

	OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467
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DIN- 20241071ML000071287B

A	File No.	GEN/ADJ/COMM/132/2024-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KND-CUSTM-000-COM-12-2024-25
C	Passed by	M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla.
D	Date of Order	25.10.2024
E	Date of Issue	25.10.2024
F	SCN No. & Date	CUS/SIIB/MISC/106/2023-SIIB-O/o Commr-Cus-Kandla dated 27.10.2023
G	Noticee / Party / Importer / Exporter	M/s. La Spirit Liquor Trading Co. and others

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.
8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise penalty alone is in dispute.

BRIEF FACTS OF THE CASE-

1. Whereas, M/s. La Spirit Liquor Trading Co. (IEC-3494001022) (hereinafter also referred to as the 'Noticee'), is a SEZ Unit situated at Shed No.416, Ground Floor, Sector-II, KASEZ, Gandhidham-370230. Letter of Approval (LoA) dated 24.08.2010 was granted to them vide F. No. KASEZ/IA/018/2010-11/7849(RUD-1) by the Development Commissioner, Kandla SEZ under Section 15(9) of the Special Economic Zones Act, 2005 read with Rule 18 of the Special Economic Zones Rules, 2006 to operate as an SEZ unit and carry out authorized operations viz. "Trading of all sorts of Liquor". The noticee executed Bond-cum-Legal Undertaking in the Form-H regarding their obligations for proper utilization and account of goods. Further, the approval of BOA permitting the noticee to trade in "Cigarettes" was communicated to them vide letter dated 05-04-2011 issued by Director, SEZ (RUD-1) subject to conditions mentioned therein. The said SEZ unit was directed to ensure strict compliance of comprehensive instruction as stipulated in Instruction No. 01/2011 dated 28.04.2011 in dealing with sensitive items like Cigarettes. (RUD-1).
2. A specific information received by the officers of P&I Section (Customs) KASEZ indicated that certain dutiable mis-declared/concealed goods were lying inside the premises of the said SEZ unit. Based on this information, Custom officers from KASEZ visited the premise of the said SEZ unit to take a stock of the goods lying at said SEZ Unit. The proceedings of the stock-taking/examination of goods lying at said SEZ Unit were recorded under Panchnama dated 28.10.2022 (RUD- 2).
3. During the course of examination, a total of 219 boxes were found. 100 smaller cartons were further found inside each of such 219 bigger cartons. Each of these 100 cartons had the description "**State Express / No. 555 / Made Under Authority Of CTBAT International Co. Ltd./ For Adults Only / For Duty Free Sale Only / Tar: 11mg / Nicotine: 1.1mg**" imprinted on them. Further, each of these 100 cartons had 10 packs inside them with each pack having description "**Gold Flake / Kings / Honey dew / Made In Turkey Under Authority Of The Trade Mark Owned By British American Tobacco / For Sale in GCC Countries / Tar: 7mg / Nicotine: 0.6mg**" imprinted on them. Each pack contained 20 sticks of Cigarettes. Thus, a total of 43,80,000 (Forty-three lacs eighty thousand only; 219*100*10*20) sticks of cigarettes each having a length of 84 millimetres having declared assessable value of Rs. 58,68,378/- were found during the course of examination. As part of investigation, KASEZ Customs found that the value of cigarettes in open market was Rs. 24/- per stick and hence, the total value of the cigarettes imported was found to be Rs. 10,51,20,000/-. Thus, cigarettes of one brand (Gold Flake Kings) were found concealed inside cartons having description of another brand (555 State Express Original).

4. The said SEZ unit was requested to provide the stock register required to be maintained by them in respect of goods imported as well as goods procured from DTA under the provisions of SEZ Act 2005 and SEZ Rules 2006 which they failed to produce. The said SEZ Unit was informed that they should not carry out any Custom transaction nor deal with subject goods placed under seizure and locked inside the said premises without written permission from proper officer of Customs. The SEZ Unit was further informed to maintain proper security in and around their premise. The said SEZ Unit was also asked that they should produce the said seized goods intact and in the same condition as they were then, whenever called upon to do so by the Superintendent (P&I) and not to deliver the same to any person or otherwise dispose off or deal with the same without an order in writing from Superintendent (P&I).

5. **Statement of concerned Person(s)**

- 5.1. During the course of enquiry proceedings, the statements of various persons were recorded by KASEZ officers under Section 108 of Customs Act, 1962. The names of persons whose statements are relied upon in the notice are as follows: -

Sr.No.	Person whose statement was recorded	Dates on which statement of the said person were recorded
1	Statement of Shri Sakir I. Motanwala, Proprietor of M/s. La Spirit Liquor Trading Co., KASEZ	09.11.2022 & 24.02.2023
2	Statement of Shri Narendrasinh Zala, the beneficiary owner of the goods	14.11.2022 & 15.02.2023
3	Statement of Shri Vivek Jha, Authorised Representative of the Unit at the time of Panchnama proceedings	05.12.2022
4	Statement of Shri Ganesh Venkatesh Naidu, Transporter and clearing Agent	06.12.2022
5	Statement of Shri Bharagav Upadhyay	14.12.2022
6	Statement of Shri Haresh Sangar, Authorised Representative of them/s Maersk Line India Pvt. Ltd/(Shipping line)	03.02.2022

- 5.2. **Statement of Shri Sakir I. Motanwala, Proprietor of M/s. La Spirit Liquor Trading Co., KASEZ (RUD-3)** was recorded on 09.11.2022 under Section 108 of the Customs Act, 1962 wherein he, inter-alia, stated:

+that he was a partner in a Plastic recycling unit and that Shri Narendrasinh Zala visited M/s. R.R. Vibrant for enquiries related to plastic granules and during the visit Shri Narendrasinh Zala discussed about the import of cigarettes consignment, as Narendrasinh Zala was aware that he i.e., Sakir.I. Motanwala was holding a valid LoA for trading activity in Cigarettes in M/s La Spirit Liquor Trading Co.

- +that **Shri Narendrasinh Zala offered that he would arrange the import and export of cigarette consignment(s)** in the name of M/s La Spirit Liquor Trading Co. and offered to pay him commission for the same.
- +that he had filed Bills of Entry with description Cigarettes (Packing details: 1 case- 20,000 sticks/ 1 Case-100 Cartons/1 Carton-10 Packets/ 1 Packet- 20 Sticks) (24022090) – Traded Goods.
- +that on examination of goods he came to know that the cigarettes of one brand had been packed in outer wrapper/cartons of another brand.
- + that he was not aware of the supplier and that the supplier was better known to Shri Narendrasinh Zala who had arranged the import order
- ☐ that he would undertake to make suitable provisions for security for guarding the locked premises at all times, at his own expense.
- ☐ that he had shared his login details and digital signature dongle with Shri Narendrasinh Zala for filling the said Bill of entry.
- +that Shri Ganesh Naidu, the clearing agent had got the delivery order for release of container at Mundra port on directions of Shri Narendrasinh Zala.
- +that Shri Vivek Jha, supervisor working for M/s. La Spirit Liquor Trading Co. had supervised the unloading of the imported cargo.
- + that the consignment was for re-export purpose only.

5.3. **Statement of Shri Narendrasinh Zala**, (RUD-4) was recorded on 14.11.2022 under Section 108 of the Customs Act, 1962 wherein he, inter-alia, stated:-

- +that as per the request of Shri S. I. Motanwala, upon enquiries, he found one Alex, Resident of Sri Lanka, interested in trading of Cigarettes and due to some logistics constraints, he (Alex) wished to first import cigarettes from Cambodia to India and then to export to Dubai.
- +that he was requested by Shri Motanwala to find any suitable party for import of cigarette because Shri Motanwala wanted to carry out one transaction to keep his LOP/License alive/active.
- +that Mr. Alex R/o Sri Lanka of M/s Expo Denzi Co. Ltd., Cambodia was the supplier of the imported goods;
- + that Mr. Alex was a trader, his company name was M/s. Expo Denzi Co. Ltd., Cambodia.
- + Alex was a Sri Lankan National and was living in Cambodia then.
- +that he had met Mr. Alex at DUBAI for the first time, in a club in a party of a Common friend.
- +That after receiving the request verbally from S.I. Motanwala, after one day he discussed with Mr. Alex regarding the supply of the Cigarettes to M/s. La Spirit Liquor Trading Co., KASEZ.
- +that he told Alex that the consignment sent by him would be re-exported to his clients at Dubai, as and when he requested and the whole matter was

communicated to Shri S.I. Mottanwala telephonically.

+that the name of brand was not discussed at that time and it was decided by Mr. Alex as per their requirement for further export to Dubai.

+that the declaration dated 25.05.2022 appeared to be a typographical error.

+that he was informed that during panchanama proceedings it was found that cigarettes imported were packed in outer wrapper of 555 brand Cigarettes and inside of the wrapper there were 10 Packets having 20 cigarettes in each packet & were of Gold Flake brand cigarettes.

+that the packing was as per the commercial invoice and packing list supplied by the supplier. There was no special cost involved for packing.

+ that he was not aware about the brand of the cigarettes.

+that Mr. Alex of M/s Expo Denzi Co. Ltd paid the freight for transportation of consignment from Cambodia to India.

+that the description and the CTH for said goods were decided based on the documents received by them.

+ that Shri Ganesh Naidu had filed the bill of entry on his directions.

5.4. Statement of Shri Vivek Jha(RUD-5) authorised representative of the Unit at the time of Panchnama proceedings, was recorded on 05.12.2022 under Section 108 of the Customs Act,1962 wherein he, inter-alia, stated:-

+that he had joined M/s R.R. Vibrant Polymers Ltd., KASEZ in 2020 as supervisor and looked after unloading of import consignments and supervise bale shifting and other works.

+that he attend to the work related to M/s La Spirit Liquor Trading Liquor Co. as and when he was directed to do so by his boss Shri S. I.Motanwala.

+ that he was not aware about the goods imported and unloaded.

+that he was told to visit premises of M/s. La Spirit Liquor Trading Co. by Shri S.I. Motanwala and was told to coordinate with the Custom officers for further proceedings.

+Shri Bhargav Upadhyay took him to M/s. La Spirit Liquor Trading Co. and upon reaching there he saw the Cigarette consignment.

+that he was not aware about the designation of Shri Bhargav Upadhyay and that BhargavUpadhyay worked for Shri S.I Motanwala.

+that during the panchanama proceedings he found that cigarette packets of one brand had been packed in outer wrapper/cartons of other brand.

+ that he was not present at the time of unloading of imported goods.

+ that he had not received any import documents.

5.5. Statement of Shri Ganesh Venkatesh Naidu(RUD-6), Transporter and clearing agent was recorded on 06.12.2022 under Section 108 of the Customs Act,

1962 wherein he, inter-alia stated that:

- + that he was the Director in M/s. Cross Tradelink Pvt. Ltd.
- +that they provided Custom clearance services and transportation services at Mundra port for consignments destined to KASEZ and also provide Custom clearance services at KASEZ.
- +**that they have filed BE No. 1016497 dated 20.10.2022 based on the import documents received from Shri Narendrasinh Zala.**
- +that they provided Customs clearance services for M/s. Laxmi Impex, in which ShriNarendrasinhZala was one of the partners.
- +**that ShriNarendrasinhZala contacted him and informed that he was importing one container of Cigarettes in M/s. La Spirit Liquor Trading Co. and asked him to obtain Customs clearance at Mundra, services for release of Delivery Order from Shipping line, transportation from Mundra to KASEZ and filing of BE and Custom clearance at KASEZ.**
- +that Shri Narendrasinh Zala shared import documents with him and he agreed to provide required services.
- +that he requested him (NarendrasinhZala) to provide KYC of the firm and login credentials & security-key/dongle of the firm to proceed further for filing of BE at KASEZ.
- +that he did not receive original documents and received only photocopies of import documents
- + that the container reached KASEZ on 27.10.2022
- +that one of their field staff gated in the container and produced the documents for seal verification before Customs. After verification of seal, their ground staff sent the container to the premises of M/s. La Spirit Liquor Trading Co. and then shared the details of vehicle number i.e., GJ12Z4939 and container number with ShriNarendrasinhZala for further process at their unit i.e. M/s. La Spirit Liquor Trading Co.
- +that he had spoken with labour contractor and shared the location details and requested him to send labour to premises of M/s. La Spirit Liquor Trading Co., KASEZ for unloading of imported goods, on the direction of Shri NarendrsinhZala.
- + that the vehicle took route via Mokha, Vadala, Hatdi, Mathak to KASEZ.
- +that the container was transported to KASEZ from Mundra International Container Terminal (MICT).
- +that part payment towards THC was made from M/s. La Spirit Liquor Trading Co. and part payment towards demurrage and DO charges was made from M/s. Cross Tradelink Pvt. Ltd.
- + that he made payment to labour.
- +that he had not received any payment towards any of the services provided by him.

- +that the description of goods was taken from the invoice and packing list provided and CTH was arrived based on the copy of LoA and as per EXIM data available on internet.
- +that before finalizing the details M/s. Cross Tradelink Pvt. Ltd. had shared the draft details to Shri Narendrasinh Zala and upon receiving confirmation they have filed Bill of Entry
- +that the quantity of cigarettes as per the packing list received was 43,80,000 sticks in 219cases.
- +that brand name had not been mentioned in the import documents received.
- +that length of cigarettes imported vide BE No. 1016497 dated 20.10.2022 was not mentioned in the documents.

