प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

"सीमाशुल्क भवन", पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.

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DIN: 20250871MN0000444BEF

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	GEN/ADJ/ADC/1705/2024-DIV-SRT-CUS-COMMRTE-AHMEDABAD
B	कारण बताओ नोटिस संख्या–तारीख / Show Cause Notice No. and Date	:	GEN/ADJ/ADC/1705/2024-DIV-SRT-CUS-COMMRTE-AHMEDABAD dated 21.11.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	**113/ADC/SR/O&A/2025-26**
D	आदेश तिथि/ Date of Order-In-Original	:	**19.08.2025**
E	जारी करनेकी तारीख/ Date of Issue	:	**19.08.2025**
F	द्वारापारित/ Passed By	:	**Shravan Ram**, Additional Commissioner, Customs Ahmedabad.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	**THE C2C3 PLANT ONGC,** PLOT NO. 7D GIDC, DAHEJ SEZ, VILLAGE: LUVARA, TALUKA VAGRA, BHARUCH, GUJARAT-392130.
(1)	**यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।**		
(2)	**कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क(अपील), चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।**		
(3)	**अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:**		
(i)	**अपील की एक प्रति और;**		
(ii)	**इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।**		
(4)	**इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।**		

BRIEF FACTS OF THE CASE:

The C2C3 PLANT ONGC, Plot no. 7D GIDC, Dahej SEZ, Village Luvara, Taluka Vagra, Bharuch, Gujarat-392130, (hereinafter referred to as the "Noticee" for the sake of brevity) having GSTN 24AAAPO1598A3ZR, IEC 2988002207 is engaged in manufacture of taxable

goods viz. LPG-LIQUEFIED PETROLEUM GAS FOR HOUSE HOLD DOMESTIC CONSUMERS UNDER PUBLIC DISTRIBUTION SYSTEM (PDS), NON DOMESTIC PROPANE (INDUSTRIAL) under Chapters No. 27111910 & 27111200. The Noticee has been granted permission to set up manufacturing unit and carry-on commercial production in Dahej SEZ vide LOA No. KASEZ/P&C/6/09/06-07, dated 06/03/2007 (as amended & extended time to time), in terms of Rule 19(4) of the SEZ Rules, 2006. The Noticee has executed Bond-Cum Legal Undertaking (BLUT) in Form-H regarding their obligations for proper utilization and accountal of goods including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty free and regarding achievement of Positive Net Foreign Exchange (NFE) earning in terms of provisions of Rule 22(i) of the SEZ Rules, 2006.

2.1 During test check of records of the Specified Officer, Dahej SEZ, Dahej, Dist. Bharuch for the period 2018-19 to 2020-21 i.e. Audit period through of the Specified Officer, Dahej SEZ, Dahej, (under Commissioner of Customs, Custom House, Ahmedabad), by the Auditors of the CRA Ahmedabad team, it was noticed from the data analysis of the DTA Bill of Entry (BOE) that Noticee made Domestic Tariff Area (DTA) clearance of Vestar Vasyr225ITT 2T 5 Inv AC (CTH 84158290) valued at Rs. 35.45 lakh vide Thoka No. 2039439 dated 26.11.2019, under the provisions of the Special Economic Zones (SEZ) Act, 2005 and Special Economic Zones (SEZ) Rules, 2006 without payment of duty (IGST).

2.2 The Sr. Audit Officer, CRA Ahmedabad ("CRA") during the course of verification has observed that Noticee has procured the said good, vide Thoka No. 6052696, from M/s Anjaneya Corporation (DTA) vide invoice no. TX-0022 dated 24.07.2019 without paying any IGST. Further, it was also found that the item falls under Sr. No. 119 of Schedule IV of IGST Schedule (attracting duty @ 28%). The SEZ unit viz. C2C3 PLANT ONGC while clearing the same to DTA viz. M/s Anjaneya Corporation has not paid any duty claiming that they have not claimed any export entitlement when the same was procured from the DTA unit hence claiming no duty liability falls upon them on removal of same good to DTA unit.

2.3 The Audit team has observed that on SEZ supply of goods the supplier (DTA unit) avails IGST exemption i.e. without payment of IGST. On rejection, the SEZ unit clears the same goods to same supplier without payment of IGST, which was not paid at the time of clearance in this case. This appeared to have resulted non-payment of IGST to the tune of Rs.9,92,653/-.

2.4 Against this backdrop, the office of the Deputy Director (CRA), Office of the Principal Director of Audit (Central), Audit Bhawan, Navrangpura, Ahmedabad, vide letter No. CRA/LAR-28/2021-22 dated 27.04.2022 **[RUD-01 to SCN]** of LAR No. 28/2021-22 dated 28.04.2022 raised an audit objection that the Noticee had failed to pay the IGST to the tune of Rs. 9,92,653/- at the time of clearance of goods.

2.5 Subsequently, the Specified Officer, Multi-Product SEZ, Dahej (hereinafter referred to as the "Specified Officer"), vide letter dated 07.04.2022 **[RUD-02 to SCN]** sought clarification/reply from the Noticee.

2.6 The Noticee vide their reply letter dated 11.04.2022 **[RUD-03 to SCN]** informed that all the items i.e. "rejected 82 nos. Air Conditioners" were returned to the supplier M/s Anjaneya Corporation, after obtaining necessary clearance from SEZ vide letter dated 25.11.2019. Therefore, no payment of IGST is applicable. However, the Specified Officer vide letter dated 17.10.2022, **[RUD-04 to SCN]** *inter alia*, intimated the Noticee to pay applicable IGST along with applicable interest. The RUD-04 is reproduced as under:

> *"Kindly refer to this office letters of even no. dated 07.04.2022 and 03.10.2022 and your office letters dated 11.04.2022 and 11.10.2022 on the above captioned subject.*
> *2. It is to mention here that this office vide it's supra mentioned letters had requested to provide clarification/pay duty alongwith interest w.r.t. the audit objection wherein Audit has pointed out, inter alia, that on rejection of goods C2C3 Plant ONGC Cleared the same goods vide Bill of Entry (BOE) 2039439 dated 26.11.2019 to same supplier i.e. M/s Anjaneya Corporation (DTA Unit) without payment of IGST. This has resulted in non-payment of IGST to the tune of Rs.9,92,653/-.*
> *3. Accordingly, C2C3 Plant ONGC vide its aforementioned letters has mentioned that they had cleared the same after obtaining necessary clearances vide letter in F.No. DSEZ/CUs/07/C2-C3/Misc/2019-20 dated 25.11.2019, Thus, claimed that no IGST payment is applicable upon them.*
> *In this regard it is requested to please refer to your letter (copy dated 23.10.2019 enclosed) wherein it was requested to allow permanent return of 82 split ACs of 2 tonne to the original supplier M/s. Anjaney Corporation, Ahmedabad as per SEZ Rules. Accordingly, this office vide letter in F.No. DSEZ/Cus/07/C2-C3/Misc/2019-20 dated 25.11.2019 (copy Enclosed) allowed to clear the goods under NIL rate of duty to subject fulfillment of SEZ Rules, 2006. However, clearance without payment it IGST was neither sought for nor provided by this office.*
> *4. In light of the above it is hereby requested to pay applicable IGST alongwith applicable interest, as pointed out by the Audit."*

2.7 Further, the clarification was sought from the unit vide letters dated 03.10.2022, 17.10.2022, 09.01.2023, 19.05.2023 & 18.09.2023 **[RUD-05 to 09 to SCN]**. However, no communication was received nor any payment of IGST made by Unit.

