OFFICE OF THE COMMISSIONER OF CUSTOMS (EXPORT)

CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS, INDIAN CUSTOMS - MUMBAI ZONE – I
2nd FLOOR, NEW CUSTOM HOUSE, SHOORJI VALLABHDAS ROAD, BALLARD ESTATE,
MUMBAI – 400001.
Tel. No. 22619538 *Fax No. 22671113*

F. No.: S/40-EPCG-1172/07 & 53/08 **Date of Order: 17.07.2026**
eF. No: GEN/ADJ/COMM/317/2026-ADJN **Date of Issue: 17.07.2026**

Passed by: RAJENDRA KUMAR MEENA,
COMMISSIONER OF CUSTOMS (EXPORT),
NEW CUSTOMS HOUSE, MUMBAI, ZONE-I

C.A.O. NO.: 23/2026-27/CAC/CC(E)/RKM/ADJN-EXP
DIN : 2026077700000000DE74

ORDER-IN-ORIGINAL
मूल आदेश

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

यह प्रति उस व्यक्ति के प्रयोग के लिए नि शुल्क है जिसके लिए:यह पारितकिया है।

2. An appeal against this order lies to the Regional Bench, Customs, Excise and Service Tax Appellate Tribunal, Jai Centre, 4th & 5th Floor, 34 P. D'Mello Road, Poona Street Masjid Bunder (East), Mumbai 400 009.

इस आदेश के विरूद्ध क्षेत्रीय पीठ, सीमाशुल्क, उत्पाद एवं सेवाकर अपीलीय अधिकरण, जय सेन्टर, चौथा एवं पांचवा तल, 34 पीडी.' मेलो रोड, पूना स्ट्रीट मस्जिद बन्दर (पूर्व मुंबई (400 009 को अपील की जा सकती है।

3. The appeal is required to be filed as provided in Rule 6 of the Customs (Appeals) Rules, 1982 in form C.A.3 appended to said rules. The appeal should be in quadruplicate and needs to be filed within 90 days and shall be accompanied by Four copies of the order appealed against (at least one of which should be certified copy) . A crossed bank draft drawn in favour of the Asstt. Registrar of the Bench of the Tribunal on a branch of any nationalized bank located at a place where the bench is situated for Rs. 200/- or Rs. 1000/- as applicable under Sub Section (6) of the Section 129 (A) of the Customs Act, 1962.

सीमाशुल्क (अपील नियमों (1982 के नियम 6 के आधार पर अपील फॉर्म सी ए-3 में जैसा कि उक्त नियम में संलग्न है के आधार पर की जानी चाहिए। अपील चार प्रतियों में की जानी चाहिए एवं 90 दिनों के अन्दर दायर की जानी चाहिए एवं उसके साथ उस आदेश की चार प्रतियां संलग्न होनी चाहिए जिसके विरूद्ध अपील की गई हो इन प्रतियों में कम से कम एक प्रति) । अपील के साथ सीमाशुल्क अधिनियम(अभिप्रमाणित प्रति होनी चाहिए1962 की धारा 129 (ए की उपधारा ((6) के अन्तर्गत लागू रु .200/- अथवा रु .1000/- का, क्रास किया हुआ बैंक ड्रॉफ्ट अधिकरण की पीठ के सहायक रजिस्ट्रार के नाम जारी किया होना चाहिए। यह बैंक ड्राफ्ट ऐसे राष्ट्रीय बैंक का होना चाहिए जिसकी शाखा उस जगह स्थित हो जहां अधिकरण पीठ स्थित है।

4. The appeal shall be presented in person to the Asstt. Registrar of the bench or an Officer authorized in this behalf by him or sent by registered post addressed to the Asstt. Registrar or such Officer and/or as per the latest instructions.

अपील अधिकरण पीठ के सहायक रजिस्ट्रार अथवा इस संबंध में उनके द्वारा अधिकृतकिसी भी अधिकारी के कार्यालय में प्रस्तुत की जानी चाहिए अथवा 2सहायक रजिस्ट्रार या ऐसे अधिकारीके नाम पंजीकृत डाक द्वारा भेजी जानी चाहिए।

5. Any person desirous of appealing against this decision or order shall pending the appeal deposit the duty demanded or the penalty levied therein and produce proof or such payment along with the appeal failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129 of the Customs Act, 1962.

जो व्यक्ति इस आदेश के विरूद्ध अपील करना चाहता है वह इस अपील के लंबित रहने तक दंडराशि या अपेक्षित शुल्क को जमा कर और ऐसे भुगतान का साक्ष्य प्रस्तुत करे। ऐसा न करने पर यह अपील सीमाशुल्क अधिनियम 1962 की धारा 129 के प्रावधानों के अनुपालन न करने के आधार पर निरस्त मानी जाएगी।

SUBJECT: ADJUDICATION OF SHOW CAUSE NOTICE NO. 01/2025-26 DATED 13.08.2025 ISSUED UNDER SECTION 124 READ WITH SECTION 143 OF THE CUSTOMS ACT, 1962, IN RESPECT OF M/S. HOT METAL FORGE (INDIA) PVT. LTD. (IEC: 0398060851).

1. BRIEF FACTS OF THE CASE

1.1. M/s Hot Metal Forge (India) Pvt. Ltd. (IEC: 0398060851) (hereinafter referred to as "the Noticee"), having its declared address at 10, Chandragupta, New Link Road, Mumbai – 400058, Maharashtra, was issued two EPCG Licences bearing Nos. 0330018197/3/11/00 dated 23.11.2007 and 0330017796/3/11/00 dated 16.10.2007 by the Office of the Joint Director General of Foreign Trade (JDGFT), Mumbai. The said Licences were issued under the provisions of the Export Promotion Capital Goods (EPCG) Scheme in terms of Notification No. 97/2004-Customs dated 17.09.2004, which provided exemption from payment of customs duty on the import of eligible capital goods, subject to the fulfillment of the prescribed export obligation and other conditions stipulated therein. In terms of the said notification, the Noticee executed two Bonds for Rs.97,00,000/- (Rupees Ninety-Seven Lakh only) vide Bond No. S/40-EPCG-53/08 and Rs.1,86,00,000/- (Rupees One Crore Eighty-Six Lakh only) vide Bond No. S/40-EPCG-172/07 respectively, aggregating to Rs.2,83,00,000/- (Rupees Two Crore Eighty-Three Lakh only), as security for compliance with the conditions of the EPCG Scheme, particularly the fulfillment of the stipulated export obligation within the prescribed period. The particulars of the said EPCG Licences and the Bonds executed thereunder are furnished in Table-I below.

