

 <p>सत्यमेव जयते</p>	<p>Office of The Commissioner of Customs New Custom House, Near Balaji Temple, New Kandla - 370210 Tel.-02836-271468-469 Fax- 02836-271467 E-mail: commr-cuskandla@nic.in</p>		F. No.
---	---	---	-----------

GEN/ADJ/COMM/127/2025-Adjn-O/o Commr-Cus-Kandla

Date - 15-01-2026

Show Cause Notice
(Issued under Section 28(4) of the Customs Act, 1962)

Whereas it appears that:

M/s. Flamingo Logistics (hereinafter referred to as 'SEZ unit') is situated at Unit No. 304, 2nd Floor, Ganga SDF Complex, Phase-II, Kandla Special Economic Zone, Gandhidham, Kutch. Letter of Approval (LOA) dated 19.05.2011 (**RUD-1**) was granted to them vide F. No. KASEZ/IA/FTWZ/001/2011-12/1952-56 for 'Warehousing Services' & 'Trading of all items except Restricted and Prohibited Items' by the Development Commissioner, Kandla SEZ under section 15(9) of the SEZ Act, 2005 read with Rule 18 of the SEZ Rules, 2006 to operate as a SEZ unit and carry out authorized operations. Whereas, the Unit Approval Committee (UAC) after due deliberations has approved the requests of the said SEZ unit for inclusion of certain items in their Trading/ Warehousing Service activity and accordingly, LoA has been issued and renewed from time to time.

2. The information received by KASEZ Customs indicates a short levy of Custom duty & IGST for the goods declared as "Betelnut product known as Supari (Unflavoured supari, Boiled Supari)" on account of mis-classification, incorrect avilment of exemptions and mis-declaration of value of the imported goods at the time of clearance from SEZ to DTA. Whereas, it appears that an "Analysis Report on import of Arecanuts" dated 30.12.2020 (**RUD-2**) has been issued by the Additional Director General, RMCC, Mumbai. Whereas, it appears that the detailed analysis carried by RMCC, Mumbai indicates potential risk area in respect of mis-classification of processed Boiled Supari under CTH 21069030 and wrong avilment of SAFTA Notification benefits by certain importers. Whereas, the information indicates that the Arecanuts/ Betelnuts, Custom Tariff Item -08028010/20/30/90 are being imported by certain importers by mis-declaring the same as "Betelnut product known as Supari (Unflavoured Supari, Boiled Supari)" and mis-classifying the same under CTH 21069030 and evading the Customs Duty applicable thereon. In this regard, Department of Commerce vide Notification No. 20/2015-20 dated 25.07.2018 has revised Import policy of items falling under CTH 0802 (Betelnuts) from "Free" to "Prohibited" with revised policy condition as "However, the import is free if CIF value is Rs. 251/- and above per kilogram". Therefore, to circumvent the prohibition imposed vide the said notification, certain importers are purportedly mis-declaring and mis-classifying the goods in addition to paying less Custom Duty applicable thereon. It is noteworthy to observe that the restriction of CIF value of Rs. 251/- and above per kilogram is imposed on the item falling under the CTH 08028010/20/30/90 and there is no restriction

imposed on the Minimum import price of the items falling under CTH 21069030. Even though CTH 08028010/20/30/90 attracts total duty of 110% and CTH 21069030 attracts total duty of 77%, the prescribed minimum import price for the CTH 08028010/20/30/90 as per the notification supra is the reason for certain importers to mis-declare and mis-classify the goods under the CTH 21069030 with a an intention to pay lesser Customs Duty in comparison to what they would have to pay for declaring the goods under CTH 08028010/20/30/90.

2.1 Whereas, during the scrutiny of the records pertaining to DTA clearance of the goods declared as “Betelnut product known as Supari (Un-flavoured Supari)/Boiled Supari” under CTH 2106, it has been observed that the M/s. Flamingo Logistics has filed a DTA Bill for clearance of goods declared as “Betelnut product known as Supari (Un-flavoured Supari, Boiled Supari)” imported from Myanmar by classifying the same under CTH 2106 9030.

3. Whereas, the documents on the basis of which the subject goods entered KASEZ have been attached as **RUD-3** to this Show Cause Notice. The Import documents include a copy of Import BE, Bill of Lading, Commercial invoice, Packing list, Sales contract and Certificates of Origin. The details of the subject goods as per Import documents filed before KASEZ Customs are as under:

Import BE No. & date	1013118 dated 16.12.2020
Bill of lading No. & date	OOLU4050941050 dated 25.11.2020
Invoice No. & date	JSC-07/2020 dated 26.10.2020
Country of Origin	Myanmar
Name of the Supplier	M/s. Jury Co. Ltd., Myanmar
Name of the Importer	M/s. RR Exports, Delhi
Description of goods in Import BE	Betel nut product known as Supari (Unflavoured Supari)
Description of goods in BL	Betel nut product known as Supari (Unflavoured Supari)
Declared CTH	21069030
Quantity declared	108 MTs
Unit Price	USD 1500 per MT
Declared Assessable Value	Rs. 1,21,87,957.70/-

3.1 Whereas, the documents on the basis of which the subject goods have been cleared from KASEZ to DTA have been attached as **RUD-4** to this Show Cause Notice. The documents include a copy of DTA Bill of Entry, copy of Import Bill of Entry, Invoice-cum-Goods dispatch Note, Report of Food Analyst and Analysis Report issued by M/s. Hitech Healthcare Laboratory, Certificates of Origin and Certificate of Processing by supplier. The details of the subject goods as per documents for DTA clearance filed before KASEZ Customs are as under

DTA BE No. & date	2000788 dated 21.01.2021
Invoice-cum-Goods dispatch Note no. & date	FL/04/RR/20-21 dated 21.01.2021
Country of Origin	Myanmar
Description of goods in DTA BE	Betel nut product known as Supari (Unflavoured Supari, Boiled Supari)

Description of goods in BL	Betel nut product known as Supari (Unflavoured Supari)
Declared CTH	21069030
Quantity declared	108 MT
Unit Price	USD 1510.73 per MT
Declared Assessable Value	Rs. 1,21,03,747.10/-
Duty Structure	BCD@50%+SWS@0%+IGST@18%
Duty exemption claimed, if any	Duty benefit under SAPTA Notification No. 09/2008 dated 13.08.2008 Effective duty after benefit - BCD@0%+SWS@0%+IGST@18%
Duty assessed	Rs. 21,78,674.48/-

4. Whereas, it appears that the said DTA client has imported goods declared as “Betelnut product known as Supari (Unflavoured supari)” by classifying the same under CTH 21069030. The goods under CTH 21069030 attract duty structure as effective BCD@50%+SWS@0%+IGST@18%. Further, due to the benefit of Country of Origin claimed by the DTA client, in the instant case, the BCD is reduced to “NIL”, thereby changing the duty structure as **BCD@0%+SWS@0%+IGST@18%**. Whereas, upon classification under sub-heading 080280 the said goods attract the policy conditions as stipulated under DGFT Notification no. 20/2015-20 dated 25.07.2018. Vide the said notification, import of Arecanuts falling under sub-heading 080280 is “Prohibited”: However, import is free if CIF value is Rs. 251/- & above. Further, these goods under sub-heading 080280 attract Tariff value of USD 3695 per MTs as fixed by the Board in terms of Notification No. 04/2021-Customs (N.T.) dated 15.01.2021. Whereas, it appears that the goods under sub-heading 080280 attract duty structure of **BCD@100%+SWS@0%+IGST@5%** leviable on the assessable value of the goods arrived on the account of Tariff values.

5. Whereas, during the course of inquiry proceedings, the statements of various persons were recorded under Section 108 of the Customs Act, 1962 by the AO (P&I), KASEZ Kandla. The names of the persons whose statements are relied upon in the Notice are mentioned in the table below.

