



OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-V)
सीमाशुल्क आयुक्त एनएस- V का कार्यालय
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**SHOW CAUSE NOTICE ISSUED UNDER SECTION 124 READ WITH SECTION 28(4)
OF THE CUSTOMS ACT, 1962**

M/s Gujarat Fluorochemicals Limited, IEC AAFCI0903C having registered office at INOX Towers, Plot No.17, Sector 16A, Noida-201301, U.P., INDIA, (hereinafter referred to as 'Importer') had cleared their imported items vide bill of entries as mentioned in Annexure 1,2,3 & 4. During the course of Audit and on examination of records the following discrepancies have been observed

Observation-1: Non- Compliance of the conditions of Notification No. 104/1994 dated 16.03.1994, as amended: -

2. During the course of Post Clearance Audit of Bill of entries mentioned in Table-A, it has been noticed that importer had imported "VDF SKID CONTAINERS and CYLINDERS" under Bills of Entry (as detailed in **Table-A**) without payment of Customs Duty by availing the benefit of exemption extended by Notification No. 104/1994 dated 16.03.1994, as amended, which were otherwise payable as BCD @ 10% and 15%, SWS @10% of BCD and IGST @ 18%. The importer has saved the duty as detailed in Table-A in the import of these items.

3. The Importer was required to re-export the imported goods within time limit of 06 months from the date of its import, or get the extension of the time limit of 06 months for further period from the competent authority as notified under the referred Notification. However, the Importer neither could submit/produce any documents evidencing re-export of the said imported containers/cylinders and/or the extended time limit, nor could they produce the documents showing deposit of differential duties. Thus, the Importer failed to comply with the conditions of Notification No. 104/1994 dated 16.03.1994 as amended, which provides duty exemption to "VDF SKID CONTAINER and Cylinder" if the same is re-exported within 06 months or as extended.

(i) The Notification No. 104/1994 -Customs dated 16.03.1994 is reproduced as under: -

"Exemption to containers of durable nature. 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 containers which are of durable nature, falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from, -

- a. *the whole of the duty of customs leviable thereon under the said First Schedule; and*
- b. *the whole of the additional duty leviable thereon under section 3 of the said Customs*

Tariff Act: Provided that the importer, by execution of a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs or Deputy Commissioner of Customs binds himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importer's failure to do so:

Provided further that in any particular case, the aforesaid period of six months may, on sufficient cause being shown, be extended by the said Assistant Commissioner for such further period, as he may deem fit."

TABLE A

Sr No	BOE No. & Date	Port of Import	Commodity	HS Code	CIF AMT (in Rs)	Total Duty Foregone (BCD, SWS & IGST) (in Rs)
1	3500388/28.11.2022	INNSA1	VDF SKID Container	86090000	7,64,54,560	2,36,85,623
2	3500388/28.11.2022		VDF SKID Container	86090000	3,82,27,280	1,18,42,811
3	9949105/10.08.2022		VDF SKID Container	86090000	1,23,49,352	38,25,829
4	9961888/15.12.2020		Cylinder	73110090	62,001	23,232
5	9961888/15.12.2020		Cylinder	73110090	95,616	35,827
6	9961888/15.12.2020		Cylinder	73110090	1,86,003	69,695
7	7088159/15.01.2022		Cylinder	73110090	3,39,300	1,27,136
8	5963642/23.10.2021		Cylinder	73110090	5,68,500	2,13,017
9	6612374/10.12.2021		Cylinder	73110090	5,69,250	2,13,298
10	7577354/21.02.2022		Cylinder	73110090	4,56,300	1,70,976
11	8527796/19.08.2020	HAZIRA	Cylinder	73110090	4,84,800	1,81,655
12	8527796/19.08.2020		Cylinder	73110090	4,84,800	1,81,655
13	8527796/19.08.2020		Cylinder	73110090	4,84,800	1,81,655
14	9618773/19.07.2022	ACC Mumbai	Cylinder	73110090	2,79,095	1,04,577
TOTAL						4,08,56,984

3.2. During Audit, the Importer submitted that in the case of import of "Cylinders"- (Sl. No. 11 to 13 of Table-A above) from ports Hazira and ACC Mumbai (other than INNSA1), they have made payment of BCD, SWS and IGST along with interest of INR 8,61,786/- through TR-6 challan No. 2049456487 dated June 07, 2024 against BOE No. 8527796 dated August 19, 2020 (Sl. no. 11-13) and INR 1,34,231/- through TR-6 Challan No. Mumbai/FY2023- 24/0625/47609 dated June 05, 2024 against BOE No. 9618773 dated July 19, 2022 (Sl. no. 14 of above Table-A).

