

DIN- 20241071ML0000555DD1

	OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467
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DIN-20241071ML0000555DD1		
A	File No.	GEN/ADJ/COMM/648/2023-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KND-CUSTM-000-COM-10-2024-25
C	Passed by	M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla
D	Date of Order	08.10.2024
E	Date of Issue	08.10.2024
F	SCN No. & Date	GEN/ADJ/COMM/648/2023-Adjn- O/o Commr-Cus-Kandla dated 09.10.2023
G	Noticee / Party / Importer / Exporter	M/s. Rekha Superfine Exporters 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

M/s. Rekha Superfine Exporters, Shed no. 395, SP Type-II, Kandla Special Economic Zone, Gandhidham, holder of IEC- 1300008016 (hereinafter referred to as "the exporter") is a unit in SEZ, Kandla Special Economic Zone, Gandhidham.

2. The Exporter was having permission vide F.No. KASEZ/Cus/01/14/07-08/4418 dated 12.08.2021 issued by the office of the Development Commissioner, Kandla Special Economic Zone, Gandhidham, Kutch to remove 900 MTs of imported Black Pepper (900 Mts- Gross weight, 891 MTs- Net weight) in to DTA to M/s Lafretier Precious Private Ltd (GSTIN-24AAECL1486E1ZP) situated at B/162, Electronic Estates, Sec-25, GIDC, Gandhinagar-382024, Gujarat for converting the imported black pepper into Oleoresins on job work basis under Rule 41 of the SEZ Rules 2006 subject to strict compliance of Rule 42 of the SEZ Rules 2006 and as per which during job work 8% of oleoresins and 89% wastage (Husk/cake) would be generated and the oleoresins and wastage generated would be brought back to the KASEZ and would be exported thereof. There would be a manufacturing loss @ 3%.

3. Further, a Shipping Bill No. 4016882 dated 07.10.2022 was filed by M/s Rekha Superfine Exporters at INKDL6 (KANDLA SEZ) for export of the following items as permitted export:-

Table-1

Sr No.	Invoice No.	Invoice Date	Item Description	Unit Price	Quantity (KGS)	Product Value (USD)
1	RE-122-22	06.10.2022	Black Pepper Oleoresin	32	7625	244000
2	RE-122-22	06.10.2022	Jaljeera Masala Mix	2.5	5000	12500
3	RE-122-22	06.10.2022	Black Pepper powder	3	5000	15000

3.1 The said export goods were said to be stuffed in container No. SEGU5151499 sealed with e-seal No. BOLT50266369 and Line Seal No. 058776 which was then docked at T2 of Adani Mundra Container Terminal (AMCT) at location 8L26E1 of Mundra port.

4. The export documents uploaded by the exporter (**RUD-2**) was showing that the export goods mentioned at Sr No. 1 [i.e. Black Pepper Oleoresin] of SB No. 4016882 dated 07.10.2022 were processed on job work from M/s Lafretier Precious Private Ltd situated at B/162, Electronic Estates, Sec-25, GIDC, Gandhinagar-382024, Gujarat (GSTIN-24AAECL1486E1ZP) as per the aforesaid permission letter F.No. KASEZ/Cus/01/14/07-08/4418 dated 12.08.2021, under below mentioned job work challans, which were imported

DIN- 20241071ML0000555DD1

vide Bill of Entry No. 1007834 dated 01.06.2022, 1008842 dated 17.06.2022 and 1009853 dated 01.07.2022 (Gross weight 112 MT, 84 MT and 27 MT respectively Total 223 MTS).

Table-2

SEZ Request ID (for JOB WORK)	Challan No. (for JOB WORK)	Challan Date	Invoice No.	Date	Quantity (net weight Kg)	Gross weight [Kg]	Item Description	Invoiced value per Kg in INR
492200387711	8000425	25.07.2022	RJ-16-22	25.07.2022	9900	10000	Black Pepper	204.36
492200389030	8000429	26.07.2022	RJ-17-22	26.07.2022	9900	10000	Black Pepper	204.36
492200407683	8000464	04.08.2022	RJ-18-22	04.08.2022	9900	10000	Black Pepper	204.36
492200407720	8000466	05.08.2022	RJ-19-22	04.08.2022	9900	10000	Black Pepper	204.36
492200410332	8000477	08.08.2022	RJ-20-22	05.08.2022	9900	10000	Black Pepper	204.36
492200410413	8000476	08.08.2022	RJ-21-22	05.08.2022	14850	15000	Black Pepper	204.36
492200416315	8000482	09.08.2022	RJ-22-22	08.08.2022	14850	15000	Black Pepper	204.36
492200416326	8000483	09.08.2022	RJ-23-22	08.08.2022	14850	15000	Black Pepper	204.36
					94050 Kg	95000 Kg		

4.1 Deputy Commissioner of Customs KASEZ vide their letter dated 21.11.2022 confirmed the movement of the goods covered by the aforesaid job work challans out of KASEZ for purpose of Job work.

REKHA SUPERFINE EXPORTERS 2021-22 & 2022-23 JOB WORK DATA				
TABLE-B				
SR. NO.	SUBCONTRACTING (NOTING) NUMBER	REQUEST SUBMISSION DATE	DATE OF REMOVAL	VEHICLE NO.
1	8000164	31/05/2021	31/05/2021	GJ-11Z-9037
2	8000218	04/06/2021	04/06/2021	GJ-12AU-6814
3	8000246	19/06/2021	19/06/2021	GJ-10TT-5612
4	8000265	30/06/2021	30/06/2021	HR-63D-6340
5	8000323	16/08/2021	16/08/2021	GJ-12BY-0397
6	8000328	19/08/2021	19/08/2021	GJ-12BY-0397
7	8000417	02/10/2021	02/10/2021	GJ-12AU-9929
8	8000451	22/10/2021	22/10/2021	GJ-08U-3111
9	8000481	17/11/2021	17/11/2021	GJ-12AZ-6920
10	8000516	03/12/2021	03/12/2021	GJ-08W-1724
11	8000524	07/12/2021	07/12/2021	GI-02XX1280
12	8000530	12-10-2021	12-10-2021	UP-53ET-3785
13	8000535	15/12/2021	15/12/2021	RJ-04GB-RS58
14	8000556	30/12/2021	30/12/2021	RJ-04GB-3390
15	8000005	05/01/2022	05/01/2022	GJ-08U3111
				GJ-10TT-5612
16	8000039	24/01/2022	24/01/2022	GJ-12AT-8649
17	8000049	01/02/2022	01/02/2022	GJ-12AT-9576
18	8000082	11/02/2022	11/02/2022	GJ-12AY-2938
19	8000102	18/02/2022	18/02/2022	GJ-12AY-2938
20	8000121	25/02/2022	25/02/2022	RJ-04GC-1888
21	8000125	28/02/2022	28/02/2022	RJ-04GC-1888
22	8000136	04/03/2022	04/03/2022	RJ-04GC-1888
23	8000150	09/03/2022	09/03/2022	RJ-04GB-7448
24	8000158	11/03/2022	11/03/2022	RJ-04GB-8558
25	8000181	25/03/2022	25/03/2022	RJ-04GB-7448
26	8000209	08/04/2022	08/04/2022	GJ-18BT-3853
27	8000234	12/04/2022	12/04/2022	GJ-10TT-5612
28	8000231	21/04/2022	21/04/2022	GJ-18BT-3853
29	8000256	04/05/2022	04/05/2022	GJ-24V-1824
30	8000262	09/05/2022	09/05/2022	GJ-24V-1824
31	8000265	10/05/2022	10/05/2022	GJ-24V-1824
32	8000272	11/05/2022	11/05/2022	GJ-24V-1824
33	8000280	13/05/2022	13/05/2022	GJ-24V-1824
34	8000284	17/05/2022	17/05/2022	GJ-24V-1824
35	8000294	23/05/2022	23/05/2022	GJ-24V-1824
36	8000302	26/05/2022	26/05/2022	GJ-24V-1824
37	8000303	27/05/2022	27/05/2022	GJ-24V-1824
38	8000352	23/06/2022	23/06/2022	RJ-04GC-1888
39	8000358	27/06/2022	27/06/2022	RJ-19GG-2122
40	8000361	28/06/2022	28/06/2022	GJ-18BT-1676
41	8000425	25/07/2022	25/07/2022	RJ-04GB-7448
42	8000429	26/07/2022	26/07/2022	RJ-04GB-7448
43	8000454	04/08/2022	04/08/2022	RJ-19GG-2122
44	8000465	05/08/2022	05/08/2022	RJ-19GG-2122
45	8000477	06/08/2022	06/08/2022	RJ-19GG-2122
46	8000476	08/08/2022	08/08/2022	RJ-19GG-2122
47	8000482	09/08/2022	09/08/2022	RJ-04GC-1888
48	8000483	09/08/2022	09/08/2022	RJ-04GC-1888

