भारत सरकार/ Government of India
वित्त मंत्रालय/ Ministry of Finance
आयुक्त सीमा शुल्क एनएस-II का कार्यालय,
केंद्रीकृत अधिनिर्णयन प्रकोष्ठ, जवाहरलाल नेहरू सीमा शुल्क भवन
न्हावा शेवा, तालुका-उरण, जिला -रायगढ़, महाराष्ट्र707 400-
OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-II
CENTRALIZED ADJUDICATION CELL,
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,
DIST- RAIGAD, MAHARASHTRA-400707

सत्यमेव जयते

F.No. : S/10-194/2018-19/ADC/NS IV/CAC/JNCH

S/40-LUT-3663/2014 Gr.VII D-JNCH आदेशकीतिथि :10.09.2025

SCN No. 299/2018-19/DMC/JNCH जारी किए जाने की तिथि 10. 09.2025

Order Passed by: डॉ. चितरंजन प्रकाश वाघ
अतिरिक्त आयुक्त, सीमा शुल्क
एनएस-II, जेएनसीएच.

Dr. Chittaranjan Prakash Wagh
Additional Commissioner of Customs,
(NS-II), JNCH, NHAVA SHEVA

आदेशसंख्या25-26/ :/ADC/NS-II/CAC/JNCH

Order No. :794 /25-26/ADC/NS-II/CAC/JNCH

DIN NO. : 20250978NT0000777CBO
Name of Party : M/s Empower Gensets Pvt.Ltd (IEC No. 3107012700)

मूल आदेश

Order-In-Original

1. यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।

1. This copy is granted free of charge for the use of the person to whom it is issued.

2 . इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त (अपील(, जवाहरलाल नेहरू सीमाशुल्क भवन, शेवा, ता.उरण, जिला - रायगढ़, महाराष्ट्र - 400707 को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क (अपील (नियमावली, 1982 में संलग्न फॉर्म सी .ए1 . में की जानी चाहिए। अपील पर न्यायालय फीस के रूप में 2.00 रुपये मात्र का स्टांप लगाया जायेगा और साथ में यह आदेश या इस की एक प्रति लगायी जायेगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इस पर न्यायालय फीस के रूप में 2.00 रुपये का स्टांप भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1870 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।

2. An appeal against this order lies with the Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House, Nhava Sheva, Uran, Raigad under Section 128 (1) of the Custom Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA 1 appeared in Custom (Appeals) Rule, 1982. The appeal should bear a court fee stamp of ₹ 2.00 paisa paid only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a court fee stamp of ₹ 2.00 paisa only as prescribed under Schedule 1, item 6 of the Court Fees Act, 1870.

3. इस निर्णय या आदेश के विरुद्ध अपील करनेवाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5%का, अथवा केवल शास्ति के संबंध में विवाद होने पर शास्ति का भुगतान करेगा |

3. Any person desirous of appealing against this decision or order shall, pending the appeal, make 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.

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This is a denovo adjudication proceeding in terms of Order-in-Appeal No. 23 to 25 (DEEC Monitoring Cell)/2020 (JNCH)/Appeal-I dated 04.03.2020 passed by the Commissioner of Customs(Appeals), Mumbai Customs Zone-II, JNCH against Three Order-in-Original Nos.(1) 795/2018-19/ADC/NS-II/CAC/JNCH dated 09.10.2018; (2) 472/2017-18/ADC/NS-II/CAC/JNCH dated 27.12.2017 and (3) 487/2017-18/ADC/NS-II/CAC/JNCH dated 03.01.2018 passed by then Additional Commissioner of Customs (NS-IV), JNCH, Nhava Sheva to M/s Empower Gensets Pvt. Ltd (IEC-3107012700), Whereby the Commissioner of Appeal vide Order-in-Appeal No.23 to 25(DEEC Monitoring Cell)/2020 (JNCH)/Appeal-I dated 04.03.2020 set aside the Three Order-in-Original Nos.(1) 795/2018-19/ADC/NS-II/CAC/JNCH dated 09.10.2018; (2) 472/2017-18/ADC/NS-II/CAC/JNCH dated 27.12.2017 and (3) 487/2017-18/ADC/NS-II/CAC/JNCH dated 03.01.2018 and the matter was back to remanded the original adjudicating authority for fresh decision with direction to re-hear the appellant and consideration of reply submitted by the appellant thereafter re-determine the issue fresh.

