

Office of The Commissioner of Customs
 New Custom House, Near Balaji Temple
 New Kandla - 370210
 Tel.-02836-271468-469 Fax-02836-271467
 E-mail: adjcustomskandla22@gmail.com

By Speed /RPAD & through E-mail

DIN- 20240471ML0000000F5B

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

M/s OSGL overseas, Shed No. 2 & 3, CPWD Type, Sector-1, Phase-1, Kandla Special Economic Zone (KASEZ), Gandhidham (hereinafter referred to as 'M/s OSGL') is a partnership firm engaged in warehousing of import and export goods in KASEZ since 15.01.2001.

2. Whereas, intelligence was developed by the officers of the Special Intelligence and investigation Branch (SIIB), Custom House, Mundra to the effect that Areca Nuts being imported in KASEZ for re-export purpose and at the time of re-export rotten Areca Nuts and wooden Powder is being re-exported in guise of Areca Nuts. Further, intelligence suggested that major import has been happened December, 2022 onwards.

EXAMINATION OF THE CONSIGNMENTS:

3. Acting upon the intelligence, 5 containers arrived at Mundra Port for the purpose of export purportedly showing export goods as Areca Nuts were intercepted on 08.04.2023. These containers were covered under Shipping Bill No. 4005491 dated 03.04.2023(**RUD-1**) filed by M/s OSGL on behalf of Indian entity M/s DEEG Marketings Private Limited, (IEC-AAACD1594P) Flat No. F/217, B Wing, 1st Floor, Express Zone Mall, Next to Patel Vanika, Off. W.E. Highway, Goregaon East, Mumbai, India (hereinafter referred to as M/s DEEG).

4. The consignment covered under the Shipping Bill No. 4005491 dated 03.04.2023 was examined under panchnama proceeding dated 08/09.03.2024(**RUD-2**) drawn at the Exim Yard, Mundra Port in the presence of authorized person of the Shipping line, M/s Transliner Maritime Private Limited, Gandhidham and Assistant Manager, Documentation, EXIM Yard. The consignment was loaded in 5 containers (Container No.-FCIU8883299, INLU4106216, CAIU7081536, INLU4106432, BEAU4470709). As per the Shipping Bill, the consignee of the goods was M/s Fidelis Fodstuff Trading LLC, 511, Sultan Business Centre, Near Lamcy Plaza, Old Mehta, Bur, Dubai, UAE, whereas M/s Fame eagle Limited, F-1, 210, 2/F, Hang Fung Ind Bldg (Ph-1), ZG Hong Yuen St, Hung Hom, KL is shown as 1st Notified party and M/s Kayak General Trading LLC, Office No. 403, BMI Building, Bank Street, P. O. Box 122576, Bur Dubai-UAE is shown as 2nd notified party.

5. During examination of the consignment on 08/09.03.2024, it was noticed that

- The front side of the containers (all five) were packed with white coloured PP Bags while on the back side was stuffed with Jute bags, The jute bags were visible only after destuffing of the containers.
- Total 2255 bags (1299 white PP bags and 956 Jute Bags) were found in 5 containers.
- On opening of the bags, it was noticed that white PP bags were filled with stale/rotten/waste looking areca nuts, while Jute Bags were filled with red/wooden colored powder like material which prima facie appeared as wooden powder.
- On random selection, both PP bags and Jute bags were weighed and it was noticed that average weight of 1 PP bag was 49 kg and average weight of Jute bag was 81 Kgs.
- In total 63.651 MT of rotten Areca Nut and 77.436 MT of Wooden Powder was found during examination.
- As per the Shipping Bill was signed and submitted by Shri Swaroop Shetty on behalf of SEZ entity, M/s OSGL with a remark "*Goods are packed in bags and there are no wooden material/Wooden pallets used in any kind of packing. Goods being returned as not of SHHAI*

compliance and physically seem unfit for human consumption. Goods being inferior quality goods rejected and is being re-exported as received”

- For ease of reference, scan copy of Shipping Bill is reproduced herein under:

SCAN IMAGE OF SB NO. 4005491 dated 03.04.2023:

<p>5/3/23, 2:52 PM https://www.sazonline-cdml.co.in/ShippingBill/SBPartForm.aspx?PartQuantity=10000&RequestId=0&EntityId=0&IsUnit/sar=0&is</p> <p>Gross Weight: 139509.000KGS</p> <p>Total FOB Value In Words:-> (Rupees Four Crore Ninety Nine Lakh Forty Thousand Three Hundred and Thirty Only)</p>																																							
<table border="1"> <thead> <tr> <th>Analysis of Export Value</th> <th>Currency</th> <th>Amount in Specified Currency</th> <th>Amount in INR</th> </tr> </thead> <tbody> <tr> <td>FOB value</td> <td>USD</td> <td>008400</td> <td>49940330</td> </tr> <tr> <td>Freight</td> <td></td> <td>0</td> <td>0</td> </tr> <tr> <td>Insurance</td> <td></td> <td>0</td> <td>0</td> </tr> <tr> <td>Commission</td> <td></td> <td>0</td> <td>0</td> </tr> <tr> <td>Discount</td> <td></td> <td>0</td> <td>0</td> </tr> <tr> <td>Other Deductions</td> <td></td> <td>0</td> <td>0</td> </tr> <tr> <td>Packing Charges</td> <td>USD</td> <td>0</td> <td>0</td> </tr> <tr> <td>Deductions from Realizable Value without FOB charge</td> <td></td> <td>0</td> <td>0</td> </tr> </tbody> </table>				Analysis of Export Value	Currency	Amount in Specified Currency	Amount in INR	FOB value	USD	008400	49940330	Freight		0	0	Insurance		0	0	Commission		0	0	Discount		0	0	Other Deductions		0	0	Packing Charges	USD	0	0	Deductions from Realizable Value without FOB charge		0	0
Analysis of Export Value	Currency	Amount in Specified Currency	Amount in INR																																				
FOB value	USD	008400	49940330																																				
Freight		0	0																																				
Insurance		0	0																																				
Commission		0	0																																				
Discount		0	0																																				
Other Deductions		0	0																																				
Packing Charges	USD	0	0																																				
Deductions from Realizable Value without FOB charge		0	0																																				
<p>Full export value OR Where not ascertainable the value which exporter expects to receive on the sale of goods</p> <p>Currency: USD 008400</p> <p>Amount in INR: Net Realisable 49940330</p>																																							
<p>Goods are packed in bags and there is no wooden material/Wooden Palettes used in any kind of Packing. Goods being returned as not of FSSAI compliance and physically seems unfit for Human consumption. Goods being of Inferior quality goods rejected and is being re-exported as received.</p>																																							
<p>Declaration: We declare that all particulars given herein are true and correct. We also attach the declaration(s) under clause No.(s). Public Notice No. _____ is attached.</p> <p>We certify that the above declared goods meant for export have been packed & sealed in my presence as per statutory requirement under SEZ Act 2006 & SEZ Rule 2006.</p>																																							
<p>This SB Form is Digitally Signed & Submitted by SWARUP SHRIDHAR SHETTY on behalf of SEZ Entity</p> <p>This SB Form is Assessed & Digitally Signed by GAJENDRA SINGH KHMARA, SEZ Authorised Officer on 04/04/2023.</p>																																							

Remark on the Shipping Bill

6. Therefore, since on examination, goods brought for export vide above said Shipping Bill was prima facia found mis declared, the goods covered under Shipping Bill No. 4005491 dated 03.04.2023 having declared FOB value of Rs. 4,99,40,330/- were found liable for confiscation under Section 113 (e), (h) & (i) of the Customs Act, 1962 and hence were placed under seizure under Section 110 of the Custom Act, 1962 vide seizure Memo dated 09.04.2023 and the seized goods were handed over to the Assistant Manager (Documentation), Exim Yard, Mundra for safe custody vide Supurnama dated 09.04.2024 **(RUD-3)**.