2.8 Further, Noticee vide their reply letter dated 14.12.2023 **[RUD-10 to SCN]** informed that *Rule 49(3) of the SEZ Rules, 2006 refers to "export entitlements" and not about the IGST exemption and being the SEZ unit, they are entitled for exemption. Also, Rule 27 clearly provides difference between procurement of goods without payment of duty, taxes and cess from DTA and procurement from DTA after availing export entitlement. Thus, their case falls under first part and not under the later, as the unit have not availed any*

export entitlement and had not filed Bill of Export which was prerequisite and not claimed any export entitlement.

2.9 It further appeared that the Specified Officer, Dahej SEZ vide letters dated 12.11.2024 had sought clarification from CRA audit to clarify the applicability appropriate provisions for issuance of show cause notice to unit.

2.10 It further appeared that CRA vide letter dated 13.11.2024 has clarified that in the instant case it is noticed that ONGC C2C3 (SEZ unit) has cleared VESTAR AC (Rejected goods supplied vide Invoice No. TX-0022 dated 24.7.2019). Hence in the instant case the Notification applicable will be 45/2017-Customs dated 30.06.2017 for re-import of exported goods. Further, Sl. No. 1(d) of the said Notification stipulates that goods exported without payment of IGST when reimported have to pay the amount of IGST not paid. In light of the same, rule 49(3) is very clear which states that export entitlement of IGST were availed at the time of clearance of goods to SEZ Unit and as per Notification No.45/2017-Customs dated 30.06.2017, non-payment of IGST amounting to Rs.9,92,653/- has been pointed out by CRA.

2.11 It appeared that the subject goods viz. Vestar Vasyr225ITT 2T 5 Inv AC (CTH 84158290), that was procured by the Noticee. without payment of duty, vide Thoka No. 6052696, from M/s Anjaneya Corporation (DTA), appeared to have been cleared in DTA only after payment of applicable duties. But unit appeared to have failed to pay the same during the time of clearance.

3. LEGAL PROVISIONS

3.1 Section 7 of SEZ Act, 2005 provides that;

> *7. Any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by, -*
> *(i) a Unit in a Special Economic Zone; or*
> *(ii) a Developer;*
> *shall, subject to such terms, conditions and limitations, as may be prescribed, be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.*

3.2 Section-26 of SEZ Act, 2005 provides that;

> *"26. Exemptions, drawbacks and concessions to every Developer and entrepreneur*
> *1. Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:-*
> *.....*
> *c. exemption from any duty of excise, under the Central Excise Act, 1944 (1 of 1944) or the Central Excise Tariff Act, 1985 (5 of 1986) or any other law for the time being in force, on goods brought from Domestic Tariff Area to a Special Economic Zone or Unit, to carry on the authorised operations by the Developer or entrepreneur;*
> *...."*

2. The Central Government may prescribe, the manner in which, and, the terms and conditions subject to which, the exemptions, concessions, draw back or other benefits shall be granted to the Developer or entrepreneur under sub-section (1).

3.3 An SEZ unit is allowed to import from abroad or procure from domestic tariff area (DTA) without payment of applicable duties/taxes in terms of Section 26(1) of the SEZ Act, 2005. Further, such exemptions from duties and Taxes on inputs procured from domestic area or imported, are subject to provisions of Section 26(2) of the SEZ Act, 2005 and terms and conditions, as imposed vide Rule 22 of SEZ Rules, 2006, which *interalia* required that

"the Unit shall execute a Bond-cum-Legal Undertaking in Form H, with regard to its obligations regarding proper utilization and accountal of goods, including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty free and regarding achievement of positive net foreign exchange earning."

Provided that the Bond-cum-Legal Undertaking executed by the Unit or the Developer including Co-Developer shall cover one or more of the following activities, namely: -

(a) …….;

(b) the authorized operations, as applicable to Unit or Developer;

(c) ……..

……

……

(2) Every Unit and Developer shall maintain proper accounts, financial year-wise, and such accounts which should clearly indicate in value terms the goods imported or procured from Domestic Tariff Area, consumption or utilization of goods, production of goods, including by-products, waste or scrap or remnants, disposal of goods manufactured or produced, by way of exports, sales or supplies in the domestic tariff area or transfer to Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or Bio-technology Park Unit, as the case may be, and balance in stock:

3.4 Rule 23 of the SEZ Rules, 2006 provides that

Supplies from the Domestic Tariff Area to a Unit or Developer for their authorized operations shall be eligible for export benefits as admissible under the Foreign Trade Policy.

3.5 Rule 25 of the SEZ Rules, 2005 specifies that

"Where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case

may be, shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed without prejudice to any other action under the relevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Excise Tariff Act, 1985, the Central Sales Tax Act, 1956, the Foreign Trade (Development and Regulation) Act, 1992 and the Finance Act, 1994 (in respect of service tax) and the enactments specified in the First Schedule to the Act, as the case may be: Provided that if there is a failure to achieve positive net foreign exchange earning, by a Unit, such entrepreneur shall be liable for penal action under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and the rules made there under."

3.6 Rule 27 of SEZ Rules, 2006 specifies that

27. Import and Procurement-

(1) A Unit or Developer may import or procure from the Domestic Tariff Area without payment of duty, taxes or cess or procure from Domestic Tariff Area after availing export entitlements or procure from other Units in the same or other Special Economic Zone or from Export Oriented Unit or Software Technology Park unit or Electronic Hardware Technology Park Unit or Bio-technology Park Unit, all types of goods, including capital goods (new or second hand), raw materials, semi-finished goods, (including semi-finished Jewellery) component, consumables, spares goods and materials for making capital goods required for authorized operations except prohibited items under the Import Trade Control (Harmonized System) Classifications of Export and Import Items:

3.7 Further, Rule 34 of the SEZ Rules, 2006 provides that

"The goods admitted into a Special Economic Zone shall be used by the Unit or the Developer only for carrying out the authorized operations but if the goods admitted are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to account for the goods as provided under these rules, duty shall be chargeable on such goods as if these goods have been cleared for home consumption

Provided that in case a Unit is unable to utilize the goods imported or procured from Domestic Tariff Area, it may export the goods or sell the same to other Unit or to an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit, without payment of duty, or dispose of the same in the Domestic Tariff Area on payment of applicable duties on the basis of an import licence submitted by the Domestic Tariff Area buyer, wherever applicable".

3.8 Further, Rule 47 of the SEZ Rules, 2006 provides that

"47. Sales in Domestic Tariff Area-

(1) A Unit may sell goods and services including rejects or wastes or scraps or remnants or broken diamonds or by-products arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area on payment of customs duties under section 30, subject to the following conditions, namely:-

(a) Domestic Tariff Area sale under sub-rule (1), of goods manufactured by a Unit shall be on submission of import licence, as applicable to the import of similar goods into India, under the provisions of the Foreign Trade Policy:

…

…

(4) ***Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made thereunder****."*

3.9 Further, Rule 49 (3) of the SEZ Rules, 2006 provides that

"Goods on which any export entitlements were availed at the time of procurement of goods may be supplied back to the Domestic Tariff Area on payment of duty equivalent to the export entitlements availed subject to the condition that the identity of goods being supplied back to the Domestic Tariff Area is established to the satisfaction of the Specified Officer:

Provided that where no export entitlements are availed, such goods may be supplied back to the Domestic Tariff Area without payment of duty."

3.10 Further section 20 of the Customs Act, 1962 provides that

"If goods are imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof".

3.11 Further, Rule 48 (1) of the SEZ Rules, 2006 provides that

"Domestic Tariff Area buyer shall file Bill of Entry for home consumption giving therein complete description of the goods and / or services namely, make and model number and serial number and specification along with the invoice and pocking list with the Authorized Officers:

PROVIDED that the Bill of Entry for home consumption may also be filed by a Unit on the basis of authorization from a Domestic Tariff Area buyer."

3.12 From the provisions discussed above, it can be seen that benefit of non-levy/non- payment of Customs duty in respect of all the goods imported/procured by a SEZ unit is available only when such goods are utilized for authorized operation and accounted for or transfer to Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or Bio-technology Park Unit, as the case may be.