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1.<u>BRIEF FACT OF THE CASE</u>

1.1 **M/s Empower Gensets Pvt. Ltd (IEC-3107012700)** declared IEC address as S. No. 36/1, Pisoli Road, Near Furtect Furniture, Piosoli, Taluka — Haveli, Pune — 411 060, Maharashtra(hereinafter referred to as "the importer") have obtained exemption from payment of Customs Duty in respect of clearance of imported goods in terms of Notification No.96 /2009-Cus dated 11.09.2009 under Advance Authorisation No. 3110061793 dated 30.12.2013(herein after referred to as "License") for duty saved amount of Rs. 12,29,407/-(Rupees Twelve Lakh Twenty Nine Thousand Four Hundred Seven Only).

1.2 The importer M/s Empower Gensets Pvt. Ltd (IEC-3107012700), had cleared imported goods of assessable value of Rs. 43,01,633/- (Rupees Forty Three Lakh One Thousand Six Hundred Thirty Three) under Advance Authorisation No. 3110061793 dated 30.12.2013 in terms of Customs Notification No. 96 /2009-Cus dated 11.09.2009 at concessional rate of duty. The importer has executed Bond dated 17.01.2014 and Bank Guarantee No. 13/2013-14 dated 11.01.2014 of amount Rs. 1,95,000/- which was accepted by the Assistant Commissioner of Customs and they had also given an undertaking to fulfil the conditions of the Bond, Advance Authorisation and the relevant Custom Notification at the time of registration of the license at Nhava Sheva port.

1.3 Further, as per the conditions of the said Customs Notification No. 96 /2009-Cus dated 11.09.2009, License Condition and undertaking given in the Bond, the importer was required to produce proof of fulfilment of export obligation within the period as prescribed in the said notification.

1.4 Further, as per the provision of Section 143 of the Customs Act, 1962, the said imported goods were allowed clearance by the proper officer on execution of bond by the importer wherein the importer bounded themselves to discharge liability in certain manner, which they have failed to do so by not submitting Export Obligation Discharge Certificate (EODC). Thus the importer appeared to have not complied with the conditions of Customs NotificationNo. 96 /2009-Cus dated 11.09.2009 ,License and undertaking given in the Bond.

1.5 Thus, it appear that the importer is liable to pay dutyforgone of Rs.12,29,407/-(Rupees Twelve Lakh Twenty Nine Thousand Four Hundred Seven Only) on the said imported goods along with interest at the applicable rate on the imported goods in terms of the conditions of the said notification read with conditions of the said Licence and the Bond executed by the Importer read with section 143 of the Customs Act, 1962. It also appears that the imported goods were not used for intended purpose for which the exemption from duty was claimed, therefore, the same are liable for confiscation under Section 111(o) of the Customs Act, 1962. It is also proposed that the importer is liable for penalty under section 112(a) of the Customs Act, 1962 for their act of commission or omission which render the goods liable for confiscation.

1.6 Therefore the Importer M/s Empower Gensets Pvt. Ltd were called upon to show cause(299/18-19/DMC/JNCH dated 29.05.2018) to the Additional Commissioner of Customs, Nhava Sheva IV, having his office at Jawaharlal Nehru Customs House, Nhava Sheva, Tal.Uran,Dist. Raigad, Maharashtra- 400707 as to why:-

(i) The imported goods of declared Assessable Value of Rs. **43,01,633/- (Rupees Forty Three Lakh One Thousand Six Hundred Thirty Three)**,should not be held liable for confiscation under section 111 (o) of the Customs Act, 1962 read with conditions of Bond executed in terms of Section 143 of the Customs Act, 1962 read with Customs Notification 96/2009-Cus dated 11.09.2009 as amended/applicable.

