw materials in the domestic market. Moreover, these facts came to light only when the instant investigation was conducted by the DRI. Hence, the condition of sub-section (4) of Section 28 *ibid* is fulfilled in the instant case and the Customs duty amounting to Rs.25,94,617/- is recoverable from M/s. Aangan Agrotech Exports Ltd. by invoking the extended period of time under the provisions of Section 28(4) of the Customs Act, 1962.

22.1 M/s. Aangan Agrotech Exports Ltd. have contended in their defense that, they are law abiding citizen and they never intended to do any kind of malpractice which amounts to revenue distortion and they could not fulfill the Export Obligation due to non availability of export order and rejection of their clubbing request by DGFT Policy relaxation committee and therefore the penalty may be waived, show cause notice may be withdrawn and case may be closed. I find that this is a case of violation of conditions of notification and legal undertaking/Bond. The question as to whether violation of legal undertaking/Bond amounts to suppression of facts or not

was decided by Hon'ble Tribunal in the matter of Patel Engineering Ltd. Vs. Commissioner of Customs (Import), Mumbai [2013(295) E.L.T. 243 (Tri. – Mumbai)], wherein it was held that:

13. As per the condition of the Notification, the undertaking was given by the appellant at the time of import that the impugned paver finisher shall be used only and only for construction of roads for a period of 5 years. From the facts ascertained hereinabove, we find that the paver finisher was not used for the intended purpose as undertaken by the appellant. In view of this finding, the department has rightly issued show-cause notice to the appellant for violation of condition of their undertaking and thereby for denying the exemption under Notification 21/2002. As show-cause notice has been rightly issued and in the adjudication order it is also found that the impugned paver finisher was not used for construction of road, therefore they have not fulfilled the condition terms of undertaking/ bond at the time of import. As they have violated the terms of condition of their bond /undertaking, therefore they are liable to pay duty as demanded in the impugned order. On limitation, we find that the show-cause notice has been issued for violation of undertaking given at the time of importation for intended use and the fact that the imported paver finisher was not found to be used for intended purpose during investigation which amounts to suppression, therefore, the show-cause notice issued is within limitation.

22.2 The above decision was challenged before the Hon'ble Supreme Court, vide Civil Appeal Nos. 4842-4846 of 2012, but the same were dismissed and thus, the said order of the CESTAT has attained finality. In the instant case, the importer has failed to fulfill the Export Obligation within the stipulated/extended time period thereby violating the condition (viii) of the Notification No. 96/2009-Cus dated 11.09.2009. Further, as provided under Condition (iv) of the said notification, M/s. Aangan Agrotech Exports Ltd. filed bonds with the Department, binding themselves to observe all the terms and conditions of the said notification and the license and to fulfill the export obligations. In the said bond, they also undertook to produce evidence of export of resultant product, within 30 days from the expiry of the specified export obligation period and to pay the Customs duty with interest at applicable rate in the event of failure of fulfill full or part of the export obligations. However, M/s. Aangan Agrotech Exports Ltd. did not fulfill the export obligation and instead they sold the finished goods manufactured out of duty free raw materials in domestic market. The same is clearly a blatant violation of the terms and conditions of bond/ legal undertaking filed by them. In the instant case, the SCN has been issued alleging violation of bond/undertaking given at the time of importation. In the matter of Patel Engineering Ltd. (supra), show-cause notice was issued

for violation of undertaking given at the time of importation for intended use but the imported goods were not used for intended purpose and the Hon'ble Tribunal held the violation of legal undertaking as suppression of facts. The present case also involves violation of legal undertaking/bond given at the time of importation. The diversion of finished goods manufactured out of duty free raw materials imported against Advance Authorizations to domestic market instead of export, was not informed to the Department and came to light only when the instant investigation was conducted by the DRI. Therefore, relying on the decision of the Hon'ble Tribunal in the matter of Patel Engineering Ltd. (supra), I find that the above violations amount to suppression of facts and thus, the extended period of demand under Section 28(4) of the Customs Act, 1962 is invocable in this case. Consequently, the bond furnished by the importer is required to be enforced and the security, if any, furnished by them is required to be en-cashed and appropriated against the duty demand, interest and penalty etc.

23. After deciding the issue of demand of duty, I take up the issue of demand of interest on duty. I find that in terms of the Section 28AA of the Customs Act, 1962, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, at the rate fixed under sub-section (2) of Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section. Therefore, I find that M/s. Aangan Agrotech Exports Ltd. is also liable to pay interest at appropriate rate on the amount of duty recoverable from them.

24. Further, I find that the amount of Customs duty to the tune of Rs.25,94,617/- and interest on Customs duty to the tune Rs.4,61,700/-, voluntarily paid by M/s. Aangan Agrotech Exports Ltd. during the course of investigation, is required to be appropriated and adjusted against their said duty and interest liability.

