

	OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467
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DIN-20250771ML0000115001		
A	File No.	GEN/ADJ/ADC/802/2024-Adjn-O/o-Commr-Cus-Kandla
B	Order-in-Original No.	KND-CUSTM-000-COM-24-2025-26
C	Passed by	M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla.
D	Date of Order	29.07.2025
E	Date of Issue	30.07.2025
F	SCN No. & Date	GEN/ADJ/COMM/802/2024-ADJN dated 03.05.2024
G	Noticee / Party / Importer / Exporter	M/s. Vishnu Exports

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 & Service Tax Appellate Tribunal, West Zonal Bench,
2nd Floor, Bahumali Bhavan Asarwa,
Nr. Girdhar Nagar Bridge, Girdhar Nagar, 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 Court Fees Act, 1870.
6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.
8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise if penalty alone is in dispute.

BRIEF FACTS OF THE CASE-

Whereas, M/s Vishnu Export (hereinafter referred to as "said SEZ unit") is a SEZ unit situated at Unit No. 101 to 206, Gokul SDF Complex, Phase-II, Kandla Special Economic Zone, Gandhidham. Letter of Approval (LOA) No.010/2013-14 dated 18.09.2013 was granted to them vide F.No. KASEZ/IA/010/2013-14 (**RUD-1**) by the Development Commissioner, Kandla SEZ under Section 15(9) of the SEZ Act read with Rule 18 of the SEZ Rules,2006 to operate as an SEZ unit and carry out authorized operations of "Manufacturing activity".

2. Whereas, during the scrutiny of the documents for the period 2019-2021, the Senior Audit Officer (CRA-I) noticed that the unit is undertaking certain un-authorised operations. The said observations were communicated vide HM dated 01.10.2021(**RUD-2**) and subsequently vide Para 3 of the LAR dated 03.11.2021 (**RUD-2**). During the course of test check of the records, it has been noticed that the said SEZ unit had imported consignments of "Betel Nuts - CTH 0802" having CIF value lower than the restricted import rate i.e. Rs.251 per KG, resulting in incorrect duty foregone on unauthorized imports. The details of the goods mentioned in the Audit Para are listed in Annexure-A to this Notice.

3. Whereas, the said SEZ was granted LoA dated 18.09.2013 to undertaking authorized operations of "Manufacturing activity" of Pan Masala (ITC HS 21069020) and Pan Masala Containing Tobacco- Guthka (ITC HS 24039990), subject to terms and conditions mentioned thereof. The condition no. 4 of the said LoA stipulates that the said SEZ Unit is not allowed to import items prohibited under the ITC (HS) Classifications of Export and Import items. The condition no. 4 of the LoA reads as:

"4) You may import or procure from the Domestic Tariff Area all the items required for your authorized operations under this approval, except those prohibited under the ITC (HS) Classifications of Export and Import items"

3.1. Whereas, DGFT vide notification no. 20/2015-20 dated 25.07.2018 (**RUD-3**)has amended the import policy for goods falling under Chapter sub-heading 080280 from "Free" to "Prohibited" and the Policy condition is revised to "However, import is free if CIF value is Rs.251/- and above per Kilogram". Subsequently, DGFT vide notification no. 57/2015-20 dated 14.02.2023(**RUD-3**)has amended the import policy condition for goods falling under Chapter 080280 to "a) However, import is free if CIF value is Rs.351/- and above per Kilogram; b) MIP conditions, however, will not be applicable for imports by 100% Export Oriented Units (EOUs) and units in the SEZ subject to the condition that no DTA sale is allowed"and the import policy is not altered and mentioned as "Prohibited". Whereas, by virtue of above said notifications the import of goods falling under Chapter sub-heading 080280 stands "Prohibited" and import is subject to MIP mentioned therein. Further, w.e.f. 14.02.2023, the imports into SEZ are exempted from MIP conditions subjected to fulfillment of the conditions stipulated therein.

