प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद
सीमाशुल्कभवन, आलइंडीयारेडीऑकेबाजुमे, नवरंगपुरा ,अह्मदाबाद 380009
दुरभाष (079) 2754 46 30 **फैक्स** (079) 2754 23 43
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD
CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009
PHONE : (079) 2754 46 30 FAX (079) 2754 23 43
DIN-20250271MN00000159E1

निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.

फा. सं./ **F.No.GEN/ADJ/COMM/431/2024-TECH**

आदेशकीतारीख/Date of Order :24.2.2025

जारीकरनेकीतारीख/Date of Issue : 24.2.2025

द्वारापारित :- **शिव कुमार शर्मा, प्रधान आयुक्त**

Passed by :- **Shiv Kumar Sharma, Principal Commissioner**

मूलआदेशसंख्या **: Order-In-Original No: AHM-CUSTM-000-PR.COM-65-24-25 Dated 24.2.2025** in the case of M/s. Meghmani Organics Ltd. Plot No. Z-31 & 32, Dahej, SEZ-I, Taluka Vagra, Bharuch-Gujarat -392130.

1 जिसव्यक्ति(यों) कोयहप्रतिभेजीजातीहै, उसेव्यक्तिगतप्रयोगकेलिएनिःशुल्कप्रदानकीजातीहै।

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेशसे असंतुष्ट कोई भी व्यक्ति इस आदेशकी प्राप्तिसे तीन माहके भीतर सीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीयन्यायाधिकरण, अहमदाबाद पीठको इस आदेशके विरुद्ध अपील कर सकता है। अपील सहायकरजिस्ट्रार, सीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीयन्यायाधिकरण, दुसरी मंज़िल, बहुमालीभवन , गिरिधरनगर पुलके बाजुमे, गिरिधरनगर, असारवा, अह्मदाबाद-380 004 को सम्बोधित होनी चाहिए।

2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, *Ahmedabad* – 380004.

3. उक्तअपीलप्रारुपसं. सी.ए.3 मेंदाखिलकीजानीचाहिए।उसपरसीमाशुल्क (अपील) नियमावली, 1982 के नियम 3 के उपनियम (2) मेंविनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्तअपीलको चार प्रतियोँमें दाखिल किया जाए तथा जिस आदेशके विरुद्ध अपील की गई हो, उसकीभीउतनीहीप्रतियाँसंलग्नकीजाएँ

(उनमेंसेकमसेकमएकप्रतिप्रमाणितहोनीचाहिए)।अपीलसेसम्बंधितसभीदस्तावेजभीचारप्रतियोंमेंअग्रेषित किएजानेचाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपीलजिसमेंतथ्योंकाविवरणएवंअपीलकेआधारशामिलहैं, चार प्रतियोंमें दाखिल की जाएगी तथा उसके साथ जिस आदेशके विरुद्ध अपील की गईहो, उसकीभी उतनीही प्रतियाँ संलगनकी जाएंगी (उनमेंसेकमसेकमएकप्रमाणितप्रतिहोगी)।

4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपीलका प्रपत्र अंग्रेजी अथवा हिन्दीमें होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरणके बिना अपीलके कारणोंके स्पष्टशीर्षोंके अंतर्गत तैयार करना चाहिए एवं ऐसे कारणोंको क्रमानुसार क्रमांकित करना चाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रिय सीमा शुल्क अधिनियम,1962 की धारा 129 ऐके उपबन्धोंके अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थितहै, वहांके किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरणकी पीठके सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँगड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

6. The prescribed fee under the provisions of Section 129A of the Customs Act,1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेशके विरूद्ध सीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीयन्यायाधिकरणमें शुल्कके 7.5% जहां शुल्क अथवा शुल्क एवं जुरमानाका विवादहै अथवा जुरमाना जहां शीर्फ जुरमानाके बारेमे विवादहै उसका भुकतान करके अपीलकी जा शकती है।

7. An appeal against this order shall lie before the Tribunal 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".

8. न्यायालयशुल्कअधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेशकी प्रति पर उपयुक्तन्यायालय शुल्क टिकट लगा होना चाहिए।

8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice No. GEN/ADJ/COMM/431/2024-TECH dated 15.10.2024 in case of M/s Meghmani Organics Ltd., Plot No. Z-31 & 32, Dahej SEZ-I, Taluka Vagra, District Bharuch, Gujarat 392130 issued by Principal Commissioner of Customs, Ahmedabad.

1. BRIEF FACTS OF THE CASE

1.1 M/s. Meghmani Organics Ltd., Plot No. Z-31 & Z-32, Dahej SEZ-I, Taluka- Vagra, District- Bharuch, Gujarat-392130, (hereinafter referred to as the "Noticee" for the sake of brevity) were engaged in manufacture of taxable goods viz. Pigments, High Performance Pigments, its intermediate, Basic/Fine Chemicals and its Derivatives falling under Chapters 29, 32, 34 & 38 of the ITC (HS). The Noticee had been granted permission to set up manufacturing unit and carry-on commercial production in Dahej SEZ vide LOA No. KASEZ/DCO/03/MOL/08-09 dated 05.05.2008(as amended & extended time to time), in terms of Rule 19(4) of the SEZ Rules, 2006. The Noticee has executed Bond-Cum Legal Undertaking in Form-H regarding their obligations for proper utilization and accounting of goods including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty free and regarding achievement of Positive Net Foreign Exchange earning in terms of provisions of Rule 22(i) of the SEZ Rules, 2006.

2.1 Whereas, on 22.10.2022, a fire incident happened at the factory premises of the Noticee situated at Plot No. Z/31 & Z32, SEZ-1, Dahej, Taluka-Vagra, District- Bharuch, Gujarat-392130.

2.2 Whereas, the Preventive Officer, Gate-I, Dahej SEZ, submitted a preliminary report letter dated 23.10.2022 to the Specified Officer, Dahej SEZ intimating about the fire incident **[RUD-1].** The Specified Officer, Multi-Product SEZ, Dahej (hereinafter referred to as the "Specified Officer"), vide letter dated 15.11.2022 **[RUD-2]** asked the Noticee about the cause of fire and extent of damage.

2.3 Whereas, the Noticee vide their letter dated 16.11.2022 **[RUD-3]** informed that they have informed the insurance company regarding the damage and the estimate of loss was being worked out. Further, from the incident report provided thereon, it had been informed that it appeared that the blast was caused due to human error and negligence.

2.4 On 19.05.2023, the Noticee vide their letter informed jurisdictional office that they had not submitted the Final Claim Bill to the surveyor. The final claim bill was under preparation and they submitted the estimated final claim amount to this office **[RUD-4].**

2.5 The Specified officer, Multi-Product SEZ, Dahej vide letter dated 14.07.2023 **[RUD-5]** asked the noticee to provide the details of extent of damage along with surveyor report and copy of the insurance of the same at the earliest.

