

**DIN: 20210571MN0000555A5A**

अपर आयुक्त कार्यालय सीमा शुल्क भवन, अलथान भीमराड रोड,एसअएमसी वार्ड ऑफिस के पास मे, अलथान,सूरत -395002	 सत्यमेव जयते	OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE,ALTHAN BHIMRAD ROAD, NR. SMC WARD OFFICE, ALTHAN, SURAT- 395007
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**PREAMBLE**

A	फाइलसंख्या /File No.	:	VIII/10-12/O&A/ADC/Avira/2020
B	कारण बताओ नोटिस संख्या Show Cause Notice No. and date	:	VIII/10-12/O&A/ADC/Avira/2020 dated 12.05.2020
C	मूल आदेश संख्या / Order-In- Original No.	:	01/BPS/ADC-SRT/2021-22
D	द्वारा पारित आदेश /ORDER PASSED BY	:	बिनय प्रताप सिंह/BINAY PRATAP SINGH, अपर आयुक्त/ ADDITIONAL COMMISSIONER, सीमा शुल्क/CUSTOMS, सूरत/SURAT
E	आदेशतिथि / Date of Order	:	10.05.2021
F	जारी करने की तारीख /Date of Issue	:	10.05.2021
G	आयातक का नाम और पता/Name and Address of Importer/Noticee	:	To, M/s Avira Exim, 67,68,69, Sidhdhi Vinayak Ind Estate-2, Umarwada, Surat-395010

1. जिस व्यक्ति के लिए आदेश जारी किया गयाहै, उसके व्यक्तिगत उपयोग के लिए प्रति निशुल्क प्रदान की है।

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

२. इस आदेशसे अपनेको व्यथित महसूस करनेवाला ,आयुक्त (अपील), सीमाशुल्क, सातवी मंजिल, मृदुलटावर, टाइम्स ऑफ इंडिया के नजदीक, आश्रम रोड, अहमदाबाद- ३८०००९ के यहाँ अपील कर सकता है। इस तरह की अपील, पार्टी को इस आदेश के सौंपे जाने अथवा डाक के प्राप्त होने के साठ दिन के अन्दर सीमा शुल्क (अपील) नियम, १९६२के अंतर्गत फार्म ससी. ए. १ और २ दी जानी चाहिए। इस अपील पर नियमानुसार कोट की स्टाम्प लगा होना चाहिए।

2. Any person deeming himself aggrieved by this order, may 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, may prefer an appeal against the order to the Commissioner of Customs (Appeal), 7th Floor, Mrudul Tower, Near Times of India, Ashram Road, Ahmedabad in Form C. A. 1 & 2 as prescribed under Customs (Appeal), Rules, 1962. The appeal must be filed within sixty days from the date of receipt of this order either by the post or by the person. It should bear a court fee stamp of appropriate value.

३. अपील के साथ निम्नलिखित चीजे संलग्न किया जाए।

3. The following documents must be enclosed alongwith the appeal.

(क) अपील की प्रति, तथा

(a) A copy of the appeal and

(ख) आदेश यह प्रतिया अन्य आदेश की प्रति, जिस नियमानुसार कोट फी/स्टाम्प लगा हो।

(b) Copy of this order or another copy of the order, which must bear court fee stamp of appropriate value.

4. Any Person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, where penalty alone is in dispute (maximum Rupees 10 (ten) Crores), and produce proof of such payment along with the appeal; failing which the appeal is liable to be rejected for non-compliance of the provisions of Section 129E of the Customs Act, 1962.