25. Now, I proceed to consider the proposal of penalty against M/s. Aangan Agrotech Exports Ltd.. Imposition of penalty has been proposed on M/s. Aangan Agrotech Exports Ltd. under Section 114A and Section 112(a) of the Customs Act, 1962 in the SCN. As held in the foregoing paras, M/s. Aangan Agrotech Exports Ltd. failed to observe the conditions of FTP and Notification No. 96/2009-Cus dated 11.09.2009 for duty free import of raw materials under Advance Authorization, in as much as they failed to fulfill the Export Obligation and they knowingly & willfully sold the finished goods

manufactured out of duty free raw materials in the domestic market instead of exporting the same, these facts came to light only when the instant investigation was conducted by the DRI. Hence, I find that in the instant case, the ingredients of wilful mis-statement and suppression of facts by M/s. Aangan Agrotech Exports Ltd. have been clearly established as discussed in the foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of duty plus interest. Therefore, I find that the said contraventions on the part of M/s. Aangan Agrotech Exports Ltd. constitute an offence of the nature as described under Section 114A of the Customs Act, 1962 and hence, rendered them liable for imposition of penalty under Section 114A of the Customs Act, 1962.

25.1 Imposition of penalty has also been proposed on M/s. Aangan Agrotech Exports Ltd. under Section 112(a) of the Customs Act, 1962 in the SCN. I find it necessary to read through the relevant provisions of Section 114A, which reads as under:

Section 114A. Penalty for short-levy or non-levy of duty in certain cases. -

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined :

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

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in a case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate

Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five per cent. of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:-

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation.- For the removal of doubts, it is hereby declared that-

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28] relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

[Emphasis Supplied]

It is evident from the proviso to the Section 114A which provides that that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114. Therefore I find that no penalty is required to be imposed in the Section 112(a) of the Customs Act, 1962 when I am imposing penalty under Section 114A of the Customs Act, 1962.

26. In view of the foregoing discussions and findings, I pass the following order:-

::: ORDER :::

- (i) I hold that the impugned goods i.e. 'P.P.Granules' weighing 119.800MTs, imported duty free under Notification No. 96/2009-Cus, dated 11.09.2009, as amended, having assessable value of Rs.98,17,591/- (Rupees Ninety Eight Lakh Seventeen Thousand Five Hundred Ninety One only), are liable for confiscation under Section 111(o) of the Customs Act, 1962. However, as the goods are not physically available, I refrain from imposing redemption fine in lieu of confiscation.
- (ii) I confirm the demand of Customs duty amounting to Rs.25,94,617/- (Rupees Twenty Five Lakh Ninety Four Thousand Six Hunderd

- Seventeen only), under Section 28(4) of the Customs Act, 1962, and order to recover the same from M/s. Aangan Agrotech Exports Ltd..
- (iii) I order to recover the interest, at the appropriate rate, under Section 28AA of the Customs Act, 1962, on the aforesaid Customs duty, from M/s. Aangan Agrotech Exports Ltd..
- (iv) I order to appropriate the amount of Rs.30,56,317/- deposited vide TR-6 Challan No. 737 dated 30-06-2017, by M/s. Aangan Agrotech Exports Ltd. towards payment of Customs duty of Rs.25,94,617/- and interest payable on the said duty.
- (v) I impose penalty of Rs.25,94,617/- (Rupees Twenty Five Lakh Ninety Four Thousand Six Hunderd Seventeen only), plus an amount equivalent to the interest to be recovered, on M/s. Aangan Agrotech Exports Ltd., under Section 114A of the Customs Act, 1962.
- (vi) I do not impose penalty on M/s. Aangan Agrotech Exports Ltd., under Section 112(a) of the Customs Act, 1962 as I have imposed penalty under Section 114A of the Customs Act, 1962.
- (vii) I order to enforce the Bonds and encash the Bank Guarantee filed by M/s. Aangan Agrotech Exports Ltd., towards recovery of their above confirmed liabilities.

(Amarjeet Singh)
Additional Commissioner
Customs House, Mundra

F. No. VIII/48-44/Adj/ADC/MCH/17-18

Date: 07.05.2019

To:-

M/s. Aangan Agrotech Exports Ltd, (IEC No. 0801007267),
Registered office at No. 31, Madhuban Towers,
Behind Town Hall, Ellisbridge,
Ahmedabad, Gujarat-380006.

Copy to:

- (1) The Joint Director, Directorate of Revenue Intelligence, Kolkata Zonal Unit, 8, Ho Chi-Minh Sarani, Kolkata, -700071.

- (2) The Deputy Commissioner, Import Assessment, Group-II, Customs House, Mundra.
- (3) The Deputy Commissioner (RRA), Customs House Mundra.
- (4) The Deputy/Assistant Commissioner (Recovery), Customs House Mundra.
- (5) The Deputy/Assistant Commissioner (Disposal), Customs House Mundra.
- (6) The Deputy/Assistant Commissioner (BG Section), Customs House Mundra.
- (7) The Deputy/Assistant Commissioner (EDI), Customs House Mundra.
- (8) Guard File.