



**OFFICE OF THE COMMISSIONER OF CUSTOMS
CUSTOM HOUSE, KANDLA
NEAR BALAJI TEMPLE, NEW KANDLA**
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A	File No.	S/10-09/Adj/COMMR/2017-18
B	Order-in-Original No.	KDL/COMMR/SKA/01/2018-19
C	Passed by	Shri Sanjay Kumar Agarwal Commissioner, Custom House, Kandla.
D	Date of order	19.04.2018
E	Date of issue	19.04.2018
F	Show Cause Notices No. & Date	F. No. DRI/KZU/CF/ENQ-72(INT-42)/2016 dated 23/25.05.2017
G	Noticee(s)/Co-Noticee(s)	M/s. Asian Colour Coated Ispat Ltd., "ACCIL" House, 26-P, Sector-33, Gurgaon, Haryana-122001

1. This Order - in - Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

**Customs Excise & Service Tax Appellate Tribunal,
West Zonal Bench,**

2nd Floor, Bahumali Bhavan Asarwa,
Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004

3. Appeal shall be filed within three months from the date of communication of this order.
4. Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
5. The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.



Brief Fact of the Case

M/s. Asian Colour Coated Ispat Ltd. (hereinafter also referred to as 'the noticee') are having registered office at 'ACCIL' House, 26-P, Sector-33, Gurgaon, Haryana-122001 and are having IEC No. 0505088282. The noticee imported "Hot Rolled Non-Alloy Steel Sheets/Strips in Coil" covered under Customs Tariff Heading 7208, under three Bills of Entry, through Kandla & Mundra ports under Advance Authorization Nos. 0510280306 dated 24.12.2010 and 0510270716 dated 17.08.2010. They availed exemption under notification No. 96/2009-cus. dated 11.09.2009. One of the conditions of exemption was that such imported materials were to be used for manufacturing export goods. Intelligence gathered by officers of Directorate of Revenue Intelligence (hereinafter also referred to as 'DRI') indicated that the noticee did not fulfill their export obligation within the original export obligation period and were also not granted any extension by the Directorate General of Foreign Trade (hereinafter also referred to as 'DGFT'). Despite having failed to complete export obligation, they did not pay the customs duty as stipulated under the policy and the notification No. 96/2009-Cus dated 11.09.2009, as amended, which was otherwise payable. Thus, it appeared that they contravened conditions of notification No. 96/2009-cus dated 11.09.2009, and provisions of Para 4.1.3 & 4.1.5 of Foreign Trade Policy (2009-14) and Para 4.22, 4.24 & 4.28 of the Hand Book of Procedures, Volume-I (2009-14).

1.2 The Advance Authorization No. 0510280306 dated 24.12.2010 was issued for import of 'Hot Rolled Non-Alloy Steel Sheets/ Strips' for a CIF value of Rs. 15.31 Crore, casting export obligation of Rs. 17.61 Crore. The Authorization No. 0510270716 dated 17.08.2010 was granted for import value of Rs. 15.28 Crore with export obligation of Rs. 17.58 Crore. The details of the two Advance Authorizations are as below:

Particulars of the Advance Authorization				
Advance Authorization No.	0510270716		0510280306	
Date of Advance Authorization	17.08.2010		24.12.2010	
Category of Authorization	SION C- 470/C-473			
Validity of Export Products	36 MONTHS/ 16.08.2013		36 MONTHS/ 23.12.2013	
FOB Value of Authorization	Rs.175775379	\$36,73,466.70	Rs.176054793	\$38,14,838.44
CIF Value of Authorization	Rs.152848154	\$31,94,318.00	Rs.153091077	\$33,17,250.80

1.3 The noticee imported 'Hot rolled Non-Alloy Steel Sheets/ Strips in Coils' and saved customs duty of Rs. 3.21 Crore and Rs. 3.11 Crore, respectively. The particulars of such imports are as below:

BE specific particulars of import and Duty saved						
Authorization No.	0510280306			0510270716		
Authorization Date	24.12.2010			17.08.2010		
B/E No.	2534369	2534369		2850	2851	
Date of B/E	05.01.2011	05.01.2011		03.09.2010	03.09.2010	
Quantity (MT)	1216.66	3656.54	4873.20	2374.50	2390.23	4764.73
CIF Value Import (USD)	827817.30	2487935.45	3315752.75	1591876.25	1602422.55	3194298.80
CIF Value Import (Rs)	37748469	113449857	151198325	75216153	75714425	150930578
BCD (Rs)	2097186	6272963	3315753	3798416	3923579	7721995
CVD +SAD (Rs)	5996780	17722280	151198325	11204132	12190354	23394486
Total Duty Saved (Rs)	8093967	23995243	32089209	15002548	16113933	31116481

1.4 Officers of DRI recorded statement of Shri Ankur Saraf, Executive Director and authorized representative of the noticee on 22.08.2016 wherein he stated, inter alia, that they obtained subject two Advance Authorizations for import of Hot Rolled Non Alloy Steel which were used for manufacturing of Cold Rolled Full Hard, Galvanized, Colour Coated Coil/Sheets; that against Authorization No. 510280306 they imported 1216.66 MT plus 3656.54 MT of Non Alloy Hot Rolled Steel under Bill of Entry No. 2534369 dated 05.01.2011, collectively valued at Rs. 15,11,98,325/-; that in that import they saved customs duty of Rs. 3,20,89,209/-; that against Authorization No. 510270716 they imported 2374.5 MT of Hot Rolled Non Alloy Steel under Bill of Entry No. 2850 dated 03.09.2010, valued at Rs. 7,52,16,153/- and saved customs duty of Rs. 1,50,02,548/- and a quantity of 2390.23 MT of such strips under Bill of Entry No. 2851 dated 03.09.2010 valued at Rs. 7,57,14,425/- and saved customs duty of Rs. 1,60,13,933/-; that against Authorization No. 510280306, they were supposed to export 1124.030 MT of Cold Rolled Full Hard Steels but actually they exported 1135.460 MT of such goods under 15 Shipping Bills during 09.04.2013 to 15.04.2013; that in addition to that they were supposed to export 3252.560 MT of Galvanized Steel/ Colour Coated Steel (as per SION 61/473) which they could not export; that it was admitted that they failed to fulfill export obligation against the subject Advance Authorization although they availed benefit of exemption at the time of import of input raw materials for a quantity of 3656.54 MT; that total customs duty attributable to the excess import was Rs. 2,39,95,243/-; that similarly against Authorization No. 510270716, they were supposed to export 4264.36 MT of Galvanized Steel Sheets (as per SION No. 61/473), whereas they could export a quantity of

1070.485 MT of goods; that going by the ratio allowed in SION they were entitled to import of 1196.80 MT of such duty free goods whereas actually they imported 4764.73 MT of Hot Rolled Steel Coils; that it resulted in excess import of 3567.93 MT against which they availed duty benefit which is roughly Rs. 2,25,42,854/- for which they could not make any export; that exact quantum of customs duty attributable to such non-fulfilled export obligation would be calculated by them and they would submit the same within a week; that in case of both the Authorizations, export obligation period was of 36 months within which they were supposed to fulfill their obligation; that the Para 4.1.3, 4.1.5 and 4.22 of the Foreign Trade Policy (2009-2014) required an importer to use duty free imported material exclusively for manufacturing export products; that they could not utilize those imported duty free materials exclusively for the purpose of manufacture of export goods; that a portion of such goods i.e. 23% and 25% respectively against respective Authorizations were utilized for manufacturing export goods, whereas, the rest quantity were used for manufacturing goods for purposes other than export; that they applied for extension to the DGFT Delhi; that the Policy Relaxation Committee (PRC) in their meeting No. 14/AM15 dated 19.12.2014 rejected their request and directed them to regularize the matter in terms of Para 4.28 of the Policy; that as per condition No. (viii) of notification No. 96/2009 dated 11.09.2009 export obligation should be fulfilled within the period mentioned in the Authorization; that as per condition No. (ix) of the said notification, evidence of discharge of export obligation are required to be submitted to the customs authority; that condition No. (x) of the said notification stipulated that goods imported under Advance Authorization should not be sold or transferred; that as they could not fulfill their export obligation in full, it was not possible for them to submit evidence of export to the customs authority; that failure to complete export obligation and utilization of duty free materials for purpose other than manufacturing export goods led to violation of conditions of the subject notification; that understanding their failure they decided to deposit customs duty proportionate to the unfulfilled export obligation and accordingly deposited Rs. 1,00,00,000/- against TR-6 Challan No. 37620 dated 18.07.2016 and Rs. 1,50,00,000/- by TR-6 Challan No. 37908 dated 05.03.2016 and Rs. 75,00,000/- vide DD No. 482660 dated 17.08.2016, deposited on 22.08.2016; that they undertook to deposit Rs. 1.75 Crore by September 2016 which would include both customs duty as well as interest pertaining to Authorization No. 0510280306 dated 24.12.2010 and in respect of the Authorization No. 0510270716 dated 17.08.2010; that they