## BRIEF FACTS OF THE CASE:

M/s Avira Exim, 67,68,69, Siddhi Vinayak Indl.Estate-2, Umarwada, Surat -395010 (hereinafter referred as "the importer"), holder of Import Export Code No. 5206005851 (Proprietor Shri Jiteshbhai Jayantibhai Bharoliya) have imported 09 sets of Capital goods viz. Computerized Embroidery Machine under EPCG Licence No. 5230006977 dated 03/05/2010 by saving duty of Rs. 9,81,439/- (Actual Duty Utilized of Rs 9,11,549/-). The importer cleared Computerized Embroidery Machines vide various Bills of Entry at a concessional rate of duty @ 3% while availing the benefit of exemption available under Notification No. 103/2009 dated 11.09.2009. The details of import are as under:

Sr. No	B/E No. & Date	Number of machinery cleared	Duty Saved available as per EPCG Licence	Total Duty Foregone/Debited at the time of clearance	Bank Guarantee Amount.
1	139/2010-11 dated 21.05.2010	2 Sets	Rs.9,81,439/-	2,14,686/-	Rs. 91,000/- + Rs.71,000/-
2	140/2010-11 dated 21.05.2010	1 set	7,66,753/-	1,07,342/-	
3	141/10-11 dated 21.05.2010	1 set	6,59,411/-	1,07,342/-	
4	218/2010-11 dated 21.06.2010	2 sets	5,52,069/-	1,94,008/-	
5	253/2010-11 dated 29.06.2010	1 set	3,58,061/-	97,006/-	
6	662/10-11 dated 28.09.2010	2 sets	2,61,055/-	1,91,165/-	
<b>Total Duty Foregone/Debited</b>				<b>Rs.9,11,549/-</b>	Total Rs 1,62,000/-

2. The importer executed Bond dated 21/05/2010 for Rs. 26,00,000/- (Rupees twenty six lakh only) along with a Bank Guarantee No. SCB/SUR/11/BG/300/445 dated 16/06/2010 for Rs.91,000/- & SCB/SUR/11/BG/300/438 dated 20/05/2010 for Rs.71,000/- issued by the Saraswat Co. Op. Bank Ltd, B-101, Yash Plaza, Opp. Dhanmal Mill, Varachha Main Road, Surat-395006 for EPCG License No. 5230006977 dated 03/05/2010. They had also given an undertaking to fulfill the conditions of the Bond, EPCG License and the relevant Customs Notification at the time of registration of the EPCG License No. 5230006977 dated 03/05/2010 at ICD-Sachin, Surat.

3. The 09 sets of Computerized Embroidery machines were to be installed at 67-68-69, Gr.Floor, Siddhi Vinayak Industrial Estate-2, Umarwada, Surat-395010 and as the importer was not registered with the Central Excise Department, they produced a copy of Installation Certificate dated 12.10.2010 issued by a Chartered Engineer P.J. Gandhi, Surat who certified the complete installation of 09 sets of Computerized Embroidery Machine on 02.10.2020

4. As per Notification No. 103/2009-Cus dated 11.09.2009 the importer was required to fulfill the export obligation on FOB basis equivalent to 8 times the duty saved on the goods imported as may be specified on the licence or authorization. The relevant portion of the said notification is produced herein below for reference:

### **Notification No. 103 /2009-CUSTOMS**

*New Delhi, the 11 September, 2009.*

*G.S.R. 669 (E) - In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in the Table annexed hereto, from,-*

(i) so much of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as is in excess of the amount calculated at the rate of three percent ad-valorem, and

(ii) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, when specifically claimed by the importer.

2. The exemption under this notification shall be subject to the following conditions, namely :-

(1) that the goods imported are covered by a valid authorization issued under the Export Promotion Capital Goods (EPCG) Scheme in terms of Chapter 5 of the Foreign Trade Policy permitting import of goods at the rate of three percent duty and the said authorization is produced for debit by the proper officer of customs at the time of clearance :

Provided that for import of spare parts specified at Sr.No.4 of the said Table, the validity period of the authorization shall be deemed to be the period permitted for fulfillment of the export obligation in full :

Provided further that the import of motor cars, sports utility vehicles or all purpose vehicles shall be allowed only to hotels, travel agents, tour operators or tour transport operators and companies owning or operating golf resorts, subject to the condition that,-

(i) the total foreign exchange earning from hotel, travel and tourism and golf tourism sectors in current and preceding three licensing years is rupees one crore fifty lakhs or more;

