

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOM HOUSE, MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No. 02838-271029/423 FAX No. 02838-271425 Email : adj-mundra@gov.in, adjmundra@gmail.com
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A	फा. सं./ FILE NO.	F. No. GEN/ADJ/ADC/404/2024-Adjn
B	मूल आदेश संख्या/ ORDER-IN-ORIGINAL NO.	MCH/ADC/MK/276/2024-25
C	द्वारा पारित किया गया / PASSED BY	मुकेश कुमारी अपर आयुक्त सीमा शुल्क सीमा शुल्क भवन, मुन्द्रा
D	आदेश की तिथि DATE OF ORDER	24.02.2025
E	जारी करने की तिथि DATE OF ISSUE	24.02.2025
F	कारण बताओ नोटिस संख्या & तिथि SCN NUMBER & DATE	CUS/ASS/CORR/35/2021-EA-O/o Pr Commr-Cus-Mundra dt. 21.02.2024
G	निर्यातक / नोटिस प्राप्तकर्ता EXPORTER / NOTICEE	1. M/s Nisha & Co. Exports Imports 2. M/s Kuber India Exim LLP
H	डिन संख्या / DIN NUMBER	20250271MO0000888F0F

1. यहआदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

सीमाशुल्कआयुक्त) अपील(,
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
नवरंगपुरा, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING,
ISHWAR BHUVAN ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”

3. उक्तअपील यहआदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.
4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –
 - i. उक्त अपील की एक प्रति और A copy of the appeal, and
 - ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ऊूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

.6अपील प्रस्तुत करते समय, सीमाशुल्क) अपील (नियम, 1982और सीमाशुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5 % भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACT OF THE CASE:-

M/s Nisha & Co Exporters Importers, an exporter having IEC-1089000596 and having their registered office at SR Buildings, Burma Road, Kumarapuram Medical College PO, Thiruvananthapuram, Kerala-695011 (*herein referred as "Exporter" for the sake of brevity*) filed Shipping Bill No.8063711 dated 21.01.2021 for export of **Triethanol Amine 85% under CTH-29221500** to Ethiopia.

2 . As per **Para 2.09** the Foreign Trade Policy, 2015-20 (as on 31.03.2023) **Export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET), as indicated in Appendix-3 of Schedule 2 of ITC(HS) Classification of Export & Import Items, shall be governed by the specific provisions of** (i) Chapter IV A of the FT(D&R) Act, 1992 as amended from time to time (ii) SI. No. 4 & 5 of Table A and Appendix-3 of Schedule 2 of ITC(HS) Classification of Export & Import Items (iii) Para 2.16, Para 2.17, Para 2.18 of FTP and (iv) Para 2.73 -2.82 of Hand Book of Procedures, in addition to the other provisions of FTP and Handbook of Procedures governing export Authorisations.

2.1 As per **Para 2.73** of Hand Book of Procedures (as on 31.03.2023), an application for grant of Export Authorisation in respect of SCOMET items mentioned in Appendix 3 to Schedule 2 of ITC (HS) Classifications of Export and Import Items may be made in ANF 2 0 to DGFT (Hqrs) along with documents prescribed therein.

2.2 List 1C of Appendix 3 [List of SCOMET Items] To Schedule- 2 of ITC (HS)Classification of Export and Import Items, 2018 (as notified on 11.06.2020) deals with Export of SCOMET Items.

2.3 Export of chemicals listed in 1C of Appendix 3 below is allowed to the countries specified in Table-1 (Para-2.6 below) without an export authorization, subject to the condition that the exporter shall notify the National Authority, Chemicals Weapons Convention (NACWC), Cabinet Secretariat, Department of Chemicals & Petro-Chemicals, Disarmament & International Security Affairs (D&ISA) Division of Ministry of External Affairs and Directorate General of Foreign Trade (DGFT), within 30 days of such export, in the prescribed format [Aayat Niryat Form (AN F)- 2O] along with the End-Use Certificate (EUC) in the prescribed proforma [Appendix 2S(ii)] and also submit to the DGFT a copy of the bill of entry into the destination country within 30 days of delivery.

2.4. The list of Chemicals under 1C is as below:

S r N o .	SCOM ET ENTR Y	NAME OF THE CHEMICAL	ENT RY C WC SCH EDUL E 3	CAS NUMBERS	ITC CO DE HS
		A. TOXIC CH EMICAL			
1	1C00 1	Phosgene: (Carbonyl Dichloride)	3A01	75-44-5	2812110 0
2	1C00 2	Cyanogen Chloride [(CN)Cl]	3A02	506-77-4	2853100 0
3	1C00 3	Hydrocyanic Acid	3A03	74-90-8	2811120 0
4	1C00 4	(Reserved)	-	-	
		B. Precursors			
5	1C00 5	Phosphorus oxychloride	3B0 5	10025-87-3	2812120 0
6	1C00 6	Phosphorus Trichloride	3B0 6	2125683	2812130 0
7	1C00 7	Phosphorous Pentachloride	3B0 7	10026-13-8	2812140 0
8	1C00 8	Trimethyl Phosphite	3B0 8	121-45-9	2920240 0
9	1C00 9	Triethyl Phosphite	3B0 9	122-52-1	2920230 0
10	1C01 0	Dimethyl Phosphite	3B1 0	868-85-9	2920210 0
11	1C01 1	Diethyl Phosphite	3B1 1	762-04-9	2920220 0
12	1C01 2	Sulphur Monochloride	3B1 2	10025-67-9	2812150 0
13	1C01 3	Sulphur Dichloride	3B1 3	10545-99-0	2812160 0
14	10014	Thionyl Chloride	3B14	2125597	2812170 0
15	1C01 5	Ethyldiethanolamine	3B15	139-87-7	2922172 0
16	1C01 6	(RESERVED)	-		
17	1C01 7	Triethanolamine	3B17	102-71-6	2922150 0