2.6 Subsequently, the Noticee vide their letter dated 16.08.2023 **[RUD-6]** submitted the details of the extent of damage along with the surveyor report and copy of the insurance of the same to this office. The summary of the details provided is as below:

Sr.No.	Particulars	Amount
1	Stocks	
(i)	CPC	13,45,16,536
(ii)	Alpha Blue	2,40,28,442
(iii)	Beta Blue	23,40,26,090
	Total	**39,25,71,068/-**
2	Building	2,15,78,873
3	Plant & Machinery	42,46,516
4	Removal of Debris, Consulting Professional Fees, Claim, Preparation Cost, Fire Fighting Expenses, GST & Customs Duty etc.	2,58,254 10,00,000
Total		**41,96,54,711/-**

2.7 Subsequently, on scrutiny of the letter dated 19.05.2023 submitted by the noticee, a letter dated 24.08.2023 was issued to the noticee to provide the details of the goods destroyed during the fire incident in provided format **[RUD-7].**

2.8 The noticee submitted the details along with HSN and applicable rate of duty vide email dated 28.08.2023 along with annexure. **[RUD-8]**

2.9 From the above facts, it appeared that the goods viz. capital goods, inputs and semi-finished, destroyed in the fire incident in the factory premises of the Noticee, had not been utilized for the authorized operations, as envisaged in the LOA issued to the Noticee. Further, it also appeared that the Noticee failed to account for the goods so destroyed in the fire in the manner provided in the SEZ Act & Rules thereunder.

3. LEGAL PROVISIONS

3.1 Section 7 of SEZ Act, 2005 provides that;

> *7. Any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by, -*
>
> *(i) a Unit in a Special Economic Zone; or*
> *(ii) a Developer;*

shall, subject to such terms, conditions and limitations, as may be prescribed, be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.

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

"26. Exemptions, drawbacks and concessions to every Developer and entrepreneur
1. Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:-
a. exemption from any duty of customs, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods imported into, or services provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur;
.....
c. exemption from any duty of excise, under the Central Excise Act, 1944 (1 of 1944) or the Central Excise Tariff Act, 1985 (5 of 1986) or any other law for the time being in force, on goods brought from Domestic Tariff Area to a Special Economic Zone or Unit, to carry on the authorised operations by the Developer or entrepreneur;
...."
2. The Central Government may prescribe, the manner in which, and, the terms and conditions subject to which, the exemptions, concessions, draw back or other benefits shall be granted to the Developer or entrepreneur under sub-section (1).

3.3 Whereas, an SEZ unit is allowed to import from abroad or procure from domestic tariff area without payment of applicable duties/taxes in terms of Section 26(1) of the SEZ Act, 2005 read with Rule 27 of the SEZ Rules, 2006. Further, such exemptions from duties and Taxes on inputs procured from domestic area or imported, are subject to provisions of Section 26(2) of the SEZ Act, 2005 and terms and conditions, as imposed vide Rule 22 of SEZ Rules, 2005, which *interalia* required that

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

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

(a) .....;

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

(c) .....
.....
.....

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

3.4 Whereas, Rule 25 of the SEZ Rules, 2005 specifies that

"Where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case may be, shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed without prejudice to any other action under the relevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Excise Tariff Act, 1985, the Central Sales Tax Act, 1956, the Foreign Trade (Development and Regulation) Act, 1992 and the Finance Act, 1994 (in respect of service tax) and the enactments specified in the First Schedule to the Act, as the case may be: Provided that if there is a failure to achieve positive net foreign exchange earning, by a Unit, such entrepreneur shall be liable for penal action under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and the rules made there under."

3.5 Whereas, Rule 27 of SEZ Rules, 2006 specifies that

27. Import and Procurement-

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

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

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

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

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

"47. Sales in Domestic Tariff Area-

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

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

3.9 Further, from the submissions made by the Noticee, it appeared that they had also procured duty free goods indigenously without payment of Central Excise Duty/Goods & Service Tax as such supplies were considered as export, and therefore, in terms of provisions of Rule 34 of the SEZ Rules, 2006 if the goods admitted in SEZ 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 Rule 22 of SEZ Rules, 2006, duty shall be chargeable on such goods as if these goods have been cleared for home consumption. Further, as per Rule 47(4) of the SEZ Rules, 2006, valuation and assessment of the cleared/provided into Domestic Tariff Area shall be made in accordance with the Customs Act and rules made thereunder.

3.10 Whereas, in the instant case, it appeared that being an SEZ unit, the Noticee was legally bound to follow the provisions of Rule 22, 25, 27 & 34 of the SEZ Rules, 2006 in respect of the goods procured duty free under the provisions of

Section 26 of the SEZ Act,2005. It appeared that the Noticee had failed to utilize the aforesaid goods in their unit for their authorized operation and to follow the prescribed procedure as provided in Rule 22(2) and Rule 34 of the SEZ Rules, 2006 to the extent said goods were destroyed in fire.

3.11 From the above discussion, it appeared that the Noticees had contravened Provisions of Section 26(1) of SEZ Act, 2005 read with Rule 27 of the SEZ Rules, 2006 in as much as they had failed to utilized the goods procured duty free for authorized operations; Section 26(2) of the SEZ Act, 2005 and Rule 22 of SEZ Rules, 2006 in as much as they had failed to follow terms and conditions for duty free procurement of goods.

3.12 Whereas, the Noticee had, in terms of Rule 22 of the SEZ Rules, 2006 executed Bond-cum-Legal undertaking, whereby they bound themselves for proper utilization and accountal of goods procured duty free. It appeared from the discussion herein that the Noticee had breached the said bond-cum-legal undertaking, thereby making themself liable for payment of applicable duties on goods destroyed in fire, as the same were not utilized for authorized operations and were not accounted for in terms of SEZ Rules, 2006.

3.13 It therefore, appeared that the Noticee was liable to pay an amount equal to the applicable duties on the aforesaid goods burnt/destroyed in the fire incident, alongwith applicable interest on the said amount of duties at a rate as specified in the Notification of the Government of India, Ministry of Finance (Department of Revenue), issued under Section 28AA of the Customs Act, 1962, from the material date till the date of payment of such duties.

3.14 Whereas, it appeared that the provision of Section 23(1) of the Customs Act, 1962 that; "*where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Custom that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall remit the duty on such goods*" are not applicable in the present case as the goods under question had been ordered to be deposited in a warehouse under Section 60 of the Customs Act, 1962 and were intended to be utilized in the manufacture (under Bond under Section 65 of the Customs Act, 1962) of the finished goods to be exported out of India. Hence, it appeared that the remission on such imported goods is not permissible to the Noticees in the instant case. It further appeared that there is no provision in the SEZ Statute for claiming such duty remission, and also, by virtue of Section 51 of the SEZ Act, 2005, the SEZ Act has the overriding effect.

4. CALCULATION OF DUTIES INVOLVED IN THE GOODS DESTROYED IN THE FIRE INCIDENT

4.1 Whereas, the Noticee had produced the details of the destroyed goods vide their letter dated 16.11.2022, 19.05.2023, 16.08.2023 . Further, on being asked the Noticee also produced goods destroyed details vide email dated 28.08.2023 in respect of capital goods. Accordingly, the details regarding value and duty foregone are summarized herein below:

	Assessable Value	BCD	SW cess on BCD	IGST	Duty Foregone
Capital Goods	1,84,38,383	0	0	33,18,909	33,18,909
CPC Blue	13,45,16,536	1,00,88,740	10,08,874	2,62,10,547	3,73,08,161
Alpha Blue Pigment	2,40,28,442	18,02,133	1,80,213	46,81,942	66,64,288
Beta Blue Pigment	23,40,26,090	1,75,51,957	17,55,196	4,55,99,984	6,49,07036
Total	**41,10,09,451**	**2,94,42,830**	**29,44,283**	**7,98,11,382**	**11,21,98,495**

Accordingly, the total amount of value of goods destroyed in the fire incident comes to be Rs. 41,10,09,451/- and the duty involved therein comes to be Rs. 11,21,98,495/- as detailed in Annexure attached herewith.