INVESTIGATION AT THE END OF M/s OSGL:

7. In view of the above, since the goods attempted to export by M/s OSGL were found mis declared, the registered premises of M/s OSGL situated at Shed No. 2 & 3, CPWD Type, Sector-1, Phase-1, Kandla Special Economic Zone (KASEZ), Gandhidham was searched on 09.04.2023 (**Panchnama dated 09.04.2023 RUD-4**) by the officers of SIIB, Custom House, Kandla, in presence of Shri Swarrop Shetty, Partner of M/s OSGL. During search proceeding it was noticed that

- The premises was consisting two sheds- Shed No. 2 & 3.
- In the Shed No. 2 stock of Areca Nuts and Old black dates was found whereas in the shed No. 3, stock of Agricultural Fodder, Spices Powder, Black Peeper Husks, Areca Nut Powder was found.
- During search proceeding, stock of goods laying in both the sheds was taken and detailed in Annexure-A to the panchnama.
- Representative Samples of the stock lying at the premises of M/s OSGL were drawn by the officers for testing purpose.
- On being asked about the stock register, documents related to import and DTA clearance, Shri Swaroop Shetty initially denied for having any such documents with him but later on submitted some documents related to transactions made by M/s OSGL which were placed in a made-up file and seized by the officers for further investigation.
- Shri Swaroop Shetty also informed that they had cleared goods of approx. 18-20 containers of Areca Nuts under Intra Zone Transfer to the premises of M/s Rekha Superfine Exporters, KASEZ.
- During the search, stock position of the goods laying at the premises was as under:

Table-1

Shed No 2				
Sr No	Item Found	Number of Bags	KGs per Bag	Total Quantity (KGs)
1	Areca Nuts in Plastic Bags	828	60	49680
2	Areca Nuts in Plastic Bags	175	50	8750
3	Areca Nuts in Jute Bags	387	80	30960
Total Areca Nuts				89390
4	Old Black Dates in Jute Bags	190	50	9500
Total Old Black Dates				9500
Shed No 3				
Sr No	Item Found	Number of Bags	KGs per Bag	Total Quantity (KGs)
1	Areca Nut Powder	28	80	2240
2	Agricultural Fodder	12	40	480
3	Black Pepper Husk	22	50	1100
4	Spices Powder	290	50	14500
Total				18320

Thus, from the available stock of the Areca Nut, it appeared that **89.390 MTs** of Areca Nut was available in the premises of M/s OSGL at the time of search on 09.04.2023.

8. Further, during the search at M/s OSGL, import data of M/s OSGL since November, 2022 was retrieved by the officers of SIIB, Kandla (**RUD-5**) and outcome of the scrutiny of the same is as under:

Summary of imports of Areca Nut and Dry Dates since November, 2022:

Table-2

Sr No	BOE No/Date	Client Name	Item Description	Qty (MTS) (Gross Weight)	Container No	BL No
1	1019725, 18.12.2022	Shivalik Enterprises	(i) Dry Dates-UAE Origin (11109 Bags) (ii) Dried Areca Nut Split-Indonesia Origin (1857 Bags)	697.52	CSYU4022980 CSYU4024365 SEKU5976982 CSYU4004029 CSYU4022418 CSYU4024339 CSYU4024658 CSYU4024067 CSYU4024299	CSX22JEAM UN045737

					TGCU5274261 CSYU4023950 CSYU4024302 CSYU4024597 CSYU4024920 CSYU4023081 CSYU4024149 CSYU4024196 CSYU4024679 TGCU0151428 CSYU4024642 CSYU4024663 SEKU5785219 SEKU5976998 SEKU5982239 SEKU5976555	
2	1020248, 27.12.2022	Shivalik Enterprises	Areca Nuts Split (Special Cut betel nut for transhipment)	No record found on ICEGATE (Wt 383.856 MTS)	RUSJEANSA 2231398	
3	1020249, 27.12.2022	DEEG Marketing Private Limited	Areca Nut Split (Diamond cut split betel nut for transshipment)	No record found on ICEGATE (Wt 498.232 MTS mentioned in sheet)	RUSJEANSA 2231371	
4	1000372, 07.01.2023	Shivalik Enterprises	Dry Dates	171.003 ASLU7001288 ASLU7003423 ASLU7044124 ASLU7041953 ASLU7006973 ASLU7050549	ASCLJEAMU N2201708	
5	1000525, 10.01.2023	Shivalik Enterprises	Dry Dates	168.00 INLU4103053 CAIU7006023 CAIU9778258 INLU4100120 CAIU9280753 INLU4100624	TRLJEAMUN 9713034	
6	1000659, 12.01.2023	Eleza Impex Pvt Ltd	Areca Nuts Split (Cutting betel Nuts unflavoured supari for transhipment)	No record found on ICEGATE (Wt mentioned in the list is 139.89 MTS)	RUSJEANSA 2231370	
7	1000658, 12.01.2023	Eleza Impex Pvt Ltd	Areca Nuts Split (Cutting betel Nuts unflavoured supari for transhipment)	No record found on ICEGATE (Wt mentioned in list is 56.00MTS)	RUSJEANSA 2231387	
8	1002804, 22.02.2023	DEEG marketing Pvt Ltd	Dried Areca Nuts- Complementary packing material	No record found on ICEGATE (Wt mentioned in list is 18.00MTS)	NAVJEAIXY0 05687	
9	1004293 20.03.2023	DEEG marketing Pvt Ltd	Areca Nuts Split (For processing, re- packaging and export)	167.40 MTS EISU9152112 HMCU9121934 EISU9855753 EMCU9846928 HMCU9139321 RSCU6862425	GMULJEAMU N23011	

In some cases, container numbers and quantity have been retrieved from ICEGATE (from Bill of Lading Numbers) and mentioned in above table. In many cases, BL numbers have not been found on ICEGATE and hence premia facie appeared fake. Copies of only 3 Bills of Lading have been provided out of which only 2 have been found on ICEGATE. Out of the 3 Bills of Lading provided,

only 1 is verifiable on ICEGATE (BL No GMULJEMUN23011) and shipper in this Bill of Lading is FIQELIS FOODSTUFF TRADING LLC DUBAI, UAE (Sr. No. 9 of above table). Further, as per the sheet provided by SIIB, Kandla, total import of Areca Nuts was of 1263.378 MTS.

Export since November, 2022:

9. Similarly, Data for export of Areca Nuts has also been received from SIIB, Kandla (November onwards). Export data received for Areca Nuts and Dry Dates is also reproduced below:

TABLE-3

Sr No	Shipping Bill No & Date	Invoice No	Exporter	Item Description	Qty (MTS)	Container No	BL No
1	4000776, 17.01.2023	SE-19-23	Shivalik Enterprises	Dried Areca Nuts Split	52.5	EISU9035749 EISU9138834	MUNJEA0342
2	4001098, 23.01.2023	DMPL-03-22	DEEG Marketings	Dried Areca Nuts Split	55.359	NTCU2232914 NTCU2234244	NA
3	4001100, 23.01.2023	DMPL-04-22	DEEG Marketings	Dried Areca Nuts Split	83.038	WSCU9139930 INKU6577460 THLU1812639	ABDMUNJEA1610223
4	4001429, 28.01.2023	DMPL-06-22	DEEG Marketings	Dried Areca Nuts Split	55.359	FTIU7308868 CARU9612535	SFSNSAJEA230008
5	4001807, 03.02.2023	DMPL-09-22	DEEG Marketings	Dried Areca Nuts Split (Dust/Husk)	55.00	CCLU7222589 INKU6735083 WHLU5485918	SFSNSAJEA230008 (repeated, Sr No 4)
				Areca Nuts Split (Black & Rotten)	27.00		
6	4002278, 11.02.2023	SE-24-22	Shivalik Enterprise	Dried Areca Nuts Split	65.00	MRKU6449625 MRSU5360942	225140234
				Dry Dates	16.00	MRSU9835998	
9	4002802, 20.02.2023	DMPL-11-22	DEEG Marketings	Areca Nuts Split	27.00	DFSU6995523	TRLMUNJEA913772
10	4002945, 22.02.2023	DMPL-10-22	DEEG Marketings	Areca Nuts Split	60.00	CAIU9280753 DFSU6061650 FCIU9032518	TRLMUNJEA913746
11	4004339, 17.03.2023	SE-26-23	Shivalik Enterprise	Dried Areca Nuts Split	109.60	CRXU9824848 TGHU8348788 DOLU4005516 TGHU6191010	31011817
12	4004934, 26.03.2023	SE-28-23	Shivalik Enterprise	Dried Areca Nuts Split	83.40	DOLU4004567 TGHU8447918 TGHU9599176	31411251

Therefore, as per sheet provided by SIIB, Kandla, total quantity of Areca Nuts Split was **673.256 MTS**.

In view of the above, it was noticed that at the time of search on 10.04.2024, total balance quantity of Areca Nuts should be approx. **592.122 MTS**, whereas from the available stock of the Areca Nut, it appeared that **89.390 MTs** of Areca Nut was available in the premises of M/s OSGL at the time of search on 09.04.2023 (as detailed in table-1 above).