3.3. In view of the facts, it's evident that the Importer has contravened that condition of Notification No. 104/94-Customs dated 16.03.1994 as amended; by not re-exporting the imported goods within the stipulated period of 06 months or as extended by the competent authority nor did they deposited the duty foregone amounts in r/o imports made against Sl. no. 1 to 10 of TABLE-A above. However, in r/o imports against sl.no 11 to 14 the Importer informed that they had deposited the duty foregone amount along with the applicable interest.

3.4 Accordingly, the duty foregone amount of Rs. **4,08,56,984/- as detailed in sl. No. 1 to 14 of Table-A**, along with applicable interest appears to be recoverable from the Importer under Section 143 of the Customs Act, 1962.

4. Legal Provision: - Section 143 of the Customs Act, 1962: - Power to allow import or export on execution of bonds in certain cases. -

Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.

If the thing is done within the time specified in the bond, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.

If the thing is not done within the time specified in the bond, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.

Section 111(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;*

Section 112(a)- *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

5. In view of above facts, it appears that-

The importer willfully mis-stated in respect of timely re-export of goods mentioned in Table-A and imported without payment of Customs Duty by wrongfully availing the benefit of exemption extended by Notification No. 104/1994 dated 16.03.1994, as amended.

Observation -2: (a) Non-fulfilment of Export Obligation of Advance authorization Nos. 3411001176 dt.27.09.2021: -

6. During the audit period, the Importer had imported various items falling under Customs Tariff Items (**as detailed in Table-B**) under Bills of Entry (**as detailed in**

Table-B) without payment of Customs Duty by availing the benefit of exemption extended by Notification No. 018/2015- Cus, dated 01.04.2015, as amended, against the above-mentioned Advance Licence. The Importer did not pay any Customs duty on such input materials at the time of import on condition of using the said imported material for the purpose of manufacturing of export goods.

6.1 During the Audit, it was noticed that the Importer could not fulfill their export obligation within the original EO period and despite having failed to complete the Export Obligation, they did not deposit the duty foregone amount as stipulated under the Policy and the subject Customs Notification No. 018/2015-Cus dated 01.04.2015, as amended, which was otherwise payable.

6.2 During the audit, on scrutiny of the records of the imports made under the said Advance Authorization Licence number 3411001176 dt. 27.09.2021 by the Auditee, it was observed that the Importer has imported:

(i) 2.50 (MT) of "PPVE (PERFLUOROPROPYLENE VINYL ETHER)" under CTH 29091990 vide - BOE, 5744721 dt. 07.10.21;

(ii) 1.46 (MT) of "PPVE (PERFLUOROPROPYLENE VINYL ETHER)" under CTH 29091990 vide -BOE 5812351 dt.12.10.21 and;

(iii) 0.20 MT of "TRIBUTYLAMINE" under CTH 29211990 vide- Bill of Entry no. 7898397 dt.17.03.22 at the port INNSA1- having the assessable value and duty foregone amount as detailed in Table-B. The Importer has paid Customs Duties @ NIL by availing the benefit of exemption extended by Notification No. 018/2015-Cus, dated 01.04.2015, as amended which were otherwise payable as BCD @7.5% / 5%; SWS @10% of BCD and IGST @ 18%. The Importer has saved the duty of Rs. 82,35,129/- as detailed in Table- B in the import of these items.: -

Table B

Advance Authorisation No.	Bill of Entry No. under which item was imported	CTH	Description of Goods	Quantity (in MT) out of total which could not be exported	Assessable Value (in Rs.)	Duty Liability (in Rs)		
						BCD (7.5%)	SWS (10% of BCD)	IGST (18%)
3411001176 dt 27.09.2021	5744721 dt 07.10.21	2909199	PPVE (PERFLUOROPROPYLENE VINYL ETHER)	2.50	19251000	1443825	144383	3751057
	5812351 dt. 12.10.21	29091990	PPVE (PERFLUOROPROPYLENE VINYL ETHER)	1.46	10389068	779180	77918	2024310
	7898397 dt. 17.03.22	29211990	TRIBUTYLAMINE	0.20	52122	3909	391	10156
	GRAND TOTAL				29692190	22,26,914	222691	57,85,523
Total Duty Liability (in Rs) (BCD+SWS+IGST)					82,35,129			

7. Para 4.03 of the FTP read with paragraph 4.22 of Handbook of Procedures, Vol-I- states that, an Advance Authorization (AA) is issued for import of duty-free inputs

against which the prescribed Export obligation (EO) has to be fulfilled within a period of 18 months from the date of issuance of the authorization. Further, paragraph 4.44 of HBP, Vol-I stipulates that the authorization holder shall submit evidence of export within two months from the date of expiry EO period. In the event of failure to fulfil the prescribed EO, the authorization holder is liable to pay Customs Duty foregone on the unutilized value of the imported material along with interest and penalty.

