OFFICE OF THE COMMISSIONER

CUSTOM HOUSE, KANDLA

NEAR BALAJI TEMPLE, NEW KANDLA

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DIN- 20250571ML0000666A3A		
A	File No.	GEN/ADJ/COMM/284/2023-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KND-CUSTM-000-COM-04-2025-26
C	Passed by	M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla.
D	Date of Order	21.05.2025
E	Date of Issue	21.05.2025
F	SCN No. & Date	GEN/ADJ/COMM/284/2023-Adjn-O/o Commr-Cus-Kandla dated 23.12.2024
G	Noticee / Party / Importer / Exporter	M/s. V Milak Enterprises and others

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 disupte, or penalty wise if penalty alone is in dispute.

BRIEF FACTS OF THE CASE-

M/s. V. Milak Enterprises (hereinafter also referred to as 'SEZ unit'), situated at Plot No. 176A, Sector-I, Kandla Special Economic Zone, Gandhidham, Kutch were granted Letter of Approval (LoA) dated 20.06.2018 vide F.No. KASEZ/IA/04/2015-16 **(RUD-1)** by the Development Commissioner, Kandla SEZ under Section 15(9) of the Special Economic Zones Act, 2005 read with Rule 18 of the Special Economic Zones Rules, 2006 to operate as an SEZ unit and carry out authorized operations of warehousing of precious metals. Whereas, the Unit Approval Committee (UAC) after due deliberations has approved the requests of the said SEZ unit for inclusion of additional items/precious metals in their warehousing activity and accordingly, amendments in the original LoA have been made from time to time.

2. During the test check of records for the period 2019-21, the Sr. Audit Officer (CRA-I) noticed short levy of Basic Customs duty and IGST due to short fixation of Tariff value and said observations were communicated vide HM dated 01.10.2021 **(RUD-2)** and subsequently vide LAR dated 03.11.2021 **(RUD-3)**. During the test check of records, it has been noticed that the said SEZ unit had cleared/removed "Silver Bar" (CTH 7106) to DTA applying incorrect exchange rate and tariff value applicable on the date of payment of duty. The statement showing duty calculations by the audit team for the short levy of Custom duty and IGST to tune of Rs. 41,62,84,241/-, in respect of the clearances made by concerned KASEZ Units, has been attached as (**RUD-4)** to the notice. As per the audit team statement, the short levy Custom duty and IGST on the clearances made by M/s. V. Milak Enterprises is to the tune of **Rs. 11,75,41,547/-**

3. Whereas, CBIC vide Notification No. 36/2001-Customs (NT) dated 03.08.2001 has fixed tariff value of the subject item, having regard to the trend of value of subject goods, and where such tariff values are fixed by the Board, the duty shall be chargeable with reference to such tariff value. Therefore, the subject goods "Silver, in any form" shall attract the tariff value as per Notification No. 36/2001-Customs (NT) dated 03.08.2001 (as amended from time to time). Amended tariff value is applicable from the date of issue of such amended notifications. Further, in exercise of powers conferred vide section 14 of the Customs Act, 1962, the CBIC notifies rate of exchange for conversion of foreign currencies into Indian currency or vice versa, through Customs (non-tariff) notifications issued from time to time, for the purpose of valuation of imported and export goods. The rate of exchange, as determined by the Board, is mentioned in the subject notifications against the respective foreign currency and the same shall be used for the purpose of valuation of the goods.

4. As per Section 30(b) of the SEZ Act, 2005, the rate of duty and tariff valuation, if any, applicable to goods removed from the SEZ 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. In the instant case, the audit team has noticed that the said SEZ unit had cleared/removed subject goods by applying the incorrect exchange rate and tariff value as applicable on the date of payment of duty. Whereas, the statement showing duty calculations by the audit team, covering clearances made under 22 Bills of entry by concerned KASEZ units, has been attached as **RUD-4** to the notice.

4.1. The audit observations were communicated to all the DTA buyers and the SEZ Unit vide letters all dated 21.12.2021 **(RUD-5(i))** issued from F.No. KASEZ/CUS/D&R/Audit/13/21-22/2021-22 and requested them to submit reply. In response to the same, the SEZ Unit M/s. V Milak Enterprises vide their letter dated 18.12.2021 **(RUD-5(ii))**, inter-alia, submitted:

- That, they are a unit approved and operating in Kandla SEZ for manufacturing/trading and warehousing services. Already into warehousing of precious metals, they have been regularly importing precious metals (SILVER -HS

CODE 71069220) on behalf of their warehousing clients for supply to recognized banks approved through RBI/DGFT and basis the intimation by our overseas clients

- That, it is to be emphasized that the Section 30(b) speaks only for the rate of duty and tariff valuation and not on any other parameters including exchange rate variation, which has been earlier considered by the audit team for arriving at differential duty under the audit para.
- That, they received with E-mail from NSDL - SEZ stating that there is no provision in place for amending duty basis the exchange rate once the domestic clearance bill of entry is filed. As stated and confirmed there from, the exchange rate would remain as was applicable on the date of filing of bill of entry.
- That, in this scenario, if there aren't any provisions in law or the NSDL itself how can there be a differential duty for the purpose being claimed. In this regards and basis the fact that there isn't any provision or what so ever for EXCHANGE RATE CHANGE under the act; this should be out rightly waived for consideration.
- That, although SEZ Act 2006 - Section 30(b) provides for duty determined on the date of removal of goods from SEZ basis the rate/tariff valuation in force and further where such date is not ascertainable on the date of payment of duty; however the same is still not applied in other SEZ's of INDIA including SRI-CITY SEZ, Chennai where similar goods still continue to be removed basis the reliance on CUSTOM ACT, Section 15 whereby date of presentation of bill of entry or date of entry inwards is considered for determination of duty rate/tariff valuation and where the same cannot be determined the date of payment of duty is considered. Accordingly it is requested to have similar standing to be considered in our case as well instead of different standing in different SEZ's for the same goods/transaction.
- That, for all purposes pertaining to SEZ clearance, the Custom Act is being relied upon including assessment, audit and clearance process; however only for the duty tariff/valuation a different process is adopted which needs to be re-considered basis the practical operational issues faced at all SEZ unit level as well as procedural level on the time lines provided.
- That, "the date of such removal" is vaguely defined with no clear definition under the act/rules. With no clear definition to the date of such removal available the act/rules and with reliance on Custom Act Section 15- if considered - the presentation of bill of entry or the date of payment of the duty for removal - the differential duty is not at all applicable.
- That, applicability of Section 30(b) of SEZ Act, 2006 is practically difficult as well due to the fact that any removal of goods into DTA from SEZ needs to follow the long chain of processes which takes quite a long time and hence difficult to clear the same day.
- That, generally for their high value product and being precious metals, there is additional verification and counting process as well at their end to avoid any error in dispatches. Also, the receiving bankers need to be confirmed and security escort deputed before initiating the dispatch.
- That, although they have been received the details of short levy computation as provided by the CRA Audit Team but they have found that certain BOE values have been wrongly calculated apart from Bill of Entries which do not fall under the described criteria of tariff valuation / duty rate and needs to be removed/exempted from the computation.
- That, a few of the DTA Bill of Entries under consideration were filed at the time of COVID PANDEMIC LOCKDOWN period declared by Government of India itself whereby due to lockdown situation not only the departmental staff were off-duty with DTA clearance held up and also the transportation availability was subject to approvals/ conditional. Being a government declared lockdown across the Country India and with various directives through MHA during the said lockdown for the support of industry and trade; these should be considered for exemption of differential duty as it was not clearance delay out of KASEZ due to the pandemic situation prevailing then and the lockdown imposed by Government of India across the country.
- that, it is found that in certain of cases whereby the tariff value / exchange rate on the date of clearance of goods from SEZ has fallen down. If they adopt upon the SEZ Act Section 30(b), there is a considerable amount of refund as well arising in

favour of the domestic importer which would then be required to be refunded and along with the said demand of differential duty itself.

- That, a solemn request to re-consider for a proposed amendment of Section 30(b) of SEZ Act basis the practical issue underlying there-under at SEZ unit end and further to grant us exemption from payment of differential duty arising due to change in tariff rate / exchange rate in the light of the facts put forth as above as well as the adoption of Section 15 of Custom Act for the purpose and most important to adopting similarity in operations/duty computations across various SEZ's in INDIA

5. The activities of admission and clearance of goods by SEZ units, having approval granted under Section 15 of the SEZ Act, 2005 and Rule 18 of the SEZ Rules, 2006, are regulated as per the provisions & procedures contained in the SEZ Act, 2005 and Rules made there-under. The relevant legal provisions under the SEZ Act, 2005, the Customs Act, 1962 and the SEZ Rules, 2006 are reproduced as under:

(i) ***Section 30 in The Special Economic Zones Act, 2005****:- 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) ***Section 51 in The Special Economic Zones Act, 2005***

51. Act to have overriding effect.—*The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*

(iii) ***Chapter V: Conditions subject to which Goods may be removed from a Special Economic Zone to the Domestic Tariff Area:***

Rule 47 of SEZ Rules, 2006: 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* **********

(2) *……*

(3) *……..*

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

Rule 48 of SEZ Rules, 2006: Procedure for Sale in Domestic Tariff Area

(1) *Domestic Tariff Area buyer shall file Bill of Entry for home consumption giving therein complete description of the goods and/or services namely, make and model number and serial number and specification along with invoice and packing list with the Authorised Officers:*

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

(2) *Valuation of the goods and/or services cleared into Domestic Tariff Area shall be determined in accordance with provisions of Customs Act and rules made there-under as applicable to goods when imported into India: [***]*

(iv) ***Section 14 in the Customs Act, 1962***

14 Valuation of goods. —

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf: .....

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, ***and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.***

Explanation. —For the purposes of this section—
(a) ***"rate of exchange"*** *means the rate of exchange—*
(i) ***determined by the Board****, or*
(ii) ascertained in such manner as the Board may direct,
for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;
*(b) "foreign currency" and "Indian currency" have the *************.*

6. The subject goods cleared by the said SEZ unit into DTA were subjected to levy of Custom duty under Section 30 of SEZ Act, 2005. The Bills of Entry were filed on self-assessment basis for the clearance of subject goods into DTA by said SEZ unit to following DTA buyers under Rule 48(1) of the Special Economic Zone Rules, 2006:

(i). M/s. HDFC Bank Limited, Ahmedabad (IEC- 0301022666/AAACH2702H)
(ii). M/s. HDFC Bank Limited, Agra (IEC- 0301022666/AAACH2702H)
(iii). M/s. Diamond India Ltd. A1, Noida (IEC- AABCD8377R)

7. Whereas the valuation of the said goods removed/cleared under the subject Bills of Entry filed by said SEZ unit on self-assessment basis, into Domestic Tariff Area, was done under Rule 48(2) of the SEZ Rules, 2006.