chemicals listed in Category 1C to the countries other than those specified in Table 1 shall be allowed only against an export authorization. The exporter shall submit to the DGFT a copy of the bill of entry into the destination country within 30 days of delivery. Further, applications for export of chemicals in this category to countries not Party to the Chemical Weapons Convention (CWC) shall be submitted along with a Government signed End-Use-Certificate (EUC).

2.6 The countries listed in Table 1 are as under:

Table-I

Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Republic of Korea, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States.
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2.7 As per Section 3(3) of Foreign Trade (Development and Regulation) Act,

1992 (hereinafter referred to as **FT** (D&R) Act, 1992) all goods which are prohibited, restricted or regulated (subject to exception, if any) for import or export, by an order issued under Section 3(2) of **FT** (D&R) Act, 1992 shall be deemed to be prohibited under Section **11** of the Customs Act, 1962.

2 . 8 Further, as per Section 11 of Foreign Trade (Development and Regulation)

Act, 1992, no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made there under and the foreign trade policy for the time being in force.

2 . 9 In view of above, if goods are restricted or regulated for import or export,

they are prohibited goods even if there is no complete prohibition and in the instant case the exported goods are restricted as per export policy and exported without any licence issued by DGFT, thus, are "**prohibited goods**". Being the prohibited goods, the same appears to be liable for confiscation under Section 113(d) of the Customs Act, 1962.

2.10 As, there were reason to believe as stated above that the

said goods were liable for confiscation under section 113(d) of the Customs Act, 1962, therefore, the impugned goods exported under Shipping Bill No.8063711 dated 21.01.2021 are liable for seizure under Section 110(1) of the Customs Act, 1962. However, as the goods are already exported, the same are not seized.

3. In view of above, a letter dated 22.11.2021 and a reminder dated

14.12.2021 were issued to the exporter, M/s Nisha & Co Exporters Importers that the export of **Triethanol Amine** shall be allowed only against an export authorization; that the exporter shall submit to the DGFT a copy of the Bill of Entry into the destination country within 30 days of the delivery; that the application for export of chemical in the category to countries not Party of the Chemical Weapons Conventions (CWC) shall be submitted along with a Government signed End-Use Certificate (EUC) and they are requested to submit the following documents:

- i. Export Authorization
- ii. Copy of Bill of Entry to the destination Country.
- iii. Government signed End-Use-Certificate (EUC).

3.1 In reply to the above letter, the exporter, M/s Nisha & Co Exporters

Importers vide their email dated 17.12.2021 submitted that they have received mail from DGFT SCOMET Cell; that they have informed their buyer to give end use certificate and they are trying to get it arranged; that it may require two weeks time and they will clear all the formalities as soon as possible.

3.2 In continuation of the above mail, M/s Nisha & Co Exporters Importers vide

their email dated 01.01.2022 submitted that they filed the online application with DGFT and payment also done.

3.3. The Export Section vide email dated 03.01.2022 requested M/s Nisha & Co Exporters Importers to submit all the documents as soon as DGFT procedure is finalized. However, no reply was received from the above exporter.

3.4 Again, a letter dated 01.02.2024 was issued to the exporter, M/s Nisha & Co

Exporters Importers through post as well as email and in reply they vide email dated 12.02.2024 having subject matter **"Deficiency: Post regularisation case Application**

No.304879AM22 dated 01/01/2022 filed by M/s Nisha & Co Exporters Importers for post regularization of export of SCOMET item Triethanol Amine to Gast Solar Mechanics, Ethiopia" submitted that:

"Further to your Notice attached, trailing mail are the proof of our communication with DGFT HQ (Mr.Nitish Suri sir) and Scomet office.

My contention in all the mail is that, I received order from Dia 33 Dubai, We do not have any direct connection with Ethiopia buyer as is the business relation with Dia 33 Dubai. After receiving notice received from Scomet and DGFT I requested DIA 33 to involve and get the EUC. The people who were in the respective position is no more with the company at the time of above communication. As much as possible, I tried to collect the documents requested.

Scomet office on phone informed me that the case no more to be pursued and the case is closed.

Available documents and subjects which are on memory shared as the communication was done in 2022/Feb/2nd and down the months of March etc.

I Hope the above information suffice your requirement.

3.5 On perusal of the above mail alongwith trailing mail which is their communication with DGFT SCOMET Cell alongwith documents submitted by them as attachment, it is evident that M/s Nisha & Co Exporters Importers did not have any Authorization from DGFT at the time of export of SCOMET item i.e. **Triethanol Amine.**

Legal Provisions:

4. The relevant provisions of law pertaining to import of goods in general, the policy & rules relating to imports, the liability of the goods to confiscation and the persons concerned to penalty for illegal importation under provisions of Customs Act, 1962 and the other laws for the time being in force are summarized as under:

4.1 Section 2(33) in the Customs Act, 1962

Section 2:

(1)

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(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported, have been complied with;

4.2 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.".