Sr. No.	Statement of Person	Date
01	Statement of Shri Kiran Singh Kochar, Partner of M/s. Flamingo Logistics, KASEZ(RUD-5)	05.12.2022
02	Statement of Mohd. Jalaludeen Roomie, Proprietor of M/s. RR Exports, Delhi(RUD-6)	19.12.2022

5.1. Whereas, **Statement of Shri Kiran Singh Kochar**, Partner of M/s Flamingo Logistics KASEZ was recorded on **05.12.2022** under Section 108 of Customs Act, 1962 wherein he, inter alia, stated:

- that M/s Flamingo Logistics KASEZ is engaged in Trading and Warehousing activities since 2011 in KASEZ as per Letter of Approval issued and renewed from time to time.
- that they are mainly dealing in Food products, they undertake FSSAI and Phyto Clearances, wherever required under clearances in DTA and after that on the basis

- of documents provided by the supplier, they file the DTA Bill of entry.*
- *that they have been contacted by Mohd. Yusuf Jalauddin Roomie, who is the Proprietor of M/s. R.R. Exports, he visited their office for the requirement of a warehouse in the KASEZ*
 - *that Betel Nut products known as Supari (Un-flavored Supari, Boiled Supari) was cleared vide Bill of Entry No. 2000788 dated 22.01.2021 and the country of origin was Myanmar.*
 - *that the report provided by the FSSAI was with the description “Betel Nut products known as Supari (Un-flavored Supari boiled supari)” and the supplier has not provided any test report or analysis report. Accordingly, they had filed the DTA Bill of Entry.*
 - *that the DTA Bill of entry No. 2000788 dated 22.01.2021 was filed by them i.e., M/s. Flamingo Logistics on behalf of M/s. R.R. Exports, Delhi based on the directions and authorization of M/s. R.R. Exports, Delhi.*
 - *that based on the import documents provided by the supplier i.e. M/s. Jury Co. Ltd., Myanmar, the CTH 21069030 of the goods was decided.*
 - *that they agree that unflavored supari is correctly classifiable under chapter 8 and not under 21069030. However, they wish to clarify that the Bill of Entry was filed before issuing the advance ruling dated 15.03.2021 and the Bill of Entry was filed as per the documents provided by the supplier.*
 - *that after seeing the Advance Ruling dated 15.03.2021 issued by Customs Authority for Advance Rulings, Mumbai they **confirm that the goods covered under CTH 080280***
 - *that, however they filed the Bill of Entry on the basis of documents provided by the Importer/ DTA client,*
 - *that they will convince the Importer, namely, M/s R.R. Exports Delhi to pay differential duty as applicable under Customs law.*
 - *that the transportation of the goods to DTA was arranged by them through M/s. Flamingo Multiports Pvt. Ltd. and the place for delivery of the goods was Coimbatore, Tamil Nadu*

5.2. Whereas, **Statement of Mohd. Jalaludeen Roomie, Proprietor of M/s. R.R. Exports (IEC-3209016941/ADAPJ8715A) was recorded on 19.12.2022** under Section 108 of Customs Act, 1962 wherein he, inter alia, stated:

- *that he is the proprietor of M/s. R.R. Exports and he started importing Arecanuts from Sri Lanka to ICD Tughlakabad and supplied to the local traders.*
- *that due to the delay in transit time from Sri Lanka to ICD, they have decided to import the Arecanuts cargo to Mundra and Kandla and since 2019 to 2021, they have imported around 20+ containers in Kandla Port.*
- *that they are warehousing **only Arecanuts** in the warehouse of M/s. Flamingo Logistics and till date they have warehoused 06x40' containers of Arecanuts, imported from Myanmar and M/s. Flamingo Logistics does all the clearing works on their behalf.*
- *that he came to know about M/s. Flamingo Logistics through Internet while searching the import data of CHAs who are doing the foods items.*
- *that M/s. Jury Co. Ltd., Myanmar are the exporter of Arecanuts and he import from*

them. They have sales contracts for each and every shipment between M/s. R. R. Exports and M/s. Jury Co Ltd.

- *that “Betel Nut products known as Supari (Un-flavored Supari Boiled Supari)” was cleared vide Bill of Entry No. 2000788 dated 22.01.2021 and the country of origin was Myanmar.*
- *that the import bill of entry was filed based on the documents provided by M/s. Jury Co. Ltd. **However, when the goods arrived, they came to know that the goods are boiled Supari, accordingly, the DTA bill of entry was filed by adding “Boiled Supari” in the description.***
- *that on enquiry by them, M/s. Jury Co. Ltd., confirmed that the arecanuts supplied by them are boiled arecanuts and M/s. Jury Co. Ltd. forgot to mention the same in the import documents and submitted a Certificate of Processing, wherein it is mentioned that the betel nuts impurities have been removed by labour, boiling in water for 04 hours, removing husk, re-boiled for 02 hours, further dried using hot air, sterilizing in oven, shortening, polishing and packed.*
- *that the DTA BE No. 2000788 dated 22.01.2021 was filed by M/s. Flamingo Logistics on behalf of M/s. R.R. Exports, on the direction given by him based on the Authorization letter.*
- *that as per the International Customs law, cooked/prepared/boiled Betelnuts/Arecanuts are called processed Betelnuts/Arecanuts. Accordingly, their supplier M/s. Jury Co. Ltd., Myanmar has decided the CTH as 21069030. Further, the supplier has sent a letter dated 13.12.2022 on how they have decided the CTH of the goods as 21069030.*
- *that he had received the Import documents through bank and later on forwarded to M/s. Flamingo Logistics for filing of Bills of Entry and he sent the original documents through DTDC Blue courier.*
- *that they have not got the goods tested on the above said Bill of Entry and also the supplier, M/s. Jury Co. Ltd. has not provided any test report for this consignment. Further, the goods were tested by the FSSAI before clearing to DTA and as per the FSSAI Test Report No. HTL/KSZ210101001 dated 20.01.2021, the goods are described as “Betel Nut Product known as Supari (Unflavoured Boiled Supari).*
- *That after seeing the report issued by Customs Authority for Advance Rulings, Mumbai, he stated that presently Unflavored Supari is **correctly classifiable under chapter 08 and not under 21069030.***
- *However, he clarified that the Bill of Entry was filed before issuing the above said advance ruling and the Bill of Entry was filed as per the documents provided by the supplier i.e., M/s. Jury Co. Ltd. He submitted that they have filed the Bill of Entry basing on the Advance ruling dated 15.08.2015 in respect of M/s. Excellent Betelnut Product Pvt. Ltd., Nagpur wherein API Supari, following processes are conducted on raw green fresh Betel Nut : Removing of Large impurities by Labor, Boiling in water for 6 hrs., Mixing Food Starch, Drying, Polishing and Packaging and it was decided that the products shall be covered in Chapter 21 and not in Chapter 8.*
- *that they have cleared the goods vide Bill of Entry no. 2000788 dated 22.01.2021 and the Advance Ruling was passed on 15.03.2021. So their consignment was cleared before the decision of advance ruling.*
- *that the goods vide said DTA Bill of Entry was delivered to his office located at 101/1C, 6- Narripallam Road, Odunthurai, Mettepalayam, Coimbatore – 641301. From there the goods were sorted and sold to the distributors at Kerala.*
- *that transporter of the said goods, cleared vide DTA Bill of Entry No. 2000788 dated*

22.01.2021, was M/s. Flamingo Multiports Pvt. Ltd.