would be completing payment of duty and interest against the other Authorization by January 2017.

1.5 The noticee were supposed to fulfill their export obligation by exporting goods manufactured from the duty free imported goods but they made partial exports only and utilized the rest of the quantity of the imported materials for the purpose other than manufacturing export goods. Details of exports made, export shortfall and liability of customs duty against Advance Authorization No. 0510270716 are tabulated below:

Total Exports made in respect of AA No. 0510270716 dated 17.08.2010			
Sl.No.	S/B No.	S/B Date	Qty (MT)
1	9301689	08.06.2012	8.545
2	3909818	11.02.2013	310.880
3	5132975	25.04.2013	328.480
4	5135382	25.04.2013	185.530
5	6702387	30.07.2013	93.785
6	6890369	12.08.2013	24.975
7	7243583	11.08.2013	24.310
8	7645292	25.09.2013	95.980
Total			1070.485
Total Import			4764.730
Export Obligation			4261.834
Shortfall of EO			3191.349
Percentage of EO fulfilled in terms of quantity and Value			25.118

Export Shortfall in respect of AA No. 0510270716 dated 17.08.2010	
EO Completed (MT)	1070.485
EO Shortfall (MT)	3191.350
Norms Per KG	1.118
Import made (MT)	4764.730
Import allowed (MT)	1196.800
Excess Import made (MT)	3567.930

Calculation of Customs Duty liability in respect of AA No. 0510270716 dated 17.08.2010		
B/Entry No.	2850	2851
Date	03.09.2010	03.09.2010
Qty (MT)	2374.5	2390.23
BCD (Rs.)	3798416	3823579
CVD (Rs.)	12120152	12290354
Total (Rs.)	15918548	16013933
Duty/mt	6704	6700
Excess Import Qty (MT)	1178	2390
Total Excess Import (MT)	3568	
Total Duty (Rs.)	7895251	16013933
Total Duty (Rs.)	23909184	
Total Interest @ 15% (Rs.)	22450250	
Total Customs Duty + Interest (Rs.)	46359434	

1.6 Thus, in respect of Authorization No. 0510270716 dated 17.08.2010, there was shortfall of export obligation by a quantity of 3191.349 MT. Against a total import of 4764.73 MT of goods the noticee was supposed to export 4261.834 MT of finished goods but they could export a quantity of 1070.485 MT only, resulting in shortfall by 3191.349 MT. This shortfall

tantamount to excess import of 3568 MT of the raw materials for which collective Customs duty benefit availed by the noticee comes to Rs.2,39,09,184/-.

1.7 Details of exports made, export shortfall and liability of customs duty against Advance Authorization No. 0510280306 are tabulated below:

Export shortfall in respect of AA No.0510280306 dated 24.12.2010		
Authorization No	510280306	dated 24.12.2010
Export Item	Cold Rolled Black Sheets	Cold Rolled Galvanized Sheets
Qty Imported	1216.66	3656.54
SION Norm	1.085	1.118
Qty to be exported	1121.35	3270.61
Actual Export made	1135.46	0
Shortfall in EO	NIL	3270.61

Total Export made in respect of AA No. 0510280306 dated 24.12.2010 for Cold Rolled Steel Sheet			
Sl. No.	S/Bill No.	S/B Date	Qty (MT)
1	4874866	09.04.2013	78.100
2	4877282	09.04.2013	77.480
3	4875341	09.04.2013	74.520
4	4879930	09.04.2013	74.730
5	4874952	09.04.2013	37.730
6	4893974	10.04.2013	75.750
7	4904329	10.04.2013	89.630
8	4892034	10.04.2013	90.170
9	4892355	10.04.2013	86.700
10	4892049	10.04.2013	94.210
11	4896715	10.04.2013	99.720
12	4892027	10.04.2013	75.750
13	4944182	13.04.2013	78.120
14	4944227	23.07.2013	78.140
15	4950967	15.04.2013	24.710
Total Export made			1135.460
Actual Export Obligation			1124.3
% of EO fulfilled in respect of Cold Rolled Steel Sheets			100.99

Calculation of Customs Duty liability in respect of AA No. 0510280306 dated 24.12.2010 for Galvanized Sheets	
BE No.	2534369
BE Date	05.01.2011
Total Import Made	3656.54
SION Norm	1.118
EO Fixed	3270.61
Export Made	NIL
Shortfall of EO	3270.61
Total Custom Duty FG	23995243
Qty-Excess Import	3656.54
Total Custom Duty / MT	6562
Total Custom Duty to be paid on excess import	23995243
Interest 15% PA	3599286
Interest 15% per day	9861
Number of Days/05.08.2016	1923
Total Interest	18962816
Total Custom Duty + Interest	42958058

1.8 As detailed above, in case of the Advance Authorization No. 0510280306 dated 24.12.2010, the noticee imported two different items and were supposed to export Cold Rolled Black Products against a part of the import and Cold Rolled Galvanized Goods against the rest of the imported goods. They imported 1216.66 MT *plus* 3656.54 MT goods under the Authorization. While 1216.66 MT was used to manufacture goods which were exported, whereas the quantity of 3656.54 MT was consumed for other than manufacturing export goods. Investigation revealed that in respect of the first part of 1261.66 MT, the noticee fulfilled export obligation in full but in respect of 3656.54 MT of import, they could not export any goods.

1.9 Total export obligation against import under Bill of Entry No. 2534369 dated 05.01.2011 and Advance Authorization No. 0510280306 dated 24.12.2010 was 3270.61 MT of Cold Rolled Galvanized Sheets/ Strips. The noticee could not export any goods against it. Therefore, the total amount of customs duty saved in respect of that quantity of the goods i.e. Rs. 2,39,95,243/- is payable by the noticee. Port-wise details of duty liability are as follows:

AA No. & Date	BE No. & Date	Port	Customs Duty Payable (Rs.)	Value (Rs)
0510270716 dated 17.08.2010	2850 & 2851 dated 03.09.2010	Mundra	2,39,09,184/-	15,26,32,986/-
0510280306 dated 24.12.2010	2534369 dated 05.01.2011	Kandla	2,39,95,243/-	15,12,97,517/-
TOTAL			4,79,04,427/-	30,39,30,503/-

1.10 The noticee applied to the Policy Relaxation Committee (PRC), DGFT, Delhi for extension of export obligation period. In their meeting No. 14/AM15 dated 19.12.2014 (Sr. No. 24), the PRC rejected their request and directed them to regularize the matter in terms of Para 4.28 of the Policy on payment of customs duty along with interest. Observation of the PRC was as under:

“The committee noted that the firm has made only 25% and 25.82% exports of its stipulated export obligation, within the original export obligation period against the referred Advance Authorizations, respectively. As such, there is no merit in the case for consideration. The Committee therefore did not accede to the request. The applicant is hereby directed to get-their cases regularized in terms of Para 4.28 of HBP.”