(ii) Duty forgone amount of Rs. **12,29,407/-(Rupees Twelve Lakh Twenty Nine Thousand Four Hundred Seven Only)** along with applicable interest (from the date of clearance of goods to the date of payment of duty) should not be recovered in terms of conditions of Bond executed under section 143 of the Customs Act 1962 read with Customs Notification No. 96/2009-Cus dated 11.09.2009 read with condition of Advance Authorization.

(iii) Penalty should not be imposed on the importer under section 112(a) of the Customs Act 1962 for the acts of omission and commission.

(iv) Bond and BG furnished by the importer should not be enforced for recovery of duty, interest, penalty and redemption fine, if any.

1.7. Following the principle of natural justice, Personal Hearing was granted to the importer fixed on 17.09.2018. However they failed to appear for Personal Hearing. Further no written submission have been filed by the Importer. The importer also did not request for adjournment, despite being given ample opportunities to defend their case. It is to mention here that copy of SCN was sent to last available address(i.e. **Empower Gensets Pvt. Ltd** S. No. 36/1, Pisoli Road, Near Furtect Furniture, Pisoli, Taluka — Haveli, Pune — 411 060, Maharashtra) as available in this office but no response has been received in this regard.

1.8. The said SCN No. 299/18-19/DMC/JNCH dated 29.05.2018 was adjudicated by Additional Commissioner of Customs,(NS-II), JNCH vide Order-in- Original No. 795/2018-19/ADC/NS-II/CAC/JNCH dated 09.10.2018 whereby ordered that:

(i) I hold that the imported goods Valued at Rs. 43,01,633/- (Rupees Forty Three Lakh One Thousand Six Hundred Thirty Three) are liable for confiscation under section 111 (o) of the Customs Act, 1962.Since the goods had already been cleared against bond executed by the Importer. I impose fine of Rs. 10, 00,000/-(Rupees Ten Lakh only) in terms of bond on the Importer under Section 125 of the Customs Act, 1962.

(ii) I Ordered to recover of the Duty saved/forgone amount of Rs. 12,29,407/-(Rupees Twelve Lakh Twenty Nine Thousand Four Hundred Seven Only) along withapplicable interest in terms of conditions of Bond executed read with Customs Notification No. 96/2009-Cus dated 11.09.2009 read with condition of Advance Authorisation.

(iii) I impose a penalty of Rs. 1,20,000/- (Rupees One Lakh TwentyThousand only) under section 112(a) of the Customs Act, 1962.

(iv) I order that the Bond furnished to be enforced for recovery of Duty, Interest, Penalty and Redemption Fine.

1.9 TheImporter preferred an appeal before Commissioner Appeal, JNCH vide Appeal No. 43/2019 dated 19.06.2019 against the said Order-in-Original No.795/2018-19/ADC/NS-II/CAC/JNCH dated 09.10.2018. The Commissioner Appeal, JNCH vide Order- in- Appeal No. **23 to 25(DEEC Monitoring Cell)/2020 (JNCH)/Appeal-Idated 04.03.2020**passed an order as under:

The Commissioner Appeal find that the main contention of the Appellant that due to change in management and address of the Company they had not received any of the SCN/PH Memos/OIOs from Customs being their address has been changed, which was updated by them with Registrar of Companies as well as in IEC. The Appellant further submitted that they had received copies of impugned O-in-Os from CGST Pune Commissionerate and as soon they received the said copies initiate action for submission of relevant documents to DGFT and payment of appropriate Customs Duty saved along with applicable interest.

