



**OFFICE OF THE COMMISSIONER
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A	File No.	GEN/ADJ/ADC/754/2024-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/VS/04/2025-26
C	Passed by	Vishwajeet Singh Additional Commissioner of Customs, Custom House, Kandla.
D	Date of Order	26.12.2025
E	Date of Issue	26.12.2025
F	SCN NO. & Date	GEN/ADJ/ADC/754/2024-Adjn-O/o Commr-Cus-Kandla dated 29.04.2024
G	Noticee / Party / Importer / Exporter	M/s Om Shiva Products Inc. (IEC No.0713021985), Unit No.s 202, 203, 210 & 301, Ganga SDF Complex, Phase-II, Kandla Special Economic Zone, Gandhidham

1. यह मूल आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस मूल आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमाबली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 12 A के अंतर्गत प्रपत्र सीए- 1-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है।

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमाशुल्कआयुक्त (अपील),
वी 7 मंजिल, मृदुलटावर, टाइम्सजॉफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”

**“THE COMMISSIONER OF CUSTOMS (APPEALS),
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by -

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्यप्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मदसं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/व्याज/दण्ड/जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

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

6. अपील प्रस्तुत करते समय, सीमा शुल्क) अपील (नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्कया शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

7. An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

M/s Om Shiva Products Inc. (**hereinafter referred to as “said SEZ unit”**) is a SEZ unit situated at Unit No.s 202, 203, 210 & 301, Ganga SDF Complex, Phase-II, Kandla Special Economic Zone, Gandhidham. Letter of Approval (LoA) No.003/2014-15 dated 13.07.2014 was granted to them vide F.No. KASEZ/IA/003/2014-15 (**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” of Pan Masala (ITC HS 21069020) and Pan Masala Containing Tobacco-Guthka (ITC HS 24039990), Zarda (ITC HS 24039910) and Khaini (ITC HS 24039930).

2. During the scrutiny of the documents for the period 2019-2021, the Senior Audit Officer (CRA-I) had noticed that the said SEZ 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 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. The details of the goods mentioned in the Audit Para were listed as Annexure-A of Show Cause Notice dated 29.04.2024 issued to them.

3. Whereas, the said SEZ was granted LoA dated 13.07.2014 for undertaking authorized operations of “manufacturing activity” of Pan Masala (ITC HS 21069020) and Pan Masala Containing Tobacco-Guthka (ITC HS 24039990), Zarda (ITC HS 24039910) and Khaini (ITC HS 24039930) subject to the terms and conditions mentioned therein. The condition no. 4 of the said LoA stipulates that the said SEZ Unit was 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 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. The DGFT vide Notification no. 20/2015-20 dated 25.07.2018 (**RUD-3**) had amended the import policy for goods falling under Chapter sub-heading 080280 from “Free” to “Prohibited” and the Policy condition was 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**) had 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”. 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 conditions stipulated therein.

3.2. Subsequently, 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 they were requested to pay the entire outstanding amount along with applicable interest or submit reply. In response to the aforesaid letter dated 13.10.2021, the SEZ Unit vide their letter dated 11.01.2022 (**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, Pan 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-Guth'ka.
- 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 was carried out and it was observed that, the said SEZ Unit appeared to have indulged in unauthorized import of Arecanuts/ Betelnuts falling under CTH 080280 in contravention to the MIP conditions stipulated in Import Policy conditions. The details of such imports are as under:

Table-A

S. No	Request Id	BE No.	BE date	CTH No.	Item Description	Quantity	Unit Price (In Invoice Currency)	Assessable Value For The Item In INR	Duty Forgone / Paid Amount	Assessable Value Per Kg (in INR)
1	171700612123	3769	14.03.2017	08028010	BETEL NUTS	16 MTs	2594	28,41,378/-	31,57,339/-	177.59
2	171901143223	1006036	03.05.2019	08028090	BETEL NUTS	7 MTs	900	4,46,371/-	5,37,877/-	63.77
				08028090	BETEL NUTS	10 MTs	1425	10,03,913/-	12,09,715/-	100.39

3	171901232171	1006668	13.05.2019	08028090	BETEL NUTS	8 MTs	1200	6,83,929/-	8,24,134/-	85.49
				08028090	BETEL NUTS B1	8 MTs	1900	10,82,887/-	13,04,879/-	135.36
4	172100286665	1001611	01.02.2021	08028090	BETEL NUTS	18 MTs	1800	25,35,972/-	30,55,846/-	140.89
5	172102231184	1011117	21.08.2021	08028090	BETEL NUTS	17.8 MTs	2525	34,17,887/-	41,18,554/-	192.02

4. 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 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 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, importability and approvals and other regulatory compliances in respect goods dealt by them in SEZ area. From the above, it is evident that the said SEZ unit had willfully suppressed the fact that the goods were falling under prohibited category and they had imported the same in contravention to the conditions stipulated in their LoA, thereby indulging in unauthorized activity.

5. The assessment of Bills for import of goods by the SEZ unit is done on the basis of self-declaration. Under 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 appeared to be falling under the "Prohibited" category as the said SEZ Unit had 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 appeared 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 had imported subject goods in contravention to the conditions of the LoA. Since the goods so imported by the said SEZ unit appeared to be contrary to the prohibition imposed under the Customs Act, 1962 read with the SEZ Act, 2005. Therefore, the said goods imported by the said SEZ unit appeared to be liable for confiscation under the provisions of Section 111(d) & 111(o) of the Customs Act, 1962 and the said SEZ unit further appeared to be liable for penalty under Section 112 of the Customs Act, 1962.

6. Further, as per 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. 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 appeared that the said SEZ unit had violated the provisions

of Section 46(4A) of the Act *ibid* by way of importing the said goods, falling under Prohibited category, in contravention to conditions stipulated in their LoA. Such indulgence and endeavor on their part appeared to be in violation of the provisions of Section 46 of the Customs Act, 1962 thereby making the impugned goods liable for confiscation in terms of Section 111(d) and 111(o) of the Customs Act, 1962 and the said SEZ unit appeared to be liable for penalty under Section 112 & 114AA of the Customs Act, 1962.

7. Para 9.41 of the FTP (Foreign Trade Policy), "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. Section 3 (2) of the FTDR Act, 1992 [THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) 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 has been prohibited under Section 11 of the Customs Act, 1962 and all the provisions of that Act shall have effect accordingly. Section 5 of the FTDR Act, 1992 empowers the Central Government to formulate and announce by notification the foreign trade policy and also empowers to amend the policy in like manner. Section 8 of the FTDR Act, 1992, the DGFT or any other officer authorized has been 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. 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. 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. 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. 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. Legal Provisions:

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:

8.1. The Customs Act, 1962:

8.1.1. Section 46 of the Customs Act, 1962

- 8.1.2. Section 2(33) of the Customs Act, 1962
- 8.1.3. Section 2(39) of the Customs Act, 1962
- 8.1.4. Section 111(d) of the Customs Act, 1962.
- 8.1.5. Section 111(o) of the Customs Act, 1962.
- 8.1.6. Section 112 of the Customs Act, 1962
- 8.1.7. Section 114AA of the Customs Act, 1962
- 8.1.8. Section 117 of the Customs Act, 1962

8.2. SEZ Act, 2005

- 8.2.1 Section 15(9) of the SEZ Act, 2005
- 8.2.2 Rule 18 of the SEZ Rules, 2006.
- 8.2.3 Rule 26 of the SEZ Rules, 2006.
- 8.2.4 Rule 27 of the SEZ Rules, 2006.