3.13 Further, from the submissions made by the Noticee, it appeared that they had procured duty free goods without payment of IGST.

3.14 In the instant case, it appeared that being an SEZ unit, the Noticee was legally bound to follow the provisions of Rule 22, 25 & 27 of the SEZ Rules, 2006 in respect of the goods procured duty free under the provisions of Section 26 of the SEZ Act, 2005. It appeared that the Noticee failed to utilize the aforesaid goods in their unit for their authorized operation and to follow the prescribed procedure as provided in Rule 22(2), Rule 49(3) of the SEZ Rules, 2006.

3.15 It appeared that SEZ entity filed the Bill of Entry and being an SEZ unit, the Noticee was legally bound to follow the provisions of Rule 22, Rule 49(3) of the SEZ Rules, 2006 in respect of the goods procured duty free under the provisions of Section 7 and 26 of the SEZ Act, 2005 read with Rule 23 of the SEZ Rules, 2006. It appeared that the Noticee had failed to supply the aforesaid goods on payment of applicable duties as provided in Rule 49(3) of the SEZ Rules, 2006. From the above discussion, it appeared that the Noticee has contravened provisions of Rule 47 and Rule 49(3) of the SEZ Rules, 2006 in as much as they had failed to supply back the goods procured duty free after payment of applicable duties.

3.16 The Noticee had, in terms of Rule 22 of the SEZ Rules, 2006 executed Bond-cum-Legal undertaking, whereby they had undertaken for proper utilization and accountable of goods procured duty free. It appeared from the discussion herein above that the Noticee has breached the said bond-cum-legal undertaking, thereby making themselves liable for payment of applicable duties on goods cleared, as the same were not cleared in terms of Rule 49(3) of the SEZ Rules, 2006. It therefore, appeared that the Noticee is liable to pay an amount equal to the applicable duty on the aforesaid goods, alongwith applicable interest on the said amount of duties at a rate as specified in the Notification of the Government of India, Ministry of Finance (Department of Revenue), issued under Section 28AA of the Customs Act, 1962, from the material date till the date of payment of such duties.

3.17 The details regarding value and short levy are summarized herein below:

Bill of Entry No./ Date	**Item description**	**Assessable Value**	**Duty payable IGST @ 28% as proposed in the subject SCN**	**Short levy as proposed in the subject SCN**
2039439/26 .11.2019	Vestar Vasyr225ITT 2T 5 Inv AC (CTH 84158290)	Rs. 35,45,188/-	Rs. 9,92,653/-	**Rs.9,92,653/-**

4. SUMMARY

4.1 In light of the facts and circumstances discussed in the above paras, it appeared that in the instant case, the Noticee has procured indigenously duty free goods valued at Rs. 35,45,188/- involving applicable duties and cleared the same to DTA unit without payment of applicable duties in contravention to Rule 47, 49(3) of the SEZ Rules, 2006. It therefore, appeared that the Noticee is liable to pay amount of **Rs. 9,92,653/- (IGST @ 28%) (Total Rupees Nine Lakh Ninety Two Thousand Six Hundred Fifty**

Three Only) equal to the duty leviable on the goods, under Section 28(4) of the Customs Act, 1962, read with the Rule 49(3) of the SEZ Rules 2006 read with Sr.No.1(d) of Notification No. 45/2017-Customs Dated 30.06.2017. _

4.2 Bond-Cum Legal Undertaking (in Form H) furnished by the noticee should not be enforced for recovery of above referred liabilities.

4.3 It appeared that the Noticee is also liable to pay interest at a rate as specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue,) under Section 28AA of the Customs Act, 1962, on the said amount of duties till the date of payment of such duties.

4.4 It also appeared that being an SEZ unit, the Noticee has undertaken to fulfill all the conditions stipulated in various Notifications/Circulars etc. related to the SEZ unit. The Noticee, by way of furnishing Bond-Cum Legal Undertaking in Form H, have undertaken to pay duty, interest, penalty etc. in case of any demand for violation of any of the conditions mentioned in the said Bond-Cum Legal Undertaking. The Noticee deliberately cleared the goods to DTA without payment of applicable duties, thereby mis declaring the facts to escape payment of duties. Therefore, above proposed duty and interest can be made by enforcing the Bonds, executed by them.

4.5 The Noticee appeared to have wrongly filed BOE by not assessing the leviable duties on above said matter which appeared to have resulted in non-levy and non-payment duties amounting to **Rs. 9,92,653/- (IGST @ 28%)**. From the advent of self-assessment in 2011, it is the responsibility of the Noticee while presenting the Bill of Entry shall make and subscribe to a declaration as on the truth and correctness of the contents of the Bill of Entry and classify the goods under appropriate tariff item. In the instant case, the Noticee appeared to have willfully not paid the applicable duties. The Noticee appeared to have intent to evade the payment of duty, thereby appeared to have willfully mis-declared the vital facts in the BOE filed, which led to Non-payment of applicable duties. It appeared that the duties not paid is required to be recovered by invoking extended period under Section 28(4) of the Customs Act, 1962 along with interest at appropriate rate as applicable under Section 28AA of the Customs Act, 1962.

4.6 The Noticee has brought the above goods from DTA Unit by availing exemption and the same were cleared without payment of applicable duties of customs. The said goods were cleared by mis-declaring in BE there is no levy of duty, thus violated the provisions of section 111(m) of the Customs Act, 1962. Therefore, the Penalty appeared to be imposed on the Noticee under Section 112(a) of the Customs Act, 1962. It appeared, in the present case; when the good in question have been removed improperly by the Noticee to the DTA unit contrary to Rule 47, 49(3) of the SEZ Rules, 2006, constitute the offence as described under Section 112 of the Customs Act, 1962. Hence, it appeared to have rendered the Noticee liable for penalty under the Section 112 of the Customs Act, 1962.

5. Thereafter, M/s. C2C3 PLANT ONGC, Plot no. 7D GIDC Industrial Estate Dahej, Village Luvara, Taluka Vagra, Bharuch, Gujarat-392130 were issued the Show Cause Notice vide F. No. GEN/ADJ/ADC/1705/2024-DIV-SRT-CUS-COMMRTE-

AHMEDABAD dated 21.11.2024 to show cause to the Additional Commissioner of Customs, Customs Ahmedabad, as to why;

i. The duties of Customs amounting to **Rs.9,92,653/- (IGST @ 28%) (Total Rupees Nine Lakh Ninety Two Thousand Six Hundred Fifty Three Only)** on the goods cleared to the DTA unit without payment of duties, should not be demanded and recovered invoking extended period from the Noticee under Section 28(4) of the Customs Act, 1962, read with Rule 49(3) of the SEZ Rules, 2006 read with Notification No. 45/2017-Customs Dated 30.06.2017.

ii. Interest at the appropriate rate on the total duty demanded at Sr. No.(i) above should not be demanded and recovered from them, under Section 28AA of the Customs Act, 1962.

iii. Goods should not be confiscated under Section 111(m) of the Customs Act, 1962

iv. Penalty should not be imposed upon them under Section 112 of the Customs Act, 1962.

v. Bond-Cum Legal Undertaking (in Form H) furnished by the noticee should not be enforced for recovery of above referred liabilities.