CBEC vide Circular No.16/2017 Cus dated 20.05.2017 stipulates that in cases where the Licence holders/Authorization Holders have applied for EODC, the matter may be kept in abeyance till the same is decided by DGFT. Since in the instant case the Appellant has submitted EODC against one licence and EODCs against two Advance Authorizations are pending with the Addl. DGFT, Pune, the impugned Orders Nos.(I) 795/2018-19/ADC/NS-II/CAC/JNCH dated 09.10.2018; (2) 472/2017-18/ADC/NS-II/CAC/JNCH dated 27.12.2017 confirming duty of and imposing penalty is not sustainable in the law at this stage. Further, as far as O-in-O No. 487/2017-18/ADC/NS-II/CAC/JNCH dated 03.01.2018 where the Appellant has submitted copy of EODC is required to be scrutinized and get satisfied that the Appellant has really fulfilled the Export Obligation and within the stipulated period or otherwise.

Since the decision of the Addl. DGFT, Pune on the issue of EODC in respect of the two Advance Authorization Nos. (1) 3110061793 dated 30.12.2013 and (2) 3110052947 dated 14.02.2012 is still pending consideration and in one case appellants have claimed the EODC has been granted, the impugned Order in Original is pre-matured and therefore required to be set aside and remand back the matter to OA for a fresh consideration.

In view of above, the Commissioner of Appeal set aside the Orders-in-Original

Nos.(1)795/2018-19/ADC/NS-II/CAC/JNCH dated 30.08.2018, (2) 472/2017-18//ADC/NS-II/CAC/JNCH dated 27.12.2017, & (3) 487/2017-18/ADC/NS-II/CAC/JNCH dated 03.01.2018, passed by the Addl. Commissioner of Customs, NS-II, JNCH, Nhava Sheva and remand the matter back to the Original Authority(AO) for fresh decision. The OA shall pass an appropriate order after due consideration of reply submitted by the appellant and allowing it an opportunity of being heard, in compliance of principles of natural justice, shall also be granted.

Accordingly, the Appeal Nos. 43/2019, 44/2019 & 04/2019 filed by the appellant M/S Empower Gensets Pvt. Ltd. is disposed off by way of remand in above terms.

2. Replies/Written Submission and Record of Personal Hearing

In line of Commissioner Appeal order and Following the principle of natural justice, effort has been made to trace out the correct address.of the Importer. In this regard, during the verification of Advance Authorisations status with DGFT site, a mobile number 9823595848 was mentioned there. On calling to this number, the person again provide the mobile number 9833068385 in the name of Shri Sanath Kumar, for further communication in respect of this noticee. Shri Sanath Kumar provided the correct address as "Empower Gensets Pvt.Ltd, C/o Powerica Limited, 1102, Kotibhaskar Business Court, Opp. Karishma Society, Karve Road, Kothrud, Pune-411038(MH) and an email sanath_empower@powericaltd.com. Hence letter was issued at the new address to the Importer with a request to appear before Adjudicating Authority for personal hearing on 26.06.2025, **04.09.2025.** Shri Sanath Kumar, Senior Manager-Commercial, attended personal hearing on 26.06.2025 and 04.09.2015 in virtual mode. They stated that they have already completed the EODC under Advance Authorisation No. 3110052947/14.02.2012 and 3110054375/22.05.2012 and have submitted the Redemption letter. In respect of Advance Authorisation No. 3110061793/30.12.2013 they submitted that export obligation has completed 100% and all related documents submitted with DGFT Pune. The EODC is under process and redemption letter not received yet. They are continuously follow up the matter with DGFT, Pune since 2021

3. DISCUSSIONS AND FINDINGS

3.1 The subject SCN was adjudicated in first round adjudication vide Order- in-Original No. 795/2018-19/ADC/NS-II/CAC/JNCH dated 09.10.2018 passed by then Addl. Commissioner of Customs, NS-II, JNCH. The Importer preferred an appeal before Commissioner Appeal, JNCH vide Appeal No. 43/2019 dated 19.06.2019against the said Order-in-Original No.795/2018-19/ADC/NS-II/CAC/JNCH dated 09.10.2018.The Commissioner Appeal vide Order- in- Appeal No.23 to **25(DEEC Monitoring Cell)/2020 (JNCH)/Appeal-Idated 04.03.2020,** set aside the Orders-in-Original Nos.(1)795/2018-19/ADC/NS-II/CAC/JNCH dated 30.08.2018, (2) 472/2017-18//ADC/NS-II/CAC/JNCH dated 27.12.2017, & (3) 487/2017-18/ADC/NS-II/CAC/JNCH dated 03.01.2018, passed by the Addl. Commissioner of Customs, NS-II, JNCH, Nhava Sheva and remand the matter back to the Original Authority(AO) for fresh decision. The OA shall pass an appropriate order after due consideration of reply submitted by the appellant and allowing it an opportunity of being heard, in compliance of principles of natural justice, shall also be granted. In compliance with the order of Commissioner of Appeal the matter is now being taken for De-novo adjudication.