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

- 8.3.1. Section 3(2) and (3) of the FTDR Act, 1992
- 8.3.2. Section 5 of the FTDR Act, 1992
- 8.3.3. Section 11 (1), (2), (3), (8) of the FTDR Act, 1992
- 8.3.4. Section 12 of the FTDR Act, 1992

8.4. Foreign Trade (Regulation) Rules, 1993

- 8.4.1. Rule 11 of the FTR, 1993
- 8.4.2. Rule 14 of the FTR, 1993
- 8.4.3. Rule 15(3)(a) of the FTR, 1993
- 8.4.4. Rule 17 of the FTR, 1993

9. In view of the above, M/s. Om Shiva Products Inc. (IEC 0713021985) were issued SCN bearing no. **F.No.GEN/ADJ/ADC/754/2024-Adjn-O/o Commr-Cus-Kandla dated 29.04.2024** wherein they were called upon to show cause to the Additional Commissioner of Customs, Customs House, Near Balaji Temple, Kandla, District Kutch as to why:

- i)** The goods imported vide Bills of Entry as detailed at **Table-A** above having declared assessable value of **Rs.91,70,959/-** (Rupees Ninety One Lakhs Seventy Thousand Nine Hundred and Fifty Nine only) should not be confiscated under Section 111(d) and 111(o) of the Custom Act, 1962 for contravening the Import Policy conditions and conditions stipulated in the LoA;
- ii)** Penalty should not be imposed on them, separately under each of the provisions of Section 112 & 114AA of the Customs Act, 1962.
- iii)** Bond-cum-Legal Undertaking in Form-H executed by the said SEZ Unit should not be enforced towards its above liabilities.

DEFENCE REPLY AND SUBMISSIONS

10. M/s Om Shiva Products Inc. (IEC 0713021985) have submitted their defense reply in response to the above referred SCN dated 29.04.2024 on 26.12.2024 wherein they have submitted as under: -

- 2. *At the outset the SEZ unit denies the allegations and averments made in the show cause notice as these are ex-facie incorrect and without any cogent evidence, unsustainable in law as well as on facts. The SEZ unit submits the following submission which are independent and without prejudice to each*

other.

3. The SEZ unit is situated in Kandla Special Economic Zone. A Letter of Approval (LOA) No.003/2014-15 dated 13.07.2014 was granted to the SEZ unit, vide F. No. KASEZ/IA/ 003/2014-15 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 to carry out authorized operations of 'manufacturing activity', viz., Pan Masala (ITC HS 21069020) and Pan Masala Containing Tobacco-Gutkha (ITC HS 24039990), Zarda (ITC HS 24039910) and Khaini (ITC HS 24039930).
4. Betel Nut falling under ITS (HS) 0802 is a one of the raw materials for manufacturing of Pan Masala. The SEZ unit has been allowed to import areca/betel not for self-consumption. The final product manufactured out of the imported areca/ betel not is being exported. There is no DTA sale by the unit any of the items, like, Betel not OR Guthka.
5. The DGFT has issued vide Notification No.20/2015- 2020 dated 25.07.2018, in exercise of power conferred under Section 3 of the FT (D&RJ Act, 1992, read with Para 1.02 and 2.01 of Foreign Trade Policy, 2015-2020 amended the import policy of arecanut as under:

"S.O. (E): In exercise of powers conferred by Section 3 of FT (D&RJ Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby, in supersession of Notification NO.35/2015- 2020 dated 17th January, 2017, amends the Import Policy of areca nut under Exim Code 0802 80 of Chapter 8 of ITC (HS) 2017, Schedule 1 (Import Policy) as under:

Exim Code	Item Description	Policy	Revised Policy	Existing Policy Condition	Revised Policy Condition
	Areca Nuts				
08028010	Whole	Free	Prohibited	Provided CIF value is Rs.251/- and above per Kilogram	However, import is free if CIF value is Rs.251/- and above per Kilogram

- 5.1 Thus, the DGFT has imposed conditions wherein the import is permissible provided the CIF Value is Rs. 251/- per kg and above. However, the SEZ unit has imported the areca nuts on transaction value which is below to the value indicated in the above policy notification. According to the department, the bills of entry filed by the SEZ unit do not reflect that the conditions imposed in the impugned notification dated 25.07.2018 is fulfilled,
- 5.2 It is submitted that above notification is issued in exercise of the powers conferred under Section 3 of the FT (D&R) Act, 1992 read with Paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020 in the form of an amendment made by the Central Government, imposing the policy conditions which is issued by the DGFT. The impugned notification clearly indicates that the areca nuts/betel nuts is freely importable under the Foreign Trade Policy, 2015-2020, subject to the conditions that the CIF Value is Rs. 251/- and above per kg.

5.3 It is submitted that Section 3 of the FT (D&R) Act empowers the Central Government to formulate and announce the export and import policy with further power to amend it and not DGFT who is responsible for carrying out the policy. The DGFT can only advise the Central Government in formulation of the Foreign Trade Policy and, therefore, is not bestowed with any power either to formulate or amend the same. It is submitted that though Section 6 (3) of the FT (D&R) Act authorizes the DGFT to exercise the power of the Central Government by Order published in the Official Gazette but excludes the power to be exercised by the Central Government under Section 3, 5, 15, 16 & 19 of the said Act. Thus, the power to formulate and amend the export & import policy cannot be delegated to the DGFT by the Central Government in view of the clear embargo created under Section 6(3) of the FT (D&R) Act.

5.4 In support of above submission, the SEZ unit relies upon the judgment of Hon'ble High Court of Gujarat in the case of ALSTOM INDIA LTD Vs UNION OF INDIA & ANR reported in 2014-TIOL-223-HC-AHM-EXIM, wherein Hon'ble court has held that:

"3 1. We have already pointed out that according to **Section 6 of the FTDR Act, the Respondent No.2 or the officer subordinate to him cannot usurp the power under Sections, 3, 5, 15, 16 and 19 of the FTDR Act.** According to Section 3, it is for the Central Government which may, by Order published in the Official Gazette, make provision for development and regulation of foreign trade by facilitating imports and increasing exports. The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology. According to sub-section (3) of section 3 all goods to which any Order under subsection (2) of the said section applies should be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 and all the provisions of that Act shall have effect accordingly. According to section 5, it is for the Central Government which may, from time to time, formulate and announce, by notification in the Official Gazette, the foreign trade policy and may also, in like manner, amend that policy. The proviso to the said section provides that the Central Government may direct that, in respect of the Special Economic Zones, the foreign trade policy shall apply to the goods, services and technology with such exceptions, modifications and adaptations, as may be specified by it by notification in the Official Gazette.