1.11 Advance Authorizations are issued by the Directorate General of Foreign Trade (DGFT) to importers for import of various raw materials without payment of customs duty as per Chapter 4 of the Foreign Trade Policy (FTP). In this case, relevant FTP is of 2009-14. Corresponding Chapter 4 of the Hand Book of Procedures (2009-14), Volume-I is applicable in this

case. Para 4.1.3 of the FTP allows duty free import of inputs which are to be physically incorporated in the export products. Para 4.1.5 of the FTP restricts use of such duty free imported goods and stipulates that such import will be with actual user condition. It will not be transferable even after completion of export obligation.

1.12 Thus, benefit of duty free import is available on specific condition that materials imported before fulfillment of export obligation are to be used in the manufacture of export products only, after allowing normal wastage. Physical incorporation of such materials in the export goods is mandatory under provisions of Para 4.1.3. Para 4.1.5 of the FTP. Further, after fulfillment of export obligations, such remaining goods can be used for manufacturing dutiable goods only and the same cannot be transferred or sold. Therefore, it appears from combined reading of Para 4.1.3 of the FTP in force at the time of issuance of the Authorizations and the above mentioned notification that exemption from customs duty is extended to the input materials subject to condition that such materials would be exclusively used in the manufacture of goods which would be ultimately exported.

1.13 Para 4.22 of the Hand Book of Procedures (2009-14), Volume-I, is applicable in this case which requires an importer to fulfill export obligation under an Advance Authorization within a period of 36 months from the date of issue of the Authorization. The Advance Authorization Nos. 0510280306 dated 24.12.2010 and 0510270716 dated 17.08.2010 were issued to the noticee as per provision of the FTP in force at that point of time as mentioned on the subject Authorizations. According to which the noticee had to complete their export obligation within 36 months from the date of issue of the Authorizations, in absence of extension by the DGFT.

1.14 Para 4.24 of the HBP makes it mandatory on the part of the Authorization holder to submit requisite evidence in support of discharge of export obligation in accordance with law within a period of two months from the date of expiry of export obligation period.

1.15 Para 4.28(iii) of the HBP provides that if export obligation is not fulfilled in terms of quantity and value both, for the regularization the Authorization holder had to pay customs duty on unutilized value of imported/ indigenously procured material along with interest as notified. It implies that the Authorization holder is duty bound to pay the proportionate amount of customs duty corresponding to the unfulfilled export obligation along with interest.

1.16 Condition (iv) of notification No. 96/2009-Cus. dated 11.09.2009, as amended, stipulates that in respect of imports made before discharge of export obligation, the importer at the time of clearance of the imported materials executes a bond with surety or security binding himself to pay on demand an amount equal to the duty leviable, on the imported materials in respect of which the conditions specified in the notification are not complied with, together with interest. In the present case the noticee grossly failed to observe and comply with the conditions of the subject notification, thereby rendering them liable to pay the amount of duty with interest in terms of the bond executed by them.

1.17 Condition (viii) of notification No. 96/2009-Cus. dated 11.09.2009, as amended, requires an importer to discharge their export obligation as specified in the authorization both in terms of value and quantity within the period as specified in the Authorization or within the extended period as may be granted by the Regional Authority by exporting resultant products manufactured out of the imported duty free materials.

1.18 Condition (ix) of notification No. 96/2009-Cus. dated 11.09.2009, as amended, requires an importer to produce evidence of discharge of export obligation to the satisfaction of the of customs authority within a period of thirty days from the expiry of the period allowed for fulfillment of export obligation. Failure on the part of the importer to furnish such particulars indicates that they could not complete their export obligation within the stipulated period of time allowed under the Policy and the notification. Such failure led to outright violation of the conditions of the notification read with the Policy in vogue rendering the duty free imported goods liable to confiscation under Section 111(o) of the Customs Act, 1962.

1.19 Condition No (x) of notification No. 96/2009-Cus. dated 11.09.2009, as amended, prohibits from selling or transferring the imported duty free materials under any circumstances. The said provision in clear terms states that such materials should not be sold or transferred. Therefore, the only option given to the importer is to utilize such materials for the purpose of manufacture of goods which would be ultimately exported. In the instant case instead of using such duty free materials for manufacture of export goods, the noticee consumed a major portion of the materials and the end products were sold in the open market. Only a portion of the goods, so manufactured out of the duty free imported materials were exported. By their act of diversion of manufactured product made out of the duty free

imports, the noticee contravened the said condition No. (x) of the notification No. 96/2009-Cus. dated 11.09.2009, as amended.

1.20 Condition (x) of the notification No. 96/2009-Cus dated 11.09.2009, as amended, is restrictive in nature and bars an importer from transferring or selling any materials imported duty free by under the subject notification. It put a ceiling on use of the raw materials otherwise except for the purpose of manufacture of "resultant products" i.e. export goods. Combined reading of the conditions of the notification and the provisions of Para 4.1.3 & Para 4.1.5 of the FTP shows that Advance Authorizations are issued on actual user condition and such duty free imported goods cannot be dealt with otherwise. Demand for such stringent adherence to the actual user condition is further bolstered by the fact that even in cases where imports are made after discharge of export obligation, importer does not have the liberty to sell it or transfer it, but he has to use the same for manufacturing dutiable goods. Both the notification and the Policy have made this obligatory.

1.21 In his statement dated 22.08.2016, Shri Ankur Saraf has admitted that major quantity of the said duty free imported goods were utilized for the purpose of other than manufacture of export goods. The said admission led to direct corollaries that the quantity of goods imported were used in manufacturing finished goods which have been cleared in domestic market. Such an act is in complete violation of condition (x) of the said notification. Such contravention of the condition (x) of the subject notification read with the relevant provisions of the Policy rendered the subject duty free imported goods liable to confiscation under section 111(o) of the Customs Act, 1962.

1.22 Under Para 4.22 of HBP (2009-14), Volume-I, and condition No. (viii) of notification No. 96/2009-Cus. dated 11.09.2009, as amended, it was made mandatory on the part of the noticee to discharge their export liability within the stipulated period. In the instant case, the noticee could not discharge their export liability within the original export obligation period. Even after completion of 6 and half years and 5 years from the date of issue of the respective Advance Authorizations, the noticee could not complete their export obligation. This resulted in non-discharge of export obligation. Therefore, it appeared that by their act of non-compliance of the aforesaid provisions of law, the noticee contravened the provisions of FTP (2009-14) and conditions of notification No. 96/2009-Cus. dated 11.09.2009, as amended. The noticee was duty bound to pay the amount of customs duty along with interest for the unfulfilled portion of export obligation in

compliance with Para 4.28 of the Policy and the provisions of the said notification, which they did not do.

1.23 Para 4.24 of the Hand Book of Procedures (2009-14), Volume-I and condition No. (ix) of notification No. 96/2009-Cus. dated 11.09.2009 provide that an importer should furnish details of evidence of discharge of export obligation to the satisfaction of the customs authority within a period of thirty days of the expiry of Authorization. In the instant case, it appeared that the noticee failed to fulfill the subject conditions and also preferred to suppress the fact of their failure from the government authorities with mala-fide intention of evading duty of Customs. The onus was on the noticee to bring it to the notice of the customs authority within 30 days from expiry of export obligation period about their inability to discharge export liability in full and at the same time they should have paid the differential amount of customs duty attributable to the materials imported in proportion with the unfulfilled export obligation. Such deliberate act of suppression on the part of the noticee resulted in non-payment of customs duty.