10. Further, a statement of Shri Swarrop Shetty, Partner of M/s OSGL was recorded on 10.04.2023 (**RUD-6**), wherein, he, inter-alia stated that

- *He was the partner of M/s OSGL Overseas having share of 99% and another partner is Shri Akash Bhojne having share of 1%.*
- *He was looking after all day to day work of the firm.*
- *They are engaged in the import & export business since 15.01.2001. As per Letter of Approval (LOA), granted by the KASEZ authority, only warehousing activity was allowed to them.*
- *They file import/export documents on behalf of the importer/exporter.*

- *On being asked about the Shipping Bill No. 4005491 dated 03.04.2023, he stated that this Shipping Bill was filed for re-export of 138.50 MT (05 containers) of Areca -Nut Split, which were imported vide KASEZ Bill of Entry No. 1004293 dated 20.03.2023.*
- *Their client, M/s DEEG marketing Pvt. Ltd, Mumbai had imported 167.49 MT (06 containers) of Areca Nut Split. On examination at their unit, the cargo of two containers was found completely rotten and most of the bags were torn and damaged. These goods were nowhere fit for human consumption. In rest 4 containers, powder was found.*
- *These facts were brought to the notice of the client, M/s DEEG and on the direction of the client, they proceeded for re-export of the said goods vide Shipping Bill No. 4005491 dated 03.04.2023.*
- *On being asked about the reason for exporting 138.50 MT while they had imported 167.49 MT, he stated that due to non availability of the trailers, they could arrange only 5 trailers and hence only 5 containers were being exported.*
- *On being asked, he stated that initially, they received only two containers in which the goods were completely rotten. After 2-3 days, they received 4 containers out of which in 3 containers, red wooden powder was found in jute bags. They informed M/s DEEG about the condition of the cargo vide email dated 27.03.2023 (for two containers) and 01.04.2023 (for 4 containers).*
- *They did not inform the Customs department about the rotten condition of the cargo. However, during examination of one container EISU9855753 on 29.03.2023, the customs officer reported the goods as declared.*
- *On being asked as to when the Customs officer has reported the goods of one container as declared, i.e. Areca Nuts Split, how the red powder was found in the containers, he stated that the red powder in jute bags was found in addition to the areca nut.*
- *They had not sent the red powder for testing purpose as their client directed them to re-export the entire cargo.*

11.1 Whereas, from scrutiny of subjected Shipping Bill No. 4005491 dated 03.04.2023, it appears that the Shipping Bill was filed for export of 138.5 MTs of Areca Nut Split having declared FOB value at Rs. 4,99,40,330/- . Whereas, as stated by Shri Swarrop Shetty in his statement dated 10.04.2023, these goods were purportedly imported by them vide KASEZ Bill of Entry No. 1004293 dated 20.03.2023 but since rotten Areca Nut and wooden Powder was found in the import consignments, they were forced to re-export the same. Here, it is pertinent to mention that vide aforesaid BE No. 1004293 dated 20.03.2023, in total 167.49 MTs of Areca Nut was imported in 3303 Bags. From the BL No. GMULJEAMUN23011 dated 13.03.2023, it appears that each container was having 560 Bags (in 5 containers total 2800 bags) and 503 bags (in one container). From the Gross Weight/Net Weight Mentioned on the BL, it appears that each bag was having approx. 50 Kg weight each. Furthermore, as discussed above, the imported cargo was of 167.49 MTs consisting of total 3303 bags having approx. 50 kg weight for each bag. Whereas, during the examination of the cargo brought for export, 138.5 MTs in 2255 bags (1299 white PP bags and 956 Jute Bags) were found in 5 containers. Further, it was noticed that average weight of 1 PP bag was 49 kg and average weight of Jute bag was 81 Kgs. Thus, it appeared that the packing of the cargo was changed. However, during search at the premises of M/s OSGL, neither the balance cargo 28.99 MTs of rotten Areca Nuts/wooden red Powder was found nor any evidence of repacking of the imported cargo into Jute Bags was found. Furthermore, on the SB, it is specifically mentioned that the goods are being re-exported as such, which does not seem a rightful statement on behalf of M/s OSGL.

11.2 As per the copies of emails said to be sent by M/s OSGL to M/s DEEG (**RUD-7**) on 27.04.2023, it appears that 2 containers were reached in M/s OSGL and destuffed by M/s OSGL and as per M/s OSGL, the cargo of these containers was found as Rotten Areca Nuts. Thereafter, as per another email dated 01.04.2023 said to be sent by M/s OSGL to M/s DEEG, the cargo was found as Powder. Further, on being asked, Shri Swarrop Shetty has categorically stated that they did not inform the Customs officer about receipt of rotten Areca Nut and wooden Powder in the import consignment. Here, it is pertinent to mention that **on the basis of scanning mismatch** one container No. EISU9855753 was selected for examination. And as per examination report dated 29.03.2023 uploaded by the Examination Officer, KASEZ after examination of the Container No. EISU9855753, the cargo was found as declared. Had the import consignment was found in non-usable condition as claimed by Shri Swarrop Shetty in his statement dated 10.04.2023, they would have informed the same to the Custom Officer, when he arrived for examination. Furthermore, the examination report clearly suggests that the cargo of one container was as declared, i.e. **Areca Nut Split**. Thus, the chronology of events suggests that receipt of rotten Areca Nut and wooden Powder in import consignment is a cooked up story just to camouflage the diversion of imported cargo into DTA, illicitly.

11.3 Furthermore, it is noticed that at the time of import, the rate of imported cargo was Rs. 3,34,800/- per MT (Total FOB value was 5,60,75,652/- for 167.49 MTs) whereas, at the time of export, the rate of the cargo is shown as Rs. 3,60,580/- Per MT (Total FOB value as Rs. 4,99,40,330/- for 138.5 MTs). Here, it is pertinent to mention that since this cargo was to be re-exported in actual, as claimed by M/s OSGL, the rate of the cargo in INR should be the same, when the goods are being sent back to the supplier.

11.4 Furthermore, during examination of the 5 containers brought for export, it was noticed that the cargo was stuffed in a way that the front side of the containers (all five) were packed with white coloured PP Bags which were having stale/rotten/waste looking areca nuts while the back side of the containers were stuffed with Jute bags red/wooden colored powder like material which were visible only after destuffing of the containers.

11.5 In view of the above discussion, it appears that the sequence of events indicates that the claim of receiving spoiled Areca Nut and wooden powder in the import shipment is likely a fabricated narrative intended to conceal the unlawful diversion of imported goods into the Domestic Tariff Area (DTA). Had the Customs department not have intercepted the cargo brought for export, the said fact would not have surfaced.

11.6 Furthermore, it is to mention that the as per information available on GST Portal, GSTIN of M/s OSGL- **GSTIN-24AAHFO4006B1ZX** has been cancelled *suo moto* effective from 10.05.2021 **(RUD-8)**. Thus, it appears that at the time of filling of Shipping Bill No. 4005491 dated 03.04.2023, M/s OSGL was not a registered GST taxpayer effectively.

11.7 Therefore, to clarify the issue, Summons dated 11.04.2023, 17.05.2023, 22.05.2023 and 09.08.2023 were issued to M/s OSGL but no person appeared on behalf of M/s OSGL for recording of his statement in the matter. However, Summons dated 09.08.2023 returned undelivered with remark, **LEFT (RUD-8)**.

SAMPLE TEST REPORTS:

12.1 The representative samples of the cargo covered under Shipping Bill No. 4005491 dated 03.04.2023 drawn under the panchnama dated 08/09.03.2023 were found not traceable in the office of the SIIB, Custom House, Mundra. Therefore, after approval of the competent authority, resampling of the cargo was done under panchnama dated 22.08.2023 **(RUD-9)** in presence of authorized representative of shipping line and Exim Yard, APSEZ, Mundra. Total 10 samples, two from each container were drawn and forwarded to the CRCL, Vadodara. On scrutiny of the test reports received from the CRCL, Kandla, vide e-mails dated 25.09.2023 & 26.09.2023 **(RUD-10)**, it was noticed that (i) In cases, where samples were in the form of cut piece (split) of areca nuts, fungal surface and unpleasant odour has been reported in the test reports. However, end use/whether fit for human consumption or not could not be ascertained from the test reports of the CRCL, Kandla. Further, in cases, where the samples were in powder form, composition of vegetative matter with constituents of Areca Nuts were reported. However, exact identification/composition of the sample could not be ascertained as reported. CRCL, Kandla suggested for forwarding the samples to Central Agmark lab, Nagpur or CRCL, New Delhi for the same. Therefore, after approval of the competent authority, the samples were forwarded to the CRCL, Delhi for re-testing purpose. Outcome of the test results received from the CRCL, Kandla and CRCL, New Delhi received vide various letters in December-January, 2023-24 **(RUD-11)** is as under