3.2. Whereas, the audit observations were communicated to the SEZ Unit vide letter dated 13.10.2021 (**RUD-4**) issued from F.No. KASEZA/CUS/D&R/Audit/13/21-22 and requested the unit to pay the entire outstanding amount along with applicable interest or submit a reply. Whereas, in response to aforesaid letter, the SEZ Unit vide their letter dated 07.01.2022 (**RUD-4**), inter-alia, submitted

- that they are an approved unit bearing Letter of Approval for undertaking authorized operations of Manufacturing Activity of Pan Masala, Pana Masala containing tobacco, Zarda, Khaini.
- that they have been permitted to import areca/ betel nut for self-consumption and authorized operation by the office of the Development Commissioner
- that they have been permitted to import any items required for authorized operation except those prohibited under the ITC (HS) Classification of export and import items.
- That they are undertaking the authorized operation in compliance to the letter of approval issued to their unit.
- That the imported areca/ betel nut is being strictly utilized for manufacturing of Pan Masala containing tobacco-Guthka.

- That the final product manufactured out of imported areca/ betel nut is being exported.
- That they are not selling any of items i.e. Betel nut or guthka in domestic tariff area.
- That the duty payment and interest thereof are not applicable to them as imported areca/ betel nut are not removed in domestic tariff area and imported areca/ betel nut is utilized for manufacturing and export of the finished goods.

3.3. Based on the Audit objection raised by the CRA team, analysis of import data downloaded from NSDL SEZ Online data has been carried out. During the analysis of import data, it is observed that, during the subsequent period, the said SEZ Unit continued to indulge in unauthorized import of Arecanuts/ Betelnuts falling CTH 080280 in contravention to MIP conditions stipulated in Import Policy conditions. The details of imports made by the said SEZ Unit in contravention to the MIP conditions, for the period from 2019-2023 (up to 14.02.2023) are tabulated in Annexure-B attached to this SCN. Further, based on the description in the respective Bills of entry mentioned at Sr.No. 23 to 28 in Annexure-B, it is also observed that the said SEZ Unit had mis-classified the imported “Betelnut” under CTH 08029000, which are rightly classifiable under CTH 08028010.

4. Legal Provisions:

Whereas, 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 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:

4.1. The Customs Act, 1962:

- 4.1.1. Section 46 of the Customs Act, 1962
- 4.1.2. Section 2(33) of the Customs Act, 1962
- 4.1.3. Section 2(39) of the Customs Act, 1962
- 4.1.4. Section 111(d) of the Customs Act, 1962.
- 4.1.5. Section 111(m) of the Customs Act, 1962.
- 4.1.6. Section 111(o) of the Customs Act, 1962.
- 4.1.7. Section 112 of the Customs Act, 1962
- 4.1.8. Section 114AA of the Customs Act, 1962
- 4.1.9. Section 117 of the Customs Act, 1962

4.2. SEZ Act, 2005

- 4.2.1 Section 15(9) of the SEZ Act, 2005
- 4.2.2 Rule 18 of the SEZ Rules, 2006.
- 4.2.4 Rule 26 of the SEZ Rules, 2006.
- 4.2.4 Rule 27 of the SEZ Rules, 2006.

4.3. Foreign Trade (Development and Regulation) Act, 1992

- 4.3.1. Section 3(2) and (3) of the FTDR Act, 1992
- 4.3.2. Section 5 of the FTDR Act, 1992
- 4.3.3. Section 11 (1), (2), (3), (8) of the FTDR Act, 1992
- 4.3.4. Section 12 of the FTDR Act, 1992

4.4. Foreign Trade (Regulation) Rules, 1993

- 4.4.1. Rule 11 of the FTR, 1993
- 4.4.2. Rule 14 of the FTR, 1993
- 4.4.3. Rule 15(3)(a) of the FTR, 1993
- 4.4.4. Rule 17 of the FTR, 1993

5. Whereas, Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods by the importer and exporter himself by filing a bill of entry or shipping bill, as the case may be. Under self-assessment the importer or exporter has to ensure correct classification, applicable rate of duty, value and exemption notifications, if any, in respect

of imported /export goods while presenting a bill of entry or shipping bill. 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 importing the subject goods, the said SEZ unit was bound for true and correct declaration, classification and assessment which include importability of the subject goods. As the said SEZ unit was engaged in business of activities related to subject goods, they were fully aware of specifications, characteristics, nature, classification, importability and approvals and other regulatory compliances in respect goods dealt by them in the SEZ area. From the above, it is evident that the said SEZ unit willfully misclassified the imported goods and suppressed the fact that the goods are falling under prohibited category and in contravention to the conditions stipulated in their LoA, thereby indulged in unauthorized activity.