5.6. **Statement of Shri Bharagav Upadhyay** (RUD-7), was recorded on 14.12.2022 under Section 108 of the Customs Act, 1962 wherein he, inter-alia, stated:

- +that Shri S.I. Motanwala offered him a job and instructed to **supervise the construction work related to his son's firm M/s. Jay Bolenath Weigh bridge, KASEZ.**
- +that, at any time, if he was directed by Shri S. I Motanwala then **he attended miscellaneous work pertaining to M/s. La Spirit Liquor Trading Co.**
- + that, he received his salary from Shri S.I. Motanwala in cash.
- + that as per the directions by Shri S.I. Motanwala, he used to share/coordinate with Shri Narendrasinh Zala for any email correspondence related to said import consignment through his email id bhargavupadhyay72@gmail.com.
- + that **as per the directions by Shri Narendrasinh Zala he proceeded to supervise the unloading of the said goods.**
- +that after completion of unloading of imported goods, he informed to both Shri S.I. Motanwala and Shri Narendrasinh Zala and shared the images of stack of goods in carton boxes to both of them.
- +that at the time of unloading of goods, along with him there were 02 private security guards, who were engaged by the firm.
- + That he was told that the imported goods were Cigarettes.
- +that during unloading it was found that there are 219 carton boxes. He had not opened or seen the goods at the time of unloading. He had seen the goods only during the panchanama proceedings by Customs officers on 28.10.2022.
- +that as per the instructions of Shri S.I. Motanwala, he shared his email id with Shri Narendrasinh Zala
- ☐ that he received BL copy on email from the Shipping line and Invoice & packing list from the supplier M/s. Expo Denzi Co. Ltd. from email id: denzico@hotmail.com.

5.7. **Statement of Shri Haresh Sangar** (RUD-8), Authorised representative of the

M/s. Maersk Line India Pvt. Ltd/ (Shipping line), was recorded on 03.02.2023 under Section 108 of the Customs Act, 1962 wherein he, inter- alia, stated:

+ that **he was working as Sr.Executive (Operations) for M/s. Maersk Line India Pvt. Ltd., Gandhidham.**

+*that as per the Transport Order, copy of route details along with relevant dated and vessels details and a copy container tracking details as retrieved from database, the container was loaded at Sihanoukville Autonomous Port (PAS), Cambodia and transshipped to Mundra port through PelabuhanTanjungPelepas Terminal, Malaysia and Colombo Intl ContrTml, Sri Lanka.*

+*that the container was received in MICT on 15.10.2022 from Vessel – IRENES RAY. From the documents/BL the place of delivery was 'Kandla SEZ'.*

+*that the client/transporter/Custom clearing agent approached them to issue the D.O. for release the container MICT.*

+*that based on the request of the client, they had issued the DO on 26.10.2022 and the client picked up the container from MICT on 27.10.2022 and returned the empty container at Kishan Marine yard, Mundra.*

+ *that as shipping line, they had no role in stuffing of goods in container.*

+ *that generally they don't scrutinize the declarations made by the client.*

+*that they processed documents based on the declarations made by the client.*

+*that they had received a booking for export of Cigarettes from KASEZ to Cambodia.*

+ *Further, based on booking they had released 20 feet container with no. MRSU0188002 for the said export.*

6. CLANDESTINE REMOVAL OF DUTY FREE IMPORTED GOODS

6.1. The subject goods imported by the said SEZ unit were seized under examination proceedings recorded under Panchnama dated 28.10.2022. The said SEZ Unit was informed that they should not carry out any Custom transaction nor deal with subject goods, without written permission of Superintendent(P&I). Further, the SEZ Unit was informed that they should maintain proper security in and around said premises. Further, the SEZ Unit was informed that they should produce the said seized goods intact and in the same condition as they were then, whenever called upon to do so by the Superintendent (P&I) and not to deliver the same to any person or otherwise dispose off or deal with the same without an order in writing from Superintendent (P&I) (RUD-2). Later, an attempt of clandestine removal/theft of cigarettes, at early hours of 04.02.2023 was reported by Security Officer, KASEZ (RUD-9). The goods recovered appeared to be same as goods placed under seizure at

the said SEZ Unit vide Panchnama dated 28.10.2023. The same was intimated to the Unit vide letter dated 04.02.2023 (RUD-10). KASEZ Customs was informed via e-mail by Gandhidham police that an FIR bearing No. 11993007230098 dated 10.02.2023 (RUD 11) had been registered at Police Station, B division, Gandhidham on the basis of complaint received by Shri Narendrasinh Zala on 10.02.2023 regarding the theft and the Preventive Officer submitted an Incident report dated 14.02.2023 (RUD-12).

6.2. In order to ascertain the quantum of theft/quantification of duty free imported good which had been clandestinely removed from SEZ Unit despite specific directions given to the said SEZ Unit as mentioned in Panchnama dated 28.10.2023 which were re-iterated by Shri S.I. Motanwala dated 09.11.2022 and in contravention to the provisions of SEZ Act, 2005 read with the Customs Act, 1962, the Customs officers carried out a stock verification of the goods lying at said SEZ Unit in the presence of Unit representative. The said proceedings were carried out under Panchnama proceeding dated 16.02.2023 (RUD-13). The details of the goods found are as under: -

6.2.1. Each box/case was found to contain 100 cartons having the following description imprinted on them - "State Express / No. 555 / Made Under Authority of CTBAT International Co. Ltd./ For Adults Only / For Duty Free Sale Only / Tar: 11mg / Nicotine: 1.1mg". Each of such carton was opened and found to be containing 10 packs, each of such packs was found to have the following description imprinted on them "Gold Flake / Kings / Honeydew / Made in Turkey Under Authority of The Trade Mark Owned By British American Tobacco / For Sale in GCC Countries / Tar: 7mg / Nicotine: 0.6 mg". Each of such packs was found to contain 20 sticks of Cigarettes.

6.2.2. During the course of stock taking proceedings, it was found that total of 161 corrugated boxes having 100 cartons of 20 packs of cigarettes i.e., a total of 32,20,000 (Thirty-two lacs twenty thousand) cigarette sticks (each 84mm in length) of one brand concealed in cartons having description of another brand were lying at the premise of the said SEZ unit on 16-02-2023.

6.2.3. Further, out of 11,60,000 sticks of cigarettes which had been clandestinely removed from said SEZ Unit, 23,800 sticks of cigarettes had been recovered by KASEZ Security Officer.

7. Genuineness of the Gold-Flake cigarettes imported by M/s. La Spirit Liquor

Trading Co.

During the course of enquiry proceedings, KASEZ Customs vide letter dated 12.01.2023 made a reference to M/s ITC Limited with a request to nominate and deploy an appropriate/authorized person/team for verification of authenticity of goods and other details viz.marks, batch no.etc. Subsequently, M/s ITC Limited had submitted a reply dated 15.02.2023(RUD-14) wherein, inter-alia, they stated:

- +that they had examined the sample images of Gold Flake brand of cigarette packages enclosed with the subject notices.*
- +that it is clear from the images, that **these cigarette packages had not been manufactured by ITC Limited.***
- +that **“Gold Flake” was a trademark owned by ITC Limited in India. Only ITC Limited was authorized to manufacture and sell Gold Flake brand of cigarettes in India and few other countries.***
- +**No other entity was authorized to import “Gold Flake” brand of cigarettes for sale in India.***
- +that they had come across Gold Flake cigarette packages which were similar to the packages under enquiry in retail outlets in India, which clearly suggested that Gold Flake cigarette packages were being brought into India in a clandestine manner.*
- +that the fact that the Gold Flake packages under enquiry had been imported concealed in the outer wrapper of “State Express 555” seemed to indicate that **these Gold Flake cigarette packages were meant to be smuggled into country circumventing applicable legislations like the Goods and Service tax Act, 2017, the Customs Act, 1962, the Trade Marks Act, 1999.***
- +that there were specific requirements set out under the Cigarettes and other Tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA), the Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2008 (COTP Rules), the Legal Metrology Act, 2009(LM) and Legal Metrology (Packaged Commodity) Rules, 2011(LMPC), the compliance of which are mandatory for sale of cigarette packages in India.*
- +It applied to both domestically manufactured and imported cigarette packages.*
- +that the subject goods should not be released for home consumption in the domestic market and should be destroyed.*
- +that they wish to draw attention to circular No. 09/2017-Cus dated 29.03.2017 in respect of disposal of seized/confiscated cigarettes.*
- +that since the imported cigarettes packages did not comply with the requirements under COTPA, COTP Rules, Legal Meteorology Act and Legal Metrology (PackagedCommodity)Rules, 2011, the same should not be released for home consumption in domestic market and should be destroyed.*
- +that it was clear that the Gold Flake cigarette packages in question were being illegally imported and were liable to be confiscated.*

8. STATEMENT OF CONCERNED PERSON(S) AFTER THE CLANDESTINE REMOVAL

During the course of further investigation, the statements of various person(s) were once again recorded under Section 108 of Customs Act, 1962. The names of persons whose statements are relied upon in the notice are mentioned in the table below:

Sr. No.	Person whose statement was recorded	Dates on which statement of the said person were recorded
1	Statement of Shri Narendrasinh Zala	15-02-2023
2	Statement of Shri Sakir I.Motanwala, Proprietor of M/s.La Spirit Liquor Trading Co., KASEZ	24-02-2023

8.1. **Statement of Shri Narendrasinh Zala** was recorded on 15.02.2023 (RUD-15) under Section 108 of the Customs Act, 1962 wherein he, inter-alia, stated:

- +that he had received an email on company email address dated 04.02.2023 regarding attempt of theft of goods which were apparently same as those goods seized at M/s La Spirit Liquor Trading Co., KASEZ.*
- +that he visited the premises on 06.02.2023 and called some labourers for stock verification and upon verification found that out of 219 boxes, Cigarettes in 58 boxes were found to be missing (i.e., 5800 cartons approx.)*
- +that after having discussed with Shri S.I. Motanwala, he visited the jurisdictional Police authorities and filed a complaint on 07.02.2023 for theft of 58cases/boxes of seized Cigarettes and based on complaint an FIR dated 10.02.2023 was registered by the Police.*
- +that he made complaint in capacity of working manager for M/s LA Spirit Liquor Trading Co., KASEZ.*
- + that as per the extract of Panchnama dated 28.10.2022 “further, representative of said SEZ Unit was informed that they should maintain proper security in and around said remises.....”, a security agency, namely M/s H.B. Security Services, Gandhidham was appointed by the SEZ Unit.*
- +that the period of security services engaged was 27.10.2022 to 16.01.2023.*
- +that he was not informed about the stopping of security services after 16.01.2023.*
- +that from 06.02.2023 another security agency namely M/s Top Security Services, Gandhidham is engaged by the Unit.*
- +that since the goods are seized, Custom appointed security guards and Unit security guards were present at the Unit. The unit was facing financial crisis, so they thought they would take care of the seized goods.*
- +that they had not received any written communication from the Customs regarding deployment of security near their premises.*

+that the container no. MRSU0188002 was booked for returning the earlier supplied goods i.e. cigarettes without receiving any approval for re-export of imported Cigarettes from the KASEZ Customs.

8.2. Statement of Shri Sakir I. Motanwala, Proprietor of M/s. La Spirit Liquor Trading Co., KASEZ (RUD-16) was recorded on 24.02.2023 under Section 108 of the Customs Act, 1962 wherein he, inter-alia, stated: -

+that he had received an email on company email address dated 04.02.2023 regarding attempt of theft of goods which were apparently same as those goods seized at M/s La Spirit Liquor Trading Co., KASEZ.

+that the FIR was filed by Shri Narendrasinh Zala on behalf of M/s La Spirit Liquor Trading co., KASEZ.

+that Shri Narendrasinh Zala was the beneficiary importer of the goods and had filed the complaint being the beneficiary importer of the goods.

+that Shri Narendrasinh Zala was not holding any position in the Unit, for filing of FIR, he stated that he was a working manager in the Unit namely M/s La Spirit Liquor Trading Co.

+that the Unit had been dormant for last 12 years and security measures as directed in Panchnama and Instruction 01/2011 had not been undertaken by them properly.

+that the security agency namely H.B. Security Services, Gandhidham was appointed by M/s La Spirit Liquor Trading Co.

+ that the duration of security services engaged was 27.10.2022 to 16.01.2023.

+that Shri Narendrasinh Zala was informed about the stopping of security services after 16.01.2023.

+ that Shri Narendrasinh Zala arranged the security services.

+that Shri Narendrasinh Zala informed him that as the security guard appointed by the SEZ was already there, Shri Narendrasinh Zala had stopped the security services.

+ that he was not aware about the exact details of the FIR

+that the security was arranged by Shri Narendrasinh Zala and due to some payment issues security services were stopped.

+that he had not verified the credentials Security guards deployed by concerned security agency like M/s H.B. Security Services and M/s Top Security Services.

+that Narendrasinh Zala had not been issued a valid ID Card as per rule 70 of the SEZ Rules, 2006.

+ that the SEZ Unit was not maintaining log book and stock register.

☐ that the SEZ Unit had not installed CCTV yet.