TABLE-4

Sr. No.	Test Memo No.	Date	Description as per documents	Description as per physical appearance	CRCL, Kandla Report		CRCL, Delhi Report	
					Test Report No	Test Result	Test Report No	Test Result
1	679	22.08.2023	Areca Nuts Split	Areca Nuts Split	6019	Samples were having unpleasant fungal odour. It has characteristics of Area Nuts. Moisture 12.42 % & Ash Content 3.38%.	CRCL/Food/08/734(SIIB)/ dated 26.12.2023	The sample does not meet the requirement of Areca Nut w.r.t. Moisture by mass, Damaged by moulds & insects, Copper content, Plate Count and Yeast Count and does not fit for human consumption
2	680	22.08.2023	Areca Nuts	Powder	6020	Composed of vegetative matter and answered the test for	CRCL/Food/08/734(SIIB)/ dated	The sample does not meet the requirement of Areca Nut w.r.t.

						constitution of Areca Nuts. Moisture content 12.53% and Ash Content 3.60 %.	26.12.2023	Moisture by mass, Damaged by moulds & insects, Copper content, Plate Count and Yeast Count and does not fit for human consumption
3	681	22.08.2 023	Areca Nuts Split	Areca Nuts Split	6021	some of the cut pieces (split) having blackish fungal surfaces. It has the characteristics of Areca Nut. Moisture content 8.85% and Ash Content 1.64%.	CRCL/Food/ 08/738(SIIB)/ dated 21.12.2023	The sample does not meet the requirement of Areca Nut w.r.t. Moisture by mass, Damaged by moulds & insects, Copper content, Plate Count and Yeast Count and does not fit for human consumption
4	682	22.08.2 023	Areca Nuts	Powder	6022	Composed of heterogenous mixture of brownish coarse powder and vegetative matter together with extraneous matter. It is mainly composed of vegetative matter and answered the test for constitution of Areca Nuts. Moisture content 11.7% and Ash Content 1.63 %.	CRCL/Food/ 08/737(SIIB)/ dated 03.01.2024	The sample does not meet the requirement of Areca Nut powder w.r.t. Moisture by mass, & Copper content, Plated Count and Yest And Mouuld Count and does not fit for human consumption
5	683	22.08.2 023	Areca Nuts Split	Areca Nuts Split	6023	Samples were having unpleasant fungal odour. It has characteristics of Area Nuts. Moisture 12.70 % & Ash Content 3.51 %.	CRCL/Food/ 08/738(SIIB)/ dated 21.12.2023	The sample does not meet the requirement of Areca Nut w.r.t. Moisture by mass, Damaged by moulds & insects, Copper content, Plate Count and Yeast Count and does not fit for human consumption
6	684	22.08.2 023	Areca Nuts	Powder	6024	Composed of brownish coarse powder and vegetative matter together with extraneous matter. It is mainly composed of vegetative matter and answered the test for constitution of Areca Nuts. Moisture content 11.95% and Ash Content 3.62 %.	CRCL/Food/ 08/739(SIIB)/ dated 03.01.2024	The sample does not meet the requirement of Areca Nut powder w.r.t. Moisture by mass, & Copper content and does not fit for human consumption
7	685	22.08.2 023	Areca Nuts Split	Areca Nuts Split	6025	Samples were having unpleasant fungal odour. It has characteristics of Area Nuts. Moisture 8.1 % & Ash Content 1.7%.	CRCL/Food/ 08/740 (SIIB)/dated 21.12.2023	The sample does not meet the requirement of Areca Nut w.r.t. Moisture by mass, Damaged by moulds & insects, Copper content, Plate Count and Yeast Count and does not fit for human consumption.
8	686	22.08.2 023	Areca Nuts	Powder	6026	Composed of vegetative matter and answered the test for constitution of Areca Nuts. Moisture content 13.48% and Ash Content 5.13 %.	CRCL/Food/ 08/741(SIIB)/ dated 03.01.2024	The sample does not meet the requirement of Areca Nut w.r.t. Moisture by mass, Damaged by moulds & insects, Copper content, Plate Count and Yeast Count and does not fit for human consumption
9	687	22.08.2 023	Areca Nuts Split	Areca Nuts Split	6027	some of the cut pieces (split) having blackish fungal surfaces. It has the characteristics of Areca Nut. Moisture content 8.37% and Ash Content 2.14%..	CRCL/Food/ 08/742 (SIIB)/dated 21.12.2023	The sample does not meet the requirement of Areca Nut w.r.t. Moisture by mass, Damaged by moulds & insects, Copper content, Plate Count and Yeast Count and does not fit for human consumption.

10	688	22.08.2 023	Areca Nuts	Powder	6022	Composed of brownish coarse powder. It is mainly composed of vegetative matter and answered the test for constitution of Areca Nuts. Moisture content 14.7% and Ash Content 1.78 %.	CRCL/Food/ 08/743(SIIB)/ dated 03.01.2024	The sample does not meet the requirement of Areca Nut w.r.t. Moisture by mass, Damaged by moulds & insects, Copper content, Plate Count and Yeast Count and does not fit for human consumption
----	-----	----------------	------------	--------	------	---	--	--

From the above test reports from CRCL, Kandla and CRCL, Delhi, it is noticed that the goods brought for Export vide Shipping Bill No. 4005491 dated 03.04.2023 were rotten and did not meet the requirement of Areca Nut and Areca Nut Powder and hence were not fit for human consumption. Here, it is pertinent to mention that as discussed in para supra, M/s OSGL has never disclosed about the same to the Customs Department.

INVESTIGATION AT THE END OF M/s REKHA SUPERFINE (The unit involved in Intra SEZ transfer with M/s OSGL):

12.1 Whereas, during the panchnama proceeding dated 09.04.2023 at the premises of M/s OSGL, Shri Swaroop Shetty informed that they had cleared goods of approx. 18-20 containers of Areca Nuts under Intra Zone Transfer to the premises of M/s Rekha Superfine Exporters, KASEZ. Therefore, to corroborate the stock of inward and outward of M/s OSGL, premises of M/s Rekha Superfine situated at Shed No. 395, Special Economic Zone, Sector-II, KASEZ, Gandhidham, Kutchch was searched on 12.04.2023 by the officers of the SIIB, Kandla Custom House in presence of Mr. Imran Khan, authorized person of M/s Rekha Superfine under panchnama dated 12.04.2023 (**RUD-12**).

12.2 During the search process, stock of old and rotten dates was found. At this premises, no stock of Areca Nut was found. On being asked, Mr. Imran Khan informed the officers that stock of Areca Nut was laying in the warehouse situated in front of their unit at the Plot No. 7, Sector-II, KASEZ. On visiting the said plot, the warehouse was found to be under construction without roof, in which stock of waste and old Jeera Dandi and Sea Salt was laying. On another side, in a closed shuttered room, Areca Nut Split was found, which was as per Mr. Imran Khan, transferred by M/s OSGL as per Intra SEZ transfer. On the basis of the documents produced by Mr. Khan regarding inward/outward quantity of the Areca Nut, it appeared that Intra SEZ transfer of Areca Nuts split was found to be happening between M/s Rekha Superfine and M/s OSGL Overseas. Further, on spot comparison of the stock position as per documents with the stock available physically in the premises of M/s Rekha was done. Outcome of the same was as under:

Table-4

Intra SEZ transfer from M/s Rekha to M/s OSGL				
Sr No	Goods Description	Qty (MTS)	Rekha TP No	Client Name
1	Areca Nuts Split (Dust/Husk)	55	701972 dtd 29.03.2023	DEEG Marketing Mumbai
2	Areca Nuts Split (Black and Rotten)	27		
3	Dried Areca Nuts Split	13.35	7002131 dtd 08.04.2023	Shivalik Enterprise
4	Dried Areca Nuts Split	26.9	7002077 dtd 03.04.2023	Shivalik Enterprise
5	Dried Areca Nuts Split	109.6	7001602 dtd 17.03.2023	Shivalik Enterprise
6	Dried Areca Nuts Split	70	7002041 dtd 31.03.2023	Shivalik Enterprise
Total		301.85		

Table-5

Intra SEZ transfer from M/s OSGL to M/s Rekha				
Sr No	Goods Description	Qty (MTS)	Rekha TP No	Client Name
1	Areca Nuts Split	139.89	7001971 dtd 29.03.2023	Eleza Impex Private Limited, Mumbai
3	Areca Nuts Split	333.85	7000294 dtd 18.01.2023	Shivalik Enterprise
4	Areca Nuts Split	56	700258 dtd 16.01.2023	Shivalik Enterprise
5	Dried Areca Nuts Split	175.777	7000177 dtd 08.01.2023	DEEG marketing
Total		761.517		

12.3 Thus, as per documents submitted that it appeared that 459.667 MTS Acrea Nuts should be available with M/s Rekha Superfine (transferred from OSGL Overseas). Stock was taken at Rekha Superfine and stock of Areca Nuts Split was found to be 459.32 MTS. Thus, a difference of .07% in weight was found. No import was found to have been done by M/s Rekha Superfine since October, 2022 onwards.