8. Whereas, Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods by the importer or 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 Bill of Entry or Shipping Bill. Further, Rule 75 of the SEZ Rules, 2006 also 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 clearing subject goods to Domestic Tariff Area, the said SEZ Unit and the DTA buyers were bound for true and correct declaration and assessment. The said SEZ Unit and the DTA buyers were bound to pay subject duties at the tariff valuation in force, as on the date of removal of goods from the SEZ Unit. It is pertinent to note that the date of removal of the goods from SEZ Unit is clearly ascertainable as the subject information has to be maintained by the SEZ Unit. The SEZ Unit is duty bound to maintain detailed accounts of all goods imported or procured from DTA or consumed and utilized, in proper form including of those remaining in stock and those removed into DTA. Further, it is pertinent to mention that the tariff valuation, applicable to subject goods shall be the tariff value in force as on the date of removal of goods, which is clearly ascertainable in terms of information that has to be maintained by the SEZ Unit/obligation casted on the SEZ Unit in terms of the SEZ Act, 2005. It is pertinent to mention that in terms of Section 51 of the SEZ Act, 2005 the provisions of SEZ Act shall have effect notwithstanding anything inconsistent therewith contained in any other act for time being in force. It may be

noted that the date of determination of rate of duty and tariff value finds mention in Section 30(b) of the SEZ Act, 2005. It may also be noted that the date of determination of rate of duty and tariff value finds mention in Section 15 of the Customs Act, 1962. In view of overriding effect given in terms of Section 51 of the SEZ Act, 2005, the provisions of Section 30(b) ibid shall have effect notwithstanding anything inconsistent therewith contained in Section 15 of the Customs Act, 1962, for the time being in force. Therefore, the rate of duty and tariff valuation as applicable on subject goods shall be the rate and tariff value as on the date of removal of the goods from the SEZ Unit. It may be noted that Section 15(1)(b) has been amended in the year 2003 and subsequently in a case of goods cleared from a warehouse, under Section 68 of the Customs Act, 1962, the tariff valuation shall be the valuation in force, as on the date on which "a bill of entry for home consumption is presented" instead of the date on which "the goods are actually removed from the warehouse". The Section 15 of the Customs Act, 1962 was amended vide the Finance Act, 2003. Vide said amendment, in Section 15 of the Customs Act, 1962 in sub-section (1), in clause (b), for the words "the goods are actually removed from the warehouse", the words "a bill of entry for home consumption in respect of such goods is presented under that section" have been substituted. It is pertinent to note that no such provisions have been inserted in the SEZ Act, 2005 (i.e. after above said 2003 amendment). Thus, the intention of legislature in respect of relevant date for the purpose of determination of rate of duty and tariff valuation for domestic clearances by SEZ Unit is very clear and the same must be strictly governed by Section 30(b) of the SEZ Act, 2005. Moreover, the facts that the said SEZ Unit are legally not a warehouse under any of the provisions of Section 57, 58 or 58A of the Customs Act, 1962 and overriding effect of Section 30(b) of the SEZ Act, 2005 over Section 15 of the Customs Act, 1962 in terms of Section 51 of the SEZ Act, 2005 must be considered for determination of relevant date for the rate of duty and tariff value and accordingly, the tariff value, applicable to subject goods removed from Special Economic Zone shall be the tariff valuation in force as on the date of such removal. Further, for the purpose of valuation of the goods in terms of Section 14(2) of the Customs Act, 1962, the duty shall be chargeable with reference to fixed tariff value as notified in the official gazette by the Board.

9. As the said SEZ unit and the DTA buyers were engaged in business of warehousing and importing the subject goods, respectively, for considerable amount of time, they were fully aware of Customs procedures. However, it appeared that they deliberately suppressed the fact that the Bill for home consumption has been assessed at a particular tariff value and the said tariff value has been amended by the Board vide Notification. The fact that the tariff value, as on date of removal of subject goods, has been re-determined by the board was never brought to the notice of Customs officers posted at gate. Further, it appeared that they deliberately suppressed the fact that the Bill for home consumption has been assessed at a particular exchange rate and the said exchange rate has been amended by the Board vide Notification by the time the said goods were removed from SEZ Unit. The fact that the rate of exchange, as on date of removal of subject goods, has been re-determined by the board was never brought to the notice of Customs officers posted at gate.

10. Therefore, it appeared that the fact that the tariff value and rate of exchange, as on date of removal of subject goods, has been re-determined by the board was never brought to the notice of Customs officers posted at gate. The said SEZ Unit and the DTA buyers willfully wrongly applied the rate of exchange and tariff value on the removal of "Silver Bar/Ingot" (CTH 7106) to DTA with an intention to evade Custom Duty. In the above manner, they have evaded Customs Duty totally amounting to **Rs. 11,75,41,547/-** (Rupees Eleven Crore Seventy five lakh Forty One thousand Five Hundred and Forty Seven Only) as detailed in Annexure-A to the notice. Further, it is noticed that as per LoA dated 20.06.2018 **(RUD-1),** the risk coverage of duty amount shall be the sole responsibility of the warehousing unit and the said unit will furnish a comprehensive insurance coverage equivalent to the duty involved in favour of Government of India for the purpose transit as well as storage in the warehouse. In view of the foregoing facts, it is the fit case for invoking the extended period for demand of duty under Section 28(4) of the Customs Act, 1962.

11. The above discussed facts reveal that while clearing the subject goods to various DTA Buyers, the said SEZ Unit and DTA Buyers have incorrectly applied the tariff value and rate of exchange, on the subject goods totally valued at **Rs. 296,79,02,647/-** (Rupees Two hundred and Ninety Six crore seventy nine lakh two thousand Six hundred and Forty Seven only) as detailed in Annexure-A to the notice, by deliberately suppressing the material facts relating to the changed tariff value and rate of exchange notified by the Board before Customs officer posted at the gate. They mis-declared the tariff valuation and rate of exchange, applicable to the goods as on the date of removal with an intention to evade the payment of appropriate duty during clearance of subject goods to DTA. For the said act of suppression of material facts and mis-declaration of tariff value and rate of exchange, the goods mentioned in Annexure-A to the notice, totally valued at **Rs. 296,79,02,647/-** (Rupees Two hundred and Ninety Six crore seventy nine lakh two thousand Six hundred and Forty Seven only) are liable to confiscation under section 111(m) of the Customs Act,1962, though the same are not physically available. For the act of suppression of material facts and mis-declaration, the said SEZ unit and the DTA Buyers have rendered themselves liable to penalty under section 112(a) of the Customs Act, 1962. By the act of knowingly evading Custom duty by suppressing the material facts and mis-declaring subject goods in terms of valuation of goods, the SEZ unit and the DTA buyers have also rendered themselves liable to penalty under section 114A of the Customs Act, 1962. Since, the said SEZ unit and the DTA buyers have prepared and/or used documents showing false information about the subject goods, this act on their part have rendered themselves liable to penalty under section 114AA of the Customs Act, 1962.

SHOW CAUSE NOTICE-

12. The said SEZ unit, namely, M/s. V. Milak Enterprises (IEC-) were called upon to Show Cause to the Commissioner of Customs, Kandla as to why:

a) The assessable value of goods i.e. “Silver Bars/Ingots” (CTH 7106) in the Bills of entry appearing in the Annexure-A to the notice should not be rejected and the same should not be reassessed by applying correct tariff value and rate of exchange, as applicable on the date of removal of the goods from said SEZ Unit.
b) The goods mentioned in Annexure A to the notice, totally valued at **Rs. 296,79,02,647/-** (Rupees Two hundred and Ninety Six crore seventy nine lakh two thousand Six hundred and Forty Seven only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, though the same are not physically available.
c) Penalty under section 112, 114A and 114AA of the Customs Act, 962 should not be imposed for reasons discussed above.
d) Bond-cum-Legal Undertaking in form-H executed by the said SEZ Unit should not be enforced towards its above liabilities.

12.1. Further, the DTA Buyer, namely, M/s. HDFC Bank Limited (IEC-0301022666/AAACH2702H) were called upon to Show Cause to the Commissioner of Customs, Kandla as to why:

a) The assessable value of goods i.e. “Silver Bars/Ingots” (CTH 7106) in the Bills of entry appearing in the Annexure-B to the notice should not be rejected and the same should not be reassessed by applying correct tariff value and rate of exchange, as applicable on the date of removal of the goods from said SEZ Unit.
b) The differential Custom duty & IGST totally amounting to **Rs. 9,60,78,238/-** (Rupees Nine Crore Sixty Lakh Seventy Eight Thousand Two Hundred and Thirty Eight Only) on the goods detailed in Annexure-B to the notice should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid.
c) The goods mentioned in Annexure-B to the notice, totally valued at **Rs. 220,57,52,935/-** (Rupees Two Hundred And Twenty Crore Fifty Seven Lakhs Fifty

Two Thousand Nine Hundred and Thirty Five Only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, though the same are not physically available.

d) Penalty under section 112, 114A and 114AA of the Customs Act, 1962 should not be imposed for reasons discussed above.

12.2. The DTA Buyer, namely, M/s. Diamond India Ltd. (IEC-0306062984/AABCD8377R) were called upon to Show Cause to the Commissioner of Customs, Kandla as to why:

a) The assessable value of goods i.e. "Silver Bars/Ingots" (CTH 7106) in the Bills of entry appearing in the Annexure-C to the notice should not be rejected and the same should not be reassessed by applying correct tariff value and rate of exchange, as applicable on the date of removal of the goods from said SEZ Unit.

b) The differential Custom duty & IGST totally amounting to **Rs. 2,14,63,308/-** (Rupees Two Crore Fourteen Lakh Sixty Three Thousand Three Hundred and Eight Only) on the goods detailed in Annexure-C to the notice should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid.

c) The goods mentioned in Annexure-C to the notice, totally valued at **Rs. 76,21,49,712/-** (Rupees Seventy Six Crore Twenty One Lakh Forty Nine Thousand Seven Hundred And Twelve Only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, though the same are not physically available.

d) Penalty under section 112, 114A and 114AA of the Customs Act, 1962 should not be imposed for reasons discussed above.

RECORD OF PERSONAL HEARING-

13. Shri Vivek Milak appeared for personal hearing on 13.03.2025 on behalf of M/s. V. Milak Enterprises, SEZ unit and filed a written submission dated 13.03.2025. He opposed the notice on various grounds interalia on the grounds that-
    a. They are only a vaulting facility.
    b. Statutory payments are in dollar terms
    c. Time bar
    d. Covid time KASEZ was not working on regular basis
    e. They have no control on removal etc.
14. Shri SS Gupta and Shri Vaibhav Shah appeared for personal hearing on 13.03.2025 on behalf of M/s. HDFC bank Limited, Ahmedabad and M/s. HDFC bank limited, Agra, U.P and referred the submission dated 22.01.2025 and referred to Para 9 of the submission which states that SCN did not correctly consider the duty amount paid by them and requested to drop the proceedings.
15. Shri Arjun Raghvendra M, Advocate appeared for personal hearing on 30.04.2025 on behalf of M/s. Diamond India Ltd and reiterated the submission dated 25.04.2025 and requested to drop the proceedings.