DEFENSE SUBMISSION AND PERSONAL HEARING:

6. In response to the Show Cause Notice vide F. No. VIII/10-71/Gift City/O&A/HQ/2024-25 dated 05.06.2024, the noticee presented a submission dated 13.12.2024 wherein, they submitted that:-

- Time barring of the proceedings: The proceedings for issuance of a show cause notice under the Customs Act, 1962 is governed vide Section 28. The Unit had received the permission letter from the Specified Officer, Dahej SEZ on 25-11-2019 regarding the clearance of the rejected goods to the original supplier in the DTA, subsequent to which the Bill of Entry for home consumption was filed on behalf of the DTA supplier for the removal of goods on 26-11-2019 which was duly assessed on 13-12-2019. Further, the Unit had well informed the facts of the case to the Office of the Specified Officer, Dahej SEZ - Customs for obtaining permission for removal of the goods. Hence, it cannot be contemplated herein that the unit, in order to negate any duty payments (either on its own account or on behalf of the DTA supplier), had deliberately concealed or suppressed or misrepresented the facts of the case before the revenue. Relying upon the provisions of Section 28 of the Customs Act, 1962, the show cause notice can be issued within two years from the date of order for the clearance of goods, which in this case is 13-12-2019. Since the said timeline has elapsed, the case is prima facie time barred for the purpose of initiating any tax / duty recoveries. Moreover, it will be unjust to invoke the

additional period of limitation prescribed under the Law herein on account of fraud / willful suppression of facts since the Unit has maintained complete transparency in furnishing the details / documents before the SEZ authorities and has acted in a bona fide spirit throughout. On this ground alone, the proceedings initiated by the show cause notice deserve to be dropped.

- Liability of the importer to pay Custom Duties on goods removed from the SEZ to DTA: Since the responsibility of filing the Bill of Entry for Home Consumption is of the DTA Unit, the payment of the Customs Duty is also the responsibility of the DTA Unit. The SEZ unit merely acts as a facilitator for the DTA unit for the purpose of initiating the necessary filings on the SEZ portal and does not hold itself out to be the importer of goods. Therefore, assuming but not admitting a default in the payment of custom duties (particularly IGST herein), the DTA importer should be called upon to make the default good and avail the necessary tax credits thereafter. Therefore, the proceedings initiated by the show cause notice deserve to be dropped.

- Permission allowed for permanent removal of goods in DTA at nil rate of duty: Reference is again drawn to the Letter issued by the Office of the Specified Officer, Dahej SEZ - Customs vide F. No. DSEZ/Cuslj7lC2-C3lMisc/2019-20 dated 25.11.2019, which is enclosed to this letter as Annexure - 4. The SEZ Unit was allowed by the Dahej SEZ - Customs to remove the goods in the DTA at nil rate of duty, based on which the Bill of Entry for Home Consumption was filed. The Bill of Entry was assessed by the learned authority without raising any query on the leviability of the Integrated Goods & Service Tax (IGST) and allowed the removal of goods from the SEZ. No objection was raised by the Dahej SEZ - Customs office at the time of assessment of the Bill of Entry, indicating due compliance under the Law. The issuance of a notice subsequently upon the instructions of the CRA team for the levy of IGST defeats the purpose of assessment of the bill of entry by the customs authorities. Therefore, the proceedings initiated by the show cause notice deserve to be dropped.

- Requirement for Payment of Duty equivalent to the export entitlements availed: As per the Rule 49 (3), the Unit would like to submit that the goods have been removed into DTA in as such conditions. The goods have been rejected by the Unit and the DTA Unit has agreed to take back the goods as per the enclosed Annexure - 3. Since the goods have been removed in 'as such' conditions, the above Rule squarely applies to this instance. The goods were originally admitted into SEZ without any availment of export entitlements available under Chapter 3 of the Foreign Trade Policy and thus, the proviso to the Rule 49(3) quoted above allows such goods to be removed to the DTA without payment of any duty. Further, the identity of the goods was well confirmed with the Specified Officer at the time of assessment of the Bill of Entry for Home Consumption dated 13-11.2019. On this ground alone, the show cause notice deserves to be dropped.

- No instance of Unjust Enrichment: The SEZ Unit would like to state that the Unit has not enjoyed any Unjust Enrichment by supplying back the goods to the DTA

Unit. The goods were received by the Unit from DTA without any payment of IGST since the goods were supplied by the DTA Unit under LUT as per the CGST Act 2017 as the goods were for the Authorized Operations of the Unit. Further, at the time of supplying the goods back to DTA, the Unit did not charge any IGST on the transaction, since the permission was availed by the office of the Specified officer, Dahej SEZ as per enclose d Annexure - 4 for removal of goods at nil rate of duty. Further, Rule 49(3) of the SEZ Rules allowed the Unit to remove goods without payment of duty since no export entitlements had been availed initially. Further, the Unit encloses the confirmation provided by the DTA supplier as Annexure - 6, whereby the DTA supplier has provided the tax invoices through which the goods viz. the returned Air Conditioners, have been further supplied to another DTA Unit and the IGST charged on such supply has been duly paid by the DTA supplier. Therefore, the DTA unit has also not benefited from the unjust enrichment as the IGST is paid by the DTA supplier on such supply, which otherwise would have been paid by the utilization of the Input Tax Credit of IGST paid for import of goods. In view of the above submission, the proceedings initiated by the show cause notice deserve to be dropped.

- Without prejudice to our above submissions, the re-import is eligible for exemption under the Customs Notification No. 4512017 dt. 30.06.2017: Para2.10 of the Show Cause Notice states that IGST is payable in view of Sl. No. 1(d) of the Customs Notification No.45/2017 dated 30.06.2017 ('the Notification'). In this regard, the Noticee submits that the Notification exempts goods falling under any chapter of the First Schedule of the Customs Tariff Act, 1975, when re-imported into India, from Customs duty specified in the First Schedule, Integrated Tax (IGST)and Compensation Cess leviable, which is in excess of amount specified in the Notification. However, Sl. No. 1(d) of the Notification is applicable when goods are exported under bond. Whereas, re-import not covered under Sl. No. 1 to 4 of the Notification are covered under the Residual Entry i.e. Sl. No. 5 which allows for exemption from whole of Customs Duty as also IGST upon re-import of goods. In this regard, there is no doubt that the re-import is of the same goods which were supplied by DTA unit i.e. there is no change in the identity of the goods. The goods supplied by the DTA Supplier were rejected by the SEZ Unit and therefore the Supplier was obligated to re-import the same goods back to the DTA. It is submitted that the DTA supplier has not exported the subject goods under bond as stipulated in Sl. No.1 (d) of the Notification, hence this entry would not be applicable in the instant case. Instead, residuary entry Sl. No. 5 of the Notification would be squarely applicable on such re-import. In view of the above, the re-import would be exempt from whole of customs duty including IGST. Therefore, the demand as envisaged in the Show Cause Notice deserves to be dropped.

6.1 Opportunities for Personal hearing was given to the importer on 24.07.2025 in compliance with Principle of Natural Justice, which was attended by Shri Krishna Mathur, CA and Shri Bharat Mathur, CA. They reiterated their written submission dated 13.12.2024 and requested to drop the proceedings.

DISCUSSIONS AND FINDINGS:

7. I have gone through the Show Cause Notice, the Submissions made by the noticee in written as well as during the course of the personal hearing and available records of the case.