1.24 It appears that customs duty was not paid in respect of the goods imported under notification No. 96/2009-Cus. dated 11.09.2009, as amended, for the fact that export obligation was not fulfilled in respect of the same. Therefore, benefit of the said notification was not available in respect of the material goods. It appeared that the goods should be considered to be imported without payment of duty of customs and such customs duty appeared to be recoverable in terms of the bonds executed by the noticee in compliance with the conditions of notification No. 96/2009-Cus. dated 11.09.2009, as amended. Therefore, the amount of customs duty proportionate to the unfulfilled export obligation i.e. Rs. 4,79,04,427/- appeared to be recoverable from the noticee. It further appeared that for such non-payment of customs duty, interest on the said unpaid duty also becomes payable as per the bond furnished by them.

1.25 In his statement, the Authorized representative of the noticee admitted failure of the company to comply with the conditions and accepted that they could not fulfill export obligation for which they also failed to furnish requisite documents in support of such export obligation to the customs authority. He admitted that the noticee should have paid differential amount of customs duty attributable to the quantity of goods imported, against which export obligation could not be fulfilled. The noticee accordingly paid an amount of Rs. 4,79,04,427/- along with interest of Rs 4,24,82,976/- vide TR-6 Challans detailed below. Above admission and subsequent payment

towards customs duty further corroborates the charges framed against them for non-compliance of conditions of the customs notification No. 96/2009-Cus. dated 11.09.2009, as amended and the Policy.

Particulars of Payment of Customs Duty & Interest					
TR-6 No.	TR-6 Date	DD No.	DD Date	Customs Duty paid (Rs.)	Interest Paid (Rs.)
38805	03.10.2016	488815	27.09.2016	5000000	0
39818	21.12.2016	678059	13.12.2016	5000000	0
39817	21.12.2016	678075	19.12.2016	7500000	0
39836	22.12.2016	678087	20.12.2016	6409184	3590816
40003	04.01.2017	678133	28.12.2016	0	6000000
48834	22.02.2017	678316	17.02.2017	0	8787402
37620	18.07.2016	532699	13.07.2016	5000000	0
37620	18.07.2016	532715	14.07.2016	5000000	0
37908	05.08.2016	482604	01.08.2016	13995242.5	0
37908	05.08.2016	482604	01.08.2016	0	1004757.5
38179	23.08.2016	482660	17.08.2016	0	7500000
38366	02.09.2016	482723	30.08.2016	0	15600000
Total				47904427	42482976

1.26 The bonds executed under Section 143 gives authority to recover customs duty, short paid or not-paid, along with interest and holding goods liable for confiscation under section 111(o) of the Customs Act, 1962 in case such goods are imported by availing benefit of an exemption notification for which the noticee failed to comply with and/ or observe conditions laid down in the notification. Section 124 ibid authorizes the proper officer to issue show cause notice with conditions as aforesaid before confiscation of the goods and imposition of penalty.

1.27 From the facts and discussion hereinabove it appeared that:-

1.27.1 The noticee imported "Hot Rolled Non-Alloy Steel Sheets/Strips in Coil" availing conditional exemption under notification No. 96/2009-Cus. dated 11.09.2009, as amended in respect of Advance Authorizations. The notification stipulates that the exemption is on actual user condition and importer availing the benefit should use such materials for production of exports goods only unless and until specifically allowed otherwise and the same cannot be sold or transferred. The noticee appealed to the Policy Relaxation Committee (PRC) of DGFT for extension of period of export obligation in both the subject Authorizations, however, the Policy Relaxation Committee rejected their request. Para 4.1.5 of the Policy (2009 -14), restricts use of such duty free imported goods and stipulates that such import will be with actual user condition.

1.27.2 Para 4.1.3 of the FTP (2009-14), indicates that exemption from customs duty is subject to strict condition that materials imported under

Advance Authorization would be exclusively used in the manufacture of export goods. Para 4.22 of the Hand Book of Procedures (2009-14), Volume-I, requires an importer to fulfill export obligation under an Advance Authorization within a period of 36 months from the date of issue of the Authorization. However, the noticee failed to comply with the same. The noticee also failed to comply with the provision of Para 4.22 of the Hand Book of Procedures (2009-14), Volume-I, which requires Authorization holder to submit evidence of discharge of export obligation, in accordance with Para 4.25, within two months from date of expiry of period of obligation.

1.27.3 Para 4.28(iii) of the Hand Book of Procedures (2009-14), Volume-I provides that if export obligation is not fulfilled both in terms of quantity and value, the Authorization holder shall, pay to the Customs authorities, customs duty on unutilized value of imported/ indigenously procured material along with interest as notified. However, the noticee failed to comply with the condition and did not pay customs duty and interest till the matter was taken up for investigation by the DRI.

1.27.4 The condition (vi) of notification No. 96/2009-Cus. dated 11.09.2009 provides that at the time of clearance of the imported materials, the importer executes a bond binding himself to pay customs duty with interest, leviable on the imported materials in respect of which the conditions specified in the notification are not complied with. In the present case the noticee grossly failed to observe and comply with the conditions of the subject notification and have rendered themselves liable to pay the amount of duty with interest in terms of bond executed by them. Therefore an amount of Rs. 4,79,04,427/- appears to be recoverable from the noticee in terms of the conditions of the bond executed by them, under section 143 of the Customs Act, 1962. Further, interest on the said amount of duty also becomes payable in terms of the condition of the bond executed by the noticee and they are liable to pay interest @15%.

1.27.5 Failure to complete export obligation has led to outright violation of conditions of the notification and the Policy, rendering duty free imported goods liable to confiscation under section 111(o) of the Customs Act, 1962.

1.27.6 The authorized representative of the noticee admitted failure to comply with the conditions. Accordingly, the noticee paid an amount of Rs. 4,79,04,427/- towards customs duty along with interest of Rs 4,24,82,976/-.

The amounts so paid, towards duty and interest by the noticee are liable to be appropriated against the duty and interest payable by them.

1.27.7 The contraventions of the provisions of notification, the Customs Act, 1962 and the Foreign Trade Policy appears to have rendered the goods liable to confiscation under section 111(o) of the Customs Act, 1962, for being imported duty free without observing the conditions of the notification. The acts of omission and/ or commission, which resulted in non levy of duty and rendered the goods liable for confiscation for improper importation of goods by availing exemption under notification without observing conditions laid down under such notification, has rendered the noticee liable to penalty under Section 112(a) of the Customs Act, 1962.

1.28 In view of above, show cause notice F. No. DRI/KZU/CF/ENQ-72(INT-42)/2016 dated 23/25.05.2017 has been issued by the Additional Director General, DRI, Zonal Unit, Kolkata, calling upon M/s Asian Colour Coated Ispat Ltd., Gurgaon, Haryana to show cause to the Principal Commissioner of Customs, Kandla, as to why:

(a) Customs duty amounting to Rs. 2,39,95,243/- in respect of imports against Advance Authorization No. 0510280306 dated 24.12.2010 at Kandla port, should not be demanded and recovered from them under section 143(3) of the Customs Act, 1962;

(b) Subject goods having assessable value of Rs. 15,12,97,517/- imported through Kandla Port should not be held liable for confiscation under section 111(o) of the Customs Act, 1962;

(c) Interest should not be demanded and recovered from them for the delayed payment of customs duty on the offending goods under section 143(3) of the Customs Act, 1962;

(d) Amount of Rs. 9,03,87,402/- deposited by them, as discussed above, should not be appropriated towards payment of customs duty of Rs. 2,39,95,243/- and interest thereon;

(e) Penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962, for non-payment of customs duty, which rendered the goods liable to confiscation under section 111(o) of the Customs Act, 1962, and;

(f) The bond executed by them should not be enforced for recoveries and payments.