(ii) the duty saved amount on all EPCG authorizations issued in a licensing year for import of motor cars, sports utility vehicles or all purpose vehicles shall not exceed 50% of average foreign exchange earnings from hotel, travel and tourism and golf tourism sectors in preceding three licensing years; and

(iii) the vehicles imported shall be so registered that the vehicle is used for tourist purpose only and a copy of the registration certificate shall be submitted to the concerned Customs authorities as a confirmation of import of vehicle within six months from the date of import:

Provided also that the benefit of import of capital goods at concessional duty under this notification for creation of modern infrastructure shall be extended only to such retailers who have a minimum area of 1000 square metres.

(2) that the goods imported shall not be disposed of or transferred by sale or lease or any other manner till export obligation is completed.

(3) that the importer executes a bond in such form and for such sum and with such surety or security as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs binding himself to comply with all the conditions of this notification as well as to fulfill export obligation on FOB basis equivalent to eight times the duty saved on the goods imported as may be specified on the authorization, or for such higher sum as may be fixed or endorsed by the Licensing

Authority or Regional Authority in terms of Para 5.10 of the Handbook of Procedures Vol I, issued under para 2.4 of the Foreign Trade Policy, within a period of eight years from the date of issue of Authorization, in the following proportions, namely :-

S.No.	Period from the date of issue of Authorization	Proportion of total export obligation
(1)	(2)	(3)

1.	Block of 1st to 6th year	50%
2.	Block of 7th to 8th year	50%

**4.1** It is thus evident from the above notification that the importer is required to execute a bond in such form and for such sum and with such surety or security as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs binding himself to fulfill export obligation on FOB basis equivalent to 8 times the duty saved on the goods imported as may be specified on the licence or authorization, or for such higher sum as may be fixed or endorsed by the licencing Authority or Regional Authority, within a period of eight years from the date of issuance of licence or authorization i.e. complete 50% export obligation within first block of 1<sup>st</sup> to 6<sup>th</sup> years and remaining 50 % in second block of 7<sup>th</sup> to 8<sup>th</sup> years.

**5.** The aforesaid EPCG License No. 5230006977 dated 03/05/2010 was issued to the importer for a period of 8 years valid upto 02/05/2018 and the bond dated 21/05/2010 was executed for a period of 10 years. Accordingly, the Importer was required to fulfill the export obligation within a period of 8 years from the date of EPCG Licence as per the condition laid down in the Notification and EPCG Licence itself. The importer was also required to submit the installation certificate within 06 months from the date of import and produce proof of fulfillment of export obligation within the period as prescribed in the said notification.

Since, the EPCG Licence was issued to the Importer on 03/05/2010, as per the condition of the said Notification, they were required to fulfill the export obligation by 02/05/2018 and submit the Export Obligation Discharged Certificate issued by the DGFT Authority to the department.

**6.** On completion of export obligation period, letters dated 07.02.2020 and 21.02.2020 were issued to the importer requesting them, either to furnish the EODC issued by DGFT, Surat or any extension granted by DGFT, Surat for fulfillment of Export Obligation, which were also returned undelivered