5. CONCLUSION

5.1 In light of the facts and circumstances discussed in the above paras, it appeared that in the instant case, imported/indigenous duty free goods procured by the Noticee had not been utilized for the authorized operation for which the same were intended, due to fire incident. Therefore, the goods imported/ procured indigenously duty free, valued at Rs. 41,10,09,451/- involving Duties of Customs totally amounting to Rs. 11,21,98,495/- (including Cess) were destroyed in the fire and thus, were not used for the authorized operation nor accounted for as discussed in paras supra. It therefore, appeared that the Noticee was liable to pay amount of Rs. 11,21,98,495/- **-** including cess (as detailed in Annexure to this notice), equal to the duties and tax leviable on the goods, under Section 28(1) of the Customs Act,1962, read with Rule 22, Rule 34 and Rule 47 of the SEZ Rules, 2006, and Section 26 of the SEZ, Act, 2005. It appeared that the Noticee was also liable to pay interest at a rate as specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue) under Section 28AA of the Customs Act, 1962, on the said amount of duties till the date of payment of such duties.

5.2 Whereas, from the revised insurance details it appeared that the Noticee has not claimed the duty component from the insurance company in respect of

goods destroyed in the fire incident. This shows that the Noticee was not concerned about the duty component as if there was no duty or there was no loss of duty on the said goods. However, it is not the case; the goods were dutiable and were procured without payment of same, only for the purpose of authorized operation in the SEZ. In case of domestically procured goods, the suppliers of the goods had availed the export benefit thereon i.e. the Government had already paid to the suppliers the duty component by way of benefit of non-payment of duties available on the supplies made to the SEZ. The goods were in possession of the Noticee and were received only for authorized operation. The monetary loss suffered by the Noticee has been/is being compensated by the insurance company, but the loss of public money in the form of duties has not been compensated. Therefore, in the present case, when the goods in question have not been used for authorized operation in SEZ, the same may be treated as goods improperly imported/procured by the Noticees and their act constitute the offence as described under Section 112 of the Customs Act, 1962, and hence, they have rendered themselves liable for penalty under the said Section.

5.3 Further, from the submission made by the notice vide letter dated 16.11.2022, the cause of fire appears to be human error and negligence, and accordingly, the Noticee has failed to undertake the required safety measures in the licensed premises of the Developer.

5.4 It also appeared that being an SEZ unit, the Noticee has undertaken to fulfill all the conditions stipulated in various Notifications/Circulars etc. related to the SEZ unit. The Noticee, by way of furnishing Bond-Cum Legal Undertaking in Form H, have undertaken to pay duty, interest, penalty etc. in case of any demand for violation of any of the conditions mentioned in the said Bond-Cum Legal Undertaking. Therefore, above mentioned dues such as duty, interest and penalty etc. can be made by enforcing the Bonds, executed by them.

6. A pre consultation was fixed on 4.10.2024 and Shri Ashok Herma, DGM (Indirect Tax) of the Company appeared on behalf of M/s Meghmani Organics Ltd and submitted that he would be furnishing written submissions by 7.10.2024. Further submissions were submitted by him on 7.10.2024 wherein M/s Meghmani Organics Ltd submitted that there was a fire occurrence on 22.10.2022 in their factory premises located at Plot no. Z-31 and Z-32, Dahej SEZ-I, Taluka Vagra, Bharuch and they submitted necessary intimation and subsequently on 19.5.2023, they submitted details of final claim of fire accident to Appraising Officer Dahej, SEZ, Dahej with summary of stock damaged in fire valuing Rs. 39,25,71,068/-. They submitted that all goods i.e. CPC, Alpha Blue, Beta Blue destroyed were recorded in their books, registers, SAP system and there is no contravention of Rule 22(1)(i) of SEZ Rules and hence enforcement of Bond-cum-

Legal undertaking doesn't arise. They cited the Tribunal judgements in case of M/s Satguru Poly Fab P ltd vs CC Kandla reported at 2011(267)ELT 273 (Tri-Ahmd) and M/s Jindal International vs CC Kandla reported as 2013(290)ELT 729 (Tri-Ahmd) that destruction of goods in accidental fire is not a case where such goods could be considered to have been utilized for any purpose other than the authorized operation and the goods were not accounted for (both CESTAT orders accepted by department on merit as reported from Kandla Customs submitted by M/s Meghmani Organics Ltd). They also submitted that in a similar issue of fire occurred in their premises on 27.7.2016, an OIO No. AHM-CUSTM-000-COM-005-19-20 dated 28.6.2019 was passed by Principal Commissioner of Customs, Ahmedabad wherein the demand was dropped. They also cited the CESTAT judgement in case of P I Industries Ltd vs Principal Commissioner of Customs (CESTAT Ahmedabad).

7. SHOW CAUSE

7.1 Now therefore, M/s. Meghmani Organics Ltd., Plot No. Z-31 & 32 Dahej SEZ-I, Taluka- Vagra, District- Bharuch, Gujarat-392130 were required to show cause to the Principal Commissioner of Customs, Custom House, Near Akashwani, Navrangpura, Ahmedabad-380009, as to why;

(i) the duties of Customs amounting to Rs. 11,21,98,495/- (Rupees Eleven Crore Twenty One Lakh Ninety Eight Thousand Four Hundred Ninety Five only) on the goods destroyed in the fire incident, should not be demanded and recovered from them under Section 28(1)(a) of the Customs Act, 1962, read with Section 26 of the SEZ, Act,2005 and Rules 22, 25, 34 and 47 of the SEZ Rules, 2006;

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

(iii) Penalty should not be imposed upon them under Section 112 of the Customs Act, 1962;

(iv) Bond-Cum Legal Undertaking in Form H furnished by the Noticees should not be enforced towards the above liabilities.

RECORD OF PERSONAL HEARING-

8. Opportunity for personal hearing was given to noticee on 27.1.2025. Shri Amal P Dave, Advocate attended the personal hearing through virtual link on 27.1.2025 at 11.30 am. During the course of personal hearing, they reiterated the submissions given on 22.1.2025..

WRITTEN SUBMISSION-

9. M/s. Meghmani Organics Ltd., vide their submission dated 22.01.2025, interalia, submitted that-

1. In para 5.2 of the show cause notice, it has been alleged that we have filed the insurance claim for the amount of goods which are destroyed in the fire incident, however, we have not secured the duty component as if there was no duty or there was no loss of duty on the goods and hence it shows that we have not bothered about the loss of public money in the form of duties which have not been compensated for and hence the goods should be treated as improperly imported by us. It is submitted that such grounds raised in the show cause notice are completely without any backing/authority of law inasmuch as the Hon'ble Tribunal in the case of M/s. Welspun Terri Towels reported at **2002 (149) ELT 593**, held that the insurance claim has no bearing upon the issue of grant of remission of customs duty under Section 23 of the Act and the provisions of Section 23 have nothing to do with claiming insurance benefit. In the case of M/s. Welspun Terri Towels, it was the case of the department that the assessee had in addition to claiming remission of duty, also claimed insurance benefits and hence the Commissioner could not have granted remission. The Hon'ble Tribunal in this context held as under:-

> *"5. The ground that the Commissioner should have inquired from the assessee whether it had filed or was intended to file any insurance claim is equally untenable. The thrust of this ground is that the assessee had, in addition to claiming remission from duty, also claimed insurance benefits. We have seen neither the insurance policy nor the claim made in terms of that policy. It is therefore not possible for us to say whether or not the respondent had validly claimed anything under the policy. This has however no bearing upon the issue before us.* ***Grant of remission of custom duty under Section 23 of the Act has nothing to do with claiming insurance benefit****. If the departmental authorities were of the view that the respondent had made a fraudulent claim on the insurance company, they were and still are at liberty to inform the concerned authorities. Nevertheless, the Commissioner's order cannot be found fault with on this ground. It was not required of him to look into it."*

Therefore, it is clear that whether the assessee claims duty portion as insurance or does not claim insurance of such portion is of no material relevance in so far as the remission under Section 23 of the Customs Act, 1962 is concerned. In view of such legal position, the allegation regarding not securing the duty component through insurance as is mentioned in para 5.2 of the show cause notice is a proposal which is not supported by any law and hence such proposal which is not backed by any legal provision deserves to be vacated on this ground alone.