DIN- 20241071ML0000555DD1

5. During the course of search at the job worker premises i.e. M/s Lafretier Precious Private Ltd situated at B/162, Electronic Estates, Sec-25, GIDC, Gandhinagar, Gujarat on 10.10.2022 the officers found the place to be an empty green grass plot of 250 sq. meter (approx.) having no construction, no shed, no machinery, no labour, no security guard and no goods of any description (either of black pepper or black pepper oleoresin) were found. The photographs of said empty plot were enclosed in Panchnama dated 10.10.2022 **(RUD-3)** and are as under :

IMG-I



Plot No. B/162, Electronic Estates, Sec-25, GIDC, Gandhinagar, Gujarat

5.1. Further, the landladies/owners of the above mentioned plot - Smt. Kalpana Ben Alpesh Bhai and Smt. Krupaben Digvijay Bhai Patel, both resident of Hanumanpura, Mansha Gandhinagar, furnished affidavit on dated 11.10.2022, that they had only rented 250 Sq Meter of their bare area [no construction] to the tenant Lafretier Precious Private Ltd and the tenant itself had vacated the empty plot in Oct, 2021. The landladies/owners had also submitted the Bank Statement dated 11.10.2022 **(RUD-4)**, evidencing that the tenant had last paid rent on 21/11/2021 and thereafter no payment was made by the tenant.

DIN- 20241071ML0000555DD1

In view of above, the black pepper oleoresin mentioned in aforesaid shipping bill dated 07.10.2022 could never had been manufactured in an empty green grass plot which was not even in possession of the job worker, having been vacated a year ago in October, 2021.

5.2. Accordingly, the export goods i.e. Black Pepper Oleoresin mentioned at S.No.1 of the SB No. 4016882 dated 07.10.2022 in Container No. SEGU5151499 were seized under Section 110 of the Customs Act, 1962 on a reasonable belief that they were liable for confiscation under Section 113 [i] of the Customs Act, 1962.

6. Since the exporter vide email dated 10/10/2022 (**RUD-5**) had requested that due to festive season, the goods may be examined after Diwali, as such, he was requested to be present for examination of the seized goods on 27/10/2022 at Adani Container Terminal Mundra Port, Mundra (INMUN1) Gujarat in the seizure memo itself and contact the seizing officer at phone number 0161-2430197 affirming his availability and presence at the port in advance.

7. Further, another search was conducted at the premises of M/s Aashvi Corporation (GSTIN- 24ABJFA2980R1ZV), situated at B/162, Electronic Estates, Sec-25, GIDC, Gandhinagar, Gujarat on 10.10.2022 (being same address as of job worker) under Section 105 of the Customs Act, 1962. On entering the said premises, the DRI officers along with Panchas were received by Sh. Rashmikant Patel partner in M/s. Aashvi Corporation. Sh. Rashmikant Patel informed that the total plot area of B/162, Electronic Estates, Sec-25, GIDC, Gandhinagar is of 500 sq meter (approx.) which was on rent from owner named Smt. Kalpana Ben Alpesh Bhai, Address: Hanumanpura, Mansha Gandhinagar and Smt. Krupaben DigvijayBhai Patel, Address: Hanumanpura, ManshaGandhinagar. Further Sh. Rashmikant Patel informed that out of 500 sq meter Plot area, only 250 square meter was taken on rent by M/s Aashvi Corporation for their business activity in which they had installed a machine for oil extraction from herbs/ food items, spices etc and Sh. Rashmikant Patel handed over the rent agreement for the said premises to the DRI officers. Further, it was verbally informed by Sh. Rashmikant Patel that remaining 250 sq meter space in the said premises was an open plot without any construction, shed or any machinery and was on rent to M/s Lafretier Precious Private Ltd from the above said owners.

Further, Sh. Rashmikant Patel informed that they were processing turmeric powder by using machine named SCFE (Super Critical Fluid Extraction machine) installed in the said rental premises of M/s Aashvi

DIN- 20241071ML0000555DD1

Corporation. Two polybags (25 kgs each) of turmeric were present inside the hall of M/s Aashvi Corporation. On enquiry, Sh. Rashmikant Patel told that no black pepper was present inside the SCFE machine and no black pepper was present at the premises of M/s Aashvi Corporation or at any of the open space in the said plot. Further, Shri Rashmikant Patel also informed that Whole / Sabut Spices, Herbs etc. cannot be used as input in Super Critical Fluid Extraction machine rather spices or herbs only in powdered form could be used to extract the oil and they had no such facility in M/s Aashvi Corporation to convert the herbs or spices from raw form to powder form [Panchnama dated 10.10.2022, **RUD-6**]. Thus, during the search proceedings none of either black pepper or black pepper oleoresin was present on the said premises.

8. Another search was conducted at the office/business premises of M/s Lafretier Precious Pvt. Ltd, at 225/A-5, 2nd Floor, Super Mall 1, Infocity, Gandhinagar, Gujarat on 10.10.2022. On reaching the premises, the DRI officers alongwith Panchas were received by one lady who introduced herself as Smt. Purohit Sweta Megh. She informed that M/s Lafretier Precious Pvt. Ltd, Office at 225/A-5, 2nd Floor, Super Mall 1, Infocity, Gandhinagar, Gujarat is a Private Limited Company and she was doing the desk job in the firm. She further informed that **Sh. Anand Kumar Singh** was the **Managing Director** of the firm and looked after all the day to day activities of the firm. During the course of search some records / documents and electronic devices like one Master made Silver color pen drive, Dell Inspiron 15 laptop etc. were recovered under Panchnama dated 10.10.2022 (**RUD-7**).