12.4 In view of the above, it was noticed that at the time of search on 10.04.2024, total balance quantity of Areca Nuts should be approx. **592.122 MTS**, whereas from the available stock of the Areca Nut, it appeared that **89.390 MTs** of Areca Nut was available in the premises of M/s OSGL and **459.32 MTS** was found at the premises of M/s Rekha. Thus, total stock of 548.71 MTs of Areca Nut was found combinedly at the premises of M/s OSGL and M/s Rekha against the stock of 592.122 MTs, which shows **shortage of 43.412 MTs of Areca Nut** and appears as indicative for diversion of imported item, Areca Nuts into DTA illicitly.

12.5. Furthermore, it was noticed that vide Intra SEZ transfer no. 7000177 dated 08.01.2023, **175.777 MTs** of Dried Areca Nut Split was transferred from M/s OSGL to M/s Rekha Superfine on behalf of M/s Deeg Marketing for cleaning, sorting, repacking and treatment purpose. In turn, after reprocessing, 55 MTs of Areca Nuts (Dust/Husk) and 27 MTs of Areca Nut Split (Black & Rotten), were transferred from M/s Rekha Superfine to M/s OSGL vide Intra SEZ Transfer no. 7001972 dated 29.03.2023. Thus, it appears that out of total 175.777 MTs of Areca Nuts, **82 Mts was of waste** in the form Husk/dust/rotten and black part was generated. For ease of reference, scan copy of invoice cum packing list pertaining to both transactions are reproduced herein under:

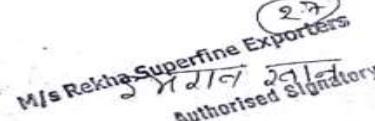
DEEG MARKETINGS PRIVATE LIMITED

Flat No. F/217, B Wing 1st Floor, Express Zone Mall, Next to Patel Vanika, Off: W.E. Highway Goregoan East, Mumbai
IEC: AAACD1594P /// GST: 27AAACD1594P1Z7 /// PAN: AAACD1594P

INTRA SEZ TRANSFER INVOICE CUM PACKING LIST

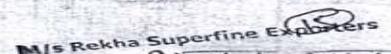
Consignee (Ship To): M/s REKHA SUPERFINE EXPORTERS SEZ NO. 395, SPECIAL TYPE 2 KANDLA SPECIAL ECONOMIC ZONE, GANDHIDHAM, KUTCH, GUJARAT-370230 GSTIN: 27AAECD1594P1Z7		Invoice No.: DMPL-01-22 Date: 07-01-2023	PAN/IEC CODE: AAACD1594P GSTIN: 27AAACD1594P1Z7		
SEZ ENTITY:- M/s OSGL OVERSEAS, SHED NO: 2&3, CPWD TYPE, SECTOR 1, PHASE 1, KANDLA SPECIAL ECONOMIC ZONE, GANDHIDHAM, KUTCH-370230		IMPORTED FROM VIDE BILL OF ENTRY No. 100974B dated: 22.07.21			
SUPPLY MEANT FOR EXPORT/SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS UNDER BOND OR LETTER OF UNDERTAKING WITHOUT ANY PAYMENT OF GST.					
Marks & Nos.	Description of Goods	HSN Code	Quantity KGS	Rate/KG USD	Amount USD
2359 BAGS	DRIED ARECA NUT SPLIT For Cleaning Sorting Re-packing and Treatment as per agreed terms and conditions and proforma estimate submitted	08028020	175777	\$ 2,000	\$ 3,51,554.00
Net Wt: 375777 Kgs					
Gross Wt: 396000 Kgs					
Amount in words: USD	THREE HUNDRED FIFTY ONE THOUSAND FIVE HUNDRED FIFTY FOUR DOLLARS ONLY	Grand Total	175777	\$	\$ 3,51,554.00
Declaration: We declare to the best of our knowledge and belief that the particulars stated herein are true and correct and there is no additional consideration in arriving to us directly or indirectly in any manner other the amount indicated herein.		FOR, DEEG MARKETINGS PRIVATE LIMITED 			
		Authorised Signatory.			

Out of 175.77 MTs of dried Areca Nut Split sent for processing, 82 MTs of waste in the form of Dust/Husk/Black/Rotten was generated


M/s Rekha Superfine Exporters
Authorised Signatory

12/4/23

INVOICE							
Consignee: M/s OSGL OVERSEAS SEZ NO. 2&3, CPWD TYPE, SECTOR 1, PHASE 1, KANDLA SPECIAL ECONOMIC ZONE, KUTCH-370230 GSTIN: 27AAECD1594P1Z7		Invoice No.: RETP-11 Date: 29.03.23	IEC CODE: 13900008016 GSTIN: 27AAACD1594P1Z7 PAN NO.: AAACD1594P	Importer-Exporter			
Buyer's Ref. No.:							
M/s DEEG MARKETINGS PRIVATE LIMITED Flat No. F/217 B Wing, 1st Floor, r, Express Zone Mall, Next To Patel Vanika, Off: W.E. Highway Goregoan East, MUMBAI, MUMBAI GSTIN: 27AAACD1594P1Z7 PAN/IEC CODE: AAACD1594P							
Marks & Nos.	Description of Goods	HSN Code	Quantity TON	Rate / TON USD	Amount USD		
BAGS	ARECA NUTS SPLIT (DUST / HUSK)	08028090	55	\$ 2,000.00	\$ 1,10,000.00		
BAGS	ARECA NUTS SPLIT (BLACK & ROTTEN)	08028090	27	\$ 2,000.00	\$ 54,000.00		
WASTE GENERATED OUT OF CLEANING/SORTING/REPACKING PROCESS VICE TIP NO. 7000127 DATED 06.01.2023							
Total no. of Bags: 1137	(GOODS ARE NOT FIT FOR HUMAN CONSUMPTION)						
Net Wt: 82000Kgs							
Gross Wt: 82500 Kgs							
Amount in words: USD	ONE. LAKH SIXTY FOUR THOUSAND DOLLARS ONLY	Grand Total	82		\$ 1,64,000.00		
Declaration: We declare to the best of our knowledge and belief that the particulars stated herein are true and correct and there is no additional consideration in arriving to us directly or indirectly in any manner other the amount indicated herein. THIS IS A TRANSACTIONAL VALUE ALTHOUGH THE ACTUAL VALUE OF THE GOODS MIGHT BE QUITE LOWER BECAUSE OF THE NATURE OF THE GOODS.		For M/s. REKHA SUPERFINE EXPORTERS 					
		Authorised Signatory.					


M/s Rekha Superfine Exporters
S 2721 of 29
Authorised Signatory
12/4/23

12.6 In view of the above, it appears that generation of waste to the extent of around 50% of the imported item, is non considerable and appears as just a tool to camouflage the circular transaction between M/s OSGL and M/s Rekha Superfine and to adjust the stock of imported items, Areca Nut being diverted into DTA illicitly. Based on the aforementioned observations, it appears that the generation of waste amounting to approximately 50% of the imported item is not significant and appears to serve merely as a facade to disguise the circular transaction between M/s OSGL and M/s Rekha Superfine. This waste generation may also serve to adjust the stock of imported items, particularly Areca Nut, which is being illicitly diverted into the DTA.

12.7 Therefore, to record the statement of authorized persons of M/s Rekha, Summons dated 11.04.2023, 17.05.2023 & 22.05.2023 were issued to M/s Rekha but no person appeared on behalf of M/s Rekha for recording of his statement in the matter.

