

DIN- 20250271ML0000222EB5

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F.No.- GEN/ADJ/COMM/253/2023-Adjn-O/o Commr-Cus-Kandla

SHOW CAUSE NOTICE**(Under Section 28 and 124 of the Customs Act, 1962)**

M/s. GKN Enterprises (hereinafter referred as 'SEZ unit'), is situated at Plot No. 54, Sector-I, Phase-I, Kandla Special Economic Zone, Gandhidham, Kutch. Letter of Approval (LoA) dated 18.05.2015 was granted to them vide F.No. KASEZ/IA/04/2015-16 (**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 to carry out authorized operations of manufacturing and trading activity. Further, the Unit Approval Committee (UAC) after due deliberations has approved the requests of the said SEZ unit for inclusion of additional items in their trading and manufacturing activity and accordingly, amendments in the original LoA have been made from time to time.

2. Whereas, during the test check of records of O/o the Specified Officer, KASEZ for the period F.Y. 2019-21 and subsequently for the period F.Y. 2021-22 by O/o PDAC, Ahmedabad, the Sr. Audit Officer (CRA-I) noticed short levy of duty due to misclassification of goods. The Audit observations, as communicated vide LAR 14/2021-22 (for the period 2019-21) (**RUD-2**) and LAR 14/2022-23 (for the period 2021-22) (**RUD-3**), are as detailed below:

2.1. Whereas, it appears that the SEZ Unit had cleared/ removed goods described as "Paint Solvent N80 (Toluene/ Toluene based)-manufactured goods" into Domestic Tariff Area (DTA) classifying it under CTH 29023000 and appears to have short paid the applicable duty.

2.2. As per Chapter Note of Chapter 29, Toluene (methylbenzene (C₆H₅CH₃), a benzene derivative in which one atom of hydrogen has been replaced by a methyl group, is obtained by distilling light coal tar oil, or by cyclisation of acyclic hydrocarbons. Colorless, mobile, refractive, inflammable liquid, with an aromatic

odour similar to that of benzene, and to fall in this heading, toluene must have a purity of 95% or more by weight.

2.3. Customs Tariff Head (CTH) 38140010 covers “Organic composite solvents and thinners not elsewhere specified or included; Prepared Paint or Varnish Removers” and attracts 30.98% Customs duty (BCD-10%, SWS 10%, IGST 18%). Whereas, CTH 29023000 includes “toluene” and attracts 21.245% Customs duty (BCD-2.5%, SWS 10%, IGST 18%)

2.4. CTH 29023000 covers Toluene only while the said goods (Cleared into DTA) were having description as “Paint Solvent N80 (Toluene/ Toluene based)”, accordingly merited classification under CTH 38140010 attracting Customs duty of 30.98%

2.5. In some DTA clearances made by the said SEZ Unit during the aforesaid period, it had correctly classified the same goods (viz. Paint Solvent N80) under CTH 38140010. The details of some of such clearances by the said SEZ unit have also been communicated in the subject LAR 14/2021-22 (RUD-2)

2.6. The said SEZ unit was granted LoA for authorized operations i.e. to manufacture “Paint Solvents” and not for “Toluene”. The manufacture and clearance of “Toluene”, even if assumed to be done by the said SEZ unit correctly, appears to fall under the ambit of “unauthorized activity” and accordingly duty benefits availed on procurement/ import of such raw materials etc. for such unauthorized manufacturing of “Toluene (CTH 29023000)” appears to be recoverable under penal proceedings. As the unit is engaged in manufacturing of “Paint Solvents (Toluene based)” and not “Toluene” classifying the “Paint Solvents” under CTH 29023000 which covers toluene only, was incorrect.

3. The details of the Bills of Entry vide which the said SEZ Unit M/s GKN Enterprises, had cleared goods “Paint Solvent (Toluene)” into DTA under CTH 29023000 resulting in short payment of applicable Customs duty on account of misclassification, as communicated by the Audit team are detailed in the below mentioned Annexures:

- LAR 14/2021-22 (for the period 2019-21) – **Annexure B** to SCN
- *It is to inform that the B/E at Sr. No. 330 in the statement to LAR 14/2021-22 is excluded from this Annexure (Annexure B to the SCN) as it belongs to a different SEZ unit and not to M/s GKN Enterprises*
- LAR 14/2022-23 (for the period 2021-22) – **Annexure C** to SCN

