आयुक्त, सीमा शुल्क का कार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS
न्यू कस्टम हाउस, बालाजी मंदिर के पास, न्यू कांडला 370210
NEW CUSTOMS HOUSE, NEAR BALAJI TEMPLE, NEW KANDLA-370210
दूरभाष **Phone No. 02836-270222** फ़ैक्स **Fax No 02836-271467**
E-mail: commr-cuskandla@nic.in
सत्यमेव जयते

DIN- 20260271ML000051085A

A	File No.	GEN/ADJ/COMM/55/2025-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL-CUSTM-000-COM-30-2025-26
C	Passed by	Nitin Saini, Commissioner of Customs, Customs House Kandla,
D	Date of Order	05.02.2026
E	Date of Issue	05.02.2026
F	SCN No. & Date	GEN/ADJ/COMM/55/2025-ADJN-O/o-Commr-Cus-Kandla dated 07.02.2025
G	Noticee / Party / Importer / Exporter	M/s. Varsur Impex Pvt Ltd. (Unit-II), Shed No. 168, First Floor, Special CIB Type, Phase-I, Sector-II, Kandla Special Economic Zone, Gandhidham, Kutch

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

2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

Customs Excise & ServiceTax AppellateTribunal, West Zonal Bench,

2ndFloor, Bahumali Bhavan Asarwa,

Nr.Girdhar Nagar Bridge,GirdharNagar,Ahmedabad-380004

3. Appeal shall be filed within three months from the date of communication of this order.

4. Appeal should be accompanied by a fee of Rs.1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/-in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh(Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs(Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. The appeal should bear Court Fee Stamp of Rs.5/-under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the CourtFees Act, 1870.

6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.

8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise if penalty alone is in dispute.

BRIEF FACTS OF THE CASE:-

M/s. Varsur Impex Pvt Ltd. (Unit-II), (hereinafter also referred to as 'SEZ unit'), situated at Shed No. 168, First Floor, Special CIB Type, Phase-I, Sector-II, Kandla Special Economic Zone, Gandhidham, Kutch was granted Letter of Approval (LoA) No. 21/2022-23 dated 25.01.2023 vide letter F.No.KASEZ/IA/16/2022-23 by the Development Commissioner, Kandla SEZ to operate as a SEZ unit and to carry out authorized operations as mentioned in the LoA. They have executed Bond-cum-Legal undertaking in the Form-H regarding their obligations for proper utilization and accounting of goods including capital goods, spares, raw materials, components and consumables including fuel, imported or procured duty free and regarding achievement of Net foreign exchange earnings in terms of provisions of Rule 22 of SEZ Rules, 2006**.**

2. M/s. VarsurImpex Pvt Ltd (Unit II) has filed Import Bill of Entry No. 1008157 dated 20.06.2024 [SEZ Online Request ID; 172402023253] for goods imported against Bill of Lading No. MLPLJEAKDL240131 dated 13/06/2024 and filed on behalf of their foreign client M/s Cimple Trading FZE, Business Centre, Sharjah Publishing Free Zone, Sharjah, UAE with details as below:-

Table-I

Sr. No.	Import Bill of Entry & Date	Item Description	Quantity	Value
1	1008157 dated 20.06.2024	Areca Nuts Split (Also Known as Betelnut) - For Reprocessing of Cargo (08028020) – Raw Materials	2346 Bags (05x40 FCL), Gross Weight:1,38,416 Kgs	Rs.7,10,37,081.00 (Rs. Seven Crore Ten Lakh Thirty Seven Thousand and Eighty One Only)

3. Specific information was received that certain goods are lying inside the SEZ Unit premises and the SEZ Unit is engaged in certain activities other than the *"authorised operations*" in terms of SEZ Act, 2005 and rules made thereunder. Acting upon the information and to verify its truthfulness, the officers of KASEZ Customs visited the unit premises for examining and taking the stock of the subject goods. Accordingly, the goods were examined under Panchnama dated 12.11.2024.

4. Summons and Statements under Section 108 of Customs Act, 1962 and other correspondence by the SEZ unit:

To investigate the matter further and ascertain the facts, summons under Section 108 of the Customs Act, 1962 were issued to the Authorized Representative of the said SEZ unit.

4.1 Summons dated 14.11.2024, 21.11.2024 and 28.11.2024 under Section 108 of the Customs Act, 1962 were issued to the Authorized Representative of the said SEZ unit, Shri Nawaz Khan Choudhary, to present himself on 03.12.2024 to tender his statement and to produce relevant documents in the subject matter.

4.2 Accordingly, the statement of Shri Nawaz Khan Choudhary, Authorized Representative of M/s VarsurImpexPvt. Ltd. (Unit-II), Kandla SEZ, Gandhidham was recorded on 03.12.2024 under Section 108 of Customs Act, 1962 wherein he, inter alia, stated:

- *that he is working for M/s VarsurImpexPvt. Ltd. (Unit-II) since last almost three year and he is authorized by the Board Resolution to represent M/s VarsurImpexPvt. Ltd. (Unit-II), KASEZ.*
- *that M/s VarsurImpexPvt. Ltd. (Unit-II) is engaged in business of manufacturing of Pan Masala, Khaini, Smokeless Chewing Tobacco, Guthka, Zarda/Vizapatta and Chewing Tobacco Plain/Tambakoo as approved under Letter of Approval No.21/2022-23 dated 25.01.2023.*
- *that Betel Leaves, Lime, Menthol, Cardamom, Tobacco Leaves, Areca Nuts, Slaked Lime, Catechu, Roasted Finerly Chopped Tobacco, Chewing Tobacco, Aromatic Spices, Fragrances, Raw Kiwam and Silver Flakes are the raw materials are used in manufacturing of their finished goods, which are as approved under Letter of Approval No.21/2022-23 dated 25.01.2023.*
- *that they use Masala Packing Machines (05 Nos.), Masala Mixing Machine (01 No.), Cutting Machine (01 No.), Heating Machine (03 Nos.), Pouch Sealer (03 Nos.) and Weighing Machines (02 Nos.). That out of the said machines they had purchased only Cutting Machine (01 No.) and remaining machines were not purchased by us the same were lying in the unit when we got the possession of said premises from KASEZ Authority*
- *that the Cutting Machine (01 No.) was purchased by them vide Purchase Invoice No.036 dated 25.01.2024.*
- *that they are manufacturing the goods for foreign clients and any details about the Rule 18(6), Special Economic Zone, Rule, 2006 is not mentioned in LoA.*
- *that the raw materials was purchased vide BoE No.1008157 dated 20.06.2024, and domestically procured vide invoices no. DC10 dated 28.06.2024, DC 11 dated 04.07.2024, DC 13 dated 16.09.2024 and DC 14 dated 16.09.2024.*
- *that the finished goods were exported vide Shipping Bill No.4013690 dated 07.08.2024 and 4015861 dated 29.09.2024.*
- *that no capital goods have been provided to them by any of their foreign client. Further, he stated that Raw Material was supplied to them by one of their foreign client for manufacturing vide BoE No.1008157 dated 20.06.2024.*
- *that they entered into agreement between M/s VarsurImpexPvt. Ltd. (Unit-II) and M/s Cimple Trading FZE, Business Center, Sharjah Publishing Free Zone, Sharjah, UAE.*

- *On being asked why the agreement is neither notarized/registered nor it has signature of both parties on all pages, he informed that the agreement is as per normal trade practice of doing business where parties trust each other. Further, he stated that they notarize the agreements entered into with their Indian client(s) but they have never received any such instructions to notarize/register the agreements entered into with foreign client.*
- *that no capital goods have been supplied to them on loan or lease basis by any of their foreign client.*
- *that the Project Report dated 15.06.2022 submitted by M/s VarsurImpexPvt. Ltd. (Unit-II) at the time of UAC for approval of unit. At page no. 04 of the said report, they have informed that they intend to start manufacturing facility consisting of manual processing, quality control, packaging and facilitation of export to overseas clients.*
- *that their foreign client and themselves have already requested, vide their letters dated 15.10.2024 and 30.10.2024 respectively, to re-export the goods imported vide BoE no.1008157 dated 20.06.2024.*

4.3. Further, the SEZ unit vide letter dated 04.12.2024, addressed to the Development Commissioner submitted additional points.

5. Observation based on the above:

5.1 Based on the NSDL SEZ Online Bill of Entry No.1008157 dated 20.06.2024 filed by the SEZ unit M/s. VarsurImpexPvt. Ltd. (Unit-II), Kandla SEZ, it appeared that the said SEZ unit had imported raw material, viz. Areca Nuts Split, supplied by and on behalf of their foreign client, viz. M/s. Cimple Trading FZE, UAE, by availing the exemption as per the SEZ Act, 2005 and rules made thereunder.