INVESTIGATION AT THE END OFM/s DEEG Marketings Private Limited (The Indian client in the present matter):

13.1 Furthermore, search was conducted at the registered premises of M/s DEEG Marketings Private Limited, shown as Indian client in the present matter situated at Flat No. F/217, B Wing, 1st Floor, Express Zone Mall, Next to Patel Vanika, Off. W.E. Highway, Goregaon East, Mumbai by the officers of the Customs (Preventive), Mumbai under panchnama dated 10.04.2023 (**RUD-13**). During the search, the premises, which was an office cum shop, was found locked. The owner of the shop, Shri Nanda Prakash Savjibhai, informed the officers that he had rented that shop to Shri Sandeep Soni and Shri Gaurav Nagori w.e.f.15.09.2022 and both the persons were running their business from the said premises in the name and style of M/s DEEG Marketings Private Limited. Thereafter, the premises was searched in the presence of Shri Nanda Prakash Savjibhai, the owner and during the search, no document or any electronic devise was found inside the said premises.

13.2 Furthermore, from the open source available on web net (<https://www.zaubacorp.com/company>) (**RUD-14**), it is noticed that Deeg Marketings Private Limited was a Private incorporated on 20 May 1991. It was shown as involved in other wholesale [Includes specialized wholesale not covered in any one of the previous categories and wholesale in a variety of goods without any particular specialization. Further, as per as per records from Ministry of Corporate Affairs (MCA), its balance sheet was last filed on 31 March 2021. The official email id of M/s DEEG was dmpt1991@yahoo.com and its registered address was OFFICE NO. 623, 6TH FLOOR, NAVJIVAN SOCIETY DR. DADA SAHEB BHADKAMKAR MARG, MUMBAI CENTRAL MUMBAI CENTRAL Mumbai City MH-400008.

13.3 Further, from another open source available on web net (<https://deegmarketing.com/about-deeg>) (**RUD-14**), it is noticed that M/s **Deeg Marketings Private Limited** is shown as a pharmaceutical trading company based in Mumbai, India, with a specialization in APIs (Active Pharmaceutical Ingredients) and Intermediates trading, we are committed to providing high-quality raw materials to the pharmaceutical industry. On this source, the address of M/s DEEG is shown as Flat No. F/217, B Wing, 1st Floor, Express Zone Mall, Next to Patel Vanika, Off. W.E. Highway, Goregaon East, Mumbai.

13.4 Furthermore, from the information available on GST Portal, it is noticed that principal place of business of M/s DEEG (GSTIN- 27AAACD1594P1Z7) was shown at 2nd Floor, Shop No 103 B Wing, Express Zone Mall, Western Express Highway, Parel Vanilla, Goregaon East, Mumbai, Mumbai Suburban, Maharashtra, 400063(**RUD-16**).

13.5 From the above, it appears that on different portals, different address of M/s DEEG was shown as place of business. However, at the premises shown in the invoices of M/s DEEG used for intra zone transfer in KASEZ, i.e. Flat No. F/217, B Wing, 1st Floor, Express Zone Mall, Next to Patel Vanika, Off. W.E. Highway, Goregaon East, Mumbai, no document/electric devise was found during the search. Therefore, to record the statement of authorized persons of M/s DEEG, Summons dated 09.08.2023 was issued to M/s DEEG for its both registered addresses, mentioned in Para 12.2 & 12.3 above. Both the Summons returned undelivered with remark, '**UNCLAIMED/ NO SUCH PERSON AVAILABLE**'(**RUD-17**).

Outcome of Investigation:

14. In view of the discussion in forgoing paras, it appears that:

- (i) **M/s OSGL**, a SEZ entity at KASEZ has filed a Shipping Bill No. 4005491 dated 03.04.2023 for export of Areca Nut Split at Mundra Port.
- (ii) During examination of the goods (5 containers), the goods were found to be stale/rotten/waste looking areca nuts, while Jute Bags were filled with red/woodencolored powder like material which prima facie appeared as wooden powder. In total 63.651 MT of rotten Areca Nut and 77.436 MT of Powder was found during examination.
- (iii) Since, the goods brought for export vide above said Shipping Bill was prima facia found mis declared, the goods covered under Shipping Bill No. 4005491 dated 03.04.2023 having declared FOB value of Rs. 4,99,40,330/- were found liable for confiscation under Section 113

(e), (h) & (i) of the Customs Act, 1962 and hence were placed under seizure under Section 110 of the Custom Act, 1962 vide seizure Memo dated 09.04.2023.

- (iv) Further, it was noticed that at the time of search on M/s OSGL on 10.04.2024, from reconciliation of the import/export and Intra Sez transfer data of Areca Nut, total balance quantity of Areca Nuts should be approx. **592.122 MTs**, whereas from the available stock of the Areca Nut, it appeared that **89.390 MTs** of Areca Nut was available in the premises of M/s OSGL and **459.32 MTs** was found at the premises of M/s Rekha. Thus, total stock of 548.71 MTs of Areca Nut was found combinedly at the premises of M/s OSGL and M/s Rekha against the stock of 592.122 MTs, which shows **shortage of 43.412 MTs of Areca Nut** and appears as indicative for diversion of imported item, Areca Nuts into DTA illicitly.
- (v) On scrutiny of scrutiny of subjected Shipping Bill No. 4005491 dated 03.04.2023, it appears that the Shipping Bill was filed for export of 138.5 MTs of Areca Nut Split having declared FOB value at Rs. 4,99,40,330/- Shri Swarrop Shetty, partner of M/s OSGL in his statement dated 10.04.2023 has stated that these goods were purportedly imported by them vide KASEZ Bill of Entry No. 1004293 dated 20.03.2023 but since rotten Areca Nut and wooden Powder was found in the import consignments, they were forced to re-export the same. Here, it is pertinent to mention that vide aforesaid BE No. 1004293 dated 20.03.2023, in total 167.49 MTs of Areca Nut was imported in 3303 Bags.
- (vi) From scrutiny of the BL No. GMULJEAMUN23011 dated 13.03.2023 (BL for import of goods), it appears that the imported cargo was of 167.49 MTs consisting of total 3303 bags having approx. 50 kg weight for each bag. Whereas, during the examination of the cargo brought for export, 138.5 MTs in 2255 bags (1299 white PP bags and 956 Jute Bags) were found in 5 containers. The average weight of 1 PP bag was found as 49 kg and average weight of Jute bag was found as 81 Kgs. Thus, it appeared that the packing of the cargo was changed. However, during search at the premises of M/s OSGL, neither the balance cargo 28.99 MTs of rotten Areca Nuts/wooden red Powder was found nor any evidence of repacking of the imported cargo into Jute Bags was found.
- (vii) Further, as per the copies of emails said to send by M/s OSGL to M/s DEEG on 27.04.2023, it appears that 2 containers reached in M/s OSG on 27.04.2023 and destuffed and as per M/s OSGL, the cargo of these containers was found as Rotten Areca Nuts. Thereafter, as per another email dated 01.04.2023 said to be sent by M/s OSGL to M/s DEEG, the cargo of another four containers was found as Powder. Further, on being asked, Shri Swarrop Shetty has categorically stated that they did not inform the Customs officer about receipt of rotten Areca Nut and wooden Powder in the import consignment.
- (viii) Here, it is pertinent to mention that as per examination report dated 29.03.2023 uploaded by the Examination Officer, KASEZ after examination of the Container No. EISU9855753, the cargo was found as declared. Had the import consignment was found in non-usable condition as claimed by Shri Swarrop Shetty in his statement dated 10.04.2023, they would have informed the same to the Custom Officer, when he arrived for examination on 29.03.2023. Furthermore, the examination report clearly suggests that the cargo of one container was as declared, i.e. **Areca Nut Split**. Thus, the chronology of events suggests that receipt of rotten Areca Nut and wooden Powder in import consignment is a cooked up story just to camouflage the diversion of imported cargo into DTA, illicitly.
- (ix) Furthermore, it is noticed that at the time of import, the rate of imported cargo was Rs. 3,34,800/- per MT (Total FOB value was 5,60,75,652/- for 167.49 MTs) whereas, at the time of export, the rate of the cargo is shown as Rs. 3,60,580/- Per MT (Total FOB value as Rs. 4,99,40,330/- for 138.5 MTs). Here, it is pertinent to mention that since this cargo was to be re-exported in actual, as claimed by M/s OSGL, the rate of the cargo in INR should be the same.
- (x) Furthermore, during examination of the 5 containers brought for export, it was noticed that the cargo was stuffed in a way that the front side of the containers (all five) were packed with white coloured PP Bags which were having stale/rotten/waste looking areca nuts while the back side of the containers were stuffed with Jute bags red/wooden colored powder like material which were visible only after destuffing of the containers.