9. **CONTRAVENTION AND VIOLATION OF LAWS:**

The goods imported vide Bill of entry No. 1016497 dated 20-10-2022 (RUD- 17) i.e., 43,80,000 (Forty-three lacs eighty thousand sticks of cigarettes each of which was of 84 millimetres in length) sticks of "GOLD-FLAKE" brand cigarettes having description "**Gold Flake / Kings/Honeydew / Made in Turkey Under Authority of The Trade Mark Owned By British American Tobacco/For Sale in GCC Countries/Tar.7mg/Nicotine: 0.6mg**" imprinted on them were found to be concealed inside smaller carton packaging of another brand with description "**State Express/No555/Made Under Authority Of CTBAT International Co. Ltd/ For Adults Only/ For Duty-Free Sale Only/Tar 11mg/Nicotine1.1mg**" imprinted on each of such cartons. As per the investigation undertaken by KASEZ Customs, the value of cigarettes in open domain was found to be Rs. 24 per stick and hence, the value of such imported cigarettes was found to be Rs. 10,51,20,000/- (Rupees Ten crores fifty-one lacs twenty thousand only). The cigarettes are of foreign origin and illegally imported into India.

9.1. **CONTRAVENTIONS PERTAINING TO IMPROPER IMPORT OF GOODS**

9.1.1. **Section 46 of the Customs Act, 1962**

Section 46 of the Customs Act, 1962 places responsibility on the importer of goods to file Bill of Entry against the imported goods while furnishing only correct information in such Bill of Entry. The relevant extract of **Section 46 of the Customs Act, 1962** pertaining to Entry of goods on importation reads as follows: -

(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed.

... (4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

...(4A) The importer who presents a bill of entry shall ensure the following, namely:-

(a) The accuracy and completeness of the information given therein.

(b) The **authenticity and validity of any document** supporting it; and

(c) **Compliance with the restriction or prohibition, if any, relating to the goods Under this Act or under any other law for the time being in force.**

Further, Customs Act, 1962 vide Section 17 read with Rule 75 of the SEZ 2006, places responsibility on the importer to self-assess the value and the correct duty applicable, if any on such imported goods.

9.1.2. Section 17 of the Customs Act, 1962

Assessment of duty.-

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

9.1.3. Rule 75 of SEZ Rules, 2006

Self-Declaration.-

Unless otherwise specified in these rules all inward or outward movement of goods into or from the Zone by the Unit or Developer shall be based on self-declaration made and no routine examination of these goods shall be made unless specific orders of the Development Commissioner or the Specified Officer are obtained.

Therefore, the said SEZ unit and the beneficiary owner appear to have contravened the provisions of Section 17, Section 46 of the Customs Act, 1962 read with Rule 75 of the SEZ Rules, 2006 **in as much as they failed to file correct Bill of Entry while furnishing correct information pertaining to the goods being imported by them** as the goods were found to be mis-declared in terms of the description as well as assessable value.

Further, as seen above, **Section 46(4A)(c) of the Customs Act, 1962 places responsibility on the importer of the goods to ensure compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.**

In this regard, attention is drawn to DGFT Notification No. 18/2015-2020 dated 01.08.2017 which reads as follows -

To be Published in the Gazette of India Extraordinary Part-II, Section - 3, Sub-Section (ii)
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Foreign Trade

Notification No. 18/2015-2020
New Delhi, Dated: 1 August, 2017

Subject: Amendment in Para 13 of the General Notes Regarding Import Policy of ITC (HS), 2017 – Schedule – 1 (Import Policy).

S.O. (E): In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends Para 13 of the General Notes Regarding Import Policy of ITC (HS), 2017 – Schedule – 1 (Import Policy), as under:

Existing Para 13 of the General Notes Regarding Import Policy of ITC (HS), 2017	Existing Para 13 of the General Notes Regarding Import Policy of ITC (HS), 2017
Cigarettes or any other Tobacco product:	Cigarettes or any other Tobacco product:
Import of cigarette or any other tobacco product shall be subject to the provisions contained in the Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment Rules, 2009 (as amended from time to time) as notified by the Ministry of Health & Family Welfare (the details can be accessed from the website of the Ministry of Health & Family Welfare: www.mohfw.nic.in)	Import of cigarette or any other tobacco product shall be subject to the provisions contained in the Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment Rules, 2017 (as amended from time to time) as notified by the Ministry of Health & Family Welfare (the details can be accessed from the website of the Ministry of Health & Family Welfare: www.mohfw.nic.in)

2. **Effect of this Notification:** Para 13 of the General Notes Regarding Import Policy of ITC (HS), 2017 – Schedule – 1 (Import Policy), has been amended in consonance with Cigarettes and other Tobacco Products (Packaging and Labeling) Amendment Rules, 2017.

(Shri Alok Vardhan Chaturvedi)
Director General of Foreign Trade

[Issued from F. No. Mon.-6872/AM - 04/PC-2 (A)/Vol.III]

As seen, the aforesaid DGFT notification places restriction while importing Cigarettes or other Tobacco products that the import of Cigarettes or anyother tobacco product shall be subject to provisions contained in the **Cigarettes and other Tobacco products (Packaging and Labelling) Amendment Rules, 2017**[COTPA Rules 2017] (as amended from time to time) as notified by Ministry of Health and Family Welfare.

9.1.4. PROVISIONS OF COTP Act, 2003 and rules made there under:

9.1.4.1. Sec.7 of COTPAct:

Restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products: -

(1) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him bears thereon, or on its label **such specified warning including a pictorial warning as may be prescribed.**

(2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied, or distributed by him thereon, or on its label, the specified warning.

*(3) No person shall import cigarettes or any other products for distribution or supply for a valuable consideration or **for sale in India unless every package of cigarettes** or any other tobacco products **so imported by him bears thereon, or on its label, the specified warning.***

9.1.4.2. Rule 3 of the Cigarettes and Other Tobacco products (Packaging and Labelling) Rules, 2008 and its Amendment Rules, 2017

The manner of packing and labelling of the Cigarettes and other Tobacco products have been defined as under –

Rule 3(1) Manner of packing and labelling:-

*(1) Every person engaged directly or indirectly in the production, supply, **import** or distribution of cigarettes or any other tobacco product shall ensure that:*

(a) Every package of cigarettes or any other tobacco product shall have the specified health warning exactly as specified in the Schedule to these rules.

(b) The specified health warnings shall cover atleast eighty-five per cent (85%) of the principal display area of the package of which sixty per cent (60%) shall cover pictorial health warning and twenty-five per cent (25%) shall cover textual health warning and shall be positioned on the top edge of the package and in the same direction as the information on the principal display area.

...Provided further that on box, carton and pouch type of package, the specified health warning shall appear on both sides of the package, on the largest panels and for cylindrical and conical type of package, the specified health warning shall appear diametrically opposite to each other on two largest sides or faces of the package and the specified health warning shall cover eighty five per cent (85%) of each side or face of the principal display area of the package of which sixty per cent (60%) shall cover pictorial health warning and twenty-five per cent (25%) shall cover textual health warning;

(c) none of the elements of the specified warning are severed, covered or hidden in any manner when the package is sealed or opened.

(d) no messages, images or pictures that directly or indirectly promote the use or consumption of a specific tobacco

brand or tobacco usage in general or any matter or statement which is in consistent with, or detracts from, the specified health warning are inscribed on the tobacco product package;

(e) *no product shall be sold unless the package contains the specified health warning:*

Provided that the specified health warning shall be printed on every retail pack in which the tobacco product is normally intended for consumer use or retail sale, as well as any other external packaging, such as cartons or boxes and will not include other packaging such as gunny bags;

(f) *the textual health warning shall be inscribed in the language used on the pack:*

Provided that where the language used on a package or on its label is :-

(a) *English, the health warning shall be expressed in English*

(b) *English and Indian languages, the health warning shall be expressed in English and any one of the Indian languages in which the brand name appears.*

(c) *Hindi and other Indian languages, the health warning shall be expressed in Hindi and any one of the Indian language in which the brand name appears;*

(d) *any Indian language, the health warning shall be expressed in such Indian language.*

(e) *Indian languages, the health warning shall be expressed in any two Indian languages in which the brand name appears;*

(f) *foreign language, the health warning shall be expressed in English;*

(g) *foreign and Indian languages, the health warning shall be expressed in English and any one of the Indian languages in which the brand name appears:*

Provided further that the textual health warning shall appear in not more than two languages used on the package:

Provided also that the textual health warning in one language shall be displayed on one side or face of principal display area and the textual health warning in the other language shall be displayed on the other side or face of principal display area of the package.

(h) *no tobacco product package or label shall contain any information that is false, misleading, or deceptive, or that is likely or intended to create an erroneous impression about the characteristics, health effects, or health or other hazards of the tobacco product or its emissions. This prohibition includes, but is not limited to, the use of words or descriptors, whether or not part of the brand name, such as "light", "ultralight", "mild", "ultramild", "lowtar", "slim", "safer", or similar words or descriptors; any graphics associated with, or likely or intended to be associated with, such words or descriptors; and any*

product package design characteristics, associated with, likely or intended to be associated with, such descriptors.

(iii) The specified Health warning an in terms of the Schedule is:

"Smoking Kills" (on smoking forms of tobacco products)" and the prescribed pictorial warnings for case of reference is depicted as under:



9.1.4.3. Circular No.09/2017-Customs, issued under F.No. 711/07/2003-Cus(AS) dated 29.03.2017:

...2. All tobacco products (whether domestically manufactured and sold or imported) require to comply with the requirements contained in the Cigarettes and other Tobacco Products [(Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA 2003)] and the Rules framed thereunder. Ministry of Health and Family Welfare Vide Notification GSR 727 (E) dated 15.10.2014 notified the Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment (COTP) Rules, 2014, which came into effect from 01.04.2016[G.S.R. 739 (E) dated 24.09.2015]. The COTP Rules are strict in nature and their compliance requires that the printing of pictorial and textual warning on cigarette packs is in specified format, colours, resolution, font, and language.

3. The Legal Metrology Act, 2009 and the Legal Metrology(Packaged Commodities) Rules, 2011 apply to packaged commodity which includes cigarettes. As the imported cigarette packs are intended for retail sale, they are covered under the Legal Metrology (Packaged Commodity) Rules, 2011 which require a declaration on the packs containing the name and address of the manufacturer or importer or packer, quantity of the product, month and year of manufacturing or pre-packing or importation, the retail sale price, etc. In terms of the said Act and Rules it is illegal to manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless the package is in such standard quantities or number and bears thereon such declarations and particulars in such a manner as prescribed

9.1.4.4. Further, the relevant extract of **Circular No.27/2017-Customs dated 05-07-2017** is reproduced here for reference:-

..3....As per the said Rules [COTPA Rules, 2014] inter-alia amended the existing health warning specifications and prescribed mandatory display of stringent health warnings in the specified format, colours, resolution, font, language etc. on both sides of the tobacco product packages covering 85% of the principal display area. Further, as per the said Rules, during the rotation period of 24 months, two images of specified health warnings as notified in the Schedule, shall be displayed on all tobacco product packages and each of the images shall appear consecutively on the package with an interregnum period of twelve months.

6. It is requested that in addition to the existing statutory requirements, compliance of the amendments in health warning specifications prescribed by the COTPA Rules, 2017 may also be ensured...

9.1.4.5. Further, CBIC Circular No.20/2018-Customs dated 20th June 2018 reads as follows (relevant extract):-

3.Now, Mo H & FW vide Notification GSR 283 (E) dated 26.03.2018 has notified the Cigarettes and other Tobacco products (Packaging and Labelling) Amendment Rules 2018 (effective from 01.04.2018)

5. In view of the above, it is requested that in addition to the existing statutory requirements, compliance of the amendments in health warning specifications prescribed by the COTPA Amendment Rules, 2018 may also be ensured before clearance of import consignments or disposal of seized/confiscated tobacco products, including Cigarettes.

As per the investigation, the goods have been found to be not adhering to the provisions of the COTPA Act, 2003 and COTPA Rules, 2018 (as amended from time to time) in as much as the said cigarette packages do not carry 85% Indian Pictorial statutory warning on the front and back of the package which is statutorily mandated under Section 3(o) and 7(1) of COTPA Act 2003 read with Rule 3 and the Schedule to the COTPA Rules, do not carry the name and address of the manufacturer and importer which is statutorily mandated under Section 18 of Legal Metrology Act read with Rule 6(1)(a) of the Legal Metrology (Packaged Commodity) Rules, 2011 and Rule 3(1)(h)(b) of COTPA Rules and do not carry the common or generic names of commodity contained in the package i.e., Cigarette which is required under Section 18 of Legal Metrology Act, 2009 read with rules 6(1)(b) of the Legal Metrology (Packaged Commodity) Rules, 2011 and 3(1)(h) of COTPA Rules, maximum retail price of package which is

required under Section 18 of Legal Metrology Act, 2009 read with Rule 6(1)(e) of Legal Metrology (Packaged Commodity) Rules, 2011, do not carry the details of person who can be contacted in case of Consumer complaints which is mandated under Section 18 of Legal Meteorology Act readwith rules 6(2)of LMPC, do not carry batch number of the product which is a standard practice.

Therefore the cigarettes imported appear to be non-adherent to **COTP Act, 2003, COTP Rules, 2017 Legal Meteorology Act, Legal Metrology (Packaged Commodity) Rules, 2011** and appear to contravene: -

- + the conditions laid down vide Notification No. 18/2015-20 (DGFT) dated 01-08-2017 issued by DGFT, Ministry of Commerce under Section 3 of the Foreign Trade (Development & Regulation) Act, 1992 read with Section 11(3) of the Customs Act, 1962.
- + Provisions of Section 46 (4A)(c) of the Customs Act, 1962.
- + Section 11(3) of the Customs Act, 1962 as well which reads as follows:-

11. Power to prohibit importation or exportation of goods
[Section 11(3) of the Customs Act, 1962]

...(3) Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.