6. Whereas, the assessment of Bills for import of goods by the SEZ unit shall be done on the basis of self-declaration. Whereas, Section 2(33) of the Customs Act, 1962, the prohibited goods include the goods, import of which is subject to any prohibition under the Customs Act, 1962 or any other law for the time being in force. However, it does not include the goods, in respect of which the conditions subject to which the goods are permitted to be imported have been complied with. In the instant case, the goods imported by the said SEZ unit are under "Prohibited" category and the said SEZ Unit has not complied with the conditions for its import as prescribed in the Import policy thereby violating the terms and conditions prescribed in Letter of Approval (LoA) issued by the Development Commissioner, KASEZ. Thus, the goods imported by the said SEZ unit are to be treated as "Prohibited goods" as per Customs Act, 1962 read with DGFT Notification No.20/2015-20 dated 25.07.2018. It is evident that the said SEZ unit has imported subject goods in contravention to the conditions of the LoA. Since the goods so imported by the said SEZ unit are contrary to the prohibition imposed under the Customs Act, 1962 read with SEZ Act, 2005. Therefore, the said goods imported by the said SEZ unit are liable to confiscation under the provisions of Section 111(d) & 111(o) of the Customs Act, 1962 and the said SEZ unit is liable for penalty under Section 112 of the Customs Act, 1962.

6.1. Whereas, during the course of analysis of SEZ Online data, it emerges that the said SEZ Unit have mis-classified the goods imported under CTH 08029000 to circumvent the MIP conditions stipulated in Import Policy and conditions stipulated in LoA. Based on the declared description i.e. "Arecanut", the actual classification of these goods should be 08028010. Such indulgence and endeavor on the part of said SEZ Unit are in violation of the provisions of Section 46 of the Customs Act, 1962, irrespective of the importability of the impugned goods and other aspects involved in the case, which makes the impugned goods liable for confiscation in terms of Section 111(d), 111(m) and 111(o) of the Customs Act, 1962 and said SEZ unit is liable for penalty under Section 112 and Section 114AA of the Customs Act, 1962.

6.2. Whereas, Section 46(4A) of the Customs Act, 1962, the importer, who is presenting the bill of entry should ensure the accuracy and completeness of the information given therein viz. classification, description, value etc., the authenticity and validity of any document supporting it; and compliance with the restriction or prohibition, if any, relating to the goods under the Customs Act, 1962 or under any other law for the time being in force. Apparently, it appears the said SEZ unit has violated the provisions of section 46(4A) by way of importing the said goods, falling under Prohibited category,in contravention to conditions stipulated in their LoA. Such indulgence and endeavor on the part of their part are in violation of the provisions of Section 46 of the Customs Act, 1962 makes the impugned goods liable for confiscation in terms of Section 111(d), 111(m) and 111(o) of the Customs Act, 1962 and the said SEZ unit is liable for penalty under Section 112, 114AA and section 117 of the Customs Act, 1962.

7. Whereas, Para 9.41 of the extant FTP, "Prohibited" indicates the import/export policy of an item, as appearing in ITC (HS) or elsewhere, whose import or export is not permitted. In the instant case, as per the DGFT Import policy, the import of subject goods is Prohibited and is not permitted by the LoA issued by the Development Commissioner, KASEZ. Whereas, Section 3 (2) of the FTDR Act, 1992 empowers the Central Government to issue order, making provisions