- (xi) Whereas, during the panchnama proceeding dated 09.04.2023 at the premises of M/s OSGL, Shri Swaroop Shetty informed that they had cleared goods of approx. 18-20 containers of Areca Nuts under Intra Zone Transfer to the premises of M/s Rekha Superfine Exporters, KASEZ. Therefore, to corroborate the stock of inward and outward of M/s OSGL, premises of M/s Rekha Superfine situated at Shed No. 395, Special Economic Zone, Sector-II, KASEZ, Gandhidham, Kutchch was searched on 12.04.2023.
- (xii) From the import/export detail and Intra SEZ Transfer detail retrieved during the search at M/s OSGL and M/s Rekha Superfine, it was noticed that at the time of search on 10.04.2024, total balance quantity of Areca Nuts should be approx. **592.122 MTS**, whereas from the available stock of the Areca Nut, it appeared that **89.390 MTs** of Areca Nut was available in the premises of M/s OSGL and **459.32 MTS** was found at the premises of M/s Rekha. Thus, total stock of 548.71 MTs of Areca Nut was found combinedly at the premises of M/s OSGL and M/s Rekha against the stock of 592.122 MTs, which shows **shortage of 43.412 MTs of Areca Nut** and appears as indicative for diversion of imported item, Areca Nuts into DTA illicitly.
- (xiii) Furthermore, it was noticed that in once instance of Intra Zone Transfer between M/s OSGL and M/s Rekha, it appeared that out of total 175.777 MTs of Areca Nuts sent for cleaning/reprocessing/re-packing, **82 Mts was of waste** in the form Husk/dust/rotten and black part was shown as generated. Generation of waste to the extent of around 50% of the imported item, is non suspicious and appears as just a toll to camouflage the circular transaction between M/s OSGL and M/s Rekha Superfine and to adjust the stock of imported items, Areca Nut being diverted into DTA illicitly. Based on the aforementioned observations, it appears that the generation of waste amounting to approximately 50% of the imported item is not significant and appears to serve merely as a facade to disguise the circular transaction between M/s OSGL and M/s Rekha Superfine. This waste generation may also serve to adjust the stock of imported items, particularly Areca Nut, which is being illicitly diverted into the DTA.
- (xiv) The above said Shipping Bill was filed on behalf of M/s DEEG Marketings Private Limited, shown as Indian client in the present matter situated at Flat No. F/217, B Wing, 1st Floor, Express Zone Mall, Next to Patel Vanika, Off. W.E. Highway, Goregaon East, Mumbai. During search at the registered premises of M/s DEEG neither any document nor any electronic devise was found inside the said premises which clearly indicates that no business was being operated from that premises.
- (xv) Further, it was noticed that on different open source available on web net, different addresses M/s Deeg Marketings Private Limited Are shown as disused above. However, at the premises shown in the invoices of M/s DEEG used for intra zone transfer in KASEZ, i.e. Flat No. F/217, B Wing, 1st Floor, Express Zone Mall, Next to Patel Vanika, Off. W.E. Highway, Goregaon East, Mumbai, no document/electric devise was found during the search.
- (xvi) No person from M/s Rekha appeared on behalf of M/s Rekha for recording of his statement in the matter in response to the Summons dated 11.04.2023, 17.05.2023 & 22.05.2023.
- (xvii) No person from M/s OSGL appeared for recording of his statement in response to Summons dated 11.04.2023, 17.05.2023, 22.05.2023 and 09.08.2023. Summons dated 09.08.2023 returned undelivered with remark, LEFT.
- (xviii) No person from M/s DEEG appeared for recording of his statement in response to Summons dated 09.08.2023 issued to M/s DEEG for its registered addresses These Summons returned undelivered with remark, 'UNCLAIMED/ NO SUCH PERSON AVAILABLE'.
- (xix) In view of the above discussion, it appears that the sequence of events indicates that the claim of receiving spoiled Areca Nut and wooden powder in the import shipment is likely a fabricated narrative intended to conceal the unlawful diversion of imported goods into the

Domestic Tariff Area (DTA). Had the Customs department not have intercepted the cargo brought for export, the said fact would not have surfaced.

(xx) Further, this investigation is limited in respect of live export consignment covered Shipping Bill No. 4005491 dated 03.04.2023 which was seized vide Seizure memo dated 09.04.2023. Since the investigation in the matter could not be completed within 06 months as per provisions of Section 124 of the Customs Act, 1962 due to unavoidable circumstances, the competent authority, had granted extension for issuance of Show Cause Notice in this matter vide Order dated 01.10.2023. The extension of the period was communicated to M/s OSGL vide email dated 03.10.2023.

LEGAL PROVISIONS:

15.1 From the discussion in para supra, it appears that the goods brought for re-export vide Shipping Bill No. 4005491 dated 03.04.2023 were not the same goods which were imported vide BE No. 1004293 dated 20.03.2023. The relevant legal provisions of Customs Act, 1962 and Rules made thereunder and Special Economic Zone Act, 2005 and Rules made thereunder is as under:

15.2 As per section 2 (m) of the SEZ, Act 2005, “**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;*

15.2 As per section 2 (o) of the SEZ, Act 2005, “**import**” means—

- (i) *bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or*
- (ii) *receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;*

15.3 Further as per Rule 22 (2) of the SEZ Rules, 2006, as amended, “*Every Unit and Developer shall maintain proper accounts, financial yearwise, [either in register form in hard copy or time stamped digital form,] 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 Biotechnology Park Unit, as the case may be, and balance in stock.*

15.4 Further, as per Rule 35 of the SEZ Rules, 2006, **Co-relation of import consignment with corresponding export consignment is prescribed.** According to this rule, *the Unit shall account for the entire quantity of goods imported or procured duty free, by way of export, sales or supplies in Domestic Tariff Area or transfer to other Special Economic Zone Unit or Export Oriented Unit or Electronic Hardware Technology Park unit or Software Technology Park Unit or Bio-technology Park Unit or bonded warehouses and the balance held in stock: Provided that at no point of time the Unit shall be required to co-relate every import consignment with its export or transfer to other Special Economic Zone Unit or Export 112 Substituted vide Notification No. G.S.R. 909(E) dated 19-09-2018 Oriented Unit or Electronic Hardware Technology Park unit or Software Technology Park Unit or Bio-technology Park Unit or sales in Domestic Tariff Area or supply to bonded warehouses except in case of goods covered under proviso to clause (d) of sub-rule (4) of rule 18 and goods held as stock and the Unit may adopt 'First-in-First- Out' method and a consignment which has been received first, shall be deemed to have been utilized first.*

15.5 Further, as per Notification No. S. O. 2667 (E) dated 05.08.2016 issued vide F. No. C.1/1/2009-SEZ, the Central Government has authorized the jurisdictional Customs Commissioner, in respect of offences under the Customs Act, 1962 (52 of 1962) and notified under the Act, for the reasons to be recorded in writing, to carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit with prior intimation to the Development Commissioner, concerned.

15.6 Further, as per Notification No. S.O. 2665(E) dated 05.08.2016 issued vide F. No. C.1/1/2009-SEZ, the Central Government has notified the offences contained in the under-mentioned sections of the Customs Act, 1962 (52 of 1962), as offences under the Act:-

The Customs Act, 1962:

1. Section 28, 28AA and 28AAA
2. Section 74 and 75
3. Section 111
4. Section 113
5. Section 115
6. Section 124
7. Section 135
8. Section 104

15.7 Various provisions of **Customs Act, 1962** are applicable in the instant case:

Clearance of export goods:

Section 50. Entry of goods for exportation. -

(1) *The exporter of any goods shall make entry thereof by presenting electronically] on the customs automated system] to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in such form and manner as maybe prescribed:*

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner.

(2) *The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.*

(3) *The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:-*

- (a) *the accuracy and completeness of the information given therein;*
- (b) *the authenticity and validity of any document supporting it; and*
- (c) *compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.*

Section 113 of the Customs Act, 1962 provides the provisions of Confiscation of goods attempted to be improperly exported, etc. -

The following export goods shall be liable to confiscation:-

- (e) *any goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation;*
- (h) *any goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*
- (i) *any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;]*

Section 114: Penalty for attempt to export goods improperly, etc. -

Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable, -

- (i) *in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 1/[2]not exceeding three times the*

value of the goods as declared by the exporter or the value as determined under this Act]], whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;]

(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

Section 114AA. Penalty for use of false and incorrect material. -

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

Section 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 1 [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:

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, 3 [no such fine shall be imposed]:

Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation .-For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date** on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]

15.8 Whereas, following provisions of **The Foreign Trade (Development and Regulation) Amendment Act, 2010 NO. 25 OF 2010 [19th August, 2010]** and Rules made thereunder are applicable in the instant matter:

The Foreign Trade (Development and Regulation) Amendment Act, 2010 (NO. 25 OF 2010) [19th August, 2010]

Section 11:Contravention of provisions of this Act, rules, orders and foreign trade policy:

(1) No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the foreign trade policy, he shall be liable to a penalty of not less than ten thousand rupees and not more than five times the value of the

goods or services or technology in respect of which any contravention is made or attempted to be made, whichever is more.