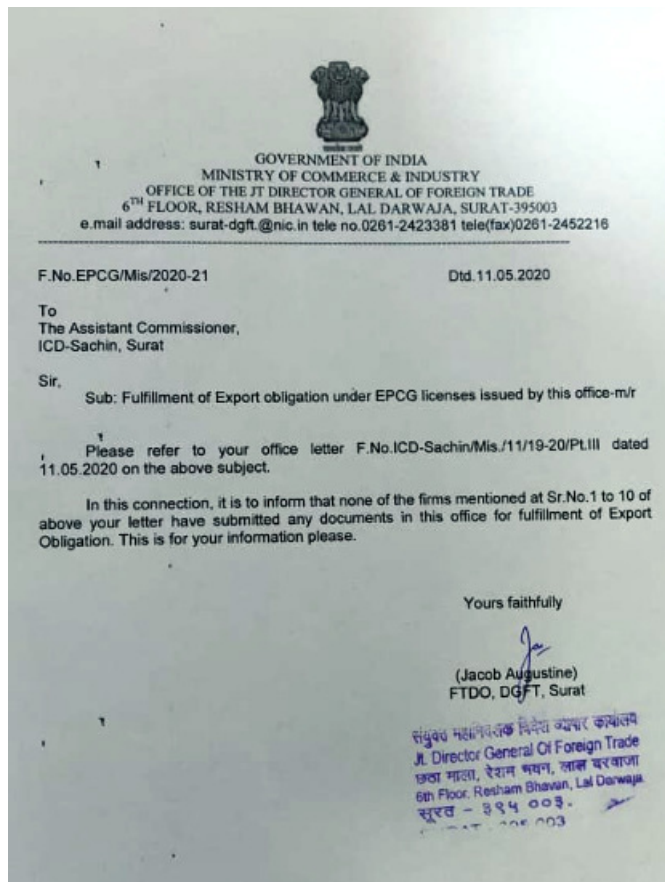
**6.1** Letters dated 29.01.2020 and 11.05.2020 were issued to the Foreign Trade Development Officer, DGFT, Surat to provide :

- a. the present status of the License
- b. whether the importer had approached their office for granting further extension for fulfillment of export obligation period
- c. whether the importer had submitted the export documents for EODC.

**6.1.1** The DGFT was requested to provide details in respect of the following EPCG licence holders:

Sr.No.	Importer Name	Importer Name Lic. no. & date
1	Rucci's	5230006878/ 25.03.2010
2	Anjali Impex	5230007006/ 12.05.2010
3	Aditya Prints P. Ltd	5230006989/ 12.05.2010
4	Aditya Prints P. Ltd	5230007002/ 07.05.2010
5	Aarav Creation	5230006965/ 29.04.2010
6	Arushi Embroidery P. ltd	5230006932/ 20.04.2010
7	Avira Exim	5230006977/ 03.05.2010
8	Aayush Industries	5230007010/ 13.05.2010
9	Kirti Nagindas Shah	5230006996/ 07.05.2010
10	Shree Radhey Krishna Emb.	5230007048/ 25.05.2010

6.2 The Joint Director General of Foreign Trade, Surat vide their letter dated 11.05.2020 mentioned that the importer had not submitted any documents to them for fulfillment of export obligation. The said letter is scanned herein below for reference:



6.3 Thus, it is evident from the above that the importer had failed to fulfill the export obligation as specified in the Licence and did not comply with the mandatory condition of the Customs Notification No. 103/2009 dated 11.09.2009, EPCG licence and conditions of the bond dated 19/05/2010.

7. As per the provisions of Section 143 of the Customs Act, 1962, the aforesaid capital goods were allowed clearance by the proper officer on execution of bond by the importer wherein the importer bound themselves to discharge liability within a specified period in certain manner, which they have failed to do, by not fulfilling the export obligation. Therefore, the department is entitled to recover the duty less paid by raising a demand and appropriating the Bank Guarantee furnished by the importer against this demand. The said section is produced herein below for reference:

**SECTION 143. Power to allow import or export on execution of bonds in certain cases.** - (1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the 5[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 5[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 5[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 5[Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.

(3) If the thing is not done within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall, without

***prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.***

8. In view of the above, the importer has failed to fulfill the conditions laid down under Notification No. 103 /2009-CUSTOMS dated 11 September, 2009 in as much as they have failed to export goods manufactured from 10 sets of Computerized Embroidery Machine imported under EPCG Licence No. 5230006977 dated 03/05/2010 which was equivalent to eight times the duty saved on the goods imported produce and also did not produce EODC issued by DGFT, Surat or any extension granted by DGFT, Surat for fulfillment of Export Obligation. They are therefore liable to pay duty of **Rs. 9,11,549/-(Rupees nine lakhs eleven thousand five hundred forty nine only)** in respect of the said imported goods along with interest at the applicable rate, in terms of conditions of the said Notification read with condition of Bond executed by the importer read with Section 143 of the Customs Act,1962. It also appears that the imported capital goods were not used for intended purpose for which the exemption from payment of duty was claimed and therefore, the aforesaid Capital goods are liable for confiscation under Section 111(o) of the Customs Act, 1962. It therefore appears that importer has rendered themselves liable for penal action separately under Sections 112 (a) & 117 of the Customs Act, 1962.