5.2 Further, as per the submissions made and the relevant purchase invoices related to the capital goods submitted by the authorized representative of the SEZ unit during his statement, it appeared that the capital goods (e.g. Machinery etc.) were procured and owned by the said SEZ unit itself in their name. It was neither supplied by the said foreign client nor provided on loan/lease basis by the said foreign client to M/s. VarsurImpexPvt. Ltd. (Unit-II), Kandla SEZ.

5.3 Further, vide letter dated 04.12.2024, addressed to the Development Commissioner, KASEZ, the said SEZ unit had submitted that, at page no. 4 of the project report submitted by them to the Development Commissioner, it is mentioned that,"*We, at VarsurImpexPvt. Ltd., intend to provide manufacturing facility, on job work basis, processing, quality control, packaging and facilitation for export to our Indian & overseas client".*

- However, on going through the Project proposal as submitted by the unit, no mention of "Job work" or "Sub-contracting" etc. is found. Accordingly, the above submission

of SEZ Unit regarding "job work" in their project report appeared to be a misrepresentation of the facts.

- Further, as per the Letter of Approval (LoA) No. 21/2022-23 dated 25.01.2023 granted to them vide F.No.KASEZ/IA/16/2022-23 by the Development Commissioner, Kandla SEZ, no such approval/authorization for jobwork/sub-contracting on behalf of **overseas client** appeared to have been granted to the said SEZ unit.

- Furthermore, as per the letter vide F. No. KASEZ-IA1/21/2022-SEZ-Kandla/ 3161560/204-07 dated 09.04.2024 regarding extension of validity period of Letter of Approval No. 21/2022-23 dated 25.01.2023, it was clearly mentioned that "*job work/sub-contracting shall be strictly as per the provisions of SEZ Act and SEZ rules*".

- Further, Unit Approval Committee of Kandla SEZ under Table AgendaItem No. 209.4.2 of Minutes of 209th Meeting dated 23.12.2024 also noted that the activity of providing manufacturing services to their foreign client/providing sub-contracting services to their foreign client appeared to be in contravention to the provisions of SEZ Act & Rules and also contrary to the permissions granted to them as per their LOA as per SEZ Act, 2005 read with SEZ Rules, 2006 and hence, appeared to be an unauthorized activity as per SEZ Act, 2005 read with SEZ Rules, 2006.

- Further, as per the agreement dated 21.05.2024 (uploaded along with the B/E on NSDL SEZ Online portal) which they claimed to have entered with M/s. Cimple Trading FZE, UAE, the SEZ Unit, they appeared to have misrepresented themselves as "*Warehouse at KASEZ for extending Manufacturing & Job Work Services on in terms of SEZ Act & Rules 2005-2006, Rule 18(5)….*", even though they have been issued LoA dated 25.01.2023 for undertaking authorized operations of "*Manufacturing Activity*", which is again a misrepresentation of facts.

5.4 Further, the said SEZ unit, vide their letter dated 04.12.2024, submitted that "*in case of foreign clients, the raw materials or inputs will be provided by the foreign clients only and such raw materials may be procured locally or imported directly by the foreign clients*".

- Furthermore, the SEZ unit, vide their letter dated 04.12.2024, submitted that since the raw material, i.e. Areca Nuts Split have been supplied by their foreign client M/s. Cimple Trading FZE and due to oversight in his statement dated 03.12.2024, he had stated that:
  " '*...nor any raw material has been provided to us by any of our foreign clients*" *which may be please be read as* "*raw material has been provided to us by our foreign clients…'* ".

- Based on the same, it is clear that the goods (i.e. Areca Nuts Split) imported vide BoE No. 1008157 dated 20.06.2024, were supplied by the foreign client on their own behalf and ownership of the same lies with the foreign client.

- Further, during the statement, the authorized representative of the unit has mentioned that "*Cutting Machine (01 No.) was purchased by them vide Purchase Invoice No.036 dated 25.01.2024".* Accordingly, it is evident that the capital goods viz., Cutting Machine was procured domestically vide invoice no. 036 dated 25.01.2024 in the name of the SEZ unit. Hence, it appeared that the legal owner of these capital goods is the SEZ unit itself and the said capital goods have not been supplied by their foreign clients.

- Hence, as discussed above, it appeared that the goods (i.e. Areca Nuts Split) imported vide BE No. 1008157 dated 20.06.2024, were supplied by the foreign client on their own behalf and ownership of the same lies with the foreign client. However, the capital goods were domestically procured by the said SEZ unit in their own name and not supplied by the Overseas entity.

5.5 Furthermore, the SEZ unit, vide their letter dated 04.12.2024, submitted that the SEZ unit M/s Varsur ImpexPvt. Ltd. (Unit-II), Kandla SEZ "*In the instant matter, since we were to manufacture for a foreign client M/s Cimple Trading FZE, the raw material i.e. Areca nut was supplied by them only*".

- Based on the above, it is evident that SEZ unit M/s VarsurImpexPvt. Ltd. (Unit-II), Kandla SEZ were to provide manufacturing services to their foreign client/provide sub-contracting services to their foreign client viz. M/s Cimple Trading FZE, Business Center, Sharjah Publishing Free Zone, Sharjah, UAE. In order to do the same, (the SEZ unit) imported raw materials viz. Areca Nuts Split supplied by their foreign client.

5.6**.** Whereas, Rule 43 of the SEZ Rules, 2006 states that:

Rule 43: Sub-contracting for Domestic Tariff Area unit for export:

"A Unit may, on the basis of annual permission from the Specified Officer, undertake sub-contracting for export on behalf of a Domestic Tariff Area exporter, subject to following conditions, namely:-

(a) all the raw material including semi-finished goods and consumables including fuel shall be supplied by Domestic Tariff Area exporter;

(b) finished goods shall be exported directly by the Unit on behalf of the Domestic Tariff Area exporter: Provided that in case of subcontracting on behalf of an Export Oriented Unit or an Electronic Hardware Technology Park unit or an Software Technology Park unit or Bio Technology Park unit, the finished goods may be exported either from the Unit or from the Export Oriented Unit or Electronic Hardware Technology Park unit or Software Technology Park unit or Bio-Technology Park unit;

(c) export document shall be jointly in the name of Domestic Tariff Area exporter and the Unit;

(d) the Domestic Tariff Area exporter shall be eligible for refund of duty paid on the inputs by way of brand rate of duty drawback."

From the above, it appeared that Rule 43 is applicable for sub-contracting by the SEZ unit for the DTA unit for the purpose of export only. Here, the client not being a DTA unit, the Rule 43 of SEZ Rules did not appear to be applicable in the instant case.

5.7 Furthermore, Rule 18(6) of SEZ Rules, 2006 states that*:*

Rule 18: Consideration of proposals for setting up of Unit in a Special Economic Zone:

(1)...

(2)..

...

(6) "Units may also be setup for providing services or manufacturing services to Overseas Entities subject to following conditions, namely:-

(a) Capital goods, raw materials including consumables sub-assemblies, components, semi-finished goods shall be supplied by the Overseas Entity free of cost;

(b) Capital goods for setting up such facilities may also be supplied on loan or lease basis, provided the notional value of such capital goods shall be taken into account for calculation of Net Foreign Exchange Earnings under rule 53.

...

"

From the above, it appeared that the SEZ unit may provide manufacturing services to Overseas Entities under Rule 18(6) of the SEZ Rules, 2006 subjected to fulfilment of conditions mentioned therein. However, as per the LoA vide F.No. KASEZ/IA/16/2022-23/9403 dated 27.01.2023, issued to the unit M/s VarsurImpexPvt. Ltd. (Unit-II), Kandla SEZ, no approval/authorization for undertaking such operations i.e., providing manufacturing services to overseas entities appeared to have been granted to them under Rule 18(6) of the SEZ Rules, 2006.

Further, Unit Approval Committee of Kandla SEZ under Table Agenda Item No. 209.4.2 of Minutes of 209th Meeting dated 23.12.2024 (Copy of the relevant minutes attached)had also noted that the activity of providing manufacturing services to their foreign client/providing sub-contracting services to their foreign client appeared to be in contravention to the provisions of SEZ Act & Rules and also contrary to the permissions granted to them as per their LOA as per SEZ Act, 2005 read with SEZ Rules, 2006 and hence, appeared to be an unauthorized activity as per SEZ Act, 2005 read with SEZ Rules, 2006.

Furthermore, in Form F submitted by the said SEZ Unit for setting up the unit at KASEZ, at para "VI. INVESTMENT", the SEZ Unit proposed to utilize Promoter's Capital for procuring Plant and machinery, whereas, under Rule 18(6) of the SEZ Rules, 2006, it is envisaged that the Capital goods either be supplied by the Overseas Entity free of cost or be supplied on loan or lease basis. In view of the above, the unit also did not appear to fulfil the conditions as mentioned in the Rule 18(6) of the SEZ Rules 2006.

Based on the above, it is seen that the SEZ unit did not had approval/authorization/permission under Rule 18(6) of SEZ Rules 2006. Furthermore, the conditions stipulated under Rule 18(6) of SEZ Rules 2006 appeared to have not been fulfilled in the subject matter by the SEZ unit.