3.2 I find that a corrigendum to Order - in- Appeal No.23 **to 25(DEEC Monitoring**

Cell)/2020 (JNCH)/Appeal-I dated 04.03.2020 was issued vide F. No. S/49-Appeals 07/2024-25/Misc/JNCH dated 02.09.2025 in respect of page no. 5, at serial no. 12 of the said OIA, the order-in original has inadvertently mentioned as **772/2017-18/ADC/NS-II/CAC/JNCH dated 30.01.2018, the same may be read as 487/2017-18/ADC/NS-II/CAC/JNCH dated 03.01.2018.**

3.3 I find that the Importer was issued personal hearing letter dated 14.10.2024, 24.10.2024, 05.11.2024 and 07.03.2025 at the address (i) M/s Empower GensetsPvt.Ltd, Show Room No. 1 & 2,Vartak Heritage,100 ft. DP Road,KarveNagar,Erwande, Pune- 411 052; and (ii) M/s Empower GensetsPvt.Ltd, at S.No. 36/1, Pisoli Road, Near furniture, Pisoli, Tal-Havel, Dist-pune, MH-411060. However the said letters returned with remark " **address incomplete**".

Further during the verification of Advance Authorisation status with DGFT site, a mobile number 9823595848 was mentioned there. On calling to this number, the person again provide the mobile number 9833068385 in the name of Shri Sanath Kumar, for further communication in respect of this Importer. Shri Sanath Kumar provided the new address as "Empower GensetsPvt.Ltd,C/o Powerica Limited, 1102, Kotibhaskar Business Court, Opp. Karishma Society, Karve Road, Kothrud, Pune-411038(MH).He also provided email ID "sanath_empower@powericaltd.com" for further communication.

3.4 I have carefully gone through the facts of the case, available records and written submission from the Importer and direction given by the Commissioner of Appeal. Further in compliance to the provisions of section 28(8) and 122(A) of the Customs Act, 1962 and in terms of principles of natural justice, as per the direction of the Commissioner of Appeal, fresh opportunity for personal hearing was given to the Importer on 26.06.2025, 04.09.2025 and representative of the said Importer appeared along with submission on virtual mode. Hence the principles of natural justice have been followed during the adjudication proceeding. Accordingly, I proceed to decide the case.

3.5 I find that the importer M/s Empower Gensets Pvt. Ltd (IEC- 3107012700) have obtained exemption from payment of Duty against clearance of goods in terms of Customs Notification No. 96/2009-Cus dated 11.09.2009 against Advance Authorisation No. 3110061793 dated 30.12.2013 for duty saved amount of Rs. 12,29,407/-(Rupees Twelve Lakh Twenty Nine Thousand Four Hundred Seven Only). It is alleged in the Show Cause Notice that the Importer has failed to produce EODC certificate within the period as prescribed, hence the importer is liable to pay Duty saved amount of Rs. 12,29,407/- (Rupees Twelve Lakh Twenty Nine Thousand Four Hundred Seven Only) along with applicable interest.

4. In view of the above, I find that the issues to be decided are:

(i) Whether the imported goods of value at Rs. 43,01,633/- (Rupees Forty Three Lakh One Thousand Six Hundred Thirty Three) should be held liable for confiscation under Section 111(o) of the Customs Act, 1962 read with relevant Notifications as amended.