2. In para 5.3 of the show cause notice, it has been alleged that the cause of fire appears to be human error and negligence and accordingly we have failed to undertake the required safety measures as a SEZ developer. In this regard it is submitted that such allegation is without any basis inasmuch as on a perusal of the report of the Directorate of Forensic Science Gujarat (DFS), it is clear that the cause of the fire was a Short Circuit. It is nowhere mentioned in the DFS Report that the Short Circuit could be avoided or it was because of human negligence. The SCN presumes that the fire was due to human error/negligence and such presumption is

unwarranted in facts as well as in law. Without prejudice to the submission that the fire was due to natural causes and was unintended, it is submitted that the Hon'ble Tribunal in the cases of M/s. Bharat Petroleum Corporation Ltd. reported at **1994 (70) ELT 402** and in the case of M/s. Madras Petrochem Ltd. reported at **1999 (112) ELT 336** has categorically held that remission of duty under Section 23 of the Customs Act, 1962 cannot be refused if the loss is not due to any incident but negligence. It has also been held that the claim for remission of duty cannot be rejected on the ground of negligence inasmuch as Section 23 of the Customs Act, 1962 does not provide for any such exception. It is submitted that Section 23 of the Customs Act, 1962 reads as under:-

> *"23 (1) Without prejudice to the provisions of section 13, where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall remit the duty on such goods."*

On a close reading of Section 23, it is clear that negligence or human error cannot be a ground for rejecting remission under such provision as opposed to the provisions of Rule 17 of the Central Excise Rules, 2002 are specifically reads as under: -

> *"Rule 17. Remission of duty. - (1) Where it is shown to the satisfaction of the Principal Commissioner or Commissioner, as the case may be, that goods have been* ***lost or destroyed by natural causes or by unavoidable accident*** *or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing"*

On a comparison of the both the provisions, it is clear that when the legislature wants to impose conditions on the aspect of remission, the legislature would use the wordings as mentioned under Rule 17 of the Central Excise Rules, 2002 where the remission can only be granted if the goods were destroyed due to any natural causes or by unavoidable accident. However, the provisions of Section 23 of the Customs Act, 1962 are very clear as are interpreted by the Hon'ble Tribunal in the cases of M/s. Bharat Petroleum Corporation Ltd. and M/s. Madras Petrochem Ltd. (supra), that negligence or human error cannot be a basis to deny remission of duty under Section 23 of the Customs Act, 1962. Therefore, such allegation,that remission should not be granted inasmuch as the fire was due to human error or negligence is also an allegation which is devoid of any merits and such allegation cannot form the basis of imposing substantial duties upon us.

3. Regarding the issue of remission of duty under Section 23 of the Customs Act, 1962, it is submitted that the Hon'ble Tribunal in the case of M/s. Satguru Polyfab Pvt. Ltd. V/s. Commissioner of Customs, Kandla **2011 (267) ELT 273** categorically discussed this issue and came to a conclusion that remission of duty would be available under Section 23 of the Customs Act, 1962 on the goods which are imported in the SEZ and were eventually burnt in an accident. While considering such decision in the case of M/s. Satguru Polyfab Pvt. Ltd. the Hon'ble Tribunal in the case of M/s. P I Industries Ltd. vide **Final Order No.11146/2024 dated 05.06.2024** again held that remission of customs duty under Section 23 would be available when the goods were burnt in fire. Similarly, in another case of M/s. ONGC Petro

Additions Ltd. the Hon'ble Tribunal vide **Final Order No.12735/2023** while again considering the decision of M/s. Satguru Polyfab Pvt. Ltd. (Supra) came to a conclusion that the goods which are burnt in fire in the SEZ unit and could not be used for the authorized operations of the SEZ, are eligible for remission under Section 23 of the Customs Act, 1962. Although law regarding remission of duty in cases where goods were burnt in a SEZ unit is well settled we wish to elaborate the legal position in detail as under: -

In case of Satguru Polyfab Pvt. Ltd. V/s. CC, Kandla reported in **2011 (267) ELT 273 (Tri.-Ahmd.),** the Hon'ble CESTAT, Ahmedabad has considered case where a fire broke out in one of the SEZ Units of M/s. Satguru Polyfab Pvt. Ltd., and raw materials imported fee of duty for use in the SEZ Unit were destroyed in the fire. The Revenue demanded custom duties on imported raw materials because they were not used, but were destroyed before being put to the authorized operations. But the Hon'ble Appellate Tribunal has held that the goods were not removed without payment of duty in the garb of accident, and that raw materials imported duty free were actually destroyed in the fire, and hence it was a case where such raw materials were not used for any purpose other than the authorized operations. Considering Rule 8 of the SEZ Rules, 2003, the Appellate Tribunal has held that the Rule does not provide for a situation other than unauthorized use or failure to account for, and in such cases only duty could be demanded and recovered for the concerned goods. The Hon'ble Tribunal has also held that Rule 8 provides for charging of duty when the goods imported/procured were utilized for the purposes other than the authorized operations or failure to account for the goods. In case of destruction of such raw materials etc. in fire, the Hon'ble Appellate Tribunal has held that the goods were not utilized for purposes other than authorized operations nor were the goods unaccounted for. The Revenue's case for demanding duties on such raw materials is rejected by the Hon'ble Appellate Tribunal in this case of M/s. Satguru Polyfab Pvt. Ltd.

In a subsequent case of M/s. Jindal International V/s. CC, Kandla **2013 (290) ELT 729 (Tri.-Ahmd.)** also**,** the Hon'ble CESTAT, Ahmedabad has considered the provisions of SEZ Rules, 2003, the SEZ (Customs Procedure) Regulations, 2003 and also Section 28 of the Customs Actr, 1962 in a case where imported raw materials were destroyed in a fire accident. Following the principle laid down in case of M/s. Satguru Polyfab Pvt. Ltd, the Hon'ble Appellate Tribunal has negated the Revenue's case for demand of customs duty foregone on the raw materials destroyed in the fire that broke out in the SEZ Unit in this case of M/s. Jindal International also.

In view of the above the allegation in the SCN that section 23 is not applicable to SEZ units is without any merits.

4. The further allegation in the show cause notice is that the goods have not been accounted for in the manner prescribed in Rule 22(2) read with Rule 34 of SEZ Rules, 2006; and contravention of these provisions is alleged on this basis. But this issue is raised without any justification and without any merit, because the goods listed at para 2.6 of the show cause notice are admittedly destroyed in fire accidents in our Unit, and the details of such goods are taken by the Revenue from the books and registers and SAP system maintained by us. **This table itself shows that we have maintained proper accounts in respect of quantity and value of the good of procured duty free.** The expression "account for" is not defined in the

Statute, but its meaning in the New Oxford Dictionary of English, published by Oxford University Press is as under:

> "Account For: - give a satisfactory record of (something, typically money, that one is responsible for), provide or serve as a satisfactory explanation or reason for; …."