1.29 Vide the said show cause notice, M/s Asian Colour Coated Ispat Ltd., Gurgaon, Haryana have been further called upon to show cause to the Principal Commissioner of Customs, Mundra, as to why:

(a) Customs duty amounting to Rs. 2,39,09,184/- in respect of imports against Advance Authorization No. 0510270716 dated 17.08.2010 imported at Mundra Port, should not be demanded and recovered from them under section 143(3) of the Customs Act, 1962;

(b) Subject goods having assessable value of Rs. 15,26,32,986/- imported through Mundra port should not be held liable for confiscation under section 111(o) of the Customs Act, 1962;

(c) Interest should not be demanded and recovered from them for the delayed payment of Customs duty on the offending goods under section 143(3) of the Customs Act, 1962;

(d) Amount of Rs. 9,03,87,402/- deposited by them, as discussed above, should not be appropriated towards payment of customs duty of Rs. 2,39,09,184/- and interest thereon;

(e) Penalty should not be imposed upon them under section 112(a) of the Customs Act, 1962, for non-payment of customs duty, which rendered the goods liable to confiscation under section 111(o) of the Customs Act, 1962, and;

(f) The bond executed by them should not be enforced for recoveries and payments.

1.30 The SCN was answerable to the Principal Commissioner of Customs, Kandla in respect of import made at Kandla Port and to the Principal Commissioner of Customs, Mundra in respect of import made at Mundra port. Vide notification No. 7/2017-Cus. (N.T.) dated 31.07.2017, the Commissioner of Customs, Custom House, Kandla has been appointed as Common Adjudicating Authority to adjudicate subject show cause notice.

DEFENCE:

2.1 Vide letters dated 10.08.2017 and 26.02.2018 the noticee have filed their reply contending that:

(i) The DGFT, Delhi has issued the redemption letter No. 1225619 dated 23.09.2016 stating that export obligation against Advance Authorization No. 0510280306 dated 24.12.2010 has been met in full. Thus the case has been redeemed in terms of Para 4.26 of Handbook of Procedures 2004-09. On the basis of the same, vide order dated 16.12.2016 the Assistant Commissioner of Customs (EPM) has allowed cancellation of bond submitted against the said Advance Authorization and returned the cancelled bond to them.

(ii) The DGFT, Delhi has issued the redemption letter No. 1254624 dated 08.06.2017 stating that export obligation against Advance Authorization No. 0510270716 dated 17.08.2010 has been met in full. Thus the case has been redeemed in terms of Para 4.26 of Handbook of Procedures 2004-09. On the basis of the same, vide order dated 02.08.2017 the Assistant Commissioner of Customs (EPM), ICD, Tuglakbad, New Delhi has allowed cancellation of bond submitted against the said Advance Authorization and returned the cancelled bond to them.

(iii) In both the redemption letters, the DGFT has mentioned details of the payment of duty and interest for the imported raw material utilized for the manufacturing of goods which were not exported but cleared in the domestic market on payment of Central Excise duty. The DGFT, New Delhi and the Customs, ICD, Tuglakbad, New Delhi have issued the required redemption letter and returned the cancelled bonds against the both authorization without levy of penalties as no compliance is pending against both the Advance Authorizations.

(iv) Since the Customs, ICD, Tuglakabad, New Delhi has cancelled bonds against Advance Authorizations No. 0510280306 dated 24.12.2010 and 0510270716 dated 17.08.2010, neither the customs notification nor the provisions of the FTP require to invoke Section 111(o) and Section 112(a) of the Customs Act, 1962. Confiscation and penalty are not warranted as the authorizations have been redeemed and bonds have been cancelled and returned to them by Customs.

(v) The export obligation could not be fulfilled due to international market conditions. When they started fulfilling export obligation, the international market conditions were not favorable and overall export of such products was decreased. To save the domestic industry, the Government imposed condition of minimum import price (MIP) and also levied safeguard duty and antidumping duty. Under the said scenario even major steel companies became defaulters. They fulfilled a part of their export obligation. In respect of the part which could not be fulfilled due to international market conditions, they have made payment of customs duty with interest. They started depositing customs duty proportionate to the unfulfilled export obligation as and when they used the imported material in manufacturing final products for home consumption. They started paying such customs duty prior to issuance of summons to them by DRI.

(vi) The non-fulfillment of export obligation was beyond the control of the noticee. Due to collapse of international market it was impossible to fulfill export obligation, therefore, section 111 and 112 ibid should not be invoked as held in judicial pronouncements in the matters of **(a)** Taurus Novelties Ltd. Vs. Commissioner [2004 (173) ELT 100 (Tri.)], **(b)** Meirs Pharma (India) Pvt. Ltd. Vs. Commissioner [2004 (167) ELT 53 (Tri.)], **(c)** Fal Industries Ltd. Vs. Commissioner [2003 (159) ELT 215 (Tri.)], **(d)** Dyna Lamps and Glass Works Ltd. Vs. Commissioner [2003 (157) ELT 73 (Tri.)] and **(e)** Suvarna

Aqua Farm & Exports Ltd. Vs. Commissioner of Customs, Guntur [2005 (190) ELT 284 (Tri.-Bang.)].

(vii) Ministry of Commerce imposed Minimum Import Price (MIP) on all imports of Iron and Steel Products into India by importers and also levied Safeguard Duty including Anti-Dumping Duty on such imports at a time when the noticee were in the process of completing the export obligation against the import of the 3656.54 MT under the Advance Authorization. The overall Industry trend starting from the date of import till March, 2016 indicates that by the time the Government imposed the Safeguard duty to save the Domestic Industry from the impact of surge in imports, the exports considerably reduced to zero level in case of secondary products to 10 to 15% of the earlier exports. This is a proven fact that after a gap of 5 years, India became the exporters for the items being put in imports as MIP and Safeguard duty could not save the domestic market and finally imposed ADD on such imported Steel products.

(viii) The notification No. 96/2009-Cus. dated 11.09.2009, as amended, is a self-contained code. It provides for payment of duty with interest in the event of failure to fulfill export obligation. It does not provide for confiscation and penalty. No action outside the notification is attracted. In support of this contention, they have relied order of Hon'ble CESTAT in the matters of Oswal Paper and Allied Industries Vs. Commissioner of Customs, Amritsar [2006 (206) ELT 991 (Tri. - Del.)] which was upheld by Hon'ble Punjab and Haryana High Court [2016 (341) ELT A155 (P & H)].

(ix) As the imported HR Steel products were of corrosive nature, they were not in a position to sustain its quality over period of time and export of the same would have led to large scale rejections and huge financial losses. Due to above constraint the imported products were compulsorily consumed in the manufacture of the final product and cleared for home consumption when the same could not be exported within the stipulated period of the Authorization. The loss on account of export was more in comparison to be used for home consumption.

(x) The goods are not liable for confiscation as there is nothing in Para 4.28 of the HBP (2009-14), Volume -I which would indicate that partial non-utilization of imported raw material to the extent of 3656.54 MTs for export would constitute a serious offence. There are cogent reasons attributed for non-export of the finished goods. It is also on record that the Policy

Relaxation Committee in their Meeting Minutes dated 19.12.2014 has also upheld the fact that the non-export of the final product was clearly bona-fide in nature as seen from the Development Commissioner's letter, wherein it has been directed to follow the procedure laid down under Para 4.28 of the HBP and this is in itself sufficient to accept the reasons that due to adverse international market prevailing at the time of export, the noticee was not in a position to fulfill the remaining export obligation as stated above and had to clear the final product for home consumption on payment of Central Excise duty after payment of customs duty with interest on the said imported quantity of 3656.54 MT.

(xi) The DGFT has given relief by issuing Public Notices No. 32 and 34 giving one time relaxation to the exporters who have imported raw material under advance licenses which were issued prior to 5.6.2012 for manufacturing goods for export but could not complete export obligation within the period allowed under the advance authorization. This type of relaxation is always given by the government through DGFT to the exporter not only to boost the export but understanding the actual problem faced by the exporter. They were affected exporter due to adverse international market conditions and they could have availed the one time relaxation under the above said Public Notices for closer of the licences as permitted under the said public notices no. 32 & 34 but having redeemed both advance authorizations and also got bond cancelled the matter is closed once for all.