Table-I

Sr. No.	Licence No. & Date	Assessable Value (Rs.)	Duty Foregone (in Rs.)	Bond Amount (Rs.)
1.	0330018197/3/11/00 dated 23.11.2007	1,22,64,657/-	38,16,000/-	97,00,000/-
2.	0330017796/3/11/00 dated 16.10.2007	2,38,66,884/-	74,01,450/-	1,86,00,000/-
	Total	3,61,31,541/-	1,12,17,450/-	2,83,00,000/-

1.2. The Noticee had undertaken through execution of Bond to fulfil the Export Obligation in the terms of the said Notification, under the said Licence(s) and to produce evidence of having so fulfilled export obligation within 30 days from the expiry of the specified Export Obligation period to the satisfaction of the department. It was also undertaken therein that in event of failure to fulfil the export obligation and to produce evidence in respect of fulfillment of Export

Obligation within the stipulated period, they would be liable to pay on demand, the duty foregone along with applicable interest as stipulated in the Notification No. 97/2004-Customs dated 17.09.2004.

1.3. As per Notification No. 97/2004-Customs dated 17.09.2004, the capital goods imported, assembled or manufactured were to be installed in the importer's factory or premises and a certificate from the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise or an independent Chartered engineer, as the case may be, is to be produced confirming installation and use of capital goods imported under the impugned Licences within six months from the date of completion of imports or within such extended period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow.

1.4. It is noticed that as per said Licences, the Noticee had imported capital goods (Second Hand Forging Press Wilkins and Mitchell U.K Model W96-54-16-year 1970 & Second-Hand Counterblow Hammer with standard spare parts & other accessories) having assessable values of Rs. 1,22,64,657/- (Rupees One Crore Twenty-Two Lakhs Sixty-Four Thousand Six Hundred Fifty-Seven Only) & Rs. 2,38,66,884/- (Rupees Two Crore Thirty-Eight Lakhs Sixty-Six Thousand Eight Hundred Eighty-Four Only) under EPCG Licence No. 0330018197/3/11/00 dated 23.11.2007 and 0330017796/3/11/00 dated 16.10.2007 respectively, totally amounting to Rs. 3,61,31,541/- (Rupees Three Crore Sixty-One Lakhs Thirty-One Thousand Five Hundred Forty-One Only) under the said Licences and availed exemption from payment of Customs duty amounting to Rs. 38,16,000/- (Rupees Thirty-Eight Lakhs Sixteen Thousand Only) & Rs.74,01,450/- (Rupees Seventy-Four Lakhs One Thousand Four Hundred Fifty Only) under EPCG Licence No. 0330018197/3/11/00 dated 23.11.2007 and 0330017796/3/11/00 dated 16.10.2007 respectively, totally amounting to Rs.1,12,17,450/- (Rupees One Crore Twelve Lakhs Seventeen Thousand Four Hundred Fifty Only) in terms of Notification No. 97/2004-Customs dated 17.09.2004. In terms & conditions of the said Customs Notification and Bond executed, the Noticee was required to produce the certificate issued in confirmation of installation of said imported goods at the factory/business premises of the Noticee within six months from the date of import. As per records, the same has not been submitted by the Noticee, so far. Also, the Noticee was required to fulfil the export obligation as required under the Notification No. 97/2004-Customs dated 17.09.2004 and also fulfil the conditions of the Chapter 5 of the Foreign Trade Policy(FTP) 2009-14. As per records, the same has also not been submitted by the Noticee.

1.5. Further, as per the provisions of Section 143 of Customs Act, 1962, the said impugned goods were allowed clearance by proper officer on execution of bond by the Noticee, wherein the Licence Holder had bound themselves to discharge liability in certain manner, which they have failed to do so by not submitting Capital Goods Installation Certificate and Export Obligation Discharge Certificate (EODC). Thus, the Noticee appeared to have not complied with terms & conditions of the said exemption Notification, Licence and undertaking given in the Bond. As the Noticee did not submit EODC after expiry of export obligation period, an advisory letter/Demand Notice dated 02.09.2024 for the Licence No. 0330017796/3/11/00 dated 16.10.2007 was issued to them. However, no reply was received from the Noticee.

1.6. Thus, it appeared that the Noticee has violated/contravened the conditions of the Notification No. 97/2004-Customs dated 17.09.2004 and the conditions of the Chapter 5 of the FTP 2009-14. Therefore, they are liable to pay duty foregone amount of Rs. 38,16,000/- (Rupees Thirty-Eight Lakhs Sixteen Thousand Only) & Rs. 74,01,450/- (Rupees Seventy Four Lakhs One Thousand Four Hundred Fifty Only) against EPCG Licences No. 0330018197/3/11/00 dated 23.11.2007 and 0330017796/3/11/00 dated 16.10.2007 respectively, totally amounting to Rs.1,12,17,450/- (Rupees One Crore Twelve Lakhs Seventeen Thousand Four Hundred Fifty Only) along with interest at the applicable rate on the impugned goods in terms of the conditions of Notification No. 97/2004-Customs dated 17.09.2004 read with the conditions of Licence and the conditions of Bond executed by the Noticee, read with Section 143 of the Customs Act, 1962.

1.7. It is pertinent to note that where such a bond is executed, the Licence Holder undertakes to fulfil the conditions prescribed under the relevant exemption notification and licence terms and conditions, failing which the bond can be enforced to recover the duty foregone. The Noticee has failed to submit the mandatory Export Obligation Discharge Certificate (EODC) and installation certificate despite lapse of considerable time. Therefore, the bond executed under Section 143 is liable to be enforced.

1.8. The conditions of Notification No. 97/2004-Customs dated 17.09.2004 read with the conditions of Licences and the conditions of Bonds executed have not been fulfilled by the Noticee against which the exemption from payment of duty was claimed while the relevant goods were imported. Therefore, the impugned goods also appeared to be liable for confiscation under Section 111(o) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992. The Noticee for their acts of omissions and commissions as appeared to have rendered themselves liable for penal action under Section 112(a) of the Customs Act, 1962.

1.9. In view of the above, the Noticee, M/s Hot Metal forge (India) Pvt. Ltd. (IEC: 0398060851) having declared address at 10, Chandragupta, New Link Road, Mumbai, Maharashtra- 400058, were called upon to show cause vide Show Cause Notice No.01/2025-26 dated 13.08.2025 to the Commissioner of Customs (Export), 2nd Floor, New Custom House, Ballard Estate, Mumbai-400001, so as to why:

a. The goods having assessable value of Rs. 1,22,64,657/- (Rupees One Crore Twenty-Two Lakhs Sixty-Four Thousand Six Hundred Fifty-Seven Only) imported under EPCG Licence No. 0330018197/3/11/00 dated 23.11.2007 & the goods having assessable value Rs. 2,38,66,884/- (Rupees Two Crore Thirty Eight Lakhs Sixty Six Thousand Eight Hundred Eighty Four Only) imported under EPCG Licence No. 0330017796/3/11/00 dated 16.10.2007, totally amounting to Rs 3,61,31,541/- (Rupees Three Crore Sixty One Lakhs Thirty One Thousand Five Hundred Forty One Only) 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 and Customs Notification No. 97/2004 dated 17.09.2004, as amended from time to time.