for prohibiting, restricting or otherwise regulating, the import of goods. As per Section 3(3) of the FTDR Act, 1992, all goods to which the order under Section 3(2) applies shall be deemed to be goods the imports of which have been prohibited under Section 11 of the Customs Act, 1962 and all the provisions of that Act shall have effect accordingly. Whereas, Section 5 of the FTDR Act, 1992 empowers the Central Government to formulate and announce by notification the foreign trade policy and also empowered to amend the policy in like manner. Whereas, Section 8 of the FTDR Act, 1992, the DGFT or any other officer authorized by him empowered to pass order for suspension or cancellation of the IEC Number of a person, who has contravened any of the provisions of the FTDR Act, 1992 or any rules or orders made thereunder or the FTP or any other law for the time being in force relating to Customs or has committed any other economic offence under any other law for the time being in force. Whereas, Section 11(1) of the FTDR Act, 1992 provides that no import shall be made by any person except in accordance with the provisions of the FTDR Act, 1992, the rules and orders made thereunder and in accordance with the FTP for the time being in force. Penal provisions are also prescribed vide Section 11(2) of the FTDR Act, 1992. As per Section 11(8) of the FTDR Act, 1992, the offending goods are liable to confiscation. **Whereas, Section 12 of the FTDR Act, 1992 prescribes that the penalty imposed or confiscation made under the FTDR Act, 1992 shall not prevent the imposition of any other punishment to which the person affected thereby is liable under any other law for the time being in force.** Whereas, Rule 11 of the FTDR, 1993 provides that on importation of any goods, the owner of the goods has to file Bill of Entry as prescribed under the Customs Act, 1962, stating the value, quantity, quality and description of such goods to be best of his knowledge and belief and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry. Whereas, Rule 14 of the FTR, 1993 prohibits making, signing, using or cause to be made, signed or used any declaration, statement or documents for importing any goods, knowing or having reason to believe that such declaration, statement or document is false in any material particular. Employing any corrupt or fraudulent practice in importing the goods have also been prohibited.

8. Now, therefore, the said SEZ Unit, namely, M/s. Vishnu Export (IEC0813010179) are hereby called upon to show cause to the Commissioner of Customs, having office situated at Customs House, Near Balaji Temple, Kandla, District Kutch within 30 days from the receipt this notice as to why:-

- i) The declared classification i.e.08029000 of the goods imported vide bills of entry mentioned at Sr.No. 23 to 28 of Annexure-B having declared assessable value of **Rs 4,61,82,960/-** (Rupees Four crore Sixty one lakh eighty two thousand nine hundred and Sixty only) should not be rejected and should not be re-classified under Custom tariff Item 08028010 and should not be confiscated under Section 111(d), 111 (m) & 111(o) of the Custom Act, 1962.
- ii) The goods imported vide Bills of Entry as detailed in 'Annexure-B' having declared assessable value of **Rs. 37,68,00,065/-** (Rupees Thirty Seven Crore Sixty Eight lakh and Sixty five only) should not be confiscated under Section 111(d), 111 (m) and 111(o) of the Custom Act, 1962 for contravening the Import Policy conditions and conditions stipulated in the LoA;
- iii) Penalty should not be imposed upon them under each of the provisions of Section 112, 114AA of the Customs Act, 1962 for the reasons discussed above.
- iv) Bond-cum-Legal Undertaking in form-H executed by the said SEZ Unit should not be enforced towards its above liabilities.

RECORD OF PERSONAL HEARING-

9. Opportunity of personal hearing was provided to the noticee on 11.03.2025. Shri N.K. Tiwari and Shri Ankur Garg appeared for personal hearing on 11.03.2025 and requested for time to make submission in the matter. They opposed the notice saying that

- (i) in terms of S.53 of SEZ Act, 2005, present proceedings should not interfere with their declarations and there is no case for present proceedings.

(ii) MIP is not applicable in terms of Notification.