5.8 Section 15 (9) of the SEZ Act 2005 states that:

"*The Development Commissioner may, after approval of the proposal referred to in sub-section (3), grant a letter of approval to the person concerned to set up a Unit and undertake such operations which the Development Commissioner may authorise and every such operation so authorised shall be mentioned in the letter of approval."*

Further, Section 2(c) of the SEZ Act, 2005 states that:

" (c)"authorised operations" means operations which may be authorised under sub-section (2) of section 4 and sub-section (9) of section 15; "

5.9. Based on the above, it appeared that the said activity by the SEZ unit of providing manufacturing services to their foreign client/providing sub-contracting services to their foreign client is contrary to the approvals/authorizations/permissions granted to them as per their LOA as per SEZ Act, 2005 readwith SEZ Rules, 2006 and hence, appeared to be not falling under the definition of "*authorised operations*" as defined under Section 2 (c) of the SEZ Act, 2005.

5.10. As per Section 26 of SEZ Act, 2005, the SEZ unit is entitled for exemption from any duty of Customs, under the Customs Act, 1962 or the Custom Tariff Act, 1975 or any other law for the time being in force, on goods imported into the SEZ unit, only to carry on the authorised operations. However, as discussed above, the import of subject goods by the SEZ unit, under the BE No 1008157 dated 20.06.2024 did not appear to be for carrying on the authorized operations in their LoA as defined under Section 2(c) of SEZ Act, 2005. Therefore, it appeared that the SEZ unit was not entitled for availing exemptions from Customs duty in terms of Section 26 of SEZ Act, 2005 for the said import. Accordingly, for availing exemption without observance of condition for availing exemption (i.e. for carrying on the authorised operations), the subject goods appeared to be liable for confiscation under Section 111(o) and Section 111 (d) of the Customs Act, 1962.

5.11 **Seizure of the goods:** Accordingly, on the reasonable belief that the goods are liable for confiscation under Customs Act, 1962, the said goods were seized vide seizure memo dated 16.12.2024.

5.12 Furthermore, as discussed above, as per Section 26 of SEZ Act, 2005, the SEZ unit was entitled for exemption from any duty of customs, under the Customs Act, 1962 or the Custom Tariff Act, 1975 or any other law for the time being in force, on goods imported into the SEZ unit, only to carry on the authorised operations. Further, Rule 25 of the SEZ Rules, 2006, states that where an entrepreneur does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations, the entrepreneur shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed without prejudice to any other action under the relevant provisions of the other acts including Customs Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975) etc.

5.13 Based on the above discussion, it appeared that all the exemptions, drawbacks and concessions availed by the SEZ unit on the import of subject goods is liable to be recovered from them under relevant provisions of Customs Act, 1962 readwith SEZ Act 2005 and rules made thereunder. The quantification of exemptions,concessions etc. availed on the import of subject goods (vide NSDL SEZ Online BE no 1008157 dated 20.06.2024)by the SEZ unit is as under:

Table-II

Quantity of Areca Nuts (Net wt.)	Assessable Value (in Rs.)	Basic Customs Duty (in Rs.)	SWS Customs (in Rs.)	IGST (in Rs.)	Total (in Rs.)
1,35,000 Kgs	7,10,37,081	7,10,37,081	71,03,708	1,79,01,344	9,60,42,134

6. Legal Provisions:

The following are the legal provisions, which are in general applicable in the present case.The list given herein is indicative and not exhaustive, as the context of legal provisions may otherwise require reference of other legal provisions, reference of which are also to be invited, as and when required:

6.1 **The Customs Act, 1962:**

6.1.1 Section 2(25) of the Customs Act, 1962
6.1.2 Section 2(33) of the Customs Act, 1962
6.1.3 Section 111 of the Customs Act, 1962
6.1.4 Section 112 of the Customs Act, 1962
6.1.5 Section 114 of the Customs Act, 1962
6.1.6 Section 117 of the Customs Act, 1962.
6.1.7 Section 28(4) of the Customs Act, 1962,

6.2. **SEZ Act, 2005 and SEZ Rules, 2006**

6.2.1 Section 2(c) of the SEZ Act,2005
6.2.2 Section 2(o) of the SEZ Act,2005
6.2.3 Section 15(9) of the SEZ Act, 2005.
6.2.4 Section 26 of the SEZ Act, 2005.
6.2.5 Rule 25 of the SEZ Rules, 2006.
6.2.6 Rule 27(1) of the SEZ Rules, 2006
6.2.7 Rule 27(10) of the SEZ Rules, 2006.
6.2.8 Rule 18 of the SEZ Rules, 2006.
6.2.9 Rule 28 of the SEZ Rules, 2006.
6.2.10 Rule 29(2) of the SEZ Rules, 2006.

7. Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods by the importer and exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be. Under self-assessment the importer or exporter has to ensure correct classification, applicable rate of duty, value and exemption notifications, if any, in respect of imported /export goods while presenting a bill of entry or shipping bill. Rule 75 of the SEZ Rules, 2006 provides that unless and otherwise specified in these rules all inward or outward movements of the goods into or from SEZ by the Unit/Developer shall be based on self-declaration made by the Unit/Developer. While importing the subject goods, the said SEZ unit was bound for true and correct declaration and ensuring import of subject goods was to carry on authorized operations as approved in their Letter of Approval issued by Development Commissioner, KASEZ. Further, as the said SEZ unit was engaged in business of activities related to subject goods, they were fully aware of specifications, characteristics, nature, classification, importability,approvals and other regulatory compliances as per SEZ Act,2005, SEZ Rules, 2006 and activities permitted in their LoAalongwith specified conditions therein in respect of the goods dealt by them in the SEZ area. Furthermore, they appeared to have willfully misrepresented themselves as "*Warehouse at KASEZ for extending Manufacturing & Job Work Services on in terms of SEZ Act & Rules 2005-2006, Rule 18(5)….*", even though they have been issued LoA dated 25.01.2023 for undertaking authorized operations of "*Manufacturing Activity*", which is again a misrepresentation of facts. The above discussed facts revealed that while importing subject goods, the said SEZ unit appeared to have willfully engaged in mis-stating and suppressing the substantial facts with a malafide intention to unlawfully avail the benefits of exemptions granted under SEZ Act, 2005 on the import of subject goods contrary to the approvals/authorizations granted in their Letter of Approval. The said act of omission and commission by the SEZ unit appeared to make them liable for penalties under Section 112, Section 114A, Section 114AA and Section 117 of the Customs Act, 1962. Further, it also made the subject goods liable for confiscation in terms of Section 111(o) and 111(d) of the Customs Act, 1962.

8. Further, as per section 46(4A) of the Customs Act, 1962, the importer, who is presenting the bill of entry, should ensure, *inter-alia*, the 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, which includes compliance with the condition of import of the subject goods only to carry on the authorized operations as approved in their Letter of Approval. It appearedthat the said SEZ unit had violated the provisions of section 46(4A) by importing the said goods,by way of willfulmis-statement, mis-representation and suppression of facts, to

import goods after availing exemptions which are in contravention to the conditions stipulated in their LoA. The SEZ Unit appeared to have intentionally used false or incorrect information and documents to mislead the Custom authorities, and to effect the import of subject goods after availing exemptions applicable to SEZ units only for authorized operations. Such omission and commission on their part were in violation of the provisions of Section 46 of the Customs Act, 1962 and made the impugned goods liable for confiscation in terms of Section 111(o) and 111(d) of the Customs Act, 1962 and made the said SEZ unit liable for penalties under Section 112, 114A, 114AA and section 117 of the Customs Act, 1962.

9. Accordingly, as discussed in foregoing paras, as the goods imported appeared to be intended for carrying on operations which were not "authorised operations" in terms of SEZ Act 2005 readwith rules made thereunder, the SEZ unit was not entitled for availing the benefits of exemptions as per Section 26 of SEZ Act, 2005. Further, Rule 25 of the SEZ Rules, 2006, states that where an entrepreneur does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations, the entrepreneur *shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed without prejudice to any other action under the relevant provisions of the other acts including Customs Act, 1962* (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975).