(ii) whether the duty saved amount of Rs. 12,29,407/-(Rupees Twelve Lakh Twenty Nine Thousand Four Hundred Seven Only) along with applicable interest should be recovered in terms of conditions of Bond executed under section 143 of the Customs Act 1962 read with Customs Notification No. 96/2009-Cus dated 11.09.2009.

(iii) Whether penalty should be imposed on the importer under Section 112(a) of the Customs Act, 1962.

(iv) Whether Bond furnished by the importer should be enforced for recovery of duty, interest, penalty and Redemption Fine, if any.

5. I find that the importer had cleared imported goods having Assessable value of 43,01,633/- (Rupees Forty Three Lakh One Thousand Six Hundred Thirty Three) under Advance Authorisation No. 3110061793 dated 30.12.2013 in terms of Customs Notification No. 96/2009-Cus dated 11.09.2009 at concessional rate of duty for duty saved amount of Rs12,29,407/-(Rupees Twelve Lakh Twenty Nine Thousand Four Hundred Seven Only).

6. I find that the importer had executed Bond dated 02.01.2014(accepted by Deputy Commissioner of Customs) and had given an undertaking to fulfil the conditions of the Bond, Advance Authorisation and the relevant Custom Notification at the time of registration of the license at Nhava Sheva port.

7. I find that the Importer submitted (at the time of personal hearing) that theexport obligation in respect of Advance Authorisation No. 3110061793 dated 30.12.2013 has completed 100% and all related documents submitted with DGFT Pune. The EODC is under process and redemption letter not received yet. They are continuously follow up the matter with DGFT, Pune since 2021. They submitted the copy of the following letters below:

(i) Letter F.No. 31/82/40/00212/AM14 dated 18.07.2019 addressed to the M/s Empower Gensets Pvt. Ltd. issued by DGFT, Pune for BRC details for Shipping Bills No. 1534578 dated 11.03.2014

(ii) Letter dated 07.10.2019 addressed to the Jt. Director General of Foreign Trade, Pune issued by the Importer for submitting the BRC and Charted Engineer's Certificate.

(iii) Letter dated 05.03.2021 addressed to the Jt. Director General of Foreign Trade, Pune issued by the Importer in reference of Deficiency letter dated 02.12.2019 and 12.02.2021 of DGFT Pune.

(iv) Letter dated 01.07.2024 addressed to the Jt. Director General of Foreign Trade, Pune issued by the Importer for requested to issue the Redemption letter. Further they received order in –Appeal No.03/16/144/00047/AM19/1194/475 dated 20.11.2018 passed by Addl. DGFT, Mumbai against Order –in-Original No. 31/82/040/00212/AM14 dated 07.03.2018 passed by Jt. DGFT, Pune.

(v) Letter dated 25.11.2024 addressed to the Jt. Director General of Foreign Trade, Pune issued by the Importer for requested to issue the Redemption letter in the long pending cases. Further they brought to notice that M/s Empower Gensets Pvt. Ltd merged with M/s Powerica Limited wide the final order of NCLT and had complied with all respective deficiency letters issued to their firm.

(vi) Letter dated 03.04.2025 addressed to the Jt. Director General of Foreign Trade, Pune issued by the Importer for requested to issue the Redemption letter in the long pending cases of Advance Authorisation issued to their Firm(Formerly known as Empower GensetsPvt.Ltd.) .

7.1 I find that CBEC vide Circular No.16/2017 Cus dated 20.05.2017 stipulates that in cases where the License holders/Authorization Holders have applied for EODC, the matter may be kept in abeyance till the same is decided by DGFT.