5.5.1 Hon'ble court has further held in above cited case that:

"33. We, thus, find that although specifically prohibited under section 6 of the Act, the DGFT has been illegally vested with the power to intervene in the subject-matters coming within the purview of Sections 3, 5, 15, 16 and 19 in clear violation of sub-section 3 of Section 6 of the FTDR Act. In other words, what is specifically prohibited by the FTDR Act, by taking aid of the HOP, the DGFT has assumed such power in colorable exercise of the power conferred upon it."

In the above case law, the respondent No. 2 is DGFT.

5.6 The impugned notification depicts that an amendment to the Foreign Trade Policy, 20154-2020 is made in exercise of the power under Section of the FT (D&R) Act by the DGFT in contravention to the provisions contained under Section 6 of the said Act. It is further submitted that in the case of Bimal Kumar Modi v/s Union of India reported m 2014 (306) E.L.T. 9Y (Cat) Hon'ble court has held that the Government and DGFT do not have any power under section 5 of the Foreign Trade Act as well as the Foreign Trade Policy to fix and prescribe MIP for any

goods imported in India and that such price fixation and notification issued for that purpose were unconstitutional.

- 5.7 In the case of S. Mira Commodities Pvt. Ltd; -vs- Union of India & Another reported in 2009 (235) ELT 423(Mad) wherein Hon'ble Madras High Court has held that such notification offends Section 6(3) of the FT (D&R) Act. The aforesaid judgment was relied on and applied by the Kerala High Court in case of Global Industries - vs- Union of India reported in 2011 (263) ELT 517. The conjoint reading of Paragraph 1.2 and 2.1 of the Foreign Trade Policy, 2015-2020 postulates the import and export to be free except regulated as per ITC (HS) with certain restrictions indicated in Paragraph 2.6 thereof. The restriction imposed under imposing the policy conditions which is issued by the DGFT.
- 5.8 The SEZ unit refers to the provisions contained under Section 3 (2) of the FT (D&R) Act, and submits that such power of prohibition, restriction and otherwise regulating is within the exclusive domain of the Central Government which cannot be delegated to the DGFT in view of the embargo created under Section 6 (3) of the FTDR Act. Such prohibition and/ or restriction can only be regulated by an Order which is required to be placed before each house of the Parliament for approval as required under Section 19 (3) of the FT (D&R) Act. The conditions imposed for import of the areca nuts, when the policy says, it is freely importable, amounts to a restrictions which can only be made by an Order under Section 3 (2) of the FT (D&R) Act provided the procedure incorporated therein are adhere to. If a thing is required to be done in a certain manner, it should be done in such manner and not at all as held in case of Nazir Ahmed Vs. King Emperor reported in AIR 1936 PC 253.
- 5.9 The prohibition can also be relatable to Section 11 of the Customs Act which empowers the Central Government to prohibit either absolutely or subject to conditions for importation of the goods under Sub-Section 2 thereof. Since, the impugned notification is not issued under Section 11 of the said Act, the importation of the areca nuts at a lesser price than indicated in the impugned notification does not partake the character of the prohibited goods defined under Section 2 (33) of the Customs Act.
- 5.10 It is further submitted that the impugned notification cannot withstand on the anvil of the provisions of Section 14 of the Customs Act which provides that the price at which the goods are sold at the time of importation is the value of goods for assessment, i.e., the transaction value. It is further submitted that Rule 3 (1) and 4 (1) of the Customs Valuation (Determination of value of Imported goods) Rules, 2007, further provides the value of the imported goods to be transaction value. Thus, if the authorities have reason to believe that the value is not correctly stated and there is under invoicing, it would amount to violation of the conditions for import/ export. Thus, it is submitted that the DGFT cannot arbitrarily fixed a price which has no nexus to the transaction value in invocation of the powers under Section 5 of the FT (D&R) Act. The impugned notification cannot withstand as the price fixation is a legislative function and beyond the competence of the DGFT as held by the Hon'ble Apex Court in case of Union of India -vs- Cynamide India Limited & Anr ; reported in (1987) 2 SCC 720.
- 5.11 It is further submitted that if such conditions are imposed to protect the domestic producers, then Section 8B and Section 9A of the Customs Tariff Act, 1975, provides the imposition of safeguard duty and anti dumping duty to protect the domestic producers subject to the compliance of the conditions incorporated therein.

5.12 It is further submitted that the Kerala High Court in case of *Global Industries -vs- Union of India* reported in 2011 {263J ELT 51'Z, accepted and applied the proposition of law laid down by the Madras High Court in case of *S. Mira Commodities Pvt. Ltd; (supra)* in these words:

"6. Reading of these Sections shows that it is only the Central Government which can formulate export and import policy and amend the said policy. It also is evident that the power conferred on the Central Government under Section 5 cannot be delegated to the Director General of Foreign Trade appointed under Section 6 of the Act. If this be the position, and as admittedly the notification has been issued by the Director General of Foreign Trade, it has to be concluded that the notification is issued without jurisdiction.

7. Learned counsel for the petitioners has also made available before me judgment of the Madras High Court in *S. Mira Commodities Pvt. Ltd. -v- Union of India* [2009 (235) ELT 423 (Mad)], wherein the Madras High Court has quashed Ext. PI notification on the very ground itself.

8. Therefore, in view of the statutory provision referred above and in the light of the judgment of the Madras High Court, the Notification dated 4-6-2008 issued by the Director General of Foreign Trade is illegal and is to be set aside and I do so."

5.13 In view of the above, it is submitted that the Notification No.20/2015-2020 dated 25.07.2018, issued by the DGFT under Section 3 of the FT (D&R) Act, 1992, read with Para 1.02 and 2.01 of Foreign Trade Policy, 2015-2020 is invalid in light of catena of judgments of Hon'ble High Court as discussed in Para(s) supra. Therefore, MIP fixed by the DGFT has also not have locus standi. Therefore, the proposal of confiscation in the notice should be dropped in the interest of justice. Hence, proposal of penalty proposed under the Show Cause Notice should also be dropped.

6.0 Without prejudice to above, it is further submitted that the term "import" is defined in different manner under FT (D&R) Act, 1992 as well as under SEZ Act, 2005. The definition of the term "import" provided under both the Acts reads as under:

" "2. Definitions. -In this Act, unless the context otherwise requires, —

"(e) "import" and "export" means, —

(I) in relation to goods, bringing into, or taking out of, India any goods by land, sea or air;"

Definition of "import" under SEZ Act, 2005:

"2 In this Act, unless the context otherwise requires, -

(o) "Import" means-

(i) bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise;"

6.1 From plain reading of definition of "import" provided in the FT (D&R) Act, 1992 means to bring the goods into India, whereas, as per SEZ Act, 2005, "import" means to bring the goods in SEZ, by a unit from a place outside India. Thus, the term "import" by a unit in SEZ is not akin with the "import" in India in accordance with the FT (D&R) Act, 1992.