4.3 Section 110 of the Customs Act, 1962, provides for Seizure of goods,

documents and things. - (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

4.4 113. Confiscation of goods attempted to be improperly exported, etc.—

The following export goods shall be liable to confiscation: —

(a).....

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by

or under this Act or any other law for the time being in force;

4.5 114. 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 [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.*

4.6 117. Penalties for contravention, etc., not expressly mentioned. —

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees.

Provisions of the Foreign Trade Development and Regulation) Act, 1992

4.7 Section 3: Powers to make provision relating to imports and exports.

3. (1) The Central Government may by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and

increasing exports.

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

Provided that the provisions of this sub-section shall be applicable, in case of import or export of services or technology, only when the service or technology provider is availing benefit under the foreign trade policy or is dealing with specified services or specified technologies.

All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

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

11.(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 there under and the foreign trade policy for the time being in force.

Foreign Trade Policy, 2015-20 (as on 31.03.2023)

4.9 2.09 Export of SCOMET Items

Export of Special Chemicals, Organisms, Materials, Equipment and (SCOMET), as indicated in Appendix-3 of Schedule 2 of ITC(HS) Classification of Export & Import Items, shall be governed by the specific provisions of (i) Chapter IV A of the FT(D&R) Act, 1992 as amended from time to time (ii) Sl. No. 4 & 5 of Table A and Appendix- 3 of Schedule 2 of ITC(HS) Classification of Export & Import Items (iii) Para 2.16, Para 2.17, Para 2.18 of FTP and (iv) Para 2.73 -2.82 of Hand Book of Procedures, in addition to the other provisions of FTP and Handbook of Procedures governing export Authorisations.

Provisions of the Foreign Trade Policy, 2015- 2020

4.10 2.08 Export/Import of Restricted Goods/Services :

Any goods /service, the export or import of which is 'Restricted' may be exported or imported only in accordance with an Authorisation / Permission or in accordance with the Procedures prescribed in a Notification / Public Notice issued in this regard

DGFT Hand Book of Procedures, 2015- 2020 (as on 31.03.2023)

4.11 2.73 Application for SCOMET Authorisation

- a. *An application for grant of Export Authorisation in respect of SCOMET items mentioned in Appendix 3 to Schedule 2 of ITC (HS) Classifications of Export and Import Items may be made in ANF 2 O to DGFT (Hqrs) along with documents prescribed therein.*
- b. -----

Customs Brokers Licensing Regulations, 2018

4.12 Obligations of Customs Broker. - A Customs Broker shall –

(a)-----

(d). advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(e)exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage

Outcome of the investigation:

5. *M/s Nisha & Co Exporters Importers, an exporter having IEC-1089000596 and having their registered office at SR Buildings, Burma Road, Kumarapuram Medical College PO, Thiruvananthapuram, Kerala-695011 (herein referred as "Exporter" for the sake of brevity) filed Shipping Bill No.8063711 dated 21.01.2021 for export of **Triethanol Amine 85% under CTH-29221500** to Ethiopia.*

5.1 As discussed above, Export of chemicals listed in 1C of Appendix3 [List of SCOMET Items] To Schedule- 2 of ITC (HS) Classification of Export and Import Items, 2018 (as notified on 11.06.2020) is allowed only to the notified countries without an export authorization, subject to the condition that the exporter shall

notify the National Authority, Chemicals Weapons Convention (NACWC), Cabinet Secretariat, Department of Chemicals & Petro-Chemicals, Disarmament & International Security Affairs (D&ISA) Division of Ministry of External Affairs and Directorate General of Foreign Trade (DGFT), within 30 days of such export, in the prescribed format along with the End-Use Certificate (EUC) in the prescribed proforma and also submit to the DGFT a copy of the bill of entry into the destination country within 30 days of delivery. However, in the present case the export of Triethanol Amine (SCOMET Item) had been made to Ethiopia which is not the notified country and therefore, the export of Triethanol Amine (SCOMET Item) is allowed only under Authorization issued by DGFT. It is pertinent to mention here that till date no authorization has been issued by the DGFT to the exporter and the exporter had failed to submit any documents for justifying the export of Triethanol Amine 85% without export authorization issued by DGFT. therefore, the impugned goods i.e. Triethanol Amine 85% exported under Shipping Bill No.8063711 dated 21.01.2021 are liable for confiscation under Section 113(d) of the Customs Act, 1962. Further, as the goods are liable for confiscation the exporter is also liable for Penalty under Section 114(i) of the Customs Act, 1962. Further, as the exporter has also contravened the provision of Section 50 of the Customs Act, 1962, they are also liable for penalty under Section 117 of the Customs Act, 1962.