WRITTEN SUBMISSION-

16. M/s. Diamond India Limited vide submission dated 25.04.2025, interalia, submitted that-

a. They were engaged in import/export of precious metals i.e. gold, silver, platinum etc. as raw materials for supply to the gems and jewellery industry.

b. The noticee is a trade body, collectively formed by members, formed with the support of Gems Jewellery Export Promotion Council (GJEPC) which is sponsored by the Ministry of Commerce, GoI and not owned by any single individual, to act as a Nominated Agency under (FTP), under which they were authorized to import precious metals, with IEC-0306062984 and to import raw

materials like gold dore bars for the supply to the jewellery industry.

c. The Noticee had been notified as a Nominated Agency by the DGFT- in the ministry of Commerce,GoI vide Noti. No. 88/2008, dated 26.02.2009 and as per Para 4.41 (ii) of the FTP. It is thus licenced to import precious metals like gold, silver and platinum.

d. The import of silver in any form shall be made only through the nominated agencies and hence, the Noticee imported silver for onward supply to the jewelers.

e. M/s. V Milak Enterprises operating from FTWZ and therefore, also an SEZ Unit. They are authorized by the UAC for the operation of warehousing of precious metalsm through Letter of Approval dated 20.06.2018. The UAC, after due deliberations approve the request of the said SEZ unit for inclusion of additional items/precious metals in their warehousing activity and accordingly, amendments in the original LoA had been made from time to time.

f. The imported goods were warehoused in the FTWZ as the goods were imported in bulk. They paid the applicable basic customs duty and IGST on the imported goods for clearance for home consumption to DTA from FTWZ.

g. the aforesaid goods were alleged to have been cleared into DTA by applying incorrect exchange rate and tariff value applicable on the date of payment of duty. As per the audit team statement, the short levy of customs duty and IGST on the clearances made by M/s. V Milak Enterprises was to the tune of Rs. 11,75,41,547/-.

h. The noticee had duly complied with the statutory provisions and the assessable value adopted in respect for the imported goods is correct.

i. They filed the captioned BoE through Milak on 08.04.2020 and 13.04.2020 for removal of goods from KASEZ to DTA for home consumption.

j. The duty was determined based on the tariff value and exchange rate applicable on the date of presentation of bill of entry as required under Section 15 of the Customs Act, 1962.

k. They had duly paid the applicable customs duty on the date of presentation of BoE, i.e. 08.04.2020 and 13.04.2020 and removed the goods on 17.04.2020 after arranging for the logistics. For the removal and clearance from Customs, the Bill of Entry was duly presented before the Proper Officer of Customs for assessment and order Section 46 of the CA, 1962. The BoE was filed through EDI system/ICEGATE for clearance of goods for home consumption, and it was duly cleared by the proper officer.

l. They have complied with the provisions of Sections 15, 46 and 47 of the Customs Act, the goods are deemed to have been legally cleared for home consumption in the DTA upon the Proper Officer's assessment order under Section 47(1). Any further customs clearance at the time of physical removal of goods from the SEZ is neither envisaged under the Customs Act, 1962 nor statutorily mandated.

m. They have also relied upon Section 68 that deals with the clearance of warehoused goods for home consumption. In respect of the warehoused goods also, bill of entry for home consumption when presented, clearance shall be granted by the Customs authority and duty should have been paid at that time of presentation of bill of entry and it cannot be postponed to a later date of removal of goods from the warehouse. This fortifies the statutory positions that tariff value and rate of exchange prevalent on the date of presentation of bill of entry are relevant and not the date when the goods are physically removed from the SEZ. Customs Act, does not refer to any such alternative date.

n. They have also referred to Rule 48(2) of SEZ Rules, 2006 to argue that Valuation of the goods and/or services cleared into Domestic tariff Area shall be determined in accordance with the provisions of Customs Act and rules made thereunder as applicable to goods when imported into India.

o. Without prejudice, the SEZ Act clearly states that the date of payment of duty can be adopted where the date of removal cannot be ascertained exactly. The physical removal of goods after customs clearance is a matter of logistics and not of law. The SEZ gate cannot determine or overrule the legal assessment done by the Proper Officer of Customs, in respect of the BoEs presented.

p. Post-clearance of goods by the Proper Officer under the applicable provisions of the Customs Act, physical removal of goods is a matter of logistics as of arranging vehicles, organizing labour, obtaining administrative clearances/passes etc. The Noticee reiterated that the SEZ gate, as the physical place, would not determine and overrule the legal assessment done by the Proper officer. Instead it should be construed as having been done at the SEZ gate in compliance with the due procedure prescribed under both the Customs Act and the SEZ Act, which had been duly complied with the Noticee, as they had rightly presented the BoE and had paid the applicable duties. In this respect, the case to allege suppression on the part of the Noticee had not been made out.

q.All the information pertaining to the imported goods were disclosed to the proper officer of Customs during the presentation of Bill of Entry and therefore, it cannot be said tha the noticee suppressed the facts.

r. The goods are not liable to confiscation.

s. Penalty under Section 114A is not imposable.

t. Penalty under Section 114AA is not imposable.

u. The impugned SCN issued on the grounds alleging suppression of facts or mis declaration of value is not sustainable.

16.1 M/s. Diamond India vide their additional submission dated 05.05.2025 interalia submitted that-

a. The noticee has not made any mis-statement while filing the Bill of Entry. They have filed the BoE under Section 17 of the Customs Act & Rule 75 of SEZ Rules, 2006. Based on the same, the proper officer of Customs has assessed duty and permitted removal of goods.

b. The noticee has not suppressed any material facts.

c. The noticee has intimated the date of removal of goods to the Customs officer.

d. All Banks and nominated agencies have followed the same procedure.

e. The noticee have no interest in goods imported.

f. It could be a matter of different interpretation of law but definitely not one of evasion of duty.

g. No short payment of duty.

h. OOC has no relevance for assessment of duty. OOC is an order passed under section 47(1) of Customs Act, permitting clearance of goods from SEZ to DTA. It arises after completion of assessment and payment of duty “as assessed”. It has no relevance to assessment which must be done before OOC can be issued. The assessment needs to be done u/s 15(1) before clearance is given u/s 47(1).

i. Clearance means removal.

j. Date of removal deleted in Customs Act, 1962.

k. No conflict between Customs Act and SEZ Act.

17. M/s. HDFC bank Limited vide their submissions dated 22.01.2025 and 21.03.2025 interalia submitted that-

a. Date of removal refers to the date of Bill of Entry. The term ‘date of removal’ has not been defined under the Customs Act, 1962 and the SEZ Act. As per erstwhile Section 15(1)(b), the date of Bill of entry shall be date of removal. In this regard, they have relied upon the judgement of Apex court in the matter of DCM v. UoI 1999 (109) ELT 12 (SC)

b. Filing of Bill of Entry shows intention to remove. The term ‘removal’ should be interpreted as ‘intention to remove’. They have relied upon the decision of Kiran Shipping Mills vs Collector 1999 (113) ELT 753 (SC). They have also referred to the case of Kesoram rayon vs Collector of Customs, Calcutta 1996(86) ELT 464 (SC).

c. SEZ Online system automatically and without any human intervention considers the Tariff value and Exchange Rate as in force on the date of filing of a Bill of Entry.

d. Date of Removal is not ascertainable on the date of filing of bill of entry.

e. No mechanism in SEZ online System to pay Customs duty on the basis of date of removal. They have relied upon the decision of Wipro Ltd v. UoI, the Delhi HC to argue that any condition imposed by the notification must be capable of being complied with. If it is impossible of compliance, then there is no purpose behind it.

f. The self assessment is completed upon generation of bill of entry through SEZ online system. They have relied upon the Rule 4(2) of Bill of entry (Electronic Integrated declaration and Paperless Processing) Regulations, 2018.

g. As per Section 17(4) of CA, 1962, the re-assessment is allowed only if it is found on verification, examination or testing of the goods that the self assessment is not done correctly. They have relied upon the decision of the Apex Court in the matter of UoI Vs. GS Chatha Rice Mills.

h. The notification issued subsequently to filing of Bill of Entry cannot be made applicable retrospectively.

i. Customs duty paid amount considered incorrectly for computation of differential duty liability resulting into inflated proposed differential duty demand by Rs. 7,66,57,108/-.

j. Quantification of duty-

They have provided the calculation as given below-

Request Id	Customs duty paid as per Annexure-B	Actual Customs Duty Paid	Excess Duty demanded
262000943304	3,72,22,194	3,72,22,194	-
262000898854	3,56,95,077	3,56,95,077	-
262000943934	3,83,31,725	3,83,31,725	-
261904405582	3,83,31,726	10,28,43,219	6,45,11,493
261904406783	3,83,31,730	5,04,77,345	1,21,45,615
Total	18,79,12,452	26,45,69,560	7,66,57,108

They have further provided the total differential duty by considering the correct amount of customs duty paid as given below:-

Request Id	Customs duty payable as per Annexure-B	Actual Customs Duty Paid	Differential duty payable
262000943304	3,79,74,158	3,72,22,194	7,51,964
262000898854	4,48,52,849	3,56,95,077	91,57,772
262000943934	3,91,06,103	3,83,31,725	7,74,378
261904405582	10,87,03,770	10,28,43,219	58,60,551
261904406783	5,33,53,811	5,04,77,345	28,76,466
Total	28,39,90,690	26,45,69,560	1,94,21,130

Without prejudice to their submission that the entire demand is not sustainable, the differential duty of Rs. 7,66,57,108/- is invalid and should be restricted to Rs. 1,94,21,130/-.

k. Entire demand is time barred. The demand has been raised for the period 07.12.2019 to 19.03.2020 in the month of December 2024. Hence even if the demand is upheld, entire demand is hit by limitation as the same is made after the time limit of 24 months. The SCN has proposed to invoke extended period of limitation on the grounds of suppression with an intent to evade duty.

l. The issue involves interpretation of statute.

m. Confiscation of goods not possible. They have relied upon the decision of Shiv Kripa Ispat Pvt. Ltd Vs Commissioner of Central Excise, Nasik, 2009 (235) ELT arguing that when goods are not available for confiscation, no confiscation shall be made.

n. Interest and penalty are not leviable.

18. M/s. V Milak Enterprises vide their submissions dated 20.01.2025 and 13.03.2025, interalia, submitted that-

a. They had been approved as a warehousing service providing unit in KASEZ and operating as Warehousing custodian on behalf of their client.

b. They had been as well approved for warehousing of precious metals on behalf of their clients vide their LoA dated 20.06.2018.

c. A warehousing agreement was entered into with Brinks India Pvt. Ltd for storage of precious metals including handling thereof.

d. As provided therein basis the terms of agreement- Brinks India Pvt. Ltd or their Customer were to arrange the transportation, security, insurance etc. and V Milak Enterprises was required to provide needful space in KASEZ duly compliant and audited to the storage norms of the product as well as to manage the handling operations within the warehouse.

e. As per Section 48(1), SEZ Rules, BoE needs to be filed by DTA buyer only or upon his authorization by the SEZ Unit/SEZ warehousing service provider. In this case, Brinks India Pvt. Ltd and their customers would provide the needful documents/ information to file the Bills of Entry and this has as well been mentioned in the terms of agreement while Brinks India Pvt Ltd or their customer would arrange the transportation, insurance, security etc.

f. The duty payment has been done by the DTA clients of Brinks India P. Ltd.

g. Being concerned with the management of warehouse and handling within the warehouse facility as well as to file the Bill of Entries on behalf of the client or their customers basis the authorization under agreement; there isn't any mis-declaration or error in filing of the Bill of Entries for Home Consumption /Removal into DTA.

h. The value, quantity and other conditions including the duty tariff as notified from time to time are complaint when assessed. Accordingly, the SEZ warehousing service provider be not held responsible.

i. Being a warehouse service provider in KASEZ they had ensured that all documents are correctly and transparently filed to the ex-chequer and that there existed no error in their filing of Bill of Entries for Home consumption including the assessment thereof and handing over the goods on instructions of the Principal client Brinks India P Ltd or their customer who were recognized/authorized banks operating in India approved through RBI/DGFT.

j. Being Brinks India Pvt. Ltd or their client responsible for filing of Bill of Entry for Home Consumption and thereafter (specifically included in agreement also) for the transportation and duty payment; the first onus is on them to pay the duty and remove the goods in time post assessment.

k. They have also referred to Section 47(4), 48(1), SEZ Rules, 2006 and Section 30(b) of SEZ Act, 2005 to argue that date of removal of goods from warehouse should be interpreted as date on which Bill of entry was presented.

l. The change in tariff or exchange rate are not known prior hand but are communicated through CBIC on the public forum; accordingly the concealment

or mis-representation or suppression of facts is not holdable; atleast on the part of warehousing service provider.

m. A few of KSEZ DTA Bill of Entries under consideration in the issued SCN were of COVID Pandemic lockdown situation by MHA orders caused complete restrictions in India on movement including in KASEZ, not only for vehicles but even the employees/owners through various circulars/notices whereby all inward-outward movements were suspended and thus causing their clearances to be held up.

n. They have provided agreement entered into with Brinks India/G4S International.