9. The summary of all searches, which were conducted in the matter are summarized in below Table:

Table:3

Sr No.	Party name & Address	Date of Search	Findings
1	M/s Lafretier Precious Pvt. Ltd., B/162, Electronic Estates, Sec-25, GIDC, Gandhinagar, Gujarat (Job worker)	10.10.2022	Empty plot of 250 sq. meter (approx.) having no construction, no shed, no machinery, no labour, no security guard and no goods of any description were found at said address. Neither of black pepper or black pepper oleoresin found at the said premises
2	M/s Aashvi Corporation, 8/162, Electronic Estates, Sec-25, GIDC, Gandhinagar, Gujarat	10.10.2022	250 sq. meter built area (approx.) having a machine for oil extraction from turmeric powder. Neither of black pepper or black pepper oleoresin found at the said premises

DIN- 20241071ML0000555DD1

3	M/s Lafretier Precious Private Ltd., C25, 24 Floor, Innov8 Fairmount, Plot No. 4 & 6, Palm Beach Road, Sector-17, Sanpada, Navi Mumbai-400705	10.10.2022	Non-existent
4	M/s Lafretier Precious Private Limited, 1" Floor, C-10, Parle Cly, Sahar Road, Ville Parle East, Mumbai, Maharashtra	10.10.2022	Non-existent
5	Sh. Anand Kumar Singh, Managing Director of M/s Lafretier Precious Private Limited, Village Bartholli, Distt- Varanasi	10.10.2022	No person on name of Sh. Anand Kumar was found existing at said address. Incident report presented as RUD-8

9.1. In view of the above, it appeared that no Black Pepper Oleoresins could have been manufactured in an empty plot. Also, another GST registered premises of M/s Lafretier Precious Private Ltd in Mumbai was found to be non-existent and the residential address of Sh. Anand Kumar Singh, one of the Directors of M/s Lafretier Precious Pvt. Ltd in Varanasi was also found to be bogus.

10. Based on the above facts, live export consignment i.e. shipping Bill No. 4016882 dated 07.10.2022 in Container No. SEGU5151499 of M/s Rekha Superfine was put on hold at Mundra port (INMUN1) vide alert e-mail dated 10.10.2022. Further, as the black pepper oleoresin mentioned in aforesaid shipping bill dated 07.10.2022 could never had been manufactured in an empty green grass plot which was not even in possession of the job worker, having been vacated a year ago in October, 2021, the export goods i.e. Black Pepper Oleoresin mentioned in Container No. SEGU5151499 were seized under Section 110 of the Customs Act, 1962 on a reasonable belief that they were liable for confiscation under Section 113(i) of the Customs Act, 1962 (Seizure Memo dated 11.10.2022 as **RUD-9**).

10.1 The export goods under Shipping Bill No. 4016882 dated 07.10.2022 filed by M/s Rekha Superfine Exporters inside container No. SEGU5151499 (having cargo weight of 18010 Kgs as per weightment Slip No. MICT/575838/20221012) sealed with e-seal No. BOLT50266369, Line Seal No. 058776 and CFS Seal no. MICT 009252 at MICT CFS, Navi Nadh Village were handed over to Sh. Ketan Solanki, Executive, MICT CFS, Navi Nar Village for safe custody of the same under Supardginama dated 12.10.2022.

DIN- 20241071ML0000555DD1

11. A letter dated 12.10.2022 was issued to The Zonal Development Commissioner, Kandla Special Economic Zone (KASEZ), Gandhidham (Kutch)-370230 regarding the investigation against M/s Rekha Superfine Exporters citing that the subject exporter had violated Rule 41 and Rule 42 of the SEZ Rules, 2006 apart from violation of the provisions of Customs Act, 1962 and appropriate necessary action against the exporter may be initiated.

12. Thereafter, summon dated 13.10.2022 was issued to Sh. Daya Shankar, M/s Rekha Superfine Exporters, Shed No. 395, Sector-II, CIB type, Kandla Special Economic Zone to join the investigation and tender statement on 20.10.2022 along with submission of documents related to job work done by M/s Lafretier Precious Pvt. Ltd for M/s Rekha Superfine Exporters and other banking & transportation details, but no one appeared in DRI LdZU office on behalf of M/s Rekha Superfine Exporters. However, M/s Rekha Superfine Exporter vide email dated 25.10.2022 (**RUD-11**) submitted that as festive season is going on, he would not be able to attend the summon and asked for another date after 10.11.2022 to attend the summon. Further, another summon dated 28.10.2022 was issued to the exporter to appear on 02.11.2022. The exporter vide email dated 29.10.2022 conveyed his non-availability on 02.11.2022 and requested to re-schedule the summon for 07/08.11.2022.

12.1 Vide seizure memo dated 11.10.2022, M/s Rekha Superfine Exporters was informed to be present for examination of the said consignment on 27.10.2022. No representative from M/s Rekha Superfine Exporters appeared at Mundra Port for examination of goods on 27.10.2022, as informed to them in the seizure memo, but vide email dated 28.10.2022 M/s REKHA Superfine Exporters requested to call back the container from MICT CFS to KASEZ for examination.

13. Also, letters from Ass./Dy Registrar of Companies, Maharashtra informed this unit that Sh. Daya Shankar Prasad was director in M/s Lafretier Precious Pvt. Ltd (till 03.05.2021), along with Sh. Anand Kumar Singh (Director) and Sh. Anurag Pandey (Additional Director). Further, from GST records in public domain corresponding to GSTIN 24ABCFR2717E1ZL, it appeared that Sh. Daya Shankar Prasad is also a partner in M/s Rekha Superfine Exporters, Shed no, 395, SP Type-II, Kandla Special Economic Zone, Gandhidham whose second partner is Ms. Rekha Kachhwaha.

13.1 Thereafter, business premises of M/s Rekha Superfine Exporters i.e. Shed no. 395, SP Type-II, Kandla Special Economic Zone, Gandhidham were searched on 07.11.2022. During the entire search proceedings, neither of the

DIN- 20241071ML0000555DD1

stock of black pepper Oleoresin or Black pepper was available inside the above stated premises. Also, no machinery to convert black pepper into oleoresin was installed at either of the premises.

14. Due to non appearance of any representative from M/s Rekha Superfine Exporters, Shed no, 395, SP Type-II, Kandla Special Economic Zone, Gandhidham, despite multiple communications for the same, examination of Container No. SEGU5151499 at MUNDRA port (INMUN1) was done by DRI LDZU officers on 09.11.2022 in presence of Customs Appraising Officer (Gazetted officer) and two Independent witnesses.

The goods mentioned in SB No. 4016882 dated 07.10.2022 are as following in Table 5:

Table 5 (Goods as Declared by Exporter)

Shipping Bill No.	ITEM DESCRIPTION	CTH	QUANTITY	UQC
4016882 dated 07.10.2022	Black Pepper Oleoresin	33019013	7625	Kgs
4016882 dated 07.10.2022	Jaljeera Masala Mix	09109100	5000	Kgs
4016882 dated 07.10.2022	Black Pepper Powder	09109100	5000	Kgs

14.1 During the process of examination of container No. SEGU5151499, it was de-stuffed, upon de-stuffing following items were found inside it as mentioned in Table-6 and representative samples were drawn.