b. The duty foregone amount of Rs. 38,16,000/- (Rupees Thirty Eight Lakhs Sixteen Thousand Only) under EPCG Licence No. 0330018197/3/11/00 dated 23.11.2007 & Rs.74,01,450/- (Rupees Seventy Four Lakhs One Thousand Four Hundred Fifty Only) under EPCG Licence No. 0330017796/3/11/00 dated 16.10.2007, totally amounting to Rs 1,12,17,450/- (Rupees One Crore Twelve Lakhs Seventeen Thousand Four Hundred Fifty Only) along with applicable interest (from the date of clearance of goods to the date of payment of duty) should not be recovered from them in terms of conditions of the Bond executed under Section 143 of the Customs Act, 1962 read with Notification No. 97/2004-Customs dated 17.09.2004 and conditions of EPCG Licences.

c. The Bonds furnished by the M/s Hot Metal forge (India) Pvt. Ltd. (IEC 0398060851) having declared address at 10, Chandragupta, New Link Road, Mumbai, Maharashtra- 400058 should not be enforced for recovery of outstanding amount of duty foregone along with the applicable interest together with penalty and redemption fine.

d. The Penalty should not be imposed on the Noticee M/s Hot Metal forge (India) Pvt. Ltd. (IEC: 0398060851) under Section 112(a) of the Customs Act, 1962.

e. The Penalty should not be imposed on the Noticee M/s Hot Metal forge (India) Pvt. Ltd. (IEC: 0398060851) under Section 114AA of the Customs Act, 1962.

2. PERSONAL HEARING AND WRITTEN SUBMISSION

2.1. There is single Noticee in the subject SCN viz. M/s Hot Metal forge (India) Pvt. Ltd. (IEC: 0398060851).

2.2. In compliance with the provisions of Section 122A of the Customs Act, 1962 and in adherence to the principles of natural justice, the Noticee was granted opportunities for Personal Hearings (PH) on 03.06.2026, 11.06.2026 and 18.06.2026. Intimation letters dated 22.05.2026, 04.06.2026, 11.06.2026 for the personal hearings were issued through Speed Post to the addresses of the Noticee, M/s. Hot Metal Forge (India) Pvt. Ltd., as available on the site of the Directorate General of Foreign Trade (DGFT). The personal hearing intimations were also forwarded to the e-mail address available in the public domain viz info@hotmetalforge.com vide e-mail dated 25.05.2026. However, all the personal hearing intimation letters dispatched to the Noticee via Speed Post were returned undelivered by the postal authorities with the remarks "Left" and/or "No Such Person". Further, the e-mails sent to the available e-mail address could not be delivered and were returned with the remark "Domain could not be found". The Personal Hearing Intimation letters dated 22.05.2026, 04.06.2026, 11.06.2026 were also forwarded to the Customs House Section(CHS), New Custom House, Mumbai, on 25.05.2026, 04.06.2026, 12.06.2026 respectively, for displaying on the Notice Board in compliance to Section 153 (1)(e) of Customs Act,1962.

3. DISCUSSION AND FINDINGS

3.1. I have carefully gone through the subject Show Cause Notice (SCN) and it's Relied Upon Documents (RUDs), material on record and facts of the case. Accordingly, I proceed to decide the case on merit.

3.2. In compliance with the provisions of Section 122A of the Customs Act, 1962 and in adherence to the principles of natural justice, opportunities for Personal Hearing (PH) were granted to the Noticee on 03.06.2026, 11.06.2026 and 18.06.2026. However, the Noticee failed to appear on any of the scheduled dates of the Personal Hearings. The Personal Hearing Intimation letters dated 22.05.2026, 04.06.2026, 11.06.2026 issued to the Noticee through Speed Post were returned undelivered by the postal authorities. Thereafter, the Personal Hearing Intimation letters dated 22.05.2026, 04.06.2026, 11.06.2026 were also forwarded to the

Customs House Section(CHS), New Custom House, Mumbai, on 25.05.2026, 04.06.2026, 12.06.2026 respectively, for display on the Notice Board in accordance with the provisions of Section 153(1)(e) of the Customs Act, 1962. Despite such service, neither the Noticee nor any authorised representative appeared for the personal hearings nor filed any written submissions in defence of their case. I, therefore, find that adequate and reasonable opportunities have been accorded to the Noticee to present their case, and the requirements of Section 122A of the Customs Act, 1962 as well as the principles of natural justice have been duly complied with. Since the Noticee has failed to avail themselves of the opportunities granted, I proceed to decide the Show Cause Notice ex-parte on the basis of the facts available on record, the evidence relied upon in the Show Cause Notice, and the relevant provisions of law.

3.3. The fact of the matter is that the subject Show Cause Notice No. 01/2025-26 dated 13.08.2025 was issued to the Noticee, M/s Hot Metal forge (India) Pvt. Ltd. (IEC: 0398060851), on the basis that they have cleared the impugned goods at the concessional rate of duty and availed the benefit of duty exemption vide Notification No. 97/2004-Customs dated 17.09.2004, but the Noticee failed to submit the certificate of installation of said impugned goods at their factory/business premises viz. Vasai (WADA), Thane, within six months from the date of import, further, the Noticee have failed to submit the EODC certificate or any proof of completion of export obligation under the said EPCG Licences vide No. 0330018197/3/11/00 dated 23.11.2007 & 0330017796/3/11/00 dated 16.10.2007, thereby have violated and contravened the conditions of the Chapter 5 of the FTP 2009-14, conditions of the Notification No.97/2004-Customs dated 17.09.2004 and the conditions of the Bond executed by the Noticee in terms of Section 143 of the Customs Act, 1962. Therefore, duty foregone amount of Rs.38,16,000/- (Rupees Thirty Eight Lakhs Sixteen Thousand Only) & Rs.74,01,450/- (Rupees Seventy Four Lakhs One Thousand Four Hundred Fifty Only) availed under EPCG Licence No. 0330018197/3/11/00 dated 23.11.2007 and 0330017796/3/11/00 dated 16.10.2007, respectively, totally amounting to Rs.1,12,17,450/- (Rupees One Crore Twelve Lakhs Seventeen Thousand Four Hundred Fifty Only) along with applicable interest in terms of conditions of the Bond executed under Section 143 of the Customs Act, 1962 read with Notification No. 97/2004-Customs dated 17.09.2004 have been raised and penalties have been proposed under Section 112(a) & 114AA of the Customs Act, 1962 in the subject Show Cause Notice. The Show Cause Notice has also proposed for confiscation of impugned goods totally valued at Rs.3,61,31,541/- (Rupees Three Crore Sixty One Lakhs Thirty One Thousand Five Hundred Forty One Only) under Section 111(o) of the Customs Act, 1962.

3.4. On a careful perusal of the Show Cause Notice and case records, I find that following main issues are involved in the case which have to be decided:

a. Whether the goods having assessable value totally amounting to Rs.3,61,31,541/- (Rupees Three Crore Sixty One Lakhs Thirty One Thousand Five Hundred Forty One Only), imported under EPCG Licence No. 0330018197/3/11/00 dated 23.11.2007 & EPCG Licence No. 0330017796/3/11/00 dated 16.10.2007, should 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 and Notification No. 97/2004- Customs dated 17.09.2004, as amended from time to time;

b. Whether the duty foregone totally amounting to Rs.1,12,17,450/- (Rupees One Crore Twelve Lakhs Seventeen Thousand Four Hundred Fifty Only) along with applicable interest should be recovered from Noticee in terms of conditions of the Bond executed under Section 143 of the Customs Act, 1962 read with Notification No. 97/2004-Customs dated 17.09.2004 and conditions of EPCG Licences;

c. Whether the Penalty should be imposed on the Noticee, M/s Hot Metal forge (India) Pvt. Ltd. (IEC: 0398060851) under Section 112(a) and Section 114AA of the Customs Act, 1962.