10. Based on the same, all the exemptions, concessions etc. availed on the import of subject goods (imported vide NSDL SEZ Online BE no 1008157 dated 20.06.2024)by the SEZ unit, amounting to **Rs.9,60,42,134/-** (Rupees Nine crore Sixty Lakh Forty Two Thousand One Hundred and Thirty Four only) (as detailed in Table-II above) by wilfully mis-stating and suppressing the substantial facts with a malafide intention, were liable to be recovered from the SEZ unit under Section 28(4) of the Customs Act, 1962 read with Rule 25 of the SEZ Rules, 2006, along with applicable interest under Section 28AA of the Customs Act, 1962. Consequently, the said act of omission and commission by the SEZ unit appeared to made them liable for penalty under Section 112, 114A, 114AA, 117 of the Customs Act, 1962

11. Accordingly, the said SEZ Unit, namely M/s. Varsur Impex Pvt Ltd (Unit-II) [IEC:AAGCV7466C] were called upon to show cause to the Commissioner of Customs, having office situated at Customs House, Near Balaji Temple, Kandla, District Kutch within 30 days from the receipt this notice as to why:-

i) The subject goods imported vide NSDL SEZ Online Bill of Entry no 1008157 dated 20.06.2024 having declared assessable value of **Rs.7,10,37,081/-** (Rupees Seven Crore Ten Lakh Thirty Seven Thousand and Eighty One only) should not be confiscated under Section 111(d) and 111(o) of the Customs Act, 1962 for contravening various provisions of the SEZ Act, 2005 readwith SEZ Rules, 2006 and Customs Act, 1962 as discussed above;

ii) All the exemptions, concessions etc. availed on the import of subject goods (imported vide NSDL SEZ Online BE no 1008157 dated 20.06.2024)by the SEZ unit, amounting to **Rs.9,60,42,134/-** (Rupees Nine Crore Sixty Lakh Forty Two Thousand One Hundred and Thirty Four only) (as detailed in Table-II above) should not be denied and demanded and

recovered from the SEZ unit under Section 28(4) of the Customs Act, 1962 read with Rule 25 of the SEZ Rules, 2006 for reasons as discussed above;

iii) Interest should not be demanded and recovered from the SEZ unit under Section 28 AA of the Customs Act, 1962 for reasons discussed above.

iv) Penalties should not be imposed on the SEZ unit under the Section 112, Section 114A, Section 114AA and Section 117 of the Customs Act, 1962 for the reasons discussed above,and;

v) Bond-cum-Legal Undertaking in Form-H executed by the said SEZ Unit should not be enforced towards its above liabilities.

12. PERSONAL HEARING AND DEFENCE REPLY:

Shri Mahendra Kapoor, Authorised representative of M/s Varsur Impex Pvt ltd. Attend the Personal hearing held on virtual mode on 16.01.2026 and submitted their reply vide letters dated:- 17.12.2025, 24.12.2025 & 23.01.2026.

12.1 Submission vide letter dated:- 17.12.2025: -M/s Varsur Impex Pvt. Ltd. hereinafter referred to as "the Noticee"), in their written submission dated 17.12.2025, have inter alia stated as under;

A.1 They had requested for inspecting the original LOA file in connection with the subject SCN, however the same has not been granted till date and also sought Cross-examination of following officers: -

1. Shri R.R. Meena, Authorized Officer, who assessed the bill of entry no 1008157 dt 20.06.24 (RUD-3)
2. Shri R.R. Meena, Authorized Officer who processed the shipping bill no 4016626 dated 23.10.24 seeking re export of the imported goods
3. Shri Yogesh Anand, PO who effected the seizure of the subject goods vide seizure memo dt 16.12.24 (RUD -11)
4. Shri Dinesh Singh, Chairman of UAC NO 209 held on 23.12.24 who approved the issuance of the impugned SCN (RUD-09)
5. Mr. Bhanu Jain, Specified Officer, Kasez, the supervisory authority of Seizure and other proceedings

A.2 That, the subject goods were duly assessed by the Authorized Officer and Specified Officer and permitted for removal into the SEZ Unit after examination of eligibility under the LOA and applicable provisions. Further, the inward movement of goods was allowed after issuance of No Objection Certificate by DRI, Gandhidham. These facts demonstrate that the import transactions were examined and verified at multiple levels.

A.3 That, the goods were imported for captive consumption meant exclusively for export, and continue to remain within the manufacturing unit. Re-export of the raw material was necessitated due to cancellation of the overseas order. In these circumstances, the allegations

regarding unauthorized operations and inadmissible exemption are disputed and require detailed rebuttal based on contemporaneous records.

A.4 That, the Noticee is a service provider and not the owner of the goods**,** and no exemption benefit has been availed by the Unit. These aspects go to the root of the matter and can be effectively addressed only after inspection of the original LOA file and cross-examination of the concerned officers and requested for Inspection of the original LOA file be permitted at the earliest and Cross-examination of the above-named officers/persons.

12.2 Submission dated 24.12.2025

M/s Varsur Impex Pvt. Ltd. (hereinafter referred to as "the Noticee"), in their written submission dated 24.12.2025, have inter alia stated as under:

A.1 That, the imported goods, in original and unprocessed condition, were in the process of re-export due to cancellation of the manufacturing order, when the alleged seizure was affected. It is a matter of record that no manufacturing or processing activity was undertaken, and the goods remained within the SEZ premises throughout.

A.2 That,no exemption benefits were availed in respect of the subject goods. The goods were imported for captive use for export purposes only, and upon cancellation of the overseas order, steps were immediately initiated for re-export to the supplier.

A.3 Considering that the goods are no longer required by the Unit, are of perishable nature, and are intended to be re-exported in the same condition, it is respectfully requested that the same may kindly be released on provisional basis for re-export, subject to such conditions as may be deemed fit by the Department. Once again requested to Inspection of the original LOA file be permitted and Cross-examination of the officers relied upon in the SCN be allowed,

12.3 WRITTEN SUBMISSIONS DATED 23.01.2026: -

M/s Varsur Impex Pvt. Ltd. (hereinafter referred to as "the Noticee"), in their written submission dated 23.01.2026, have inter alia stated as under;

A. ALLEGATION OF UNAUTHORISED OPERATIONS IS FALSE

A.1 It is submitted that the SCN wrongly alleges that the SEZ Unit is not authorised to provide manufacturing services to overseas clients/sub-contracting operations under Rule 18(6) of SEZ Rules, 2006.

A.2 it is submitted that Form F is a consolidated application form which does not segregate activities Rule-wise or Section-wise. There is no reference to any specific Rule in Form F. Therefore, the allegation that the unit is not authorised for such activity is misplaced and contrary to facts.

A.3 The project report dated 15.06.2022 clearly states that the unit intends to start manufacturing facility consisting of manual processing, quality control, packaging and facilitation of exports to overseas clients. This was duly considered by the UAC.

A.4 The relevant portion of project report (RUD 6, page 4) states:

"We, at Varsur Impex Pvt Ltd, intend to start manufacturing facility consisting of manual processing, quality control, packaging and facilitation of exports to our overseas clients. We will manufacture KOHI-E-NOOR and RAHEESI brand pan masala and gutka."

A.5 Thus, it is clear that the unit has mentioned providing manufacturing services/sub-contracting to overseas clients and the same was part of the project report based on which LOA was granted.

A.6 The LOA condition No. IX itself states:

"The approval is based on the details furnished by you in your project report proposal/application."

A.7 Therefore, the allegation that the unit does not have permission under Rule 18(6) is factually incorrect, baseless and malafide. It is an attempt to cause illegitimate harm to the business interest of the SEZ Unit. Accordingly, the allegation is unsustainable and liable to be set aside.

A.8 That, the reference is also made to Rule 43 of the SEZ Rule, 2006, this rule related to Sub-contraction for Domestic Tariff Area Unit for Export . It is not relevant to the present SCN, because it related to an overseas client & not to DTA Client.

B. ILLEGITIMATE SEIZURE AS REMOVAL OF GOODS TO THE UNIT WAS PERMITTED VIDE ASSESSED BILL OF ENTRY

B.1 The subject goods were imported and permitted to be removed vide assessed Bill of Entry No. 1008157 dated 20.06.2024, after considering eligibility of exemptions in terms of LOA and

B.2 The fact that the goods were assessed on final basis and permitted for inward movement clearly demonstrates that the import was valid and authorised.

B.3 It is submitted that the Authorized Officer assessed the bill of entry under Section 17 of Customs Act, 1962 and the SEZ Rules 2006, and found all details including classification, value, exemptions etc. to be in order. It is on record that Authoirsed officers i.e assessing officer consulted LOA.

B.4 Therefore, the allegation questioning eligibility for exemptions is baseless, not tenable, and contrary to records.

C. MANIPULATIVE PROTRAYAL OF NON-RECEIPT OF CAPITAL GOODS FROM OVERSEAS CLIENT

C.1 The SCN alleges that the SEZ Unit did not receive capital goods from overseas client. It is submitted that the overseas supplier delayed supply of capital goods and other raw materials, and hence, no manufacturing activity was undertaken.

C.2 Rule 18(6) does not prescribe any condition requiring receipt of capital goods first. Import of raw material prior to capital goods does not violate Rule 18(6) of SEZ Rules 2006.

C.3 The SCN's allegation that the unit intended to use domestically procured capital goods for the overseas client M/s Cimple Trading, FZE, Sharjah is false and misrepresented.

C.4 The reference of Rule 43 of SEZ Rule, 2006 is incorrect. The unit has already informed that the capital goods installed are being used for DTA clients with approval of specified officer and there is no violation of any rule.