6. Whereas, as per the documents submitted by M/s. R.R. Exports, New Delhi, the goods were supplied to M/s. R.R. Exports, Coimbatore, Tamil Nadu as per the details mentioned hereunder:

Sl. No.	Customer Name and GSTIN	Invoice No. and Date	Rate/Kg (in Rs.)	Quantity (in Kg)	Description of goods as per invoice
1	M/s. R. R. Exports, Coimbatore, Tamil Nadu (GSTIN – 33ADAPJ8715A1Z5)	25 dt. 27.12.2020	125	27,000	Processed Betelnut Unflavored Supari
2		26 dt. 27.12.2020	125	27,000	
3		27 dt. 27.12.2020	125	27,000	
4		28 dt. 27.12.2020	125	27,000	

7. Whereas, as per the documents submitted by M/s. R.R. Exports, Coimbatore, Tamil Nadu, the subject goods was further supplied to the following entities:

Sl. No.	Customer Name and GSTIN	PO No. and date	Invoice No. and date	Rate/Kg (in Rs.)	Quantity (in Kg)	Description of goods as per invoice
1	M/s. TTK Traders, Malappuram, Kerala (GSTIN 32AFOPK7597P1Z F)	TKK 012 dt . 27.1 2.20	09 dtd. 04.02.2 1	126	25, 000	Betelnut Processed P roduct known as unfl avored Supari
2	M/s. Bismi Traders, Palakkad, Kerala (GS TIN 32DEVPM3245B1ZL)	PO No. 06 dt. 25.12 .21	10 dtd. 06.02.2 1	126	24, 900	
3			11 dtd. 11.02.2 1	126	24, 900	
4	M/s. Akkino Traders, Nagpur, Maharashtra (GSTIN 32DEVP M3245B1ZL)	AKKI NO/ 2 021/01 dt.	12 dtd. 28.02.2 1	126	30, 000	

		12.01.			
		21			

8. Verification of genuineness of existence of the entities:

8.1 Whereas, during the course of investigation, verification of physical existence of M/s. R.R. Exports, Coimbatore, Tamil Nadu was carried out by Preventive formation of Coimbatore commissionerate and vide letter No. GEXCOM/AE/MISC/1831/2022-AE dated 17.03.2023 issued by the Joint Commissioner (Prev.), Coimbatore informed that the address at No.101/1 C6, Naripallam Road, Odanthurai, Mettupalayam, Coimbatore - 641301 is the residential premises of Shri Jalaludeen Roomie, Proprietor of M/s. R.R. Exports. The principal place of business of M/s. R.R. Exports at No.12G13, K.K.Nagar, Kovai Road, Mettupalayam, Coimbatore 641301 is found to be in existence. Further, Shri Jalaludeen Roomie was not available at the time of visit by the officers. However, an office staff was available and a statement was recorded. It was also informed that the taxpayer has recently amended their GST registration on 10.03.2023 and changed their principal place of business from their residential address to the present declared address. **(RUD – 7)**

8.2 Whereas, during the course of investigation, verification of physical existence of M/s. TTK Traders, Malappuram, Kerala was carried out. Vide letter No. B2-98/2023 dated 06.03.2023 received from the Deputy Commissioner, Tax Payer Service Division, Tirur, SGST, informed that the tax payer is a proprietary concern and registered dealer in KVAT Act also and conducting business for more than 20 years. Returns are filed upto date. On a primary verification, nothing noticed to suspect the genuineness of the taxpayer. **(RUD – 8)**

8.3 Whereas, during the course of investigation, verification of physical existence of M/s. Bismi Traders, Palakkad, Kerala was carried out. Vide letter C. No. GEXCOM/AE/INV/GST/308/2023 dated 16.03.2023 received from Kozhikhode GST Commissionerate, Calicut, wherein it is informed that the premises located at Door No. XIV/8, Mukkil Peedika, Kokkur-Pannanpadi Road Chalissery, Chalissery, Palakkad was found to be locked and no business activity was conducted from the last one and half year. It was further informed by the Gram Panchayat that the license of the said premises was not renewed from the since 01.04.2010. Furthermore, the additional place of business which is located at Door No.IX/47, Changramkulam Road, Kokkur, Alangod Village, Malapuram – 679591, exists and no sign board or business activities to confirm that of the entity at the time of visit. It was also found that Shri Shameer has vacated the premises since January 2023. **(RUD-9)**

8.4 Whereas, during the course of investigation, verification of physical existence of M/s. Akkino Traders, Nagpur, Maharashtra was carried out. Vide letter in C. No. IV(16)134/Prev/NGP-II/2023 dated 15.03.2023, issued by the Deputy Commissioner (A.E.), Nagpur-II, Nagpur, it was informed that the trader was found to be in existence at the given address. **(RUD-10)**

8.5 Whereas, during the course of investigation, verification of physical existence of M/s. R R Exports, New Delhi was carried out by CGST Anti Evasion, New Delhi and vide letter F.No. IV(Hqrs. Prev.)/GST-N/12/2829/Gr.3/2022 dated 26.10.2023 submitted that the no such address i.e., 366/2, Gali Kuan wali, Naya Bans, Khari Baori, Delhi-110006 in the said vicinity and no such firm was ever seen or heard operational in said area. **(RUD-11)**

9. Whereas, during the course of inquiry proceedings, the statements of various persons to whom M/s. R R Exports, Coimbatore, Tamil Nadu have supplied the subject goods, were recorded under Section 108 of the Customs Act, 1962 by the AO (P&I), KASEZ, Kandla. The names of the persons whose statements are relied upon in the Notice are mentioned in the table below.

Sr. No.	Statement of Person	Date
01	Shri Shinoy Tharukutty Tholath, Proprietor of M/s. Akkino Traders, Nagpur, Maharashtra (RUD-12)	17.03.2023
02	Shri Vinodkumar C N, Manager of M/s. Bismi Traders, Palakkad, Kerala (RUD-13)	01.05.2023
03	Statement of Shri Noufel T K, S/o Shri T K Koya (Proprietor of M/s. TKK Traders, Malapuram, Kerala) (RUD-14)	01.05.2023

9.1 Statement of **Shri Shinoy Tharukutty Tholath, Proprietor of M/s. Akkino Traders**, Nagpur was recorded on 17.03.2023, wherein he stated:

- *that he purchases both types of Arecanuts viz., Whole (white) Arecanuts falling under HSN 0802 and Boiled (red) Arecanuts falling under HSN 2106 from M/s. R.R. Exports*
- *that the Arecanuts received from M/s. R.R. Exports vide invoice no. 12 dated 28.02.2021 was red in colour and broken.*
- *that he is not sure whether the Arecanuts received from M/s. R.R. Exports vide invoice no. 12 dated 28.02.2021 containing lime, Katha, Tobacco, Cardamom, Copra and Menthol.*
- *that he sells the supari locally to the suppliers of the Pan Masala and Sweet Supari manufacturers and to the local retailers of the Suprai.*
- *that the final use of the red betel nut is manufacturing of Pan Masala, Kharra and Sweet Supari.*
- *that there is not much difference in the final use of the supari falling under HSN 0802 and 2106, both are used in consumption. Since, the goods falling under HSN 2106 is cheaper, the customers purchase the cheaper one to mix to make Sweet Supari, Pan Masaala and Kharra to balance the price of the goods.*

9.2 Whereas, Shri Shameer Meleyil, Proprietor of M/s. Bismi Traders did not appear for deposing his statement due to health issues and hence authorized **Shri Vinodkumar C N, Manager of M/s. Bismi Traders**, Palakkad, Kerala to appear on his behalf. Statement of Shri Vinodkumar C N, Manager of M/s. Bismi Traders was recorded on 19.04.2023, wherein he stated:

- *that they are into the business of Arecanuts trading since 2017 and they are doing business with M/s. R.R. Exports since 2018.*
- *that he purchases both types of Arecanuts falling under HSN 0802 and Boiled and Broken Arecanuts falling under HSN 2106 from M/s. R.R. Exports*