5.2. In this case, M/s Kuber India Exim LLP (AAPFK6460KCH002), A- 423/14, Mahagujarat Industrial Estate, Sakhej Bavla Road, Moraiya, Ahmedabad, Gujarat-380013 have not followed due diligence in respect of exportation of goods which were restricted and filed the impugned Shipping Bill even after having the knowledge that the same were restricted and filed the Shipping Bills without ensuring and verifying the export Authorization issued by DGFT in respect of impugned restricted export goods thus, appears to be liable for penal action under Section 114(i) of the Customs Act, 1962. They have also failed to comply with the provisions of the Custom Broker Licensing Regulations, 2018 (CBLR, 2018). Further, as CHA- M/s Kuber India Exim LLP has also contravened the provision of Section 50 of the Customs Act, 1962, they are also liable for penalty under Section 117 of the Customs Act, 1962.

6 . In view of the foregoing paras, M/s Nisha & Co Exporters Importers, SR Buildings, Burma Road, Kumarapuram Medical College PO, Thiruvananthapuram, Kerla-695011 holding IEC No.1089000596 are hereby directed to show cause to the Additional Commissioner (Export Assessment), Customs House Mudra, 5B, Port User Building, Mundra Port, Mundra (Gujarat) within 30 days of this notice, as to why:

i. The impugned goods exported by them under

Shipping Bill No.6648649 dated 19.11.2020; 6648650 dated 19.11.2020; 6648661 dated 19.11.2020; 7098211 dated 09.12.2020; 7853879 dated 12.01.2021 and 7853880 dated 12.01.2021 i.e. Triethanol Amine 85% under CTH-29221500 valued at Rs.19,28,964/- (Rupees Nineteen Lakhs Twenty Eight Thousand Nine Hundred and Sixty Four only), should not be held liable for confiscation under Section 113(d) of the Customs Act, 1962 read with the provisions of FT(D&R) Act, 1992, Foreign Trade Policy, 2015-20 and Hand Book Procedure, 2015-20;

ii. Penalty should not be imposed on them under Section 114(i) of the Customs Act, 1962.

iii. Penalty should not be imposed on them under Section 117 of the Customs Act, 1962.

6.1 In view of forgoing paras, M/s Kuber India Exim LLP (AAPFK6460KCH002), A-423/14, Mahagujarat Industrial Estate, Sakhej Bavla Road, Moraiya, Ahmedabad, Gujarat-380013 is hereby directed to show cause to the Additional Commissioner, Customs House Mundra, 5B, Port User Building, Mundra Port, Mundra (Gujarat) within 30 days of this notice as to why:

i. Penalty should not be imposed on them under Section 114(i) of the Customs Act, 1962.

ii. Penalty should not be imposed on them under Section 117 of the Customs Act, 1962

7. The export assessment Cell, CH, Mundra vide their letter dt. 24.01.2025 have issued following corrigendum to the subject SCN. The same is reproduced as below:

In the SCN No. CUS/ASS/CORR/35/2021-EA-O/oPr Commr-Cus-Mundra dt. 20.02.2024 para No. 6(i) mentioned as

The impugned goods exported by them under Shipping Bill No.6648649 dated 19.11.2020; 6648650 dated 19.11.2020; 6648661 dated 19.11.2020; 7098211 dated 09.12.2020; 7853879 dated 12.01.2021 and 7853880 dated 12.01.2021 i.e. Triethanol Amine 85% under CTH-29221500 valued at Rs.19,28,964/- (Rupees Nineteen Lakhs Twenty Eight Thousand Nine Hundred and Sixty Four only), should not be held liable for confiscation under Section 113(d) of the Customs Act, 1962 read with the provisions of FT(D&R) Act, 1992, Foreign Trade Policy, 2015-20 and Hand Book Procedure, 2015-20;

May be read as

The impugned goods exported by them under Shipping Bill 8063711 dt. 21.01.2021 i.e. Triethanol Amine 85% under CTH-29221500 valued at Rs.19,28,964/- (Rupees Nineteen Lakhs Twenty Eight Thousand Nine Hundred and Sixty Four only), should not be held liable for confiscation under Section 113(d) of the Customs Act, 1962 read with the provisions of FT(D&R) Act, 1992, Foreign Trade Policy, 2015-20 and Hand Book Procedure, 2015-20;

7. Personal Hearing

7.1 Personal hearing in this regard was given to all the noticees on 03.06.2024 in response to which no one either from the importer nor from the CHA attended the PH.

7.2 Further, on account of change in the adjudicating authority another opportunity for PH were given to all the noticees on 25.11.2024 in response to which Dr. Sanjay Kalra, Advocate appeared for the PH on behalf of M/s Kuber India Exim LLP and requested to drop the charges levied against their client.

7.3 Last PH in this regard was given on 18.12.2024 in response to which Shri Sanjayan R.S., the proprietor of M/s Nisha & Co Exports Imports appeared for the PH and stated that they have committed an unintentional mistake at their end and requested for taking lenient view towards him while deciding the case.

8. Defense Submission

8.1 *Shri Sanjayan R.S., the proprietor of M/s Nisha & Co Exports Imports vide his letter dt. 21.03.2024 has made following submission in his defense.*

I, Sanjayan R.S, Proprietor, representing M/s Nisha & Co Exporters Importers, hereby submit my response to the Show Cause Notice dated [21.02.24].

1. Background and Context:

o M/s Nisha & Co Exporters Importers holds IEC number 1089000596 and has its registered office at SR Buildings, Burma Road, Kumarapuram Medical College PO, Thiruvananthapuram, Kerala - 695011.

o We filed shipping Bill through Kuber India Exim LLP No. 8063711 dated 21.01.2021 for the export of Triethanol Amine 85% under CTH-29221500 to Ethiopia.