WRITTEN SUBMISSION-

10. M/s. Vishnu Export, KASEZ, Gandhidham vide submission dated 22.04.2025, interalia, submitted the following-

- (i) They had been granted LoA dated 18.09.2023 for manufacturing activity of Pan Masala, Pan Masala containing tobacco.
- (ii) They had been permitted to import areca nut/betel nut for self consumption and authorized operation by the competent authority. The Areca nuts being imported were strictly utilized for authorized operation in the manufacture of Pan Masala containing tobacco-Gutkha. The final product is being exported. No DTA clearance has been made.
- (iii) As per the condition no. 5 of the LoA, it is mentioned that no DTA sale was permissible. In compliance of the same, they had exported the finished goods.
- (iv) As per Section 53(1) of SEZ Act, 2005, SEZ is shall on and from the appointed date be deemed to be a territory outside the custom territory of India for the purpose of undertaking the authorized operations. On conjoint reading of the terms and conditions of letter of Approval and provisions of Section 53 of the SEZ Act, 2005, it can be reasonably inferred that the proceedings initiated against them under the Customs Act, 1962 were mis conceived and was based on the mis-appreciation of law.
- (v) The Show cause notice has alleged that the unit was undertaking certain unauthorized operations. In terms of Section 2(c) of SEZ Act, 2005 read with Section 4 and Section 15 of the SEZ act, 2005 and LoA dated 18.09.2013, the authorised operations mentioned in the said letter of Approval is the manufacturing activity of Pan Masala and Pan Masala containing tobacco-Guthka. Thus the observation that they were undertaking unauthorized operations were contradictory to the facts and evidence on record and no such evidence has been brought on record in the subject show cause notice.
- (vi) By relying on the decision of Hon'ble Tribunal in the case of Swastik Tin Works Vs. Collector of Central Excise, Kanpur 1986 (25) ELT 798 (Trib.) they have argued that investigation/inquiry must precede with the issue of Show cause notice. It was further held that a show cause notice issued without proper inquiry and merely on the basis of audit objection was without jurisdiction.
- (vii) With respect to mis-classification of goods to circumvent the MIP conditions, they argued that they had placed the order for import of areca nuts and had shown the Areca nut classifiable under HSN 08029000 in the invoices and packing List. When the consignment arrived at the port, the authorized person had filed the Bills of Entry under HSN 08029000 as being shown in the supplier's invoice, based on insistence of the department. Further, it is not disputed that the imported goods were used in the manufacturing activity and exported under proper documentation. The classification adopted by them was based on the HSN shown by the supplier of goods.
- (viii) Without prejudice to the above, the classification of the goods imported was adopted by the importer based on the understanding and it was always open to the department to alter or modify the said classification adopted by the importer. Thus, even the department was convinced that the classification adopted by them was legal and proper.
- (ix) As per Section 26(1) of the SEZ Act, 2005, exemption from customs duty is not only under the Customs Act but also under any other law for the time being in force. Thus they were under the bonafide belief that the said notification of 2018 issued was not applicable to the units under SEZ carrying out authorized operations.
- (x) They have referred to the provisions of Rule 27 of SEZ Rules, 2006 which provides that the item prohibited for import can be procured by SEZ from a place outside India to the SEZ with the prior approval of Board of Approval.
- (xi) The Notification dated 14.02.2023 is only clarificatory in nature and to be applied retrospectively.
- (xii) They have further relied on the decision of Hon'ble Supreme Court in the matter of Hindustan Steel Ltd. Vs. State of Orissa reported at AIR 1970 SC (253) 1979 ELT (J402), wherein it is held that for imposition of penalty it has to be brought on record that the party had

acted deliberately in defiance of law. The impugned show cause notice proposing to impose penalty on them is legally not tenable.

DISCUSSION AND FINDINGS-

11. I have carefully gone through the show cause notice, written submission and all the evidences placed on record.

12. M/s Vishnu Export, SEZ unit, were granted Letter of Approval (LOA) No.010/2013-14 dated 18.09.2013 vide F.No. KASEZ/IA/010/2013-14 (RUD-1) by the Development Commissioner, Kandla SEZ under Section 15(9) of the SEZ Act read with Rule 18 of the SEZ Rules, 2006 to operate as an SEZ unit and carry out authorized operations of "Manufacturing activity".

13. During the scrutiny of the documents for the period 2019-2021, the Senior Audit Officer (CRA-I) noticed that the unit is undertaking certain un-authorised operations. During the course of test check of the records, it was noticed that the said SEZ unit had imported consignments of "Betel Nuts -CTH 0802" having CIF value lower than the restricted import rate i.e. Rs.251 per KG, resulting in incorrect duty foregone on unauthorized imports.

14. The said SEZ was granted LoA dated 18.09.2013 to undertake authorized operations of "Manufacturing activity" of Pan Masala (ITC HS 21069020) and Pan Masala Containing Tobacco- Guthka (ITC HS 24039990), subject to terms and conditions mentioned thereof. The condition no. 4 of the said LoA stipulates that the said SEZ Unit is not allowed to import items prohibited under the ITC (HS) Classifications of Export and Import items. The condition no. 4 of the LoA reads as:

"4) You may import or procure from the Domestic Tariff Area all the items required for your authorized operations under this approval, except those prohibited under the ITC (HS) Classifications of Export and Import items"

15. DGFT vide notification no. 20/2015-20 dated 25.07.2018 (**RUD-3**) has amended the import policy for goods falling under Chapter sub-heading 080280 from "Free" to "Prohibited" and the Policy condition is revised to "However, import is free if CIF value is Rs.251/- and above per Kilogram".