3.5. After having identified and framed the main issues to be decided, I now proceed to examine each of the issues individually based on the facts and circumstances mentioned in the SCN; provisions of the Customs Act, 1962; relevant notifications; as well as documents available on record.

3.6. I find that the Noticee had imported capital goods (Second Hand Forging Press Wilkins and Mitchell U.K Model W96-54-16-year 1970 & Second-Hand Counterblow Hammer with standard spare parts & other accessories) having assessable value of Rs. 1,22,64,657/- (Rupees One Crore Twenty-Two Lakhs Sixty-Four Thousand Six Hundred Fifty-Seven Only) & Rs. 2,38,66,884/- (Rupees Two Crore Thirty-Eight Lakhs Sixty-Six Thousand Eight Hundred Eighty-Four Only) under EPCG Licence No. 0330018197/3/11/00 dated 23.11.2007 and 0330017796/3/11/00 dated 16.10.2007 respectively, with total Assessable value of the impugned goods amounting to Rs. 3,61,31,541/- (Rupees Three Crore Sixty-One Lakhs Thirty-One Thousand Five Hundred Forty-One Only). Further, the Noticee availed exemption from payment of Customs duty amounting to Rs. 38,16,000/- (Rupees Thirty-Eight Lakhs Sixteen Thousand Only) & Rs.74,01,450/- (Rupees Seventy-Four Lakhs One Thousand Four Hundred Fifty

Only) under EPCG Licence No. 0330018197/3/11/00 dated 23.11.2007 and 0330017796/3/11/00 dated 16.10.2007, respectively. Hence, I find that the Noticee had cleared the impugned goods as per the Bonds executed vide Bond No. S/40-EPCG-53/08 against EPCG Licence No. 0330018197/3/11/00 dated 23.11.2007 and vide Bond No. S/40-EPCG-172/07 against EPCG Licence No. 0330017796/3/11/00 dated 16.10.2007 and availed the benefit of duty exemption totally amounting to Rs.1,12,17,450/- (Rupees One Crore Twelve Lakhs Seventeen Thousand Four Hundred Fifty Only) in terms of Notification No. 97/2004-Customs dated 17.09.2004.

3.7. I find that the Noticee had declared that they are manufacturer exporter(s) holding "Registration No.AABCH5539BXM001" with the Deputy Commissioner of Central Excise Range: Vasai-1, Division Thane II, Commissionerate Mumbai-III. I find that the Noticee have failed to submit the Installation Certificate from the concerned jurisdictional Assistant/Deputy Commissioner of Central Excise confirming the installation and use of impugned goods at their factory premises located at Vasai (Wada), Thane. The Noticee have neither submitted Export Obligation Discharge Certificate (EODC) nor any proof of completion of export obligation under the subject EPCG Licences dated 23.11.2007 & 16.10.2007. Thus they have failed to comply with terms & conditions of the Notification No.97/2004-Customs dated 17.09.2004 and EPCG Licences and violated the provisions of the undertaking given in the Bonds even after issuance of the demand notice by the EPCG Monitoring Cell, New Custom House, Mumbai.

3.8 I also find that upon verification of the official website of DGFT viz. "www.dgft.gov.in", it is observed that DGFT had issued Show Cause Notice(SCN) dated 20.06.2023 vide ECA File No.MUMECAAPPLY00000248AM24 & Authorization File No:039602101517AM08 in respect of EPCG Licence No. 0330018197/3/11/00 dated 23.11.2007 and Show Cause Notice dated 24.05.2023 vide ECA File No.MUMECAAPPLY00000432AM24 & Authorization File No:039602101273AM08 in respect of EPCG Licence No. 0330017796/3/11/00 dated 16.10.2007 and the screenshots of the same retrieved from the DGFT website are reproduced below for ease of reference and sake of clarity:

IEC : 0398060851	Firm Name : HOTMETAL FORGE (INDIA) PVT LTD	Firm Address (on Authorisation): 10,CHANDRAGUPTA,NEW LINK ROAD,,ANDHERI (WEST) Contact No: 66921972,MUMBAI ,MAHARASHTRA,400058

Original File Number 039602101517AM08	Original File Date : 21/11/2007	Authorisation Type: 3-EPCG Concessional Duty 03 Percentage	Custom Notification Number : 26/2023
Authorisation Number : 0330018197	Date of Issue of Authorisation : 23/11/2007	Issued By : RA MUMBAI	Date of Expiry : 23/11/2009

FOB : 3,05,28,000.00	CIF : 1,41,34,736.90	
Duty Saved: 38,16,000.00	Port Code: INBOM1-NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI - 400038	Authorization Status: Show Cause Notice

Authorisation Life-Cycle			
File Date	File Number	Action	RA office
30/11/2010	-	Import Validity Expired	RA MUMBAI
Last Transmission Status :		Last Response Date:	

IEC : 0398060851	Firm Name : HOTMETAL FORGE (INDIA) PVT LTD	Firm Address (on Authorisation): 10,CHANDRAGUPTA,NEW LINK ROAD,,ANDHERI (WEST) Contact No: 66921972,MUMBAI ,MAHARASHTRA,400058

Original File Number 039602101273AM08	Original File Date : 15/10/2007	Authorisation Type: 3-EPCG Concessional Duty 03 Percentage	Custom Notification Number : 26/2023
Authorisation Number : 0330017796	Date of Issue of Authorisation : 16/10/2007	Issued By : RA MUMBAI	Date of Expiry : 16/10/2009

FOB : 5,92,11,600.00	CIF : 2,74,85,883.52	
Duty Saved: 74,01,450.00	Port Code: INBOM1-NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI - 400038	Authorization Status: Show Cause Notice

Authorisation Life-Cycle			
File Date	File Number	Action	RA office
	MUMCORRESPONDENCE00001121AM24		
31/10/2010	-	Import Validity Expired	RA MUMBAI
Last Transmission Status :		Last Response Date:	

3.8.1 Further, the copy of the Show Cause Notices are provided by the office of the DGFT, Mumbai to this office on 15.07.2026. Upon the scrutiny of the SCNs received, I find that Deputy Director General of Foreign Trade, Mumbai had issued the above mentioned (02) Show Cause Notices under Section 14 for taking action under Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 as amended and the Foreign Trade (Regulation) Rules, 1993 for non-fulfilment of export obligation with reference to EPCG Authorization No.0330017796 dated 16.10.2007 & EPCG Authorization No.0330018197 dated 23.11.2007.

