



DIN-20240571ML0000001E5B

SHOW CAUSE NOTICE
(UNDER SECTION 124 OF THE CUSTOMS ACT, 1962)

Whereas, M/s Vishnu Export (hereinafter referred to as "said SEZ unit") is a SEZ unit situated at Unit No. 101 to 206, Gokul SDF Complex, Phase-II, Kandla Special Economic Zone, Gandhidham. Letter of Approval (LoA) No.010/2013-14 dated 18.09.2013 was granted to them vide F.No. KASEZ/IA/010/2013-14 (**RUD-1**) by the Development Commissioner, Kandla SEZ under Section 15(9) of the SEZ Act read with Rule 18 of the SEZ Rules,2006 to operate as an SEZ unit and carry out authorized operations of "Manufacturing activity".

2. Whereas, during the scrutiny of the documents for the period 2019-2021, the Senior Audit Officer (CRA-I) noticed that the unit is undertaking certain un-authorised operations. The said observations were communicated vide HM dated 01.10.2021(**RUD-2**) and subsequently vide Para 3 of the LAR dated 03.11.2021 (**RUD-2**). During the course of test check of the records, it has been noticed that the said SEZ unit had imported consignments of "Betel Nuts -CTH 0802" having CIF value lower than the restricted import rate i.e. Rs.251 per KG, resulting in incorrect duty foregone on unauthorized imports. The details of the goods mentioned in the Audit Para are listed in Annexure-A to this Notice.

3. Whereas, the said SEZ was granted LoA dated 18.09.2013 to undertaking authorized operations of "Manufacturing activity" of Pan Masala (ITC HS 21069020) and Pan Masala Containing Tobacco- Guthka (ITC HS 24039990), subject to terms and conditions mentioned thereof. The condition no. 4 of the said LoA stipulates that the said SEZ Unit is not allowed to import items prohibited under the ITC (HS) Classifications of Export and Import items. The condition no. 4 of the LoA reads as:

"4) You may import or procure from the Domestic Tariff Area all the items required for your authorized operations under this approval, except those prohibited under the ITC (HS) Classifications of Export and Import items"

3.1. Whereas, DGFT vide notification no. 20/2015-20 dated 25.07.2018 (**RUD-3**)has amended the import policy for goods falling under Chapter sub-heading 080280 from "Free" to "Prohibited" and the Policy condition is revised to "However, import is free if CIF value is Rs.251/- and above per Kilogram". Subsequently, DGFT vide notification no. 57/2015-20 dated 14.02.2023(**RUD-3**)has amended the import policy condition for goods falling under Chapter 080280 to "a) However, import is free if CIF value is Rs.351/-

and above per Kilogram; b) MIP conditions, however, will not be applicable for imports by 100% Export Oriented Units (EOUs) and units in the SEZ subject to the condition that no DTA sale is allowed" and the import policy is not altered and mentioned as "Prohibited". Whereas, by virtue of above said notifications the import of goods falling under Chapter sub-heading 080280 stands "Prohibited" and import is subject to MIP mentioned therein. Further, w.e.f. 14.02.2023, the imports into SEZ are exempted from MIP conditions subjected to fulfillment of the conditions stipulated therein.

3.2. Whereas, the audit observations were communicated to the SEZ Unit vide letter dated 13.10.2021 (**RUD-4**) issued from F.No. KASEZA/CUS/D&R/Audit/13/21-22 and requested the unit to pay the entire outstanding amount along with applicable interest or submit a reply. Whereas, in response to aforesaid letter, the SEZ Unit vide their letter dated 07.01.2022 (**RUD-4**), inter-alia, submitted:-

- a. that they are an approved unit bearing Letter of Approval for undertaking authorized operations of Manufacturing Activity of Pan Masala, Pana Masala containing tobacco, Zarda, Khaini.
- b. that they have been permitted to import areca/ betel nut for self-consumption and authorized operation by the office of the Development Commissioner
- c. that they have been permitted to import any items required for authorized operation except those prohibited under the ITC (HS) Classification of export and import items.
- d. That they are undertaking the authorized operation in compliance to the letter of approval issued to their unit.
- e. That the imported areca/ betel nut is being strictly utilized for manufacturing of Pan Masala containing tobacco-Guthka.
- f. That the final product manufactured out of imported areca/ betel nut is being exported.
- g. That they are not selling any of items i.e. Betel nut or guthka in domestic tariff area.
- h. That the duty payment and interest thereof are not applicable to them as imported areca/ betel nut are not removed in domestic tariff area and imported areca/ betel nut is utilized for manufacturing and export of the finished goods.