4. Based on the audit observations and scrutiny of data of DTA clearance of goods declared as “Paint Solvent (Toluene/ Toluene Based) - CTH 29023000” as retrieved from NSDL SEZ Online for the period from F.Y. 2019-20 to F.Y. 2023-24, it is observed that in addition to the DTA clearances covered in Annexure B & C, the said SEZ Unit had filed 65 Bills of entry (**detailed in Annexure-D to this Notice**) and subsequently paid the duty. As the Out of charge is not provided in SEZ Online, to ascertain the current status of goods mentioned in Annexure-D, to forward the audit objection and to request the SEZ Unit to pay the applicable Custom duty along with interest, letters (**RUD-4**) had been issued to the said SEZ Unit. In response, the said SEZ Unit vide their letter dated 09.05.2024 (RUD-4) informed that all the goods under said 65 Bills of entry have been cleared into DTA after obtaining Manual Out of charge and the Out of Charge is pending to be updated in SEZ Online system.

4.1. Further, during the scrutiny of data of DTA clearance of goods declared as “Paint Solvent (Toluene/ Toluene Based) - CTH 29023000” as retrieved from NSDL SEZ Online for the period from F.Y. 2019-20 to F.Y. 2023-24, it is observed that in addition to the DTA clearances covered in Annexure B, C & D, the said SEZ Unit had cleared goods declared as “Paint Solvent (Toluene)” misclassifying the same under CTH 29023000 under 02 Bills of entry and thereby short paid duty. The details of the same are listed in **Annexure E** to this Notice.

4.2. Based on the above, all the DTA clearances of goods declared as “Paint Solvent (Toluene/ Toluene Based) - CTH 29023000” made by the SEZ Unit for the period during F.Y. 2019-2024, i.e. all the clearances covered under Annexures B, C, D & E, are tabulated in **Annexure A** to this Notice.

4.3. During the scrutiny of data of DTA clearance of goods declared as “Paint Solvent (Toluene/ Toluene Based) - CTH 29023000” as retrieved from NSDL SEZ Online for the period from F.Y. 2019-20 to F.Y. 2023-24, it is observed that the SEZ Unit has supplied the subject goods to their own units in DTA having same IEC and/or PAN as that of the said SEZ Unit.

5. In response to the audit observations and above mentioned points, the unit vide their letter dated 11.10.2021 (**RUD-4**), inter-alia, submitted that :

- *they are manufacturing ‘Paint Solvent N80 (Tolene/ Toluene based)’ and classifying the same under CTH 29023000 for DTA clearances.*

- the product manufactured by them having the chemical character and properties of the product Toluene pertaining to CTH 29023000 as the principle input is Toluene and even after certain process, the characteristics of the final product remain same as Toluene.
- the chapter heading 38140010 pertains to the goods 'Organic Composite solvents and thinners not elsewhere specified or included, prepared paint or varnish removers'. Since the chemical characteristics of their final product are similar to characteristics of the Toluene and same is already specifically specified under CTH 2902 therefore the goods cannot be reclassified under the heading which is to be used for those goods not elsewhere specified or included.
- With reference to some of the DTA clearances where the goods 'Paint Solvent N80' was classified under CTH 38140010, they submitted that as per market demand they have to mix certain other solvent chemical in their final product for which reason the final product does not have characteristics like Toluene. That they have not used the phrase 'Toluene' in such clearances. Since the mixed final product get denatured by mixing of other solvents therefore for the purpose of DTA clearance of those final product, they have classified the goods under CTH 38140010.
- that there is a difference in chemical characteristics and properties between the product 'Paint Solvent N80 (Toluene/ Toluene based)' classified under CTH 29023000 and 'Paint Solvent N80' classified under 38140010.
- that they have obtained all the necessary permissions for manufacture of those goods which have been manufactured and cleared by them.

5.1. Further, the unit vide their letter dated 27.05.2024 **(RUD-4)**, inter-alia, submitted that :

- M/s GKN Enterprises was authorized and approved by the Development Commissioner for manufacturing of finished goods falling under ITC HS: 2902 3000
- the audit objection that the subject goods - Paint Solvent N80(Toluene) are misclassified under CTH: 2902 3000 whereas they actually classifiable under CTH: 3814 0010 is in-appropriate
- The subject good Paint Solvent N80 (Toluene) is manufactured/ obtained by distilling light coal tar oil/ by cyclisation of acyclic hydrocarbons. The finished good has physical properties like colourless, mobile, refractive, inflammable liquid with an aromatic odour similar to that of benzene.
- all the goods manufactured by the unit are cleared into DTA only after the in-house analysis and quality check of the finished product through lab test at our unit.