Table-6 (Actual goods found during examination)

Sr No.	Item Description	Quantity Each	Total No. of items
1	Aluminum sealed bottles containing liquid substance	624 carton Boxes with 12 bottles per carton	7488 bottles
2	Brownish tasteless powder with spicy odour	40 HDPE bags of 50 kg approx each	2000 kg
3	White odourless powder	147 HDPE bags of 50 kg approx each	7350 kg

14.2 Further, representative sample, each of Black Pepper Oleoresin, brown powder and white powder were sent to the Chemical Engineer, Central Revenue Control Laboratory, Indian Agriculture Research Institute, Pussa Road, New Delhi for testing. Thereafter, CRCL, New Delhi submitted the Test reports (**RUD-16, 17, 18**) and summary of which is mentioned in Table 7 below:

DIN- 20241071ML0000555DD1

Table-7 (report of the samples as received from CRCL, New Delhi)

Sr No.	Test Report No.	Description as per Shipping Bill No.	Test Report as per CRCL
1	CRCL/Food/09/445(DRI) 17.11.2022 dated 10.01.2023	Black Pepper Oleoresin	The test sample is other than Oleoresin
2	CRCL/Food/09/443(DRI) 17.11.2022 dated 10.01.2023	JalJira Mix	The tested sample has characteristic of mix masala and tested parameter (Sr No. 3 and 8) of the samples does not meet the requirement of mix masala powder
3	CRCL/Food/09/444(D RI)17.11.2022 dated 21.12.2022	Black Pepper Powder	It is mainly composed of sodium chloride along with some inorganic substances. It is other than Black Pepper Powder

14.3 Thus, from the above reports submitted by CRCL, New Delhi, it is evident that the goods to be exported in actual were altogether different from the goods as declared in the Shipping Bill No. 4016882 dated 07.10.2022. Further, the items at Sr. no. 2 & 3 in the above table were seized on dated 14.03.2023 **(RUD-19)** under Section 110 of the Customs Act, 1962 on a reasonable belief that they were liable to be confiscated under Section 113 (i) of the Customs Act, 1962. Item at Sr. no. 1 was already seized vide seizure memo dated 11.10.2022.

15. Thereafter, summons dated 13.01.2023 and 20.01.2023 under Section 108 of Customs Act 1962 were again issued to Sh. Daya Shankar Prasad to appear in this office on 18.01.2023 and 06.02.2023 respectively, so as to ascertain from / question him regarding the where about of diverted black pepper and the actual contents of the declared export items. The said summons was sent through post, e-mail and also delivered through Office of Deputy Commissioner of Customs, KASEZ. Despite service of summons, he did not join the enquiries and neither submitted the documents sought by this office. Sh. Daya Shankar Prasad submitted an e-mail reply dated 17.01.2023 and 21.01.2023 (through his advocate Sh. S.K. Mathur) stating that he was critically ill, bed ridden and had been under consistent medication since over two months time and takes use of wheel chair for his movements.

16. The Deputy Commissioner (Customs), KASEZ vide e-mail dated 16.12.2022 made available copies of the following:

1. Copy of application dated 24.04.2003 submitted for setting up SEZ Unit bank accounts details submitted before SEZ authorities. **(RUD-20)**
2. Copy of Letter of Approval (LOA) dated 02.05.2003. **(RUD-21)**

DIN- 20241071ML0000555DD1

3. Copy of letter dated 21.05.2018 received from the said unit for renewal of their LOA. **(RUD-22)**
4. Copy of LOA renewal letter dated 16.07.2018. **(RUD-23)**
5. Copy of KYC documents submitted to KASEZ Authorities. **(RUD-24)**

17. While analyzing all the SEZ forms filed by M/s Rekha Superfine Exporters in KASEZ, it was seen that **GSTIN used by them in KASEZ for filing all documents in KASEZ viz. Bill of Entry, Shipping Bill, DTA sale etc. was 24AGGPK1098N1Z2, which belonged to Proprietorship firm M/s Rekha Superfine Exporters, proprietor of which was Mrs. Rekha Kachhwaha and GSTIN for which was cancelled suomoto from 01.02.2018.** Also, it was found in all the commercial invoices attached with Export shipping bills that GSTIN used by M/s Rekha Superfine Exporters was 24ABCFR2717E1ZL, which belonged to Partnership Ship firm M/s Rekha Superfine Exporters, Partners of which were Mrs. Rekha Kachhwaha and Mr. Daya Shankar Prasad, GSTIN for which was registered on 23.01.2021 and is active till date. Therefore all documents appear to be forged and were created to defraud SEZ and Customs authorities.

17.1 From the study of GSTIN data, data shared by KASEZ and the data shared by Registrar of Companies (ROC) authorities, it appeared that Mr. Daya Shankar Prasad was partner with both M/s Lafretier Precious Pvt. Ltd and M/s Rekha Superfine Exporters from 23.01.2021 till 03.05.2021.

18. Summons dated 02.02.2023 was issued to Sh. Amar Tawari (Partner), M/s Rekha Superfine Exporters and Summon dated 24.02.2023 was issued to Sh. Daya Shankar Prasad, C/o M/s Rekha Superfine Exporters which returned undelivered. Summon to Sh. Anand Kumar Singh, C/o M/s Lafretier Precious Pvt. Ltd. was issued on 02.02.2023. Despite serving of summon, Sh. Anand Kumar Singh neither joined the enquiry nor explained his absence. Further, summons dated 14.02.2023, 24.02.2023 and 20.03.2023 were issued to Sh. Anand Kumar Singh which he failed to comply again and did not join and cooperate with the investigation.

19. A complaint was filed in the Court of Chief Judicial Magistrate, Ludhiana on 21.03.2023 against Sh. Daya Shankar Prasad, shed no. 395, Sector II, CIB Type Kandla Special Economic Zone, Kandla, Gujarat. Despite serving of various summons dated 13.10.2022, 28.10.2022, 13.01.2023 & 20.01.2023 to Sh. Daya Shankar Prasad, neither did he join the enquiries under Section 108 of the Customs Act, 1962 nor did he produce all the requisite documents, thereby disobeying the summons issued by a competent officer. The accused had committed offences punishable under Sections 174 and 175 of the Indian

DIN- 20241071ML0000555DD1

Penal Code. In this context, the Honorable Court ordered to proceed against the accused for having committed an offence U/s 174 & 175 of IPC and summoned Him. As such, notice to the accused was issued through RC/AD for 05.07.2023 subject to furnishing of RC/AD by the complainant, which he had failed to comply.

20. Another complaint was filed in the Court of Chief Judicial Magistrate, against Sh. Anand Kumar Singh, C/o M/s Lafretier Precious Pvt. Ltd., SF/225/A-5, Super mall-1, Infocity, Gandhinagar, Gujarat-382009. Despite serving of various summons dated 02.02.2023, 14.02.2023, 24.02.2023 & 20.03.2023 to Sh. Anand Kumar Singh, he did not join the enquiries under Section 108 of the Customs Act, 1962, thereby disobeying the summons issued by a competent officer. The accused had committed offences punishable under Sections 174 and 175 of the Indian Penal Code. In this context, the Honorable Court ordered to proceed against the accused for having committed an offence U/s 174 & 175 of IPC and also summoned Him.

21. Since, neither the exporter M/s Rekha Superfine Exporters nor its job-worker M/s Lafretier Precious Private Ltd. responded to any of the summons issued, as such owing to the non-cooperation and evasive attitude, the investigation could not be completed and Show Cause Notice U/s 124 of the Customs Act, 1962 could not be issued and time period for the same was extended for six months as per the provisions of the section 110(2) of the Customs Act, 1962.