6.2 It is further submitted that the SEZ Act, 2005, and its section 26 (i) (a) specifically provides that all goods imported into the SEZ, to carry out authorized operation in SEZ, shall be exempted. Question of applicability of Minimum Import Price (MIP) arises only when there is levy of customs duty on the impugned areca nut/ betel not imported in SEZ. However, in the instant case the areca nuts was imported in the SEZ unit for self-consumption and that too after manufacturing the gutkha the same was exported out of India. There is no DTA sale by the SEZ unit. Therefore, it is submitted that MIP fixed by the DGFT vide Notification No. 20/2015-2020 ibid is not applicable to SEZ units.

6.3 Further, it is submitted that in terms of section 51 of the SEZ Act, 2005, shall have overriding effect over all provisions of any other law for the time being in force and it is settled legal principle that any rule or notification cannot override the Act. Otherwise also the issue involved herein is no longer res integra in view of the decision of the Tribunal in the matter of EON Kharadi Infrastructure Pvt. Ltd. vs. CCE, Pune III 2015 (39) STR 267 (Tri-Mumbai), it is held that:

"4.1 I note that the SEZ Act, 2005, under Section 26(i)(e), provides that all services imported into the SEZ to carry on authorized operations in SEZ shall be exempted. Further Section 51 of this Act gives overriding effect over other Acts."

6.4 In view of the above submission, it is submitted that when "import" made in SEZ is not akin with the 'import' as per FT (D&R) Act. The Section 26 (i)(a) of the SEZ Act, 2005, specifically provides exemption to all goods imported into the SEZ, to carry out authorised operation, and, further Section 51 of the SEZ Act, 2005, is titled 'Act to have overriding effect'. It provides that the SEZ Act will have effect notwithstanding anything contained in any other law for the time being in force or in any other instrument. It has overriding effects over any other law and in case of conflict; the SEZ Act is to prevail, therefore, the restrictions imposed vide Notification No. 20/2015-2020 dated 25th July 2018, issued under Section 3 of the FT (D&R) Act, 1992 shall not be applicable to SEZ units.

7. In view of above submission, the areca nuts imported by the SEZ unit for authorized operation is not a prohibited goods, as the Notification No.20/2015-2020 dated 25.07.2018, issued by the DGFT under Section 3 of the FT (D&R) Act, 1992, read with Para 1.02 and 2.01 of Foreign Trade Policy, 2015-2020 is invalid. Further, Section 26 (i)(a) of the SEZ Act, 2005, provides exemption to all goods imported into the SEZ to carry out authorised operation, and Section 51 of the SEZ Act, 2005, have overriding effect, therefore, proposal of confiscation under Section 111(d) and 111(o) ibid is also not sustainable. Hence, it is liable to be dropped.

8. As the confiscation of the goods is not sustainable, the penalty proposed under Section 112 and I 14AA of the Customs Act, 1962, is also not sustainable. Further, proposal of enforcing of Bond-cum-Legal Undertaking in form-H executed by the M/s. Om Shiva Inc. requires to be dropped.

PERSONAL HEARING

11. M/s Om Shiva Products Inc were accorded opportunities for Personal Hearing in the matter on 03.12.2024, 10.07.2025, 15.07.2025 and 01.12.2025 to remain present and produce all such documents on which they intend to rely in support of their defence. In response to the Personal Hearing opportunity scheduled on 03.12.2024, the said SEZ Unit vide their letter dated 02.12.2024 had sought extension of one month to prepare defense submission and appear before the adjudicating authority. Subsequently, they submitted the defense reply on 26.12.2024. I find that Shri Devang Mehta, Consultant and Authorised Representative of the said firm finally appeared on 01.12.2025 wherein he reiterated the submissions contained in the reply dated 26.12.2024 filed by them. Further, he denied the allegations and averments made in the SCN and he submitted that their firm was only permitted to do re-export and no DTA clearance was allowed to them. He further submitted that, the cargo has been 100% self-consumed for exports only. Finally, he submitted that since SEZ is treated as foreign territory and import laws are applicable only when DTA sales are executed and, in their case, cargo is 100% re-exported. Accordingly, I shall decide the present show cause notice on the basis of the allegations levelled in the subject SCN dated 29.04.2024 and the defense reply submitted by the said SEZ Unit and also the submissions made during the course of personal hearing on 01.12.2025.

DISCUSSION AND FINDINGS

12. I have carefully perused the contents of the Show Cause Notice No. GEN/ADJ/ADC/754/2024-Adjn- O/o Commr-Cus-Kandla dated 29.04.2024 along with the Relied upon Documents and the documents/evidences available on record. I have also gone through the defense reply dated 26.12.2024 submitted by the noticee as elaborately discussed at **Para 10 supra**. It appears from the available records that despite providing opportunities for personal hearing to the noticees, neither M/s Om Shiva Products Inc nor their authorised representative have appeared before the adjudicating authority. Therefore, I shall proceed to record my findings in the instant case on the basis of the allegations levelled in the aforesaid SCN dated 29.04.2024 and the defense reply dated 26.12.2024 filed by them.

13. I find that the M/s Om Shiva Products Inc. is a SEZ unit situated at Unit Nos. 202, 203, 210 & 301, Ganga SDF Complex, Phase-II, Kandla Special Economic Zone, Gandhidham. The Letter of Approval (LOA) No.003/2014-15 was granted to them by the Development Commissioner, Kandla SEZ on 13.07.2014 under Section 15(9) of the SEZ Act read with Rule 18 of the SEZ Rules, 2006. The said SEZ unit was allowed to carry out authorized operations of “manufacturing activity” of Pan Masala (ITC HS 21069020) and Pan Masala Containing Tobacco-Guthka (ITC HS 24039990), Zarda (ITC HS 24039910) and Khaini (ITC HS 24039930). Thus, the authorized operations were only limited to “manufacturing activity” of the aforesaid goods.