16. Subsequently, DGFT vide notification no. 57/2015-20 dated 14.02.2023(**RUD-3**) has amended the import policy condition for goods falling under Chapter 080280 to "a) However, import is free if CIF value is Rs.351/- and above per Kilogram; b) MIP conditions, however, will not be applicable for imports by 100% Export Oriented Units (EOUs) and units in the SEZ subject to the condition that no DTA sale is allowed" and the import policy is not altered and mentioned as "Prohibited".

17. By virtue of above said notifications the import of goods falling under Chapter sub-heading 080280 stands "Prohibited" and import is subject to MIP mentioned therein. Further, w.e.f. 14.02.2023, the imports into SEZ are exempted from MIP conditions subjected to fulfillment of the conditions stipulated therein.

18. Further, the show cause notice has alleged that based on the description in the respective Bills of entry mentioned at Sr.No. 23 to 28 in Annexure-B, it is also observed that the said SEZ Unit had mis-classified the imported "Betelnut" under CTH 08029000, which are correctly classifiable under CTH 08028010.

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

(i) Whether the SEZ Unit had engaged in carrying out un-authorized operations;

(ii) Whether the imported goods were prohibited in terms of MIP conditions imposed vide DGFT notification no. 20/2015-2020 dated 25.07.2018;

(iii) Whether the goods were liable for confiscation under Section 111 of the Customs Act, 1962.

(iv) Whether penalties under Sections 112 and 114AA are attracted in the instant case;

Whether the SEZ Unit has engaged in Un-authorised operations-

20. Before proceeding further, relevant sections of SEZ Act, 2005 are reproduced below:-

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

4(2) After the appointed day, the Board may, authorise the Developer to undertake in a Special Economic Zone, such operations which the Central Government may authorise.

15(9) The Development Commissioner may, after approval of the proposal referred to in sub-section (3), grant a letter of approval to the person concerned to set up a Unit and undertake such operations which the Development Commissioner may authorise and every such operation so authorised shall be mentioned in the letter of approval.

21. Further, relevant rules of SEZ Rules, 2006 are reproduced below:-

9. Grant of Approval for Authorized Operations.- The Developer shall 31[submit in Form C7 to the Development Commissioner who within a period of fifteen days, shall forward it to the Board with his recommendations,] the details of operations proposed to be undertaken in the Special Economic Zone for obtaining authorization under subsection (2) of section 4 at the time of seeking approval for setting up of Special Economic Zone or thereafter

10. Permission for procurement of items. - The Approval Committee ***may permit goods and services to carry on the operations authorized under rule 9:***

23. ***Supplies from the Domestic Tariff Area to a Unit or Developer for their authorized operations*** shall be eligible for export benefits as admissible under the Foreign Trade Policy.

33. Admission of goods.- Any goods imported or procured from Domestic Tariff Area, required for authorized operations, shall be admitted into the Special Economic Zone subject to the following conditions.

22. On perusal of the above provisions, I find that authorised operation is the operation or activity required to be carried out by the SEZ unit as approved by the Development Commissioner (Board in case of Developer) and it is clearly outlined in the Letter of Approval granted by the Development Commissioner. However, it is important to note that importing or procuring goods/ services from DTA is not synonymous with the authorised operations. However, the said goods are required to be utilized in authorised operations.

23. In the instant case, the authorised operation of the SEZ unit M/s. Vishnu export was 'manufacturing activity of Pan Masala and Pan Masala containing Tobacco-Guthka'. As per condition no. 4 of LoA, in order to carry out the said authorised operation, they were allowed to either import or procure the raw material (Betel Nuts) from DTA. I find that they have imported Betel Nuts and after carrying out the manufacturing activity of Pan Masala, they have exported the finished goods. Even if they have engaged in importing Betel Nuts below Minimum Import Price, they have carried out authorised operation of manufacturing of 'Pan Masala'. From the LOA, it is further evident that authorized operation was *Manufacturing activity of Pan Masala (ITC HS 21069020) and Pan Masala Containing Tobacco-Guthka (ITC HS 24039990)*. It is further worth noting that the goods were allowed to be imported into SEZ and then finished goods were allowed to be exported at the material time by the KASEZ customs.