D. OBSERVATIONS OF 209TH UAC ARE VOID AB INITIO

D.1 The observations of the 209th UAC (Agenda 209.4.2) are void ab initio due to violation of natural justice.

D.2 There was no intimation to the SEZ Unit about inclusion of agenda, no opportunity of hearing, no written submission asked, and deliberations were held without knowledge of the unit.

D.3 Therefore, the decision of UAC is invalid and cannot be relied upon.

E. INDISPENSABILITY OF CROSS EXAMINATION

E.1 It is not clear what material/evidence was placed before UAC to take decision.

E.2 The unit has requested cross examination of Mr. Dinesh Singh (then Development Commissioner) and Mr. Bhanu Jain (Deputy Commissioner) to prove that the seizure was based on ill-information and revengeful attitude.

E.3 In the absence of cross-examination, the entire proceedings are vitiated and the seizure is liable to be vacated.

F. NO ACT OF OMISSION OR COMMISSION ATTRIBUTABLE TO THE SEZ UNIT – PENALTY NOT IMPOSABLE

F.1 It is submitted that the SEZ Unit has not committed any offence, nor has any omission or commission occurred.

F.2 The SCN has invoked multiple penal provisions (Sections 112, 114A, 114AA and 117) which is unjustified.

F.3 The SCN itself admits that the SEZ unit has imported goods for authorised operations and has claimed exemptions based on LOA.

F.4 The goods remained in the SEZ unit and were not used for any manufacturing activity.

F.5 Therefore, no mis-declaration, no false declaration, no suppression and no mala fide intent is attributable to the SEZ Unit.

F.6 Reliance is placed on the decision of Hon'ble Bombay High Court in Commissioner of Customs, Raigad v. Ganesh Benzoplast Ltd., which held that once there is no breach of conditions and no confiscation, penalties cannot be imposed.

G. The Noticee also submits that the proceedings are based on a biased and targeted approach by the then Development Commissioner and certain Customs officials. The goods were already properly verified and finally assessed, and permission for inward movement into

the SEZ was granted. Taking action without any hearing or chance to explain shows a pre-decided mind set the Development Commissioner and Custom Authorities and violates natural justice. Therefore, the proceedings are arbitrary and not sustainable.

13. DISCUSSION AND FINDINGS

13.1.1 I have before me the Show Cause Notice bearing F. No. GEN/ADJ/ADC/55/2025-Adjn and DIN 20250271ML000000B318 issued under Section 28 and Section 124 of the Customs Act, 1962 read with Rule 25 of the Special Economic Zones Rules, 2006 to M s Varsur Impex Pvt. Ltd. Unit-II, Kandla Special Economic Zone, Gandhidham, Kutch.

13.1.2 The notice proposes confiscation of imported goods under Section 111(d) and Section 111(o) of the Customs Act, 1962, demand and recovery of customs duty foregone amounting to Rs 9,60,42,134 under Section 28(4) of the Customs Act, 1962 read with Rule 25 of the Special Economic Zones Rules, 2006 along with interest under Section 28AA, and imposition of penalties under Section 112, Section 114A, Section 114AA and Section 117 of the Customs Act, 1962, besides enforcement of Bond cum Legal Undertaking executed in Form H.

13.1.3 I have also considered the written submissions filed by the noticee dated 17.12.2025, 24.12.2025 & 23.01.2026.

13.2. Relied upon documents and record considered

The Show Cause Notice relies upon, inter alia, the Letter of Approval No 21/2022-23 dated 25.01.2023, Import Bill of Entry No 1008157 dated 20.06.2024 with import documents, Panchnama dated 12.11.2024, summons issued under Section 108, statement dated 03.12.2024 of Shri Nawaz Khan Choudhary, letter of the noticee dated 04.12.2024, extension letter dated 09.04.2024, and the agreement dated 21.05.2024 uploaded along with the Bill of Entry.

13.3. Brief facts as emerging from record

13.3.1 The noticee is an SEZ unit situated at Shed No 168, First Floor, Special CIB Type, Phase I, Sector II, Kandla Special Economic Zone, Gandhidham, Kutch, holding Letter of Approval No 21/2022-23 dated 25.01.2023 granted by the Development Commissioner, Kandla Special Economic Zone, to undertake authorised operations mentioned therein.

13.3.2 The noticee filed Import Bill of Entry No 1008157 dated 20.06.2024 for “Areca Nuts Split” classifiable under 08028020, quantity 2346 bags, gross weight 1,38,416 kgs, declared assessable value Rs.7,10,37,081, filed on behalf of a foreign client M/s Cimple Trading FZE, Sharjah, UAE, and availed SEZ exemptions.

13.3.3 The department visited and examined stock under Panchnama dated 12.11.2024 and subsequently seized the goods under seizure memo dated 16.12.2024 as recorded in the notice.

13.3.4 Statement of Shri Nawaz Khan Choudhary, Authorised Representative, was recorded under Section 108 of the Customs Act, 1962 on 03.12.2024. The Show Cause Notice records, inter alia, his admissions that no capital goods were provided by the foreign client and that the cutting machine was purchased by the SEZ unit under Purchase Invoice No 036 dated 25.01.2024.

13.3.5 The notice alleges that the noticee was providing manufacturing services or sub-contracting services to an overseas entity without approval under Rule 18(6) of the Special Economic Zones Rules, 2006, that such activity did not fall within "authorised operations" under Section 2(c) read with Section 15(9) of the SEZ Act, 2005, and that consequently the import was not eligible for exemption under Section 26 of the SEZ Act, 2005.

13.4. Issues for determination

I determine the following issues on a preponderance of probability, applying the settled quasi-judicial standard in customs adjudication where the proceedings are civil in nature but the consequences are penal and therefore the reasons must be cogent and evidence based.

(a) Whether the activity undertaken by the noticee in relation to the import under Bill of Entry No 1008157 dated 20.06.2024 was outside the authorised operations granted under the Letter of Approval dated 25.01.2023 and Whether the noticee could claim the framework of Rule 18(6) of the Special Economic Zones Rules, 2006 without specific approval and without satisfaction of its conditions relating to supply of capital goods and inputs by the overseas entity.

(b) Whether the goods are liable to confiscation under Section 111(d) and Section 111(o).

(c) Whether duty foregone amounting to Rs.9,60,42,134 is recoverable under Section 28(4) read with Rule 25, with interest under Section 28AA.

(d) Whether penalties under Section 112, Section 114A, Section 114AA and Section 117 are imposable and whether the Bond cum Legal Undertaking is enforceable.

14. Findings

14.1 Issue 1

14.1.1 The Show Cause Notice alleges that the import under Bill of Entry No. 1008157 dated 20.06.2024 was not for the noticee's authorised manufacturing operations, as

approved in its Letter of Approval, but was instead linked to an arrangement of providing manufacturing services to an overseas entity. Such activity is permissible only under Rule 18(6) of the SEZ Rules, 2006, subject to specific approval and conditions, including the requirement that capital goods and raw materials be supplied by the overseas entity. No approval under Rule 18(6) was granted, and the mandatory conditions were not met, as the capital goods were procured domestically by the noticee. Accordingly, the activity did not fall within authorised operations, and the exemption claimed under Section 26 of the SEZ Act, 2005 is alleged to be inapplicable.

14.1.2 The manner in which the allegation is made is by linking

(a) The Bill of Entry itself which shows it was filed on behalf of the foreign client.

(b) The agreement dated 21.05.2024 (uploaded alongwith Bill of Entry) which portrays the noticee, as a job work service provider.

(c) The statement dated 03.12.2024 of authorised signatory which admits absence of capital goods supplied by the overseas client.

(d) The Letter of Approval which authorises manufacturing activity as "authorised operations" and specifically restricts job work subcontracting in the manner stated.

(e) The extension letter dated 09.04.2024 which reiterates that job work subcontracting shall be strictly as per SEZ Act and SEZ Rules.

Appreciation of evidence including RUDs and verbatim extracts

14.1.3 The Bill of Entry narration in the Show Cause Notice records that the noticee filed Bill of Entry No 1008157 dated 20.06.2024 on behalf of its foreign client. This documentary feature is material because it indicates that the noticee itself was not the commercial owner of the raw material and was acting as a processing facility for the overseas client. I find that the noticee uploaded the agreement dated 21.05.2024 alongwith the Bill of Entry dated 20.06.2024. The said agreement is a central contemporaneous document. On examining Page 1 of the agreement dated 21.05.2024, it is observed that the noticee, M/s Varsur Impex Pvt. Ltd., represents itself as the "absolute owner of the covered warehouse at KASEZ for extending Manufacturing & Job Work Services in terms of SEZ Act & Rules 2005–2006, Rule 18(5), at KASEZ, Gandhidham, as per LoA No. KASEZ/IA/16/2022-23/9403 dated 27.01.2023 issued by the Development Commissioner, KASEZ." In light of this representation, it becomes necessary to examine not only the Letter of Approval dated 27.01.2023 and its subsequent extension dated 09.04.2024, but also the project proposal dated 15.06.2022 submitted by the noticee, in order to ascertain whether the noticee was ever authorised to undertake manufacturing or job-work services for overseas clients within the framework of Rule 18(5)/18(6) of the SEZ Rules, 2006.