7.2 I find that as per stipulates CBEC vide Circular No.16/2017 Cus dated 20.05.2017 and in line of Order- in- Appeal No. 23 to **25(DEEC Monitoring Cell)/2020 (JNCH)/Appeal-Idated 04.03.2020,** in the instant case, the current status in respect of Advance Authorisation 3110061793 dated 30.12.2013 enquired with the official website of DGFT in the respect of View Authorisation/ Transmission details , **it is showing the Authorization status as "Demand Notice Issued". Hence the EODC has not fulfilled by the Importer yet.**

8 . I find that as per the provisions of Section 143 of the Customs Act, 1962, the said imported goods were allowed clearance by the proper officer on execution of bond by the importer wherein the importer bounded themselves to discharge liability in certain manner, which they have failed to do so by not fulfilling the export obligation. Thus the importer appeared to have not complied with the mandatory conditions of Customs NotificationNo. 96/2009-Cus dated 11.09.2009 and conditions of the Bond. Therefore, the duty saved amount of Rs.12,29,407/-(Rupees Twelve Lakh Twenty Nine Thousand Four Hundred Seven Only) alongwith applicable interest is payable in terms of the Bond executed by them at the time of import.

9. From the perusal of the Section 111(o) of the Customs Act, 1962, which reads as under:
Confiscation of improperly imported goods, etc.—
The following goods brought from a place outside India shall be liable to confiscation:
(o):- "any goods ***exempted,*** *subject to any condition, from duty or any prohibition in* ***respect of the import thereof*** *under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non- observance of the condition was sanctioned by the proper officer are not observed without the permission of proper officer".*

As per Section 111(o), this covers post importation violations leading to confiscation of goods. Any goods imported availing the benefit of notification, wherein the conditions stipulated in the notifications are to be fulfilled and in the case of non-fulfilment of conditions, goods become liable for confiscation under Section 111 (o). Therefore, it is evident that the exemption from payment of duty is subject to fulfilment of certain post importation conditions, as mandated by Customs Act, 1962 or any other law.

10. In view of the above facts/evidences, it is observed that post import conditions have not been followed and thus it stands violated, so the provisions of Section 111(o) are attracted and hence imported goods having declared Assessable value of 43,01,633/- (Rupees Forty Three Lakh One Thousand Six Hundred Thirty Three) are liable for confiscation under Section 111(o) of the Customs Act, 1962 read with conditions of Bond executed in terms of Section 143 of the Customs Act, 1962 read with condition of Customs Notification No. 96/2009-Cus dated 11.09.2009 as amended from time to time.

11. Reliance is placed upon following case law to support confiscation under Section 111(o)of the Customs Act, 1962.

i. Union of India v Sampat Raj Dugar, 1992 (58) E.L.T. 163 (S.C.), while considering the scope and ambit of Section 111(o) Hon'ble Supreme Court has observed as under;

> *"Clause (o) contemplates confiscation of goods which are exempted from duty subject to a condition. which condition is not observed by the importer. Occasion for taking action under this Clause arises only when the condition is not observed within the period prescribed, if any, or where the period is not so prescribed,* within *a reasonable period. "*

12. As regards to imposition of redemption fine, I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

> *"23. The penalty directed against the* importer *under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and* other *charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods* to *payment of duty and other charges, the improper and irregular importation* is *sought to be regularized, whereas, by subjecting the goods to payment of fine under sub-section (2) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of section 125, "whenever confiscation Of any goods is authorized by this* Ref .... *", brings* out *the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for Under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section 111 Of the Act, we are of the opinion that* the *physical availability of goods is* not *so much relevant. The redemption* fee *is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment* or/redemption fine *saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii). "*

In the case of M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.), it has been held that:

> *"if subsequent to release of goods import was found invalid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods - Section 125 of Customs Act, 1962, then the mere fact that the goods were released* on *the bond would not take away the power* of the *Customs Authorities to levy redemption fine." 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.*
>
> *2.The appeal is dismissed.*

13. Accordingly, in view of the above judicial pronouncements, it is observed that the present case also merits imposition of Redemption Fine in lieu of liability for confiscation.