Under Rule 22(2) of the SEZ Rule also, it is laid down that every Unit and Developer shall maintain proper account, financial year wise, and such accounts which should clearly indicate in value terms goods imported or procured from Domestic Tariff Area, consumption or utilization of goods, production of goods, including by products, waste or scrap or remnants, disposal of goods manufactured or procured, by way of exports, sales or supplies in the domestic tariff area or transfer to the Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or Bio-technology Park Unit, as the case may be, and balance in stock. Thus there is an obligation on a Unit like us to maintain proper accounts for the goods procured duty free; but we have complied with this requirement in as much as it is nobody's case that any goods procured duty free and brought in our Unit were diverted elsewhere, or any of such goods were removed from our Unit without following the procedure, or that in guise of destruction in fire, any of the goods were actually done away with in any illegal manner. **Destruction of goods in a fire in a Unit is not a case where the Unit could be alleged to have not maintained proper accounts in respect of goods procured duty free**. When any such goods procured duty free were recorded in the registers maintained in a Unit and also in private accounting system like SAP, and such goods were destroyed in an accident like fire in Unit itself, it is not a case where contravention of Rule 22(2) of the Rules could be alleged. Destruction of goods in a fire within the Unit is a satisfactory explanation about the goods, and destruction of goods recorded in the books and registers is a clear fact where satisfactory record is kept about the goods, and satisfactory explanation about the destruction of goods is also tendered. **The present one is undoubtedly a case like this**.

5. We submit that the all the goods which were destroyed in fire accident that took place on 22.10.2022 were recorded in our books, registers and SAP system; and we have also given the details of such goods destroyed in fire to various Authorities and Agencies, including the specified officer in charge of Dahej SEZ. Thus the present one is a case where all the goods destroyed in fire were accounted for, i.e. proper accounts of all such goods were maintained by us. Therefore, there is no contravention of Rule 22(2) of the Rules in this case. Rule 22 (1) refers to execution of a Bond-Cum Legal Undertaking in Form H for grant of exemption to the entrepreneur or developer. This Rule is referred to at para 3.3 of the show cause notice. We have admittedly executed a Bond-Cum Legal Under taking, and it is such bond which is proposed to be enforced in the show cause notice. Therefore, when there is no contravention of Rule 22(1)(i) of the Rules , the bond cannot be enforced in the present case.

6. Section 28 of the Customs Act provides for recovery of duties not levied or not paid or short levied or short paid or erroneously refunded. Ours is not a case where custom duties on goods destroyed in fire accidents were not levied or not paid or short levied or short paid, or erroneously refunded. The duties leviable on such goods were forgone in view of the scheme of Section 26 of SEZ Act. The exemption allowed under Section 26 of the SEZ Act, can be withdrawn only when there was a contravention or breach of any of the provisions of SEZ Act or Rules framed thereunder, but not otherwise. In the present case, there is no breach or contravention of any of the provisions of the SEZ Act or the Rules made thereunder by us in respect of the goods which have been destroyed in accidental fire. These goods have been burnt and destroyed in fire, which was an accident. We have not committed any violation or

contravention of the provisions of the SEZ Act and the Rules, and therefore the exemption from customs duties allowed to us under Section 26 of the SEZ Act for such goods destroyed in accidental fire cannot now be withdrawn. Section 28 of the Customs Act is therefore wrongly invoked, and the proceeding initiated under such provision deserves to be withdrawn in the interest of justice.

7. Any recovery of duty forgone by us enforcing the Bond Cum Legal Undertaking can be made only if we have committed breach or contravention of provisions of SEZ Act or SEZ Rules. The Conditions of Bond Cum Legal Under Taking furnished by us so provide, and therefore this Undertaking can also not be invoked in the present case where we have not committed any breach or contravention of any of the provisions or SEZ Act and SEZ Rules. We therefore submit that this show cause notice and the proposals to demand and recover customs duties forgone on the goods burnt/destroyed in the fire accidents are without any legal basis and without any factual justification.

8. It is suggested at para 3.3, 3.4, 3.5 and 3.6 of the show cause notice that we were legally bound to follow the provisions of Rules 22, 25, 27 and 34 of SEZ Rules, in respect of goods procured duty free under the provision of Section 26 of the SEZ Act. But provisions of all these rules are also fully complied with by us, and therefore the allegation of contravention of provision of these Rules is ill-founded and unjustified.

Rule 25 of the Rules lays down that Entrepreneur or Developer shall refund an amount equal to the benefit of exemption, drawback, cess and concessions where he did not utilize the goods or services on which such exemption had been availed for the authorized operations, or was unable to duly account for the same. The decisions in cases of **M/s. Satguru Polyfeb Pvt Ltd (supra) and M/s. Jindal International (supra)** clearly lay down the principle that goods destroyed in a fire in the Unit was not a case where the entrepreneur had utilized the goods for any purpose other than the authorized operations. As explained above, the goods have been dully accounted for by us, and destruction of goods is also accounted for. Therefore, Rule 25 of the Rules is not contravened by us in this case. Rule 27 of the Rules allows a Unit or Developer to import or procure from DTA without payment of duty, taxes or cesses all type of goods required for authorized operations except prohibited items under the ITC. The goods which have been destroyed in fire accidents were required for our authorized operations, and therefore procurements of all such goods duty free was in accordance with Rule 27; and accordingly there is no contravention of Rule 27 also in this case. Rule 34 of the Rules creates a fiction that the goods were cleared for home consumption if the goods were utilized for purposes other than for the authorized operations, or if Unit or Developer fails to account for the goods as provided under the Rules. This rule ispari materia Rule 8 of SEZ Rules, 2003; and the decisions of the Appellate Tribunal in cases of M/s. Satguru Polyfeb Pvt Ltd (supra) and M/s. Jindal International (supra) interpreting Rule 8 of 2003 Rules lay down the principle that goods admitted duty free into a Special Economic Zone and destroyed in fire were not goods which were utilized for purposes other than for the authorized operations. The fiction of removal of such goods for home consumption is not attracted in the cases like the present one, where the goods have been admittedly destroyed in fire that occurred in the Unit. Therefore Rule 34 of SEZ Rule, 2006 is also not contravened in this case. Rule 47 of the Rules is also referred to in para 3.7 of the show cause notice, but this Rule for sale of goods and services in the DTA on payment of customs duty is not applicable in the present case. All the goods detailed at para 2.6 in the show cause notice are “destroyed” in our Unit because of fire accidents, and none of these goods are sold in DTA by us. The eventuality of payment of customs duties while selling goods in DTA therefore does not arise in the present case, and therefore Rule 47 of the Rule is also not applicable.

Section 26 of the SEZ Act provides for exemptions, drawbacks and concessions to every Developer and the Entrepreneur. The exemption from payment of customs duties while procuring the goods in question had been legally and lawfully allowed to us, and there is no breach or contravention of any of the provisions subject to which such exemption was granted. We have explained above that there is no contravention of provisions of Rules 22 ,25, 27,34 and 47 of SEZ Rules in our case; and therefore procurement of the goods in question duty free was in full compliance with the provision of Section 26 of the SEZ Act. The exemption allowed to us for the goods, which have been destroyed in the accidental fires, cannot be now withdrawn, because there is no contravention or breach of any of the provisions of the Act and the Rules by us as regards procurement of such goods duty free. We therefore submit that the proposal to recover customs duties forgone for the goods detailed in para 2.6 in the show cause notice does not hold any water, and therefore this proposal deserves to be vacated at once in the interest of justice.