8. The due date to fulfil the Export Obligation for the Advance Authorisation Licence number 3411001176 dt. 27.09.2021 was 26.03.2023. However, it was noticed that the Importer has not completely fulfilled the export obligation as per Foreign Trade Policy 2015-20 and has also not submitted the evidence of export within two months from the date of expiry of the EO period nor deposited the applicable customs duty till date.

9. Therefore, the duty foregone amount of Rs. **82,35,129/- {BCD (Rs. 22,26,914/-) + SWS (Rs. 2,22,691/-) + IGST (Rs. 57,85,523-)}** (Detailed calculation is attached as Annexure-2) appears recoverable from the Importer under Section 143 of the Customs Act, 1962. This duty was foregone, on the materials imported against Advance Licence No. 3411001176 dt. 27.09.2021 to the extent for non-fulfilment of export obligation, along with applicable interest.

10. (b) Non-fulfilment of Export Obligation of Advance authorization No. 3411000961 dt.11.08.2021: -

10.1 During the audit period, the Importer has imported various items falling under Customs Tariff Items (**as detailed in Table-C**) under cover of Bills of Entry (**as detailed in Table-C**) without payment of Customs Duty by availing the benefit of exemption extended by Notification No. 018/2015-Cus, dated 01.04.2015, as amended. The Auditee did not pay any Customs duty on such input materials at the time of import on condition of using the material imported for the purpose of manufacturing of export goods. During the Audit, it was noticed that the Auditee could not fulfil their export obligation within the original EO period and despite having failed to complete the Export Obligation, they did not pay the applicable Customs Duty as stipulated under the Policy and the subject Customs Notification No. 018/2015-Cus dated 01.04.2015, as amended, which was otherwise payable.

10.2 During the audit, on scrutiny of the records of the imports made under the Advance Authorization Licence number 3411000961 dt.11.08.2021 by the Importer, it was observed that the Importer has imported: -

(i) 15.6 MT of "Hexafluoropropylene (HFP)" under CTH 29033990 vide -BOE, 6736131 dt.18.12.21:

(ii) 0.14 (MT) of "TRIBUTYLAMIN" under CTH 29211990 vide -BOE 7898397 dt.17.03.22 - from the port INNSA1 having the assessable value as detailed in Table-B. The auditee has paid Customs Duty as BCD @NIL, SWS @ NIL and IGST @ NIL by availing the benefit of exemption extended by Notification No. 018/2015-Cus, dated 01.04.2015, as amended which were otherwise payable as BCD @7.5%, SWS @10% of BCD and IGST @ 18%, the auditee has saved the duty as detailed in Table-C in the import of these items.

Table-C

Advance Authorisation No.	Bill of Entry Number vide which item was imported	CTH	Description of goods	Quantity, (in MT), which could not be exported	Assessable value (CIF in Rs.)	Duty Liability (in Rs.)		
						BCD (5 %/7.5%)	SWS (10% of BCD)	IGST (18 %)

3411000 961 dt.1 1.08.202 1	6736131 18.12.21	dt.2903 399 0	Hexafluor opropylene (HFP)	15.6	1,27,57,52 4	6,37,876	63,788	24,22,654
	7898397 17.03.22	dt.2921 199 0	TRIBUTY LAMINE	0.14	36,485	2,736	274	7,109
Total						6,40,613	64,061	24,29,763
GRAND TOTAL						Rs. 31,34,437		

10.3 As per paragraph 4.03 of the FTP read with paragraph 4.22 of Handbook of Procedures, Vol-I, an Advance Authorization (AA) is issued for import of duty-free inputs against which the prescribed Export obligation (EO) has to be fulfilled within a period of 18 months from the date of issuance of the authorization. Further, paragraph 4.44 of HBP, Vol-I stipulates that the authorization holder shall submit evidence of export within two months from the date of expiry of the EO period. In the event of failure to fulfil the prescribed EO, the authorization holder is liable to pay Customs Duty foregone on the unutilized value of the imported material along with interest and penalty.

10.4 The due date to fulfil the Export Obligation for the Advance Authorisation Licence number 3411000961 dt.11.08.2021 was 10.02.2023. However, it was noticed that the Importer has not completely fulfilled the export obligation as per Foreign Trade Policy 2015-20 and also not submitted evidence of export within two months from the date of expiry of the EO period nor deposited the applicable customs duty till date.

10.5 Therefore, the total duty foregone amount of Rs. **31,34,437/- {BCD (Rs. 6,40,613/-) + SWS (Rs. 64,061/-) + IGST (Rs. 24,29,763/-)}** (Detailed calculation is attached as Annexure-3) appears to be recoverable from the Importer i.e. M/s Gujarat Fluorochemicals Limited, IEC AAFCI0903C, INOX Towers, Plot No.17, Sector 16A, Noida-201301, U.P., INDIA under Section 143 of the Customs Act, 1962. This duty was foregone on the materials imported under Advance Licence No. 3411000961 dt.11.08.2021 to the extent for non-fulfilment of export obligation, along with applicable interest.