14. By clearing the goods under Bond after claiming exemption Notification, the Noticee has taken upon himself to fulfil the conditions as mandated by the relevant FTP, HBP, condition of license. However, in this case, the Noticee has not fulfilled the conditions as mentioned in the aforesaid Notification read with policy condition of relevant FTP and HBP. It is established from the facts and evidence that in spite of giving sufficient opportunities to submit necessary and relevant documents in respect of use and utilization of imported goods in terms of intended purpose, the Noticee failed to show that they are entitled for exemption from payment of duty, thus for the acts of omissions and commissions mentioned above, have rendered themselves liable for penal action under Section 112 (a) of Customs Act, 1962

15. In the instant case, the Noticee has executed a Bond dated 17.01.2014 and Bank Guarantee No. 13/2013-14 dated 11.01.2014 of amount Rs. 1,95,000/- In view of the foregoing discussion, the Bond furnished by the Noticee is required to be enforced for recovery of outstanding amount of duty foregone alongwith the applicable interest together with penalty and redemption fine.

16. In view of the foregoing discussion, I pass the following order.

ORDER

i. I order the confiscation of the goods having Assessable value of Rs. 43,01,633/- (Rupees Forty Three Lakh One Thousand Six Hundred Thirty Three) are liable for confiscation under Section 111(o) of the Customs Act, 1962 read with conditions of Bond executed in terms of Section 143 of the Customs Act,1962 read with Customs Notification No. 96/2009-Cus dated 11.09.2009. Since the goods had already been cleared against bond executed by the Importer. I impose a redemption fine on the importer in lieu of confiscation amounting to Rs.40,00,000/- (Rupees Forty Lakh Only) under Section 125 of the Customs Act, 1962.

(ii) I order to recover of the Duty saved/forgone amount of Rs. 12,29,407/-(Rupees Twelve Lakh Twenty Nine Thousand Four Hundred Seven Only) along with applicable interest in terms of conditions of Bond executed and Bank Guarantee read with Customs Notification No. 96/2009-Cus dated 11.09.2009 read with condition of Advance Authorisation.

(iii) I impose a penalty of Rs. 1,20,000/- (Rupees one Lakh Twenty Thousand only) under section 112(a) of the Customs Act, 1962.

(iv) I order that the Bond and BG furnished to be enforced for recovery of outstanding amount of duty foregone along with applicable interest together with penalty and redemption fine.

17. This order is issued without prejudice to any other action which may be taken in respect of the goods in question and/or against the persons concerned or any other persons, if found involved under the provisions of the Customs Act, 1962 and/or other law for the time being in force in the Republic of India.

(Dr.Chittaranjan Prakash Wagh)

Digitally signed by
Wagh Chittaranjan Dhake
Date: 10-09-2025 14:51:00

Commissioner of Customs
NS-II, JNCH, Nhava Sheva.

To.

M/s Empower Gensets Pvt. Ltd (IEC- 3107012700)
C/o Powerica Limited,
1102, Kotibhaskar Business Court, Opp. Karishma Society,
Karve Road, Kothrud, Pune-411038(MH) EM986907205IN

Copy To:

1. The Commissioner of Customs, NS-II, JNCH, Nhava-Sheva
2. The DC/ CRRC, JNCH
3. The DC/ Review Cell (CRAC), JNCH
4. The DC EPSMMC Cell, JNCH.
5. The AC/DC of EDI, JNCH for uploading on website
6. Notice Board, JNCH, Nhava-Sheva.
7. Master File/ Office Copy.

उप आयुक्त सीमाशुल्क/Dy. Commissioner of Customs
सी.एच.एस. अनुभाग
C.H.S. SECTION
11 SEP 2025
जवाहरलाल नेहरु सीमाशुल्क भवन, न्हावा शेवा
Jawaharlal Nehru Custom House, Nhava Sheva

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NHAVA SHEVA, TAL URAN,
DIST RAIGAD, MAHARASHTRA-400 707

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E.P.C.G. SECTION
11 SEP 2025
जवाहरलाल नेहरु सीमाशुल्क भवन, न्हावा शेवा
Jawaharlal Nehru Custom House, Nhava Sheva

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Jawaharlal Nehru Custom House, Nhava Sheva
ता.उरण-Tal.Uran, जिला रायगड-Dist. Raigad-400707.