(3) Where any person signs or uses, or causes to be made, signed or used, any declaration, statement or document submitted to the Director General or any officer authorised by him under this Act, knowing or having reason to believe that such declaration, statement or document is forged or tampered with or false in any material particular, he shall be liable to a penalty of not less than ten thousand rupees or more than five times the value of the goods or services or technology in respect of which such declaration, statement or document had been submitted, whichever is more.

(4) Where any person, on a notice to him by the Adjudicating Authority, admits any contravention, the Adjudicating Authority may, in such class or classes or cases and in such manner as may be prescribed, determine, by way of settlement, an amount to be paid by that person.

The Foreign Trade (Regulation) Rules, 1993

Rule 11. Declaration as to value and quality of imported goods. -

On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.

Rule 14. Prohibition regarding making, signing of any declaration, statement or documents-

(1) No person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of obtaining a licence or importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular

16. Contraventions:

16.1 Whereas, based on investigations conducted in the matter and legal provision discussed herein above, it appears that M/s OSGL has cleared the imported goods, Areca Nut illicitly into Domestic Tariff Area (DTA) and tried to export the rotten/staple Areca Nut and Waste Powder in guise of re-export of the imported item. Therefore, it appears that M/s OSGL has contravened the provisions of Section 50 of the Customs Act, 1962 read with Rule 22 (2) and Rule 35 of the SEZ Rules, 2006. Furthermore, by misstating the facts and details of the Shipping Bill, M/s OSGL has contravened the provisions of Section 11 of the Foreign Trade (Development and Regulation) Amendment Act, 2010 (NO. 25 OF 2010) [19th August, 2010] read with Rule 11 & 14 of the Foreign Trade (Regulation) Rules, 1993.

16.2 In view of the above, it appears that goods, Areca Nut- Split having declared value of Rs. 4,99,40,330/- attempted to be exported under cover of Shipping Bill No. 4005491 dated 03.04.2023 appears to be liable for confiscation under Section 113 (e), (h) &(i) of the Customs Act, 1962 and M/s OSGL is appear as liable for penalty under Section 114(iii) of the Customs Act, 1962.

16.3 Furthermore, it appears that Shri Swarrop Shetty, Partner of M/s OSGL has signed a false statement of the Shipping Bill and has not follow the obligation imposed through Regulations and Act and has not made correct declarations; therefore, Shri Swarrop Shetty has violated the provisions of Section 11 of The Foreign Trade (Development and Regulation) Amendment Act, 2010 and Rule 11 and 14 of the Foreign Trade (Regulation) Rules, 1993. Thus, by the above-mentioned acts of various omission and commission, Shri Swarrop Shetty defrauded the government exchequer by diverting the imported item in SEZ area and acted in a manner which rendered the goods having declared FOB value of Rs. 4,99,40,330/- are liable for confiscation under Section 113 (e), (h) & (i) of the Customs Act, 1962. He, as an authorised person of M/s OSGL has not appeared for recording of his statement in response to Summons dated 11.04.2023, 17.05.2023, 22.05.2023 and 09.08.2023. Thus, it appears that by their acts of omission and commission, Shri Swarrop Shetty has rendered himself liable for penalty action under Section 114AA of Customs Act, 1962.

16.4 Further, it appears that above said Shipping Bill was filed on behalf of M/s DEEG Marketings Private Limited, shown as Indian client in the present matter. During search at the registered

premises of M/s DEEG no document or any electronic devise was found inside the said premises which clearly indicates that no business was being operated from that premises. No person from M/s Rekha appeared on behalf of M/s Rekha for recording of his statement in the matter in response to the Summons dated 11.04.2023, 17.05.2023 & 22.05.2023. Thus, it appears that M/s DEEG Maketing was actively participated in the nexus with M/s OSGL in creating a fabricated narrative intended to conceal the unlawful diversion of imported goods into the Domestic Tariff Area (DTA). Thus, by the above-mentioned acts of various omission and commission, it appears that /s DEEG Marketings Private Limited defrauded the government exchequer by diverting the imported item in SEZ area and acted in a manner which rendered the goods having declared FOB value of Rs. 4,99,40,330/- are liable for confiscation under Section 113 (e), (h) & (i) of the Customs Act, 1962. Thus, it appears that by their acts of omission and commission, M/s DEEG Marketings has rendered himself liable for penalty action under Section 114(iii) of the Customs Act, 1962.

17. Now, therefore, M/s OSGL overseas, Shed No. 2 & 3, CPWD Type, Sector-1, Phase-1, Kandla Special Economic Zone (KASEZ), Gandhidham are called upon to show cause to the Additional Commissioner of Customs, having his office at 1st Floor, Custom House, Near Balaji Temple, New Kandla, Gandhidham, Gujarat, within 30 days of the receipt of the Notice as to why:

- (i) The goods covered under Shipping Bill No. 4005491 dated 03.04.2023 having declared FOB value of Rs. 4,99,40,330/- (Four Crores Ninety-Nine Lakhs Forty Thousand Three Hundred Thirty) should not be held liable for confiscation under Section 113 (e), (h) & (i) of the Customs Act, 1962.
- (ii) Penalty should not be imposed upon them under the provisions of Section 114(iii) of the Customs Act, 1962.

18. Now, therefore, Shri Swarrop Shetty, Partner of M/s OSGL overseas, Shed No. 2 & 3, CPWD Type, Sector-1, Phase-1, Kandla Special Economic Zone (KASEZ), Gandhidham is called upon to show cause to the Additional Commissioner of Customs, having his office at 1st Floor, Custom House, Near Balaji Temple, New Kandla, Gandhidham, Gujarat, within 30 days of the receipt of the Notice as to why the penalty should not be imposed upon him under the provisions of Section 114AA of the Customs Act, 1962 for the act of omission and commissions as discussed in para supra.

19. Now, therefore, M/s DEEG Marketings Private Limited, (IEC-AAACD1594P) Flat No. F/217, B Wing, 1st Floor, Express Zone Mall, Next to Patel Vanika, Off. W.E. Highway, Goregaon East, Mumbai, India, shown as Indian client in the Shipping Bill No. 4005491 dated 03.04.2023 is called upon to show cause to the Additional Commissioner of Customs, having his office at 1st Floor, Custom House, Near Balaji Temple, New Kandla, Gandhidham, Gujarat, within 30 days of the receipt of the Notice as to why the penalty should not be imposed upon them under the provisions of Section 114(iii) of the Customs Act, 1962 for the act of omission and commissions as discussed in para supra.

20. The Noticee is required to specifically state in their written reply, whether they wish to be heard in person, by the Adjudicating authority, before the case is adjudicated. If no reply is received, within 30 days from the date of receipt of this notice or if they fail to appear before the Adjudicating authority, when the case is posted for personal hearing, the case will be adjudicated on the basis of evidence on record, without any further notice to them.

21. This show cause notice is issued without prejudice to any other action that may be taken against the said goods/ persons under the provisions of Customs Act, 1962 or any other law for the time being in force in the Republic of India.

22. Department reserves its right to amend, modify or supplement this notice at any time prior to the adjudication of the case.

23. The documents relied on in the notice are listed in the Annexure 'A' of this notice.

#ApprovedByName#
#ApprovedByDesignation#
#ApprovedDate#

By Registered/Speed Post/Hand Delivery:

To,

- (i) M/s OSGL overseas, Shed No. 2 & 3, CPWD Type, Sector-1, Phase-1, Kandla Special Economic Zone (KASEZ), Gandhidham
- (ii) Shri Swarrop Shetty, Partner of M/s OSGL overseas, Shed No. 2 & 3, CPWD Type, Sector-1, Phase-1, Kandla Special Economic Zone (KASEZ), Gandhidham
- (iii) M/s DEEG Marketings Private Limited, (IEC-AAACD1594P) Flat No. F/217, B Wing, 1st Floor, Express Zone Mall, Next to Patel Vanika, Off. W.E. Highway, Goregaon East, Mumbai

Copy to:-

1. The Additional Commissioner (SIIB), Customs House, Mundra.
2. Additional commissioner (SIIB), Custom House, Kandla
3. The Deputy Development Commissioner, Kandla Special Economic Zone, Gandhidham for information
4. Guard File/Notice Board.