DISCUSSION AND FINDINGS-

19. I have carefully gone through the Show cause notice, record of personal hearings, written submissions and all the evidences available on record.

20. The issues to be decided before me are the following:-

a) Whether the duty is leviable on the date of filing of Bill of Entry or on the date of Out of Charge on clearance/removal of goods from SEZ to DTA;

b) Whether the goods are liable for confiscation;

c) Whether penalty is levaible;

d) Whether the Show cause notice is time barred;

Whether the duty is leviable on the date of filing of Bill of Entry or on the date of Out of Charge on clearance/removal of goods from SEZ to DTA-

21. The Show cause notice proposes leviability of duties of Customs on the date of removal of goods viz. when the out of the Charge is given and the noticees argued that the duty is leviable on the date of filing of Bill of Entry or the date of payment in terms of Section 15, 46 and 68 of the Customs Act, 1962 read with Rule 48 of SEZ Rules, 2006.

22. In this regard, **relevant provisions of the Customs Act, 1962** are reproduced for ease of reference:-

2(23) —"import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

2 (27) —"India" includes the territorial waters of India;

12. Dutiable goods.—(1) Except as otherwise provided in this Act, or any other law for the time being in force, ***duties of customs shall be levied*** *at such rates as may be specified under the 1 [Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force,* ***on goods imported into, or exported from, India****.*

14. Valuation of goods.—(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

15. Date for determination of rate of duty and tariff valuation of imported goods.—

(1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,—

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse under section 68, on the date on which 3 [a bill of entry for home consumption in respect of such goods is presented under that section];

(c) in the case of any other goods, on the date of payment of duty:

[Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.]

(2) The provisions of this section shall not apply to baggage and goods imported by post.

46. Entry of goods on importation.—(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting 4 [electronically] 5 [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing 6 [in such form and manner as may be prescribed]:

47. Clearance of goods for home consumption.—

(1)] Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:

[Provided that such order may also be made electronically through the customs automated system system on the basis or risk evaluation through appropriate selection criteria: Provided further that] the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.]

[(2) [The importer shall pay the import duty—

(a) on the date of presentation of the bill of entry in the case of self assessment; or

(b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or

(c) in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf, and if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, at such rate, not less than ten per cent. but not exceeding thirty-six per cent. per annum, as may be fixed by the Central Government, by notification in the Official Gazette.]

[Provided that the Central Government may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty electronically:

WAREHOUSING

57. Licensing of public warehouses.—The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a public warehouse wherein dutiable goods may be deposited.]

58. Licensing of private warehouses.—The Principal Commissioner of Customs or Commissioner

of Customs may, subject to such conditions as may be prescribed, licence a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.

58A. Licensing of Special warehouses.—(1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.

68. ***Clearance of warehoused goods for home consumption.****—*

[Any warehoused goods may be cleared from the warehouse] for home consumption, if—

(a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;

[(b) the import duty, interest, fine and penalties payable in respect of such goods have been paid; and]

(c) an order for clearance of such goods for home consumption has been made by the proper officer.

[Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

*Provided further that] the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of *** penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon:]*

[Provided also that] the owner of any such warehoused 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.]

23. In terms of section 12 of the Customs Act, taxable event for the purpose of import into India, which includes its territorial water, ***occurs when the goods enter the territorial water.*** Thus, the taxable event is considered when goods enter into the territorial water of India but continues and is completed when goods reach the customs barriers and bill of entry for home consumption is filed.

In this regard, I refer to the decision of Hon'ble High Court of Calcutta in the matter of DINESH KUMAR NEVATIA Versus COLLECTOR OF CUSTOMS1988 (38) E.L.T. 606 (Cal.) wherein the Hon'ble Court held that-

'Import' and 'import into India' - Chargeability, rate of duty and valuation will arise at different points of time - Therefore, the words 'import' and 'import into India' cannot be interpreted on the basis of the word 'levied' in Section 12 of the Customs Act, 1962. - Having regard to the nature of the levy of Customs duty the word 'levied' occurring in Section 12 has several connotations appears to have advisedly specified under different provisions of

the enactment at the different stages, i.e. the stage when the goods have to be valued and the stage when the duty has to be quantified under the Customs Act.

24. Chargeability is under Section 12, valuation of goods under Section 14 and the rate at which the duty should be assessed is under Section 15. These different events may occur at different points of time but unless the goods are chargeable to duty and the taxable event occurs, the question of valuation of goods quantification of duty payable at any particular rate obviously cannot arise. The taxable event has to occur at some particular point of time.

25. On Conjoint reading of the Section 2(23), 2(27) and Section 12 of Customs Act, 1962, the chargeability of customs duties occur when the goods enter territorial waters of India, however, the rate of duty and valuation of the goods arise at the date when bill of entry is filed for home consumption in terms of Section 14 and Section 15 of the Customs Act, 1962.

26. The Customs Act itself gives two options to an importer. The importer may clear the goods forthwith or lodge them in a warehouse for clearance from time to time. The goods lodged in the warehouse need not be cleared in one lot, they could be cleared in installments. In case of warehoused goods, the rate and value of the goods are taken on the date of filing of Bill of entry for Home consumption.

27. Further, **relevant provisions of SEZ Act, 2005 and SEZ Rules, 2006** are reproduced here for ease of reference:-

a. 2-Definitions-

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

(i) "Domestic Tariff Area" means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones;

(n) "Free Trade and Warehousing Zone" means a Special Economic Zone wherein mainly trading and warehousing and other activities related thereto are carried on;

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

Exemptions, drawbacks and concessions-

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: - Exemptions, drawbacks and concessions to every Developer and entrepreneur. 52 of 1962 51 of 1975 (a) 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, or service provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur;

Domestic clearance by Units.

30. 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 antidumping, countervailing and safeguard duties under the Customs Tariff Act, 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.*

Act to have overriding effect-

51. (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

SEZ to be treated outside the customs territory of India-

53.(1) A Special Economic Zone shall, on and from the appointed day, ***be deemed to be a territory outside the customs territory of India*** *for the purposes of undertaking the authorized operations.*

Rules of SEZ Rules, 2006-

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:*

47(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.

28. In the context of the **SEZ Act, 2005**, the concept of a **taxable event** is entirely different from normal import/export scenarios under the **Customs Act, 1962**, because SEZs are treated as **territory** outside the customs territory for the purposes of trade, duties, and tariffs. No customs duties are levied when goods are brought into the SEZ for the purpose of authorized operations as SEZ in terms of Section 26 of the SEZ Act, 2005.
29. Further, as per Section 2(o) of SEZ Act, 2005 import is defined as bringing goods into SEZ from outside India. The removal/clearance of goods from SEZ to DTA is not considered as import. Therefore, the domestic clearance of goods from SEZ to DTA can not be treated at par with bringing goods from outside India into territorial waters of India as done under Customs Act, 1962.
30. In this regard, reliance is placed on the decision of Hon'ble High Court of Gujarat in the matter of M/s. Adani power Ltd. Vs. Union of India 2015 (330) E.L.T. 883 (Guj.)-

"33. The effect under Section 26 cannot exceed the charging provision. Section 25 contains a power to issue subordinate legislation which must be within the power to levy and cannot exceed the power to levy. If the power to levy duty under Section 12 of the Customs Act is extended to provide for levy on goods removed from SEZ into DTA, it shall render Section 12 beyond legislative competence since Entry 83 of List I of Schedule VII of the Constitution of India and the powers the Parliament only to provide for levy of customs duty on goods imported from a country or territory outside India, into India. It is also equally settled law that liability and exemption are two different aspects as held by the Apex Court in *Associated Cement Company* v. *State of Bihar and Others,* 2004 (7) SCC 642. The question of exemption arises only after the liability is fixed. If there is no liability, the question of exemption does not arise at all. There is no liability of developers and units situated within SEZ under the Customs Act for removal of goods from SEZ into DTA or non-processing areas because in neither case, are these "imports" as defined in Section 2(23) of the Act read with definition of "India" as defined in Section 2(27) thereof. As there is no liability under the said Act, the question of exempting partial or conditional, electrical energy removed from SEZ into DTA or non-processing area of SEZ @ 16% *ad valorem* or any other rate does not arise at all. The impugned notification is a piece of delegated or subordinate legislation and, therefore, cannot travel beyond the provisions of the charging section.

34. Section 30 of the SEZ Act is divided into two parts. First part creates liability only on removal of goods from SEZ to DTA. Section 30 does not provide for levy of duty on goods removed from SEZ processing area into non-processing areas. ***To the extent of Section 30 provides for levy of duty on goods removed from SEZ into DTA for the purposes for levy of duty on goods removed from SEZ into DTA for the purposes of quantification by reference, the duty is to be calculated with reference to the provisions of the said Act and CTA for***

determining the rate of duty classification and valuation. This is referred to as incorporation of reference but Section 30 of the SEZ Act is independent from Section 12 of the said Act. Section 30 of the SEZ Act is distinct and different from Section 12 of the said Act and the two operate in different fields. Section 30 of the SEZ Act does not refer to the word "import". Section 30 of the SEZ Act does not provide for levy of goods imported into SEZ as per the word "import" defined in SEZ Act. For goods imported into SEZ, customs duty is levied under Section 12 of the said Act, but on account of Section 26 of the SEZ Act, there is an exemption from payment of such customs duty. The provisions of Section 12 of the said Act are applicable to SEZ only insofar as and limited to import of goods into SEZ from a place outside India. The provisions of the said Act are not applicable at any stage thereafter insofar as SEZ Act is concerned. At the point of entry of the goods into the territorial waters of India from a place outside India where the provisions of the Customs Act are applicable insofar as SEZ is concerned, no customs duty is payable by virtue of the exemption under Section 26 thereof. The provisions of the Customs Act are thereafter exhausted and have no further role to play. **Consequently, when goods are removed from SEZ into DTA, it is the provision of Section 30 of the SEZ Act which shall prevail. This is also provided for in Section 51 of the SEZ Act which contains the overriding provision.** Section 51 of the SEZ Act provides that notwithstanding anything contained in any other law for the time being, the provisions of SEZ Act shall prevail. Therefore, the Parliament cannot make any law providing for levy of customs duty on removing the goods from SEZ into DTA, and any such law being so made shall be *ultra vires* Entry 83 of List I of Schedule VII to the Constitution of India read with Section 12 of the said Act. Thus, impugned notification cannot provide for levy on goods removed from SEZ into DTA or non-processing areas which is a field covered and occupied by Section 30 of the SEZ Act. The impugned notification is also *ultra vires* Section 30 of the SEZ Act which has an overriding effect and shall prevail.