14. I also find that during the scrutiny of the documents for the period 2019-2021, the Senior Audit Officer (CRA-I) had noticed that the said SEZ unit was undertaking certain un-authorised operations. Subsequently, the said observations noticed during the scrutiny of the documents were communicated vide HM dated 01.10.2021 and later vide Para 3 of the LAR dated 03.11.2021. I find that during the course of test check of the records maintained by the noticee/s, it was observed 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. For the sake of ready reference, the details of the subject goods having CIF Value lesser than the minimum import price (MIP) i.e. Rs.251/- per Kilogram are reproduced as under: -

Table-A

S. No	Request Id	BE No.	BE date	CTH No.	Item Description	Quantity	Unit Price (In Invoice Currency)	Assessable Value For The Item In INR	Duty Forgone / Paid Amount	Assessable Value Per Kg (in INR)
1	171700612123	3769	14.03.2017	08028010	BETEL NUTS	16 MTs	2594	28,41,378/-	31,57,339/-	177.59
2	171901143223	1006036	03.05.2019	08028090	BETEL NUTS	7 MTs	900	4,46,371/-	5,37,877/-	63.77
				08028090	BETEL NUTS	10 MTs	1425	10,03,913/-	12,09,715/-	100.39
3	171901232171	1006668	13.05.2019	08028090	BETEL NUTS	8 MTs	1200	6,83,929/-	8,24,134/-	85.49
				08028090	BETEL NUTS B1	8 MTs	1900	10,82,887/-	13,04,879/-	135.36
4	172100286665	1001611	01.02.2021	08028090	BETEL NUTS	18 MTs	1800	25,35,972/-	30,55,846/-	140.89
5	172102231184	1011117	21.08.2021	08028090	BETEL NUTS	17.8 MTs	2525	34,17,887/-	41,18,554/-	192.02

Thus, from the above, I find that the subject goods viz. "Betel Nuts" were imported at prices below the minimum import price of Rs.251/- per kilogram as prescribed vide DGFT Notification No. 20/2015-20 dated 25.07.2018 for goods falling under Chapter sub-heading 080280 and subsequent Notification No. 57/2015-20 dated 14.02.2023 wherein the minimum import price was increased to Rs.351/- per kilogram.

15.1 At this juncture, I find it imperative to reproduce the contents of DGFT Notification No. 20/2015-20 dated 25.07.2018 which is crucial in determining the fact as to whether the goods imported by the said SEZ unit were falling into the category of "Prohibited Goods" or otherwise.

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PART-II, SECTION—3, SUB SECTION (ii)

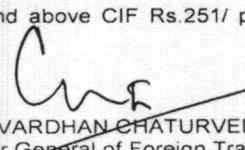
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE AND INDUSTRY
DEPARTMENT OF COMMERCE

NOTIFICATION No. 20/2015-2020
New Delhi, 25 July, 2018

S.O. (E): In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby, in supersession of Notification No.35/2015-2020 dated 17 January, 2017, amends the Import Policy of arecanut under Exim Code 0802 80 of Chapter 8 of ITC (HS) 2017, Schedule 1 (Import Policy) as under:

Exim Code	Item Description	Policy	Revised Policy	Existing Policy Conditions	Revised Policy Conditions
Areca Nuts:					
0802 80 10	Whole	Free	Prohibited	Provided value is Rs.251/- above Kilogram.	CIF However, import is free if CIF value is Rs.251/- and above per Kilogram.
0802 80 20	Split	Free	Prohibited	Provided value is Rs.251/- above Kilogram.	CIF However, import is free if CIF value is Rs.251/- and above per Kilogram.
0802 80 30	Ground	Free	Prohibited	Provided value is Rs.251/- above Kilogram.	CIF However, import is free if CIF value is Rs.251/- and above per Kilogram.
0802 80 90	Other	Free	Prohibited	Provided value is Rs.251/- above Kilogram.	CIF However, import is free if CIF value is Rs.251/- and above per Kilogram.

2. Effect of this Notification: Import of arecanut over and above CIF Rs.251/ per kilogram is free and import below CIF Rs.251/ is prohibited.


(ALOK VARDHAN CHATURVEDI)
Director General of Foreign Trade
Email: dgft@nic.in

(Issued from File No.01/89/180/43/AM-01/PC-2 (A)(Vol-II) / e - 1256

15.2 Proceeding further, I find that Section 2(33) of the Customs Act, 1962 states as under: -

"Section 2. Definitions -

In this Act, unless the context otherwise requires,

1 [(1) "adjudicating authority" means any authority competent to pass any order or decision under this Act, but does not include the Board, 2 [Commissioner (Appeals)] or Appellate Tribunal;

(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;"

15.3 I find that from a bare perusal of the DGFT Notification no. 20/2015-20 dated 25.07.2018 as reproduced above, it is forthcoming that the import of arecanut falling under CTH 080280 below CIF value of Rs.251/- has been rendered prohibited and the same has been explicitly mentioned at Para 2 of the Notification *ibid*. I also find that by virtue of issuance of the aforesaid notification dated 25.07.2018, the policy condition for import of arecanuts falling under EXIM Code 080280 as existing in the erstwhile notification no. 35/2015-20 dated 17.01.2017 issued by DGFT, New Delhi has been amended from "Free" to "Prohibited" wherein if the CIF Value is Rs.251/- per Kilogram or higher, the imports continue to remain free and if the CIF Value is less than Rs.251/- per Kilogram, such imports are prohibited.

15.4 I further find that from the details of the imports as shown in **Table-A** of the SCN dated 24.04.2024, it is observed that all such imports have been made below the prescribed MIP value of Rs.251/- per Kilogram except the one **at Sr. No.1 (BE No.3769 dated 14.03.2017)** of **Table-A** above wherein the goods have been imported prior to issuance of the DGFT Notification no. 20/2015-20 dated 25.07.2018 and as such these goods were free to be imported without any restriction of minimum import price. Apart from the said import, all other imports have been made subsequent to issuance of the aforesaid notification dated 25.07.2018 and as such the minimum import price was applicable at the time of importation of the said goods under the prescribed revised policy. As stated earlier, these imports were made below the prescribed minimum import price (CIF Value) of Rs.251/- per Kilogram and therefore such goods were covered under prohibition as stipulated under DGFT Notification no. 20/2015-20 dated 25.07.2018 read with Section 2(33) of the Customs Act, 1962.

15.5 Thus, I find that the goods viz "Betelnuts" having total assessable value of **Rs.91,70,959/-** imported by M/s Om Shiva Products Inc below the prescribed minimum import price/CIF value of Rs.251/- per Kilogram as shown in **Table-B** below were in the nature of prohibited goods in terms of DGFT Notification no. 20/2015-20 dated 25.07.2018 read with Section 2(33) of the Customs Act, 1962: -

Table-B

S. No	Request Id	BE No.	BE date	CTH No.	Item Description	Quantity	Unit Price (In Invoice Currency)	Assessable Value For The Item In INR	Duty Forgone / Paid Amount	Assessable Value Per Kg (in INR)
1	171901143223	1006036	03.05.2019	08028090	BETEL NUTS	7 MTs	900	4,46,371/-	5,37,877/-	63.77
				08028090	BETEL NUTS	10 MTs	1425	10,03,913/-	12,09,715/-	100.39
2	171901232171	1006668	13.05.2019	08028090	BETEL NUTS	8 MTs	1200	6,83,929/-	8,24,134/-	85.49
				08028090	BETEL NUTS B1	8 MTs	1900	10,82,887/-	13,04,879/-	135.36
3	172100286665	1001611	01.02.2021	08028090	BETEL NUTS	18 MTs	1800	25,35,972/-	30,55,846/-	140.89
4	172102231184	1011117	21.08.2021	08028090	BETEL NUTS	17.8 MTs	2525	34,17,887/-	41,18,554/-	192.02
Total								91,70,959		

15.6 In context of the above, I also find that as per condition no. 4 of the LoA (Letter of Approval) dated 13.07.2014 issued by the Development Commissioner, KASEZ, M/s Om Shiva Products Inc were not allowed to import items prohibited under the ITC (HS) Classifications of Export and Import items. For the sake of ease of reference, the said condition no. 4 of the LoA dated 13.07.2014 is reproduced as under:

“4) You may 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”**

Therefore, I find that M/s Om Shiva Products Inc also appear to have violated the conditions of the LoA dated 13.07.2014 issued to them by the Development Commissioner, KASEZ by resorting to import of prohibited goods in contravention of DGFT Notification no. 20/2015-20 dated 25.07.2018 read with Section 2(33) of the Customs Act, 1962.