(xii) In terms of notification No. 96/2009 -Cus. dated 11.9.2009, under which the import was carried out, the only requirement, in the event of failure to carry out export, is to pay the whole of the duty of Customs on the imported goods and interest thereon. Consequence of failure in fulfilling export obligation is made clear in clause (iv) of the notification.

(xiii) The Para 4.28 of the HBP (2009-14), Volume-I does not provide that partial non-utilization of imported raw material would constitute serious offence so the goods are not liable to confiscation. Section 111 ibid reads "confiscation of improperly imported goods, etc.". In the present case, imports were under a valid Advance Authorization with a scheme to promote exports. All the imports were as per the governing notification and both the Advance Authorizations have been redeemed and bonds also returned by Customs after cancellation thus there is no case of any impropriety committed by the noticee at the time of import. Therefore, section 111(o) and section 112(a) of the Customs Act, 1962 are not attracted.

(xiv) In the case of Commissioner of Customs (Prev.) Mumbai Vs. M. Ambalal & Co. [2010 (260) E.L.T. 487 (SC)], the Hon'ble Supreme Court has differentiated situations where the exemption notification should be strictly followed and situations where they should be liberally interpreted. Also, the Apex Court in CCP Vs. Reliance Petroleum Ltd. [(2008 (227) E.L.T. 3 (SC)] held that the purpose for which the exemption was granted must be considered in its entirety. The purpose of grant for exemption cannot be lost sight of. An exemption notification should be construed directly but it is also well settled that interpretation of an exemption notification would depend upon the nature and extent thereof. In Bharat Diagnostic Centre Vs. Commissioner of Customs [2014 (307) ELT 632 (S.C.)], the Hon'ble Supreme Court has explained the manner in which an exemption notification has to be interpreted. The Apex Court has held that to ascertain the applicability of an exemption notification, it has to be construed strictly and once the assessee crosses the threshold stage, a liberal approach has to be adopted.

In view of above contentions, the noticee has requested to drop the SCN as not sustainable on the matters pertaining to confiscation and penalty.

2.2 Personal hearing in the matter was fixed as 15.03.2018 but vide letter dated 13.03.2018, the noticee requested for adjournment. Therefore, next date of personal hearing was fixed as 28.03.2018. Shri Namdeo Pinglay, Advisor of the noticee appeared and reiterated the reply in written submission. He also stated that the material imported by them under advance authorization could not be utilized for manufacture of export product due to adverse market conditions and therefore they made the duty payment along with interest and utilized the material for manufacturing and domestic clearance. EODC has been issued by the DGFT Authorities. He prayed to drop of the adjudication proceedings in light of these facts.

DISCUSSION AND FINDINGS

3.1 I have carefully gone through the show cause notice, relied upon documents, submissions made by the noticee in writing as well as during personal hearing and material available on record.

3.2 Following issues are to be decided in this case:

- Whether duty and interest are recoverable from the noticee in respect of non-fulfillment of export obligation against a part of the duty free imports under Advance Authorizations;
- Whether the impugned goods are liable for confiscation under section 111(o) of the Customs Act, 1962;
- Whether the noticee is liable to penalty under section 112(a) *ibid.*

3.3 I find that under Advance Authorization No. 0510270716 dated 17.08.2010, there was shortfall of export obligation by a quantity of 3191.349 MT. The noticee was bound to export 4261.834 MT of finished goods but they could export a quantity of 1070.485 MT only. Considering the ratio laid down by Standard Input Output Norms (SION 61/473), this shortfall tantamount to excess duty free import of 3567.937 MT. Similarly, under Advance Authorization No. 0510280306 dated 24.12.2010, there was excess import of a quantity of 3656.54 MT. Duty with interest on the above quantities of 3567.937 *plus* 3656.54 MT has been demanded vide the impugned show cause notice.

3.4 The noticee availed the exemption as provided in the notification No. 96/2009-Cus. dated 11.09.2009, which governed the duty free import under Advance Authorization at the relevant time. As per those Authorizations, the noticee was required to export, within 36 months, whole of the finished goods manufactured from the duty free imported inputs. However, the noticee exported only a part of such finished goods. Under the Advance Authorization No. 0510270716 dated 17.08.2010 they fulfilled export obligation of around 25% and under Advance Authorization No. 0510280306 dated 24.12.2010 they fulfilled export obligation of around 23%. These facts have been narrated in the show cause notice and the same have not been contested by the noticee also. Therefore, I find that these are admitted facts of the case.

3.5 The show cause notice has been issued proposing to enforce the provisions of notification No. 96/2009-cus. dated 11.09.2009, Para 4.1.3 and 4.1.5 of FTP (2009-14) and Para 4.28 of Hand Book of Procedure (2009-14) Volume-I.

3.5.1 I have gone through the provisions mentioned above. The condition (iv) of the subject notification stipulates that in respect of imports made before discharge of export obligation, the importer has to execute a bond with surety or security binding himself to pay on demand an amount equal to the

duty leviable, on the imported materials in respect of which the conditions specified in the notification are not complied with, together with interest. The condition (viii) of the notification requires an importer to discharge their export obligation as specified in the authorization both in terms of value and quantity within the period as specified in the Authorization or within the extended period as may be granted by the Regional Authority by exporting resultant products manufactured out of the duty free imported materials. The condition (ix) of the notification requires an importer to produce evidence of discharge of export obligation to the satisfaction of the customs authority within a period of thirty days from the expiry of the period allowed for fulfillment of export obligation. The condition (x) of the notification prohibits sale or transfer of the duty free imported materials under any circumstances. Thus, the same are to be utilized only in manufacturing final products to be exported.

3.5.2 I have gone through Para 4.1.3 and 4.1.5 of FTP (2009-14). Para 4.1.3 provides for issuance of Advance Authorization to allow duty free import of inputs which are physically incorporated in export product. Para 4.1.5 provides that the Advance Authorization and / or materials imported thereunder will be with actual user condition.

3.5.3 I have also gone through Para 4.22, 4.24 and 4.28 of the HBP (2009-14) Volume-I. The Para 4.22 provides that export obligation shall be fulfilled within 36 months from the date of issue of Advance Authorization. The Para 4.24 provides for submission of evidence of fulfilment of export obligation within a period of two months from the date of expiry of period of obligation. The Para 4.28 is in respect of regularization of cases of *bona fide* default in fulfillment of export obligation in terms of quantity or value or both. For the cases of nonfulfillment of export obligation in terms of quantity and value both, clause (iii) of the said Para 4.28 provides for payment of customs duty on unutilized material with interest at the notified rate.

3.6 I find that the above provisions specifically provides that when an importer fails to fulfill export obligation under the Advance Authorization scheme, he is liable to pay duty on that part of the duty free imported goods which could not be utilized in manufacturing the export goods. In the instant case it is undisputed fact that the noticee could not fulfill a part of their export obligation and 3567.937 MT *plus* 3656.54 MT of duty free imported goods were used in manufacturing products other than for export purpose. Thus, in view of the above discussed provisions, the noticee was bound to pay the proportionate amount of customs duty corresponding to the

unfulfilled export obligation. Further, as provided in condition (iv) of the subject notification, the noticee was also liable to pay interest on duty at the rate of 15% per annum from the date of clearance of such material. On the basis of these facts, duty and interest thereon has been demanded from the noticee. In view of the facts of the case, I find that as far as recovery of duty with interest is concerned, these provisions are squarely applicable in this case. The noticee has made payment of duty with applicable interest at the rate of 15% as stipulated in the subject notification even before issuance of the show cause notice. Therefore, the show cause notice also proposes appropriation of the said amount against their liability arising from above provisions. In their defense reply the noticee has not contested demand of duty and interest and appropriation of the same against respective Bills of Entry. In view of facts of the case and the provisions discussed above, I hold that total customs duty amounting to Rs. 4,79,04,427/- (Rs.2,39,09,184/- + Rs. 2,39,95,243/-) and interest thereof amounting to Rs. 4,14,13,066/- (Rs. 2,24,50,250 + 1,89,62,816/-) are recoverable from the noticee. As the amounts of demanded duty and interest have already been paid, I also hold that the same are liable to be adjusted and appropriated against their liability arising due to partial non-fulfilment of export obligation by them against the subject two Advance Authorizations.