9. Accordingly a Shaw Cause Notice F. No. VIII/10-12/O&A/ADC/Aarav/2020 dated 12.05.2020 has been issued to M/s Avira Exim,67,68,69, Siddhi Vinayak Indl.Estate-2, Umarwada, Surat -395010 required them to Shaw Cause in writing to the Joint Commissioner of Customs, Surat, having his office at 2nd floor, Urmi Complex, behind Center Point, Sagrampura, Surat, now at Custom House, Near SMC Ward Office, Althan Bimrad Road, Althan, Surat-395007 from the receipt of 30 days from the receipt of this notice as to why

- (i) Customs duty total amounting to **Rs. 9,11,549/-((Rupees nine lakhs eleven thousand five hundred forty nine only)** being the duty foregone at the time of import under EPCG Licence should not be demanded and recovered from them in term of Notification No 103/2009 dated 11.09.2009 as amended, read with the Conditions of Bond executed and furnished by them in term of Section 143 of the Customs Act,1962 by enforcing the term of the said Bond. Further, the Bank Guarantee No. SCB/SUR/11/BG/300/445 dated 16/06/2010 for Rs.91,000/- & SCB/SUR/11/BG/300/438 dated 20/05/2010 for Rs.71,000/- issued by the the Saraswat Co. Op. Bank Ltd Surat, for EPCG License No. 5230006977 dated 03/05/2010 furnished in the name of importer M/s Avira Exim, 67,68,69, Siddhi Vinayak Indl.Estate-2, Umarwada, Surat - 395010, should not be encashed, appropriated and adjusted towards the duty liability as mentioned above .
- (ii) The imported Capital Goods 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 No. 103/2009-Cus dated 11.09.2009 as amended from time to time.
- (iii) The benefit of concessional rate of duty @ 3% for EPCG Scheme under Notification No. 103/2009 dated 11.09.2009 on the imported Computerized Embroidery Machine imported in the name of M/s Avira Exim, should not be denied.
- (iv) Interest at the applicable rate should not be recovered from them on the said Customs duty as mentioned at (i) above in term of Customs Notification No 103/2009-Cus dated 11.09.2009 as amended from time to time read with Conditions of Bond executed in term of Section 143 of Customs Act,1962.
- (v) Penalty should not be imposed on the importer under Section 112 (a) of the Customs Act, 1962 for the acts of omission & commission mentioned above.
- (vi) Penalty should not be imposed on the importer under Section 117 of the Customs Act, 1962 for non complying the provisions of Customs Act, 1962.

## **10. Defence Reply & Records of Personal Hearing :**

**10.** The Show Cause Notice dated 12.05.2020 also published on the official web-site i.e. [www.ahmedabadcustoms.gov.in](http://www.ahmedabadcustoms.gov.in).

**11.** Personal hearing was fixed on 23.11.2020 vide letter dtd 13.11.2020 and 22.12.2020 vide letter dtd 04.12.2020. However the importer Vide letter dated 23.11.2020 submitted that they have fulfilled the export obligation of their EPCG licence No. 5230006977 dated 03.05.2010 and submitted their file to the DGFT for EODC on 12.11.2020 vide file no. 52/21/165/01809/AM21. They further submitted that the file is under process and they have submitted EODC as and when received from DGFT, Surat and also requested to consider their case till the time it takes to be processed by the DGFT, Surat. Further they have submitted vide email dated 05.04.2021 is reproduced herewith.