Attention is drawn to Section 3 of the Foreign Trade (Development & Regulation) Act, 1992 which reads as follows: -

3. Powers to make provisions relating to imports and exports.—

... (2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology

(3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962

and all the provisions of that Act shall have effect accordingly.

Notification No. 18/2015-2020 dated 01-08-2017, mandating that the import of cigarette or any other tobacco product shall be subject to the provisions contained in Cigarettes and other Tobacco Products (Packaging and Labelling) Rules 2017, issued by DGFT under Section 3 of the Trade (Development & Regulation) Act, 1992 shall have the effect of restricting the import of cigarettes under Section 11 of the Customs Act, 1962 and therefore, all the provisions of the Customs Act, 1962 are applicable on such imports.

IPR Violation-

During the course of investigation, M/s ITC informed that the imported (placed under seizure) cigarette packages were not manufactured by ITC Ltd. As per the submission of M/s ITC Ltd., Gold flake is a trademark owned by M/s ITC and only they can manufacture and sell Gold flake brand cigarettes in India and few other countries. As per the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, M/s ITC Ltd., are the rightful owners of the trade mark 'Gold Flake' under the Trade Marks Act, 1999. Further Rule 2 (a) of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 defines the "goods infringing intellectual property rights" as "any goods which are made, reproduced, put into circulation or otherwise used in breach of the intellectual property laws in India or outside India and without the consent of the right holder or a person duly authorized to do so by the right holder". Therefore, in light of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, by importing cigarettes which infringed the trade mark owned by M/s ITC Ltd., M/s La Spirit Liquor Trading Co., has imported goods which fall under the definition of "goods infringing intellectual property rights" as defined under Rule 2(a) of these Rules, are violative of Trade Marks Act, 1999 and therefore, the goods appear to be liable for confiscation under Section 111(d) of the Customs Act, 1962.

ITC also informed that they had also come across Gold Flake cigarette packages which were similar to the packages under enquiry in retail outlets in India, which clearly suggest that Gold Flake cigarette packages were being brought into India in a clandestine manner. The fact that the Gold Flake cigarettes were imported concealed in the outer wrapper of "State Express 555" seems to indicate that these Gold Flakecigarette packages were meant to be smuggled into country while circumventing the applicable legislations like the Goods and Service tax Act, 2017, the Customs Act, 1962 and the Trade Marks Act, 1999.

Therefore, the vignette of the matter appears to be that cigarettes of brand '**Gold- Flake**' were found concealed inside cartons with packaging of '**State Express 555**' which appears to bring forth the unequivocal intent of the importer and the beneficiary owner Shri Narendrasinh Zala to mis-declare the goods interms of value as well as description. Therefore, the cigarettes imported vide Bill of Entry No. 1016497 dated 20-10-2022 of brand '**Gold-Flake**' concealed inside packaging of carton bearing brand '**State Express 555**' each of which was of 84 milli-metres in length appear to be in violation of specific requirements set out under the Cigarettes and other Tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply

and Distribution) Act, 2003 (COTPA), the Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, (COTP Rules), 2014 (as amended from time to time), the Legal Metrology Act, 2009 (LM), Legal Metrology (Packaged Commodity) Rules, (LMPC), 2011 and Trade Marks Act, 1999 and Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 the compliance of which are mandatory for sale of cigarette packages in India and applies equally to both domestically manufactured and imported cigarette packages.

Therefore, such imported cigarettes covered under Bill of Entry No. 1016497 dated 20-10-2022) appear to be liable for confiscation under the following provisions of the Customs Act, 1962:-

- + **Section 111 (d)** in as much as the subject import is in contravention to the prohibitions imposed as per LOA, provisions of SEZ Act 2005, Customs Act, 1962 and allied acts like COTPA and Trade Marks Act, 1999 read with Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.
- + **Section 111(f)** in as much as the wrong declaration of Country of Origin/ value in the IGM before Customs authorities. As part of investigation, KASEZ Customs found that the value of cigarettes in open market was Rs. 24/- per stick and hence, the total value of the cigarettes imported was found to be Rs. 10,51,20,000/-. Such mis- declaration in terms of value of cigarettes appears to render these imported cigarettes liable for confiscation under this provision of Section 111 of the Customs Act, 1962.
- + **Section 111(i)** in as much as the dutiable/prohibited goods were found concealed in the manner described in the foregoing paragraphs.
- + **Section 111(j)** in as much as the said goods were dealt with/ removed from said SEZ Unit without the permission of Superintendent(P&I) despite the directions to the contrary during Panchnama proceedings.
- + **Section 111(m)** in as much as the subject goods have been found to be mis-declared in terms of Country of Origin/Value. This is rendered support by the fact that cigarettes under the brand name "Gold-flake" are manufactured by M/s ITC only and M/s ITC does not have any manufacturing unit in Cambodia.
- + **Section 111(o)** in as much as the imported goods were mis-declared and imported in contravention to the provisions stipulated in the LOA issued to the unit.

It appears that the said SEZ unit and the beneficiary owner were dealing in imported goods (cigarettes) which were liable for confiscation under various provisions of Section 111 of the Customs Act, 1962 as discussed above with an intent to export them further on to Dubai and the said SEZ unit and the beneficiary owner were therefore, smuggling goods as defined under Section 2(39) of the Customs Act, 1962 which reads as follows:-

Section 2(39) defines "smuggling" as

in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;

All the acts of omission and commission of importing such smuggled goods appear to render the goods liable for confiscation under Section 111 (d), (f), (i), (j), (m) & (o) of the Customs Act, 1962 and dealing, harbouring, removing such goods in clandestine manner and furnishing false information to Customs appears to have rendered the said SEZ unit and the beneficiary owner i.e., Shri Narendrasinh Zala liable for penal; action under Section 112/114A & Section 114AA of the Customs Act, 1962.

9.2. CLANDESTINE REMOVAL OF GOODS

9.2.1. Goods imported under Bill of Entry No 1016497 dated 20-10-2022 were placed under seizure vide Panchnama dated 28-10-2022 and the said SEZ Unit was informed that they should not carry out any Custom transaction nor deal with subject goods placed under seizure and locked inside the said premises without written permission from proper officer of Customs. The SEZ Unit was further asked to maintain proper security in and around their premise. The said SEZ Unit was also asked that they should produce the said seized goods intact and in the same condition as they were then, whenever called upon to do so by the Superintendent (P&I) and not to deliver the same to any person or otherwise dispose off or deal with the same without an order in writing from Superintendent(P&I).

9.2.2. However, it appears that despite the unequivocal instructions from the Customs regarding non-parting with the offending goods and affixing their responsibility to ensure the safety of goods, an incident of clandestine removal of goods was reported wherein 11,60,000 (Eleven lacs sixty thousand) sticks of cigarettes were removed (out of which 23,800 sticks recovered by KASEZ security) in a clandestine manner leading to immense pecuniary loss to the Government exchequer. From the investigation, it is forthcoming that while huge Government revenue was at stake, the said SEZ unit and Shri Narendrasinh Zala passed the buck about the safety of the offending goods with no one actually taking the responsibility leading to the successful clandestine removal of goods and revenue loss to the exchequer. Shri S.I. Motanwala, Proprietor of M/s La Spirit Liquor Trading Co. and Shri Narendrasinh Zala appear to have adopted a very lackadaisical approach regarding the safety of the offending goods. Shri Narendrasinh Zala appears to be not holding any post whatsoever in the said SEZ unit and yet was entrusted with the responsibility of

the safety of the goods. Any communication of the material facts to the Customs authority regarding their failure to maintain security at the said premise on the part of any of the parties is not forthcoming as well. The inability of the said SEZ unit, Shri S.I. Motanwala and Shri Narendrasinh Zala to secure the goods not only led to huge pecuniary loss to the government exchequer but also clearance of 11,60,000 (Eleven lacs sixty thousand only) sticks of imported cigarettes (smuggled goods) into domestic market which were non-compliant with the COTP Act 2003, COTP Rules 2014 (as amended from time to time), Legal Meteorology Act, Legal Metrology (Packaged Commodity) Rules, 2011, Trade Marks Act, 1999 and Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

- 9.2.3. The facts and circumstances appear to bring forth the glaring absence of any bona-fide on the part of Shri S.I. Motanwala and Shri Narendrasinh Zala regarding the security of the said premise or the offending goods and the subsequent clandestine removal of the offending goods. These acts of omission and commission on the part of Shri S.I. Motanwala and Shri Narendrasinh Zala appear to render them liable for penal action under Section 112 & Section 117 of the Customs Act, 1962.

9.3. DUTY INCIDENCE ON ACCOUNT OF CLANDESTINE REMOVAL OF CIGARETTES FROM THE PREMISE OF THE SEZ UNIT AS WELL AS FROM KASEZ INTO DTA

- 9.3.1. The said SEZ unit is bound by provisions of the SEZ Rules, 2006 in respect of the goods imported duty free under the provisions of Section 26 of SEZ Act, 2005 to utilize such goods for authorized operations only (Rule 22, SEZ Rules, 2006), to pay duty in case of failure to utilize such imported goods for authorized operations (Section 30 of the SEZ Act, 2005 read with Rule 25 of the SEZ Rules, 2006).

- 9.3.2. It appears that the said SEZ unit has failed to utilize the aforesaid goods for their authorized operations and failed to follow the prescribed procedure as provided in Rule 22 (Grant of permission to operate including availing exemption subject to conditions) & Rule 34 (Utilization of goods) of SEZ Rules, 2006. It appears that the subject goods associated with incident of clandestine removal, which contain duty free imported goods would entail duty liabilities in as much as the clandestine removal of the subject goods shall be deemed to be non-utilization/non-accounting of duty-free imported goods for authorized operations. Therefore, it appears that the duty forgone on the subject goods

which were lost on the account of clandestine removal from SEZ, would be recoverable from the said SEZ unit as much as the said goods have neither been utilized in authorized operations nor have been accounted for in the manner prescribed in Rule 22 read with Rule 25 (non- utilization of duty free goods for authorized operation or on failure to account for such duty free goods) of SEZ Rules, 2006.

9.3.3. The said SEZ unit has undertaken to fulfil all the conditions stipulated in various Notifications/Circulars etc., related to their operations. The said SEZ unit, by way of furnishing Bond-cum-Legal Undertaking in Form H (Rule-22, SEZ Rules, 2006; *Terms and conditions for grant of permission to operate including availing exemptions, drawbacks and concessions*), has undertaken to pay duty, interest, penalty etc., in case of any demand for violation of any of the conditions mentioned in the Bond cum Legal Undertaking in Form H. Therefore, it appears that the aforementioned dues such as duty, interest & penalty etc., under various statutes, can be recovered by enforcing the Bonds executed by them before Development Commissioner and Specified Officer respectively.

9.3.4. It appears that it is the duty of the SEZ unit to take due care to safeguard the Government revenue which said SEZ unit has failed to do. Further, it appears that they have not obtained insurance cover regarding Customs duties involved in the subject goods and no corresponding claims have been received from the insurance companies pertaining to the tax component on the subject goods involved in the instant case. Whereas it appears that the said SEZ unit has deliberately failed to insure the subject goods for the Customs duty portion involved on the imported goods received by them duty free in their SEZ unit for use in specific purpose. Therefore, it appears that the said SEZ unit does not bear any intent at all to secure the government revenue. Factually, it appears that subject goods were dutiable but were exempted from the payment of the same only when they were used for authorized operations in the SEZ. The subject goods imported by the said SEZ unit and subsequently clandestinely removed appear to be liable to be subjected to Custom duty under Section 30 of SEZ Act, 2005 read with Rule 25 of the SEZ Rules, 2006 and Section 28(4) of the Customs Act, 1962.