3.8.2 In the above Show Cause Notice (SCN)s issued by the DGFT, the allegations framed for issuing the subject SCNs to the Noticee are such that the:

"a. Noticee have not complied with the HBP regarding the submission of the report (ANF 5B) on fulfilment of the export obligation to the office of DGFT, Mumbai by 30th April of every year.

b. Noticee have not submitted the Installation certificate issued by Central Excise /independent Chartered Engineer as applicable for the installation of CG /consumption of spares within the prescribed time limit as per HBP.

c. Noticee have failed to furnish the documents evidencing completion of export obligation (ANF 5B) during this and/or the extended period granted as per HBP from time to time.

d. Noticee have failed to fulfil Average Export Obligation as imposed on the Authorization for the same and similar products within the overall EO period including extended period, if any."

3.8.3 I also find that for the aforesaid acts of omission and commission on the part of the Noticee which attracted the provisions of rule 7 of The Foreign Trade (Regulation) Rules, 1993 and Section 11(2) of The Foreign Trade (Development & Regulation) Act;1992, as amended, the Deputy Director General of Foreign Trade, Mumbai, under Section 13 & 14 of the said Act called upon the Noticee to Show Cause as to:

(i) Why the Noticee, should not be placed under Denied Entity list under Rule 7 of the Foreign Trade (Regulation) Rules, 1993

(ii)Why action to impose penalty should not be taken on the Noticee under Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 as amended.

3.8.4 Therefore, I find that as evidenced from the Show Cause Notices issued by the Deputy Director General of Foreign Trade, Mumbai, the Noticee had failed to submit the certificate of installation of impugned capital goods at their factory premises and also failed to submit the Export Obligation Discharge Certificate (EODC) as stipulated under the conditions of the EPCG Licences, Customs Notification No.97/2004 dated 17.09.2004 and conditions of the Bonds executed under Section 143 of the Customs Act, 1962.

3.9. WHETHER THE DUTY FOREGONE TOTALLY AMOUNTING TO Rs.1,12,17,450/- (RUPEES ONE CRORE TWELVE LAKHS SEVENTEEN THOUSAND FOUR HUNDRED FIFTY ONLY) ALONG WITH APPLICABLE INTEREST SHOULD BE RECOVERED FROM NOTICEE IN TERMS OF CONDITIONS OF THE BOND EXECUTED UNDER SECTION 143 OF THE CUSTOMS ACT, 1962 READ

WITH NOTIFICATION NO. 97/2004-CUSTOMS DATED 17.09.2004 AND CONDITIONS OF EPCG LICENCES;

3.9.1. VIOLATION OF THE CONDITIONS OF THE NOTIFICATION NO.97/2004-CUSTOMS DATED 17.09.2004

3.9.1.1 I find that the Noticee have availed duty exemption on the impugned goods under the Notification No.97/2004-Customs dated 17.09.2004, subject to the fulfillment of the conditions stipulated therein. Therefore, it would be worthwhile to look at the conditions prescribed in the said notification which are to be compiled with the availment of said duty exemption. Accordingly, the relevant conditions of Notification No. 97/2004-Customs dated 17.09.2004 are reproduced for the sake of clarity:

Notification No. 97/2004-Customs dated 17.09.2004

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

(2) 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 fulfil export obligation on FOB basis equivalent to eight times the duty saved on the goods imported as may be specified on the licence, or for such higher sum as may be fixed by the Licensing Authority, within a period of eight years from the date of issue of licence, 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%*

(4) that the importer produces within 30 days from the expiry of each block from the date of issue of licence 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 15per cent per annum from the date of clearance of the goods;

(5) that the capital goods imported, assembled or manufactured are installed in the importer's factory or premises and a certificate from the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, is produced confirming installation and use of capital goods in the importer's factory or premises, within six months from the date of completion of imports or within such extended period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow."

3.9.1.2. I find that the Noticee have not submitted any documentary evidence showing the fulfilment of export obligation of any particular block within the 30 days from the expiry of each block from the date of issue of licence or within the extended period allowed by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, in terms of Condition 2 ((2) & (4)) of the Notification No.97/2004-Customs dated 17.09.2004. Hence, I find that the impugned Capital Goods imported under the subject EPCG Licences are not used for the intended purpose for which the exemption for payment of duty was claimed/availed.

3.9.1.3. Further, I find that the Noticee have failed to submit the installation certificate in respect of the Capital Goods imported under the subject EPCG Licences in terms of Condition 2 (5) of the Notification No.97/2004-Customs dated 17.09.2004, which stipulates that the capital goods imported, assembled or manufactured are installed in the importer's factory or premises and a certificate of installation from the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, is produced confirming installation and use of capital goods in the importer's factory or premises, within six months from the date of completion of imports or within such extended period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow.

3.9.1.4. From the foregoing discussions and findings, I find that the Noticee have declared that they are manufacturer exporter(s) holding "Registration No.AABCH5539BXM001" with the Deputy Commissioner of Central Excise Range: Vasai-1, Division Thane II, Commissionerate Mumbai-III. I conclude that the Noticee have failed to submit the Installation Certificate from the concerned jurisdictional Assistant/Deputy Commissioner of Central Excise confirming the installation and use of impugned goods at their factory premises located at Vasai (Wada), Thane, within six months from the date of import, as stipulated under Notification No. 97/2004-Customs dated 17.09.2004. I further find that the

Noticee also failed to fulfil the export obligation prescribed under the said Notification No.97/2004 dated 17.09.2004. Therefore, I hold that the Noticee has violated/contravened Conditions Nos. 2(2), 2(4) and 2(5) of Notification No. 97/2004-Customs dated 17.09.2004 read with the conditions of the Chapter 5 of the FTP 2009-14, and they are not eligible for the benefits of duty exemption availed thereunder.

3.9.2. VIOLATIONS OF THE CONDITIONS OF BOND EXECUTED IN TERMS OF SECTION 143 OF THE CUSTOMS ACT, 1962

3.9.2.1. I find that, in terms of the provisions of Section 143 of the Customs Act, 1962, the impugned capital goods were allowed clearance by the proper officer upon execution of bonds by the Noticee, whereby they bound themselves to discharge the obligations and liabilities arising under the EPCG Scheme and the applicable Customs Notification. I find that the Noticee have executed two Bonds vide Bond No. S/40-EPCG-53/08 amounting to value Rs.97,00,000/- (Rupees Ninety-Seven Lakh only) and Bond No. S/40-EPCG-172/07 amounting to value Rs.1,86,00,000/- (Rupees One Crore Eighty-Six Lakhs only) in terms of Notification No.97/2004-Customs dated 17.09.2004 against subject EPCG Licences. Further, I find that the subject Bonds are enforceable for demand of the duty foregone along with the applicable interest from the Noticee till the fulfilment of the conditions stipulated thereunder.