“We have received your letter for personal hearing regarding EODC of the above mentioned EPCG licence. We were called for PH on dtd 19.03.2021 at 12.30 PM for which we had personally come to your office. But, could not meet yourself due to Covid quarantine of yourself. Further, we hereby state that we have been already received the EODC letter of the above licence in February 2021. Original EODC letter along with relevant documents has been submitted at Sachin ICD custom on Dtd: 09.02.2021. Now, we hereby enclose the EODC letter copy and acknowledgement letter of ICD Sachin Custom for your reference.

Further, this is our humble request to your Sir to drop the PH as our EODC has been submitted to ICD Sachin Custom and copy is enclosed for your reference.

Kindly, proceed further and intimate the ICD Sachin custom.”

**11.1** The noticee does not want personal hearing and genuiness of the EODC confirmed by the ICD, Sachin I proceed the case.

## **DISCUSSION & FINDINGS: -**

**12.** I have gone through the aforesaid Show Cause Notice and relevant case records and report received from the Superintendent, Customs, ICD, Sachin vide letter F. No. ICD-Sachin/Misc/11/19-20/Pt.IV dated 09.03.2021 wherein it is reported that as per the verification carried out with the DGFT, Surat the importer had submitted EODC within time limit to DGFT.

**12.1** I find that the main issue to be decided in the present case is whether the importer had violated the mandatory conditions of Notification No. 64/2008-Customs dated 09.05.2008 thereby wrongly availed the benefit of concessional rate of duty, making them liable for full rate of Customs duties.

**13.** Since the case involved import under EPCG Scheme, I find it imperative to discuss the same along with relevant notifications before proceeding further with adjudication.

**13.1** Export Promotion Capital Goods (EPCG) Scheme was launched by DGFT with the objective to facilitate import of capital goods for producing quality goods and services and enhancing India's manufacturing competitiveness. Capital goods imported under EPCG Scheme are subject to actual user condition and the same cannot be transferred/sold till the fulfillment of export obligation specified in the license. After issue of EPCG authorisation, the licensee is required to submit the authorization to the Customs authority at the designated port, where the capital goods are scheduled to be imported, along with request for registration. After execution of Bond and Bank Guarantee with the Customs department, the license gets registered. After registration, the licensee can import and install the capital goods and use them for generating exports which would be counted towards his Export obligations. In order to ensure that the capital goods imported under EPCG Scheme, the license holder is required to produce certificate from the jurisdictional Central Excise Authority (CEA) or Chartered Engineer (CE) confirming installation of such capital goods in the declared premises. The RLAs/Customs authorities are required to monitor the imports and installation.

**13.2** Notification No. 64/2008-Customs dated 09.05.2008

*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, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in the Table annexed hereto, from,-*

*(i) so much of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as is in excess of the amount calculated at the rate of three percent ad-valorem, and*

*(ii) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, when specifically claimed by the importer.*

*2. The exemption under this notification shall be subject to the following conditions, namely :-*

*(1) that the goods imported are covered by a valid licence or valid authorization issued under the Export Promotion Capital Goods (EPCG) Scheme in terms of Chapter 5 of the Foreign Trade Policy permitting import of goods at the rate of three percent duty and the said licence or authorization is produced for debit by the proper officer of customs at the time of clearance :*

*Provided that for import of spare parts specified at Sr.No.4 of the said Table, the validity period of the licence or authorization shall be deemed to be the period permitted for fulfillment of the export obligation in full :*

*Provided further that the import of motor cars, sports utility vehicles or all purpose vehicles shall be allowed only to hotels, travel agents, tour operators or tour transport operators and companies owning or operating golf resorts, subject to the condition that,-*



(i) the total foreign exchange earning from hotel, travel and tourism and golf tourism sectors in current and preceding three licensing years is Rs.one crore fifty lakhs or more;

(ii) the duty saved amount on all EPCG authorizations issued in a licensing year for import of motor cars, sports utility vehicles or all purpose vehicles shall not exceed 50% of average foreign exchange earnings from hotel, travel and tourism and golf tourism sectors in preceding three licensing years; and

(iii) the vehicles imported shall be so registered that the vehicle is used for tourist purpose only. A copy of the registration certificate shall be submitted to the concerned Customs authorities as a confirmation of import of vehicle within six months from the date of import:

Provided also that the benefit of import of capital goods at concessional duty under this notification for creation of modern infrastructure shall be extended only to such retailers who have a minimum area of 1000 square meters.