22. A letter dated 05/07.06.2023 was received from the O/o- The Development Commissioner, KASEZ, Gandhidham-Kutch informing that a Show Cause Notice for LOA Cancellation has been issued to M/s Rekha Superfine Exporters regarding the Cancellation of LOA.

23. From the above it appeared that exporter M/s Rekha Superfine Exporters indulged into clandestine diversion of black pepper, which was imported duty free under the SEZ LOA issued to M/s Rekha Superfine Exporters and was further shown as having been sent for job work vide KASEZ permission letter no. KASEZ/CUS/01/14/07-08/4418 dated 12.08.2021 for conversions thereafter attempted a fraud and filed a shipping bill declaring export of oleoresin, which on testing has been found to be a substance other than oleoresin. Similar case has been found for other declared items.

24. Accordingly, a Show cause Notice was issued to M/s. Rekha Superfine Exporters, Shed no. 395, SP Type-II, Kandla Special Economic Zone, Gandhidham, answerable to the Commissioner of Customs, Customs House

DIN- 20241071ML0000555DD1

Kandla, having its office at First Floor, New Custom House, Near Balaji Temple, New Kandla, within thirty days from the receipt of notice, as to why:

- (i) Export goods covered by SB No. 4016882 dated 07.10.2022, filed by M/s Rekha Superfine Exporters having self-declared Value of INR 2,19,10,050, as detailed in Annexure A and also in paragraph 23 above, should not be confiscated under Section 113(i) of The Customs Act, 1962 read with section 124 of the Customs Act 1962.
- (ii) All the bottles and other packing material utilized by M/s Rekha Superfine Exporters for storing the declared export goods should not be confiscated U/s 118(b) of the Customs Act, 1962, read with section 124 of the Customs Act 1962.
- (iii) The differential duty of Rs. 4,29,61,795/-, as detailed in paragraph 24 above, should not be demanded and recovered from the importer under section 28(4) along with applicable interest under Section 28AA of the Customs Act, 1962
- (iv) Penalty should not be imposed on M/s Rekha Superfine Exporters under Section 114A of the Customs Act, 1962
- (v) Penalty should not be imposed on M/s Rekha Superfine Exporters under Section 114AA of the Customs Act, 1962
- (vi) Penalty should not be imposed on Sh. Daya Shankar Prasad under Section 114AA of the Customs Act, 1962
- (vii) Penalty should not be imposed on Sh. Amar Tiwari under Section 114AA of the Customs Act, 1962
- (viii) Penalty should not be imposed on Mrs. Rekha Kachwaha under Section 114AA of the Customs Act, 1962.
- (ix) Penalty should not be imposed on M/s Lafretier Precious Private Ltd. under Section 114AA of the Customs Act, 1962
- (x) Penalty should not be imposed on Sh. Anand Kumar Singh, under Section 114AA of the Customs Act, 1962

WRITTEN SUBMISSION-

25. Smt. Rekha Sunil Kachhwaha vide letter dated 03.05.2024 (received in this office on 08.05.2024), interalia, submitted that-

- (i) Smt. Rekha Sunil kachhwaha had already retired from the said partnership firm and a new partner was being added on the place of Smt. Rekha Kachhwaha.
- (ii) They have enclosed Supplementary Partnership deed dated 29.10.2021 w.e.f 13.10.2021.

DIN- 20241071ML0000555DD1

(iii) Smt. Rekha Kachhwaha is not liable for any govt. Tax, Custom tax, Income Tax etc.

PERSONAL HEARING-

26. Opportunities of personal hearing were provided to all the noticees on 09.04.2024, 23.04.2024, 30.04.2024, 04.06.2024 and 23.07.2024 on the email IDs as well as the postal address available with this office. However, none of the noticees appeared for personal hearing.

DISCUSSION AND FINDINGS

27. I have carefully gone through the facts mentioned as in Show Cause Notice with Relied upon Documents, submission of Smt. Rekha kachhwaha and records available on record.

28. I find that all the noticees (except Smt. Rekha Kachhwaha) have failed to submit any written reply to the show cause notice though it was specifically mentioned in the show cause notice itself to submit reply within 30 days. It was also specifically mentioned in the Show cause notice dated 09.10.2023 that if no reply to the notice was received from them within 30 days of receipt of the notice or if they failed to appear for the personal hearing on the date and time intimated to them, the case was liable to be decided on the basis of evidence available and merits, without any further reference to them.

29. It is crystal clear that sufficient time and ample opportunities of personal hearing have been granted to them however till date they (except Smt. Rekha kachhwaha) have not filed any written submission in the matter. Adjudication proceedings is a time sensitive process and can't be kept pending for long. Hence, under the circumstances and in light of the above facts, I am left with no option but to decide the Show Cause Notice on the basis of records available on file.

30. In view of the above discussion and circumstances of the case, I rely on various decisions of Hon'ble Supreme Court, High Courts and Tribunals wherein the ex parte decisions of the adjudicating authority have been upheld, which are as under:-

(a) "Our attention was also drawn to a recent decision of this court in A.K. Kripak Vs. union of India -1969(2) SSC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgement. One of these is the well known principle of

DIN- 20241071ML0000555DD1

audialterampartem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality."-**Hon'ble Apex Court in JethmalVs. U.O.I.-1999 (110) E.L.T. 379 (S.C.).**

- (b) "Natural Justice- Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence – principles of natural justice not violated."- United Oil Mills Vs. C.C.& C.E., Cochin - 2000 (124) E.L.T (Ker.)
- (c) Kumar Jagdish Ch. Sinha Vs. CCE, Calcutta-2000 (124) E.L.T. 118 (Cal.)
- (d) Saketh India Ltd. Vs. U.O.I.-2002 (143) E.L.T 274 (Del.)
- (e) Devi Dayal Vs. U.O.I.-2002 (144) E.L.T. 502 (Del.) maintained in 2003 (151) E.L.T. A288 (S.C)
- (f) Gopinath Chem. Tech Ltd Vs. C.C.E., Ahmedabad-II-2004(171) E.L.T.412(Trib. Mumbai)
- (g) F N Roy Vs. C.C., Calcutta-1983 (13) E.L.T. 1296 (S.C.)

31. I find that a Shipping Bill No. 4016882 dated 07.10.2022 was filed by M/s Rekha Superfine Exporters at INKDL6 (KANDLA SEZ) for export of the following items as permitted export:-

Sr No.	Invoice No.	Invoice Date	Item Description	Unit Price	Quantity (KGS)	Product Value (USD)
1	RE-122-22	06.10.2022	Black Pepper Oleoresin	32	7625	244000
2	RE-122-22	06.10.2022	Jaljeera Masala Mix	2.5	5000	12500
3	RE-122-22	06.10.2022	Black Pepper powder	3	5000	15000

32. I find that the export documents uploaded by the exporter was showing that the export goods mentioned at Sr No. 1 [i.e. Black Pepper Oleoresin] of SB No. 4016882 dated 07.10.2022 were processed on job work from M/s Lafretier

DIN- 20241071ML0000555DD1

Precious Private Ltd situated at B/162, Electronic Estates, Sec-25, GIDC, Gandhinagar-382024, Gujarat (GSTIN-24AAECL1486E1ZP) as per the aforesaid permission letter F.No. KASEZ/Cus/01/14/07-08/4418 dated 12.08.2021, under below mentioned job work challans, which were imported vide Bill of Entry No. 1007834 dated 01.06.2022, 1008842 dated 17.06.2022 and 1009853 dated 01.07.2022 (Gross weight 112 MT, 84 MT and 27 MT respectively Total 223 MTS).