- *that the Arecanuts received from M/s. R.R. Exports vide invoice nos. 10 dated 06.02.2021 and 11 dated 11.02.2021 were Dark Brown in color and in boiled broken form.*
- *that he don't know whether the Arecanuts received from M/s. R.R. Exports vide invoice nos. 10 dated 06.02.2021 and 11 dated 11.02.2021 containing lime, katha, tobacco, cardamom and menthol. However, the said goods did not contain copra.*
- *that he sold the Arecanuts supplied from M/s. R.R. Exports vide invoice nos. 10 dated 06.02.2021 and 11 dated 11.02.2021 to M/s. TKK Traders, M/s. Kasinathan Traders and M/s. K S Arecanuts.*
- *that there is not much difference in the final use of the Arecanuts falling under HSN 0802 and 2106, both are used in human consumption.*
- *that their principal place of business, which is located at Door No. XIV/8, MukkilPeedika, Kokkur-Pannanpadi Road Chalissery, Chalissery, Palakkad is being used for office purpose only and they have taken our GST registration during the year 2017 from this place and no physical business activities like receipt or supply of the goods takes place from that address, hence they kept it close most of the times.*
- *that their godown, which is their additional place of business located at Door No. IX/47, Changramkulam Road, Kokkur, Alangod Village, Malapuram, have taken on rent during the year 2019-20. Owner of the said premises sold the place to some other person, hence they vacated the premises during the month of January, 2023, and they have got their GST Registration amended accordingly.*

9.3 Whereas, Shri T K Koya, Proprietor of M/s. TKK Traders, Malapuram, Kerala did not appear to depose his statement due to health issues and hence he authorized his son Shri Noufel T K, to appear on his behalf. **Statement of Shri Noufel T K, S/o Shri T K Koya (Proprietor of M/s. TKK Traders)** was recorded on 01.05.2023, wherein he stated:

- *that he assists his father Shri T K Koya in all the day to day business activities related to sales, purchase etc.*
- *that they are into the business of Arecanuts trading since 1985 and they are purchasing Arecanuts from M/s. R.R. Exports from the past 5-6 years.*
- *that they purchase two types of Arecanuts i.e., Whole (HSN 0802) and Boiled/Broken Arecanut (HSN 2106) from M/s. R.R. Exports.*
- *that the Arecanuts received from M/s. R.R. Exports invoice no. 09 dated 04.02.2021 were Dark Brown in color and in broken form.*
- *that the Arecanuts received from M/s. R.R. Exports vide invoice no. 09 dated 04.02.2021 do not contain lime, tobacco, cardamom and copra. Further, he does not have any idea whether the said goods contain Katha or Menthol.*
- *that both types of Arecanuts are used in making Pan Masala in different factories. There is not much difference in the final use of the Arecanuts falling under HSN 0802 and 2106, both are used in human consumption.*
- *that they have supplied the Arecanuts supplied by M/s. R.R. Exports vide invoice no. 09 dated 04.02.2021 to M/s. Akkino Traders, Nagpur vide*

invoice no. 21-22/TA17 dated 09.06.2021.

//Summary of Investigation//

10. Whereas, from the investigation carried out the KASEZ Kandla, the following facts appear to emerge:
- i. A DTA Bill of entry has been presented by the Importer through SEZ Unit, namely, M/s. Flamingo Logistics, KASEZ for import of goods as “*Betel Nut products known as Supari (Un-flavored Supari Boiled supari)*”. The said goods were cleared from SEZ into DTA by mis-declaring the same as “*Betel Nut products known as Supari (Un-flavored Supari, Boiled Supari)*” and mis-classifying it under CTH 21069030. However, it should have been the prevailing tariff value for import of Areca Nuts/ Betel Nuts falling under Customs Tariff Sub-heading 080280 has been fixed at USD 3695 per Metric Ton as per CBIC Notification No. 04//2021-Customs (N.T.) dated 15.01.2021. The prevailing exchange rate of US dollar at the time of clearance of goods from SEZ into DTA was Rs. 74.70 per US Dollar (import rate) as per Notification No.110/2020-Customs(N.T.) dated 03.12.2020. Further, as per Department of Commerce Notification No. 20/2015- 2020 dated 25.07.2018 import policy of items falling under CTI 08028010/20/30/90 (Areca Nuts/ Betel Nuts) have been revised from “Free” to “Prohibited” with revised policy conditions as “*However, import is free if CIF value is Rs. 251/- and above per Kilogram.*”. Therefore, the subject goods appear to be prohibited. Also, in order to evade the effective total Customs Duty @ 110% applicable on Areca Nuts/ Betel Nuts, the said DTA client apparently mis-declared and mis-classified the Areca Nuts/ Betel Nuts.
 - ii. During the course of investigation Statement of Shri Kiran Singh Kochar, partner of said SEZ Unit was recorded where he, inter-alia, admitted that they have filed the subject DTA Bill of Entry based on the documents received from the said DTA client, report received from FSSAI affiliated laboratory and Certificate of processing from the supplier in Myanmar. Whereas, during the course of recording of Statement under Section 108 of the Customs Act, 1962, **he admitted that correct classification for the subject goods shall be CTH 080280. Whereas, he admitted that he will convince said DTA client to pay differential Customs duty.**
 - iii. During the course of investigation Statement of Mohd. Jalaludeen Roomie, proprietor of M/s. RR Exports was recorded wherein he, inter-alia, admitted that they have filed the subject DTA Bill of Entry based on the documents received from the supplier, report received from FSSAI affiliated laboratory and Certificate of processing from the supplier in Myanmar. Whereas, during the course of recording of Statement under Section 108 of the Customs Act, 1962, he admitted that they are warehousing only Areca Nuts in the said SEZ Unit in KASEZ. Whereas, he admitted that they have changed the description of subject goods from “*Betel Nut products known as Supari (Un-flavored Supari)*” as mentioned in the Import documents like Commercial Invoice, Bill of Lading, Certificate of Origin etc. to “*Betel Nut products known as Supari (Un- flavored Supari, **Boiled Supari**)*” by adding “**Boiled Supari**” in the description in the DTA Bill of Entry. Whereas, it appears that the said DTA client has classified the goods as per Advance Ruling No. AAR/Cus/08/2015 dated 07.08.2015 in respect of M/s. Excellent Betelnut Products Pvt. Ltd., Nagpur.

However, the same does not hold good to be applicable for DTA clearances at KASEZ as per Section 28J of the Customs Act, 1962. Whereas, during the course of recording of Statement under Section 108 of the Customs Act, 1962, **he admitted that the correct classification for the subject goods shall be CTH 080280 and not CTH 21069030.**

- iv. During the course of investigation, the address of M/s. R R Exports, New Delhi i.e., 366/2, Gali Kuan wali, Naya Bans, Khari Baori, Delhi-110006 found to be non-existence but M/s R R Exports (Prop. Shri Jalaludeen Roomie) is having his residential address at 101/1 C6, Naripallam Road, Odanthurai, Mettupalayam, Coimbatore – 641301 and Principal place of M/s R R Exports is No.12G13, K.K.Nagar, Kovai Road, Mettupalayam, Coimbatore 641301. Further, as per Icegate website, address of M/s R R Exports (IEC : 3209016941/ GSTIN - 33ADAPJ8715A1Z5) is 152G13, K.K.Nagar, Kovai Road, Mettupalayam, Coimbatore 641301, 188/246, Andrakuppam Checkpost, Manali New Town Tiruvallur and. 4/28, F-1, Harbour Bypass Road, Tuticorn. Therefore, M/s R R Exports (Prop. Shri Jalaludeen Roomie) appears to be in existence.