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

(3) that the importer executes a bond in such form and for such sum and with such surety or security as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs binding himself to fulfill export obligation on FOB basis equivalent to eight times the duty saved on the goods imported as may be specified on the licence or authorization, or for such higher sum as may be fixed or endorsed by the Licensing Authority or Regional Authority in terms of Para 5.10 of the Handbook of Procedures Vol I, within a period of eight years from the date of issue of licence or Authorization, in the following proportions, namely :-

S. No.	Period from the date of issue of licence	Proportion of total export obligation
(1)	(2)	(3)
1	Block of 1st to 6th year	50%
2	Block of 7th to 8th year	50%:

...

5) that the importer produces within 30 days from the expiry of each block from the date of issue of licence or authorization or within such extended period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow, evidence to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs showing the extent of export obligation fulfilled, and where the export obligation of any particular block is not fulfilled in terms of the

*preceding condition, the importer shall within three months from the expiry of the said block pay duties of customs of an equal amount equal to that portion of duties leviable on the goods, but for the exemption contained herein which bears the same proportion as the unfulfilled portion of the export obligation bears to the total export obligation together with interest at the rate of 15% per annum from the date of clearance of the goods;*

....

*9) notwithstanding anything contained in condition (5) above, where the Licensing Authority or Regional Authority grants extension of block-wise period for any block(s) or overall period of fulfilment of export obligation upto a period of two years or regularization of shortfall in export obligation, not exceeding five percent of such export obligation, the said block-wise period or overall period of export obligation shall be extended or condoned by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be :*

*Provided that in respect of sick units referred to in the second proviso to condition (3) extension of overall period of export obligation shall not be allowed :*

*Provided further that the Regional Authority may grant further extension in the overall period of export obligation upto a period of further two years if the authorization holder pays fifty percent differential duty on the unfulfilled portion of export obligation and agrees to fulfill other conditions as may be specified by the Regional Authority for this purpose;*

**13.3** *Section 143. Power to allow import or export on execution of bonds in certain cases. –*

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

*(2) If the thing is done within the time specified in the bond, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall cancel*

(3) If the thing is not done within the time specified in the bond, the [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.

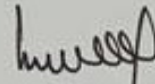
14. I find that the importer has filed the EODC within time to the DGFT, Surat and DGFT had issued the EODC on 01.02.2021 in respect of the EPCG licence as mentioned in the foregoing Para and the same were verified with the DGFT, Surat by ICD, Sachin.

15. In view of the above, I pass the following order.

**ORDER**

I drop the proceeding initiated against M/s Avira Exim, 67,68,69, Siddhi Vinayak Indl.Estate-2, Umarwada, Surat -395010 vide SCN F. No. VIII/10-12/O&A/ADC/Avira/2020 dated 12.05.2020.

16. This order is issued without prejudice to any other action that may be taken against them under Customs Act or under any other law for the time being in force.



(BINAY PRATAP SINGH)  
Additional Commissioner,  
Customs, Surat.

F. No. VIII/10-12/O&A/ADC/Aarav/2020

Dated:

**BY SPEED POST A.D**

**DIN-20200571MN00000A5CF5**

To

M/s Avira Exim,

67,68,69, Siddhi Vinayak Indl.Estate-2, Umarwada, Surat -395010 .

Copy to:-

1. The Principal Commissioner, Customs, Ahmedabad. Attn: The Deputy Commissioner (RRA), Customs, Ahmedabad.
2. The Assistant Commissioner of Customs, ICD-Sachin, Surat.
3. The System In -Charge, Customs HQ, Ahmedabad for uploading on the official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
4. The Joint Director General, DGFT, 6<sup>th</sup> Floor, Resham Bhavan Lal Darwaja, Surat 395000 .