9. The proposal to impose penalty under Section 112 of the Customs Act is also unjustified and invalid. Under Section 112 of the Customs Act, penalty can be imposed on 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 111,or abets the doing or omission of such an Act. It is nowhere suggested in the SCN that the goods that were burnt were liable to confiscation. It is only stated that we are liable to penalty because the goods were not used for intended purpose. But the issue that goods procured duty free, which were destroyed in a fire in a SEZ Unit cannot be considered to have been used for any purpose other than the authorized operations or intended purpose, stands settled by virtue of two decisions of the Appellate Tribunal in the above referred cases. Even otherwise goods brought in a Unit, which were destroyed before they could be used for authorized operations on account of accidental fire, cannot be considered to be goods not used for intended purpose. If the goods brought in a Unit were actually used for any unauthorized operations, or they were done away with in any illegal manner, then it could be suggested the Unit had not used such goods for intended purpose; but such an allegation or a suggestion would not lie in a case where the goods were destroyed in a fire, and hence were not used for any other purpose or any other operations. We have not done anything nor have we omitted to do anything which act or omission has rendered the goods in question liable to confiscation under the Customs Act. Since the goods have been destroyed in accidental fire, there is no question of doing or omitting to do anything or abetting any such doing or omission. Therefore, Section 112 of the customs Act is also not applicable in this case.

10. The matter of penalty is governed by the principle as laid down by the Hon'ble Supreme Court in the land mark case of Messrs Hindustan Steel Limited reported in **1978 ELT (J159)** wherein the Hon'ble Supreme Court has held that penalty should not be imposed merely because it was lawful to do so. The Apex Court has further held that only in cases where it was proved that the assessee was guilty of contumacious or dishonest conduct and the error committed by the assessee was not bonafide, but was with a knowledge that the assessee was required to act otherwise, penalty might be imposed. It is held by the Hon'ble Supreme Court that in other cases where there were only irregularities or contravention flowing from a bonafide belief, even a token penalty would not be justified. This principle is applicable in the present case also, and accordingly the proposal for imposing penalties also deserves to be vacated.

11. The proposal for charging interest on the customs duty deserves to be dropped alongwith the proposal to demand and recover customs duties on the goods destroyed in accidental fire. When there is no justification in law nor in facts in regard to the proposal to recover customs

duties forgone, the proposals to charge interest on such customs duties would automatically fall.

12. In the above premises, we submit that show cause notice is issued to us without any justification, and the proposals levelled thereunder do not deserve any consideration. We therefore request you to withdraw this show cause notice along with all the proposals levelled thereunder."

DISCUSSION AND FINDINGS-

10. I have carefully gone through the show cause notice, written submission dated 22.01.2025, record of personal hearing held on 27.01.2025 and all the documents available on record.

11. The issues to be decided before me are:-

(a) Whether the noticee is liable to pay duties of Customs amounting to Rs 11,21,98,495/- on the goods destroyed in the fire, alongwith interest and penalty under Section 112;

(c) Whether the noticee is liable for remission of duties of Customs under the provision of Section 23 of Customs Act, 1962

(d) Whether the decision of Hon'ble CESTAT, Ahmedabad in the matter of M/s. M/s. Satguru Polyfeb Pvt Ltd and M/s. Jindal International are squarely applicable in the instant case;

12. I find that the Noticee had been granted permission to set up manufacturing unit and carry-on commercial production in Dahej SEZ vide LOA No. KASEZ/DCO/03/MOL/08-09 dated 05.05.2008(as amended & extended time to time), in terms of Rule 19(4) of the SEZ Rules, 2006. The Noticee has executed Bond-Cum Legal Undertaking in Form-H regarding their obligations for proper utilization and accounting of goods including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty free and regarding achievement of Positive Net Foreign Exchange earning in terms of provisions of Rule 22(i) of the SEZ Rules, 2006.

13. I find that a fire incident happened at the factory premises of the Noticee situated at Plot No. Z/31 & Z32, SEZ-1, Dahej, Taluka- Vagra, District- Bharuch, Gujarat-392130 on 22.10.2022.

14. I find that the Noticee vide their letter dated 16.08.2023 [RUD-6] submitted the details of the extent of damage along with the surveyor report and copy of the insurance of the same to this office. The summary of the details provided is as below:-

Sr.No.	Particulars	Amount
1	Stocks	
(i)	CPC	13,45,16,536
(ii)	Alpha Blue	2,40,28,442
(iii)	Beta Blue	23,40,26,090
	Total	**39,25,71,068/-**
2	Building	2,15,78,873
3	Plant & Machinery	42,46,516
4	Removal of Debris, Consulting Professional Fees, Claim, Preparation Cost, Fire Fighting Expenses, GST & Customs Duty etc.	2,58,254 10,00,000
Total		**41,96,54,711/-**

15. I further find that the Noticee also produced the details of goods destroyed vide email dated 28.08.2023 in respect of capital goods. Accordingly, the details regarding value and duty foregone are summarized herein below:

	Assessable Value	BCD	SW cess on BCD	IGST	Duty Foregone
Capital Goods	1,84,38,383	0	0	33,18,909	33,18,909
CPC Blue	13,45,16,536	1,00,88,740	10,08,874	2,62,10,547	3,73,08,161
Alpha Blue Pigment	2,40,28,442	18,02,133	1,80,213	46,81,942	66,64,288
Beta Blue Pigment	23,40,26,090	1,75,51,957	17,55,196	4,55,99,984	6,49,07036
Total	41,10,09,451	2,94,42,830	29,44,283	7,98,11,382	11,21,98,495

Futher, it is not disputed that the duties of Customs amounting to Rs.11,21,98,495/- were forgone on the goods while importing them into SEZ unit for authorized operations and the same has been demanded on account of non-utilization of the said goods for Authorized Operations and failure to account for the said goods as prescribed under Rule 34 and Rule 22 of the SEZ Rules, 2006, respectively.

Whether the noticee is liable to pay duties of Customs amounting to Rs.11,21,98,495/- equal to the duty forgone on the goods burnt/destroyed in the fire-

16. Before proceeding further, the relevant provisions of SEZ Act and Rules applicable in this case are reproduced herein below to understand the legal position as under:

(i) As per Section 7 of SEZ Act, 2005, any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by a unit in a SEZ shall be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.

(ii) Rule 22 of the SEZ Rules, 2006 specifies the terms and conditions for availing exemptions. As per sub rule (2) of Rule 22 every unit and Developer shall maintain proper accounts, financial year-wise, and such accounts which should clearly indicate in value terms the goods imported or procured from Domestic Tariff Area, consumption or utilization of goods, production of goods, including by-products, waste or scrap or remnants, disposal of goods manufactured or produced, by way of exports, sales or supplies in the domestic tariff area or transfer to Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or Bio-technology Park Unit, as the case may be, and balance in stock.

(iii) Rule 25 of SEZ Rules, 2006 specifies that where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case may be, shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed.

(iv) As per Section 26 of SEZ Act, 2005, exemption from any duty of customs under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act,1975 (51 of 1975) on goods imported into, or services provided in, a SEZ or a Unit and any duty of excise, under the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 (5 of 1986) or any other law for the time being in force, is granted on goods brought from Domestic Tariff Area to a SEZ or Unit, to carry on the authorized

operation by the developer or entrepreneur subject to observance to procedure prescribed in the section.