SEZ Request ID (for JOB WORK)	Challan No. (for JOB WORK)	Challan Date	Invoice No.	Date	Quantity (net weight Kg)	Gross weight [Kg]	Item Description	Invoiced value per Kg in INR
492200387711	8000425	25.07.2022	RJ-16-22	25.07.2022	9900	10000	Black Pepper	204.36
492200389030	8000429	26.07.2022	RJ-17-22	26.07.2022	9900	10000	Black Pepper	204.36
492200407683	8000464	04.08.2022	RJ-18-22	04.08.2022	9900	10000	Black Pepper	204.36
492200407720	8000466	05.08.2022	RJ-19-22	04.08.2022	9900	10000	Black Pepper	204.36
492200410332	8000477	08.08.2022	RJ-20-22	05.08.2022	9900	10000	Black Pepper	204.36
492200410413	8000476	08.08.2022	RJ-21-22	05.08.2022	14850	15000	Black Pepper	204.36
492200416315	8000482	09.08.2022	RJ-22-22	08.08.2022	14850	15000	Black Pepper	204.36
492200416326	8000483	09.08.2022	RJ-23-22	08.08.2022	14850	15000	Black Pepper	204.36
					94050 Kg	95000 Kg		

33. I find that the Deputy Commissioner of Customs KASEZ vide their letter dated 21.11.2022 confirmed the movement of the goods covered by the aforesaid job work challans out of KASEZ for purpose of Job work.

REKHA SUPERFINE EXPORTERS 2021-22 & 2022-23 JOB WORK DATA TABLE-B				
SR. NO.	SUBCONTRACTING (ENCLING) NUMBER	RECD. DATE SUBMISSION DATE	DATE OF REMOVAL	VEHICLE NO.
1	80003164	31/05/2021	31/05/2021	GJ-11Z-9037
2	80003188	04/06/2021	04/06/2021	GJ-12AU-6814
3	8000245	19/06/2021	19/06/2021	GJ-10TT-5612
4	8000261	30/06/2021	30/06/2021	HR-63D-6340
5	8000323	16/08/2021	16/08/2021	GJ-128Y-0397
6	8000328	19/08/2021	19/08/2021	GJ-11AU-9247
7	8000417	02/10/2021	02/10/2021	GJ-12AU-9241
8	8000451	22/10/2021	22/10/2021	GJ-08W-1724
9	8000481	17/11/2021	17/11/2021	RJ19GG-2122
10	8000516	03/12/2021	03/12/2021	GJ-11Z-9037
11	8000514	07/12/2021	07/12/2021	GJ-12AU-6814
12	8000530	12/10/2021	12/10/2021	UJ-16T-7855
13	8000535	15/12/2021	15/12/2021	RJ-04GB-8558
14	8000556	30/12/2021	30/12/2021	RJ-04GB-3390
15	80000005	05/01/2022	05/01/2022	GJ-08U3111
16	8000039	24/01/2022	24/01/2022	GJ-10TT-5612
17	8000049	01/02/2022	01/02/2022	GJ-11AU-9247
18	8000062	11/02/2022	11/02/2022	GJ-12AU-9248
19	8000102	18/02/2022	18/02/2022	GJ-24W-9190
20	8000121	25/02/2022	25/02/2022	GJ-24X-0313
21	8000125	28/02/2022	28/02/2022	RJ-04GC-3588
22	8000136	04/03/2022	04/03/2022	RJ-04GC-1888
23	8000150	09/03/2022	09/03/2022	RJ-04GC-7445
24	8000158	13/03/2022	13/03/2022	RJ-04GC-8456
25	8000181	20/03/2022	25/03/2022	RJ-04GC-7446
26	8000209	08/04/2022	08/04/2022	GJ-128Y-3853
27	8000234	12/04/2022	12/04/2022	GJ-10TT-5612
28	8000233	25/04/2022	25/04/2022	GJ-188U3111
29	8000256	04/05/2022	04/05/2022	GJ-24V-1524
30	8000262	09/05/2022	09/05/2022	GJ-24V-1824
31	8000275	10/05/2022	10/05/2022	GJ-24V-1824
32	8000272	21/05/2022	21/05/2022	GJ-24V-1824
33	8000283	23/05/2022	23/05/2022	GJ-24V-1824
34	8000284	27/05/2022	27/05/2022	GJ-24V-1824
35	8000294	23/05/2022	23/05/2022	GJ-24V-1824
36	8000302	26/05/2022	26/05/2022	GJ-24V-1824
37	8000303	27/05/2022	27/05/2022	GJ-24V-1824
38	8000352	23/06/2022	23/06/2022	RJ-04GC-1888
39	8000355	27/06/2022	27/06/2022	RJ-19GG-2122
40	8000363	28/06/2022	28/06/2022	GJ-10TT-5612
41	8000425	25/07/2022	25/07/2022	RJ-04GB-7445
42	8000429	26/07/2022	26/07/2022	RJ-04GB-7445
43	8000454	04/08/2022	04/08/2022	RJ-19GG-2122
44	8000466	05/08/2022	05/08/2022	RJ-19GG-2122
45	8000477	08/08/2022	08/08/2022	RJ-19GG-2122
46	8000476	08/08/2022	08/08/2022	RJ-19GG-2122
47	8000482	09/08/2022	09/08/2022	RJ-19GG-2122
48	8000483	09/08/2022	09/08/2022	RJ-19GG-2122

DIN- 20241071ML0000555DD1

34. I further find that during the course of search at the job worker premises i.e. M/s Lafretier Precious Private Ltd situated at B/162, Electronic Estates, Sec-25, GIDC, Gandhinagar, Gujarat on 10.10.2022 the officers found the place to be an empty green grass plot of 250 sq. meter (approx.) having no construction, no shed, no machinery, no labour, no security guard and no goods of any description (either of black pepper or black pepper oleoresin) were found. The photographs of said empty plot were enclosed in Panchnama dated 10.10.2022 (**RUD-3 to the show cause notice**) and are as under-

IMG-I



Plot No. B/162, Electronic Estates, Sec-25, GIDC, Gandhinagar, Gujarat

35. It is also observed that Smt. Kalpana Ben Alpesh Bhai and Smt. Krupaben Digvijay Bhai Patel, both resident of Hanumanpura, Mansha Gandhinagar, owner of the above mentioned plot, furnished an affidavit dated 11.10.2022 stating that they had only rented 250 Sq Meter of their bare area [no construction] to the tenant Lafretier Precious Private Ltd and the tenant itself had vacated the empty plot in **Oct, 2021**. The landladies/owners had also submitted the Bank Statement dated 11.10.2022 (**RUD-4**), evidencing that the tenant had last paid rent on 21/11/2021 and thereafter no payment was made by the tenant.

DIN- 20241071ML0000555DD1

In view of above, it is amply clear that the black pepper oleoresin mentioned in aforesaid shipping bill dated 07.10.2022 could never had been manufactured in an empty green grass plot which was not even in possession of the job worker, having been vacated a year ago in October, 2021.