11. Legal Provisions

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

11.1.	<u>The Customs Act, 1962:</u>
11.1.1	Section 2(22) of the Customs Act, 1962
11.1.2	Section 2(26) of the Customs Act, 1962
11.1.3	Section 2(39) of the Customs Act, 1962.
11.1.4	Section 12 of the Customs Act, 1962
11.1.5	Section 14 of the Customs Act, 1962.
11.1.6	Section 28 of the Customs Act, 1962
11.1.7	Section 46 of the Customs Act, 1962
11.1.8	Section 111 (d) of the Customs Act, 1962.
11.1.9	Section 111 (f) of the Customs Act, 1962.
11.1.10	Section 111 (m) of the Customs Act, 1962.
11.1.11	Section 111 (o) of the Customs Act, 1962.
11.1.12	Section 112 of the Customs Act, 1962
11.1.13	Section 114AA of the Customs Act, 1962
11.1.14	Section 117 of the Customs Act, 1962
11.2.	<u>SEZ Act, 2005 and SEZ Rules, 2006</u>
11.2.1	Section 15(9) of the SEZ Act, 2005.
11.2.2	Section 30 of the SEZ Act, 2005.
11.2.3	Rule 18 of the SEZ Rules, 2006.
11.2.4	Rule 47 of the SEZ Rules, 2006.
11.2.5	Rule 48 of the SEZ Rules, 2006.

Acts of Omissions & Commissions by Noticees vis-à-vis Legal Requirement as per relevant statutes

12. Whereas, it appears that the said SEZ Unit has filed for clearance of goods declared as ‘Betel nut product known as Supari (Unflavoured Supari, Boiled Supari)’ imported from Myanmar by classifying the same under CTH 21069030. Further, the importer has availed the benefit of nil rate of BCD on account of Country of Origin benefit under Notification No. 09/2008 dated 13.08.2008 available for goods originating from least developed countries of which Myanmar is a member. Whereas, the said SEZ Unit has self-assessed the duty as BCD@0%+SWS@0%+IGST@18%.

12.1. Whereas, from the aforementioned discussion, it appears that the said goods are ‘Betelnuts/Arecanuts’ classifiable under sub-heading 0802 wherein the importation of subject goods is allowed only subject to fulfilling of the MIP condition of Rs. 251/- per Kg. Further, it appears that under subheading 0802 the duty is leviable on tariff value of USD 3695 per MT and therefore effective duty leviable would be under subheading 0802.

12.2. Whereas, therefore, from above it is clear that there is substantial difference in amount of duty leviable in both the classification. Further, the declared unit price in the instant case is 1.51 USD/Kg viz. Rs.112.07/- kg which is way below the MIP of Rs. 251/- per Kg, therefore, the classification of the subject goods shall decide the importability of goods as well in this case. Since, the cardinal issue to be decided is the classification of goods and its impact on subsequent assessment proceedings, therefore, the issue of classification has been discussed in detail in foregoing paras.

12.3. Whereas, as per Customs Tariff, the heading 2106 covers “Food preparation not elsewhere specified or included”. Therefore, to merit classification under heading 2106 it is requisite that (i) the goods should be food preparation and (ii) it should not be specified or included anywhere else in the nomenclature. Further, the introductory language of the Explanatory notes to heading 2106 states: “*Provided that they are not covered by any other heading of the Nomenclature....*”. Therefore, it appears that before classifying the products in chapter 21, it must be first determined whether they can be classified in any other heading under the nomenclature or to be specific as per circumstances of the instant case, whether the goods can be brought out of the scope of Chapter 08 of the nomenclature or otherwise.

Whereas, during the scrutiny of Certificate of Processing submitted by the said SEZ Unit, it appears that the subject goods are “Boiled Supari and has undergone process/prepared: Raw green fresh Betel nut impurities being removed by labour, Boiling in water for 04 hours, removing of husk, re-boiled for 02 hours, further dried using hot air, sterilizing in oven, sorting, polishing and packing”. Whereas, the determination whether the goods are covered under ‘Betel nuts’ or ‘preparation of Betel nuts’ has to be made in light of relevant legal provisions, and judgment by Judicial fora.

12.4. Chapter Note 3 to Chapter 8 provides as under:

“Dried fruit or dried nuts of this Chapter may be partially rehydrated or treated for the following purposes:

- a. *for additional preservation or stabilization (for example, by moderate heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate);*
- b. *to improve or maintain their appearance (for example, by the addition of vegetable oil or small quantities of glucose syrup), provided that they retain the character of dried fruit or dried nuts.”*

Further, Supplementary notes to Chapter 21 are as under:

“1. In this Chapter, “Pan masala” means any preparation containing betel nuts and any one or more of the following ingredients, namely: lime, katha (catechu) and tobacco whether or not containing any other ingredient, such as cardamom, copra or menthol.

2. In this Chapter “betel nut product known as Supari” means any preparation containing betel nuts, but not containing any one or more of the following ingredients, namely: lime, katha (catechu) and tobacco whether or not containing any other ingredients, such as cardamom, copra or menthol.”

12.5. Whereas, from above, as well as from the practice and nomenclature used on the ground, it is clear that Arecanut/ Betelnut is the raw material used to prepare the product known as Supari. In other words, to be classifiable under Chapter 21, the product must be a preparation of / containing Betel nuts, and not just only Betel nuts in any form. Further, Note 3 of Chapter 8 makes it clear that treatment undertaken for preservation, stabilization or maintaining or improving the appearance does not take away the character of the goods as dried fruit or dried nuts.

12.6. Whereas, during the scrutiny of Certificate of Processing submitted by the said SEZ Unit, it appears that the subject goods are “Boiled Supari and has undergone process/ prepared: Raw green fresh Betel nut impurities being removed by labour, Boiling in water for 04 hours, removing of husk, re-boiled for 02 hours, further dried using hot air, sterilizing in oven, sorting, polishing and packing”. Whereas, as per Certificate of Processing furnished by the supplier, it is evident that the only “processing” undergone by the goods are “removing of impurities from Raw green fresh Betel nut by labour, Boiling in water for 04 hours, removing of husk, re-boiling for 02 hours, drying using hot air, sterilizing in oven, sorting, polishing and packing”. The Certificate also categorically rules out the presence of any synthetic colouring matter or off-flavour or odour, or indeed, any other ingredient which would make it a preparation. Whereas, it appears that the Certificate of Processing itself appears to corroborate that the goods are nothing but Betel nuts. Whereas, the Certificate of Processing appears to rely on the finding that the goods are dried, boiled, re-boiled, polished, cleaned etc. to arrive at the conclusion the goods are a preparation of Betel nut. However, Note 3 of Chapter 8 makes it evident that treatment undertaken for preservation, stabilization or maintaining or improving the appearance, including moderate heat treatment i.e. drying, cleaning etc. does not take away the character of the goods as dried fruit or dried nuts. Whereas, the Certificate of Processing furnished by the supplier states report states that the goods are not in natural viz. raw state but very well dried, boiled & cleaned, however, on account of Note 3 above, it is clear that these processes will not take away the character of the goods as dried nuts of Chapter 08.