16.1 I also find that the said SEZ unit in their defense reply dated 26.12.2024 have made a valiant effort to counter the allegations levelled in the present SCN dated 29.04.2024. In their defense reply dated 26.12.2024, it has been stated that they have been issued a valid Letter of Approval to manufacture pan masala and tobacco products in Kandla SEZ, that areca/betel nut is a permitted raw material, all such imports were

made by them for self-consumption within the SEZ, finished products are exported and that there is no Domestic Tariff Area sale of betel nuts or gutkha.

16.2.1 I also find that the core of their defense reply dated 26.12.2024 is creating a premise that the DGFT lacks the competency to exercise the powers under Sections 3 and 5 of the FTDR Act and Section 6(3) expressly bars delegation of these powers to DGFT. I find that they have challenged the DGFT Notification No. 20/2015-20 dated 25.07.2018/MIP in as much as that they have argued that DGFT Notification No. 20/2015-20 dated 25.07.2018 (fixing MIP of Rs. 251/kg and treating imports below this as prohibited) and later amendments are invalid because:

(a) The DGFT can only advise the Central Government in formulation of the Foreign Trade Policy and, therefore, is not bestowed with any power either to formulate or amend the same. It is submitted that though Section 6 (3) of the FT (D&R) Act authorizes the DGFT to exercise the power of the Central Government by Order published in the Official Gazette but excludes the power to be exercised by the Central Government under Section 3, 5, 15, 16 & 19 of the said Act. Thus, the power to formulate and amend the export & import policy cannot be delegated to the DGFT by the Central Government in view of the clear embargo created under Section 6(3) of the FT (D&R) Act and that only the Central Government, not DGFT, can exercise powers under Sections 3 and 5 of the FTDR Act and Section 6(3) expressly bars delegation of these powers to DGFT. It has also been their submission that MIP fixation conflicts with Section 14 of the Customs Act and valuation rules, which require use of transaction value, and price-fixing is a legislative function beyond DGFT's competence.

(b) In support of the above, they have relied upon the following judicial pronouncements: -

- Hon'ble High Court of Gujarat in the case of ALSTOM INDIA LTD Vs UNION OF INDIA & ANR reported in 2014-TIOL-223-HC-AHM-EXIM.
- S. Mira Commodities Pvt. Ltd; -vs- Union of India & Another reported in 2009 (235) ELT 423(Mad)
- Union of India -vs- Cynamide India Limited & Anr reported in (1987) 2 SCC 720.
- Kerala High Court in case of Global Industries -vs- Union of India reported in 2011 (263 ELT 517)

16.2.2 The said SEZ unit has also emphasized that "import" into an SEZ under the SEZ Act, 2005 is different from "import into India" under the FTDR Act, that Section 26(1)(a) of the SEZ Act exempts all goods imported into SEZ for authorized operations, and Section 51 gives the SEZ Act overriding effect over other laws, so MIP-based restrictions and the DGFT notification cannot apply to SEZ imports used for authorized operations and export. On these grounds, the said SEZ unit has contended that the areca/betel nuts imported into the SEZ are not "prohibited goods", the proposed confiscation under Sections 111(d) and 111(o) of the Customs Act, 1962 and the

penalties under Sections 112 and 114AA, as well as enforcement of the Bond-cum-Legal Undertaking, are unsustainable in law and should be dropped.

17. I find that such a view that the power to formulate and amend the export & import policy cannot be delegated to the DGFT by the Central Government in view of the clear embargo created under Section 6(3) of the FT (D&R) Act and that only the Central Government, not DGFT, can exercise powers under Sections 3 and 5 of the FTDR Act and that DGFT Notification No. 20/2015-20 dated 25.07.2018 (fixing MIP of Rs. 251/kg and treating imports below this as prohibited) and later amendments are invalid is misplaced and not proper. I also find that in support of their contention they have relied upon various judicial pronouncement as highlighted at **Para 16.2.1(b)** above which I have gone through carefully while recording my findings in the instant case. At this juncture, I would like to place my reliance on the judgment pronounced by the **Hon'ble High Court of Kerala in M/s MRJ Trading vs. Union of India in writ-petition no. WP(C)19351/2021** along with a bunch of other petitions on identical matter pronounced on 25.08.2023. Vide the aforesaid judgment, a detailed insight has been provided by the learned High Court wherein the esteemed High Court has also answered the question as to whether DGFT is competent to issue notifications under the FT (D&R) Act or whether such power is exclusively vested with the Central Government which has been raised by the said SEZ Unit in their defense reply submitted on 26.12.2024.

18. I find that the matter before the Hon'ble High Court of Kerala was that the petitioners were engaged in importing spices and other articles based on the Certificate of Importer-Exporter Code issued by DGFT under Section 7 of the Foreign Trade (Development and Regulation) Act, 1992 wherein "Pepper" was once of the spices being imported which was initially free under the Foreign Trade Policy 2015-2020 but the said policy was revised by virtue of issuance of Notification No.42/2015-20 dated 06.12.2017 to allow free import only when the CIF Value was Rs.500/- or above per kilogram. Subsequently, DGFT had also issued Notification No.50/2015-20 dated 05.02.2018 which exempted the minimum import condition for imports under the Advance Authorisation Scheme for oleo-resin extraction intended for re-export, Notification No.53/2015-20 dated 21.03.2018 wherein the import of pepper was prohibited except when CIF value exceeded Rs.500/- per Kg and Notification No.21/2015-20 dated 25.07.2018 which granted exemption in respect of imports made by 100% EOUs (Export Oriented Units) and SEZ Units. All the above notifications were challenged on various grounds including the competence of DGFT to issue these notifications.

19. I find that in the said writ petitions along with other grounds, similar to the present defense reply filed by M/s Om Shiva Products Inc dated 26.12.2024 the petitioners had argued that the DGFT lacks competence to issue the impugned notifications as only the Central Government had the power to prohibit or regulate imports under Sections 3, 5, 6 and 19(3) of the FT (D&R) Act, 1992 with Section 6(3) explicitly excluding the DGFT from exercising these powers. Apart from the above, the

notifications were also challenged on the ground that the same were invalid in as much as they were not placed before the Parliament as required u/s 19(3) of the Act *ibid*.