9.3.5. Since 11,60,000 sticks of cigarettes were removed from the said SEZ unit in a clandestine manner, therefore, the amount of duty liability is as follows:-

Sr. No.	Description		DutyRate	Amount
1	Assessable Value (i.r.o. 11,60,000 sticks Of cigarettes)	A	-	2,78,40,000/-
2	Basic Customs Duty (BCD@ 30%)	B	A*30%	83,52,000/-
3	Additional Duty of Customs (Rs.3375 per thousand sticks of cigarette)	C	Rs.3375*1160 (thousand sticks of cigarettes)	39,15,000/-
4	Custom AIDC(30%)	D	B*30%	25,05,600/-
5	NCCD(Rs.735per Thousand sticks of cigarette)	E	Rs.735*1160 (thousand sticks of cigarettes)	8,52,600/-
6	Social Welfare Surcharge (10%)	F	(B+C+D+E)*10%	15,62,520/-
7	IGST (28%)	G	(A+B+C+D+E+F)*28 %	1,26,07,762/-
8	Compensation Cess (36%+Rs.4170per Thousand sticks of cigarette)	H	(A+B+C+D+E+F)*36 %+4170*1160	2,10,47,179/-
	Total Duty Liability		(B+C+D+E+F+G+H)	Rs. 5,08,42,661/-

9.4. Legal Contraventions in respect of attempt to Export of Seized goods

9.4.1. As per the conditions stipulated in their LOA, the said SEZ Unit was permitted to supply the duty-free imported goods only to the bonded warehouse, foreign vessels falling at Kandla, Mundra Port and duty-freeshops of these ports. However, **the said SEZ Unit appears to have attempted to export the said goods to Dubai in violation to the provisions of LOA.** This is forthcoming from the statement of Shri Haresh Sangar, Authorised representative of M/s Maersk Line India Pvt. Ltd/ (Shipping line) dated 03-02-2023 wherein he inter-alia stated that *they had received a booking for export of Cigarettes from KASEZ to Cambodia. Further, based on booking they have released 20 feet container with no. MRSU0188002 for the said export.*

9.4.2. Investigation has revealed that the offending cigarettes were counterfeit in nature. These offending counterfeit cigarettes had been imported from Cambodia, but there was no manufacturing facility for 'Gold-Flake' brand cigarettes in Cambodia. These offending cigarettes were in violation of the Labelling requirements for the Cigarettes for clearance in GCC Countries on account of misuse of name and Trademark, of Country of Origin,

manufacturing, packing, non- mentioning of Batch number etc. In view of above, it appears that the subject goods could not be exported to Dubai and said unit did not have valid permission to export Cigarettes to Dubai. Despite the above position, the said SEZ Unit filed Shipping Bill for export of seized goods to Dubai, arranged transportation for said export of seized goods without permission of Customs. As discussed above, the cigarettes violated the Cigarettes and other Tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, the Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2014 (as amended from time to time), the Legal Metrology Act, 2009 (LM), Legal Metrology (Packaged Commodity) Rules, 2011 and Trade Marks Act, 1999 and Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

- 9.4.3. Therefore, it appears that the SEZ unit and the beneficiary owner of the goods attempted to improperly export the goods which appears to render such goods liable for confiscation under Section 113(d) of the Customs Act, 1962 (in addition to being liable for confiscation under various provisions of Section 111 enlisted above) which reads as follows:-

Confiscation of goods attempted to be improperly exported, etc.– The following export goods shall be liable to confiscation:

(d)Any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

Further, by dealing in such goods, which are liable for confiscation, the said SEZ unit and the beneficiary owner appear to have made themselves liable for penal action under Section 114 of the Customs Act, 1962.

10. It appears that Shri S.I. Motanwala, Proprietor of the said SEZ Unit, in connivance with Shri Narendrasinh Zala had deliberately availed the Customs duty exemptions by means of mis-declaration in terms of Country Of Origin/ Value, thereby indulging in wilful mis-statement and suppression of facts and contravened various provisions of the Customs Act, 1962 and rules made there under, as discussed in the foregoing paragraphs above, with intent to evade payment of Customs duty and with the intent of unauthorized export the said goods to Dubai, UAE. Also, they intentionally and deliberately signed, made, used or caused to be filed Bills of Entry, invoices, declarations and other statements which they had reasons to believe were false and incorrect in crucial/ aspects in the course imports into KASEZ. They were part of larger conspiracy and organized smuggling and tried to mislead investigations by giving contradictory statements,

evasive replies and not cooperated with the investigation. Further, said SEZ Unit, had consciously dealt with the said counterfeited goods which they knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962 read with the SEZ Act, 2005 and rules made there under and read with Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 and rules made there under. Thus, the said SEZ Unit have rendered themselves for penalty, individually and separately, under Section 112(a) and 112(b) of the Customs Act, 1962. Also, the said SEZ Unit had knowingly and intentionally presented the said non-authentic documents before the Customs Authorities at the time of import, which were false, fabricated and incorrect. Hence, the said acts on the part of SEZ Unit have rendered them liable for penalty under Section 114AA of the Customs Act, 1962. The said acts of omission and commission on the part of the said SEZ Unit, its Proprietor- Shri S.I. Motanwala along with Shri Narendrasinh Zala who acted as facilitators and abettors of the said modus operandi, have rendered them liable for penalty, individually and separately, under the provisions of Section 112 & 114/114A, 114AA & Section 117 of the Customs Act, 1962.

11. Role played by SEZ Unit i.e. M/s. La spirit Liquor Trading CO. KASEZ.

In view of the above discussion, it appears that M/s La Spirit Trading Co. had:-

- + hatched a conspiracy with Shri Narendrasinh Zala to import mis-declared goods viz. Cigarettes from Cambodia and subsequently re-export such goods to Dubai, UAE.
- + failed to correctly file the Bill of Entry under Section 46 of the Customs Act, 1962 and had failed to furnish true and complete information. Furnished incorrect information to Customs authorities while filing the Bill of Entry and rendered themselves liable for penal action under Section 112 & 114/114A as well as Section 114AA of the Customs Act, 1962.
- + Improperly imported the goods on account of the fact that they were mis- declared in terms of value as well as description. Such improperly goods on account of being mis-declared in terms of value, description appeared to be liable for confiscation under various provisions of Section 111 of the Customs Act, 1962 as discussed above.
- + The goods so imported were in violation of The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act or COTP Act 2003, COTP Rules, 2017, Legal Metrology Act, Legal Metrology (Packaged Commodity) Rules, 2011, Trade-Marks Act, 1999 and Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. Such non-compliance of these imported goods had led to violation of Notification No. 18/2015-20 (DGFT) dated 01-08-2017 issued by DGFT, Ministry of Commerce under Section 3 of the Foreign Trade (Development & Regulation) Act, 1992, provisions of Section 46 (4A)(c) of the Customs Act, 1962 & Section 11(3) of the Customs Act, 1962.
- + Failed to ensure the security of the goods placed under seizure at their premise and instead bequeathed the responsibility for ensuring the safety of the offending goods to Shri Narendrasinh Zala who was not holding any post in their company. Such lackadaisical approach regarding the safety of the premise as well the offending goods

stored therein led to clandestine removal of such goods and huge pecuniary loss to government exchequer.

- + Cleared the 11,60,000 sticks of imported cigarettes to DTA and thus, rendered themselves liable for payment of Customs duty on such clandestinely cleared goods under Section 30 of the SEZ Act, 2005 read with Rule 25 of the SEZ Rules 2006.
- + Failed to comply with the conditions laid down for their operations in the LOA viz. Rule 22 (Terms and conditions for grant of permission to operate including availing exemptions, drawbacks and concessions), failure to maintain stock.
- + Actively participated in smuggling of goods and had aided and abetted the harbouring, storage and concealment of the goods which were liable for confiscation under Section 111 & 113 of the Customs Act, 1962.

12. Role played by Shri Narendrasinh Zala, the beneficiary owner of the offending goods

- + Hatched a conspiracy in connivance with Shri S.I. Motanwala to import mis-declared goods viz. Cigarettes from Cambodia and subsequently attempted to clear them to Dubai, UAE while knowing that such goods could not be re-exported to Dubai as M/s La Spirit did not possess any such permission. This was done at the behest of M/s La Spirit Liquor Trading Co.
- + Shri Narendrasinh Zala was the actual beneficiary owner of the cigarettes so imported from Cambodia. He appears to have arranged the import of cigarettes from Alex, the Sri Lankan national in Cambodia, got the Bill of Entry No. 1016497 dated 20.10.2022 filed from the account of M/s La Spirit Liquor Trading Co. by M/s. Cross Tradelink Pvt. Ltd, deliberately furnishing false and incorrect information with an intent to defraud the exchequer. He thus appears to have acted as the lynchpin to the conspiracy hatched with an intent to defraud the exchequer.
- + Actively aided and abetted the smuggling of the goods and actively dealt in goods such goods which were known to him to be of the nature of being liable for confiscation under various provisions of Section 111 & 113 of the Customs Act, 1962 as discussed above.
- + Accepted the responsibility to secure the premise of M/s La Spirit Liquor Trading Co. without holding any post in the company whatsoever. Subsequently, failed to secure the premise and the offending goods stored therein leading to clandestine removal of 11,60,000 sticks of smuggled cigarettes into DTA which were non-compliant with the COTP Act, COTP Rules and other allied acts and rules.
- + Actively participated in smuggling of goods and had aided and abetted the harbouring, storage and concealment of the goods which were liable for confiscation under Section 111 of the Customs Act, 1962.

12.1 Role played by Shri S.I. Motanwala, Proprietor of M/s. La Spirit Liquor Trading Co.

- + Hatched a conspiracy in connivance with Shri Narendrasinh Zala to import mis-declared goods viz. Cigarettes from Cambodia and subsequently attempted to clear them to Dubai, UAE while knowing that such goods could not be re-exported to Dubai as M/s La Spirit did not possess any such permission.

- + Allowed Shri Narendrasinh Zala Bill of Entry No. 1016497 dated 20.10.2022 filed from the account of M/s La Spirit Liquor Trading Co. and deliberately furnishing false and incorrect information with an intent to defraud the exchequer.
 - + Actively aided and abetted the smuggling of the counterfeit goods and actively dealt in goods such goods which were known to him to be of the nature of being liable for confiscation under various provisions of Section 111 & 113 of the Customs Act, 1962 as discussed above.
 - + Failed to secure the premise and the offending goods stored therein leading to clandestineremoval of 11,60,000 sticks of smuggled cigarettes into DTA which were non-compliant with the COTP Act, COTP Rules and other allied acts and rules.
 - + Actively participated in smuggling of goods and had aided and abetted the harbouring, storage and concealment of the goods which were liable for confiscation under Section 111 of the Customs Act, 1962.
13. Now, therefore, M/s. La Spirit Liquor Trading Co., Shed No. 416, Ground floor, Sector-11, KASEZ, are hereby called upon to show cause in writing to the Commissioner of Customs, Kandla, having his office situated at 1st Floor, Customs House, Near Balaji Temple, Kandla as to why: -
- a. the seized 43,80,000 sticks of imported foreign origin cigarettes of "Gold- Flake" brand, valued at Rs. **10,51,20,000/-** (Rs. Ten crores fifty one lacs twenty thousand only) placed under seizure vide Panchnama dated 28-10- 2022 should not be held liable for absolute confiscation under the provisions of Section 111(d), (f), (i), (j), (m) & (o) & 113(d) of the Customs Act, 1962;
 - b. Customs duty amounting to Rs. 5,08,42,661/- (Rupees Five crores eight lacs forty two thousand six hundred and sixty one only) on goods cleared from the premise of M/s La Spirit Liquor Trading Co. should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 read with Section 30 of the SEZ Act, 2005 and Rule 25 of the SEZ Rules, 2006.
 - c. Interest at appropriate rate should not be recovered from them under Section 28AA of the Customs Act, 1962.
 - d. Penalty should not be imposed on them under Section 112&114/114A of the Customs Act, 1962.
 - e. Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962
14. **Shri S.I. Motanwala**, the Proprietor, **M/s La Spirit Trading Co, Kasez** is hereby called upon to show cause in writing to the Commissioner of Customs, Surat, having his office situated at 1st Floor, Customs House, Near Balaji Temple, Kandla as to why: -
- a) Penalty should not be imposed on him under Section 112&114/114A of the Customs Act, 1962.
 - b) Penalty should not be imposed on him under Section 114AA of the Customs Act, 1962.
 - c) Penalty should not be imposed on him under Section 117 of the Customs Act, 1962.
15. **Shri Narendrasinh Zala**, the beneficiary owner of the imported goods, is hereby

called upon to show cause in writing to the Commissioner of Customs, Surat, having his office situated at 1st Floor, Customs House, Near Balaji Temple, Kandla as to why:-

- a) Penalty should not be imposed on him under Section 112&114/114A of the Customs Act, 1962.
- b) Penalty should not be imposed on him under Section 114AA of the Customs Act, 1962.
- c) Penalty should not be imposed on him under Section 117 of the Customs Act, 1962.

PERSONAL HEARING-

16. Shri R S Prasad, Consultant appeared for personal hearing on 28.08.2024 on behalf of all the three noticees. He reiterated the submission made vide their reply dated 04.03.2024 and 26.08.2024. He requested for dropping the proceedings.

WRITTEN SUBMISSION-

17. The noticee M/s. La Spirit Liquor vide their submission dated 26.08.2024 and 21.10.2024, interalia, stated that-

- (i) The officer who seized the goods was not authorized to seize the goods and that too within a SEZ.
 - a. Specified officer and Authorized officer are drawn from the formations of and under CBIC.
 - b. It needs to be understood that this is a source of recruitment for the posts created in a Special Economic Zone; it neither confers on them the powers and functions of proper officer or corresponding offices created under or operating under the Customs Act, 1962 nor makes them accountable to any authority created by the Customs Act, 1962 during the time that they are posted in the Special Economic Zone. In other words, when any officer of Customs is posted in Central Bureau of Investigation, the officer is not required to work there as a Customs officer and implement the provisions of Customs Act, 1962 but he must work under the various provisions under which the CBI is empowered and works. Similarly, when any Custom Officer is posted in Enforcement Directorate, he works as per the provisions of FEMA and PMLA and not as per Customs Act, 1962.
 - c. It is submitted that as per Section 51 (of SEZ Act, 2005), SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause.
 - d. It is also submitted that through Notification S.O. 2665(E) dated 5th August, 2016 issued by Ministry of Commerce under sub section (1) of Section 21 of the SEZ Act, 2005, the offences contained in the under mentioned sections of the Customs Act, 1962 have been made offences under SEZ Act, 2005: - 1. Section 28, 28AA, and 28AAA 2. Section 74 and 75 3. Section 111 4. Section 113 5. Section 115 6. Section 124 7. Section 135 8. Section 104.
 - e. It is submitted that through Notification S.O. 2667(E) dated 5th August, 2016 jurisdictional Customs Commissioner has been authorized to carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit, condition to fulfillment of certain procedural requirements.

f. It is also submitted that through Notification S.O. 2666(E) dated 5th August, 2016 ADG, DRI has been authorized to be the enforcement officer(s) in respect of any notified offence in a Special Economic Zone or Unit. 3.1.6 From the above facts and provisions it may be seen that the Specified Officers and Authorized Officers of SEZ have not been authorized to be enforcement officers in respect of any notified offence in a Special Economic Zone or Unit.