11. Thus, in the case of above 2 Advance Licences i.e. Licence Nos. 3411001176 dt.27.09.2021 & 3411000961 dt.11.08.2021, the material evidence available on record appears to show that the Importer has failed to observe the Conditions of FTP and Notification No. 018/2015 dated 01.04.2015 for duty free import of raw materials under Advance Authorizations, in as much as they failed to fulfill the Export Obligation and the same was in their knowledge. Hence, the total duty foregone amount in respect of 2 Advance Licences is calculated at Rs. **1,13,69,566/- (BCD Rs. 28,67,527/-, SWS of Rs. 2,86,753/- and Rs. IGST of Rs. 82,15,286/-)** which appears recoverable from the Auditee i.e. M/s Gujarat Fluorochemicals Limited, IEC AAFCI0903C, INOX Towers, Plot No.17, Sector 16A, Noida-201301, U.P., INDIA under the provisions of Section 143 of the Customs Act, 1962

12. Legal Provisions: -

a. Para 4.44 of the Hand Book of Procedures, Vol-I:-

4.44 Monitoring of Export Obligation

(a) Regional Authority, with whom undertaking is executed by Advance Authorisation holder, shall maintain a proper record in a master register indicating starting and closing dates of obligation period and other particulars to monitor EO. In addition, this information may be generated from Computer System and maintained in a book form.

(b) Within two months from the date of expiry of EO period, Authorisation holder shall file application online by linking details of shipping bills against the authorization.

(c) Exporters shall link all exports on line on DGFT system by linking file number / authorisation number with the relevant shipping bill numbers / bill of exports / invoices in case of deemed exports on quarterly basis.

(d) In case of non-EDI shipping bills and supplies under deemed export, exporter shall file relevant details manually on the website of the DGFT within two months from the date of expiry of EO period. Copies of shipping bills shall be submitted to concerned Regional Authority for verification within two months from date of expiry of export obligation period.

(e) e-BRC shall be linked with these shipping bills within six months from the date of expiry of export obligation/realisation or as per the time period prescribed for realization of foreign exchange by RBI. Regional Authority shall not take action for non-linking / submission of e-BRC before expiry of said period, provided other documents substantiating fulfilment of EO have been furnished by the exporter

(f) In case Authorisation holder fails to complete EO or fails to submit relevant information / documents, Regional Authority shall enforce condition of Authorisation and Undertaking and also initiate penal action as per law including refusal of further authorization to the defaulting exporter.

b. Para 4.49 of the Hand book of Procedure (2015-20) states: -

Regularization of Bonafide Default Cases of bonafide default in fulfilment of EO may be regularized by Regional Authority as under:-

(a) If EO is fulfilled in terms of value, but there is a shortfall in terms of quantity, the Authorisation holder shall, for regularisation, pay:

(i) To customs authorities, customs duty on unutilized value of imported / indigenously procured material along with interest as notified by DoR. Exporter will have the option to pay customs duty through valid duty credit scrips issued under FTP. However, interest / penalty shall be required to be paid in cash.

(ii) An amount equivalent to 3% of the CIF value of unutilized imported material, if the item of import is restricted, into "Head Account: 1453, Foreign Trade and Export Promotion and Minor Head 102". Provisions of this sub paragraph will not be applicable if unutilized material was freely importable on date of import/domestic procurement.

(b) If the EO is fulfilled in quantity but there is shortfall in value, no penalty shall be imposed if Authorisation holder has achieved minimum VA prescribed. However, if VA falls below the minimum VA prescribed, Authorisation holder shall be required to deposit an amount equal to 1% of shortfall in FOB value in Indian Rupee through TR in authorised branch of Central Bank of India as above or through EFT mode or through credit card.

(c) Value wise shortfall shall be calculated with reference to actual quantity of exports and FOB value of realisation with reference to prorata quantity of imports and CIF value. For example, if export performance is only 50% quantity wise but import has been for 119 complete CIF value permitted, then VA would be calculated on a prorata basis, i.e. with reference to 50% of CIF value of imports. This would, accordingly, imply that where Authorisation holder is unable to export, no penalty on value wise shortfall shall be imposed.

(d) If EO is not fulfilled both in terms of quantity and value, the Authorisation holder shall, for the regularisation, pay as per a), b) and c) above.