20. I find that while delivering their judgment on the above issues presented before the Hon'ble High Court of Kerala, the learned Court had noted that the powers to regulate foreign trade and also to formulate the foreign trade policy is vested with the Central Government by virtue of Section 3 and 5 of the FT (D&R) Act, 1992. The learned Court had further observed that the role of advising and implementing the foreign trade policy has been entrusted to DGFT vide Section 6(2) of the Act *ibid* while Section 6(3) excludes the DGFT from exercising powers under certain sections including Section 3 and Section 5 of the FT (D&R) Act, 1992.

21. However, at **Para 19** of the aforesaid judgment dated 25.08.2023, the learned High Court of Kerala had underscored that the above referred notifications explicitly declare that they are issued by the Central Government in exercise of the powers conferred by Section 3 of the FT (D& R) Act, 1992 read with Paragraphs 1.01 and 2.01 of the Foreign Trade Policy. The learned High Court had ruled that the impugned notifications were issued by the Central Government and published by the DGFT as ministerial act. The Hon'ble High Court had further noted that the notifications themselves declare issuance by Central Government and the Authentication (Orders and Other Instruments) Rules, 2002 and the related Presidential Sanction validate the role of the DGFT in authenticating such notifications. The learned High Court has further relied upon the judgment of the **Hon'ble Apex Court in the matter of Agricas LLP vs. Union of India** wherein it was confirmed that the DGFT acts on behalf of the Central Government and does not independently issue such notifications itself. For the ease of reference, the relevant text of **Para 19** of the judgment dated 25.08.2023 passed by the Hon'ble High Court of Kerala is reproduced as under:

*"19. The Notifications explicitly declare that they are issued by the Central Government in exercise of the powers conferred under Section 3 of the FT(D&R) Act, 1992 read with paragraphs 1.01 and 2.01 of the Foreign Trade Policy. It is also pertinent to note that vide S.O.211(E) dated 16.01.2002, the President of India, in exercise of the powers conferred by clause (2) of Article 77 of the Constitution has issued the Authentication (Orders and Other Instruments) Rules, 2002. By virtue of the said Rules, the orders and the related instruments relating to the Directorate General of Foreign Trade made executed by the President can be authenticated by the DGFT, Additional DGFT, Export Commissioner or the Joint DGFT, In **Agricas LLP (supra)** the Apex Court, answered the challenge against the competence of DGFT to issue an order amending the EXIM Policy in the following manner:*

"15. At the outset, we must record that the importers and, in our opinion, rightly have not raised the contention that DGFT could not have notified the impugned

notifications. The Notifications themselves record that they were published by the Ministry of Commerce and Industry, Department of Commerce, Directorate General of Foreign Trade. The first paragraph of the notification states that they had been issued by the Central Government in exercise of the powers conferred under Article 77 of the Constitution. Clearly, the notifications were issued by the Central Government and not by DGFT that had performed the ministerial act of publication. The decision to amend and issue the notification was of the Central Government. Neither Section 3(2) nor Section 6(3) of the FTDR Act was violated. This Court in *Delhi International Airport Ltd. Vs. International Lease Finance Corporatuib & Others* [(2015)8 SCC 446] had referred to Articles 77 and 166 of the Constitution and held that the Constitution stipulates that whenever executive action is taken by way of an order or instrument it shall be expressed to be taken in the name of the President and the Governor in whose name the executive power of the Union and the States, respectively, are vested. Article 77 does not provide for delegation of any power albeit under sub-section (3) of Article 77, the President is to make rules for more convenient transaction of business and allocation of the same among the Ministers. Under the Government of India (Transaction of Business) Rules, 1961, the Government Business is divided amongst the Ministers and specific functions are allocated to different Ministries. The Director General of Foreign Trade is an ex officio Additional Secretary in the Government of India and is appointed by the Central Government under subsection (1) to Section 6 of the FTDR Act, to advise the Central Government in formulation and carrying out the Foreign Trade Policy. Wherefore, even the website of the Ministry of Commerce and Industry, Department of Commerce states that DGFT is an agent of the Central Government and attached office to it. Further, clause (2) of Article 77 provides that the validity of an order or instrument made or executed in the name of the President, authenticated in the manner specified in the Rules made by the President, shall not be called into question on the ground that it is not an order or an instrument made or executed by the President. Therefore, the contention of issuance of the impugned notification sans authority, cannot be sustained".

As evident from the file notes pertaining to the impugned notifications, the decision to issue the notification was taken after discussing the matter with the Minister. Hence, there is substance in the contention that the notifications were issued by the Central Government in exercise of the powers conferred under Section 3 of the FT(D&R) Act, 1992 and the DGFT had only undertaken the ministerial act of publishing the notification. In such circumstances, mere publication of the notifications by the DGFT cannot lead to the presumption that the notifications were issued without the concurrence of the Central Government. Therefore, the challenge on the premise that the notifications were issued by the DGFT and not the Central Government is unsustainable."

22. Thus, in view of the judgment pronounced by the Hon'ble High Court of Kerala in **M/s MRJ Trading vs. Union of India** in writ-petition no. WP(C)19351/2021 and the decision pronounced by the Hon'ble Apex Court in **the matter of Agricas LLP vs. Union of India**, as discussed in details at **Para 17 to Para 21** above, the contention of M/s Om Shiva Products Inc. that the DGFT is not the competent authority to issue notifications under Section 3 and 5 of the FT (D&R) Act, 1992 and therefore, the DGFT Notification No. 20/2015-20 dated 25.07.2018 (fixing MIP of Rs. 251/kg and treating imports below this as prohibited) and later amendments are invalid is not sustainable.

I find no merit in the defense reply filed by the said SEZ Unit in as much as in similar litigation, it has been ruled by the Apex Court that such notifications were issued by the Central Government in exercise of the powers conferred under Section 3 of the FT(D&R) Act, 1992 and the DGFT had only undertaken the ministerial act of publishing the notification and the challenge on the premise that the notifications were issued by the DGFT and not the Central Government was found unsustainable. Relying on the above judgment passed by the Hon'ble Apex Court in M/s Agricas Vs. UOI, the learned High Court of Kerala has also ruled that such notifications explicitly declare that they are issued by the Central Government in exercise of the powers conferred by Section 3 of the FT (D& R) Act, 1992 read with Paragraphs 1.01 and 2.01 of the Foreign Trade Policy. The learned High Court has also ruled that the impugned notifications were issued by the Central Government and published by the DGFT as ministerial act. The Hon'ble High Court had further noted that the notifications themselves declare issuance by Central Government and the Authentication (Orders and Other Instruments) Rules, 2002 and the related Presidential Sanction validate the role of the DGFT in authenticating such notifications. The learned High Court has further relied upon the judgment of the Hon'ble Apex Court in the matter of Agricas LLP vs. Union of India wherein it was confirmed that the DGFT acts on behalf of the Central Government and does not independently issue such notifications itself.