(ii) As provided under Section 110(2) of the Customs Act, 1962 in case of seizure of goods, a notice is required to be issued under Section 124(a) of the Customs Act, 1962 within six months of the seizure of the goods and if no notice is issued under Section 124(a) within six months of the seizure of goods, the goods shall be returned to the person from whose possession they were seized.

(iii) It is submitted that in the show cause notice, it is alleged that the notice had clandestinely removed the duty-free imported goods. But in the present instance the goods were actually stolen and for that theft an FIR bearing no. 11993007230098 dated 10.02.2023 has also been registered at Police Station, B Division, Gandhidham. It is submitted that there is a vast difference between removal of goods and theft of goods. Removal of goods refers to transfer of the possession of goods with the intention and will of the owner of the goods. Contrary, theft means removal of goods with wrong intent by the person other than the owner of the goods without any prior intimation or approval in a malice manner.

(iv) It is submitted that noticee was informed that they were not allowed to carry out any Custom transaction nor deal with subject goods placed under seizure and locked inside the said premises, without written permission from the Superintendent (P&I). Being a law-abiding business person, it had followed all the instructions, but due to unforeseen circumstances, the said goods under custody were stolen and that too within the secured premises of KASEZ, where round the clock security is available and no person and goods can leave the KASEZ premises without permission and physical frisking. Despite these, the goods were stolen which is a situation beyond the control of the noticee. However, in any case it cannot be shown as clandestine removal of the goods. On the basis above it is clear that there was no clandestine removal of the goods as the same were stolen and all the legal procedures were duly followed till the filing of complaint in police station by the noticee.

(v) NO PROCEDURE WAS FOLLOWED AS PRESCRIBED UNDER INTELLECTUAL PROPERTY RIGHTS (IMPORTED GOODS) ENFORCEMENT RULES, 2007

It is submitted that "Goods Infringing Intellectual Property Rights" are defined under Rule 2(a) of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 and is defined as Rule 2(a) " goods infringing intellectual property rights" means any goods which are made, reproduced, put into circulation or otherwise used in breach of the intellectual property laws in India or outside India and without the consent of the right holder or a person duly authorized to do so by the right holder;

(vi) It is submitted that in the show cause notice it is mentioned that the said goods fall under Rule 2(a), the Procedures prescribed under Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 must be followed which has not been followed. The extract of the rules are as follows:

(1)(a) Where the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, based on the notice given by the right holder has a reason to believe that the imported goods are suspected to be goods infringing intellectual property rights, he shall suspend the clearance of the goods.

(b) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may, on his own initiative, suspend the clearance of goods, in

respect of which he has prima-facie evidence or reasonable grounds to believe that the imported goods are goods infringing intellectual property rights.

(2) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall immediately inform the importer and the right holder or their respective authorised representatives through a letter issued by speed post or through electronic mode of the suspension of clearance of the goods and shall state the reasons for such suspension.

(3) Where clearance of the goods suspected to be infringing intellectual property has been suspended and the right holder or his authorised representative does not join the proceedings within a period of ten working days from the date of suspension of clearance leading to a decision on the merits of the case, the goods shall be released provided that all other conditions of import of such goods under the Customs Act, 1962, have been complied with: Provided that the above time limit of ten working days may be extended by another ten days in appropriate cases by the Commissioner or an officer authorized by him in this behalf.

(4) Where the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, has suspended clearance of goods on his own initiative and right holder does not give notice under rule 3 of the Rules or does not fulfill the obligation under Rule 5, within five days from the date of suspension of clearance, the goods shall be released provided that all other conditions of import of such goods under the Customs Act, 1962, have been complied with.

(5) Where the clearance of goods has been suspended, customs may, where it acts on its own initiative, seek from the right holder any information or assistance, including technical expertise and facilities for the purpose of determining whether the suspect goods are counterfeit or pirated or otherwise infringe an intellectual property right.

(6) Where the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, has suspended clearance of goods on his own initiative and right holder has given notice under rule 3 of the Rules and fulfilled the obligations under Rule 5, but , the right holder or his authorised representative does not join the proceedings within a period of ten working days from the date of suspension of clearance leading to a decision on the merits of the case, the goods shall be released provided that all other conditions of their import under the Customs Act, 1962, have been complied with:

Provided that the above time- limit of ten working days may be extended by another ten working days in appropriate cases by the Commissioner or an officer authorized by him in this behalf.

(7) In the case of perishable goods suspected of infringing intellectual property rights, the period of suspension of release shall be three working days which may be extended by another four days subject to the satisfaction of the Commissioner or the officer authorized by him in this behalf that such extension shall not affect the goods.

(8) Notwithstanding anything contained in these Rules, in the case of suspension of clearance of perishable goods on the basis of notice of the right holder or his authorized representative, the right holder or his authorized representative shall join the proceedings as required under these Rules within three working days or the extended period as provided in sub-rule (7) and in case of suspension of clearance of perishable good by the

Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, on his own initiative, the right holder shall give notice, execute a bond and join the proceedings as required under these Rules within three working days or the extended period as provided in sub-rule (7) , as the case may be, failing which the goods shall be released.

(9) If within ten working days or the extended period under sub-rule (6), as the case may be, and within three working days or the extended period as provided in sub-rule (7) of this rule in the case of perishable goods, the right-holder or his authorized representative joins the proceedings, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, having reasons to believe that the goods are goods infringing intellectual property rights and liable to confiscation under section 111 (d) of the Customs Act, may seize the same under section 110 of the Customs Act.

(vi) There was no removal of goods not to speak of clandestine removal. There was a theft at the SEZ unit.

(vii) The legal possession of the goods was with Customs and as such the responsibility of its custody and security was also with the Customs department.

(viii) Penalty under Section 112 & 114/114A/117 is not imposable.

17.1 The noticee- Sri S I Motanwala, in his submission interalia submitted the following-

(i) Penalty under Section 112, 114/114A, 117 is not imposable as there is no clarity as to for what purpose the penalty is being proposed to be imposed and under which section.

(ii) The allegation in the SCN is vague and not specific.

(iii) They have relied on various case laws.

17.2 The noticee- Sri Narendrasinh Zhala, in his submission interalia submitted the following-

(i) Penalty under Section 112, 114/114A, 117 is not imposable as there is no clarity as to for what purpose the penalty is being proposed to be imposed and under which section.

(ii) The allegation in the SCN is vague and not specific.

(iii) They have relied on various case laws.

DISCUSSION AND FINDINGS-

18. I have carefully gone through the show cause notice, written submission and all the evidences available on record.

19. Before going into the merit of the case, it is necessary to examine the other relevant arguments of the noticees viz. whether the seizure of goods by Specified/Authorized officer is allowed as per law, whether show cause notice was issued within time limit etc.

20. The noticee in their submission has argued that –

a. *The goods lying within the KASEZ were seized by the officer under the designation of Preventive Officer under Section 110 of the Customs Act, 1962. Specified officer and Authorized officer are drawn from the formations of and under CBIC.*

b. *It needs to be understood that this is a source of recruitment for the posts created in a Special Economic Zone; it neither confers on them the powers and functions of proper officer or corresponding offices created under or operating under the Customs Act, 1962 nor makes them accountable to any*

authority created by the Customs Act, 1962 during the time that they are posted in the Special Economic Zone. In other words, when any officer of Customs is posted in Central Bureau of Investigation, the officer is not required to work there as a Customs officer and implement the provisions of Customs Act, 1962 but he must work under the various provisions under which the CBI is empowered and works. Similarly, when any Custom Officer is posted in Enforcement Directorate, he works as per the provisions of FEMA and PMLA and not as per Customs Act, 1962.

- c. It is submitted that as per Section 51 (of SEZ Act, 2005), SEZ Act prevails over other enactments to the extent of special provisions being made under SEZ Act. Therefore, the SEZ Act would prevail over the Customs Act, 1962 in all aspects in view of the non-obstinate clause.*
- d. It is also submitted that through Notification S.O. 2665(E) dated 5th August, 2016 issued by Ministry of Commerce under sub section (1) of Section 21 of the SEZ Act, 2005, the offences contained in the under mentioned sections of the Customs Act, 1962 have been made offences under SEZ Act, 2005: - 1. Section 28, 28AA, and 28AAA 2. Section 74 and 75 3. Section 111 4. Section 113 5. Section 115 6. Section 124 7. Section 135 8. Section 104.*
- e. It is submitted that through Notification S.O. 2667(E) dated 5th August, 2016 jurisdictional Customs Commissioner has been authorized to carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit, condition to fulfillment of certain procedural requirements.*
- f. It is also submitted that through Notification S.O. 2666(E) dated 5th August, 2016 ADG, DRI has been authorized to be the enforcement officer(s) in respect of any notified offence in a Special Economic Zone or Unit. 3.1.6 From the above facts and provisions it may be seen that the Specified Officers and Authorized Officers of SEZ have not been authorized to be enforcement officers in respect of any notified offence in a Special Economic Zone or Unit.*

21. In this regard, I find that the goods were placed under seizure vide Panchanama dated 28.10.2022 on reasonable belief that the goods were liable for confiscation. The Panchanama was drawn by the Preventive officer (P&I), KASEZ and Superintendent (P&I), KASEZ and the noticee was directed not to remove or part with the seized goods. Both the officers are known as Authorised Officer under Rule 2(c) of SEZ Rules, 2006 as given below-

(c) "Authorised Officer" means an Inspector or Preventive Officer or Appraiser or Superintendent of Customs posted in the Special Economic Zone and authorized by the Specified Officer to discharge any of his functions under these rules;

Further, the definition of Specified officer is given under Rule 2(zd) of SEZ Rules, 2006 as given below-

(zd) "Specified Officer" in relation to a Special Economic Zone means Joint or Deputy or Assistant Commissioner of Customs for the time being posted in the Special Economic Zone.

22. The noticee has argued that Authorized officer are not empowered to seize the goods as per Section 108 of the Customs Act, 1962 as their power and authority are circumscribed by the content of the Rules which required them to perform a certain function in a certain context. In this regard, kind reference is invited towards the Section 4 and Section 5(1) of the Customs Act, 1962 and Notification No. 110/2003 - Customs (N.T.) dated 08.12.2003, relevant extracts are reproduced as follows :

Section 4 of the Customs Act, 1962 reads as follows:

Appointment of officers of customs — (1) The [Board] may appoint such persons as it thinks fit to be officers of customs. (2) Without prejudice to the provisions of sub-section (1), [Board may authorise a [Principal Chief Commissioner of Customs or Chief Commissioner of Customs] or] a [Principal Commissioner of Customs or Commissioner of Customs] or a [Joint] or [Assistant Commissioner of Customs or Deputy Commissioner of Customs] to appoint officers of customs below the rank of [Assistant Commissioner of Customs or Deputy Commissioner of Customs.]

Section 5 of the Customs Act, 1962 reads as follows:

Powers of officers of customs — (1) Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.

(3) Notwithstanding anything contained in this section, 1[a 2[Commissioner (Appeals)]] shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV and section 108.

Notification No. 110/2003 - Customs (N.T.) dated 08.12.2003

“In exercise of powers conferred by **sub-section (1) of section 4 of the Customs Act, 1962** (52 of 1962) and in supersession of notifications of the Government of India in the Ministry of Finance (Department of Revenue) No. 201/84-Customs, dated the 18th July, 1984 [G.S.R.514(E), dated the 18th July, 1984] and No. 28/88-Customs (N.T.), dated the 12th May, 1988 [G.S.5 65 (E), dated the 12th May, 1988], except as respect things done or omitted to be done before such supersession, the **Central Board of Excise and Customs hereby appoints,-**

(i) ...

(ii) ...

(iii) Appraiser, Superintendent (Preventive and Intelligence), Examiner and Preventive Officer, Special Economic Zone, to be officers of customs;

(iv) ...

...

...

2. The officers mentioned in clauses (i) to (iii) of the first paragraph shall be the Officers of Department of Revenue in the Ministry of Finance, working on Deputation to the Department of Commerce in the Ministry of Commerce and Industry and are working in the Special Economic Zone.

Explanation.- For the purposes of this notification, "Special Economic Zone" means Cochin Special Economic Zone, FALTA Special Economic Zone, **Kandla Special Economic Zone**, Madras Special Economic Zone, NOIDA Special Economic Zone, SEEPZ Special Economic Zone, Surat Special Economic Zone, Visakhapatnam Special Economic Zone or any other Special

Economic Zone as the Central Government may, by notification in the official Gazette specify under clause(iii) of Explanation 2 to the proviso to sub-section (1) of section 3 of the Central Excise Act, 1944(1 of 1944)."

23. Reading the above legal provisions together, it is clear that vide Notification No. 110/2003 - Customs (N.T.) dated 08.12.2003, the authorised officers (*Appraiser, Superintendent (Preventive and Intelligence), Examiner and Preventive Officer*) at Special Economic Zone have been appointed by the Board as "**officers of Customs**" under Section (4)(1) of the Customs Act, 1962. Further as per the Section 5 of the Customs Act, 1962, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under the Customs Act. Therefore, it is clear that the Authorized officers are empowered to seize the goods under Section 110 of the Customs Act, 1962.