- *As per the test reports, the goods having the purity of 95% or more by weight of Toluene are classified under CTH: 2902 3000. In case, as per the test report the toluene component in the finished goods doesn't meet the purity of 95% then the subject goods are classified under 3814 0010 and goods are described as Paint Solvent N80(Toluene) – based.*
- *the approved raw-material "Toluene-2902 3000" after distillation is converted into finished good Paint Solvent N80 (Toluene) and upon the analysis/testing of the finished good based on the purity of Toluene component in the finished goods the goods are classified into ITC HS: 2902 3000/ 3814 0010 whichever applicable.*
- *the manufactured goods as described in the relevant Bill of Entry (DTA) as mentioned in Audit observations are rightly classified under ITC HS: 2902 3000 as per test analysis report*
- *requested to consider the above submissions and to close the audit observation.*

5.2 Further, the M/s. GKN Enterprises vide their letter dated 06.02.2025 (**RUD-4**), inter-alia, submitted that :

- *It is to submit that no additional submissions are to be made from our DTA unit viz., M/s. GKN Enterprises, Flat No.206, 12/B, Square Apartment, Plot No.313, Gandhidham and the submission made by our Kandla SEZ Unit vide the above mentioned letters may be considered as inclusive of the submissions from the DTA unit.*

6. In view of the above discussions, it appears that the said SEZ Unit had cleared/ removed goods declared as "Paint Solvent N80 (Toluene/ Toluene based)" into DTA by means of mis-classifying the same under CTH 29023000 which attracts Customs duty at an effective rate of 21.245%(BCD-2.5%, SWS 10%, IGST 18%) instead of appropriately classifying under CTH 38140010 and discharging the Customs duty at the effective rate of 30.98%(BCD-10%, SWS 10%, IGST 18%). Therefore, it appears that the subject mis-classification has resulted in evasion of Custom duty of **Rs. 19,61,10,601/- (Nineteen Crores Sixty One Lakhs Ten Thousands and Six Hundred and One only)** (as detailed in Annexure-A to this Show Cause Notice).

7. The following are the legal provisions, which are applicable in the present case.:

7.1. The Customs Act, 1962:

- 7.1.1. Section 46 of the Customs Act, 1962
- 7.1.2. Section 2(39) of the Customs Act, 1962
- 7.1.3. Section 111(m) of the Customs Act, 1962.
- 7.1.4. Section 112 of the Customs Act, 1962
- 7.1.5. Section 114A of the Customs Act, 1962
- 7.1.6. Section 114AA of the Customs Act, 1962
- 7.1.7. Section 124 of the Customs Act, 1962
- 7.1.8. Section 28(4) of the Customs Act, 1962

7.2. SEZ Act, 2005 and SEZ Rules, 2006

- 7.2.1. Section 30 of the SEZ Act, 2005.
- 7.2.2. Section 15(9) of the SEZ Act, 2005.
- 7.2.3. Rule 18 of the SEZ Rules, 2006.
- 7.2.4. Rule 47 of the SEZ Rules, 2006.
- 7.2.5. Rule 48 of the SEZ Rules, 2006.

7.3. Foreign Trade (Development and Regulation) Act, 1992

- 7.3.1. Section 12 of the FTDR Act, 1992

7.4. Foreign Trade (Regulation) Rules, 1993

- 7.4.1. Rule 11 of the FTR, 1993
- 7.4.2. Rule 14 of the FTR, 1993
- 7.4.3. Rule 15(3)(a) of the FTR, 1993
- 7.4.4. Rule 17 of the FTR, 1993

8. Whereas, Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be. Under self-assessment, the importer or exporter has to ensure correct classification, applicable rate of duty, value and exemption notifications, if any, in respect of imported or export goods while presenting Bill of Entry or Shipping Bill respectively. Further, Rule 75 of the SEZ Rules, 2006 also provides that unless and otherwise specified in these rules all inward or outward movements of the goods into or from SEZ by the Unit/ Developer shall be based on self-declaration made by the Unit/ Developer. While clearing subject goods to Domestic Tariff Area, the said SEZ Unit and the DTA buyers were bound for true and correct declaration and assessment. As the said

SEZ unit was engaged in business of manufacturing and trading of the subject goods, they were fully aware of specifications, characteristics, nature and description of the goods cleared by them in DTA. However, it appears the SEZ Unit and the DTA buyers deliberately/ willfully suppressed/mis-stated specifications, characteristics, nature and description of the goods and wrongly declared the classification of the said product/goods under CTI 29023000 with an intention to evade payment of applicable Customs Duty. By deliberately/ willfully suppressing/mis-stating the material facts of nature, specifications, characteristics and description of the subject goods, the said SEZ unit and the DTA buyers wrongly classified the subject goods resulting in evasion of Custom duty totally amounting to Rs. **19,61,10,601/-** (Rupees Nineteen crore sixty one lakh ten thousand six hundred and one only), as detailed in Annexure-A to this notice. In view of the foregoing facts, it is the fit case for invoking the extended period for demand of duty under Section 28(4) of the Customs Act, 1962.