(e) In case an exporter is unable to complete EO undertaken in full and he has not made any import under Authorisation, Authorisation holder will also have an option to get the Authorisation cancelled and apply for drawback after obtaining permission from Customs authorities for conversion of shipping bills to Drawback Shipping Bills. (f)

Regional Authority shall compare relevant portion of Appendix 4H duly verified and certified by Chartered Accountant/Cost Accountants with that of norms allowed in Authorisation(s) and actual quantity imported against Authorisation(s) in the beginning of licensing year for all such Authorisations redeemed in preceding licensing year. In this verification process, in case it is found that Authorisation holder has consumed lesser quantity of inputs than imported, Authorisation holder shall be liable to pay customs duty on unutilized value of imported material, along with interest thereon as notified, or affect additional export within the EO period.

(c) Notification No. 01/2019-Cus. Dated 10/01/2019: -

G.S.R.(E).-In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below, in the manner as specified in the corresponding entry in column (3) of the said Table, namely :-

Sr. No.	Notification number and date	Amendments
2	18/2015-Customs, dated the 1 st April, 2015 [vide number G.S.R. 254 (E) dated the 1 st April, 2015]	<p>In the said notification, -</p> <p>(a) after condition (vi), the following conditions shall be inserted, namely: -</p> <p>“(vi)(a) that in respect of imports made after the discharge of export obligation in full, if facility of input tax credit under relevant Goods and Services Tax law on inputs used for manufacture and supply of goods exported has been availed, then the importer shall, at the time of clearance of the imported materials, furnish a bond to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture and supply of taxable goods (other than nil rated or fully exempt supplies) and to submit a certificate from a chartered accountant within six months from the date of clearance of the said materials, that the imported materials have been so used;</p> <p>Provided that if the importer pays integrated tax and the goods and services tax compensation cess leviable on the imported materials under sub-section (7) and sub-section (9) respectively of section 3 of the said Customs Tariff Act on the Imported materials but for the exemption contained herein, then such imported materials may be cleared without furnishing a bond specified in this condition;</p> <p>vi)(b) that in respect of imports made after the discharge of export obligation in full, and if facility of input tax credit under relevant Goods and Services Tax law has not been availed on inputs used in the manufacture and supply of goods exported and (the importer furnishes proof to this effect to the satisfaction of the Deputy Commissioner of Customs, or the Assistant Commissioner of Customs, as the case may be, then the imported materials may be cleared without furnishing a bond specified in condition (vi)(a);”</p> <p>(b) in condition (viii), for the second proviso, the following proviso shall be substituted, namely: -</p> <p>“Provided further that notwithstanding anything contained herein above</p>

		<p>for the said authorisations where the exemption from integrated tax and the goods and Services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) respectively of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports or by making domestic supplies mentioned at serial numbers 1, 2 and 3 of the Table contained in notification No.48/2017- Central Tax, dated the 18th October, 2017 [published vide number G.S.R. 1305(E), dated the 18th October, 2017];”</p> <p>(c) condition (xii) shall be omitted.</p>
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(d) Section 143 of the Customs Act, 1962: - Power to allow import or export on execution of bonds in certain cases. -

(1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the 1 [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the 1 [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the 1 [Assistant Commissioner of Customs or Deputy Commissioner of Customs] approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.

(2) If the thing is done within the time specified in the bond, the 1 [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.

(3) If the thing is not done within the time specified in the bond, the 1 [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.

(e) Para 4.49 of the Hand Book of Procedures (2015-20), Volume-I, demands that if export obligation is not fulfilled both in terms of quantity and value, the Authorization 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 Authorization holder is legally duty bound to pay the proportionate amount of Customs Duty corresponding to the unfulfilled export obligation. Customs Notification too, incorporates the same provision.

(f) The Condition (ix) of the Notification No. 018/2015-Cus dated 01.04.2015, 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.

(g) 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 without the audit intervention the said duty evasion would have remained undetected due to suppression of facts by the importer.

(h) It further appears that for such non-payment of duty of Customs determined under section 28(8), section 28AA of the Customs Act, 1962 is applicable and interest on the said amount of duty not paid becomes payable.

13. In view of above facts, it appears that-

The importer willfully mis-stated in respect of advanced authorization and the Importer could not fulfill their export obligation within the original EO period and despite having failed to complete the Export Obligation, they did not deposit the duty foregone amount as stipulated under the Policy and the subject Customs Notification No. 018/2015-Cus dated 01.04.2015, as amended, which was otherwise payable and the Importer wrongfully avail the benefit of exemption extended by Notification No. 018/2015- Cus, dated 01.04.2015, as amended

14. Observation-3: In-eligible duty benefit availed under Notification No. 50/2018-Customs dated 30.06.2018: -

14.1 The Importer has imported 2,4-Dichlorobenzonitrile, having CTH 29269000 from China availing benefit of duty exemption under Notification No. 50/2018 dated June 30, 2018, vide bills of entry no. 8032965 dated 29.06.2020. During Post Clearance Audit, it was found that the assessment of the referred Bill of entry is pending. On being pointed out, the Importer has submitted that the original COO certificate has been misplaced anywhere during the COVID-19 period and not available at the material time. In the absence of the mandatory documents, the Importer appears not eligible for availing exemption from payment of duty;