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43. Section 30 of the SEZ Act, 2005 is the charging section whereby duty is imposed in respect of goods removed from SEZ to DTA. ***Section 30(a) provides that any goods removed from SEZ to DTA shall be chargeable to customs duties, etc. as leviable on such goods when imported. Section 30(b) provides that the rate of duty applicable shall be the rate on the date of removal.*** The said section, therefore, incorporates by reference rates of customs duties as applicable when goods are imported into India from outside India for goods removed from SEZ to DTA and that the levy of duty is not under the Customs Act. Section 51 of the SEZ Act gives overriding to the provisions of SEZ Act and that being so, the same will prevail over any other law including the Customs Act. Thus, when no customs duty is payable on goods imported in India, no duty would be payable on similar goods transferred from SEZ to DTA in view of Section 30 read with Section 51 of the SEZ Act.

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48. Thus, from the above, it can be seen that in order to give an impetus to exports, the SEZ Act was enacted. The SEZ Act envisages a deeming fiction where a SEZ area would be considered outside the customs area of the country. It is also noticed that Section 30 of the SEZ Act permits DTA clearances to a SEZ unit under certain conditions. One of the conditions being the goods removed from SEZ to DTA would be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 where applicable as leviable on such goods when imported."

31. On perusal of the above provisions of Customs Act, 1962, SEZ Act, 2005 and the above mentioned judicial pronouncement, it is observed that chargeability of customs duties in SEZ Act and Customs Act operate in two different fields. Chargeability of customs duties, under Customs Act, arises on bringing goods from outside India to territorial waters of India (defined as import of goods) under the provisions of Section 12 of the Customs Act, 1962. When the goods are brought into SEZ from outside India, Section 12 of the Customs Act, 1962 kicks in, however Section 26 overrides the

chargeability of Section 12 for the purpose of carrying out authorized operations by the SEZ unit in order to boost exports of India. Further, if the goods are cleared/removed from SEZ to DTA, the SEZ Act, levies duties of Customs in terms of Section 30 of the SEZ Act, 2005. The SEZ Act clearly spells out that removal of goods from SEZ to DTA is not to be considered as import as defined under Section 2(o) of the SEZ Act, 2005. Further such clearance is also not to be considered within the definition of Section 2(23) of the Customs Act, 1962 as import is bringing goods from outside India into India and SEZ, though beyond the customs territory of India, is located within the territory of India. Clearly, the intent of the legislature was clear, while enacting SEZ Act, that the goods entering into SEZ will be exempted from the duties of Customs for the purpose of boosting exports and earning foreign exchange for India, however, if the goods are cleared/removed from SEZ, the duties of Customs are levied by creating a fiction of 'deemed import'. The taxable event as per Section 30(a) of SEZ Act, 2005 is ***"removal of goods'***. Clearly, it is a settled law that first chargeability arises and then the rate and value of the goods may arise. As discussed in the aforementioned paras, all the events can happen at different points of time. The taxable event and rate and valuation of event may or may not occur at the same time. Under Customs Act, 1962 the taxable event is entering of the goods in territorial waters whereas under SEZ Act, 2005 taxable event/chargeability arises on removal of goods from SEZ to DTA. Mere filing of Bill of entry is not a taxable event. Filing of Bill of Entry for home consumption and payment of duties of customs is only a procedure to remove the goods from SEZ to DTA however if the bill of entry is filed and goods are not removed from the SEZ, the duty liability shall not arise. Unless the goods cross SEZ area, the goods are not levaible to duties of Customs.

32. Further, as per Section 30(b) of the SEZ Act, 2005, it is crystal clear that the rate of duty and tariff valuation applicable to goods 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.

33. By filing of Bill of entry for home consumption, the 'intent to remove the goods' occurs and the assessment done at the rate and valuation on the date of filing of Bill of entry is only an arrangement for removal of goods, however, if the rate and valuation changes on the date of physical removal of goods, the differential duty is ought to be paid in terms of Section 30(b) of the SEZ Act, 2005. The situation is similar/analogous to the filing of Advance bill of entry under Section 46 of the Customs Act, 1962 before the end of the day (including holidays) preceding the day of arrival at a Customs port/station at which such goods are to be cleared for home consumption or warehousing in terms of Board Circular No. 08/2021-Customs dated 29.03.2021 and Board Instruction No. 05/2021-Cutoms dated 24.03.2021. In case, the rate of duty is reduced on entering of goods into territorial waters of India, the importer becomes liable for refund of such reduction of duty.

34. Clearly, it is evident that removal/clearance of goods from SEZ to DTA can not be held equivalent to import of goods from outside India to territorial waters of India for the reasons discussed above. Further, the argument of the noticees on Section 68 is also not sustainable as the warehousing of goods in SEZ is not equivalent to warehousing of goods mentioned in Section 57 and 58 of the Customs Act, 1962. The warehousing of goods in SEZ and warehousing of goods in customs bonded warehouse operate under different provisions of law.

35. I further find that the noticees have argued that Valuation and assessment of the goods is to be done as per Section 15 of the Customs Act, 1962 in terms of Rule 47(2) of the SEZ Rules, 2006. In this regard, it is pertinent to

note that on removal of goods from SEZ to DTA, the SEZ Act mandates that the rate of duty and tariff valuation shall be done on the date of removal of goods. However, the valuation and assessment has to be carried out as provided under the provisions of Customs Act, 1962. The valuation and assessment given under Section 14 and 15 of the Customs Act, 1962 kicks in once the goods are removed from SEZ to DTA interms of Rule 47(4) of the SEZ Rules, 2006, however, the point of taxation which decides the valuation and rate of duty is to be done under the provisions of Section 30(b) of SEZ Act and the Section 30(b) of SEZ Act, shall prevail over Section 14/Section 15 of the Customs Act, read with Rule 47(4), insofar to the extent the point of taxation is concerned. The remaining provisions of Section 14/15 of the Customs Act, 1962 will remain in force.

WHETHER DATE OF REMOVAL IS ASCERTAINABLE-

36. The noticees in their submissions have further argued that the date of removal is not ascertainable on the date of filing of Bill of Entry and therefore date of payment of duty is to be treated as the relevant date. However, in this regard, it is pertinent to note that the date of removal is ascertainable as the date of physical removal of goods is duly registered in the dispatch register of KASEZ and if out of charge is given on the same day, the date of out of charge is mentioned online also at NSDL portal. The argument that a later date is not ascertainable on the date of filing of bill of Entry is not a valid ground as the taxable event is removal of goods and therefore point of taxation cannot be before the taxable event of physical removal of goods. The date of removal of goods is clearly ascertainable as the same is duly recorded.

37. I find that during the test check of records for the period 2019-21, the Sr. Audit Officer (CRA-I) noticed short levy of Basic Customs duty and IGST due to short fixation of Tariff value. It was noticed that the said SEZ unit had cleared/removed “Silver Bar” (CTH 7106) to DTA applying incorrect exchange rate and tariff value applicable on the date of payment of duty. As per the audit team statement, the short levy Custom duty and IGST on the clearances made by M/s. V Milak Enterprises was to the tune of Rs. 11,75,41,547/-.

38. CBIC vide Notification No. 36/20001-Customs (NT) dated 03.08.2001 had fixed tariff value of the subject item, having regard to the trend of value of subject goods, and where such tariff values are fixed by the Board, the duty shall be chargeable with reference to such tariff value. Therefore, the subject goods “Silver, in any form” shall attract the tariff value as per Notification No. 36/2001-Customs (NT) dated 03.08.2001 (as amended from time to time). Amended tariff value is applicable from the date of issue of such amended notifications. Further, in exercise of powers conferred vide section 14 of the Customs Act, 1962, the CBIC notifies rate of exchange for conversion of foreign currencies into Indian currency or vice versa, through Customs (non-tariff) notifications issued from time to time, for the purpose of valuation of imported and export goods. The rate of exchange, as determined by the Board, is mentioned in the subject notifications against the respective foreign currency and the same shall be used for the purpose of valuation of the goods.

39. As per Section 30(b) of the SEZ Act, 2005, the rate of duty and tariff valuation, if any, applicable to goods removed from the SEZ 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. In the instant case, the audit team had noticed that the said SEZ unit had cleared/removed subject goods by applying the incorrect exchange rate and tariff value as applicable on the date of payment of duty.

40. With regard to the change in exchange rate, I find that Section 14 of the Customs Act, 1962 mandates that the value of the imported goods shall be converted into Indian currency in terms of exchange rate determined by the board. The provisions of Section 14 are reproduced below:-

Section 14 in the Customs Act, 1962 14 Valuation of goods. —

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf: .....

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, ***and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.***

Explanation. —For the purposes of this section—

(a) ***"rate of exchange"*** *means the rate of exchange—*
(i) ***determined by the Board, or***
(ii) ascertained in such manner as the Board may direct,
for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

*(b) "foreign currency" and "Indian currency" have the **********.*

41. In view of the above discussion and findings, I hold that the customs duty is liable to be paid on the date of removal of goods as pointed out by CRA Audit as envisaged under the provisions of Section 30(a) and 30(b) of SEZ Act, 2005 and rules made thereunder and the same is to be recovered under the provisions of Section 28 of the Customs Act, 1962.

CONFISCATION OF GOODS-

42. Under the regime of self assessment, the rate of duty, tariff value and the correct exchange rate is required to be correctly mentioned in the Bill of entry for the purpose of Section 30(b) of SEZ Act, 2005. If there is any change in the rate of duty, tariff value and exchange rate on the date of removal of goods, the onus is on the DTA Units and on the persons or firms having effective control on the goods at the time of removal of goods to ensure the payment of differential duty on the date of physical removal of goods in terms of Section 30(b) of SEZ Act, 2005. Since it is established that the noticees i.e. DTA buyers field incorrect details viz. rate of duty and tariff value along with exchange rate in the Bills of Entry, the goods are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

43. I find that the noticees have argued that since the goods are not available for confiscation, the same can not be done while referring to the decision of Shiv Kripa Ispat Pvt. Ltd Vs Commissioner of Central Excise, Nasik, 2009 (235)

ELT. In this regard, it is pertinent to note that the availability of the goods is not necessary for imposing redemption fine as once the goods are liable for confiscation and the confiscation is authorized by the act, the redemption fine is imposable in terms of Section 125 of the Customs Act, 1962. In this regard, I place reliance on the decision of Hon'ble High Court of Madras in the matter of *Visteon Automotive Systems India Pvt Ltd Vs CC Chennai* dated 11.08.2017 [2018 (9) G.S.T.L. 142 (Mad.)] wherein the Hon'ble Court held that-

"the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

PENALTIES UPON VARIOUS FIRMS/COMPANIES (SEZ UNITS/DTA FIRMS)

44. The SEZ Unit M/s. V. Milak Enterprises vide their submission has argued that they had been approved as a warehousing service providing unit in KASEZ and operating as Warehousing custodian on behalf of their client. They have further argued that they had entered into an agreement with G4S International for storage of precious metals including handling thereof. G4S International or their Customer were to arrange the transportation, security, insurance etc. and V Milak Enterprises was required to provide needful space in KASEZ duly compliant and audited to the storage norms of the product as well as to manage the handling operations within the warehouse.

45. As per Section 48(1), SEZ Rules, BoE needs to be filed by DTA buyer only or upon his authorization by the SEZ Unit/SEZ warehousing service provider. In this case, G4S International and their customers would provide the needful documents/ information to file the Bills of Entry and this has as well been mentioned in the terms of agreement while G4S International or their customer would arrange the transportation, insurance, security etc.