2. Applicability of Foreign Trade Policy (FTP) Provisions:

o As per Para 2.09 of the Foreign Trade Policy 2015-20 (as on 31.03.2023), the export of Special Chemicals, Organisms, Materials,

Equipment, and Technologies (SCOMET) falls under specific provisions.

o These provisions include:

- Chapter IV A of the FT(D&R) Act, 1992 (as amended from time to time).
- Sl. No. 4 & 5 of Table A and Appendix-3 of Schedule 2 of ITC(HS) Classification of Export & Import Items.
- Para 2.16, Para 2.17, Para 2.18 of FTP.
- Para 2.73-2.82 of the Handbook of Procedures.

3. Compliance with Para 2.73 of Handbook of Procedures:

- As per Para 2.73 of the Handbook of Procedures (as on 31.03.2023), an application for the grant of Export Authorization in respect of SCOMET items mentioned in Appendix 3 to Schedule 2 of ITC (HS) Classification of Export and Import Items may be made in ANF 2 O to DGFT (Hqrs) along with the prescribed documents.

We acknowledge that our export was conducted without obtaining the necessary **export** authorization as required by the regulations governing the export of **SCOMET items**. We sincerely apologize for this oversight, and we assure you that it was a **bonafide mistake** on our part.

*Response to the notices received in 2021, Diligently completed the necessary steps
for SCOMET application: ANF2O*

- **Online Application Submission:** successfully submitted the SCOMET application online.
- **Fee Payment:** The requisite fees were duly paid.
- **Digital Signature:** Your digital signature, dated January 1, 2022, was appropriately affixed.
- **Certificate Issuance:** The SCOMET certificate was issued on June 3, 2021.
Epayment Receipt: Possess the Epayment receipt, which corresponds to DGFT file number HQRSCMTAPPLY00304879AM22.
- **Proof attached.**

Considering the above, we kindly request the following:

1. **Abolishment of the Case:** We humbly request that the case against us be abolished, considering our genuine error and lack of intent to violate any regulations.
2. **Corrective Measures:** We have taken immediate corrective measures to ensure compliance with all export regulations moving forward. We are committed to
adhering strictly to the prescribed procedures.

3. **End-Use Certificate (EUC):** We understand that exports to countries not party to

the **Chemical Weapons Convention (CWC)** require an EUC. We will promptly submit the necessary EUC for your records in future.

Considering the recent developments, we would like to present the following points for our consideration:

1. End-Use Certificate (EUC) Challenge:

- The importer, M/s Gast Solar Mechanics PLC, has expressed that there is no government body in Ethiopia that can endorse the EUC for the product.
- Self-attested EUC provided.
- Their assertion is based on the specific usage of Triethanol Amine 85% as a concrete admixture, which falls within their domain as one of the largest construction chemical manufacturers in Ethiopia.

2. India Embassy Investigation:

- We acknowledge that the India Embassy in Ethiopia, represented by Robert Shetkintong, conducted an investigation at the factory of M/s Gast Solar Mechanics PLC.
- The purpose of this investigation was to verify the genuineness of the usage of **Triethanol Amine 85%** by the importer.
- WhatsApp communication from Mr. Mulugetta Plant Manager (Mobile: 00251911640643) Gast Solar Mechanics PLC is attached as proof of communication.

3. Mitigating Factors:

- Given the unique circumstances surrounding the use of this chemical as a concrete admixture, we request leniency and understanding.
- Our intent was never to violate any regulations, and the oversight was a bonafide mistake.
- The visit by the India Embassy representative further underscores our commitment to transparency and compliance.

4. Request for Resolution:

We humbly request that the case against us be abolished in light of the following:

- The absence of a suitable government body in Ethiopia to endorse the EUC.
- The genuine usage of Triethanol Amine 85% by M/s Gast Solar Mechanics PLC.
- The proactive investigation conducted by the India Embassy.

(This claim is based on the message received from Mr. Mulugetta Plant Manager and his WhatsApp screen shot, attached as

Annexure 1)

We acknowledge the discrepancy between the information provided in the Show Cause Notice 6 (i) and the actual export transaction. Specifically, we exported only one consignment under Shipping Bill No. 8063711, dated 2021, with a value of Rs. 19,28,964/- (Rupees Nineteen Lakhs Twenty-Eight Thousand Nine Hundred and Sixty-Four only).

However, the Show Cause Notice 6 (i) refers to multiple shipping bills (Nos. 6648649, 6648650, 6648661, 7098211, 7853879, and 7853880) for Triethanol Amine 85%. We were unaware of this discrepancy, and we apologize for any confusion.