(v) *Rule 27 of SEZ Rules, 2006 specifies that the unit may import or procure from Domestic Tariff Area without payment of duty, taxes or cess, all types of goods required for authorized operations except prohibited items.*

(vi) *Rule 34 of SEZ Rules, 2006 specifies that the goods admitted in SEZ shall be used by the unit for carrying out the authorized operations*

(vii)Rule 47 of SEZ Rules, 2006 specifies that *a Unit may sell goods and services, in the Domestic Tariff Area on payment of customs duties under section 30, subject to the following conditions, namely:*

……

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

17. It is pertinent to mention that SEZ units have been granted special privileges such as exemption from Duty of Customs on imported goods, exemption from Central Excise Duty on goods which are brought into SEZ from DTA, exemption from Service Tax on the services received by them, etc. The rationale to advance such privileges is forthcoming from the provisions of Section 5 of the SEZ Act, 2005 which reads as under:

The Central Government, while notifying any area as a Special Economic Zone or an additional area to be included in the Special Economic Zone and discharging its functions under this Act, shall be guided by the following, namely:

(a) generation of additional economic activity;
(b) promotion of exports of goods and services;
(c) promotion of investment from domestic and foreign sources;
(d) creation of employment opportunities;
(e) development of infrastructure facilities; and
(f) maintenance of sovereignty and integrity of India, the security of the State and friendly relations with foreign States.

The above provisions clearly indicate that one of the objectives behind the SEZ scheme is promotion of exports of goods and services. Thus, export of goods or services by utilizing the Duty-free goods/ services procured either from indigenous or overseas market becomes an integral part of the obligation cast upon the SEZ in lieu of the exemptions granted to them. It is a well-accepted principle that privileges walk hand-in-hand with obligations/ responsibilities. This phenomenon is well-explained by the 'two sided coin' principle. As each coin has two sides, obligation/ responsibility is the other side of accrued privilege. In the event that the obligation cast upon the SEZ unit is not fulfilled the entire rationale behind grant of exemptions is defeated.

18. The exemption of Duty of Customs has been granted to SEZ unit in terms of the provisions of Section 26 of the SEZ Act, 2005. The relevant text of which reads as under:

SECTION 26-

(1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:-

(a) exemption from any duty of customs, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods imported into, or services provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur

Further Rule 25 of the SEZ Rules, 2006 mandates refund of benefit of exemption/concession availed on imported goods, if the goods are not put to use in authorized operations, as given below-

Rule 25 of SEZ Rules, 2006

> ***Where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations*** *or unable to duly account for the same, the entrepreneur or the Developer, as the case may be,* ***shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed*** *without prejudice to any other action under the relevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Excise Tariff Act, 1985, the Central Sales Tax Act, 1956, the Foreign Trade (Development and Regulation) Act, 1992 and the Finance Act, 1994 (in respect of service tax) and the enactments specified in the First Schedule to the Act, as the case may be: Provided that if there is a failure to achieve positive net foreign exchange earning, by a Unit, such entrepreneur shall be liable for penal action under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and the rules made there under.*

On conjoint reading of the above provisions of the Section 26 of the SEZ Act, 2005 and Rule 25 of the SEZ Rules, 2006 it is evident that the exemption has been granted subject to the condition that the imported goods are put to use or utilized in carrying out the *'Authorised Operations'*. In the instant case, the goods under consideration have not been used or put to use for such 'Authorised Operations' i.e. manufacture of taxable goods as listed in the LoA, in as much as the goods have been destroyed. In such circumstances, the exemption availed by the Noticee is required to be paid back in terms of the Rule 25 of the SEZ Rules. In other words, the exemption in respect of the goods under consideration has to be relinquished which in turn implies that the duty, which was foregone at the material time, has to be demanded in terms of the provisions of Section 28(1) of the Customs Act, 1962.

Further, the argument of the noticee that the demand of duty is not tenable as, the goods lost in fire does not amount to utilizing the goods for purposes other than authorized operations as clearly, the provisions of Rule 25 mandates that if the SEZ unit **does not utilize the goods on which exemption has been availed, the SEZ unit shall refund the amount equal to the benefit of exemption availed on such goods.** The provisions of Rule 25 clearly mandate refund in cases where goods are not utilized unlike Rule 34 of SEZ Rules, 2006 wherein the situation of utilizing duty free goods for unauthorized operations is provided. Clearly both the Rules (Rule 25 and Rule 34) operate in different situations.

Thus, I find that the Customs Duty amounting to Rs. 11,21,98,495/- is to be demanded and recovered from the Noticee in terms of the provisions of Section 28(1) of the Customs Act, 1962 read with the relevant provisions of SEZ Act and the rules made thereunder alongwith interest in terms of the provisions of Section 28AA of the Customs Act, 1962.

Whether remission of duty under Section 23 of the Customs Act, 1962 is applicable to the goods destroyed or burnt in SEZ on account of fire-

19. In this regard, before proceeding further, it is necessary to reproduce Section 13 and Section 23 of the Customs Act, 1962.

> **"***13. Duty on pilfered goods.—If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.*
>
> *23.* ***Remission of duty on lost, destroyed or abandoned goods.****— (1) [Without prejudice to the provisions of section 13, where it is shown] to the satisfaction of the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] that any imported goods have been lost [(otherwise than as a result of pilferage)] or destroyed, at any time before clearance for*

home consumption, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall remit the duty on such goods.
[(2) The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon;] 5 [Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.]"

Clearly the provisions of Section 23 talks about remission of duty on lost, destroyed or abandoned goods before such goods are cleared for home consumption.

20. As far as goods imported and destroyed in SEZ are concerned, they are to be dealt with SEZ Act, 2005 and rules made there under. SEZ Act, 2005 and SEZ Rules, 2006 have clearly provided for importation of various sections of the Customs Act, 1962 in order to make them applicable to units operating in SEZ.

Certain provisions of the SEZ Act, 2005 and SEZ Rules, 2006 are reproduced here for better appreciation of the facts-

(i) Section 30. Domestic clearance by Units.—

Subject to the conditions specified in the rules made by the Central Government in this behalf:—
(a)any goods removed from a Special Economic Zone to the Domestic Tariff Area **shall be chargeable to duties of customs** including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 (51 of 1975), where applicable, as leviable on such goods when imported; and
(b)the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.

(ii) Rule 47 of SEZ rules, 2006-

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

(5) **Refund, Demand, Adjudication, Review and Appeal** with regard to matters relating to authorised operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, the Central Excise Act, 1944, and the Finance Act, 1994 and the rules made there under or the notifications issued there under.]

Clearly the above mentioned provisions of SEZ Act, 2005 and SEZ Rules, 2006 provide for assessment, valuation, levy of Custom duty, demand, refund and appeal in respect of authorized operations.

21. Further, the Ministry of Commerce and Industry vide Notification S.O 2665(E) issued in exercise of power under Section 21(1) of the SEZ act, 2005, has notified, interalia, the offences contained in Sections 28, 28AA, 111, 124 of the Customs Act, 1962 as the offences in the SEZ Act, 2005. However, there is no such provision for remission of duty on lost goods in the SEZ Act, 2005 as provided in Section 23 of the Customs Act, 1962. SEZ Act is a separate legislation and does not specifically import section 23 of the Customs Act, 1962 as there are other parallel provisions within the SEZ Act which allow assessment, valuation, refund etc. under Customs Act, 1962.

22. According to Supreme Court precedent, the principle is that if a law does not explicitly provide for something, it cannot be executed or enforced. In this regard, I rely on the decision of Union of India v. Kamlakshi Finance Corporation Ltd." (1991), where the Supreme Court of India held that if a particular provision or

specific provision is not explicitly provided under the Customs Act, the authorities cannot enforce penalties or take actions that are not supported by clear legislative backing. Clearly, Section 23 of the Customs Act, 1962 doesn't provide for remission of duties of Customs on goods lost/destroyed which were imported duty free into SEZ for the purpose of authorized operations. Further, there is no provision either in SEZ Act, 2005 or SEZ Rules, 2006 for remission of duties of Customs.