12.7. Whereas, it appears that the subject issue of classification has also been endorsed by CESTAT, Chennai vide its Final Order Nos. 40736-797/2021 dated 26.02.2021 (a combined order in the matters of M/s. ST Enterprises vs. Commissioner of Customs (Chennai VII), and M/s. Ayush Enterprises vs. Commissioner of Customs (Chennai VI)). Whereas, it appears that in the above cited case, is applicable in the instant case also as the said decision categorically states that just because it has undergone some processes like boiling and drying, a Betel nut does not lose its essential character as a Betel nut and remains classifiable under Chapter 8 of the Custom Tariff. The relevant portion of the Order is cited below for ready reference:

“12.[...] They have imported betel nut in the “whole” form and only contention is that nuts have been subjected to certain processes of manufacture and therefore would fall out of Chapter 8. Though several stages/ processes are claimed to be done in the write up given by supplier, during the argument the process undertaken was mainly confined to boiling in water and drying in sun light. It is argued that such processing of boiling is a stage of preparation in making, betel nut product”. That therefore the goods would merit classification under CTH 21069030. Even if we assume that the impugned goods have undergone the stage of boiling or have been boiled in water and dried, we have to say that it does not take away the essential character of the betel nut being “whole”

*14. From above Note 3, it can be seen that even if some stage of drying or rehydrating or treatment is done for preservation/ stabilization or maintaining the appearance, **as long as the nuts retain the character of dried nuts, they fall under chapter 8”***

12.8. Whereas, it appears that Hon’ble Tribunal also did not accept the party’s contention that the Hon’ble Supreme Court’s judgment in the matter of M/s. Crane Betel Nut Powder Works Vs. CC &CE, Tirupathi as reported in 2007 (210) EL.T. 171 (S.C.), is no longer applicable in view of a change in law. The Tribunal held that the amendment relied on by the party in support of their argument that there has been a change in law, viz. the insertion of Supplementary Note 2 in Chapter 21, did not constitute a change in law. The Tribunal’s findings in this regard have also been extracted below:

*“21. In the case of A.R.S & Company Vs. CCE Trichy the Chennai Bench of the Tribunal vide Final Order No. 41961/2017 dated 29.08.2017 in Appeal No. E/492/2009 followed the judgment of the Hon’ble Supreme Court in their own case reported in 2015 (324) ELT 30 (SC). The tribunal held that process of crushing betel nuts and sweetening the same with essential oils does not amount to manufacture. We do not find any reason to deviate from the view taken by the Chennai Bench in following the decision of Hon’ble Apex Court. Though appellants herein contend that after the amendment by adding of Chapter Note 3 to Chapter 21 the position is changed, we do not think so. Even after such amendment, the position of law settled by the Hon’ble Apex court in the case of M/s. **Crane Betel Nut Powder Works** (supra) would still be applicable. The amendment relied upon by the appellants only clarified what “supari” would be and as such would not be of much help in deciding the classification of impugned goods. Moreover, it*

can be seen that the impugned products in the case of Crane Betel Nut Powder Works (supra) have undergone much more elaborate processes like cutting into different sizes; adding essential /non-essential oils, menthol, sweetening agents etc. Even when the physical appearance undergoes a change. The Hon'ble Apex Court held that the processes undertaken do not amount to manufacture. Whereas, the processes undertaken in the instant case are less complex and simple like de-husking, cleaning, boiling and drying. For the reasons cited above, the processes cannot be held to be amounting to manufacture so as to necessitate the movement of goods from Chapter 8 to Chapter 21".

12.9. Whereas, it is pertinent to mention that the Final Order of CESTAT, Chennai was challenged by M/s. Ayush Business Overseas before the Hon'ble Supreme Court, and the Hon'ble Apex court has refused to interfere with the findings of the Tribunal and has dismissed the appeal, as report in [Ayush Business Overseas vs. Commisiosner-2021 9378) E.L.T. A142 (S.C.)]. That is, the Hon'ble **Supreme Court has also affirmed the view** taken by the Tribunal that the boiled Betel nuts are appropriately classifiable under Chapter 8, and not Chapter 21.

12.10. Whereas, during the course of inquiry proceedings, it emerged that the said DTA clients/ SEZ Unit relied upon the Advance Ruling no. AAR/Cus/08/2015 dated 07.08.2015 for the purpose of deciding the classification of subject goods during assessment proceedings. However, it emerges that the Hon'ble Supreme Court has now decided this matter and has taken a view that is contrary to the one relied upon by the said DTA client. Whereas, in light of Section 28J of the Customs Act, 1962, an Advance Ruling ceases to be binding when there is a change in law. **Whereas, the interpretation of the Hon'ble Supreme Court in this matter constitutes a change in law, and as such, even the relied upon Advance Rulings are now null and void for the subject DTA clearance at KASEZ.**

12.11. Whereas, it appears that the decision of the Hon'ble Apex Court in the matter of M/s. Crane Betel Nut Powder Works, vide SLP (C) No. 20185/2005 with Civil Appeal No.6659 of 2005, is even more categorical on the issue and the relevant extract has been reproduced below for ready reference:

"30. In our view, the process of manufacture employed by the appellant company did not change the nature of the end product, which in the words of the Tribunal, was that in the end product the 'betel nut remains a betel nut'. The said observation of the Tribunal depicts the status of the product prior to manufacture and thereafter. In those circumstances, the views expressed in the D.C.M. General Mill Ltd. (supra) and the passage from the American Judgment (supra) become meaningful. The observation that manufacture implies a change, but every change of not manufacture and yet every change of an article is the result of treatment, labour and manipulation is apposite to the situation at hand. The process involved in the manufacture of sweetened betel nut pieces does not result in the manufacture of a new product as the end product continues to retain its original character though in a modified form.

31. In our view, the Commissioner of Customs and Central Excise (Appeals) has correctly analysed the factual as well as the legal situation in arriving at the conclusion that the process of cutting betel nuts into small pieces and addition of essential/ non-essential oils, menthol, sweetening agent etc. did not result in a new and distinct product having a different character and use.”

12.12. Whereas, the Hon'ble Supreme Court has held that cutting, addition of essential oils etc. does not result in a new and distinct product since a Betel nut remains a Betel nut. In view of above factual and legal matrix and findings of investigation proceedings, it appears that the Certificate of Processing and documents based on which goods cleared from KASEZ to DTA provides no case for the goods to be classified under CTH 21069030, and in fact, it only strengthens the case for them to be classified under the heading 08028020 instead. In view of above, it appears that the goods in the present case merit classification under heading 08028020 and the fact has been admitted by both the SEZ Unit and said DTA client in their respective Statements recorded under Section 108 of the Customs Act, 1962.

12.13. Based on the above factual and legal matrix as revealed during the inquiry proceedings it appears that the classification of the goods cleared into DTA from KASEZ through the said DTA BE under CTH 21069030, as claimed by the said DTA client needs to be rejected and same appear to be classified under CTH 08028020. Further, it appears that the clearance of the goods under heading 0802 shall be subject to fulfillment of the policy and other conditions as stipulated under heading 0802.

13. Whereas, it appears that the said DTA client has imported goods declared as “Betelnut product known as Supari (Unflavoured Supari)” by classifying the same under CTH 21069030. The goods under CTH 21069030 attract duty structure as effective $BCD@50\%+SWS@0\%+IGST@18\%$. Further, due to the benefit of Country of Origin claimed by the DTA client, in the instant case, the BCD is reduced to “NIL”, thereby changing the duty structure as $BCD@0\%+SWS@0\%+IGST@18\%$. Whereas, upon classification under sub-heading 080280 the said goods attract the policy conditions as stipulated under DGFT Notification no. 20/2015-20 dated 25.07.2018. Vide the said notification, import of Arecanuts falling under sub-heading 080280 is “Prohibited”: However, import is free if CIF value is Rs. 251/- & above. Further, these goods under sub-heading 080280 attract Tariff value of USD 3695 per MTs as fixed by the Board in terms of Notification No. 04/2021 dated 15.01.2021. Whereas, it appears that the goods under sub-heading 080280 attract duty structure of $BCD@100\%+SWS@0\%+IGST@5\%$ leviable on the assessable value of the goods arrived on the account of Tariff values.

14. Whereas, the subject goods cleared by the said SEZ unit into DTA were subjected to levy of Custom duty under Section 30 of the SEZ Act, 2005 and are chargeable to duties of the Customs under Customs Tariff Act, 1975. Whereas, the Tariff valuation applicable to the goods removed from the SEZ shall be at the Tariff valuation in force as on the date of such removal. The Bill of Entry was filed on self-assessment basis for the clearance of subject goods into DTA by said SEZ unit to said DTA client under Rule 48(1) of the Special Economic Zone Rules, 2006. Whereas, the valuation of the said goods cleared/removed under the subject Bill of Entry filed by said SEZ unit on self-

assessment basis, into Domestic Tariff Area, has to be determined in accordance with provisions as per Rule 48 (2) of the SEZ Rules, 2006.