Considering the legal provisions, we respectfully submit the following:

1. Confiscation Under Section 113(d) of the Customs Act, 1962:

- We believe that the impugned goods exported under Shipping Bill No. 8063711 should not be held liable for confiscation under Section 113(d) of the Customs Act, 1962.*
- We rely on the provisions of the FT(D&R) Act 1992, the Foreign Trade Policy, 2015-20, and the Handbook of Procedures 2015-20.*
- Our intent was never to violate any regulations, and we sincerely apologize for any oversight.*
-

2. Penalty Under Section 114(i), 117,50 of the Customs Act, 1962:

- We humbly request that no penalty be imposed on us under Section 114(i) of the Customs Act, 1962.*
- Our actions were based on expert opinions from M/s Kuberr Shipping and Chemexcil,*
- Bengaluru, Mr Vicky Moolchandani, Regional Officer, Chemexcil RO – Bengaluru Membership No.CHEM/BGL/N-2/P-III/2020-21/439*
- We believed that the product could be exported without prior permission.*
- The subsequent corrective measures demonstrate our commitment to compliance.*

3. Mitigating Factors:

- We acknowledge the unique circumstances surrounding the export of Triethanol mine 85%.*
- The opinions received from experts led us to believe that the product fell within permissible export norms.*
- We assure you that we have taken corrective steps to prevent such oversights in*

the future.

4. Transparency and Cooperation:

- We remain fully cooperative and transparent during any investigations or inquiries.
- Our goal is to resolve this matter amicably and maintain a positive relationship with the customs department.
- Copy of Scomet application and Payment Receipt attached as a proof for regularisation.

5. How the order received and processed, explains the below paragraph, 21-03- 02421-03-2024 16:02:39

This message details a business transaction between Sanjay R.S, the owner of Nisha Company Exporters, and Dia 33 Dubai, that involves the supply of Triethanol Amine (TEA). Sanjayan R.S, an NRI working for Wellcoat Paints in Dubai, was approached by Gopal Chandel, the Sales Manager, with this enquiry due to their relationship.

Upon receiving the enquiry, Sanjayan R.S conducted research to identify the top manufacturers of TEA and connected with India Glycols, a leading producer who agreed to supply TEA 85% with advance payment. To ensure the product could be exported under the Open General Licence (OGL), Sanjay consulted Kuber Shipping, recommended by Gujarat-based Macro Polymers, owner Mr. Mayank Mr. Kumarpal, the CEO of Kuber Shipping, confirmed the export regulations, which was corroborated by Chemexcil Bengaluru's advice.

Sanjayan R.S then confirmed the supply to Dia 33 in Dubai, submitting an offer that was approved. Dia 33 then informed the final destination for the shipment would be Ethiopia. Unsure about the export process to Ethiopia, Sanjay once again consulted Kuber Shipping for guidance on the necessary documentation for a direct shipment to the country. Then went on with the process to execute the order. This summarized narrative encapsulates a straightforward international trade enquiry that involves multiple parties and steps, from initial contact and product sourcing and finalizing shipping details.

With the above summary and submission, here I am forwarding documents which is relevant to the export of Triethanol Amine, for your kind consideration and We look forward to a fair resolution.

8.2 Further, vide his email dt. 18.12.2024, Shri Sanajan R.S., the proprietor has submitted the copies of the, BL, purchase order, EUC.

9. Discussion and Findings

I have carefully gone through the records of the case. The submission dated 21.03.2024 & 18.12.2024 and the record of personal hearing held on 03.06.2024, 25.11.2024 and 18.12.2024

and other available records. I find that in the present case principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case on the basis of documentary evidences available on record. The points to be decided in the instant case are: -

- i. *Whether the impugned goods exported by them under Shipping Bill No.8063711 dt. 21.01.2021 i.e. Triethanol Amine 85% under CTH-29221500 valued at Rs.19,28,964/- (Rupees Nineteen Lakhs Twenty-Eight Thousand Nine Hundred and Sixty-Four only), should be held liable for confiscation under Section 113(d) of the Customs Act, 1962 read with the provisions of FT(D&R) Act, 1992, Foreign Trade Policy, 2015-20 and Hand Book Procedure, 2015-20.*
- ii. *Whether the penalty should be imposed on M/s Nisha & Co. Exports Imports them under Section 114(i) of the Customs Act, 1962.*
- iii. *Whether penalty should be imposed on M/s Nisha & Co. Exports Imports them under Section 117 of the Customs Act, 1962.*
- iv. *Whether penalty should be imposed on M/s Kuber India Exim LLP under Section 114(i) of the Customs Act, 1962.*
- v. *Whether, penalty should be imposed on M/s Kuber India Exim LLP under Section 117 of the Customs Act, 1962.*

10. I find that M/s Nisha & Co Exporters Importers, an exporter having IEC-1089000596 and having their registered office at SR Buildings, Burma Road, Kumarapuram Medical College PO, Thiruvananthapuram, Kerla-695011 (filed Shipping Bill No.8063711 dated 21.01.2021 for export of Triethanol Amine 85% under CTH-29221500 to Ethiopia without a valid license issued by DGFT.

11. Confiscation of the goods under section 113(d) of the Customs Act, 1962.

11.1 The section 113(d) of the Customs Act, 1962 provides for the following:

Section 113. Confiscation of goods attempted to be improperly exported, etc.—

The following export goods shall be liable to confiscation: —

(a).....