24. Further, in this regard, it is pertinent to note that the Central Government, vide Notification No. S.O. 77(E), in exercise of the powers conferred by sub-section (2) of Section 21 of SEZ Act, 2005, has authorized the Development Commissioner of the jurisdictional SEZ to be the enforcement officer in respect of the notified offences committed in a Special Economic Zone (SEZ). The enforcement officer can carry out the investigation, inspection, search or seizure in the Special Economic Zone or unit.

25. The Development Commissioner, SEZ, being an enforcement officer, delegates any of its power to any officer employed under him under Section 12(6) of SEZ Act, 2005 as reproduced under:-

"(6) The Development Commissioner, may, delegate any or all of his powers or functions to any of the officers employed under him."

26. In view of the above discussion, I hold that the seizure of goods by the officers (Authorized officers) was correct and legal as per law.

27. The noticee further argued that as provided under Section 110(2) of the Customs Act, 1962 in case of seizure of goods, a notice is required to be issued under Section 124(a) of the Customs Act, 1962 within six months of the seizure of the goods and if no notice is issued under Section 124(a) within six months of the seizure of goods, the goods shall be returned to the person from whose possession they were seized. In the instant case, goods were seized on 28.10.2022 and impugned SCN had been issued after six months from the date of seizure i.e. on 27.10.2023.

28. In this regard, kind attention is invited towards second proviso to Section 110(2) of the Customs Act, 1962, which reads as under:-

Section 110(2) in The Customs Act, 1962

(2)Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

[Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:

Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.

29. I find that this office vide order dated 18.04.2023, issued under Section 110A of the Customs Act, 1962, communicated the SEZ unit i.e. M/s. La spirit that the provisional release request had been rejected as the SEZ unit was not allowed to export Cigarettes as per LOA dated 24.08.2010 granted to them. Therefore, once the order for provisional release, even if disallowing request of release of goods, is issued under Section 110A of the Customs Act, 1962, the specified period of six months doesn't apply. The said second proviso doesn't mandate release of goods, it only requires issuance of order under 110A of the Customs Act. The case laws cited by the noticee are not applicable in the instant case as the said cases pertain to extension of time period for issuance of show cause notice.

30. Proceeding further, it is important to examine the merits of the case. I find that M/s. La Spirit Liquor Trading Co. was granted Letter of Approval (LoA) dated 24.08.2010 vide F. No. KASEZ/IA/018/2010-11/7849(RUD-1) by the Development Commissioner, Kandla SEZ under Section 15(9) of the Special Economic Zones Act, 2005 read with Rule 18 of the Special Economic Zones Rules, 2006 to operate as an SEZ unit and carry out authorized operations viz. "Trading of all sorts of Liquor". The noticee executed Bond-cum-Legal Undertaking in the Form-H regarding their obligations for proper utilization and account of goods. Further, the approval of BOA permitting the noticee to trade in "Cigarettes" was communicated to them vide letter dated 05-04-2011 issued by Director, SEZ (RUD-1) subject to conditions mentioned therein. The said SEZ unit was directed to ensure strict compliance of comprehensive instruction as stipulated in Instruction No. 01/2011 dated 28.04.2011 in dealing with sensitive items like Cigarettes. (RUD-1).

31. I find that on the basis of information that certain dutiable mis-declared/concealed goods were lying inside the premises of the said SEZ unit, Custom officers from KASEZ visited the premise of the said SEZ unit to take a stock of the goods lying at said SEZ Unit. The proceedings of the stock-taking/examination of goods lying at said SEZ Unit were recorded under Panchnama dated 28.10.2022 (RUD- 2).

32. During the course of examination, a total of 219 boxes were found. 100 smaller cartons were further found inside each of such 219 bigger cartons. Each of these 100 cartons had the description "**State Express / No. 555 / Made Under Authority Of CTBAT International Co. Ltd./ For Adults Only / For Duty Free Sale Only / Tar: 11mg / Nicotine: 1.1mg**" imprinted on them. Further, each of these 100 cartons had 10 packs inside them with each pack having description "**Gold Flake / Kings / Honey dew / Made In Turkey Under Authority Of The Trade Mark Owned By British American Tobacco / For Sale in GCC Countries / Tar: 7mg / Nicotine: 0.6mg**" imprinted on them. Each pack contained 20 sticks of Cigarettes. Thus, a total of 43,80,000 (Forty-three lacs eighty thousand only; 219*100*10*20) sticks of cigarettes each having a length of 84 millimetres having declared assessable value of Rs. 58,68,378/- were found during the course of examination. As part of investigation, KASEZ Customs found that the value of cigarettes in open market was Rs. 24/- per stick and hence, the total value of the

cigarettes imported was found to be Rs. 10,51,20,000/-. Thus, cigarettes of one brand (Gold Flake Kings) were found concealed inside cartons having description of another brand (555 State Express Original).

33. The said SEZ unit was requested to provide the stock register required to be maintained by them in respect of goods imported as well as goods procured from DTA under the provisions of SEZ Act 2005 and SEZ Rules 2006 which they failed to produce. The said SEZ Unit was informed that they should not carry out any Custom transaction nor deal with subject goods placed under seizure and locked inside the said premises without written permission from proper officer of Customs. The SEZ Unit was further informed to maintain proper security in and around their premise. The said SEZ Unit was also asked that they should produce the said seized goods intact and in the same condition as they were then, whenever called upon to do so by the Superintendent (P&I) and not to deliver the same to any person or otherwise dispose off or deal with the same without an order in writing from Superintendent (P&I).

34. However, the SEZ unit stopped the services of security services w.e.f 16.01.2023, despite clear directions to ensure safety and security of the seized goods which led to the theft of the duty free imported goods on 04.02.2023. This clearly shows not only their intention but also connivance in clandestine removal of the duty free imported goods seized under Panchanama dated 28.10.2022.

35. I find that the goods imported vide Bill of entry No. 1016497 dated 20-10-2022 (RUD-17) i.e., 43,80,000 (Forty-three lacs eighty thousand sticks of cigarettes each of which was of 84 millimetres in length) sticks of "GOLD-FLAKE" brand cigarettes having description **"Gold Flake / Kings/Honeydew / Made in Turkey Under Authority of The Trade Mark Owned By British American Tobacco/For Sale in GCC Countries/Tar.7mg/Nicotine: 0.6mg"** imprinted on them were found to be concealed inside smaller carton packaging of another brand with description **"StateExpress/No555/Made Under Authority Of CTBAT International Co. Ltd/ For Adults Only/ For Duty-Free Sale Only/Tar 11mg/Nicotine1.1mg"** imprinted on each of such cartons. The importer and the beneficiary owner Shri Narendrasinh Zala mis-declared the goods in terms of value as well as description in order to circumvent the provisions contained in Cigarettes and other Tobacco products (Packaging and Labelling) Amendment Rules, 2017.

36. I find that they also attempted to export the goods as they had filed the shipping Bills despite knowing that they were not allowed to export the goods. As per the conditions stipulated in their LOA, the said SEZ Unit was permitted to supply the duty-free imported goods only to the bonded warehouse, foreign vessels calling at Kandla, Mundra Port and duty-free shops of these

ports. However, the said SEZ Unit had attempted to export the said goods to Dubai in violation to the provisions of LOA.

CONFISCATION OF GOODS-

37. I find that it is clearly evident from the statements of Shri S I Motanwala and Shri Narendra Sinh Zhala and evidences available on record that they both were actively involved in the smuggling of counterfeit cigarettes from overseas and then export to Dubai in contravention of various laws. Their acts of commission and omission has rendered the subject goods liable for confiscation as they had improperly imported goods as well as attempted to improperly export them also. Therefore, the seized goods are liable for confiscation on the basis of following contraventions:-

- i. **Section 111 (d)** in as much as the subject import is in contravention to the prohibitions imposed as per LOA, provisions of SEZ Act 2005, Customs Act, 1962 and allied acts like COTPA and Trade Marks Act, 1999 read with Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.
- ii. **Section 111(f)** in as much as the wrong declaration of Country of Origin/ value in the IGM before Customs authorities. As part of investigation, KASEZ Customs found that the value of cigarettes in open market was Rs. 24/- per stick and hence, the total value of the cigarettes imported was found to be Rs. 10,51,20,000/-. Such mis- declaration in terms of value of cigarettes appears to render these imported cigarettes liable for confiscation under this provision of Section 111 of the Customs Act, 1962.
- iii. **Section 111(i)** in as much as the dutiable/prohibited goods were found concealed in the manner described in the foregoing paragraphs.
- iv. **Section 111(j)** in as much as the said goods were dealt with/ removed from said SEZ Unit without the permission of Superintendent(P&I) despite the directions to the contrary during Panchnama proceedings.
- v. **Section 111(m)** in as much as the subject goods have been found to be mis-declared interms of Country of Origin/Value. This is rendered support by the fact that cigarettes under the brand name "Gold-flake" are manufactured by M/s ITC only and M/s ITC does not have any manufacturing unit in Cambodia.
- vi. **Section 111(o)** in as much as the imported goods were mis-declared and imported in contravention to the provisions stipulated in the LOA issued to the unit.
- vii. **Section 113(d)** in as much as the goods were attempted to be exported contrary to the prohibition imposed under this COTPA and other Acts.

REDEMPTION OF THE SUBJECT GOODS-

38. I find that the subject goods were imported by the noticee- SEZ unit in contravention of provisions of LoA granted to them and various other Acts as follows:-

- (i) "Gold Flake" was a trademark owned by ITC Limited in India. **Only ITC Limited was authorized to manufacture and sell Gold Flake brand of cigarettes in India and few other countries.**

- (ii) No other entity was authorized to import "Gold Flake" brand of cigarettes for sale in India.
- (iii) *Rule 2 (a) of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 defines the "goods infringing intellectual property rights" as "any goods which are made, reproduced, put into circulation or otherwise used in breach of the intellectual property laws in India or outside India and without the consent of the right holder or a person duly authorized to do so by the right holder". Therefore, in light of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, by importing cigarettes which infringed the trade mark owned by M/s ITC Ltd., M/s La Spirit Liquor Trading Co., has imported goods which fall under the definition of "goods infringing intellectual property rights" as defined under Rule 2(a) of these Rules,*
- (iv) *The Gold Flake packages had been imported concealed in the outer wrapper of "State Express 555" indicated that these Gold Flake cigarette packages were meant to be smuggled into country circumventing applicable legislations like the Goods and Service tax Act, 2017, the Customs Act, 1962, the Trade Marks Act, 1999.*
- (v) *There were specific requirements set out under the Cigarettes and other Tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA), the Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2008 (COTP Rules), the Legal Metrology Act, 2009(LM) and Legal Metrology (Packaged Commodity) Rules, 2011(LMPC), the compliance of which are mandatory for sale of cigarette packages in India.*
- (vi) *The subject imported cigarettes packages did not comply with the requirements under COTPA, COTP Rules, Legal Meteorology Act and Legal Metrology (PackagedCommodity)Rules, 2011.*

It is clear that the noticee was not allowed as per LoA as well as other Acts including Trademarks Act to import and export the subject goods, therefore, the said goods are liable for absolute confiscation as redemption of goods can't be allowed in such cases where the owner of goods are not allowed to deal with such goods. Therefore, I hold that the subject goods are liable for **absolute confiscation** for the contravention of provisions of Section 111 and 113 as discussed in the foregoing para.

38.1 I further find that out of the 43,80,000 sticks of seized counterfeit cigarettes, 11,60,000 sticks were clandestinely removed and later on only 23,800 sticks were recovered by the KASEZ security officer. Therefore, only 32,43,800 (43,80,000-11,60,000+23800) sticks valued at Rs. 7,78,51,200/- (24*32,43,800) are available in the SEZ unit for absolute confiscation.

DUTY ON CLANDESTINE REMOVAL OF GOODS-

39. I find that the SEZ unit had improperly imported the duty free goods and on seizure of the said goods, they were directed to neither remove nor deal with the goods. They were further directed to maintain sufficient safety and security of the goods. However, they willfully removed the security of the premises from 16.01.2023 and the incident of the theft happened on 04.02.2023. In order to cover up their involvement, Sh. Narendra Sinh Zhala, who was neither associated with the SEZ unit nor was authorized to do so, filed an FIR in the matter. I

find that the seized goods were purposefully, with an intent to divert the prohibited goods in the Indian Market, cleared into the DTA in a clandestine manner. The series of events from removing the security service to filing an FIR clearly shows their malafide intent to defraud the exchequer. Whenever, the SEZ unit fails to account for the imported goods, they become liable for duty on such goods as if the goods had been cleared for home consumption, as the clandestine removal of the subject goods is non-utilization/non- accounting of duty-free imported goods for authorized operations, in terms of Rule 25 (non- utilization of duty free goods for authorized operation or on failure to account for such duty free goods) of SEZ Rules, 2006.