8. I find that that Noticee made Domestic Tariff Area (DTA) clearance of "Vestar Vasyr225ITT 2T 5 Inv AC" falling under CTH 84158290 valued at Rs. 35.45 lakh vide Thoka No. 2039439 dated 26.11.2019, under the provisions of the Special Economic Zones (SEZ) Act, 2005 and Special Economic Zones (SEZ) Rules, 2006 without payment of duty (IGST). I find that during the course of the CRA Audit, it was observed that the non-payment of IGST resulted in contraventions of Rule 47 and 49(3) of the SEZ Rules, 2006 and the same was liable to be recovered under Section 28(4) of the Customs Act, 1962 read with Rule 49(3) of the SEZ Rules, 2006 and Sr. NO. 1(d) of the notification no. 45/2017-Customs dated 30.06.2017, along with interest under Section 28AA of the Customs Act, 1962. Now, the issues for consideration before me are as follows:

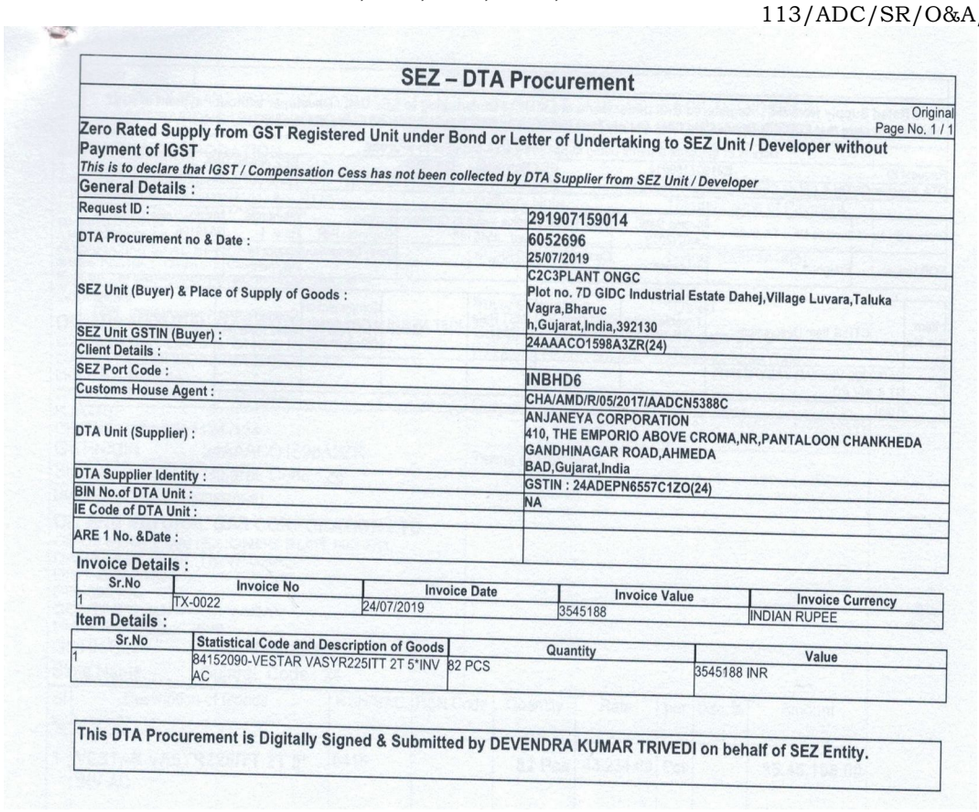
(i) Whether the duties of Customs amounting to Rs.9,92,653/- (IGST @ 28%) (Total Rupees Nine Lakh Ninety Two Thousand Six Hundred Fifty Three Only) on the goods cleared to the DTA unit without payment of duties, are recoverable from the Noticee under Section 28(4) of the Customs Act, 1962, read with Rule 49(3) of the SEZ Rules, 2006 read with Notification No. 45/2017-Customs Dated 30.06.2017?

(ii) Whether the Capital Goods under consideration are liable to confiscation?

(iii) Whether the Noticee is liable for penalty as invoked in the SCN?

9. First, I proceed to decide whether the duties of Customs amounting to Rs.9,92,653/- on the goods cleared to the DTA unit without payment of duties, are recoverable from the Noticee under Section 28(4) of the Customs Act, 1962, read with Rule 49(3) of the SEZ Rules, 2006 read with Notification No. 45/2017-Customs Dated 30.06.2017.

9.1 I find that the noticee had procured the subject goods vide DTA Procurement Thoka No. 6052696 dated 25.07.2019 from M/s Anjaneya Corporation (DTA) vide invoice no. TX-0022 dated 24.07.2019 under "Zero Rated Supply from GST Registered Unit under Bond or Letter of Undertaking to SEZ Unit/Developer without Payment of IGST".



SEZ – DTA Procurement

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Zero Rated Supply from GST Registered Unit under Bond or Letter of Undertaking to SEZ Unit / Developer without Payment of IGST

This is to declare that IGST / Compensation Cess has not been collected by DTA Supplier from SEZ Unit / Developer

General Details :

Request ID :	291907159014
DTA Procurement no & Date :	6052696 25/07/2019
SEZ Unit (Buyer) & Place of Supply of Goods :	C2C3PLANT ONGC Plot no. 7D GIDC Industrial Estate Dahej,Village Luvara,Taluka Vagra,Bharuc h,Gujarat,India,392130
SEZ Unit GSTIN (Buyer) :	24AAACO1598A3ZR(24)
Client Details :	
SEZ Port Code :	INBHD6
Customs House Agent :	CHA/AMD/R/05/2017/AADCN5388C
DTA Unit (Supplier) :	ANJANEYA CORPORATION 410, THE EMPORIO ABOVE CROMA,NR,PANTALOON CHANKHEDA GANDHINAGAR ROAD,AHMEDA BAD,Gujarat,India
DTA Supplier Identity :	GSTIN : 24ADEPN6557C1ZO(24)
BIN No.of DTA Unit :	NA
IE Code of DTA Unit :	
ARE 1 No. &Date :	

Invoice Details :

Sr.No	Invoice No	Invoice Date	Invoice Value	Invoice Currency
1	TX-0022	24/07/2019	3545188	INDIAN RUPEE

Item Details :

Sr.No	Statistical Code and Description of Goods	Quantity	Value
1	84152090-VESTAR VASYR225ITT 2T 5*INV AC	82 PCS	3545188 INR

This DTA Procurement is Digitally Signed & Submitted by DEVENDRA KUMAR TRIVEDI on behalf of SEZ Entity.

9.2 I find that the above said procurement was made under Rule 30 of the SEZ Rules, 2006:

> *"RULE 30. Procedure for procurements from the Domestic Tariff Area. — (1) The Domestic Tariff Area supplier supplying goods or services to a Unit or Developer shall clear the goods or services,* ***as in the case of zero-rated supply as per provisions of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) either under bond or legal undertaking*** *or under any other refund procedure permitted under Goods and Services Tax laws or Central Excise law, or as duty or tax paid goods under claim of rebate, on the cover of documents laid down under the relevant Central Excise law for the purpose of export by a manufacturer or supplier.*
>
> *(2) Goods or services procured by a Unit or Developer, on which Goods and Services Tax or exemption has been availed but without any availment of export entitlements, shall be allowed admission into the Special Economic Zone on the basis of [documents referred to in sub-rule (1) of Rule 30."*

9.3 I find that the DTA procurement has also been termed as "Export" as used in the SEZ Act, 2005. I find that as per Section 2(m) of the SEZ Act, the definition of the "Export" is as under:-

> *"(m) "Export" means -*
>
> *(i) taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or*
>
> *(ii)* ***Supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer****; or*
>
> *(iii) Supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone;"*

Therefore, I find that the DTA supplier had **exported** the subject goods to the noticee under "**Zero Rated Supply from GST Registered Unit under Bond or Letter of Undertaking to SEZ Unit/Developer without Payment of IGST**".

9.4 I find that thereafter, the noticee requested to allow permanent return of 82 split ACs of 2 Tonne to the original supplier M/s. Anjaneya Corporation, Ahmedabad as per SEZ Rules vide their letter dated 23.10.2019 due to quality issues. I find that the Specified Officer allowed the said clearance vide his letter F. No. DSEZ/CUs/07/C2-C3/Misc./2019-20 dated 25.11.2019 on observing the SEZ Rules, 2006.