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

11.2 I find that as per Para 2.09 the Foreign Trade Policy, 2015-20 (as on 31.03.2023), Export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET), as indicated in Appendix-3 of Schedule 2 of ITC(HS) Classification of Export & Import Items, shall be governed by the specific provisions of (i) Chapter IV A of the FT(D&R) Act, 1992 as amended from time to time (ii) SI. No. 4 & 5 of Table A and Appendix-3 of Schedule 2 of ITC(HS) Classification of Export & Import Items (iii) Para 2.16, Para 2.17, Para 2.18 of FTP and (iv) Para 2.73 -2.82 of Hand Book of Procedures, in addition to the other provisions of FTP and Handbook of Procedures governing export Authorisations. As per Para 2.73 of Hand Book of Procedures (as on 31.03.2023), an application for grant of Export Authorisation in respect of SCOMET items mentioned in Appendix 3 to Schedule 2 of ITC (HS) Classifications of Export and Import Items may be made in ANF 2 0 to DGFT (Hqrs) along with documents prescribed therein.

11.3 I find that Export of chemicals listed in 1C of Appendix 3 below is allowed to the countries specified in Table-1 without an export authorization, subject to the condition that the exporter shall notify the National Authority, Chemicals Weapons Convention (NACWC), Cabinet Secretariat, Department of Chemicals & Petro-Chemicals, Disarmament & International Security Affairs (D&ISA) Division of Ministry of External Affairs and Directorate General of Foreign Trade (DGFT), within 30 days of such export, in the prescribed format [Aayat Niriyat Form (AN F)- 20] along with the End-Use Certificate (EUC) in the prescribed proforma [Appendix 2S(ii)] and also submit to the DGFT a copy of the bill of entry into the destination country within 30 days of delivery.

Table – I

Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Republic of Korea, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States.
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11.4 I find that exports Imports without a valid DGFT license has rendered the goods prohibited as per Section 3(3) of Foreign Trade (Development and Regulation) Act, 1992 (hereinafter referred to as FT (D&R) Act, 1992) all goods which are prohibited, restricted or regulated (subject to exception, if any) for import or export, by an order issued under Section 3(2) of FT (D&R) Act, 1992 shall be deemed to be prohibited under Section 11 of the Customs Act, 1962. In view of above, it is evident that if the goods are restricted or regulated for import or export, they are prohibited goods even if there is no complete prohibition Therefore, I find that the goods i.e. Triethanol Amine 85% are restricted as per export policy and have been exported by M/s Nisha & Co. without any licence issued by DGFT, thus, are "prohibited goods". Being the prohibited goods, the same appears to be liable for confiscation under Section 113(d) of the Customs Act, 1962.

12. Imposition of Redemption fine under section 125 of the Customs Act, 1962 in lieu of confiscation of the goods under section 113(d) of the Customs Act,1962.

12. Imposition of Redemption fine in lieu of confiscation of the goods under section 113(d) of the Customs Act,1962.

12.1 The section 125 of the Customs Act, provides for the following

(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.

12.2 I find that the goods have been held liable for confiscation under section 113(d) of the Customs Act, 1962 as discussed at para 11.5 (Not repeated here for the sake of brevity). I am inclined to impose redemption fine on them although the same are not available for confiscation. In this regard, I rely upon the judgements, as enumerated below:

i . *Hon'ble Madras High Court in the case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) has after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), held in para 23 of the judgment as below:*

"The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate 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.

ii. The above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.).

iii. Further, neither the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) nor the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) has been challenged by any of the parties and are in operation.

13. Imposition of penalty on M/s Nisha & Co. Exports and imports under section 114(i) of the Customs Act, 1962.

13.1. The section 114(i) of the Customs Act, 1962 provides for the following:

Section 114(i). 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 [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;*

13.2. It is evident that M/s Nisha & Co. Exports and imports have exported Triethanol Amine 85% with out a valid License issued by DGFT. Further, I also find that the exporter has also violated the section 50 of the Customs Act, 1962. In this current era of self-assessment besides availing ease of doing business it is also the responsibility of the exporter to made and declare the true and correct information at the time of export of the goods. Therefore, I find that M/s Nisha & Co. Exports and imports via his proprietor has done and an act of exporting Triethanol Amine 85% which is a restricted item as per export policy without any licence issued by DGFT thus thus rendering the same as "prohibited goods". Being the prohibited goods, the same appears to be liable for confiscation under Section 113(d) of the Customs Act, 1962. Tehrefore, I find that the exporter M/s Nisha & Co. Exports and Imports via his proprietor rendered himself liable for penalty under section 114(i) of the

Customs Act, 1962.

14. Imposition of penalty on M/s Nisha & Co. Exports and imports under section 117 of the Customs Act, 1962.

The section 117 of the Customs Act, 1962 provides for the following:

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees.

14.1. I find that M/s Nisha & Co. Exports and imports has done and an act of exporting Triethanol Amine 85% which is a restricted item as per export policy without any license issued by DGFT thus rendering the same as "prohibited goods". Being the prohibited goods, the same appears to be liable for confiscation under Section 113(d) of the Customs Act, 1962. However, I find that the penalty under Section 117 is imposable for contravenes any provision of this Act or abets any such contravention or who fails to comply ***where no express penalty is elsewhere provided for such contravention or failure.*** In the present case the penalty expressly mentioned under section 114(i) of the Customs Act, 1962 has already been levied at para 13.2 above. Therefore, I find that the imposition of penalty under section 117 of the Customs Act, 1962 is not sustainable here.