14.1.4 I note that the noticee had applied for the establishment of a manufacturing unit in the Kandla Special Economic Zone (KASEZ) through their letter dated 18.08.2022, and had submitted, in support of this request, a detailed project report dated 15.06.2022. On going through the Page No. 4 of the project report dated 15.06.2022, I find that the noticee has declared the manufacturing process as given below:-

"The process involves ***procurement of quality ingredients from DTA/oversea suppliers****.* ***It will be procured from the suppliers of repute.*** *After delivery of the raw material at the manufacturing unit in the SEZ, quality inspection will be carried out and on finding material of requisite quality and standard, same will be put up for stamping, pressing as per requirement of the order, rolling, cutting. After this process is over, polishing of the product will be carried out. Thereafter, the product will be subjected to the quality control check and on finding the product satisfactory, the same will be conveyed to the packaging area for packing.* ***Lastly, the dispatches will be done as per the orders from the buyers****."*

A careful examination of the above mentioned manufacturing process reveals that the noticee had proposed a conventional manufacturing model wherein the unit itself would procure quality raw materials from reputed suppliers located either in the Domestic Tariff Area or overseas, undertake the complete manufacturing process within the SEZ, and thereafter dispatch the finished goods as per orders received from its buyers. This declared operational structure clearly indicates that the noticee intended to source inputs independently and manufacture goods on its own account for export, without any reference to, or dependence upon, raw materials being supplied by an overseas client. Significantly, the project report does not disclose any linkage or relationship between the supplier of raw materials and the eventual buyer of the finished goods, nor does it suggest that the noticee would perform manufacturing services on behalf of a foreign entity.

14.1.5 Considering the proposal of the noticee, the Development Commissioner vide Letter of Approval (LoA) No. 21/2022-23 dated 25.01.2023 allowed the setting up of a unit at KASEZ for undertaking authorised operations, namely, Manufacturing activity. The condition no.1 of the LoA stipulated that the noticee shall export the goods manufactured/goods imported/procured for trading and services, including items of trading as per provisions of SEZ Act, 2005 and Rules made thereunder. Further the condition no. (iv) stipulated that the noticee may import or procure from the Domestic Tariff Area all the items required for their authorized operations (i.e. manufacturing activity). Further as per condition no. (ix), the said LoA was based on the details furnished by them in their project proposal/application.

14.1.6 I find that the validity period of LoA dated 25.01.2023 was extended vide letter dated 09.04.2024 issued by the Development Commissioner, which continues the earlier conditions and adds an explicit reminder on job work and sub-contracting. The relevant verbatim extract reads "*job work/sub-contracting* shall be strictly as per the provisions of SEZ Act and SEZ Rules". It is pertinent to note that the term job work is not explicitly mentioned in the SEZ Act/Rules, however, for the purpose of extension letter dated 09.04.2024, the term

job work refers to "sub-contracting" as provided under Rule 43 of SEZ Rules, 2006 and not in relation to providing of manufacturing services to overseas clients under Rule 18(6) of the SEZ Rules, 2006. Under Rule 43, the SEZ Unit requires permission from the Specified officer to undertake sub-contracting for export on behalf of a Domestic Tariff Area exporter. The office of Development Commissioner vide letter dated 10.01.2025 informed that neither such permission had been sought by the SEZ unit nor such permission was granted by the Specified officer. The condition in the extension letter dated 09.04.2024 merely reiterates that any sub-contracting, if undertaken, must be carried out strictly in accordance with the applicable provisions of the SEZ Act and SEZ Rules. This clarification pertains only to sub-contracting under Rule 43 and has no relation whatsoever to *manufacturing services* under Rule 18(6) of the SEZ Rules, 2006.

14.1.7 Further, Rule 18(6) of the SEZ Rules, 2006, are reproduced below for ease of reference:-

18. Consideration of proposals for setting up of Unit in a Special Economic Zone.

(6) ***Units may also be setup for providing services or manufacturing services to Overseas Entities subject to following conditions, namely***:-

(a) Capital goods, raw materials including consumables sub-assemblies, components, semi-finished goods shall be supplied by the Overseas Entity free of cost;

(b) Capital goods for setting up such facilities may also be supplied on loan or lease basis, provided the notional value of such capital goods shall be taken into account for calculation of Net Foreign Exchange Earnings under rule 53.

(c) finished goods shall be exported out of the country or transferred to theCustoms Bonded Warehouse to be maintained by the Overseas entity; Provided that any supplies of finished goods shall be as per the instructions of the Overseas entity.

(d) the Unit shall receive the consideration for its manufacturing services in convertible foreign exchange directly from the said overseas entity;

(e) in case the said manufacturing facility is used by the Unit for carrying out production on its own account, separate accounts shall be maintained for the manufacturing and service activity.

Explanation: - "Overseas Entity" means a non-resident or a person of foreign origin and includes a company not incorporated in India.

14.1.8 On examining Rule 18 of the SEZ Rules, 2006, it is evident that this provision governs the consideration of proposals for setting up a Unit in a Special Economic Zone. Specifically, Rule 18(6) provides that *Units may also be set up for the purpose of providing services or manufacturing services to Overseas Entities*, subject to fulfilment of the detailed conditions prescribed therein, including that all capital goods and raw materials must be supplied free of cost or on loan/lease by the overseas entity, that finished goods shall be exported or transferred as instructed by such entity, and that the Unit shall receive consideration directly in convertible foreign exchange from the overseas entity. In the present case, as already discussed, the project report dated 15.06.2022 submitted by the noticee at the time of seeking approval does not contain any proposal or indication that the Unit sought to

be established was intended to operate under the Rule 18(6) framework or to provide manufacturing services to any overseas entity. The operational model presented in the project report contemplated independent procurement of raw materials by the Unit and manufacture of goods on its own account for export, and did not reflect any arrangement of inputs, capital goods, or instructions flowing from an overseas entity as envisaged under Rule 18(6). Accordingly, it is clear that the Letter of Approval granted to the noticee was not issued in relation to, nor did it incorporate, any authorization under Rule 18(6) of the SEZ Rules, 2006.

14.1.9 Without prejudice to the above, it is further observed that the capital goods installed in the Unit were procured domestically from the DTA and not supplied by any overseas entity, which is not in consonance with the mandatory condition under Rule 18(6) requiring that capital goods be provided free of cost or on loan/lease by the overseas entity. This further reinforces that the operations of the Unit were not structured or approved under the framework of Rule 18(6) of the SEZ Rules, 2006.

Defence version

14.1.10 The defence asserts that

(a) the allegation of unauthorised operations is false because the project report mentioned export to overseas clients and the Letter of Approval condition (ix) states that approval is based on the project report

(b) Form F does not require rule wise segregation and hence Rule 18(6) permission should be treated as implicit

(c) an assessed Bill of Entry dated 20.06.2024 implies the department accepted eligibility and hence seizure and demand are baseless

(d) the goods were not removed from the SEZ and no process was carried out and they sought re export

(e) the UAC observations were behind the back and cross examination of officers was requested

Reasons for upholding the finding

14.1.11 I reject the defence for the following reasons.

14.1.12 The concept of “authorised operations” under the SEZ Act is not a free floating permission based on general intentions in a project report. Section 15(9) of the SEZ Act requires that authorised operations are those which the Development Commissioner authorises and “every such operation so authorised shall be mentioned in the letter of approval”.

14.1.13 The noticee itself reproduces the definition of authorised operations under Section 2(c) and then applies it to the Letter of Approval as the decisive instrument. I accept this approach because it aligns with the statutory design.

14.1.14 I find that what the noticee actually did was not mere manufacturing by an SEZ unit for itself as contemplated in its approved manufacturing activity, but an arrangement where the overseas entity remained owner of the raw material, the noticee acted as processor and service provider. This is evident from the Bill of Entry filed on behalf of the foreign client and from the agreement describing job work services.

14.1.15 The reliance placed by the noticee on condition (ix) of the Letter of Approval does not assist it. Condition (ix) merely states that the approval is based on the project proposal. It does not convert every narrative line in a project report into an authorised operation, nor does it override the statutory requirement that authorised operations must be mentioned in the Letter of Approval and must be consistent with the Act and Rules. I note the verbatim extract of condition (ix) which the noticee itself cites

"The approval is based on the details furnished by you in your project proposal application"

14.1.16 Even assuming the project report contained language of export facilitation for overseas clients, the noticee's argument still fails because what is in dispute is not export as such, but providing manufacturing services to overseas entities under Rule 18(6) and claiming duty free import as a service facility for the overseas entity.

14.1.17 Accordingly, I hold that the activity connected with the import under Bill of Entry No 1008157 dated 20.06.2024 was not established to be within authorised operations, and I uphold the charge to that extent.