3.3. Based on the Audit objection raised by the CRA team, analysis of import data downloaded from NSDL SEZ Online data has been carried out. During the analysis of import data, it is observed that, during the subsequent period, the said SEZ Unit continued to indulge in unauthorized import of Arecanuts/ Betelnuts falling CTH 080280 in contravention to MIP conditions stipulated in Import Policy conditions. The details of imports made by the said SEZ Unit in contravention to the MIP conditions, for the period from 2019-2023 (up to 14.02.2023) are tabulated in Annexure-B attached to this SCN. Further, based on the description in the respective Bills of entry mentioned at Sr.No. 23 to 28 in Annexure-B, it is also observed that the said SEZ Unit had mis-classified the imported "Betelnut" under CTH 08029000, which are rightly classifiable under CTH 08028010.

4. **Legal Provisions:**

Whereas, the activities of admission and clearance of goods by SEZ

units, having approval granted under Section 15 of the SEZ Act, 2005 and Rule 18 of the SEZ Rules, 2006, are regulated as per the provisions & procedures contained in the SEZ Act, 2005 and Rules made there-under. The following are the legal provisions, which are in general applicable in the present case. The list given herein is indicative and not exhaustive, as the context of legal provisions may otherwise require reference of other legal provisions, reference of which are also to be invited, as and when required:

4.1. The Customs Act, 1962:

- 4.1.1.** Section 46 of the Customs Act, 1962
- 4.1.2.** Section 2(33) of the Customs Act, 1962
- 4.1.3.** Section 2(39) of the Customs Act, 1962
- 4.1.4.** Section 111(d) of the Customs Act, 1962.
- 4.1.5.** Section 111(m) of the Customs Act, 1962.
- 4.1.6.** Section 111(o) of the Customs Act, 1962.
- 4.1.7.** Section 112 of the Customs Act, 1962
- 4.1.8.** Section 114AA of the Customs Act, 1962
- 4.1.9.** Section 117 of the Customs Act, 1962

4.2. SEZ Act, 2005

- 4.2.1** Section 15(9) of the SEZ Act, 2005
- 4.2.2** Rule 18 of the SEZ Rules, 2006.
- 4.2.4** Rule 26 of the SEZ Rules, 2006.
- 4.2.4** Rule 27 of the SEZ Rules, 2006.

4 . 3 . Foreign Trade (Development and Regulation) Act, 1992

- 4.3.1.** Section 3(2) and (3) of the FTDR Act, 1992
- 4.3.2.** Section 5 of the FTDR Act, 1992
- 4.3.3.** Section 11 (1), (2), (3), (8) of the FTDR Act, 1992
- 4.3.4.** Section 12 of the FTDR Act, 1992

4.4. Foreign Trade (Regulation) Rules, 1993

- 4.4.1.** Rule 11 of the FTR, 1993
- 4.4.2.** Rule 14 of the FTR, 1993
- 4.4.3.** Rule 15(3)(a) of the FTR, 1993
- 4.4.4.** Rule 17 of the FTR, 1993

5. Whereas, Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods by the importer and exporter himself by filing a bill of entry or shipping bill, as the case may be. Under self-assessment the importer or exporter has to ensure correct classification, applicable rate of duty, value and exemption notifications, if any, in respect of imported /export goods while presenting a bill of entry or shipping bill. Further, Rule 75 of the SEZ Rules, 2006 also provides that unless and otherwise specified in these rules all inward or outward movements of the goods into or from SEZ by the Unit/Developer shall be based on self-declaration made by the Unit/Developer. While importing the subject goods, the said SEZ unit was bound for true and correct declaration, classification and assessment which include importability of the subject goods. As the said

SEZ unit was engaged in business of activities related to subject goods, they were fully aware of specifications, characteristics, nature, classification, importability and approvals and other regulatory compliances in respect goods dealt by them in the SEZ area. From the above, it is evident that the said SEZ unit willfully mis-classified the imported goods and suppressed the fact that the goods are falling under prohibited category and in contravention to the conditions stipulated in their LoA, thereby indulged in unauthorized activity.