46. In this regard, they have provided an agreement dated 13.03.2019 entered into between M/s. V Milak Enterprises and M/s. G4S International Logistics UK Ltd., UK.

The images of the agreement dated 13.03.2019 entered into between M/s. V Milak Enterprises and M/s. G4S International Logistics UK Ltd., UK are reproduced below for further examination-

5957

DATED

SERVICE AGREEMENT OF TERMS AND CONDITIONS

FOR THE SUPPLY OF SERVICES

BETWEEN

M/S. V. MILAK ENTERPRISES, KANDLA SPECIAL ECONOMIC ZONE, INDIA

&

M/s. G4S INTERNATIONAL LOGISTICS UK LTD., UK

SERVICE AGREEMENT MADE ON THIS 13th DAY OF MARCH 2019.

CO-OP BANK LTD.
PLOT-12,SECTOR-9,
GANDHIDHAM-370 201
GUJ/SOS/AUTH/AV/201/2007

100905 FEB 28 2019

16:13

Rs.0000100/- PB6607

INDIA STAMP DUTY GUJARAT

NOTARIAL Machulkant J. Shah Area Dist. Kutch. REG. No 324/2002 Expire Date 24-06-2022 GOVT. OF GUJARAT NOTARIAL

NOTARY Machulkant J. Shah Area Dist. Kutch. Regd. No. 324/2002 GUJARAT STATE (INDIA) GOVT. OF GUJARAT

This Service Agreement ("Agreement) is made on this 14th day of March 2019 by and between:

M/S. V. MILAK ENTERPRISES, a firm registered in **INDIA** under The Indian Partnership Act with registration number Guj/RJT – 54217 and having its registered office at **Plot 176A, Sector 1, Kandla Special Economic Zone, Gandhidham-Kutch 370 230** (hereinafter referred to as **"Custodian"**) which expression shall, wherever the context permits, include its successors in business, administrators, executors and permitted assigns;

And

M/s. G4S INTERNATIONAL LOGISTICS UK LTD, a company in **UK** with registered federal number 01412704, whose registered office is at **Unit 6, Central Park Estate, Staines Road, Feltham, Middlesex, TW4 5DJ, UK** (hereinafter referred to as "Shipper") which expression shall, wherever the context permits, include its successors in business, administrators, executors and permitted assigns.

(each a "Party" and together "the Parties")

PREAMBLE

(A) Whereas Custodian has been allotted and is in possession of Plot No. 507 Phase II – New Area of Kandla SEZ on lease from Development Commissioner, KASEZ and has been granted valid Letter of Approval No. KFTZ/IA/1721/98/3201 by Development Commissioner, KASEZ for extending Warehousing Services at Kandla SEZ under Applicable Law;

For V. MILAK ENTERPRISES

Partner

(B) Whereas the Shipper is a company engaged in the logistics services in India and elsewhere;

(C) Whereas the Shipper wishes to engage the Custodian to hold their products at the facility owned and operated by the Custodian in Kandla SEZ and to transport such products to Shipper's customers according to the Shipper's instructions and Applicable Laws;

NOW, THEREFORE, in consideration of the rights and obligations herein set forth, the Parties hereto agree as follows:

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Applicable Law: any and all laws or regulations, regulatory policies, guidelines or industry codes which apply from time to time to the provision of the Services including, but not limited to, The Special Economic Zones Act 2005, The Special Economic Zones Rules 2006 (as amended), the Gujarat Special Economic Zone Act 2004, the Gujarat Special Economic Zone Regulations 2007, The Goods & Service Tax Act 2017 and the Environment (Protection) Act, 1986 and the rules framed thereunder;

Business Day: a day other than a Saturday, Sunday or public holiday as declared under the Negotiable Instrument Act, 1881 in India or in UK when banks in Gujarat – Kutch, India and UK are open for business;

Charges: the charges payable by the Shipper for the supply of the Services in accordance with clause 6 and calculated for each Order in accordance with the principles set out in Schedule 2 to this Agreement;

Facility: the Custodian's facility at the Site which is suitable for storage of the Products in accordance with Clause 3;

Force Majeure Event: shall mean any circumstance not within a party's reasonable control including, without limitation acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action; non-

For, V. MILAK ENTERPRISES

Partner

performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); interruption or failure of utility service;

Order: the Shipper's order for the supply of Services, as set out in the Shipper's written request submitted to the Custodian from time to time;

Products: the Shipper's Products in respect of which the Custodian shall perform the Services hereunder;

Services: the services to be provided by the Custodian under the Agreement as set out in Schedule 1 to this Agreement or as otherwise specifically set out in any Order;

SEZ: a Special Economic Zone in India created under and in accordance with the Applicable Law;

Site: Plot No. 507, Phase II – New Area of Kandla SEZ.

1.2 **Construction.** In these Conditions, the following rules apply:

(a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

(b) a reference to a Party includes its [personal representatives,] successors or permitted assigns;

(c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(d) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(e) a reference to **writing** or **written** includes and faxes and e-mails (except in the case of notifications under Clauses 4.1(a), and 10 which must be served in accordance with Clause 12.2) .

2. BASIS OF CONTRACT

2.1 The terms of this Agreement to the exclusion of any other terms that the Custodian seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

For, V. MILAK ENTERPRISES

Partner

3. SUPPLY OF SERVICES

3.1 The Custodian shall from the 1ST of Feb., 2019 and for the duration of this Agreement provide the Services to the Shipper in accordance with the terms of the Agreement.

3.2 The Custodian shall meet any performance dates for the Services specified in each Order or notified to the Custodian by the Shipper.

3.3 In providing the Services, the Custodian shall:

(a) co-operate with the Shipper in all matters relating to the Services, and comply with all instructions of the Shipper;

(b) perform the Services with the best care, skill and diligence in accordance with best practice in the Custodian's industry, profession or trade;

(c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Custodian's obligations are fulfilled in accordance with this Agreement;

(d) provide all equipment, tools and vehicles and such other items as are required to provide the Services;

(e) obtain and at all times maintain all necessary licences and consents, and comply with all Applicable Laws;

(f) observe all health and safety rules and regulations and any other security requirements that apply at the premises and at the Site;

(g) hold all Products in safe custody, maintain the Products in good condition and according to Shipper's written instructions until returned to the Shipper, and not dispose or use the Products other than in accordance with the Shipper's written instructions or authorisation;

(h) not do or omit to do anything which may cause the Shipper to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Custodian acknowledges that the Shipper may rely or act on the Services;

(i) collect from Shipper or on his order the duties and taxes and pay due taxes and duties to the government on removal of Products to the Domestic Tariff Area (DTA);

(j) issue certificates/authorisations and comply with conditions as required under the Applicable Laws to procure, receive and remove Products and export of Products;

(k) maintain the Facility to the extent required for the safe and secure storage and handling of the Products (and all packaging associated therewith) in the quantities required by each Order and in accordance with Applicable Law;

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For, V. MILAK ENTERPRISE

Partner

(l) allow the Shipper's nominated representatives access to the Facility on reasonable notice and at reasonable times to verify the quantity of Products held by the Custodian and conditions under which such Products are handled and stored;

(m) promptly notify Shipper in the event that it receives any communications (other than day to day administrative documents relating to the Services) from any government authorities which concern the Products and/or the storage, handling or shipment of the Products.

3.4 At all times while the Products are being handled or stored on the Site, or where Custodian is transporting Shipper's Products, the Custodian shall:

(a) store and handle the Products separately from all other goods held by the Custodian so that they remain readily identifiable as the Shipper's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;

(c) maintain the Products in satisfactory condition from the date of delivery;

(d) notify the Shipper immediately if it becomes subject to any of the events listed in clauses 10.2(b)-(h); and

(e) give the Shipper such information relating to the Products as the Shipper may require from time to time.

(f) restrict the responsibility unto the premises of KASEZ wherein the goods of the shipper are stored.

4. SHIPPER REMEDIES

4.1 If the Custodian fails to perform the Services by the applicable dates, the Shipper shall, without limiting its other rights or remedies, have one or more of the following rights:

(a) to terminate the Agreement with immediate effect by giving written notice to the Custodian;

(b) where the Shipper has paid in advance for Services that have not been provided by the Custodian, to have such sums refunded by the Custodian;

4.2 That the agreement shall be non terminable / irrevocable for the purpose of investments made by the service provider / custodian and as per the request of the shipper to do so, for the 60 months period agreed upon from the date set above; except upon repayment in full value along with full interest and as described in annexture attached.

4.3 The Shipper's rights under this Agreement are in addition to its rights and remedies implied by statute and common law.

For, V. MILAK ENTERPRISES

Partner

5. SHIPPER'S OBLIGATIONS

The Shipper shall:

(a) provide such information to the Custodian as the Custodian may reasonably request or as may be required essentially under the laws applicable in India for trade ;

(b) ensure that all Orders contain sufficient details to enable the Custodian and any relevant government authorities to identify the Products referred to in the Order including quantity, value, quality and characteristics / identification marks of the Products;

(c) provide to the custodian all required ownership documents of the products intended to be stored at custodian warehouse along with Material Safety Data Sheet, Technical Write Ups, Test Reports, Packing Details, etc. as well as declaration that none of their products are caution listed / negative listed/barred or banned.

(d) mark all Product packaging which are to be transported and/or stored by the Custodian with the words: "GOODS MEANT FOR STORAGE AT KANDLA SPECIAL ECONOMIC ZONE & UNDER V. MILAK ENTERPRISES – CUSTODIAN ";

(e) take responsibility for answering any questions and resolving any claims or discussions concerning the Products raised by the Government of India which are addressed to either Party (except where they relate to the Custodian's actions or inaction which do not form part of the Services); thus keeping the Custodian fully indemnified against any losses or claims arising out of misdeclaration or misinterpretation or for quality and quantity differences.

(f) pay any duties and taxes to government through the Custodian arising out of the shipment of Products to its customer when properly demanded by the government.

(g) take necessary insurance for the goods stored in Custodian Warehouse at his own risk and cost, including all possible risks/losses/damages to products stored as well as duties/taxes applicable on the product and also transit insurance (from warehouse to warehouse), including therein professional indemnity clause, public indemnity claus; thus keeping the Custodian fully indemnified for and due to the product.

(h) ensure to clearly inform the Custodian on the Hazard Classification of the products being warehoused and the storage requirements for such products, if any. Shipper shall also ensure to get the necessary licensing done for its products at his own cost and risk, with regards the hazard classification and transportation as well as storage at the warehouse, as per requirement under the prevailing Indian laws.

(i) depute its own personnels for monitoring of their products.

For, V. MILAK ENTERPRISES

Partner

6. CHARGES AND PAYMENT

6.1 The Charges for the Services shall be calculated and paid in accordance with the principles set out in Schedule 2.

6.2 In consideration of the supply of the Services by the Custodian, the Shipper shall pay the Charges within thirty (30) days or as further described in the Schedule 2 of the agreement; of the date of a correctly rendered invoice to a bank account nominated in writing by the Custodian.

6.3 The Custodian shall maintain complete and accurate records of the Products received by the Custodian (including details of where they are stored and/or the locations to which they are transported by the Custodian), and shall allow the Shipper to inspect such records at all reasonable times on request.

7. INDEMNITY

7.1 The Custodian shall keep the Shipper indemnified against all liabilities, costs, expenses, damages and losses suffered or incurred by the Shipper as a result of or in connection with any claim made against the Shipper by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Custodian, its employees, agents or subcontractors; excluding delays or non performance of services due to act of God or change in Indian laws or change in Government Policies. That the value of indemnity be limited to the value of services not performed by the Custodian.