36. I further find that representative sample, each of Black Pepper Oleoresin, brown powder and white powder were sent to the Chemical Engineer, Central Revenue Control Laboratory, Indian Agriculture Research Institute, Pussa Road, New Delhi for testing. Thereafter, CRCL, New Delhi submitted the Test reports (**RUD-16, 17, 18**) and summary of which is mentioned in Table 7 below:-

Sr No.	Test Report No.	Description as per Shipping Bill No.	Test Report as per CRCL
1	CRCL/Food/09/445(DRI)17.11.2022 dated 10.01.2023	Black Pepper Oleoresin	The test sample is other than Oleoresin
2	CRCL/Food/09/443(DRI)17.11.2022 dated 10.01.2023	JalJira Mix	The tested sample has characteristic of mix masala and tested parameter (Sr No. 3 and 8) of the samples does not meet the requirement of mix masala powder
3	CRCL/Food/09/444(DRI)17.11.2022 dated 21.12.2022	Black Pepper Powder	It is mainly composed of sodium chloride along with some inorganic substances. It is other than Black Pepper Powder

37. Thus, from the above reports submitted by CRCL, New Delhi, I find that the goods to be exported in actual were altogether different from the goods as declared in the Shipping Bill No. 4016882 dated 07.10.2022. This shows that the imported duty free goods were never put to use for job work for converting the imported Black Pepper into Oleoresins, on job work basis under Rule 41 of the SEZ Rules 2006, which eventually was to be exported as per the conditions of LoA. I find that the goods which were attempted to be exported were mis-declared and the actual imported goods had been clandestinely removed in the DTA by the exporter in connivance with the job worker.

38. I further find that M/s Rekha Superfine Exporters in KASEZ, **used GSTIN 24AGGPK1098N1Z2 for filing all documents in KASEZ viz. Bill of Entry, Shipping Bill, DTA sale etc. which belonged to Proprietorship firm M/s Rekha Superfine Exporters, proprietor of which was Mrs. Rekha**

DIN- 20241071ML0000555DD1

Kachhwaha and the GSTIN for which was cancelled suomoto from 01.02.2018. Further during the inquiry, it was found in all the commercial invoices attached with Export shipping bills that GSTIN used by M/s Rekha Superfine Exporters was 24ABCFR2717E1ZL, which belonged to Partnership Ship firm M/s Rekha Superfine Exporters, Partners of which were Mrs. Rekha Kachhwaha and Mr. Daya Shankar Prasad, GSTIN for which was registered on 23.01.2021 and is active till date. Therefore all documents are forged and were created to defraud SEZ and Customs authorities.

39. From the study of GSTIN data, data shared by KASEZ and the data shared by Registrar of Companies (ROC) authorities, it is clear that Mr. Daya Shankar Prasad was partner with both M/s Lafretier Precious Pvt. Ltd and M/s Rekha Superfine Exporters from 23.01.2021 till 03.05.2021.

40. I find that the Exporter had permission vide F.No. KASEZ/Cus/01/14/07-08/4418 dated 12.08.2021 issued by the office of the Development Commissioner, Kandla Special Economic Zone, Gandhidham, Kutch to remove 900 MTs of imported Black Pepper (900 Mts- Gross weight, 891 MTs- Net weight) in to DTA to M/s Lafretier Precious Private Ltd (GSTIN- 24AAECL1486E1ZP) situated at B/162, Electronic Estates, Sec-25, GIDC, Gandhinagar-382024, Gujarat for converting the imported black pepper into Oleoresins on job work basis under Rule 41 of the SEZ Rules 2006 subject to strict compliance of Rule 42 of the SEZ Rules 2006 and as per which during job work 8% of oleoresins and 89% wastage (Husk/cake) would be generated and the oleoresins and wastage generated would be brought back to the KASEZ and would be exported thereof. There would be a manufacturing loss @ 3%.

41. However, the SEZ unit in connivance with job worker had clandestinely removed the goods which was imported in their unit without payment of customs duty and diverted the same in local market as per the directions of partners of M/s. Rekha Superfine and M/s. Lafretier Precious Pvt. Ltd. The instant case is not a case of simple mis-declaration but a managed fraud to defraud the Government revenue. The SEZ unit has misused the incentives and grants allowed to them in order to defraud the exchequer.

42. I find that Smt. Rekha Kachhwaha in her submission has argued that she had retired from the partnership firm as a partner w.e.f 29.10.2021. However, it is pertinent to note that Deputy Commissioner of Customs KASEZ vide their letter dated 21.11.2022 confirmed the movement of the goods covered by the aforesaid job work challans out of KASEZ for purpose of Job work and the goods had started to be removed from SEZ unit to DTA for job work w.e.f 11.05.2021.

DIN- 20241071ML0000555DD1

42.1 I find that the argument of the noticee, (Smt. Rekha Kacchwaha) that she had retired from the firm w.e.f. 29.10.2021 and no liability of tax rests on her, has no merit as the goods were being removed from SEZ unit since 11.05.2021 and she retired from the partnership w.e.f 29.10.2021. Further, as she was well aware of the acts done by their firm, she never intimated the authorities of customs which clearly establishes her malafide.

42.2 I further find that as per section 32(2) of the Indian Partnership Act, 1932, every partner is liable for all acts of the firm done while he is a partner. If liability has arisen during the period while a person was a partner, such liability does not come to an end by his retirement, he shall be liable for the debts contracted before his retirement.

QUANTIFICATION OF DUTY-

43. I find that the SEZ unit had imported duty free goods i.e. Black Pepper for clearing the goods into DTA for converting the imported black pepper into Oleoresins on job work basis under Rule 41 of the SEZ Rules 2006. However, as discussed above, the SEZ unit diverted the imported duty free goods into DTA clandestinely and then attempted to export some other goods by mis-declaring the same.

43.1 Rule 34 of the SEZ Rules, 2006 mandates that the goods admitted into a SEZ shall be used by the Unit only for carrying out the authorized operations but if the goods admitted are utilized for purposes other than for the authorized operations, duty shall be chargeable on such goods as if these goods had been cleared for home consumption.

43.2 In view of the above, the SEZ unit is liable to pay duties of customs on the amount so clandestinely removed under the provisions of Section 28(4) of the Customs Act, 1962 read with Rule 34 of the SEZ Rules.

43.3 The duty amount evasion calculations pertaining to Shipping Bill No. 4016882 dated 07.10.2022 filed by M/s Rekha Superfine Exporters, Shed no, 395, SP Type-II, Kandla Special Economic Zone, Gandhidham at MUNDRA port (INMUN1) amounts to Rs. 4,29,61,795/- (as per Annexure-A to the SCN).

In view of the above, I hold that the SEZ unit is liable to pay duties of customs amounting to Rs. 4,29,61,795/- under Section 28(4) of the Customs Act, 1962 alongwith interest at applicable rate under Section 28AA of the Customs Act, 1962.

CONFISCATION OF GOODS-

44. In the instant case, it is crystal clear that M/s. Rekha Superfine Exporters had imported goods duty free in order to clandestinely remove the same into DTA and deliberately mis-declared the export goods while filing Shipping Bills which has resulted in evasion of duties of Customs. Such mis-declaration has rendered their goods liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. Further, in this regard, I rely on the judgement of CC Mumbai Vs Multimetal Ltd-2002(Tri-Mumbai) wherein the Hon'ble Tribunal held that *when mis-declaration is established, goods are liable for confiscation irrespective of whether there was malafide or not.* This judgement of Hon'ble Tribunal has been upheld in Apex court in 2003 (ELT A309 (SC)). However, in the instant case, the malafides of the SEZ unit and Job worker are evident as discussed above.