6. Whereas, the assessment of Bills for import of goods by the SEZ unit shall be done on the basis of self-declaration. Whereas, Section 2(33) of the Customs Act, 1962, the prohibited goods include the goods, import of which is subject to any prohibition under the Customs Act, 1962 or any other law for the time being in force. However, it does not include the goods, in respect of which the conditions subject to which the goods are permitted to be imported have been complied with. In the instant case, the goods imported by the said SEZ unit are under "Prohibited" category and the said SEZ Unit has not complied with the conditions for its import as prescribed in the Import policy thereby violating the terms and conditions prescribed in Letter of Approval (LoA) issued by the Development Commissioner, KASEZ. Thus, the goods imported by the said SEZ unit are to be treated as "Prohibited goods" as per Customs Act, 1962 read with DGFT Notification No.20/2015-20 dated 25.07.2018. It is evident that the said SEZ unit has imported subject goods in contravention to the conditions of the LoA. Since the goods so imported by the said SEZ unit are contrary to the prohibition imposed under the Customs Act, 1962 read with SEZ Act, 2005. Therefore, the said goods imported by the said SEZ unit are liable to confiscation under the provisions of Section 111(d) & 111(o) of the Customs Act, 1962 and the said SEZ unit is liable for penalty under Section 112 of the Customs Act, 1962.

6.1. Whereas, during the course of analysis of SEZ Online data, it emerges that the said SEZ Unit have mis-classified the goods imported under CTH 08029000 to circumvent the MIP conditions stipulated in Import Policy and conditions stipulated in LoA. Based on the declared description i.e. "Arecanut", the actual classification of these goods should be 08028010. Such indulgence and endeavor on the part of said SEZ Unit are in violation of the provisions of Section 46 of the Customs Act, 1962, irrespective of the importability of the impugned goods and other aspects involved in the case, which makes the impugned goods liable for confiscation in terms of Section 111(d), 111(m) and 111(o) of the Customs Act, 1962 and said SEZ unit is liable for penalty under Section 112 and Section 114AA of the Customs Act, 1962.

6.2. Whereas, Section 46(4A) of the Customs Act, 1962, the importer, who is presenting the bill of entry should ensure the accuracy and completeness of the information given therein viz. classification, description, value etc., the authenticity and validity of any document supporting it; and compliance with the restriction or prohibition, if any, relating to the goods under the Customs Act, 1962 or under any other law for the time being in force. Apparently, it appears the said SEZ unit has violated the provisions of section 46(4A) by way of importing the said goods, falling under Prohibited category, in contravention to conditions stipulated in their LoA. Such indulgence and endeavor on the part of their part are in violation of the provisions of Section 46 of the Customs Act, 1962 makes the impugned goods liable for

confiscation in terms of Section 111(d), 111(m) and 111(o) of the Customs Act, 1962 and the said SEZ unit is liable for penalty under Section 112, 114AA and section 117 of the Customs Act, 1962.

7. Whereas, Para 9.41 of the extant FTP, "Prohibited" indicates the import/export policy of an item, as appearing in ITC (HS) or elsewhere, whose import or export is not permitted. In the instant case, as per the DGFT Import policy, the import of subject goods is Prohibited and is not permitted by the LoA issued by the Development Commissioner, KASEZ. Whereas, Section 3 (2) of the FTDR Act, 1992 empowers the Central Government to issue order, making provisions for prohibiting, restricting or otherwise regulating, the import of goods. As per Section 3(3) of the FTDR Act, 1992, all goods to which the order under Section 3(2) applies shall be deemed to be goods the imports of which have been prohibited under Section 11 of the Customs Act, 1962 and all the provisions of that Act shall have effect accordingly. Whereas, Section 5 of the FTDR Act, 1992 empowers the Central Government to formulate and announce by notification the foreign trade policy and also empowered to amend the policy in like manner. Whereas, Section 8 of the FTDR Act, 1992, the DGFT or any other officer authorized by him empowered to pass order for suspension or cancellation of the IEC Number of a person, who has contravened any of the provisions of the FTDR Act, 1992 or any rules or orders made thereunder or the FTP or any other law for the time being in force relating to Customs or has committed any other economic offence under any other law for the time being in force. Whereas, Section 11(1) of the FTDR Act, 1992 provides that no import shall be made by any person except in accordance with the provisions of the FTDR Act, 1992, the rules and orders made thereunder and in accordance with the FTP for the time being in force. Penal provisions are also prescribed vide Section 11(2) of the FTDR Act, 1992. As per Section 11(8) of the FTDR Act, 1992, the offending goods are liable to confiscation. **Whereas, Section 12 of the FTDR Act, 1992 prescribes that the penalty imposed or confiscation made under the FTDR Act, 1992 shall not prevent the imposition of any other punishment to which the person affected thereby is liable under any other law for the time being in force.** Whereas, Rule 11 of the FTDR, 1993 provides that on importation of any goods, the owner of the goods has to file Bill of Entry as prescribed under the Customs Act, 1962, stating the value, quantity, quality and description of such goods to be best of his knowledge and belief and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry. Whereas, Rule 14 of the FTR, 1993 prohibits making, signing, using or cause to be made, signed or used any declaration, statement or documents for importing any goods, knowing or having reason to believe that such declaration, statement or document is false in any material particular. Employing any corrupt or fraudulent practice in importing the goods have also been prohibited.