14.2 Relevant part of the Notification No. 50/2018 dated 30.06.2018 is reproduced as under: -

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 72/2005-Customs, dated the 22nd July, 2005, published in the Gazette of India, Extraordinary, vide number G.S.R. 497(E), dated the 22nd July, 2005, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table hereto annexed and falling under the Chapter, Heading No., Sub-heading No. or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in the corresponding entry in column (2) of the said Table, -

- a. in the case of goods specified in **Part A** of the said Table, when imported into India from a country listed in **APPENDIX-I** hereto annexed; or*
- b. in the case of goods specified in **Part B** of the said Table, when imported into India from a country listed in **APPENDIX-II** hereto annexed from so much of that portion of the applied rate of duty of customs as is specified in the corresponding entry in column (4) of the said Table:*

Provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the country listed in the said **APPENDIX I or APPENDIX II**, as the case may be, in accordance with the Customs Tariff (Determination of Origin of Goods under the Bangkok Agreement) Rules, 1976, published in the notification of the Government of India in the Department of Revenue and Banking (Revenue Wing) No. 430- Customs, dated the 1st November, 1976.

Explanation. - For the purposes of this notification, "applied rate of duty"

means ¹/ the sum of the standard rate of duty specified in the First Schedule to the Customs Tariff Act, 1975 and Agriculture Infrastructure and Development Cess leviable under ²[section 124 of the Finance Act, 2021 (13 of 2021)] in respect of the goods specified in the said Table, read with any other notification for the time being in force, issued in respect of such goods under sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), but not including the notifications of the Government of India in the Ministry of Finance (Department of Revenue), Nos. 236/89-Customs, dated the 1st September, 1989 [G.S.R. 805(E), dated the 1st September, 1989], 105/99- Customs dated the 10th August, 1999 [G.S.R. 582(E), dated the 10th August, 1999], and 26/2000- Customs dated the 1st March 2000 [G.S.R. 178(E), dated the 1st March, 2000].

TABLE

Sl. No	Chapter, Heading No., Sub-Heading No., or Tariff Item	Description of goods	Extent of tariff concession (percentage of applied rate of duty; %)
PART-A			
340	29269000	All goods	8%

APPENDIX-I

Sl. no	Country
1	Bangladesh
2	Peoples Republic of China
3	Republic of Korea
4	Sri Lanka

14.3 As the COO benefit availed under Notification No. 50/2018-Customs appears to be not available to the said goods and the differential duty **Rs 1,09,212** (BCD of Rs. 84,139/-, SWS of Rs. 8,414/- and differential IGST of Rs. 16,659/-) along with applicable interest is recoverable from the Importer i.e. M/s Gujarat Fluorochemicals Limited, IEC AAFCI0903C, INOX Towers, Plot No.17, Sector 16A, Noida-201301, U.P., INDIA.

14.4 Legal Provisions: -

1. Para-3 of Customs Audit Regulation 2018 r/w Notification No. 45/2018-Customs (NT) dated 24/05/2018 provides that- *“Auditee to preserve and make available relevant documents.- (1) The auditee shall preserve and on request by the proper officer make available in a timely manner, for the purposes of audit, true and correct information, records including electronic records, documents or accounts maintained in compliance of the provisions of the Act, rule or regulations, made there under or any other law for the time being in force, maintained for a minimum period of five years in relation to imported goods or export goods or dutiable goods.*

(2) The auditee shall render assistance to the proper officer and his team of officers in the discharge of their official duty and shall in no case refuse or obstruct the proper officer or his team of officers in discharge of their official duty”.

2. Notification No. 73/2018-Customs (NT) dated 14/05/2018-

Para-4 (7) -Time-limit and manner for submission of documents or information for the purpose of finalization of provisional assessment- states that- *“The importer or the exporter or his authorised representative or Customs Broker shall inform the*

proper officer in writing that he has submitted all the documents or information to be furnished or requisitioned”.

Para-7- Penalty -If any importer or exporter or his authorised representative or Customs Broker contravenes any provision of these regulations or abets such contravention, or fails to comply with any provision of these regulations, he shall be liable to a penalty which may extend to fifty thousand rupees.

15. In view of above facts, it appears that-

The importer willfully mis-stated in respect of COO certificate and the importer wrongfully availed the benefit of duty exemption under Notification No. 50/2018 dated June 30, 2018.