24. Thus, it is clear that they have not engaged in un-authorised operation as alleged in the show cause notice.

Whether the imported goods were prohibited in terms of MIP conditions imposed vide DGFT notification no. 20/2015-2020 dated 25.07.2018

25. The legal framework of MIP requires discussion here. MIP is governed by Section 3 and Section 5 of the FTDR Act. Section 3 empowers the Central Government to issue orders making provisions for the development and regulation of foreign trade by facilitating imports and increasing exports. It also empowers the Central Government to issue orders make provision for prohibiting, restricting or otherwise regulating *inter alia* any goods, subject to exceptions. Section 5 empowers the Central Government to formulate and announce the foreign trade policy (FTP) and make amendments to said policy.

26. In exercise of above powers, the Government has issued the Foreign Trade Policy and Indian Trade Classification (Harmonised System) 2022 ('ITC(HS)'). The ITC(HS) is a compilation of codes for all merchandise/goods for export/import classified based on their group or sub-group at 2/4/6/8 digits. It is aligned at 6-digit level with international Harmonized System goods nomenclature (HSN) maintained by the World Customs Organization (WCO). Schedule 1 of ITC (HS) contains the Import Policy regime of India which mentions the import conditions against each tariff item at 8-digit level. Generally, the import condition mentioned against the tariffs items is 'free' which means that goods falling under those tariff items can be freely imported into India without any conditions, unless prohibited or restricted under any other law. Whenever the Government wants to impose MIP on a product, it generally amends the import policy conditions for the goods falling under the relevant tariff items mentioned in Schedule 1 of ITC (HS) from 'free' to 'restricted/prohibited' with the condition that import shall remain 'free' if the CIF value of that item is above a particular price.

27. In the instant case, the DGFT vide Notification No. 20/2015-2020 dated 25.07.2018 amended the import policy for goods falling under Chapter sub-heading 080280 from "Free" to "Prohibited" and the Policy condition is revised to "*However, import is free if CIF value is Rs.251/- and above per Kilogram*". During the import undertook by M/s. Vishnu Exports, the said Notification dated 25.07.2018 was in existence, therefore, Betel Nuts imported by them into SEZ was in violation of the condition of MIP laid down in the said Notification.

28. Further, I find that DGFT vide notification no. 57/2015-20 dated 14.02.2023 amended the import policy condition for goods falling under Chapter 080280 to "a) However, import is free if CIF value is Rs.351/- and above per Kilogram; b) ***MIP conditions, however, will not be applicable for imports by 100% Export Oriented Units (EOUs) and units in the SEZ subject to the condition that no DTA sale is allowed.*** However, there is no indication contained in notification that the said policy change would be having any retrospective effect. Thus, it is clear that on the date on which the imports were made, the goods were clearly in the "prohibited" category for having not met the MIP criteria.

29. I find that DGFT vide Notification No. 5/2015-2020, dated 25.04.2018 amended para 1.05b of Foreign Trade Policy 2015-2020, wherein, interalia, it has been indicted that whenever Government brings out a policy change of a particular item, the change will be applicable prospectively (from the date of notification) unless otherwise provided for. This amendment has been carry forwarded in Para 1.05 of Foreign Trade Policy, 2023.

30. In view of clear position stated in the EXIM policy, any policy change has to be given prospective effect only and therefore the exemption from MIP criteria for SEZ Unit in respect of Arecanut cannot be extended till the time the revised notification was issued on 14.02.2023. There is no ambiguity in the wordings of notification and therefore there is no need to look for intent or interpret the notification.

31. In this regard, I rely on the Hon'ble Supreme Court's judgment in the case of Commr. of Cus. (Import), Mumbai Vs Dilip Kumar and Company [2018 (361) ELT 577 (SC)] to put forth the argument that where the words in the statute is clear, plain and unambiguous and only one meaning can be inferred, Courts are bound to give same meaning irrespective of conclusions.

32. In view of the above discussion and findings, I hold that the goods are liable for confiscation under Section 111(d), 111(m) and 111(o) of the Customs Act, 1962.

33. Further, I find that goods imported vide Bills of Entry mentioned at Sr.No. 23 to 28 of Annexure-B, have been mis-classified under CTH 08029000 and the same requires classification under CTH 08028010. The show cause notice has alleged that the mis-classification was done to circumvent the MIP conditions. I find that such mis-classification has rendered the goods liable for confiscation and since the said goods were imported in contravention of MIP conditions as laid down in the notification, the said goods are liable for confiscation under Section 111(d), 111(m) and 111(o) of the Customs Act, 1962.