8. Now, therefore, the said SEZ Unit, namely, M/s. Vishnu Export (IEC0813010179) are hereby called upon to show cause to the Commissioner of Customs, having office situated at Customs House, Near Balaji Temple, Kandla, District Kutch within 30 days from the receipt this notice as to why:-

- i. The declared classification i.e.08029000 of the goods imported vide bills of entry mentioned at Sr.No. 23 to 28 of Annexure-B having declared assessable value of **Rs. 4,61,82,960/-** (Rupees Four crore Sixty one lakh eighty two thousand nine hundred and Sixty only) should not be rejected and should not

- be re-classified under Custom tariff Item 08028010 and should not be confiscated under Section 111(d), 111 (m) & 111(o) of the Custom Act, 1962.
- ii. The goods imported vide Bills of Entry as detailed in 'Annexure-B' having declared assessable value of **Rs.37,68,00,065/-** (Rupees Thirty Seven Crore Sixty Eight lakh and Sixty five only) should not be confiscated under Section 111(d), 111 (m) and 111(o) of the Custom Act, 1962 for contravening the Import Policy conditions and conditions stipulated in the LoA;
 - iii. Penalty should not be imposed upon them under each of the provisions of Section 112, 114AA of the Customs Act, 1962 for the reasons discussed above.
 - iv. Bond-cum-Legal Undertaking in form-H executed by the said SEZ Unit should not be enforced towards its above liabilities.

9. The Noticee is required to submit their reply in writing to the Adjudicating Authority, as above, within 30 days from the date of receipt of this notice. In their written reply, the Noticee(s) may also state as to whether they would like to be heard in person. In case, no reply is received within the time limit stipulated above or any further time which may be granted to them by the Adjudicating Authority and/or if they fail to appear for personal hearing, when the case is posted for the same, the case will be decided ex parte on the basis of evidence on record and without any further reference to the Noticee(s). Further, the Noticees are advised to mention their email address in writing for virtual hearing as per CBIC's Instruction dated 21.08.2020 issued vide F.No. 390/Misc/3/2019-JC.

10. This notice is issued without prejudice to any other action that may be taken in respect of the above goods and / or the persons / firms mentioned in the notice under the provisions of the Customs Act, 1962 and / or any other law for the time being in force, in the Republic of India.

11. The department reserves the right to add, amend, modify, delete any part or the portion of this notice any such addendum, amendment, modification, deletion, if made, shall be deemed to be part and parcel of this notice.

12. The list of relied upon documents (RUDs) in this case is as per Annexure-R.

nmissioner,

Custom House, Kandla

F.No. GEN/ADJ/ADC/802/2024-Adjn-O/o Commr-Cus-Kandla
By Speed Post/Courier
To

1. M/s Vishnu Export (IEC-0813010179), Unit No.s101 to 206, Gokul SDF Complex, Phase-II, Kandla Special Economic Zone, Gandhidham.

Copy to:-

1. The Development Commissioner, Kandla Special Economic Zone, Gandhidham, Kutch.
2. The Deputy Commissioner, KASEZ, Gandhidham.
3. Guard file.

Annexure-R

**Attached to Show Cause Notice issued vide F.No.
GEN/ADJ/ADC/802/2024-Adjn-O/o Commr-Cus-Kandla to M/s. Vishnu
Export, KASEZ and others
(List of Relied upon Documents)**

RUD-01:- Letter of Approval No. 010/2013-14 dated 18.09.2013 issued by the Joint Development Commissioner.

RUD-02: (i) HM dated 01.10.2021 issued by PDA(Central), Ahmedabad &

- i. Para No. 3 LAR No. 14/2021-22 dated 03.11.2021 issued by PDA(Central), Ahmedabad.

RUD-03: DGFT Notifications No. 20/2015-20 dated 25.07.2018 and No. 57/2015-20 dated 14.02.2023.

RUD-04: Letter vide F.NO. KASEZ/CUS/D&R/Audit/13/21-22 dated 13.10.2021& Unit's reply letter dated 07.01.2022

Annexure-A: Details of the goods mentioned in the Audit objection vide HM dated 01.10.2021

Annexure-B: Details of the imports made by M/s. Vishnu Export, KASEZ in contravention to MIP conditions and conditions stipulated in their LoA.