9.5 I also find that in reference to **'return of defective goods'**, the SEZ Rules, 2006 provides in Rule 27 as under:

> *"(9) Where goods or parts thereof, imported or procured from Domestic Tariff Area are found to be defective or otherwise unfit for use or which have been damaged or become defective after such import or procurement, may be sent outside the Special Economic Zone without payment of duty for repairs or replacement, to the supplier or his authorized dealer or be destroyed:*
>
> *Provided that where overseas supplier or the Domestic Tariff Area supplier of goods does not insist for re-export or for supply back to the Domestic Tariff Area of goods, the same shall not be insisted upon and such goods shall be destroyed with the permission of the Specified Officer:*
>
> *Provided further that the goods which are sent outside the Special Economic Zone for repairs are returned to the Special Economic Zone, within 180 days from the date of removal from the Special Economic Zone, under intimation to the specified officer. In case goods are sent out for replacement then on replaced goods, no Duty Entitlement Passbook Scheme, duty drawback or other export incentives shall be claimed for this purpose:*
>
> *Provided further that destruction shall not be permitted in case of precious and semi-precious stones and precious metals:*
>
> *Provided also that* ***in case of return of goods procured from the Domestic Tariff Area, the same shall be allowed on refund of the export entitlement which have been received or availed or claimed by the Domestic Tariff Area supplier or the Unit or the Developer, as the case may be****."*

I find in view of the above, the return of goods procured from the Domestic Tariff Area (DTA) can be cleared on **refund of the 'export entitlement' received or availed or claimed** by the DTA supplier/SEZ unit. However, I find that the above Rule does not talk about Customs Duty and IGST liabilities. In this reference, I refer to the Rule 49(3) of the SEZ Rules, 2006 as under:

> *"(3) Goods on which any export entitlements were availed at the time of procurement of goods may be supplied back to the Domestic Tariff Area on*

payment of duty equivalent to the export entitlements availed subject to the condition that the identity of goods being supplied back to the Domestic Tariff Area is established to the satisfaction of the Specified Officer:

Provided that where no export entitlements are availed, such goods may be supplied back to the Domestic Tariff Area without payment of ***duty****."*

9.6 I find that the duty has not been defined in the SEZ Act, 2005. Further, the section 2 (zd) of the SEZ Act, 2005 reads as follows:-

"(zd) ***all other words and expressions used and not defined in this Act but defined*** *in the Central Excise Act, 1944 (1 of 1944)****,*** *the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Income-tax Act, 1961 (43 of 1961****), the Customs Act, 1962 (52 of 1962)*** *and the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) shall have the meanings respectively assigned to them in those Acts."*

In view of the above, it can be construed that the definition of the "duty" not expressively defined in the SEZ Act, 2005 has to be taken from the Customs Act, 1962. I find that duty has been defined as under:

"(15) "duty" means a duty of customs leviable under this Act"

I find that "duty" under the Customs Act, 1962 does not include Integrated Tax or IGST. However, I find that Section 5 of the Integrated Goods and Services Tax Act, 2017 stipulates that:

"Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962."

As per sub-section (7) of Section 3 of the Customs Tariff Act, 1975,

"*any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent, as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India"*

Therefore I find that the integrated tax (IGST) is not a duty of Customs, however is leviable as per the Customs Tariff Act, 1975 along with the duty of Customs on the import of goods. I rely on the order in advance ruling in the matter of ***SAPTHAGIRI HOSPITALITY PVT. LTD. REPORTED AT 2018 (18) G.S.T.L. 91 (A.A.R. - GST)***, wherein it is held that:

"5. Rendering of services from SEZ to DTA does not qualify as zero rated supply in terms of Section 16 of IGST Act, 2017. Therefore, SEZ Unit/ developer making inter-State supply to DTA would be liable to pay IGST under IGST Act. Therefore, supply of services by the SEZ unit or Developer from SEZ to DTA

would be covered under the normal course of supply. Accordingly the applicant will be liable to pay GST at the prescribed rates for supplies made to the clients located outside the territory of SEZ."

9.7 I find from the conjoint reading of the Rules 22(2), 23 and 25 of the SEZ Rules, 2005 that when an entrepreneur/unit does not utilize the goods or services procured from DTA on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations, the entrepreneur/unit, shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed without prejudice to any other action under the relevant provisions of **the Customs Act, 1962**, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Excise Tariff Act, 1985, the Central Sales Tax Act, 1956, the Foreign Trade (Development and Regulation) Act, 1992 and the Finance Act, 1994 (in respect of service tax) and the enactments specified in the First Schedule to the Act, as the case may be.

9.8 I find that clearance from SEZ to DTA is import for DTA buyer, which may be cleared on the Bill of Entry by the SEZ unit also. In the present case, the clearance of the subject goods by the noticee is import into Domestic Tariff Area Buyer and as per Section 20 of the Customs Act, 1962, such goods will subject to duty and all the conditions and restrictions, if any. Section 20 of the Customs Act, 1962 provides that

"If goods are imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof".

I also rely on the judgment in the case of ***ADINATH TRADE LINK VERSUS COMMISSIONER OF CUSTOMS, KANDLA REPORTED AS 2013 (293) E.L.T. 746 (TRI. - AHMD.)*** wherein it was held that:

"12. It can be seen from the above reproduced notification that the said notification provides for exemption to be granted to the goods which are leviable to SAD at the time of importation of goods into India for subsequent sale. It can be seen that the said notification specifically grants exemption by way of refund, on fulfilment of conditions of SAD which are paid on the goods when imported into India. In our considered view, the words "at the time of importation of goods" as indicated in Notification has to be read holistically with the provisions of Section 30 of SEZ Act, which also talks about applicability and leviability of such SAD when goods imported. ***It would mean that when the goods move from SEZ to DTA, the leviability of SAD is on the goods arises, as such movement is considered as "when imported to India".*** *In our view, benefit of Notification No. 102/2007-Cus. cannot be denied to the appellants, for the reason that when goods move from SEZ to DTA, leviability of SAD is not in doubt, calculation of SAD is not in doubt and subsequent sale of goods is also not in doubt."*

I find that the above judgment was upheld by the Hon'ble High Court of Gujarat. I find that the Hon'ble Tribunal while delivering the judgment, held that the **clearance from**

SEZ to DTA would be considered as import and may be dealt with the provisions of the Customs Act, 1962.

9.9 Further I find that Rule 48 (1) of the SEZ Rules, 2006 provides that

> *"**Domestic Tariff Area buyer shall file Bill of Entry for home consumption** giving therein complete description of the goods and / or services namely, make and model number and serial number and specification along with the invoice and pocking list with the Authorized Officers:*
>
> *PROVIDED that the **Bill of Entry for home consumption may also be filed by a Unit** on the basis of authorization from a Domestic Tariff Area buyer."*

Therefore I find that the Bill of Entry may be filed by any one of the DTA buyer (importer) or by the SEZ unit in clearance of good from SEZ to DTA. I reject the contentions of the noticee that the responsibility of filing the Bill of Entry for Home Consumption is of the DTA Unit and the payment of the Customs Duty is also the responsibility of the DTA Unit. However I find that such clearance may be made on the basis of documents filed by the SEZ unit also and in the present case, the noticee being an SEZ unit filed such documents for clearance of the subject goods to DTA buyer at the material time. Further, the return of goods from SEZ to DTA will be considered as import or more specifically "re-import of exported goods". I rely on the case of ***ESSAR PROJECT INDIA LTD. VERSUS COMMISSIONER OF CUSTOMS, AHMEDABAD REPORTED AT 2019 (369) E.L.T. 1547 (TRI. - AHMD.)***, wherein it is held that:

> *"10. Analyzing the above provisions, particularly Sec. 30 of the SEZ Act, it is clear that **on clearance/removal of the goods from the SEZ to DTA, the applicable duties of Customs as levied under the CTA, 1975 are required to be paid and the rate of duty and tariff valuation,** if any applicable would be the rate as in force on the date of its removal or payment of duty as the case may be. Nowhere under the said provision there is any mention of the payment of interest on clearance of the goods from SEZ to DTA."*