7.2 In no event shall the Shipper hold liable the service provider for any punitive, exemplary, special, indirect, incidental or consequential damages (including, but not limited. to lost profits, lost business opportunities, loss of use or equipment down time) arising out of or relating to this Agreement, regardless of the legal theory under which such damages are sought.

7.3 This clause 7 shall survive termination of the Agreement.

For, V. MILAK ENTERPRISES

Partner

8. INSURANCE

8.1 The shipper shall take necessary insurance cover for his goods and keep the Custodian fully indemnified against any loss or damage happening to his product during storage. That the Shipper shall as well be responsible to take necessary in-transit and outbound transit insurance for his goods covering point-to-point destination and shall keep the Custodian fully indemnified against any loss or damage happening to his product.

8.2 The Service Provider shall ensure that the warehouse premises is insured at all times appropriately and provide with a copy of the Comprehensive General Liability insurance policy document of the premises.

9. CONFIDENTIALITY

9.1 A Party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other Party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Agreement. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

9.2 This clause 8 shall survive termination of the Agreement.

10. TERMINATION

10.1 Without limiting its other rights or remedies, either parties may terminate the Agreement by giving the other three (03) months' written notice; except for the non terminable / irrevocable value of investments so unpaid till then.

10.2 Without limiting its other rights or remedies, either parties may terminate the Agreement with immediate effect by giving written notice (except

For, V. MILAK ENTERPRISES

Partner

for the non terminable / irrevocable value of investments so unpaid till then); if:

(a) Either party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of receipt of notice in writing to do so;

(b) Either party repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;

(c) Either party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;

(d) Either party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts;

(e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of either party;

(f) an application is made to court, or an order is made, for the appointment of an administrator over either party;

(g) a person becomes entitled to appoint a receiver over the assets of the either party or a receiver is appointed over the assets of the either party;

(h) Either party suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or

10.3 Termination of the Agreement, however arising, shall not affect any of the Parties' rights and remedies that have accrued as at termination.

10.4 Clauses which expressly or by implication survive termination of the Agreement shall continue in full force and effect.

11. CONSEQUENCES OF TERMINATION

On termination of the Agreement for any reason, the Custodian shall immediately deliver to the Shipper all Products in its possession, and return all documents containing the Shipper's confidential information. If the Custodian fails to do so, then the Shipper may enter the Custodian's premises and take possession of them. Until they have been returned or delivered, the Custodian shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement.

12. FORCE MAJEURE

12.1 Neither Party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under it if such

For, V. MILAK ENTERPRISES

Partner

delay or failure result from events, circumstances or causes beyond its reasonable control.

12.2 Each Party shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

12.3 If a Force Majeure Event prevents, hinders or delays the Custodian's performance of its obligations for a continuous period of more than sixty (60), the Shipper may terminate this Agreement immediately by giving written notice to the Custodian.

13. GENERAL

13.1 **Assignment and other dealings.**

(a) The Shipper may not assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement.

(b) The Custodian may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement without the prior written consent of the Shipper.

13.2 **Notices.**

(a) Any notice or other communication given to a Party under or in connection with the Agreement shall be in writing, addressed to that Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing in accordance with this clause, and shall be delivered personally, or sent by reputable international commercial courier or fax.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2(a); if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

For, V. MILAK ENTERPRISES

Partner

13.3 **Severance.** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

13.4 **Waiver.** A waiver of any right or remedy under the Agreement or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.5 **No partnership or agency.** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

13.6 **Third parties.** A person who is not a Party to the Agreement shall not have any rights to enforce its terms.

13.7 **Variation.** Except as set out in this Agreement, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the both Parties.

14. **Governing Law.** This Agreement and any non-contractual obligations arising out of or in connection with it are governed by Indian law as well as that of SEZ Act/SEZ Rules.

15. **Dispute Resolution.** The Parties shall use their best endeavours to resolve amicably all disputes arising out of, in connection with, or related to this Agreement. All disputes arising out of, in connection with, or related to this Agreement (including

For, V. M. [illegible] ENTERPRISE

Partner

any non-contractual obligation arising out of or in connection with this Agreement) which cannot be resolved amicably by the Parties within a reasonable period after formal notification of such dispute shall be finally settled by arbitration conducted in Gandhidham - Gujarat, India in accordance with the LCIA India Arbitration Rules. Three arbitrators shall be appointed in accordance with the rules. The arbitration shall be conducted in English. The Chairman or Deputy Chairman of the LCIA India shall act as appointing authority and the arbitration shall be administered by the LCIA India. Judgment upon the award rendered may be entered into any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement as the case may be. The Parties however shall have the right to contest the validity of any such award or any judgment entered thereof in any court having jurisdiction, even though one of the Parties fails to appear in such arbitration proceedings. Notwithstanding the above, in the event of unauthorised use or disclosure of the Shipper's confidential information received by the Custodian hereunder, the Shipper may directly seek a restraining order in a court of competent jurisdiction in order to stop or prevent further unauthorised use or disclosure of its confidential information.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year indicated above.

M/s. G4S INTERNATIONAL LOGISTICS UK LTD.	M/S V. MILAK ENTERPRISES
By: Joern Frese	By : VIVEK MILAK Partner
Title: Regional Director - EMEA	Title : PARTNER
Date: 13/03/2019	Date : 13/03/2019

For, V. MILAK ENTERPRISES

SCHEDULE 1 – SCOPE OF SERVICES AND PRINCIPLES FOR THE MOVEMENT, HANDLING AND STORAGE OF PRODUCTS

GENERAL DUTIES

V. MILAK ENTERPRISES shall:

(1) complete all required formalities pertaining to receiving of goods as well as delivering the same into the Indian domestic market / export as per instructions provided from the Shipper.

(2) ensure that all required documents (including commercial invoices, packing list, insurance cover note, shipping bills, bills of exports, bill of lading, airway bills, seaway bills, waybills, etc.) are maintained and available at the Facility for verification by statutory organizations/government departments from time to time.

(3) undertake all import/export/domestic clearances from Gateway Port as well as Kandla SEZ or procure such clearances through its authorized Custom House Agent;

(4) arrange for in-bond and out-bond clearance, loading and unloading of the Products as directed by the Shipper in any Order, excluding transportation and security arrangements for storage and transporation (except where exclusively agreed upon by the service provider and shipper mutually);

(5) ensure that the warehouse facility is fully insured for risk of fire and natural calamity. However, the shipper shall undertake and ensure complete insurance at all times of its goods shipped and/or warehoused, including transit insurance from warehouse to warehouse and covering all applicable duties and taxes applicable thereunder, thus ensuring that the custodian is fully indemnified towards any liability occurring to him thereunder due to any unforeseen even.

(6) security arrangements for the warehoused goods as well as in-transit security shall be taken care by the shipper or the buyer/supplier, as the case may be.

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For, V. MILAK ENTERPRISES

Partner

47. On going through the said agreement dated 13.03.2019, the following points are observed:-

a. M/s. G4S International (referred to as shipper) was a company engaged in the logistics services in India and elsewhere.

b. From Clause 3.3(i), it is seen that the custodian was tasked to collect

from Shipper or on his order the duties and taxes and pay due taxes and duties to the government on removal of products to the Domestic tariff Area (DTA).

c. From Clause 3.3(k), it is seen that the custodian was entrusted to maintain the facility to the extent required for the safe and secure storage and handling of the products (and all packages associated therewith) in the quantities required by each order and in accordance with applicable law.

d. From Clause 3.3(l), it is seen that the custodian was expected to allow the shipper's nominated representatives access to the facility on reasonable notice and at reasonable times to verify the quantity of Products held by the Custodian and conditions under which such products are handled and stored.

e. From Clause 3.3(m), it is seen that the custodian was expected to notify shipper (M/s. G4S International) in the event that it received any communication from any government authorities which concerned the Products and/or the storage, handling or shipment of the Products.

f. From Clause 3.4(f), it is seen that while transporting the shipper's products, *the custodian shall restrict the responsibility unto the premises of KASEZ wherein the goods of the shipper are stored*.

g. From Clause 4(e), it is seen that the shipper (M/s. G4S International) took responsibility for answering any questions and resolving any claims or discussions concerning the products raised by the Government of India which were addressed to either party, *thus keeping the Custodian fully indemnified against any losses or claims arising out of mis-declaration or mis-interpretation or for quality and quantity differences*.

h. From Clause 4(f), it is seen that the shipper (M/s. G4S International) shall pay any duties and taxes to government through the Custodian arising out of the shipment of Products to its customer when properly demanded by the government.

i. From Clause 4(g), it is seen that the shipper (M/s. G4S International) shall take necessary insurance for the goods stored in Custodian warehouse at his own risk and cost.

j. From Clause 4(i), it is seen that the shipper (M/s. G4S International) shall depute its own personnels for monitoring of their product.

k. Further, from the Clause 1 of General Duties of M/s. V.Milak Enterprises laid down in Schedule 1 to the agreement, it is seen that M/s. V MIlak Enterprises shall complete all required formalities pertaining to receiving of goods as well as delivering the same into the Indian domestic market/export *as per the instructions provided by the shipper (M/s. G4S International)*.

l. Further, from the Clause 4 of General Duties of M/s. V.Milak Enterprises laid down in Schedule 1 to the agreement, it is seen that M/s. V MIlak Enterprises shall arrange for in-bound and out bond clearance, loading and unloading of the Product as directed by the shipper in any order, *excluding transportation and security arrangements for storage and transportation* (except where exclusively agreed upon by the service provider and shipper mutually).

m. Further, from the Clause 6 of General Duties of M/s. V.Milak Enterprises laid down in Schedule 1 to the agreement, it is seen that the security arrangements for the warehoused goods as well as in-transit security shall be taken care by the shipper or the buyer/supplier, as the case may be.

48. From the reading of the above mentioned clauses of the agreement, I find that-

48.1 M/s. V Milak Enterprises was approved as a warehousing service providing unit in KASEZ and operating as Warehousing custodian on behalf of their client. From the agreement, it is seen that their job as a service provider was well defined in their agreement viz. file necessary

documents (including Bills of Entry) on behalf of the DTA clients as per the instructions of M/s. G4S International.

48.2 The transportation, security and insurance of the goods was the responsibility of the shipper i.e. M/s. G4S International.

48.3 The filing of Bill of Entry and payment thereof is done by the SEZ unit on behalf of the DTA Client as per the instructions of shipper. On the day of filing of Bill of Entry, the rate of duty and tariff value taken by the SEZ unit was correct. It is also worth noting that the allegation in the show cause notice is non-payment of differential duty of customs *on the date of removal of goods*. Therefore, it is necessary to ascertain whether SEZ unit had effective control over the goods at the date of removal of goods.

48.4 Further, I find that the SEZ unit did not have control over the goods on the date of removal of goods for the following reasons-

(i) The transportation and security of the goods is entrusted with the shipper, therefore, it is clear that the effective control over the removal of goods at the gate of KASEZ was with the shipper and SEZ unit was only entrusted to provide space for the purpose of storage.

(ii) From Clause 3.4(f) it is amply clear that with regard to the responsibility of transportation of goods, the responsibility of the SEZ unit ends at the premises of SEZ unit where goods were stored and effective control at the date of removal was with the shipper.

(iii) Further, it is seen that the shipper was responsible for in-transit insurance of the goods on clearance of goods from SEZ to DTA clients.