40. Since 11,60,000 sticks of cigarettes were removed from the said SEZ unit in a clandestine manner, therefore, the amount of duty liability is as follows:-

Sr. No.	Description		Duty Rate	Amount
1	Assessable Value (i.r.o. 11,60,000 sticks Of cigarettes)	A	-	2,78,40,000/-
2	Basic Customs Duty (BCD@ 30%)	B	A*30%	83,52,000/-
3	Additional Duty of Customs (Rs.3375 per thousand sticks of cigarette)	C	Rs.3375*1160 (thousand sticks of cigarettes)	39,15,000/-
4	Custom AIDC(30%)	D	B*30%	25,05,600/-
5	NCCD(Rs.735per Thousand sticks of cigarette)	E	Rs.735*1160 (thousand sticks of cigarettes)	8,52,600/-
6	Social Welfare Surcharge (10%)	F	(B+C+D+E)*10%	15,62,520/-
7	IGST (28%)	G	(A+B+C+D+E+F)*28 %	1,26,07,762/-
8	Compensation Cess (36%+Rs.4170per Thousand sticks of cigarette)	H	(A+B+C+D+E+F)*36 % +4170*1160	2,10,47,179/-
	Total Duty Liability		(B+C+D+E+F+G+ H)	Rs. 5,08,42,661/-

In view of the above, I hold that M/s. La Spirit Liquor Trading, KASEZ is liable to pay duty of Customs amounting to Rs. 5,08,42,661/- under the provisions of Section 28(4) of the Customs Act, 1962 alongwith interest at applicable rate under Section 28AA of the Customs Act, 1962.

PENALTIES-**41. SEZ Unit i.e. M/s. La spirit Liquor Trading CO. KASEZ.**

- 41.1 I find that M/s La Spirit Trading Co. hatched a conspiracy with Shri Narendrasinh Zala to import mis-declared goods viz. Cigarettes from Cambodia and subsequently re-export such goods to Dubai, UAE. Further, it is found that they failed to correctly file the Bill of Entry under Section 46 of the Customs Act, 1962 and had failed to furnish true and complete information.
- 41.2 Further, they have improperly imported the goods by mis- declaring the goods in terms of value as well as description and they have already been held liable for confiscation under various provisions of Section 111 & 113 of the Customs Act, 1962 as discussed in the foregoing paras.
- 41.3 I find that the goods so imported were in violation of The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act or COTP Act 2003, COTP Rules, 2017, Legal Meteorology Act, Legal Metrology (Packaged Commodity) Rules, 2011, Trade-Marks Act, 1999 and Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. Such non-compliance of these imported goods had led to violation of Notification No. 18/2015-20 (DGFT) dated 01-08-2017 issued by DGFT, Ministry of Commerce under Section 3 of the Foreign Trade (Development & Regulation) Act, 1992, provisions of Section 46 (4A)(c) of the Customs Act, 1962 & Section 11(3) of the Customs Act, 1962.
- 41.4 They have failed to ensure the security of the goods placed under seizure at their premise and instead bequeathed the responsibility for ensuring the safety of the offending goods to Shri Narendrasinh Zala who was not holding any post in their company. Such lackadaisical approach regarding the safety of the premise as well the offending goods stored therein led to clandestine removal of such goods and huge pecuniary loss to government exchequer. It is pertinent to note that they terminated the services of security which led to the theft or clandestine removal of the goods, despite clear instructions and directions in Panchanama dated 28.10.2022 to ensure safety of the goods.
- 41.5 I find that they willfully abetted the clandestine removal of 11,60,000 sticks of imported cigarettes to DTA and thus, rendered themselves liable for payment of Customs duty on such clandestinely cleared goods under Section 30 of the SEZ Act, 2005 read with Rule 25 of the SEZ Rules 2006. Since the levy of duty is on account of clandestine removal of goods, penalty under Section 114A of the Customs Act, is imposable upon the SEZ unit. However, considering the fifth proviso to Section 114A of the Customs Act, 1962, the penalties under Section 112 or 114 are not imposable once penalty under Section 114 is attracted.
- 41.6 Further, it is already proven that they furnished incorrect information to Customs authorities while filing the Bill of Entry which has rendered them liable for penal action under Section 114AA of the Customs Act, 1962.

42. Shri Narendrasinh Zala, the beneficiary owner of the offending goods

- 42.1 I find that he had hatched a conspiracy in connivance with Shri S.I. Motanwala to import mis- declared goods viz. Cigarettes from Cambodia and subsequently attempted to clear them to Dubai, UAE while knowing that such goods could not be re- exported to Dubai as M/s La Spirit did not possess any such permission. This was done at the behest of M/s La Spirit Liquor Trading Co.
- 42.2 It is clear that Shri Narendrasinh Zala was the actual beneficiary owner of the cigarettes so imported from Cambodia. He had arranged the import of cigarettes from Alex, the Sri Lankan national in Cambodia, got the Bill of Entry No. 1016497 dated 20.10.2022 filed from the account of M/s La Spirit Liquor Trading Co. by M/s. Cross Tradelink Pvt. Ltd, deliberately furnishing false and incorrect information with an intent to defraud the exchequer. He, in connivance with Mr. S I Motanwala, had acted as the lynchpin in the conspiracy hatched with an intent to defraud the exchequer.
- 42.3 I find that he had actively aided and abetted the smuggling of the goods and actively dealt in goods such goods which were known to him to be of the nature of being liable for confiscation under various provisions of Section 111 & 113 of the Customs Act, 1962 as discussed above.
- 42.4 I further find that he had accepted the responsibility to secure the premise of M/s La Spirit Liquor Trading Co. without holding any post in the company whatsoever. Subsequently, he had failed to secure the premise and the offending goods stored therein leading to clandestine removal of 11,60,000 sticks of smuggled cigarettes into DTA which were non-compliant with the COTP Act, COTP Rules and other allied acts and rules.
- 42.5 Actively participated in smuggling of goods and had aided and abetted the harbouring, storage and concealment of the goods which were liable for confiscation under Section 111 & 113 of the Customs Act, 1962.

In view of the above discussion and findings, I find Shri NARENDRASINH ZHALA liable for penal action under Section 112(a)(i), 112(b)(i) and 114(i) of the Customs Act, 1962.

- 42.6 As regard to the penalty under Section 114A of the Customs Act, 1962, I find that penalty under Section 114A is liable to be paid by person who is liable to pay duty or interest. In the instant case, M/s. La Spirit Liquor Trading, SEZ unit is liable to pay duty or interest, therefore, penalty under Section 114A of the Customs Act, 1962 is not imposable upon the beneficiary owner i.e. Shri Narendrasinh Zhala.
- 42.7 As regard to penalty under Section 117 of the Customs Act, 1962, I find that Shri Narendra Sinh Zhala is liable for penal action under Section 117 of the Customs Act, 1962 for the following contraventions-
- a) He had stopped the security services of the SEZ unit despite directions and instructions from the Customs Authorities in respect of the seized goods which were eventually stolen or clandestinely removed from the SEZ unit;
 - b) He used the login details and digital signature dongle of SEZ unit for filling the said Bill of entry;

- 42.8 Further, I find that he has furnished incorrect information to Customs authorities while filing the Bill of Entry and shipping Bills which has rendered him liable for penal action under Section 114AA of the Customs Act, 1962.

43. Shri S.I. Motanwala, Proprietor of M/s. La Spirit Liquor Trading Co.

- 43.1 I find that he hatched a conspiracy in connivance with Shri Narendrasinh Zala to import mis-declared goods viz. Cigarettes from Cambodia and subsequently attempted to clear them to Dubai, UAE while knowing that such goods could not be re-exported to Dubai as M/s La Spirit did not possess any such permission.
- 43.2 I find that he had allowed Shri Narendrasinh Zala to file Bill of Entry No. 1016497 dated 20.10.2022 from the account of M/s La Spirit Liquor Trading Co. and deliberately furnishing false and incorrect information with an intent to defraud the exchequer. This act on their part has rendered him liable for penal action under Section 117 of the Customs Act, 1962.
- 43.3 I find that he had actively aided and abetted the smuggling of the counterfeit goods and actively dealt in goods such goods which were known to him to be of the nature of being liable for confiscation under various provisions of Section 111 & 113 of the Customs Act, 1962 as discussed above.
- 43.4 I find that he had failed to secure the premise and the offending goods stored therein leading to clandestine removal of 11,60,000 sticks of smuggled cigarettes into DTA which were non-compliant with the COTP Act, COTP Rules and other allied acts and rules.
- 43.5 I find that he had actively participated in smuggling of goods and had aided and abetted the harbouring, storage and concealment of the goods which were liable for confiscation under Section 111 & 113 of the Customs Act, 1962.
- 43.6 In view of the above, it is clear that he has rendered himself liable for penal action under Section 112(a)(i), 112(b)(i) and 114(i) of the Customs Act, 1962.
- 43.7 As regards the penalty under Section 114A of the Customs Act, 1962, I find that penalty under Section 114A is liable to be paid by person who is liable to pay duty or interest. In the instant case, M/s. La Spirit Liquor Trading, SEZ unit is liable to pay duty or interest, therefore, penalty under Section 114A of the Customs Act, 1962 is not imposable upon the proprietor.
- 43.8 As regards the penalty under Section 117 of the Customs Act, 1962, I find that Shri S I Motanwala, prop. SEZ Unit is liable for penal action under Section 117 of the Customs Act, 1962 for the following contraventions-
- a) He had stopped the security services of the SEZ unit despite directions and instructions from the Customs Authorities in respect of the seized goods which were eventually stolen or clandestinely removed from the SEZ unit;
 - b) He allowed Shri Narendrasinh Zhala to use the login details and digital signature dongle of SEZ unit for filling the said Bill of entry;
 - c) He willfully mis-declared the goods despite aware of the provisions of LoA granted to them.
- 43.9 Further, I find that he has allowed Shri Narendra Sinh Zhala to file incorrect information to Customs authorities while filing the Bill of Entry and shipping Bills which has rendered him liable for penal action under Section 114AA of the Customs Act, 1962.

44. In view of the above discussion and findings, I hereby pass the following order-

A. Order in respect of M/s. La Spirit Liquor Trading Co., KASEZ

- a. I order for absolute confiscation of the seized 43,80,000 sticks of imported foreign origin cigarettes of "Gold- Flake" brand, valued at Rs.10,51,20,000/- (Rs. Ten crores fifty one lacs twenty thousand only) placed under seizure vide Panchnama dated 28-10- 2022 under the provisions of Section 111(d), (f), (i), (j), (m) & (o) & 113(d) of the Customs Act, 1962;

However, only 32,43,800 [43,80,000(seized)-11,60,000(Clandestinely removed) +23800(recovered)] sticks valued at Rs. 7,78,51,200/- are available in the SEZ unit.

- b. I determine and confirm the Customs duty amounting to Rs. 5,08,42,661/- (Rupees Five crores eight lacs forty two thousand six hundred and sixty one only) on goods cleared from the premise of M/s La Spirit Liquor Trading Co. and order to recover the same from them under Section 28(4) of the Customs Act, 1962 read with Section 30 of the SEZ Act, 2005 and Rule 25 of the SEZ Rules, 2006.
- c. I order to recover interest at appropriate rate on the amount of duty confirmed above at (b) from them under Section 28AA of the Customs Act, 1962.
- d. I impose penalty equal to the duty plus interest, confirmed above, under Section 114A of the Customs Act, 1962. Penalties under Section 112 or 114 are not attracted once penalty under Section 114A is imposed as discussed in Para 41.5 above.
- e. I impose penalty of Rs 10,51,20,000/-(Rupees Ten Crore Fifty One lakh Twenty Thousand only) upon them under Section 114AA of the Customs Act, 1962

B. Order in respect of Shri S.I. Motanwala, Prop. & Shri Narendra Sinh Zhala, beneficiary owner:-

- (i) I impose penalty, under various sections of the Customs Act, 1962, upon them as given below:-

Name of the person (Shri)	Penalty under Customs Act, 1962 (in Rs.)				
	112(a)(i)	112(b)(i)	114(i)	114AA	117
S.I. Motanwala	50,00,000 (Fifty lakhs only)	50,00,000 (Fifty lakhs only)	10,51,20,000 (Ten Crore Fifty One lakh Twenty Thousand only)	10,51,20,000 (Ten Crore Fifty One lakh Twenty Thousand only)	4,00,000 (Four Lakhs only)
Narendra Sinh Zhala	50,00,000 (Fifty lakhs only)	50,00,000 (Fifty lakhs only)	10,51,20,000 (Ten Crore Fifty One lakh Twenty Thousand only)	10,51,20,000 (Ten Crore Fifty One lakh Twenty Thousand only)	4,00,000 (Four Lakhs only)

- (ii) I don't impose penalty under Section 114A of the Customs Act, 1962 upon Shri S I Motanwala and Shri Narendrasinh Zhala for the reasons discussed in Para 42.6 and 43.7 above.

45. This order is issued without prejudice to any other action that may be taken against the SEZ unit or any other person under the Customs Act, 1962 or any other law for the time being in force.

(M. Ram Mohan Rao)
Commissioner of Customs,
Custom House, Kandla

BYSPEED POSTA.D./BY EMAIL

DIN- 20241071ML000071287B

To:

1. M/s. La Spirit Liquor Trading Co.(IEC-3494001022), situated at Shed No. 416, Ground Floor, Sector-II, KASEZ, Gandhidham-370230.
2. Shri S.I. Motanwala, the Proprietor, M/s. La Spirit Liquor Trading Co., Shed No. 416, Ground Floor, Sector-II, KASEZ, Gandhidham-370230.
3. Shri Narendrasinh Zala, beneficiary owner of the goods imported vide BENo. 1016497 dated 20-10-2022 in M/s. La Spirit Liquor Trading Co., Shed No. 416, Ground Floor, Sector-II, KASEZ, Gandhidham-370230.

Copy to:

1. The Deputy Commissioner, Customs, Kandla SEZ for information.
2. The Deputy/Assistant Commissioner (SIIB/EDI/TRC/DISPOSAL), Customs, Kandla for necessary action.
3. The Chief Commissioner, Ahmedabad for the purpose of Review.
4. Guard File.