To fortify my stand I further refer to Rule 47 of the SEZ Rules, 2006 provides that:

> *"47. Sales in Domestic Tariff Area-*
> *(1) A Unit may sell goods and services including rejects or wastes or scraps or remnants or broken diamonds or by-products arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area on payment of customs duties under section 30, subject to the following conditions, namely:-*
> *(a) Domestic Tariff Area sale under sub-rule (1), of goods manufactured by a Unit shall be on submission of import licence, as applicable to the import of similar goods into India, under the provisions of the Foreign Trade Policy:*
> *…*
> *…*
> *(4) **Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made thereunder**."*

9.10 I find that in the present case, there is no provision in the SEZ Act, 2005 regarding exemption of the Integrated Tax (IGST) in the case of return of goods from SEZ unit to the DTA buyer and the same has to be taken from the Customs Act, 1962, which constitutes the event as **"Re-import"** and will be governed by the Notification No. 45/2017-Customs dated 30.06.2017 for re-import of exported goods:-

Notification No. 45/2017 –Customs

New Delhi, the 30th June, 2017

G.S.R.(E).-In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling within any Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below when re-imported into India, from so much of the duty of customs leviable thereon which is specified in the said First Schedule, and the whole of the, integrated tax , compensation cess leviable thereon respectively under sub-section (7) and (9) of section 3 of the said Customs Tariff Act, ***as is in excess of the amount*** *indicated in the corresponding entry in column (3) of the said Table*

Table

Sl. No.	Description of goods	Conditions
(1)	(2)	(3)
1	Goods exported - (a) under claim for drawback of any customs or excise duties levied by the Union	amount of drawback of customs or excise duties allowed at the time of export;
	(b) under claim for drawback of any excise duty levied by a State	amount of excise duty leviable by State at the time and place of importation of the goods. allowed at the time of export;
	(c) under claim for refund of integrated tax paid on export goods	amount of refund of integrated tax, availed at the time of export;
	(d) under bond without payment of integrated tax	amount of integrated tax not paid;
	(e) under duty exemption scheme (DEEC/ Advance Authorisation/ DFIA) or Export Promotion Capital Goods Scheme (EPCG)	amount of integrated tax and compensation cess leviable at the time and place of importation of goods and subject to the following conditions applicable for such goods - (i) DEEC book has not been finally closed and export in question is de-logged from DEEC Book; Advance Authorisation/DFIA

I find that Sl. No. 1(d) of the said Notification stipulates that goods exported without payment of integrated tax (IGST) when reimported have to pay the **amount of integrated tax (IGST) not paid**. I find that in present case, the subject goods being re-imported into Domestic Tariff Area are subjected to such condition and the amount of integrated tax (IGST) needed to be paid on such clearance. I reject the contentions of the noticee that "the goods were not exported under Bond and they are covered under Sl. No. 5 of the said notification" as it has already been established that the goods were exported by DTA supplier under "**Zero Rated Supply from GST Registered Unit under Bond or Letter of Undertaking to SEZ Unit/Developer without Payment of IGST**".

9.11 In view of above discussions and provisions, I hold that integrated Tax (IGST) is leviable on supplies from the Special Economic Zones to Domestic Tariff Area as per provisions of Rule 49(3) of the SEZ Rules, 2006 read with Notification No. 45/2017-Customs dated 30.06.2017 as amended.

9.12 I find that the Show Cause notice proposed demand and recovery of the duties of Customs amounting to Rs. 9,92,653/- (IGST) (Total Rupees Nine Lakh Ninety Two Thousand Six Hundred Fifty Three Only) on the goods cleared to the DTA unit without payment of duties under Section 28(4) of the Customs Act, 1962. As discussed in foregoing paras, I find that IGST is leviable on supplies from Special Economic Zones to the Domestic Tariff Area in the present case.

9.13 Section 28(4) of the Customs Act, 1962 is reproduced below:

> *"(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*
> *(a) collusion; or*
> *(b) any wilful mis-statement; or*
> *(c) suppression of facts,*
> *by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice."*

9.14 I find that the noticee has contended that they have received permissions from the Specified Officer at the time of clearance of goods, which were allowed for clearance after due verification by the custom officer, there is no scope of invocation of the extended period of limitation. However, I find that being an SEZ unit, the Noticee has undertaken to fulfill all the conditions stipulated in various Notifications/Circulars etc. related to the SEZ unit. The Noticee, by way of furnishing Bond-Cum Legal Undertaking in Form H, have undertaken to pay duty, interest, penalty etc. in case of any demand for violation of any of the conditions mentioned in the said Bond-Cum Legal Undertaking. The Noticee deliberately cleared the goods to DTA without payment of applicable duties, thereby mis declaring the facts to escape payment of duties.

9.15 After introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2011, it is the responsibility of the importer or such other person authorized by them to correctly declare the description, classification, applicable exemption notification, applicable duties, rate of duties and its relevant notifications etc. in respect of said imported goods and pay the appropriate duty accordingly, whereas, in the instant case, they have failed to correctly apply the notification on the imported goods and mis-stated the facts with an intent to evade payment of IGST and thereby they have not paid the appropriate IGST on the said imported goods.

9.16 They have willfully contravened the provisions of Section 17(1) of the Customs Act, 1962 inasmuch as they have failed to correctly self-assess the impugned goods and have also contravened the provisions of sub-sections (4) and (4A) of Section 46 of the Customs Act, 1962 inasmuch as they have failed to ensure the accuracy and completeness of the information given therein.

9.17 From the above, I find that the noticee had intentionally not apply correct Serial No. of the Notification applicable to the imported goods in the Bills of Entry of the said imported goods and suppressed the said material facts with an intent to evade payment of appropriate IGST.

9.18 I rely on the judgment of Hon'ble Supreme Court in the case of ***UNIWORTH TEXTILES LTD. VS. COMMISSIONER REPORTED IN 2013 (288) E.L.T. 161 (S.C.).*** Hon'ble Gujarat High Court in the said case, interalia has held as under:

> ***17. The proviso cannot be read to mean that because there is knowledge, the suppression which stands established disappears****. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.*
>
> ***18.*** *The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee.* ***Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term "relevant date" nugatory and such an interpretation is not permissible.***
>
> ***19. The language employed in the proviso to sub-section (1) of Section 11A, is, clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified thereunder, the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to whether the show cause notice has been served within a period of five years therefrom.***
>
> ***20.*** *Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of Section 11A, stands*

extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of Section 11A would be applicable. However such reasoning appears to be fallacious inasmuch as once the suppression is admitted, ***merely because the department acquires knowledge of the irregularities the suppression would not be obliterated****."*

9.19 Therefore, I hold that the noticee knowingly suppressed the material facts with an intent to evade the payment of IGST and I find that the noticee has not levied the IGST on the clearance of the subject goods to the DTA buyer for which they were issued show cause notice dated 05.06.2024. For the reasons stated above, I hold that the noticee is liable for an IGST of amount Rs. 9,92,653/- to be recovered from them under Section 28 (4) of the Customs Act, 1962.

9.20 I find that the person who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section. As per Para ibid, the noticee is liable for an for an IGST of amount Rs. 9,92,653/- to be recovered from them under Section 28 (4) of the Customs Act, 1962. Therefore, I hold that they are liable to pay interest on the said export duty as per Applicable rates as per Section 28AA of the Customs Act.