14.2 Issue 2

Charge explained in detail

14.2.1 The goods imported under Bill of Entry No 1008157 dated 20.06.2024 are liable to confiscation under Section 111(o) and Section 111(d) of the Customs Act, 1962 because exemption was availed without observance of conditions and because the import was in contravention of restrictions arising from SEZ law and the Letter of Approval conditions.

Appreciation of evidence and verbatim extracts

14.2.2 The Show Cause Notice records the department's conclusion that "the subject goods appear to be liable for confiscation under Section 111(o) and Section 111(d)" based on import not being for authorised operations and violation of LoA conditions.

14.2.3 The Letter of Approval contains condition (xvi) restricting job work sub-contracting movement. I have already relied upon its verbatim extract.

Defence version

14.2.4 The defence says confiscation is not sustainable because the Bill of Entry was assessed and because the goods remained within SEZ and were not used.

Reasons for upholding the finding

14.2.5 I observe that confiscation under Section 111(d) is attracted where goods are imported in contravention of any prohibition imposed under law. In the present case, the import was undertaken without the requisite approval or authorisation in the Letter of Approval, rendering the import in contravention of the framework governing authorised operations under the SEZ Act and Rules. Accordingly, the import is liable for confiscation under Section 111(d).

14.2.6 Further, confiscation under Section 111(o) is attracted where exemption is subject to fulfilment of specified conditions and such conditions remain unfulfilled. Although the import has been claimed to fall under the mechanism contemplated in Rule 18(6) of the SEZ Rules, 2006, the mandatory condition prescribed therein—particularly the requirement that capital goods be supplied by the overseas entity—was not fulfilled. In view of these findings, I hold the goods liable to confiscation under Section 111(d) and Section 111(o) of the Customs Act, 1962.

REDEMPTION OF GOODS-

14.2.7 The noticee has requested permission to re-export the seized goods. In view of the findings recorded above and considering that the goods continue to remain in their original, unprocessed form, I allow redemption of the confiscated goods only for the limited purpose of re-export, subject to payment of the applicable redemption fine and compliance with all statutory requirements. It is further directed that the goods shall be re-exported as is, without undertaking any manufacturing, processing, repacking, or any other operation within the SEZ. The re-export shall be carried out under supervision of the proper officer.

14.3 Issue 3

14.3.1 Whether the customs duty foregone amounting to Rs.9,60,42,134 on the impugned import is recoverable from the noticee under Section 28(4) of the Customs Act, 1962 read with Rule 25 of the SEZ Rules, 2006 with interest under Section 28AA of the Customs Act, 1962, because the exemption was wrongly availed by wilful misstatement and suppression of material facts.

14.3.2 In examining the applicability of Rule 25 of the SEZ Rules, 2006, I find that the said provision has no relevance to the facts of the present case. Rule 25 operates only in a situation where duty-free goods imported or procured by an SEZ Unit for authorised operations remain unutilised for a specified period and, as a result, must be cleared in accordance with Rule 37. Rule 25 and Rule 37 are reproduced below for ease of reference:-

"Rule 25- Where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case may be, shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed without prejudice to any other action under therelevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Excise Tariff Act, 1985, 84[the Central Goods and ServicesTax Act, 2017 (12 of 2017), Integrated Goods and Services Tax Act, 2017 (13 of 2017), State Goods and Services Tax Acts, Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992)] and the enactments specified in the First Schedule to the Act, as the case may be:

Provided that if there is a failure to achieve positive net foreign exchange earning, by a Unit,85[or stipulated Value addition, such entrepreneur shall also be liable] for penal action under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and the rules made there under.

Rule 37- Duration of goods 113[*****] in a Special Economic Zone.- (1) The goods admitted to a Special Economic Zone shall be utilized, exported or disposed off in accordance with the Act and rules within the validity period of the Letter of Approval issued to the Unit or in the case of a Developer within a period of one year or such extended period as may be allowed by the Specific Officer under subrule (5) of rule 12. (2) On failure to utilize or dispose off goods as provided such goods shall be liable for payment of duty as if the goods have been removed to Domestic Tariff Area on the date of expiry of the said validity period under sub-rule (1)."

14.3.3 On careful consideration of Rule 25 and Rule 37 of the SEZ Rules, 2006, I find that neither provision is applicable to the present case. Rule 25 is attracted only where duty-free goods admitted into an SEZ for authorised operations remain unutilised or are not duly accounted for, in which case the Unit is required to refund the benefits availed. Rule 37 complements this framework by prescribing the consequence of such non-utilisation—namely, that goods which remain unutilised beyond the validity of the Letter of Approval become liable to duty as if cleared into the Domestic Tariff Area. In the instant matter, the allegation is not that the imported goods remained unutilised or that they were due for clearance under Rule 37. Rather, the issue pertains to whether the initial import itself was for authorised operations under the Letter of Approval and whether the conditions of Rule 18(6) were fulfilled. As the dispute concerns the legitimacy of the import and not non-utilisation of goods, Rule 25 has no application to the present facts.

14.3.4 In this regard, reference is invited towards the order dated 24.09.2025 of the Punjab & Haryana High Court in the matter of M/s. Quarkcity India (Pvt.) Ltd vs UoI CWP-22284-2016, the relevant excerpt of which is reproduced below:-

"18. It is apparent that goods referred to in this provision would be those which when received in SEZ are found to be defective or otherwise found to be unfit and those which may have damaged or become defective after such import or procurement i.e. during use in SEZ. There is merit in the argument raised by learned counsel for respondents that in the present case, what is involved are goods which have become defective or damaged due to their non-utilisation by Unit or Developer within the stipulated period, thus, such goods would fall within the ambit of Rule 25 of SEZ Rules. It is clearly provided in Rule 25 that in the event of Entrepreneur or Developer not utilizing the goods or services on which exemptions, drawbacks, cess and concession have been availed for authorized operations, it shall refund the amount equal thereto without prejudice to any other action under relevant provisions of Statutes as are mentioned therein. Rule 37 of SEZ Rules clearly provides that goods admitted to SEZ shall be utilized, exported or disposed of in accordance with the Act and Rules within the validity period of Letter of Approval issued to such Unit or in case of development within one year or such extended period as may be allowed under Rule 12(5) of SEZ Rules and upon failure to utilize or dispose of goods as above, it shall be liable to pay duty as if the goods have been removed to Domestic Tariff Area on expiry of validity period under sub Rule 1."

14.3.5 Thus, Rule 25 is not invokable in the present case. Further, I find that the noticee attempted to utilise the imported goods in unauthorised operations i.e. manufacturing services to overseas client. Had they been successful in doing so, the duty would have been recoverable under Section 30 of the SEZ Act, 2005 read with Rule 34 of the SEZ Rules, 2006. Rule 34 is reproduced below for ease of reference:-

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

14.3.6 Therefore, in view of the above discussion and findings, I hold that demand of duty under Section 28(4) read with Rule 25 of the SEZ Rules, 2006 is not sustainable.

14.4 Issue 4

Charge explained in detail

14.4.1 The fifth charge is imposition of penalties under Section 112, Section 114A, Section 114AA and Section 117 of the Customs Act, 1962 on the noticee for improper importation, wrongful availment of exemption, and use of incorrect documents and misstatements.

Evidence and defence

14.4.2 The notice contains detailed allegations of wilful misstatement and suppression and proposes penalties.

14.4.3 The defence asserts that no penalty is imposable, argues that Section 117 cannot be invoked with other penal sections, and relies on the Bombay High Court decision in Commissioner of Customs, Raigad v Ganesh Benzoplast Ltd.

14.4.4 With regard to penal action under Section 114A, I find that since demand of duty under Section 28(4) is not sustainable, penalty under Section 114A is not sustainable.

14.4.5 With regard to penal action under Section 112(a) of the Customs Act, 1962, I find that the noticee being a SEZ unit has engaged themselves in import of goods for the purpose of carrying out manufacturing services for the overseas client for which they did not have the valid Letter of Approval. Their act has rendered the goods liable for confiscation under Section 111(d) and 111(o) of the Customs Act, 1962, thereby rendering them liable for penal action under Section 112(a) of the Customs Act, 1962.

14.4.6 With regard to penal action under Section 114AA of the Customs Act, 1962, I find that the ingredients of the said provision are not satisfied in the facts of the present case. The agreement dated 21.05.2024 relied upon by the department is not shown to be false, fabricated or forged document, nor is it established that the noticee knowingly or intentionally made or used a declaration or document which was false in any material particular. Thus, the penal provisions of Section 114AA are not attracted in the instant case.

14.4.7 On Section 117, I agree that it is a residuary penalty provision intended to apply only where a contravention is established for which no specific penalty is provided elsewhere in the act. In the present case, the alleged acts and omissions of the noticee stand fully examined and addressed under the specific penal provisions invoked, namely Sections 112 and 114A of the Customs Act, 1962. Accordingly, I hold that penalty under Section 117 of the Customs Act, 1962 is not attracted in the facts and circumstances of the case.