49. From Clause 4(f), it is seen that the shipper (M/s. G4S International) was responsible to pay any duties and taxes to government (through the Custodian) arising out of the shipment of Products to its customer when properly demanded by the government.

50. In view of the above, it is clear that the SEZ unit filed Bills of Entry on behalf of DTA client at the instruction of the shipper. The rate of duty and tariff value alongwith exchange rate entered on the date of filing of Bill of Entry was correct and the same is also not disputed in the show cause notice. The allegation that differential duty is not paid at the date of removal is to be understood whether the SEZ unit had effective control over the transportation of goods on the date of removal. In view of the above findings, I find that the SEZ unit is not responsible for non- payment of differential duty of customs at the time of removal of goods from the SEZ as the SEZ unit was responsible for filing Bill of entry for home consumption of goods at the instructions of M/s. G4S International and the SEZ unit did not have effective control over the goods at the time of removal of goods from SEZ. In view of the above discussion and findings, I hold that the SEZ unit is not liable to penal action under Sections 112, 114A and 114AA of the Customs Act, 1962.

PENALTIES UPON DTA BUYERS- M/s. HDFC BANK Limited and M/s. Diamond India Ltd

51. With regard to proposal of penalty under Section 112(a), 114A of the Customs Act, I find that all the DTA buyers have paid short payment of duty on account of suppression and or wilfull mis-statement of facts, which has rendered the goods liable for confiscation. Therefore, they have rendered themselves liable for penal action under Section 112(a) and 114A of the Customs Act, 1962. However, as per fifth proviso to Section 114A of the Customs Act, 1962, once penalty is imposed under Section 114A of the Customs Act, penalty under Section 112(a) is not invocable. Further as per Circular no. 61/2002-Cus dated 20.09.2002, penalty under Section 114A is equal to the duty plus interest.

52. With regard to proposal of penalty under Section 114AA of the Customs Act,

1962, I find that they filed incorrect details in the Bills of Entry filed before the proper officer and consequently they have rendered themselves liable for penal action under section 114AA of the Customs Act, 1962.

Whether extended period is invocable-

53. I find that the DTA buyers in connivance with the shipper M/s. G4S International filed DTA Bills of Entry for home consumption of Silver Bars/Ingots. They were well aware of the fact that the rate of duty and tariff value of the said goods were very volatile and was subject to frequent change. All the DTA buyers and the shipper (M/s. G4S International) are well known and renowned bank/firm dealing in financial transaction and various legal firms are at their disposal to guide them. Further, the shipper was entrusted with a very crucial role of security, safety, in-transit insurance and transportation of valuables like bullions and cash and they were well aware of the provisions of SEZ Act and rules made thereunder which casts an onus on them to ensure that the duties of customs are paid on physical removal of goods. However, while filing the Bills of Entry, they filed the rate of duty, tariff value and foreign exchange of the date of filing of Bill of entry and allowed clearance of goods from the SEZ without paying the differential duties of Customs. Had there been not the CRA Audit, this evasion of duties of customs would have remained unnoticed. For such act on the part of the shipper and DTA buyers, extended period of limitation is invocable and the demand of duty is sustainable under the provisions of Section 28(4) of the Customs Act, 1962.

QUANTIFICATION OF DUTY-

DUTY DETERMINATION IN RESPECT OF HDFC BANK-

54. The demand of duty in respect of M/s. HDFC Bank Limited, as per Show cause notice is Rs. 9,60,78,238/-. M/s. HDFC Bank Limited in their submission has argued that the CRA Audit has taken the wrong value of the amount of duties paid by them. The details of excess amount of duty demanded as submitted by them is as given below:-

Request Id	Customs duty paid as per Annexure-B	Actual Customs Duty Paid	Excess Duty demanded
262000943304	3,72,22,194	3,72,22,194	-
262000898854	3,56,95,077	3,56,95,077	-
262000943934	3,83,31,725	3,83,31,725	-
261904405582	3,83,31,726	10,28,43,219	6,45,11,493
261904406783	3,83,31,730	5,04,77,345	1,21,45,615
Total	18,79,12,452	26,45,69,560	7,66,57,108

They have further provided the total differential duty by considering the correct amount of customs duty paid as given below:-

Request Id	Customs duty payable as per Annexure-B	Actual Customs Duty Paid	Differential duty payable

262000943304	3,79,74,158	3,72,22,194	7,51,964
262000898854	4,48,52,849	3,56,95,077	91,57,772
262000943934	3,91,06,103	3,83,31,725	7,74,378
261904405582	10,87,03,770	10,28,43,219	58,60,551
261904406783	5,33,53,811	5,04,77,345	28,76,466
Total	28,39,90,690	26,45,69,560	1,94,21,130

In view of the same, this office vide letter dated 30.04.2025 requested the office of DC, Customs, KASEZ to verify the details of payment made by M/s. HDFC Bank and provide the revised amount of duties of Customs which is required to be recovered under the provisions of Section 28(4) of the Customs Act, 1962.

In response to the same, the Deputy Commissioner, Customs, KASEZ vide letter dated 19.05.2025 informed that to verify the claims made by the importer regarding duty payments, the subject challans were sent to the concerned bank i.e. State Bank of India-KASEZ Branch for verification process. The Bank vide letter F.No. SBI/KASEZ/Misc./2025-26 dated 08.05.2025 has submitted verification report on the issue. Vide the said letter the SBI has informed that the mentioned challans were paid in their branch and the same has been reported to the Local Point Branches through GAD reports. They had also enclosed copies of the GAD reports. Further on perusal of the letter dated 08.05.2025 issued by the Branch Manager, SBI-KASEZ, it is seen that the Branch Manager has confirmed that the payments of Rs. 10,28,43,219/- and Rs. 5,04,77,345/- have been done by M/s. V Milak Enterprises and the said payments were made in their branch only.

Since the excess amount (amount paid – amount demanded in show cause notice) has been paid at the time of filing of bill of entry and before the Audit observations were made, the excess amount of differential duty is required to be dropped. In view of the same, I hold that M/s. HDFC Bank Limited is liable to pay duties of Customs amounting to Rs. 1,94,21,130/- only under the provisions of Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962.

DUTY DETERMINATION IN RESPECT OF Diamond India-

55. The DTA buyer i.e. M/s. Diamond India Limited is liable to pay duties of Customs amounting to Rs. 2,14,63,308/- under the provisions of Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962.

56. In view of the above discussion and findings, I hereby pass the following order:-

A. ORDER IN RESPECT OF SEZ UNIT, NAMELY, M/S. V. MILAK ENTERPRISES -

I drop the proceedings initiated vide SCN dated 23.12.2024 against the SEZ unit M/s. V Milak Enterprises.

B. ORDER IN RESPECT OF DTA BUYER, NAMELY, M/S. HDFC BANK LIMITED (IEC-0301022666/AAACH2702H)-

a) I reject the assessable value of goods i.e. “Silver Bars/Ingots” (CTH 7106) in the Bills of entry appearing in the Annexure-B to the notice and order to re-

assess the same by applying correct tariff value and rate of exchange, as applicable on the date of removal of the goods from the SEZ.

b) I determine and confirm the differential Custom duty & IGST totally amounting to Rs. 1,94,21,130/- (Rupees One Crore Ninety Four Lakhs Twenty One Thousand One Hundred and Thirty only) on the goods detailed in Annexure-B to the notice and order to recover the same from them under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid.

I drop the remaining amount of Rs. 7,66,57,108/- as the same had been duly paid at the time of filing of respective Bills of Entry.

c) I order to confiscate the goods mentioned in Annexure-B to the notice, totally valued at Rs. 220,57,52,935/- (Rupees Two Hundred And Twenty Crore Fifty Seven Lakhs Fifty Two Thousand Nine Hundred and Thirty Five Only) under Section 111(m) of the Customs Act, 1962, though the same are not physically available.

However, I impose redemption fine of Rs.20,00,000/-(Rupees Twenty Lakhs only) under Section 125 of the Customs Act, 1962.

d) I impose penalty equal to the duty plus interest confirmed above at (b) under section 114A of the Customs Act, 1962.

e) I don't impose penalty under Section 112 of the Customs Act in terms of fifth proviso to Section 114A of the Customs Act, 1962.

f) I impose penalty of Rs.60,00,000/-(Rupees Sixty Lakhs only) under section 114AA of the Customs Act, 1962.

C. <u>ORDER IN RESPECT OF THE DTA BUYER, NAMELY, M/S. DIAMOND INDIA LTD. (IEC-0306062984/AABCD8377R)</u>

a) I reject the assessable value of goods i.e. "Silver Bars/Ingots" (CTH 7106) in the Bills of entry appearing in the Annexure-C to the notice and order to re-assess the same by applying correct tariff value and rate of exchange, as applicable on the date of removal of the goods from the SEZ.

b) I determine and confirm the differential Custom duty & IGST totally amounting to Rs. 2,14,63,308/- (Rupees Two Crore Fourteen Lakh Sixty Three Thousand Three Hundred and Eight Only) on the goods detailed in Annexure-C to the notice and order to recover the same from them under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid.

c) I order to confiscate the goods mentioned in Annexure-C to the notice, totally valued at Rs. 76,21,49,712/- (Rupees Seventy Six Crore Twenty One Lakh Forty Nine Thousand Seven Hundred And Twelve Only) under Section 111(m) of the Customs Act, 1962, though the same are not physically available.

However, I impose redemption fine of Rs. 25,00,000/-(Rupees Twenty Five Lakhs only) under Section 125 of the Customs Act, 1962.

d) I impose penalty equal to the duty plus interest confirmed above at (b) under section 114A of the Customs Act, 1962.

e) I don't impose penalty under Section 112 of the Customs Act in terms of fifth proviso to Section 114A of the Customs Act, 1962.

f) I impose penalty of Rs. 75,00,000/-(Rupees Seventy Five Lakhs only) under section 114AA of the Customs Act, 1962.

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

Signed by
M Ram Mohan Rao
Date: 21-05-2025 23:00:18

(M. Ram Mohan Rao)
Commissioner of Customs,
Custom House Kandla

F.No. GEN/ADJ/COMM/284/2023-Adjn-O/o Commr-Cus-Kandla
DIN- 20250571ML0000666A3A

To,

(i) M/s. V. Milak Enterprises (IEC-), Plot No. 176A, Sector-I, Kandla Special Economic Zone, Gandhidham, Kutch.
(ii) M/s. HDFC Bank Limited (IEC- 0301022666/AAACH2702H), 2nd floor, Tej Enclave, ABV – Emerald Honda, Nr Gandhigram Railway Station, Off Ashram Road, Ahmedabad, Gujarat-380009 and
(iii) M/s. HDFC Bank Limited (IEC- 0301022666/AAACH2702H), Plot No. 10/110 – Bhawna Plaza, Sector 12-A, Din Dayal Upadhyay Puram, Sikandra, Agra, Uttar Pradesh – 282007
(iv) M/s. Diamond India Ltd. A1 (IEC- AABCD8377R), 2nd Floor, Tejpal Singh Market, Block H, Wazidpur, Sector-63, Noida, Uttar Pradesh – 201301

Copy to:-

(i) The Development Commissioner, Kandla Special Economic Zone, Gandhidham, Kutch.
(ii) The Deputy/ Assistant Commissioner of Customs, (EDI) for uploading the notice on website of Kandla.
(iii) The Deputy Commissioner of Customs, Kandla Special Economic Zone, Gandhidham, Kutch.
(iv) Guard File.