15. Imposition of penalty on M/s Kuber India Exim LLP under section 114(i) of the Customs Act, 1962.

15.1 I find that M/s Kuber India Exim LLP filed the Shipping Bill no. 8063711 dated 21.01.2021 I find that exports Imports without a valid DGFT license has rendered the goods prohibited as per Section 3(3) of Foreign Trade (Development and Regulation) Act, 1992 (hereinafter referred to as FT (D&R) Act, 1992) all goods which are prohibited, restricted or regulated (subject to exception, if any) for import or export, by an order issued under Section 3(2) of FT (D&R) Act, 1992 shall be deemed to be prohibited under Section 11 of the Customs Act, 1962. It is evident that if the goods are restricted or regulated for import or export, they are prohibited goods even if there is no complete prohibition. Therefore, I find that the goods i.e. Triethanol Amine 85% are restricted as per export policy and have been exported by M/s Nisha & Co. without any license issued by DGFT, thus, are "prohibited goods". Being the prohibited goods, the same appears to be liable for confiscation under Section 113(d) of the Customs Act, 1962.

15.2 I find that the Customs broker failed to ensure compliance of

the policy condition about restriction and mandatory requirement for the license issued by DGFT for exporting the subject goods. I find that department treats documents filed by CHA with certain degree of trust which completely violated in instant case. Dealing with the shipments of a restricted item turned prohibited in absence of mandatory license issued by DGFT is a grave offence Such acts of omission and commission have serious financial/security consequences.

15.3 Further, I also find that M/s Kuber India Exim LLP (Customs Broker) via his proprietor has knowingly and intentionally made, signed or used and/or caused to be made/signed/used import documents and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore, they are also liable to penalty under Section 114AA of the Customs Act, 1962.

16. Imposition of penalty on M/s Kuber India Exim LLP under section 117 of the Customs Act, 1962.

16.1. I find that M/s Kuber India Exim LLP has assisted the exporter in exporting Triethanol Amine 85% which is a restricted item as per export policy without any license issued by DGFT thus rendering the same as "prohibited goods". Being the prohibited goods, the same appears to be liable for confiscation under Section 113(d) of the Customs Act, 1962. However, I find that the penalty under Section 117 is imposable for contravenes any provision of this Act or abets any such contravention or who fails to comply ***where no express penalty is elsewhere provided for such contravention or failure.*** In the current case the penalty expressly mentioned under section 114(i) of the Customs Act, 1962 has already been levied at para 13.2 above. Therefore, I find that the imposition of penalty under section 117 of the Customs Act, 1962 is not sustainable here.

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

i. I order for confiscation of the impugned goods exported by them under Shipping Bill No.8063711 dt. 21.01.2021 i.e. Triethanol Amine85% under CTH-29221500 valued at Rs.19,28,964/- (Rupees NineteenLakhs Twenty-Eight Thousand Nine Hundred and Sixty-Four only), under Section 113(d) of the Customs Act, 1962 read with the provisions of FT(D&R) Act, 1992, Foreign Trade Policy, 2015-20 and Hand Book Procedure, 2015-20. However, I offer the same for redemption under Section 125 (1) of the Customs Act, 1962 upon payment of a fine of Rs. 6,00,000./-(Rs. Six Lakhs Only). Further, as per the provisions of Section 125(3) of the Customs Act, 1962 if option of payment of fine is not exercised within 120 days from the date of this order, the same shall become void.

- ii. I impose the penalty of Rs. 3,00,000/- (Rs.Three Lakhs Only) on M/s Nisha & Co. Exports Imports via his proprietor under Section 114(i) of the Customs Act, 1962.
- iii. I refrain from Imposing penalty on M/s Nisha & Co. Exports Imports under Section 117 of the Customs Act, 1962.
- iv. I impose the penalty of Rs. 3,00,000/- (Rs. Three Lakhs Only) on M/s Kuber India Exim LLP under Section 114(i) of the Customs Act, 1962.
- v. I refrain from Imposing penalty on M/s Kuber India Exim LLP under Section 117 of the Customs Act, 1962.

18. The SCN No. CUS/ASS/CORR/35/2021-EA-O/o Pr Commr-Cus-Mundra- dt. 20.02.2024 stands disposed of on the above terms.

मुकेश कुमारी
अपर आयुक्त, अधिनिर्णयन,
सीमा शुल्क भवन, मुन्द्रा

सेवा में,

1. M/s Nisha & Co Exporters Importers,
SR Buildings, Burma Road,
Kumarapuram Medical College PO,
Thiruvananthapuram, Kerla-695011

2. M/s Kuber India Exim LLP,
A-423/14, Mahagujarat Industrial Estate,
Sakhej Bavla Road, Moraiya, Ahmedabad,
Gujarat-380013

प्रति,

1. The Dy./Asstt. Commissioner, Export Assessment, Custom House, Mundra.
2. The Dy./Asstt. Commissioner (Legal/Prosecution), Custom House, Mundra.
3. The Dy./Asstt. Commissioner (RRA), Customs House, Mundra.
4. The Dy./Asstt. Commissioner (TRC), Customs House, Mundra.

7. The Dy./Asstt. Commissioner (EDI), Custom House, Mundra.
8. The Dy./Asstt. Commissioner (Disposal), Custom House, Mundra.
9. The Dy./Asstt. Commissioner (CB section), Custom House, Mundra
10. Notice Board (to display on Notice Board for all Noticees)
11. Guard File.