9. The said unit and the DTA buyers did not disclose the material facts relating to the actual specifications, characteristics, nature and description of the subject goods cleared into DTA. The above discussed facts reveal that while clearing the subject goods i.e. "Paint Solvent N80 (TOLUENE/ TOLUENE Based)" to various DTA buyers, the said SEZ Unit and the DTA buyers mis-classified the subject goods totally valued at Rs. 201,44,89,960/- (Rupees two hundred and one crore forty four lakh eighty nine thousand nine hundred and sixty only) as detailed in Annexure-A to this notice, by deliberately mis-stating the material facts relating to classification/ specifications and characteristics of the same. They mis-classified the subject goods with an intention to evade the payment of appropriate duty on the same during clearance to DTA. For the said acts of omissions and commissions the goods mentioned in Annexure-A to this notice, totally valued at Rs. 201,44,89,960/- (Rupees two hundred and one crore forty four lakh eighty nine thousand nine hundred and sixty only), are liable to confiscation under section 111(m) of the Customs Act, 1962, though the same are not physically available. For the act of willfully mis-stating of the material facts and mis-classification, the said SEZ unit and the DTA clients have rendered themselves liable to penalty under section 112 of the Customs Act, 1962. By the act of knowingly evading Custom duty by willfully mis-stating the material facts and mis-classifying subject goods, the DTA buyer has also rendered themselves liable to penalty under section 114A of the Customs Act, 1962. Since, the said SEZ unit and DTA buyer have prepared/caused to prepare and used documents showing false information about

the subject goods, this act on their part has rendered themselves liable to penalty under section 114AA of the Customs Act, 1962.

10. **Charging Paras:**

10.1. Now, therefore, the SEZ Unit, namely, **M/s. GKN Enterprises, Plot No. 54, Sector-I, Phase-I, Kandla Special Economic Zone, Gandhidham** (Noticee No. 1) is hereby called upon to Show Cause to the Commissioner of Customs having his office situated at Customs House, Near Balaji temple, Kandla, District Kutch within 30 days from the receipt of this notice as to why:

(a) The classification of goods declared under Customs Tariff Item 29023000 of Customs Tariff Act, 1975 in the Bills of Entry appearing in Annexure-A to this notice should not be rejected and goods detailed in Annexure-A to this Notice should not be re-classified under the Customs Tariff Item 38140010 of the Customs Tariff Act, 1975;

(b) The goods mentioned in Annexure-A to this notice, totally valued at **Rs. 201,44,89,960/- (Rupees Two Hundred One Crore Forty Four Lakh Eighty Nine Thousand Nine Hundred and Sixty Only)**, should not be held liable for confiscation under section 111(m) of the Customs Act, 1962, though the same are not physically available;

(c) Penalty under section 112 of the Customs Act, 1962 should not be imposed on them for reasons discussed above.

(d) Penalty under section 114AA of the Customs Act, 1962 should not be imposed on them for reasons discussed above.

(e) Bond-cum-Legal Undertaking in Form-H furnished by the said SEZ Unit should not be enforced towards the liabilities arising out of subject goods removed from said SEZ Unit to DTA as detailed in Annexure-A.

10.2. Now, therefore, the DTA client, namely, **M/s. GKN Enterprises (IEC-3513006233), Flat No.206, 12/B, Square Apartment, Plot No.313, Gandhidham** (Noticee No. 2), are hereby called upon to Show Cause to the Commissioner of Customs having his office situated at Customs House, Near Balaji temple, Kandla, District Kutch within 30 days from the receipt of this notice as to why:

(a) The classification of goods declared under Customs Tariff Item 29023000 of Customs Tariff Act, 1975 in the Bills of Entry appearing in Annexure-A to this notice should not be rejected and goods detailed in Annexure-A to this Notice should not be re-classified under the Customs Tariff Item 38140010 of the Customs Tariff Act, 1975;

(b) The goods mentioned in Annexure-A to this notice, totally valued at **Rs. 201,44,89,960/- (Rupees Two Hundred One Crore Forty Four Lakh Eighty Nine Thousand Nine Hundred and Sixty Only)**, should not be held liable for confiscation under section 111(m) of the Customs Act, 1962, though the same are not physically available;

(c) The Customs duty totally amounting to Rs. **19,61,10,601/- (Rupees Nineteen Crore Sixty One Lakh Ten Thousand Six Hundred and one only)** on the goods as detailed in Annexure-A to this notice should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with interest thereon under section 28AA *ibid*;

(d) Penalties under section 112 and 114A of the Customs Act, 1962 should not be imposed on them for reasons discussed above.