15. Whereas, Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of entry. Under self-assessment, the importer has to ensure correct classification, applicable rate of duty, value and exemption notifications, if any, in respect of imported goods while presenting Bill of entry. 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 was bound for true and correct declaration and assessment. Whereas, investigation proceedings has revealed that the said DTA Unit along with said SEZ Unit indulged themselves in the activities related to mis-classification and mis-declaration of the actual price of the goods meant for DTA clearance and the same has resulted in evasion of Customs Duty. Whereas, investigation proceedings revealed that the said DTA client along with said SEZ Unit have consciously dealt with the said goods meant for DTA clearance which, they knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962 read with the SEZ Act, 2005 and rules made thereunder. Whereas, investigation revealed that there appears to be a significant evidence, substantial, circumstantial and independent as also corroborative, as is sufficient to raise a presumption with regard to the fact that the transactions between the said SEZ unit & their DTA clients and further goods cleared to various DTA Clients, were mis-declared in terms of particulars presented before Customs Authorities. Whereas, as the said SEZ Unit was engaged in business of providing Warehousing services in respect of subject goods, they were fully aware of specifications, characteristics, nature and description of the goods cleared by them in DTA. The said SEZ Unit was well aware of the correct description/ classification of the goods and that the goods should have been correctly classifiable under CTH 08028020. Whereas, it is a settled legal position that incorrect declaration for availing exemption are “void/initio” and “there shall be a duty liability”. Whereas, it is a settled legal position that “fraud vitiates everything”. Whereas, investigation has revealed that the said SEZ Unit in connivance with the said DTA client had knowingly and intentionally presented the said incorrect documents before the Customs Authorities which they knew were false and incorrect in respect of the particulars of the goods meant for DTA clearance. The fact of mis- classification has also been admitted by both the SEZ Unit and the DTA client in their respective Statements recorded under Section 108 of the Customs Act, 1962. Whereas, it is evident that the said SEZ Unit along with DTA clients deliberately suppressed specifications, characteristics, nature and description of the goods and incorrectly declared the classification of said product/goods under tariff item 21069030 of the CTA, 1975 and paid lesser Customs duty by availing incorrect Notification Benefits with a malafide intention to evade payment of Customs Duty as detailed in Annexure-A. In the above manner, the acts of said SEZ Unit along with DTA client appear to have resulted in evasion of Customs Duty totally amounting to Rs. 3,24,83,484/- as detailed in Annexure-A to this notice.

16. Whereas, as per Section 28(4) of the Customs Act, 1962, where any duty has short-levied or short-paid, or any interest payable has not been paid for reasons of

collusion or any willful mis-statement or suppression of facts, the proper officer shall serve notice on the person chargeable with the duty or interest which has not been short-levied or short-paid. Further, as per Section 12 of the Customs Act, 1962, the duties of the Customs shall be levied on goods imported into India. Further, as per Section 2(26) *ibid*, the "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer. Whereas, as per Section 30 of the SEZ Act, 2005, any goods removed from the SEZ to DTA shall be chargeable to applicable duties of Customs, as levied on such goods when imported. Whereas, a Letter of Approval dated 19.05.2011(**RUD-1**) has been granted to the said SEZ Unit by the Development Commissioner, Kandla SEZ under section 15 (9) of the SEZ Act, 2005 read with Rule 18 of the SEZ Rules, 2006 to operate as a SEZ unit and carry out authorized operations of Trading and Warehousing Service activity. The said SEZ Unit is engaged in business of providing Warehousing Services and dealing with imported goods by removing/clearing to various DTA clients. In the instant case, the subject goods were imported and stored/warehoused by said SEZ Unit and subsequently cleared into DTA to said DTA client. In view of the above, it appears that the differential customs duty should be demanded and recovered from the said DTA client under Section 28(4) of the Customs Act, 1962.

17. Whereas, the said SEZ unit and the above mentioned DTA client did not disclose the material facts relating to the actual specification, characteristics, nature and description of the subject products cleared into DTA. The above discussed facts reveal that while clearing the subject goods i.e. " Betelnut product known as Supari (Unflavoured supari, Boiled Supari)" to DTA, the said SEZ unit has mis-classified and mis-declared the subject goods, totally valued at **Rs. 2,95,30,440/-** (as detailed in Annexure-A to this notice) by deliberately suppressing the material facts relating to specifications and particulars of the same. They mis-classified and mis-declared the subject goods in terms of value and wrongly availed exemptions, with an intention to evade the payment of appropriate duty on the same during clearance to DTA. For the said act of suppression of material facts, the goods mentioned in Annexure-A to this notice, totally valued at **Rs. 2,95,30,440/-**, are liable to confiscation under section 111(m) of the Customs Act,1962, though the same are not physically available, since the said goods do not correspond in respect of value and classification with the entry filed before Customs. Whereas, a Letter of Approval dated 19.05.2011 (RUD-1) has been granted to the said SEZ Unit by the Development Commissioner, KASEZ under Section 15 (9) of the SEZ Act, 2005 read with Rule 18 of the SEZ Rules, 2006 to operate as a SEZ unit and carry out authorized operations of Warehousing Service of all goods except Prohibited items. For the said act of suppression of material facts, the goods mentioned in Annexure-A to this notice, totally valued at **Rs. 2,95,30,440/-**, are liable to confiscation under section 111(d) of the Customs Act,1962, though the same are not physically available, as the import policy for the items falling under Custom Tariff heading 0802 is "Prohibited" as per Notification No. 20/2015-20 dated 25.07.2018. Whereas, the said SEZ Unit has imported, warehoused and cleared the "Prohibited" goods and the same has resulted in the unauthorized activity on the part of said SEZ Unit. For the said act of suppression of material facts, the goods mentioned in Annexure-A to this notice, totally valued at **Rs.2,95,30,440/-**, are liable to confiscation under section 111(o) of the Customs Act,1962, though the same are not physically available, since the said SEZ Unit along with said DTA client deliberately paid lesser

Customs duty by availing Notification Benefits incorrectly with a malafide intention to evade payment of Customs Duty. For the said act of suppression of material facts, mis-declaration of value of the imported goods, mis classification and incorrect availment of exemption benefits, the said SEZ Unit and the said DTA client have rendered themselves liable to penalty under Section 112 of the Customs Act, 1962. During the course of investigation proceedings the said SEZ unit admitted that correct classification for the subject goods shall be CTH 080280. Whereas, the SEZ unit admitted that he will convince said DTA client to pay differential Customs duty. Further, during the course of investigation, the said DTA client admitted that correct classification for the subject goods shall be CTH 080280. Whereas, investigation proceedings revealed that the said SEZ Unit in connivance with the said DTA client had knowingly and intentionally presented the said incorrect documents before the Customs Authorities which they knew were false and incorrect in respect of the particulars of the goods meant for DTA clearance. For the said act of suppression of material facts, mis-declaration of value of the imported goods, mis-classification and incorrect availment of exemption benefits based on incorrect/false declaration the said SEZ Unit and the said DTA Client have rendered themselves liable to penalty under section 114AA of the Customs Act, 1962.

18. Show Cause Notice:

18.1. Now, therefore, the SEZ Unit, namely, M/s. Flamingo Logistics, Unit No. 304, 2nd Floor, Ganga SDF Complex, Phase-II, Kandla Special Economic Zone, Gandhidham (Noticee No. 1) are hereby called upon to Show Cause to the Commissioner of Customs having his office situated at Customs House, Near Balaji temple, Kandla, District Kutch within 30 days from the receipt of this notice as to why:

(a) The classification of the subject goods declared under Customs Tariff Item 21069030 of the Customs Tariff Act, 1975, as mentioned in Annexure-A to this Notice, should not be rejected and re-classified under Customs Tariff Item 08028020 of the Customs Tariff Act, 1975

(b) The assessable value of goods as mentioned in the Annexure-A to this Notice, should not be rejected and the same should not be re-assessed by applying correct tariff value, as applicable on the date of removal of the goods from SEZ to DTA.