15. Cross examination and natural justice objections

15.1 They have requested for Cross-examination of following officers: -

1. Shri R.R. Meena, Authorized Officer, who assessed the bill of entry no 1008157 dt 20.06.24 (RUD-3)
2. Shri R.R. Meena, Authorized Officer who processed the shipping bill no 4016626 dated 23.10.24 seeking re export of the imported goods
3. Shri Yogesh Anand, PO who effected the seizure of the subject goods vide seizure memo dt 16.12.24 (RUD -11)

4. Shri Dinesh Singh, Chairman of UAC NO 209 held on 23.12.24 who approved the issuance of the impugned SCN (RUD-09)

5. Mr. Bhanu Jain, Specified Officer, Kasez, the supervisory authority of Seizure and other proceedings

15.2 I find that this request does not advance the defence because the determinative material is documentary and admitted, including the Letter of Approval dated 25.01.2023, extension letter dated 09.04.2024, agreement dated 21.05.2024, and admissions in the statement dated 03.12.2024 as narrated in the Show Cause Notice. Further, it is observed that denial of request for cross-examination has been held as not violating the principles of natural justice during quasi-judicial proceedings in the following case laws and reliance is placed on the same:-

I. In the case of Sanjeev Maggu Vs. Additional Commissioner of Customs (2026-TIOL-101-HC-DEL-CUS), the Hon'ble High Court of Delhi has held that-

"*15. Insofar as the remaining individuals are concerned, some of them are officials in the Customs Department, including, Mr. Pankaj Verma, Inspector Bond Section, Mr. Devender Singh, Tax Assistant Customs Department, Mr. Kishan Lal, Senior Tax Assistant Bond Section, Mr. Pramod Kumar, Superintendent, Audit Branch, Mr. Puneet Sethi, Air Customs Officer, Ms. Geeta Juneja, Superintendent, Mr. Mahindra Kapoor, Superintendent, Mr. Kulwendra Singh, Assistant Commissioner.*

*16. The aforesaid persons being Customs Officials, this Court is of the considered view that they were discharging their duties in an official capacity. Consequently, they cannot, as a matter of right, be subjected to cross-examination, particularly in view of the settled position of law laid down by this Court in W.P.(C) 4576/2026 titled M/s Vallabh Textiles vs. Additional Commissioner Central Tax GST, Delhi East and Ors. = **2025-TIOL-680-HC-DEL-GST**, wherein the Court has held that the right to cross examination is not an unfettered and absolute right. Prejudice has to be shown which would lead to a conclusion that without cross examination substantial justice cannot be done. The relevant portion of the said decision in M/s Vallabh Textiles (Supra) reads as under:*

"18. A perusal of the above decisions reveals that while cross-examination would be required in certain cases, it need not be given as a matter of right in all cases. The provision of the opportunity to cross-examine depends on the facts and circumstances of each case and is warranted only when the party seeking such an opportunity is able to demonstrate that prejudice would be caused in the absence thereof.

19. The Court is of the considered view that parties cannot, by praying for cross-examination, cannot convert Show-cause Notice proceedings into mini-trials. Persons seeking cross-examination ought to give specific reasons why cross-examination is needed in a particular situation and that too of specific witnesses. A blanket request to cross-examine all persons whose statements have been recorded by the Department, many of whom are typically employees, sellers, purchasers, or other persons connected to the entity under investigation, cannot be sustained. If a prayer for cross-examination is made, the Authority has to consider the same fairly and if the need is so felt in respect of a particular person, the same ought to be permitted. If not, the Authority can record the reasons and proceed in the case. Moreover, cross examination need not also be of all persons whose statements are recorded. It could be permitted by the Authority in case of some persons and not all."

II. In the case of **Patel Engg. Ltd. vs. UOI reported in 2014 (307) ELT 862 (Bom.)** Hon'ble Bombay High Court has held that;

"Adjudication – Cross-examination – Denial of- held does not amount to violation of principles of natural justice in every case, instead it depends on the particular facts and circumstances – Thus, right of cross-examination cannot be asserted in all inquiries and which rule or principle of natural justice must be followed depends upon several factors – Further, even if cross-examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated." [para 23];

III. In the case of **Suman Silk Mills Pvt. Ltd. Vs. Commissioner of Customs & C.Ex., Baroda [2002 (142) E.L.T. 640 (Tri.-Mumbai)]**, learned Tribunal has observed at Para 17 that-
"Natural Justice – Cross-examination – Confessional statements – No infraction of principles of natural justice where witnesses not cross-examined when statements admitting evasion were confessional."

IV. In the case of **Commissioner of Customs, Hyderabad V. Tallaja Impex reported in 2012(279) ELT 433 (Tri.)**, it was held that-

"In a quasi-judicial proceeding, strict rules of evidence need not to be followed. Cross examination cannot be claimed as a matter of right."

V. Hon'ble Tribunal in its decision in **Sridhar Paints v/s Commissioner of Central Excise, Hyderabad reported as 2006(198) ELT 514 (Tri-Bang)** has held that:

"……. denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, we find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized" (Para 9)

VI. Hon'ble Punjab and Haryana High Court in its decision in the case of **Azad Engg Works v/s Commissioner of Customs and Central Excise, reported as 2006(2002) ELT 423**, has held that;
"……. It is well settled that no rigid rule can be laid down as to when principles of natural justice apply and what is their scope and extent. The said rule contains principles of fair play. Interference with an order on this ground cannot be mechanical. Court has to see prejudice caused to the affected party. Reference may be made to judgment of Hon'ble the Supreme Court in K.L. Tripathi v. State Bank of India and others, AIR 1984 SC 273"

VII. Hon'ble Tribunal in the case of **P Pratap Rao Sait v/s Commissioner of Customs reported as 1988 (33) ELT (Tri)** has held in Para 5 that:

"……. The plea of the learned counsel that the appellant was not permitted to cross-examine the officer and that would vitiate the impugned order on grounds of natural justice is not legally tenable.

VIII. Similarly in **A.L Jalauddin v/s Enforcement Director reported as 2010(261) ELT 84 (Mad HC)** the Hon'ble High Court has held that;

"…. Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons. We may refer to the paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kanungo & Co. v. Collector, Customs, Calcutta)".

Order

16. In exercise of the powers vested in me, I hereby pass the following order.

i) I order to confiscate the subject goods imported vide NSDL SEZ Online Bill of Entry no 1008157 dated 20.06.2024 having declared assessable value of Rs.7,10,37,081/- (Rupees Seven Crore Ten Lakh Thirty Seven Thousand and Eighty One only) under Section 111(d) and 111(o) of the Customs Act, 1962;

However, I give them an option of redemption of goods on payment of fine of Rs. 75,00,000/- (Rupees Seventy Five lakhs only) under Section 125 of the Customs Act, 1962 for the purpose of re-export of goods.

ii) I hold that all the exemptions, concessions etc. availed on the import of subject goods (imported vide NSDL SEZ Online BE no 1008157 dated 20.06.2024)by the SEZ unit, amounting to Rs.9,60,42,134/- (Rupees Nine Crore Sixty Lakh Forty Two Thousand One Hundred and Thirty Four only) are not recoverable from the SEZ unit under Section 28(4) of the Customs Act, 1962 read with Rule 25 of the SEZ Rules, 2006 for reasons as discussed above;

iii) Consequently, Interest amount is not recoverable under Section 28AA of the Customs Act, 1962.

iv) I refrain from imposing penalty under Section 114A of the Customs Act, 1962.

v) I impose a penalty of Rs. 50,00,000/- (Rupees Fifty lakhs only) under Section 112(a) of the Customs Act, 1962.

vi) I refrain from imposing penalty under Section 114AA of the Customs Act, 1962.

vii) I refrain from imposing penalty under Section 117 of the Customs Act, 1962.

viii) I order to enforce the Bond-cum-Legal Undertaking in Form-H executed by the said SEZ Unit towards its above liabilities.

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

Digitally signed by
Nitin Saini
Date: 05-02-2026
19:15:04

(Nitin Saini)
Commissioner of Customs
Custom House, Kandla.

F. No- GEN/ADJ/COMM/55/2025-Adjn-O/o Commr-Cus-Kandla
DIN- 20260271ML000051085A

By Speed Post/Courier/Email
To:
M/s.Varsur Impex Pvt Ltd (Unit-II), Shed No. 168,
First Floor, Special CIB Type, Phase-I, Sector-II,
Kandla Special Economic Zone, Gandhidham, Kutch

Copy to:-
1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad for Review.
2. The Development Commissioner, Kandla Special Economic Zone, Gandhidham, Kutch.
3. The Deputy Commissioner, KASEZ, Gandhidham.
4. The Superintendent (EDI), Kandla for uploading the SCN on the website of Kandla Customs
5. The AC/DC (TRC/Legal), CH Kandla for information.
6. Guard file.