(e) Penalty under section 114AA of the Customs Act, 1962 should not be imposed on them for reasons discussed above.

11. The noticees are directed to mention in their reply to this notice whether they wish to be heard in person before the case is adjudicated. If no cause is shown against the action proposed to be taken or they do not appear in person before the adjudicating authority when the case is posted for hearing, the case will be decided *ex-parte* on the basis of evidence available on record.

12. Further, the noticees are advised to mention their email address in writing for virtual hearing as per CBIC's Instruction dated 21.08.2020 issued vide F.No. 390/Misc/3/2019-JC.

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

14. This notice is issued without prejudice to any other action that may be taken against the said noticee or any other person(s) concerned with the said act(s) of commission(s) and omission(s), whether mentioned hereinabove or not under the

provisions of Customs Act, 1962 and the rules framed thereunder, and/or any other laws for the time being in force.

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

DIN-20250271ML0000222EB5

F.No. GEN/ADJ/COMM/253/2023-Adjn-O/o Commr-Cus-Kandla

To,

- 1) M/s. GKN Enterprises (IEC-3513006233), Plot No. 54, Sector-I, Phase-I, Kandla Special Economic Zone, Gandhidham, Kutch.
- 2) M/s. GKN Enterprises (IEC-3513006233), Flat No. 206, 12/B, Square Apartment, Plot no. 313, Gandhidham, Kutch-370201.

Copy to:-

- 1) The Development Commissioner, Kandla Special Economic Zone, Gandhidham, Kutch.
- 2) The Deputy Commissioner of Customs, Kandla Special Economic Zone, Gandhidham, Kutch.
- 3) The Superintendent (EDI) Kandla for uploading on the website of kandla Customs.
- 4) Guard File.

Annexure-R

(List of Relied Upon Documents)

- RUD-1 : Copy of LoA issued by the O/o the Development Commissioner, KASEZ.
- RUD-2 : Copy of LAR No. 14/2021-22 (for the audit period FY 2019-21) and Copy of H.M. dated 27.09.2021, along with a statement of DTA clearances.
- RUD-3 : Copy of LAR No. 14/2022-23 (for the audit period FY 2021-22), along with statement of DTA clearances.
- RUD-4 : Letters issued to SEZ Unit and their replies
 - i) KASEZ letter to SEZ Unit dated 24.09.2021
 - ii) SEZ Unit reply letter dated 11.10.2021
 - iii) KASEZ letter to SEZ Unit dated 15.03.2024
 - iv) KASEZ letter to SEZ Unit dated 04.04.2024
 - v) KASEZ letter to SEZ Unit dated 01.05.2024

- vi) KASEZ letter to SEZ Unit dated 15.05.2024
- vii) KASEZ letter to SEZ Unit dated 24.05.2024
- viii) SEZ Unit reply letter dated 09.05.2024
- ix) SEZ Unit reply letter dated 27.05.2024
- x) M/s. GKN Enterprises letter dated 06.02.2025

- Annexure-A: Details of all the DTA clearances of goods declared as “Paint Solvent (Toluene/ Toluene based)-CTH 29023000” during the period from FY 2019-20 to 2023-24.
- Annexure-B: Details of the DTA clearances of goods declared as “Paint Solvent (Toluene/ Toluene based)-CTH 29023000” during the period from FY 2019-20 to 2020-21, as per the Audit team observations vide LAR No. 14/2021-22.
- Annexure-C: Details of the DTA clearances of goods declared as “Paint Solvent (Toluene/ Toluene based)-CTH 29023000” during the period FY 2021-22, as per the Audit team observations vide LAR No. 14/2022-23.
- Annexure-D: Details of the 65 DTA clearances of goods declared as “Paint Solvent (Toluene/ Toluene based)-CTH 29023000” removed into DTA under manual Out of charge.
- Annexure-E: Details of the DTA clearances of goods declared as “Paint Solvent (Toluene/ Toluene based)-CTH 29023000” during the period from FY 2019-20 to 2023-24 and not covered in Annexures-B, C & D above.