9.21 I find that the noticee has contended that the Unit has not enjoyed any Unjust Enrichment by supplying back the goods to the DTA Unit. In this context, I refer to the judgment in the case of ***SESA GOA LTD. VERSUS COMMISSIONER OF C. EX., CUS. & S.T., BHUBANESWAR-I REPORTED AT 2014 (313) E.L.T. 317 (TRI. - KOLKATA)*** wherein Hon'ble Tribunal Held that:-

"After reading the above passage, we have no hesitation to observe that to qualify as Customs (Export) Duty, it is not necessary that the incidence of duty should always be passed on, so as to satisfy the economists' principle of Indirect Tax. On the contrary, it would not be out of place to mention that the present export duty on Iron Ore could have been levied by the legislature to discourage export of Iron Ore from the country, with an objective to make it unviable for exporters, who ultimately have been intended to be saddled with the levy, instead of passing on the burden to the purchaser. In our view, the principle laid down in the aforesaid case and followed in other cases, answers the argument advanced by the ld. CA for the appellant. On this count also, we do not find substance in the plea of the appellant that FOB price be treated as

cum-duty price and not the transaction value, as prescribed under Section 14 of the Customs Act, 1962."

9.22 In view of the above, I find that even though the noticee might have not received any amount, in addition to the price towards the IGST not discharged by them, it is not necessary that the incidence of duty should always be passed on, so as to satisfy the economists' principle of Indirect Tax. On the contrary, the present IGST on re-imported goods could have been levied by the legislature to discourage re-import of the same. Therefore, I reject the contentions of the noticee.

10. Now I proceed to decide whether the subject Goods under consideration are liable to confiscation.

10.1 I find that in the Show Cause Notice, it is alleged that the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. From the perusal of Section 111(m) of the Customs Act, 1962 it is clear that any goods which are imported by way of the mis-declaration, will be liable to confiscation. As discussed in the foregoing paras, it is evident that the noticee has deliberately not paid IGST on the subject goods.

10.2 I find that they have willfully contravened the provisions of Section 17(1) of the Customs Act, 1962 inasmuch as they have failed to correctly self-assess the impugned goods and have also contravened the provisions of sub-sections (4) and (4A) of Section 46 of the Customs Act, 1962 inasmuch as they have failed to pay IGST on the clearance of the subject goods to the DTA buyer with clear intent to evade payment of IGST. I hold that the noticee have rendered the imported goods liable to confiscation under Section 111 (m) of the Customs Act, 1962.

10.3 As the impugned goods are found liable to confiscation under Section 111 (m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 is liable to be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. The Section 125 (1) of the Customs Act, 1962 reads as under:-

"***125 Option to pay fine in lieu of confiscation*** –

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit…"

10.4 I find that though, the goods are not physically available for confiscation and in such cases redemption fine is imposable in light of the judgment in the case of ***M/S. VISTEON AUTOMOTIVE SYSTEMS INDIA LTD. REPORTED AT 2018 (009) GSTL 0142 (MAD)*** wherein the Hon'ble High Court of Madras has observed as under:

> "23. *The penalty directed against the importer under Section 112 and the fine payable under Section 125 operates in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."*

10.6 I also find that Hon'ble High Court of Gujarat by relying on this judgment, in the case of ***SYNERGY FERTICHEM LTD. VS. UNION OF INDIA, REPORTED IN 2020 (33) G.S.T.L. 513 (GUJ.),*** has followed the dictum as laid down by the Madras High Court. In view of the above, I hold that redemption fine is imposable on the subject goods under Section 125(1) of the Act.

11. Whether the Noticee is liable for penalty as invoked in the SCN.

11.1 The Show Cause Notice proposes imposition of penalty on the Noticee under the provision of Section 112 (a) of the Customs Act, 1962. In terms of the provisions of Section 112(a), any person, who in relation to any goods, omits to do any act which act or omission would render such goods liable to confiscation under Section 111, is liable to penalty. I find that noticee by not paying IGST have rendered the subject capital goods liable for confiscation and as such rendered themselves liable for penalty under Section 112(a)(ii) of the Customs Act, 1962. Accordingly, I find that the noticee is liable to penalty in terms of the provisions of Section 112(a)(ii) of the Customs Act, 1962.

12. I find that being an SEZ unit, the Noticee has undertaken to fulfill all the conditions stipulated in various Notifications/Circulars etc. related to the SEZ unit. The Noticee, by way of furnishing Bond-Cum Legal Undertaking in Form H, have undertaken to pay duty, interest, penalty etc. in case of any demand for violation of any of the conditions mentioned in the said Bond-Cum Legal Undertaking. The Noticee deliberately cleared the goods to DTA without payment of applicable duties, thereby mis declaring the facts to escape payment of duties.

12.1 At this juncture, it is to mention that the term "Bond" is defined under Sub-section (5) of Section 2 of the Indian Stamp Act, 1899 as follows:

> *(5) "Bond" —"Bond" includes—*
>
> *(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;*
>
> *(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and*
>
> *(c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another:*

Likewise, Section 2(d) of The Limitation Act, 1963 defines the term 'Bond' as under:

> *(d) "bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;*

In light of the definition of the term 'Bond', it is expressly clear that the Noticee has undertaken the obligation to pay all taxes along with Interest @15% in the event of non-fulfillment of conditions. Therefore, I find that the act of the Noticee, of not paying IGST, tantamount to dishonoring the Bond executed by them. Therefore, I hold that Bond-Cum Legal Undertaking (in Form H) furnished by the noticee may be enforced for recovery of above referred liabilities.

13. In view of above discussion and findings, I pass the following order:

ORDER

(i) I confirm the demand of Integrated Tax (IGST) amounting to **Rs. 9,92,653/- (Total Rupees Nine Lakh Ninety Two Thousand Six Hundred Fifty Three Only)** from **M/s. THE C2C3 PLANT ONGC** and order to recover the same from them under Section 28(4) of the Customs Act, 1962, read with Rule 49(3) of the SEZ Rules, 2006 also read with Notification No. 45/2017-Customs Dated 30.06.2017**.**

(ii) I hold the subject Goods of Assessable value Rs. 35,45,188/- (Rupees Thirty Five Lakh Forty Five Thousand One Hundred Eighty Eight only) liable to confiscation in terms of the provisions of section 111(m) of the Customs Act, 1962. However, I give them an option to redeem the said goods on payment of redemption fine of **Rs. 9,00,000/- (Rupees Nine Lakh only)** in terms of the provisions of Section 125(1) of the Customs Act, 1962.

(iii) I order to recover interest at the applicable rate on the Customs duty confirmed at (i) under Section 28AA of the Customs Act, 1962.

(iv) I impose penalty of **Rs. 99,265/- (Rupees Ninety Nine Thousand Two Hundred Sixty Five only)** on them under Section 112(a)(ii) of the Customs Act, 1962.

(v) I order to enforce the Bond-Cum-undertaking (Form-H) for recovery of the duty, interest and fine/penalty liability confirmed above.

19. The Show Cause Notice bearing F. No. GEN/ADJ/ADC/1705/2024-DIV-SRT-CUS-COMMRTE-AHMEDABAD dated 21.11.2024 is disposed of in above terms.

Digitally signed by
Shravan Ram
Date: 19-08-2025
12:51:45

(Shravan Ram)
Additional Commissioner
Customs Ahmedabad

DIN: 20250871MN0000444BEF

F. No. GEN/ADJ/ADC/1705/2024-DIV-SRT-CUS-COMMRTE-AHMEDABAD

By Speed Post A.D./E-mail /Hand Delivery/Through Notice Board

To,
THE C2C3 PLANT ONGC,
PLOT NO. 7D GIDC, DAHEJ SEZ,
VILLAGE: LUVARA, TALUKA VAGRA, BHARUCH,
GUJARAT-392130.

Copy to:-

1. The Principal Commissioner, Customs, Ahmedabad (Kind Attention: RRA Section).
2. The Specified Officer, Dahej SEZ, Dahej.
3. The System In–Charge, Customs HQ, Ahmedabad for uploading on the official website i.e. http://www.gujaratcustoms.gov.in
4. The Assistant Commissioner (Task Force), Customs HQ, Ahmedabad
5. Guard File/Office copy.