16. Now, therefore, in exercise of the powers conferred by Section 28 read with Section 124 of the Customs Act, 1962, the Importer M/s Gujarat Fluorochemicals Limited, IEC AAFCI0903C having registered office at INOX Towers, Plot No.17, Sector 16A, Noida-201301, U.P., INDIA is hereby called upon to the Commissioner of Customs, Gr. VB, NS-V, JNCH, Nhava Sheva, within 30 days of the receipt of this notice, as to why:

(a) The benefit of the Notification No. 104/1994 dated 16.03.1994 should not be denied in respect of Bill of Entry as mentioned in Table- A of this notice.

(b) The benefit of Notification 018/2015-Cus dated 01.04.2015 should not be denied in respect of Bill of Entry as mentioned in Table- B & C of this notice.

(c) The benefit of duty exemption under Notification No. 50/2018 dated June 30, 2018 should not be denied in respect of Bill of Entry no. 8032965 dt. 29.06.2020.

(d) The differential duty amounting to Rs. 4,08,56,984/- (Rupees Four Crore Eight Lakh Fifty-Six Thousand Nine Hundred Eighty-Four Only) as detailed in the Table- A should not be demanded and recovered from them in terms of section 28(4) of the Customs Act, 1962.

(e) The differential duty amounting to Rs. 1,13,69,566/- (Rupees One Crore Thirteen Lakh Sixty-Nine Thousand Five Hundred Sixty-Six Only) as detailed in the Table- B & Table- C should not be demanded and recovered from them in terms of conditions of bond executed under Section 143 of the Customs Act, 1962 read with Notification 018/2015-Cus dated 01.04.2015 and section 28(4) of the Customs Act, 1962.

(f) The differential duty amounting to Rs. 1,09,212/- (Rupees One Lakh Nine Thousand Two Hundred Twelve Only) as detailed in the Annexure-4 should not be demanded and recovered from them in terms of section 28(4) of the Customs Act, 1962.

(g) The duty already deposited by the notice as mentioned in Sl. No. 11 to 14 of Table-A should not be appropriated.

(h) The subject goods should not be confiscated under Section 111(o) of the Customs Act, 1962;

(i) The applicable interest on the amount specified above in sl no. (d), (e) & (f) should not be recovered from them in terms of section 28AA of the Customs Act, 1962 and interest already deposited by the notice as mentioned in sl no. 11 to 14 & para 3.3 should not be appropriated.

(j) Penalty should not be imposed on them under section 112(ii) read with section 112(a) and/or 114A and/or 114AA of the Customs Act, 1962.

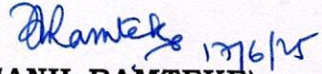
17. It is also advised that the Importer may avail the benefit of reduced penalty

@15% of duty and interest so specified in this notice in terms of Section 28(5) of Customs Act, 1962 by payment of duty and interest within 30 days of receipt of this notice, failing which Importer may be subject to higher penalty equal to the duty and interest so determined.

18. The written explanation/reply should be filed by the noticee to the Commissioner of Customs, Gr. VB, NS-V, JNCH, Nhava Sheva, within 30 days from the date of this notice. You are further required to intimate in your written reply whether you wish to be heard in person before the case is adjudicated.

19. If no reply is received within 30 days of receipt of this notice, or Noticee fail to appear before the adjudicating authority as and when the case is posted for personal hearing, the case will be decided on the basis of the evidences available on record without further reference to the Noticee.

20. This Show Cause Notice is issued without prejudice to any other action that may be taken against the Noticee or any other firm(s) or person(s) concerned in respect of the aforesaid goods or any other goods under the provisions of the Customs Act, 1962 or any other law for the time being in force in the Union of India. The department reserves its right to amend, modify or supplement this notice at any point of time prior to the adjudication of the case.


(ANIL RAMTEKE)
COMMISSIONER OF CUSTOMS
NS-V, JNCH, NHAVA SHEVA

Encl:- Annexure 1,2,3,4

To:

M/s Gujarat Fluorochemicals Limited, (IEC AAFCI0903C)
INOX Towers, Plot No.17, Sector 16A,
Noida-201301, U.P., INDIA.

Copy to: -

1. PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD: Email: cus-ahmd-guj@nic.in
2. ASST. COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, HAZIRA:
Email: cus-ahmd-guj@nic.in
3. PRINCIPAL COMMISSIONER OF CUSTOMS KANDLA CUSTOM HOUSE,
Email: commr-cuskandla@nic.in
4. THE PRINCIPAL COMMISSIONER (IMPORT), AIR CARGO COMPLEX, NEW
CUSTOMS HOUSE, NEW DELHI-37; Email: commraccimp-cusdel@nic.in
5. PRINCIPAL COMMISSIONER OF CUSTOMS, MUNDRA 5B, PORT USER
BUILDING, MUNDRA PORT; Email: commr-cusmundra@nic.in
6. COMMISSIONER OF CUSTOMS, BENGALURU: Email:
commr.citycusblr@nic.in
7. COMMISSIONER OF CUSTOMS (IMPORT-I), MUMBAI NEW CUSTOM
HOUSE, MUMBAI, Email: import-1nch@gov.in
8. COMMISSIONER OF CUSTOMS (IMPORT-II), ZONE-I, MUMBAI NEW
CUSTOM HOUSE, MUMBAI; Email: commr.import2@gov.in
9. The Deputy/ Asstt. Commissioner of Customs (Audit), P&C & PACC, New
Customs House, New Delhi-110037.
10. The Deputy/Asst. Commissioner of Customs, CAC, JNCH.
11. The Deputy/Asst. Commissioner of Customs, IRMC, JNCH
12. Office copy