3.9.2.2. Ongoing through the subject Bonds executed by the Noticee, I find that they have agreed to the following conditions and the same are reproduced hereunder for ease of reference:

Now the conditions of the above bond are that :-

1. We, the Obligor(s) shall observe all the terms and conditions of the said notification.
2. We, the Obligor(s) shall observe all the terms and conditions specified in the Licence.
3. We, the Obligor(s) shall fulfill the export obligation as specified in the said notification and the licence and shall produce evidence of having so fulfilled the export obligation within 30 days from the expiry of the specified export obligation period to the satisfaction of the government.
4. In the event of failure to fulfill full or part of the export obligation as specified in the said notification and the licence, we the Obligor(s), hereby undertake to pay the custom duty but of the exemption and also interest @ 15% per annum, thereon forth with from the date of clearance of the imported goods till the date of payment of duty and without any demur to the government.
5. We, the Obligor(s) shall comply with the conditions and limitations stipulated in the said Foreign Trade Policy as amended from time to time.
6. We, the Obligor(s) shall not change the name and style under which we, the obligor(s) are doing business or change the location of manufacturing premises except with the written permission of the government. If each and everyone of the above condition is duly complied with by us, the Obligor(s), the above written bond shall be void and of no effect, otherwise the same shall remain in full force and effect and virtue.

It is hereby declared by us the Obligor(s) and the government as follows:

1. The above written bond is given for the performance of an act in which the public are interested.
2. The government through the Commissioner of Customs or any other officer of Customs recovers the sums due from the Obligor(s) in the manner laid down in Sub-section (1) of the Section 142 of the Customs Act, 1962 without prejudice to any other mode of recovery.

3.9.2.3. Before discussing the violations of the conditions of the bonds executed in terms of Section 143 of the Customs Act, 1962, it would be worthwhile to look at the provisions of Section 143 of the Customs Act, 1962, and the same are reproduced below for sake of clarity:

> ***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 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.*

3.9.2.4. I find that the above provisions specifically provide that when a License Holder fails to fulfil export obligation under the EPCG Scheme, they are liable to pay duty along with applicable interest. Therefore, the Noticee is bound to pay exempted duty foregone along with applicable interest thereon for non-fulfilment of export obligation. The Noticee had failed to produce any evidence to substantiate that they have fulfilled export obligation under the said EPCG Licences. In terms of their undertaking under bond executed by them and in terms of condition (4) of said notification, they are liable to pay duty foregone along with applicable interest @15% per annum thereon forthwith without demur to the government.

3.9.3. NOTICEE'S LIABILITY TO PAY DUTY AS DEMANDED IN THE SUBJECT SCN ALONG WITH APPLICABLE INTEREST

3.9.3.1. The exemption granted under the said notifications, benefit of which has been availed by the Noticee, is a conditional exemption subject to fulfilment of the conditions as enumerated therein. The said notifications have been issued by the Central Government in exercise of its powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962, in the public interest which exempts some specified goods imported from customs duty. The compliance of the conditions of the said notification is mandatory for claiming the exemption on the goods imported, which otherwise attracted merit rate of duty. It is well settled law that a person, who claims exemption or concession, has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly. If exemption is available complying with certain conditions, the conditions have to be complied with for availing the exemption.

3.9.3.2 Therefore, the Noticee is liable to pay duty as demanded in the instant Show Cause Notice in respect of the impugned capital goods along with interest at the applicable rate in terms of the conditions of the Notification No.97/2004-Customs dated 17.09.2004 read with conditions of the bond executed by the Noticee in terms of Section 143 of the Customs Act, 1962, read with condition of said EPCG Licences. Section 143(3) of the Customs Act, 1962, provides that if the thing is not done within the time specified in the bond, the Assistant Commissioner 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. It has also been settled view that when the conditions of the notification are not fulfilled, the demand of duty for violation of the end use conditions of the notification is not subject to the period of limitation under Section 28 of the Customs Act, 1962, duty in such cases can be demanded and recoverable in terms of the end use condition of exemption notification and in terms of conditions of Bond.

3.9.3.3. Relying upon the ratio of law laid down by Hon'ble Apex Court in cases C.C. Mumbai v. Jagdish Cancer Research Centre (2001 (132) E.L.T. 257 (S.C.)] and C.C. Vs. Wockhard Hospital and Heart Institute [2006 (200) E.L.T. 15 (Bom.)], Hon'ble CESTAT, WZB, Mumbai in case of Hindustan Lever Ltd. Vs Commissioner of Customs (EP), Mumbai (2012 (281) ELT 241 (Tri. - Mumbai)] held:

> "*7.3 The appellant has also raised a contention that duty demand is time-barred as the show cause notice has been issued only on 29-10-2004, whereas the import of Crude Palm Stearine has taken place in March and June 1999, that is, after a period of five years from the date of import. The question of time bar in this case will not arise for the reason that the duty demand is raised in terms of the bond and letter of undertaking executed by the importer appellant with the customs authorities. In terms of the said bond/LUT, there is a obligation on the part of the appellant to fulfil the terms and conditions of import which we have already held that the appellant has not fulfilled. The bond/LUT executed with the customs has not been discharged and therefore, duty demand can be raised at any time before the bond is discharged. Since the duty demand is sustainable, the liability to pay interest thereon is automatic and consequential.*"

(Emphasis supplied)

3.9.3.4. The ratio of law is squarely applicable to the instant case. The Noticee have neither submitted the installation certificate nor produced EODC in the stipulated period in accordance with Notification No.97/2004-Customs dated 17.09.2004. Therefore, the liability of the Noticee, being a contractual liability, shall remain and recoverable from them till the bonds executed by the Noticee with the Customs have not been discharged and are still in force. The Noticee have failed to submit Export Obligation Discharge Certificate (EODC) even after the reasonable time allowed to them. In lack of any evidence about fulfillment of export obligation by the Noticee, and the Bonds executed in terms of Section 143 of the Customs Act, 1962, they are liable to pay the duty foregone along with applicable interest for exemption against impugned EPCG licences.

3.9.3.5. Therefore, in view of all the above discussions and findings, I find that the Noticee, M/s Hot Metal forge (India) Pvt. Ltd., **is liable to pay the duty foregone amount** of Rs. 38,16,000/- (Rupees Thirty Eight Lakhs Sixteen Thousand Only) under EPCG Licence No. 0330018197/3/11/00 dated 23.11.2007 & Rs.74,01,450/- (Rupees Seventy Four Lakhs One Thousand Four Hundred Fifty

Only) under EPCG Licence No. 0330017796/3/11/00 dated 16.10.2007, which is **totally amounting to Rs.1,12,17,450/- (Rupees One Crore Twelve Lakhs Seventeen Thousand Four Hundred Fifty Only) along with applicable interest** in terms of conditions of the Bond executed under Section 143 of the Customs Act, 1962 read with Notification No. 97/2004-Customs dated 17.09.2004 and conditions of EPCG Licences.

3.10. WHETHER THE GOODS HAVING ASSESSABLE VALUE TOTALLY AMOUNTING TO Rs.3,61,31,541/- (RUPEES THREE CRORE SIXTY ONE LAKHS THIRTY ONE THOUSAND FIVE HUNDRED FORTY ONE ONLY), IMPORTED UNDER EPCG LICENCE NO. 0330018197/3/11/00 DATED 23.11.2007 & EPCG LICENCE NO. 0330017796/3/11/00 DATED 16.10.2007, SHOULD 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 AND NOTIFICATION NO. 97/2004- CUSTOMS DATED 17.09.2004, AS AMENDED FROM TIME TO TIME.