(c) The goods mentioned in Annexure-A to this notice, cleared from SEZ to DTA, totally valued at **Rs. 2,95,30,440/- (Rupees Two Crore Ninety Five Lakhs Thirty Thousand Four hundred and Forty Only)** should not be held liable for confiscation under Section **111(d), 111 (m) & 111(o)** of the Customs Act, 1962, though the same are not physically available;

(d) Penalty under Section **112, 114A, 114AA** of the Customs Act, 1962 should not be imposed on them for reasons discussed above.

(e) Bond-cum-Legal Undertaking in Form-H furnished by the said SEZ Unit should not be enforced towards the liabilities arising out of subject goods removed from said SEZ Unit to DTA as detailed in Annexure-A.

18.2. Now, therefore, the DTA client/Importer, namely, M/s. R.R. Exports(IEC-3209016941/PAN -ADAPJ8715A/ GSTIN - 33ADAPJ8715A1Z5) situated at 152G13, K.K.Nagar, Kovai Road, Mettupalayam, Coimbatore 641301 and 188/246,

Andrakuppam Checkpost, Manali New Town Tiruvallur and 4/28, F-1, Harbour Bypass Road, Tuticorn are hereby called upon to Show Cause to the Commissioner of Customs having his office situated at Customs House, Near Balaji temple, Kandla, District Kutch within 30 days from the receipt of this notice as to why:

(a) The classification of the subject goods declared under Customs Tariff Item 21069030 of the Customs Tariff Act, 1975, as mentioned in Annexure-A to this Notice, should not be rejected and re-classified under Customs Tariff Item 08028020 of the Customs Tariff Act, 1975

(b) The assessable value of goods as mentioned in the Annexure-A to this Notice, should not be rejected and the same should not be re-assessed by applying correct tariff value, as applicable on the date of removal of the goods from SEZ to DTA.

(c) The goods mentioned in Annexure-A to this notice, cleared from SEZ to DTA, totally valued at **Rs. 2,95,30,440/- (Rupees Two Crore Ninety Five lakhs Thirty Thousand Four Hundred and Forty Only)** should not be held liable for confiscation under Section 111(d), 111 (m) & 111(o) of the Customs Act, 1962, though the same are not physically available;

(d) Exemption of the Customs Notification No. 96/2008 (supra), availed on the strength of above-referred LDC certificate, issued for goods falling under CTH 2106, should not be denied to the goods cleared by them as they are appropriately classifiable under CTH 08028020.

(e) Differential Customs Duty of **Rs. 3,03,04,810/- (Rupees Three crores Three lakhs Four thousand Eight hundred and Ten only)** as detailed in Annexure-A should not be demanded and recovered from them under Section 30 of the SEZ Act, 2005 read with Section **28(4)** of the Customs Act, 1962 along with applicable interest under Section **28AA** of the Customs Act, 1962 for the subject goods.

(f) Penalty under Section **112, 114A, 114AA** of the Customs Act, 1962 should not be imposed on them for reasons discussed above.

19. The Noticees are directed to mention in their reply to this notice whether they wish to be heard in person before the case is adjudicated. If no cause is shown against the action proposed to be taken or they do not appear in person before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on the basis of evidence available on record.

20. Further, the noticees are advised to mention their email address in writing for virtual hearing as per CBIC's Instruction dated 21.08.2020 issued vide F. No. 390/Misc/3/2019-JC.

21. The list of relied upon documents (RUDs) in this case is as per Annexure-R.

22. This notice is issued without prejudice to any other action that may be taken against the said notices or any other person(s) concerned with the said act(s) of commission(s) and omission(s), whether mentioned hereinabove or not under the

provisions of Customs Act, 1962 and the rules framed thereunder, and/or any other laws for the time being in force.

(Nitin Saini)
Commissioner of Customs,
Custom House Kandla

To,

- i. M/s. Flamingo Logistics, Unit No. 304, 2nd Floor, Ganga SDF Complex, Phase-II, Kandla Special Economic Zone, Gandhidham. (Noticee No. 1)
- ii. M/s. R.R. Exports (IEC-3209016941/ PAN -ADAPJ8715A/ GSTIN - 33ADAPJ8715A1Z5) (Prop.- Shri Mohd. Jalaludeen Roomie), 152G13, K.K.Nagar, Kovai Road, Mettupalayam, Coimbatore 641301 and 188/246, Andrakuppam Checkpost, Manali New Town Tiruvallur and 4/28, F-1, Harbour Bypass Road, Tuticorn (Noticee No. 2)

Copy to:

- i. The Development Commissioner, Kandla Special Economic Zone, Gandhidham, Distt.- Kutch.
- ii. The Assistant / Deputy Commissioner of Customs, Adjudication Cell, Kandla Custom House, Kandla.
- iii. The Deputy Commissioner of Customs, KASEZ, Gandhidham Kutch.
- iv. The Superintendent, EDI Section, Custom House Kandla.
- v. Guard File.

Annexure-R
(List of Relied Upon Documents)

- **RUD-1:** Copy of Letter of Approval dated 19.05.2011.
- **RUD-2:**“Analysis Report on import of Areca nuts” dated 30.12.2020 issued by the Additional Director General, RMCC, Mumbai
- **RUD-3:** The documents on the basis of which the subject goods entered KASEZ pertaining to Import BE No. 1013118 dated 16.12.2020
- **RUD-4:** The documents on the basis of which the subject goods have been cleared from KASEZ pertaining to DTA BE No. 2000788 dated 21.01.2021
- **RUD-5:** Statement dated 05.12.2022 of Shri Kiran Singh Kochar, Partner of M/s. Flamingo Logistics, KASEZ, recorded under Section 108 of the Customs Act, 1962.
- **RUD-6:** Statement dated 19.12.2022 of Mohd. Jalaludeen Roomie, Proprietor of M/s. RR Exports, Delhi, recorded under Section 108 of the Customs Act, 1962.
- **RUD-7:** Verification report of genuineness of M/s. R R Exports, Coimbatore, Tamil Nadu
- **RUD-8:** Verification report of genuineness of M/s. TTK Traders, Malappuram, Kerala
- **RUD-9:** Verification report of genuineness of M/s. Bismi Traders, Palakkad, Kerala

- **RUD-10:** Verification report of genuineness of M/s. Akkino Traders, Nagpur, Maharashtra
- **RUD-11:** Verification report of genuineness of M/s. R R Exports, New Delhi
- **RUD-12:** Statement dated 17.03.2023 of Shri Shinoy Tharukutty Tholath, Proprietor of M/s. Akkino Traders, Nagpur, Maharashtra, recorded under Section 108 of the Customs Act, 1962.
- **RUD-13:** Statement dated 01.05.2023 of Shri Vinodkumar C N, Manager of M/s. Bismi Traders, Palakkad, Kerala, recorded under Section 108 of the Customs Act, 1962.
- **RUD-14:** Statement dated 01.05.2023 of Shri Noufel T K, S/o Shri T K Koya (Proprietor of M/s. TTK Traders, Malappuram, Kerala), , recorded under Section 108 of the Customs Act, 1962.
- **Annexure-A:** Statement showing short levy of Customs duty on account of misclassification, incorrect availment of exemption benefits and mis-declaration of value of the imported goods at the time of clearance of the subject goods from SEZ to DTA by said SEZ Unit. It is pertinent to note that the differential duty calculation has been arrived after taking into account the certified details for the subject clearances submitted by the said SEZ Unit, data retrieved from SEZ Online system administered by NSDL and the findings of the investigation carried out by KASEZ Kandla in respect of gross under valuation of the subject goods cleared into DTA in fraudulent manner.