Gujarat Eurochemicals Limited																
Details of VDF Skid Container and Cylinder (ANNEXURE 1)																
S. No.	Port Code	BOE No	BOE Date	Commodity	HS Code	CIF AMT (in Rs.)	Differential BCD	Differential at SWS	Differential IGST@18%	Total	Duty Amount	Interest Amount	Total	Challan No	Date	
1	INNSA1	950088	28-11-2022	VDF SKID CONTAINER	86090000	7,64,54,566	76,45,456	7,64,546	1,52,75,621	2,36,85,623						
2	INNSA1	9500177	28-11-2022			3,82,27,280	38,22,728	3,82,273	76,37,811	1,18,42,811						
3	INNSA1	9949105	10-08-2022			1,33,49,352	12,94,935	1,33,494	24,67,400	38,25,829						
4	INNSA1	9961888	15-12-2020			62,001	9,300	930	13,002	23,232						
5	INNSA1	9961888	15-12-2020	Cylinder	73110090	95,616	14,342	1,434	20,051	35,827						
6	INNSA1	9961888	15-12-2020			1,96,003	27,900	2,790	39,005	69,695						
7	INNSA1	7577354	25-02-2022			4,56,300	68,445	6,845	95,686	1,70,976						
8	INNSA1	2088159	15-02-2022			3,39,300	50,895	5,090	71,151	1,27,436						
9	INNSA1	5963642	25-10-2021			5,68,500	85,275	8,528	1,19,214	2,12,017						
10	INNSA1	6012376	10-12-2021			5,69,250	85,388	8,539	1,19,372	2,13,298						
11	HAZIRA	8527796	19-08-2020			4,84,800	72,720	7,272	1,01,663	1,81,655						
12	HAZIRA	8527796	19-08-2020			4,84,800	72,720	7,272	1,01,663	1,81,655						
13	HAZIRA	8527796	19-08-2020	4,84,800	72,720	7,272	1,01,663	1,81,655	544964	316827	861786	2049456487	10-06-2024			
14	ACC	9618771	19-07-2022			2,79,055	41,864	4,186	58,526	1,04,577	104576	29655	134231	MUMBAI_III/FY202 3-24/06/25/47609	05-06-2024	
						1,33,04,689	13,30,469	2,62,21,826	4,08,56,984	6,49,540	3,46,477	9,96,017				

ANNEXURE - 2														
LICENCE DETAILS		BE details								Duty calculation				
Advance License No	Date	BE	PORT CODE	BE date	Qty consideate	Rate FC per MT	Ex. Rate	Asse.value- INR	BCD %	Differential BCD	Differential SWS @ 10%	IGST %	Differential IGST	Total Duty
3431001176	27.09.2021	5744721	INNSA1	07-10-2021	2.50	1,03,500	74.40	1,92,51,000	7.5%	14,43,825	1,44,383	18%	37,51,057	53,39,265
		5812351	INNSA1	12-10-2021	1.46	94,000	75.70	1,03,89,068	7.5%	7,79,180	77,918	18%	20,24,310	28,81,408
		7898397	INNSA1	17-03-2021	0.20	3,400	76.65	52,122	7.5%	3,909	391	18%	10,156	14,456
Total										22,26,914	2,22,691		57,85,523	82,35,129
ANNEXURE - 3														
3431000961	11-08-2021	6736131	INNSA1	18-12-2021	15.6	10600	77.15	1,27,57,524	5.0%	6,37,876	63,788	18%	24,22,654	31,24,318
		7898397	INNSA1	17-03-2022	0.14	3400	76.65	36,485	7.5%	2,736	274	18%	7,109	10,119
Total										6,40,613	64,061		24,29,763	31,34,437
Grand Total										28,67,527	2,86,753		82,15,286	1,13,69,566

Annexure-4									
Provisional Bill of Entry									
S. NO	Port Code	BOE	BOE date	Commodity	CIF AMT (in Rs.)	Differential BCD	Differential SWS	Differential al IGST@18 %	Total
1	INNSA1	8032965	29-06-2020	2,4- Dichlorobenzo nitrile	1,40,23,100	84,139	8,414	16,659	1,09,212