3.10.1. I find that since the export obligation has not been fulfilled by the Noticee, it can be concluded that the impugned capital goods have not been used for intended purpose for which the exemption from payment of duty was availed. Thus, the Noticee have breached/contravened conditions of the Notification No. 97/2004-Customs dated 17.09.2004 read with conditions of the subject EPCG Licence and undertaking under relevant bonds. I, therefore, find that the impugned capital goods having assessable value of Rs.1,22,64,657/- (Rupees One Crore Twenty-Two Lakhs Sixty-Four Thousand Six Hundred Fifty-Seven Only) & Rs. 2,38,66,884/- (Rupees Two Crore Thirty-Eight Lakhs Sixty-Six Thousand Eight Hundred Eighty-Four Only) under EPCG Licences No. 0330018197/3/11/00 dated 23.11.2007 and 0330017796/3/11/00 dated 16.10.2007, respectively, the total assessable value amounting to Rs.3,61,31,541/- (Rupees Three Crore Sixty-One Lakhs Thirty-One Thousand Five Hundred Forty-One Only), are liable for confiscation under Section 111(o) of the Customs Act, 1962. Section 111(o) of the Customs Act, 1962, stipulates that:

> *"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;"*

3.10.2. I rely upon the landmark judgment by Hon'ble Supreme Court in the case of ***Weston Components Ltd. Versus Commissioner of Customs, New Delhi*** as reported in 2000 (115) E.L.T. 278 (S.C.) [Civil Appeal No. 7144 of 1999, decided on 4-1-2000], wherein it has been held that Redemption fine is imposable even after release of goods on execution of bond. Mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods.

3.10.3. Further, I also find that in case of M/s. Pentafour Solec Technologies Ltd., Mr. S.N. Rajan, Managing Director and Mr. V. Ramakrishnan, Chairman Versus Commissioner of Customs, Chennai [2024 (12) TMI 1037 - CESTAT CHENNAI] the Hon'ble CESTAT, Chennai has upheld the confiscation of imported goods under Section 111(o) of the Customs Act, 1962, for non-fulfilment of Export Obligation and also sustained the imposition of Redemption Fine under Section 125 of the Customs Act, 1962. While doing so, the Hon'ble Tribunal relied upon the ratio laid down by Hon'ble Supreme Court in ***Weston Components Ltd. Versus Commissioner of Customs, New Delhi*** 2000 (115) E.L.T. 278 (S.C.) and the Hon'ble Madras High Court in Visteon Automotive Systems India Ltd. Vs CESTAT Chennai [2018 (9) GSTL 142]. The excerpt of the said judgment is reproduced as under:

> *"12.Regarding Confiscation and imposition of redemption fine under Section 125 of the ACT, we find that the Hon'ble Supreme Court in the case of Weston Components Ltd. Vs CC, New Delhi has held as follows: -*
>
> *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.*
>
> *Further, we also find that in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) GSTL 142], the Hon'ble High Court of Madras has held as follows: -*
>
> *"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 regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) 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 authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of*

confiscation of goods provided for under Section 111 of the Act. When once power of authorisation 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 fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of 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."

In view of the above, we uphold the confiscation of the imported goods for non-fulfilment of the export obligation under the provisions of Section 111(o) and imposition of fine under Section 125 of the Customs Act, 1962"

"Emphasis Supplied"

3.11. WHETHER THE NOTICEE, M/S HOT METAL FORGE (INDIA) PVT. LTD. (IEC: 0398060851) LIABLE FOR PENALTY UNDER SECTION 112(a) OF THE CUSTOMS ACT, 1962.

3.11.1. I find that section 112 of the Customs Act, 1962 provides for imposition of penalty for improper importation of goods. Section 112 reads as follows:-

112. Penalty for improper importation of goods, etc. —

Any person, -

(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

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

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

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

3.11.2. I find that Section 112 (a) of the Customs Act, 1962 provides for imposition of penalty for any person, 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 of the Customs Act, 1962, or abets the doing or omission of such an act.

3.11.3. I find that the Noticee has failed to discharge the export obligation against the said EPCG Licences within time limit. Thus, the Noticee have breached/contravened aforesaid conditions of the Notification No. 97/2004-Customs dated 17.09.2004 against the EPCG Licence No. 0330018197/3/11/00 dated 23.11.2007 & EPCG Licence No. 0330017796/3/11/00 dated 16.10.2007 and undertaking by them under said Bonds have rendered the goods liable for confiscation under Section 111(o) of the Customs Act, 1962. For their act of omissions and commissions, the Noticee have rendered themselves liable for penal action under Section 112 (a) of the Customs Act, 1962.

3.11.4. In this regard, the following legal position is relevant to the facts of the case of ***Satish Mohan Agarwal (PROP M/s CASINO ELECTRONICS) Vs CC (SEA-EXPORT) CHENNAI***, reported in 2016 (336) E.L.T. 562 (Tri. - Chennai), the Hon'ble CESTAT, Chennai, held that:

Para 10.3 "Penal provisions are enacted to suppress the evil of defrauding Revenue which is an anti-social activity adversely affecting the public revenues, the earning of foreign exchange, the financial stability and the economy of the country. Such provisions should be construed in a manner which would suppress the mischief, promote their object, prevent their subtle evasion and foil their artful circum-vention....."

Para 11.1 "It was the argument of the appellant that there was neither infraction of law made by the appellant nor Revenue proved its case for which penalty under Section 112(a) of the Customs Act, 1962 is not imposable. It may be stated that Revenue need not prove its case with mathematical precision. Provision of Section 112(a) brings an offender to its fold, who in relation to any goods commits or omits any act rendering that confiscable are abets to do so. Appellant not only committed the offence but also abetted the *commitment thereof for which he is liable to penalty u/s 112(a) of the Customs Act, 1962."*

"Emphasis supplied"

3.12. WHETHER THE NOTICEE M/S HOT METAL FORGE (INDIA) PVT. LTD. (IEC: 0398060851) IS LIABLE FOR PENALTY UNDER SECTION 114AA OF THE CUSTOMS ACT, 1962.

3.12.1. I find that Section 114AA of the Customs Act, 1962 provides for imposition of penalty for use of false and incorrect material. Section 114AA reads as follows-

[Section 114AA. Penalty for use of false and incorrect material. -

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

3.12.2. I find that for imposition of penalty under Section 114AA of the Customs Act, 1962, emphasises on knowingly or intentionally making, signing or using declaration or document which is false or incorrect in material particulars to be passed, which has not been elaborated in the show cause notice before invoking the penalty under Section 114AA. A perusal of the provisions of Section 114AA clearly bring out that the Section becomes applicable only in serious cases of intentional fraud with clear mens rea brought out and the penalty envisaged under the Section 114AA can go up to five times the value of the goods. I find that the facts of this case do not bring out any such serious intentional lapse on part of the Noticee to invoke provision of Section 114AA. Therefore, I refrain from imposing penalty on the Noticee under Section 114AA of the Customs Act, 1962.