34. In the instant case, it is undisputed that the noticee had imported Areca nuts for the purpose of carrying out authorised operations of manufacturing activity of Pan Masala and Pan Masala containing tobacco-Guthka and exported the finished goods out of India in compliance of Letter of Approval dated 18.09.2013.

35. Further, in terms of Section 26(1) of the SEZ Act, 2005, it is apparent that the SEZ unit is entitled to exemptions, drawbacks and concessions of Customs duty on goods imported into SEZ to carry on the authorised operations by the SEZ unit. This shows that, as long as the goods are utilized for authorised operations, the goods are entitled for exemption from the duties of customs irrespective of the value of goods. Thus, the argument of the noticee that they were under the bona fide belief that the imported goods being utilized for authorised operations for the purpose of export in terms of LOA granted to them were not covered under MIP conditions has merit.

36. However, the goods are liable for confiscation, if the goods are improperly imported even if there is no malafide on the part of the importer. For the imported goods to be confiscated under Section 111 of the Customs Act, 1962 mens rea is not required.

Since the goods are not available for confiscation, I find that Redemption fine can be imposed in terms of Section 125 in light of the decision of Visteon Automotive Systems India Limited v. CESTAT, Chennai 2018 (9) G.S.T.L. 142 (Mad.) and Synergy Fertichem Pvt. Ltd v. State of Gujarat 2020 (33) G.S.T.L. 513 (Guj.) to hold that the availability of the goods is unnecessary for imposing the redemption fine.

37. With regard to penal action under Section 112 of the Customs Act, 1962, I find that the goods have been imported in violation of conditions of the Notification which has rendered the goods liable for confiscation and also certain goods have been mis-classified and imported in violation of MIP conditions, rendering the goods liable for confiscation, thus attracting penalty under Section 112 of the Customs Act, 1962.

38. With regard to penal action under Section 114AA of the Customs Act, 1962, I find that w.r.t the mis-classification of goods imported (mentioned at Sr.No. 23 to 28 of Annexure-B to the SCN) the SEZ unit has filed Bills of Entry for bringing the goods into SEZ by filing incorrect classification thus attracting penal action under Section 114AA of the Customs Act, 1962.

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

i) I reject the declared classification i.e.08029000 of the goods imported vide bills of entry mentioned at Sr.No. 23 to 28 of Annexure-B having assessable value of Rs 4,61,82,960/- (Rupees Four crore Sixty one lakh eighty two thousand nine hundred and Sixty only) and order to re-classify the same under Custom tariff Item 08028010 and hold that the goods are liable for confiscation under Section 111(d), 111 (m) & 111(o) of the Custom Act, 1962 for such mis-classification and import without following MIP conditions.

Since the goods are not available for confiscation, I impose Redemption Fine of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) under Section 125 of the Customs Act, 1962 in lieu of confiscation.

ii) I hold that the goods imported vide Bills of Entry as detailed in 'Annexure-B' having declared assessable value of Rs.37,68,00,065/- (Rupees Thirty Seven Crore Sixty Eight lakh and Sixty five only) are liable to confiscation under Section 111(d), 111 (m) and 111(o) of the Custom Act, 1962 for contravening the Import Policy conditions and conditions stipulated in the LoA;
Since the goods are not available for confiscation, I impose Redemption fine of Rs.2,50,00,000/- (Rupees Two Crores Fifty lakhs only) under Section 125 of the Customs Act, 1962.

iii) I impose penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) under Section 112(a) of the Customs Act, 1962 for the reasons discussed above.

iv) I impose penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) under Section 114AA of the Customs Act, 1962 for the reasons discussed above.

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

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

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

F.No. GEN/ADJ/ADC/802/2024-Adjn-O/o Commr-Cus-Kandla

By Speed Post/Courier

To

1. M/s Vishnu Export (IEC-0813010179), Unit No.s101 to 206, Gokul SDF Complex, Phase-II, Kandla Special Economic Zone, Gandhidham.

Copy to:-

1. The Chief Commissioner, Gujarat Customs Zone, Ahmedabad.
2. The Development Commissioner, Kandla Special Economic Zone, Gandhidham, Kutch.
3. The Deputy Commissioner, KASEZ, Gandhidham.
4. Guard file.