Examination of decision of Hon'ble CESTAT in the matter of M/s. Satguru Polyfeb Pvt Ltd and M/s. Jindal International

23. I find that the noticee has relied upon decisions of the Hon'ble CESTAT, Ahmedabad in the matter of Satguru Polyfab Pvt. Ltd. V/s. CC, Kandla reported in 2011 (267) ELT 273 (Tri.-Ahmd.) and M/s. Jindal International V/s. CC, Kandla **2013 (290) ELT 729 (Tri.-Ahmd.)** and CESTAT judgement dated 5.6.2024 in case of PI Industries and Final Order No.12735/2023 in case of M/s ONGC Petro Additions .

24. I find that the said decisions had examined the provisions of SEZ Rules, 2003 which were notified vide Notification No. 52/2003-Cus (N.T) issued in exercise of the powers conferred by sub-section (1) of Section 156 read with Chapter X A of the Customs Act, 1962. Further, Section 76B of the Customs Act, 1962 allowed applicability of all the provisions of other chapters of the Act (Customs Act, 1962) to the special economic zones. Therefore, the remission was allowed under Section 23. However, with the enactment of SEZ Act, 2005 and SEZ Rules, 2006, the provisions of Section 76B were omitted.

24.1 Further, it is pertinent to note that the Hon'ble Tribunal had examined the provision of Rule 8 of the SEZ Rules, 2003 to hold that there was no unauthorized use of duty free imported goods. However, it is crucial to note that Rule 25 of SEZ Rules, 2006 entrust the onus on SEZ unit to **refund** the exemption availed on duty free goods if the same are not utilized. The SEZ Rules, 2003 had no such provisions for refund of amount of exemption availed on duty free goods. Thus ratio of both the judgements of Hon'ble Tribunal are clearly inapplicable in the instant case.

24.2 I further find that the noticee has also relied upon order dated 05.06.2024 of the Hon'ble CESTAT in case of PI Industries, in respect of the fire incident which took place on 05.06.2018 on account of which certain indigenous and imported raw material procured duty free and some semi-finished goods were destroyed. The moot question before the tribunal was-

> "A show cause notice was issued to the appellant on 06.06.2020 wherein demand of customs duty on the loss of goods on account of fire accident was made, in respect of entire quantity in stock of material time valued at Rs. 16,54,77,557/- which was lying in their factory on the day of fire. The value of actual loss reported by the appellant amounting to Rs. 7,95,76,996/- was ignored. The said demand was confirmed by the Principal Commissioner vide order dated 03.03.2021.
>
> .....
>
> The Hon'ble CESTAT held that demand of entire stock was without any basis as the there was no evidence on record to suggest entire stock of raw material, in process goods and finished goods were destroyed."

Clearly, facts of the said case are different from the facts in the instant case. In the said case the demand was made on entire stock and not on the value of lost goods reported by the appellant. However, in the instant case, the value reported by the noticee has been taken for the demand of duties of customs.

24.3 On perusal of the judgement of the Hon'ble Tribunal in the case of ONGC Petro Additions Ltd Vs CC, I find that the following findings are important:-

(i) *In number of cases, it has been held that if the goods are destroyed in SEZ, the duty involved on such destroyed goods* ***can be remitted*** *under the Customs Act.*

This implies that the remission of duty under the Customs Act is not a right in itself and will depend on the facts and circumstances of the case. Further with due respect to the findings of Hon'ble CESTAT, Ahmedabad I find that the provisions of Rule 25 of SEZ, Rules, 2006 have not been taken into consideration while deciding the issue of remission of duty of Customs. I am of the view that the ratio of the judgement of the Hon'ble CESTAT in the case of ***ONGC Petro Additions Ltd. Vs. CC- 2023 (12) TMI 530*** is not applicable in the instant case.

25. In view of the above discussion and findings, I hold that the remission of duties of customs is not allowed under the provisions of SEZ Act, 2005 and rules made thereunder.

BOND CUM LEGAL UNDERTAKING:

26. The Noticee, in terms of Rule 22 of the SEZ Rules, 2006 had executed Bond-cum-Legal Undertaking in Form H, whereby they had undertaken for proper utilization and accountal of goods procured Duty-free and to pay duty, interest, penalty etc. in case of violation of any of the conditions mentioned therein. I find that by not ensuring proper safeguard of the goods imported/procured Duty free the Noticee has breached the said Bond-cum-Legal Undertaking and made themselves liable for payment of applicable duties on goods, which were burnt/destroyed in the fire incident and hence, the same were not utilized for Authorized Operations and were not accounted for in terms of the SEZ Rules, 2006. Therefore, I find that the Noticee is liable to pay an amount equal to Duty foregone on the aforesaid goods burnt/destroyed in the fire incident alongwith interest in terms of the provisions of Section 28AA of the Customs Act, 1962 from the date of duty free import/procurement of the said goods till the date of payment of such duty. In view of the above, I find that dues such as duty, interest and penalty etc. is recoverable by enforcing the Bond executed by them.

PENALTY-

27. I find that the duty free imported goods have not been used in Authorized Operations by the SEZ units. Due to contravention of the aforesaid provisions of law, the goods are to be treated as improperly imported/procured by the Noticee and such an act on their part constitutes offence as described under Section 112 of the Customs Act, 1962. Therefore, the Noticee has rendered themselves liable for penalty under Section 112 of the Customs Act, 1962. I hold that penalty is imposable on the Noticee under Section 112 of the Customs Act, 1962.

28. Accordingly, I pass the following order:

ORDER

(i) I confirm the demand of Customs Duty of **Rs. 11,21,98,495/- (Rupees Eleven Crore, Twenty One Lakh, Ninety Eight Thousand, Four Hundred and Ninety Five only)** on the goods destroyed in the fire incident and order to recover the same from them under Section 28(1)(a) of the Customs Act, 1962, read with Section 26 of the SEZ, Act, 2005 and Rule 25 of the SEZ Rules, 2006;

(ii) I order the Noticee to pay Interest at the appropriate rate, on the total duty confirmed at Sr. No.(i) above, under Section 28AA of the

Customs Act, 1962 and order to recover the same from the Noticee under Section 28AA of the Customs Act, 1962;

(iii) I impose penalty of Rs 50,00,000**/-** (Rupees Fifty lakhs Only) upon M/s. Meghmani Organics Ltd under Section 112 (a) of the Customs Act, 1962;

Provided that if the duty demanded and the interest payable thereon under Section 28AA is paid within thirty days from the date of communication of this order, 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;

(iv) I order to enforce Bond-Cum Legal Undertaking in Form-H furnished by the Noticee to recover duty, interest & penalty from the Noticee.

28. This order is issued without prejudice to any other action that may be taken against the importers/SEZ unit or any other person under the Customs Act, 1962 or any other law for the time being in force.

Signed by
Shiv Kumar Sharma
Date: 24-02-2025 12:36:53

(Shiv Kumar Sharma)
Principal Commissioner
Customs, Ahmedabad.

BY SPEED POST/BY HAND
DIN-20250271MN00000159E1

F. No: GEN/ADJ/COMM/431/2024-TECH Date : 24.2.2025

To,

M/s. Meghmani Organics Ltd.,
Plot No. Z-31 & 32, Dahej SEZ-I,
Taluka- Vagra, District- Bharuch,
Gujarat-392130

Copy to:-

1. The Development Commissioner, SEZ, Dahej.
2. The Specified Officer, Dahej Special Economic Zone, Dahej, Bharuch
3. The Chief Commissioner, Customs Zone, Gujarat, Ahmedabad for the purpose of Review.
4. Guard file