3.7 Vide the impugned show cause notice, the duty has been demanded under section 143(3) of the Customs Act, 1962 which reads:

“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 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.”

3.8 On a plain reading of the above provision, it is clear that the section 143(1) *ibid* provides for import against bond, as made by the noticee in the instant case. The section 143(2) provides for cancellation of bond after completion of the thing specified in the bond. This sub-section provides for discharging the bond in full and to deliver the canceled bond to the person who has executed it demands for the same. In the instant case, the bonds filed against both the Advance Authorizations have been cancelled by the Customs authorities at ICD, Tughlakabad, as provided under section 143(2) *ibid*. The section 143(3) provides that if the thing is not done within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall be entitled to proceed upon the bond in accordance with law. I find that in the instant case the duty and interest thereon was paid by the noticee. After that the DGFT authorities issued redemption letters dated 22.09.2016 and 02.06.2017 against the subject Advance Authorizations. After that the bonds executed by the noticee were cancelled by the Customs authorities at ICD, Tughlakabad. Thereafter, vide the impugned show cause notice duty has been demanded under section 143(3) *ibid* i.e. by enforcing the bonds. Thus, the customs duty has been demanded against the bonds which were already cancelled by the jurisdictional Customs authorities and the cancelled bonds were returned to the noticee. In view of the provisions of section 143(3) *ibid*, duty and interest cannot be demanded after cancellation of the bonds and thus section 143(3) *ibid* is not applicable in the instant case. As the noticee had made due payments of duty and interest prior to cancellation of bonds, there was no necessity to demand the duty and interest by issuance of a show cause notice invoking section 143(3) *ibid*. However, I find that the amount paid by the noticee prior to cancellation of the bonds in terms of the condition of the notification is liable to be appropriated against their liability of duty and interest as proposed in the show cause notice.

3.9 Though the noticee has not challenged demand of duty and interest but they have vehemently contested the proposal of confiscation and penalty. I proceed to consider applicability of section 111(o) of the Customs Act, 1962 in respect of proposal to hold the impugned goods liable for confiscation. Confiscation has been proposed in the show cause notice on the grounds that the noticee contravened the conditions (viii), (ix) and (x) of the subject notification as they failed to complete the export obligation, subsequently

failed to produce evidence of discharge of export obligation to customs authorities within specified period and used the imported inputs in manufacturing goods for supply to domestic market.

3.10 The noticee has argued that the DGFT issued Public Notices No. 32 and 34 giving one time relaxation to the exporters who have imported raw material under advance licenses but could not complete export obligation under Advance Authorization. They could not avail the relaxation as both the Advance Authorizations were redeemed and the bonds were cancelled. I find that as the said benefit was not availed by them, they cannot take shelter of such Public Notices. Thus, this argument is not of help to the noticee and the issue has to be decided on the basis of the provisions invoked in the show cause notice.

3.11 Further, the noticee has contended that the notification No. 96/2009-Cus. dated 11.09.2009, as amended, is a self-contained code which provides for payment of duty with interest in the event of failure to fulfill export obligation and it does not provide for confiscation and penalty. It is their submission that no action outside the notification is attracted. They have also submitted that the goods are not liable for confiscation because Para 4.28 of the HBP (2009-14), Volume -I does not provide that partial non-utilization of imported raw material constitute a serious offence. However, I find that the provisions of confiscation under section 111 of the Customs Act, 1962 are independent provisions and if a notification or FPT or HBP does not provide for situations of confiscation, it does not mean that provisions of section 111 are not attracted. Being independent legislative provision, section 111 *ibid* is applicable in all the situations which have been enumerated in it. Thus, I do not find force in this contention of the noticee.

3.12 The noticee has relied upon various judgments wherein the Hon'ble Supreme Court has differentiated situations where the exemption notification should be strictly followed and situations where they should be liberally interpreted and that the purpose for which the exemption was granted must be considered in its entirety. The Hon'ble Supreme Court has explained the manner in which an exemption notification has to be interpreted. I find that the cited judgments deal with the interpretation of notifications but the matter under consideration in this case is applicability of section 111(o) of the Customs Act, 1962. Therefore, I find that the said judgments were issued in prospects different than the present case and thus the same are not relevant in this case.

3.13 The noticee has further contended that the subject imports were as per the governing notification and both the Advance Authorizations have been redeemed and bonds have been returned by Customs after cancellation thus there is no case of any impropriety committed by the noticee at the time of import and so section 111(o) and section 112(a) of the Customs Act, 1962 are not attracted. I find that the clause (o) of section 111 ibid provides for confiscation of the imported goods which are exempted subject to any condition and such condition is not observed, unless the nonobservance of the condition is sanctioned by the proper officer. In this case, the noticee made payments of applicable duty with interest and the concerned DGFT authorities issued EODC. The customs authorities also cancelled the bonds furnished by the noticee. Therefore, I find that the nonobservance of the condition in this case, i.e. non-fulfillment of export obligation was sanctioned by the proper officers by accepting the duty payment and issuance of EODC and cancellation of bond. I rely on the order of Hon'ble CESTAT in the matter of Motorola India Ltd. Vs. Commissioner of Customs, Bangalore 2001 (138) ELT 870 (Tri. - Bang.), wherein it was held that:

"5.(e) On the date of issue of this notice i.e. 8-4-2000, there was no offence of Import Control Regulations as on that date the DGFT had issued the necessary waiver of Bond/ LUT condition/ Redemption of Bank Guarantee/ LUT Condition against the said licence on 2-2-2000 by issuing a certificate of discharge of the export obligation in full, after scaling down the export obligation. Therefore, on the date of issue of this notice, there was no export obligation outstanding as per the proper officer of the DGFT. Following their certificate, the Commissioner has observed in his finding that Assistant Commissioner has withdrawn the notice issued demanding duty on goods cleared on the Bills of Entry duty free as demanded vide his notice dated 5-2-2000. Assistant Commissioner is admitted by the Commissioner to be the 'proper officer' to monitor the Export in DEEC scheme of goods allowed exemption. Therefore, on 8-3-2000, the proper officers of DGFT and Customs had permitted the relaxation of the export obligation under Notification 30/97-Cus., dated 1-4-1997. Section 111(o) of the Customs Act, 1962 reads as follows -

"(o) Any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer".

When the non-performance of the obligation have been relaxed and settled by the proper officers as in this case, before 8-3-2000 it will be deemed to be sanctioned by the proper officer. Therefore, there was no cause for the Commissioner to have issued a show cause notice on 8-4-2000 and confirmed the confiscation of the goods under Section 111(o) of the Customs Act, 1962, when duty and interest have been duly discharged. We therefore, do not uphold the confiscation of the goods as arrived at by the Commissioner. Therefore, there is no cause to impose any redemption fine. The same is required to be set aside."

3.14 As per the show cause notice, export obligations of only around 23% and 25% percent of imported goods were completed against subject Advance

Authorizations. In respect of remaining major part of imported goods the show cause notice alleges that the noticee failed to complete their export obligation and used such import goods for purposes other than in manufacturing export goods. The noticee has also not contested this fact. I find it relevant to ascertain as to whether the payments of duty and interest were made by the noticee prior to using the imported raw material for manufacturing final products for home consumption of otherwise.

3.14.1 I find that the show cause notice does not bring out that the part of the duty free imported goods were used in manufacturing prior to payment of duty and interest by the noticee or not. No evidence to that effect has been brought out in the show cause notice. Dates of payments of duty and interest made by the noticee are available but the dates of using such goods in manufacturing imported goods have not been brought out.