3.13. Thus, considering the facts of the non-submission of the EODC certificate or any proof of completion of export obligation under the said EPCG Licences vide No. 0330018197/3/11/00 dated 23.11.2007 and 0330017796/3/11/00 dated 16.10.2007, non-submission of installation certificate in respect of the impugned Capital Goods under the subject EPCG Licences and all the other relevant facts discussed above, I conclude that the Noticee violated/contravened the conditions No. 2(2), 2(4) & 2(5) of the Notification No.97/2004-Customs dated 17.09.2004 read with the conditions of the Chapter 5 of the FTP 2009-14 and the conditions of the Bonds executed in terms of Section 143 of the Customs Act, 1962, which have rendered the impugned goods having total assessable value of Rs 3,61,31,541/- (Rupees Three Crore Sixty One Lakhs Thirty One Thousand Five Hundred Forty One Only) imported under EPCG Licences vide Nos. 0330018197/3/11/00 dated 23.11.2007 & 0330017796/3/11/00 dated 16.10.2007, liable for confiscation under Section 111 (o) of the Customs Act, 1962 and further, the Noticee for the acts of omissions and commissions as mentioned above, have also rendered themselves liable for penal action under Section 112 (a) of the Customs Act, 1962. Also, the total duty foregone amount of 1,12,17,450/- (Rupees One Crore Twelve Lakhs Seventeen Thousand Four Hundred Fifty Only) along with applicable interest is liable to be recovered from the Noticee, M/s Hot Metal forge (India) Pvt. Ltd. (IEC 0398060851) in terms of conditions of the Bond executed under Section 143 of the Customs Act, 1962 read with Notification No. 97/2004-Customs dated 17.09.2004 read with conditions of the subject EPCG Licence.

4. In view of discussion in foregone paras, I pass the following order:-

ORDER

a. **I order confiscation of the goods having assessable value** of Rs.1,22,64,657/- (Rupees One Crore Twenty Two Lakhs Sixty Four Thousand Six Hundred Fifty Seven Only) imported under EPCG Licence No. 0330018197/3/11/00 dated 23.11.2007 & the goods having assessable value Rs.2,38,66,884/- (Rupees Two Crore Thirty Eight Lakhs Sixty Six Thousand Eight Hundred Eighty Four Only) imported under EPCG Licence No. 0330017796/3/11/00 dated 16.10.2007, **totally amounting to Rs.3,61,31,541/- (Rupees Three Crore Sixty One Lakhs Thirty One Thousand Five Hundred Forty One Only),** under Section 111(o) of the Customs Act, 1962 read with Notification No. 97/2004-Customs dated 17.09.2004 and conditions of Bond executed in terms of Section 143 of the Customs Act, 1962. However, as the goods are not physically available for confiscation, I impose Redemption fine of **Rs.12,00,000/- (Rupees Twelve Lakhs Only)** for the goods imported under EPCG Licence No. 0330018197/3/11/00 dated 23.11.2007 and I also impose Redemption Fine of **Rs.23,00,000/- (Rupees Twenty-Three Lakhs Only)** for the goods imported under EPCG Licence No. 0330017796/3/11/00 dated 16.10.2007 in lieu of confiscation, under Section 125 of the Customs Act, 1962.

b. **I confirm the demand and order for recovery of the duty foregone amount** of Rs.38,16,000/- (Rupees Thirty-Eight Lakhs Sixteen Thousand Only) under EPCG Licence No. 0330018197/3/11/00 dated 23.11.2007 & Rs.74,01,450/- (Rupees Seventy-Four Lakhs One Thousand Four Hundred Fifty Only) under EPCG Licence No. 0330017796/3/11/00 dated

16.10.2007, **totally amounting to Rs.1,12,17,450/- (Rupees One Crore Twelve Lakhs Seventeen Thousand Four Hundred Fifty Only) along with applicable interest** from M/s. Hot Metal forge (India) Pvt. Ltd. in terms of conditions of the Bond executed under Section 143 of the Customs Act, 1962 read with Notification No. 97/2004-Customs dated 17.09.2004 and conditions of EPCG Licences;

c. I order that the Bonds furnished by the M/s Hot Metal forge (India) Pvt. Ltd. (IEC 0398060851) having declared address at 10, Chandragupta, New Link Road, Mumbai, Maharashtra- 400058, vide Bond No. S/40-EPCG-53/08 of value Rs.97,00,000/- (Rupees Ninety-Seven Lakh only) and Bond No. S/40-EPCG-172/07 of value Rs.1,86,00,000/- (Rupees One Crore Eighty-Six Lakh only), aggregating to Rs.2,83,00,000/- (Rupees Two Crore Eighty-Three Lakh only), should be enforced for recovery of outstanding amount of duty foregone along with the applicable interest together with penalty and redemption fine.

d. I impose a Penalty of **Rs.3,80,000/- (Rupees Three Lakhs Eighty Thousand Only)** on the duty foregone amount under EPCG Licence No. 0330018197/3/11/00 dated 23.11.2007 and I also impose Penalty of **Rs.7,40,000/- (Rupees Seven Lakhs Forty Thousand Only)** on the duty foregone amount under EPCG Licence No. 0330017796/3/11/00 dated 16.10.2007 on M/s Hot Metal forge (India) Pvt. Ltd. (IEC: 0398060851) under Section 112(a) of the Customs Act, 1962.

e. I drop the Penalty imposed on M/s Hot Metal forge (India) Pvt. Ltd. (IEC: 0398060851) under Section 114AA of the Customs Act, 1962.

5. This order is issued without prejudice to any other action that may be taken against the noticee(s) or against any other person(s)/ Entities concerned, under the Customs Act, 1962, and/or under any other law for the time being in force in the Republic of India.

17-07-2026

(RAJENDRA KUMAR MEENA)
COMMISSIONER OF CUSTOMS (EXPORT)
NEW CUSTOM HOUSE, MUMBAI -I

To

1. M/s Hot Metal Forge (India) Pvt. Ltd.,
Unit No. 10, Chandragupta Plot No.55, New Link Road,
Andheri(W), Mumbai, Maharashtra-400058.

2. M/s Hot Metal Forge (India) Pvt. Ltd.,
Survey No. 177, Hissa No.1,
Vil.Sapane Budrik, Tal.Wada,
Dist. Thane, 421303.

3. M/s Hot Metal Forge (India) Pvt. Ltd.,
Plot No. 202, Survey No. 24,
N.H.8, Kaman, Kohli, Vasai (E),
Dist-Thane-401204.

Copy to:

1. The Principal Chief Commissioner of Customs, Zone-I, NCH, Mumbai.
2. The Additional Director General of Foreign Trade, 48, Nishta Bhavan, Vithaladas Thackersey Marg, New Marine Lines, Churchgate, Mumbai-400 020.
3. The Deputy Commissioner of Customs (EPCG Monitoring Cell), New Custom House, Mumbai, Zone-I.
4. AC/Revenue Recovery Cell, NCH, Mumbai Zone-I.
5. AC/CHS to display on Notice Board.
6. Master File.
7. Office Copy.