45. I further find that all the bottles and other packing material had been utilized by the SEZ unit for storing the mis-declared export goods which has rendered them liable for confiscation U/s 118(b) of the Customs Act, 1962.

46. I find that in view of principle of law laid down by the Hon'ble Supreme Court in the case of [Om Prakash Bhatia vs. C.C., Delhi](#) 2003 ([155](#)) ELT 423 (SC) and [C.C.E. A.P. vs. Suresh Jhunjhunwala](#) - 2006 (203) ELT 353 (SC), the prohibition cannot be restricted to only those goods which are declared to be prohibited under Sec.11 of Customs Act, 1962, but also non-compliance of any of the provisions of law in relation to goods imported or exported should also be considered as prohibited goods. Therefore, I find that the exporter was not allowed to remove the goods into DTA and therefore, the goods which were mis-declared before the authorities of customs fall under the category of prohibited goods.

47. I find that all the noticees had appeared neither before the investigating agency nor before the adjudicating authority. However, as per the provisions of Section 125 of the Customs Act, 1962, I find that even the prohibited goods may be redeemed in lieu of confiscation. Therefore, I allow redemption of the seized goods/packing material.

PENALTY UNDER SECTION 114A OF THE CUSTOMS ACT, 1962-

48. With regard to penalty under Section 114A of the Customs Act, 1962, I find that Section 114A provides for penalty for non/short payment of duty. In the instant case, it has already been held that M/s. Rekha Superfine Exporters are liable for duty amount of Rs. 4,29,61,795/- under Section 28(4) of the

DIN- 20241071ML0000555DD1

Customs Act, 1962 for wilfull mis-statement/suppression and evasion of duties of customs , therefore, penal action under Section 114A of the Customs Act, 1962 is attracted. Further relying on the circular No.61/2002 dated 20.09.2002, I find that penalty imposable upon M/s. Reha Superfine exporters, under Section 114A, is equal to the duty plus interest.

PENALTY UNDER SECTION 114AA OF THE CUSTOMS ACT, 1962-

49. I find that M/s. Rekha Superfine Exporters, its partners and M/s. Lafretier Precious Pvt.Ltd and its partners have connived with each other to defraud the exchequer by importing duty free goods into SEZ and then diverting the same into DTA without exporting the same after due processing as allowed in the said LoA. They have willfully mis-declared the goods while filing Shipping Bill and while clearing the goods for job work in DTA. Therefore, their acts of commission and omission have rendered (i) M/s. Rekha Superfine Exporters, (2) Sh. Daya Shankar Prasad, Partner, (3) Sh. Amar Tiwari, Partner, (4) Mrs. Rekha Kachwaha, Partner, (5) M/s. Lafretier Precious Pvt. Ltd and (6) Shr. Anand Kumar Singh, Managing Director, M/s. Lafretier Precious Pvt. Ltd, individually and separately, liable for penal action under Section 114AA of the Customs Act, 1962.

50. In view of the above, I hereby pass the following order-

(i) I order to confiscate the goods attempted to be exported vide Shipping Bill no. 4016882 dated 07.10.2022 by M/s. Rekha Superfine Exporters having self-declared value of Rs. 2,19,10,050/- under Section 113(i) of the Customs Act, 1962.

However, in terms of Section 125 of the Customs Act, 1962, I allow them redemption of goods on payment of Rs. 42,00,000/- (Rupees Forty Two lakhs only) in lieu of confiscation.

(ii) I order to confiscate all the bottles and other packing materials utilized by M/s. Rekha Superfine Exporters for storing the mis-declared export goods under Section 118(b) of the Customs Act, 1962.

However, I give them an option of redemption of bottles and packing material on payment of Rs. 6,00,000/- (Rupees Six lakhs only) in lieu of confiscation in terms of Section 125 of the Customs Act, 1962.

(iii) I determine and confirm differential duty of Rs. 4,29,61,795/- (Rupees Four Crore Twenty Nine lakh Sixty One Thousand Seven Hundred and

DIN- 20241071ML0000555DD1

Ninety Five only) and order to recover the same from M/s. Rekha Superfine Exporters under Section 28(4) of Customs Act, 1962.

- (iv) I order to recover interest at the applicable rate, on the amount of Rs. 4,29,61,795/- confirmed at (iii) above, under Section 28AA of the Customs Act, 1962.
- (v) I impose penalty equal to the duty plus interest confirmed above upon M/s. Rekha Superfine Exporters under Section 114A of the Customs Act, 1962.
- (vi) I impose penalty upon SEZ Unit/Job worker/firms/persons, mentioned in Column 2 of the Table below, equal to the amount, as given below in Column 3 of the Table below, under Section 114AA of the Customs Act, 1962:-

Sr.No.	Name of the person/firm	Amount of penalty under Sec. 114AA of the Customs Act, 1962 (in Rs.)
1.	M/s. Rekha Superfine Exporters	1,50,00,000/-
2.	Sh. Daya Shankar Prasad, Partner	1,00,00,000/-
3.	Sh. Amar Tiwari, Partner	75,00,000/-
4.	Mrs. Rekha Kachwaha, Partner	75,00,000/-
5.	M/s. Lafretier Precious Pvt. Ltd	1,00,00,000/-
6.	Shr. Anand Kumar Singh, Managing Director, M/s. Lafretier Precious Pvt. Ltd	75,00,000/-

51. This order is issued without prejudice to any action that can be taken against SEZ unit or any other person under this Act, SEZ Act or any other act for the time being in force.

(M. RAM MOHAN RAO)
Commissioner

F.No. GEN/ADJ/COMM/648/2023-Adjn-O/o Commr-Cus-Kandla
By Speed Post/ Email/ Kandla website/Notice board

To,

1. M/s. Rekha Superfine Exporters, Shed no. 395, SP Type-II, Kandla Special Economic Zone, Gandhidham.

DIN- 20241071ML0000555DD1

2. Sh. Daya Shankar Prasad S/o- Raghunath Prasad, D-51/18-A, PAN DARIBA, Varanasi, U.P.- 221001.
3. Mrs. Rekha Kachwaha W/o Sunil Kumar Kachhwala 30 Bhanu Bunglows, Lal Sagar, Nyaypuri, Jodhpur, Rajasthan-342026.
4. M/s Lafretier Precious Private Ltd., 225/A-5, 2ND FLOOR, Super Mall 1, Infocity, Gandhinagar.
5. Shri Anand Kumar Singh, MD of M/s Lafretier Precious Private Ltd, Village Barholli, Dist- Varanasi
6. Sh. Amar Tiwari, Partner M/s. Rekha Superfine Exporters, Shed no. 395, SP Type-II, Kandla Special Economic Zone, Gandhidham

Copy to:-

1. The Deputy Director of DRI, Ludhiana Regional Unit, Ludhiana for information
2. The Deputy/ Assistant Commissioner (CCO), Ahmedabad for review.
3. The Assistant Commissioner (EDI/TRC/DISPOSAL) for necessary action.
4. Guard File.