3.14.2 I have gone through the statement of Shri Ankur Saraf wherein he has admitted that major quantity of the duty free imported goods was utilized for the purpose of other than manufacture of export goods. He did not state that duty was paid on the imported raw material when used in the manufacturing of final products for home consumption. However, the noticee has contended that Shri Ankur Saraf deposed that he was looking after export and domestic market activities only, therefore, he could not have been aware of the fact that the customs duty was paid on the imported raw material when used in the manufacturing of final products for home consumption.

3.14.3 In their defense reply dated 10.08.2017 it has been specifically stated that they started depositing customs duty proportionate to the unfulfilled export obligation as and when they used the imported material for manufacturing final product for home consumption, even prior to issuance of summons to them by DRI. There is nothing in the show cause notice which can disprove the contention that the noticee made payments of proportionate duty as and when they used the imported goods in manufacturing final product for home consumption. In view of these facts and circumstances, I find force in the contention of the noticee that the payments of duty and interest were made by them prior to using the imported raw material in manufacturing final products for home consumption.

3.15 The noticee has contended that due to adverse international market conditions they were not able to fulfill their export obligation. In this connection, they have relied upon the order of Hon'ble CESTAT in the matter

of Taurus Novelties Ltd. Vs. Commissioner [2004 (173) ELT 100 (Tri.)]. However, I find that the said order did not attain finality as it was remanded by the Hon'ble Karnataka High Court [2015 (322) ELT 297 (Kar.)]. They have also relied the case law in the matter of Dyna Lamps and Glass Works Ltd. Vs. Commissioner [2003 (157) ELT 73 (Tri.)]. I find that issue involved in that matter was that the SCN was issued beyond the statutory period. As the issue under consideration in this case is different I find that the said order is not relevant to this case. Further they have relied on judicial pronouncements in the matter of Meirs Pharma (India) Pvt. Ltd. Vs. Commissioner [2004 (167) ELT 53 (Tri.)], Fal Industries Ltd. Vs. Commissioner [2003 (159) ELT 215 (Tri.)] and Suvarna Aqua Farm & Exports Ltd. Vs. Commissioner of Customs, Guntur [2005 (190) ELT 284 (Tri.-Bang.)]. In these three orders/ judgments it was noted that there were sincere efforts to fulfil the export obligations but the circumstances were beyond their control and they could not fulfil the export obligations. In these three cases it was not alleged that the parties had made any deliberate attempt to avail benefit of notification with a view to gain any benefit and their *bona fides* were also not doubted.

3.16 I find that it is not a case of deliberate diversion of duty free imported goods against the provisions of the subject notification and provisions of the relevant FTP. In this case, partial export obligation was fulfilled and in respect of non-fulfilment of remaining obligation it has been contended that they failed to fulfill export obligation due to reasons beyond their control. I find that in the present case the noticee has fulfilled part export obligation and in respect of unfulfilled obligation, they have contended that due to adverse international market condition they could not fulfill remaining export obligation. The show cause notice did not allege that the noticee has deliberately attempted to avail benefit. I find that the noticee also approached Policy Relaxation Committee (PRC). When they could not get relief they started making payment of duty and interest while using the duty free goods for manufacturing products for supply to domestic market. I find that they started making such payments even before initiation of investigation against them. In view of these facts of the case, I find the above three orders of Hon'ble CESTAT to be relevant in this case.

3.17 The section 111(o) of the Customs Act, 1962 provides for confiscation of imported goods which are exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under the Customs Act, 1962 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. The notification No. 96/2009-cus. dated 11.09.2009 provides for conditional exemption from customs duty. It has been alleged that the noticee violated conditions binding them to use such imported goods in manufacturing of export goods, to fulfill export obligation in specified period. The condition (iv) of the said notification provides for executing bond by the importer, binding himself for payment of duty with interest at the rate of 15%, on the imported materials in respect of which the conditions of the notification are not complied. I find that in the matter of Commissioner of Customs, Bangalore Vs. Indo Nissin Foods Ltd. [2013 (294) ELT 259 (Tri. – Bang.)], the Hon'ble CESTAT has held that:

“4. We have considered the submissions made by both sides. According to the Notification No. 110/95-Cus., dated 5-6-1995, if the importer does not fulfil the export obligation, the importer is required to pay duty leviable on the goods imported but for the exemption in the same proposition in the unfulfilled portion of the export obligation. The Notification itself provides the importer has to pay duty and interest and also proportionate of total export obligation. When the notification itself provides for a situation where an importer is not able to fulfil the obligation, the question of violation of conditions of notification does not arise.”

3.18 There is a clause in the section 111(o) stating that imported goods are liable to confiscation for violation of conditions, unless such non-observance is sanctioned by the proper officer. I find that though the noticee failed to fulfill condition of export obligation but the notification also provides consequential action of making payment of duty with interest, which has been fulfilled by the noticee. It has been accepted by the DGFT authorities by issuing EODC and by customs authorities by cancelling the bonds. I find that it amounts to sanction of non-observance of the conditions by the proper officer.

3.19 As discussed above, export obligation in respect of a part of imported goods was fulfilled. In respect of balance part of goods, the noticee made payments of duty and interest while using the duty free imported goods in manufacturing of finished goods for sale in domestic market. Further, the non-observance of the conditions has been sanctioned by the proper officer by accepting the payments of duty with interest and cancelling the bonds executed by the noticee. The contention of failure of export obligation as a result of international market condition is also relevant in view of the above discussed three orders of Hon'ble CESTAT. Therefore, in view of above observations, I find that the impugned goods are not liable to confiscation under section 111(o) of the Customs Act, 1962.

3.20 I proceed to consider whether penalty under section 112(a) of the Customs Act, 1962 is liable to be imposed upon the noticee. The above provision provides for penalty on a person who does or omits to do any act or abets the doing or omission of such an act, which would render imported goods liable to confiscation under section 111 ibid. Since in the instant case it has been found that the goods are not liable to confiscation under section 111 ibid, I find that penalty under section 112(a) ibid is not attracted.

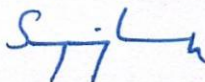
4. In view of the above, I pass the following order:

ORDER

(a) I confirm the demand of customs duty amounting to Rs. 2,39,95,243/- and interest thereon amounting to Rs. 1,89,62,816/- under Advance Authorization No. 0510280306 dated 24.12.2010 in respect of import at Kandla port. As the said amounts of duty and interest have already been paid by M/s. Asian Colour Coated Ispat Ltd., I order to appropriate the same.

(b) I confirm the demand of customs duty amounting to Rs. 2,39,09,184/- and interest thereon amounting to Rs. 2,24,50,250/- under Advance Authorization No. 0510270716 dated 17.08.2010 in respect of import at Mundra port. As the said amounts of duty and interest have already been paid by M/s. Asian Colour Coated Ispat Ltd., I order to appropriate that same.

(c) I drop the proceedings in respect of confiscation of the impugned goods and imposition of penalty on M/s. Asian Colour Coated Ispat Ltd.


[SANJAY KUMAR AGARWAL]
COMMISSIONER

BY RPAD/ SPEED POST:

To,

M/s. Asian Colour Coated Ispat Ltd., "ACCIL" House, 26-P, Sector-33, Gurgaon, Haryana-122001.

COPY TO:

- (1) The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad.
- (2) The Additional Director General, DRI, Zonal Unit, 8, Ho Chi-Minh Sarani, Kolkata -700 071.
- (3) The Commissioner of Customs, CH, Mundra.
- (4) The Deputy/Assistant Commissioner (Recovery), CH, Kandla.
- (5) The Deputy/ Assistant Commissioner (Prosecution), CH, Kandla.
- (6) The Deputy/ Assistant Commissioner (Gr.-VII), CH, Kandla.
- (7) Guard file.