Thus, I hold that the defense reply submitted by the said SEZ Unit wherein they have challenged the locus standi of the DGFT w.r.t. issuance of the Notification No. Notification No. 20/2015-20 dated 25.07.2018 thereby fixing MIP of Rs. 251/kg and treating imports below this as prohibited is not tenable in the eyes of law.

23. Proceeding further, I find that the said SEZ Unit has also submitted that "import" into an SEZ under the SEZ Act, 2005 is different from "import into India" under the FT (D&R) Act,1992 and that Section 26(1)(a) of the SEZ Act, 2005 exempts all goods imported into SEZ for authorized operations, and further that Section 51 gives the SEZ Act overriding effect over other laws, so MIP-based restrictions and the DGFT notification cannot apply to SEZ imports used for authorized operations and export.

24. I find that the above argument forwarded by the said SEZ Unit is again not tenable in as much as the DGFT Notification No. 20/2015-20 dated 25.07.2018 makes no such distinction as pointed out by the said SEZ Unit based on the definitions of

import as provided under the SEZ Act, 2005 and under the FT (D&R) Act, 1992. The Policy Condition has been revised from “freely importable” to “Prohibited” and a minimum import price has been prescribed. The minimum import price of Rs. 251/- per Kilogram or above has been made the sole criterion for imports to be allowed and any import below this minimum import price shall be prohibited in terms of the above referred notification dated 25.07.2018. I also find that the argument regarding exemption to all goods imported into SEZ Unit under Section 26(1)(a) of the SEZ Act, 2005 and that Section 51 gives the SEZ Act, 2005 overriding effect over other laws resulting into the MIP-based restrictions and the DGFT notification not applicable to SEZ imports used for authorized operations is also not tenable. I find that the issue at hands is not related to exemptions u/s 26(1)(a) of the SEZ Act, 2005 nor is it related to the overriding effects as available under Section 51 gives the SEZ Act, 2005. The issue to be decided is whether the betelnuts/arecanuts imported vide the Bill of Entries as shown at **Table-B** are “prohibited goods” or otherwise. From the discussions made *supra* at **Para 15** above, these imports were made below the prescribed minimum import price (CIF Value) of Rs.251/- per Kilogram and therefore such goods were covered under prohibition as stipulated under DGFT Notification no. 20/2015-20 dated 25.07.2018 read with Section 2(33) of the Customs Act, 1962. Further, the import of such goods was also in violation of condition no. 4 of the LoA (Letter of Approval) dated 13.07.2014 issued by the Development Commissioner, KASEZ to M/s Om Shiva Products Inc as they were not allowed to import items prohibited under the ITC (HS) Classifications of Export and Import items. Thus, I hold that the argument put forth by the said SEZ Unit is yet again not tenable.

25. CONFISCATION OF GOODS:

I find that Section 111(d) of the Customs Act, 1962 stipulates that any goods which are imported or attempted to be imported or are brought within the Indian Customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, shall be liable for confiscation. Similarly, I find that Section 111(0) of the Act *ibid* stipulates that any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer are liable for confiscation. From the facts as discussed at length in the foregoing paragraphs, it is forthcoming that M/s Om Shiva Products Inc had resorted to import of betelnuts/arecanuts below the prescribed minimum import price of Rs.251/- per kilogram and as such the goods were prohibited in terms of the policy conditions as stipulated under DGFT Notification no. 20/2015-20 dated 25.07.2018 read with Section 2(33) of the Customs Act, 1962. Further, the import of such goods was also in violation of condition no. 4 of the LoA (Letter of Approval) dated 13.07.2014 issued by the Development Commissioner, KASEZ to M/s Om Shiva Products Inc as

they were not allowed to import items prohibited under the ITC (HS) Classifications of Export and Import items.

Thus, I hold that the betelnuts/arecanuts having total declared assessable value of **Rs.91,70,959/-** (Rupees Ninety-One Lakhs Seventy Thousand Nine Hundred Fifty Nine Only) vide the Bills of Entry as detailed in **Table-B** are liable for confiscation under the provisions of Section 111(d) and Section 111(o) of the Customs Act, 1962 for contravening the Import Policy Conditions and the conditions stipulated in the LoA issued to them.

26. PENALTY UNDER SECTION 112 OF THE CUSTOMS ACT, 1962:

I find that Section 112(a) of the Customs Act, 1962, provides that, any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111 of the Act *ibid*, or abets the doing or omission of such an act shall be liable for penalty for improper importation of goods. Further, I also find that as per Section 112(b) of the Customs Act, 1962, any person who acquires possession of or is in anyway concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reasons to believe are liable to confiscation under Section 111 of the Act *ibid* shall be liable for penalty.

I find that 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 had 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.

27. PENALTY UNDER SECTION 114AA OF THE CUSTOMS ACT, 1962:

I find that 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 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 and assessment which invariably included the aspect of 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, importability and approvals and other regulatory compliances in respect goods dealt by them in SEZ area. From the above, it is evident that the said SEZ unit willfully suppressed the fact that the goods were falling under prohibited category and imported in contravention to the conditions stipulated in their LoA, and thereby they appear to have indulged in unauthorized activity.

Whereas, Section 46(4A) of the Customs Act, 1962 mandates that the importer, who is presenting the bill of entry should ensure the accuracy and completeness of the information given therein viz. 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 have 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 resulting into the goods being liable for confiscation.

I therefore hold that the said SEZ Unit is also liable for penalty u/s 114AA of the Customs Act, 1962 for the reasons as stated above.

28. In view of the above discussions and findings, I hereby pass the following order-

(i) I hold that the goods viz betelnuts/arecanuts falling under CTH 08028090 having declared assessable value of **Rs.91,70,959/- (Rupees Ninety-One Lakhs Seventy Thousand Nine Hundred and Fifty-Nine Only)** as shown in **Table-B** above are liable for confiscation under the provisions of Section 111(d) & Section 111(o) of the Customs Act, 1962 for contravening the Import Policy conditions and conditions stipulated in the LoA.

However, the noticee/s are also given an option of redemption of the said goods on payment of **Rs.22,92,740/- (Rupees Twenty-Two Lakhs Ninety-Two Thousand Seven Hundred Forty Only)** under the provisions of Section 125 of the Customs Act, 1962.

(ii) I impose Penalty of **Rs.91,70,959/- (Rupees Ninety-One Lakhs Seventy Thousand Nine Hundred and Fifty-Nine Only)** upon M/s Om Shiva Products Inc., the importer under the provisions of Section 112 of the Customs Act, 1962.

(iii) I impose Penalty of **Rs.91,70,959/- (Rupees Ninety-One Lakhs Seventy Thousand Nine Hundred and Fifty-Nine Only)** upon M/s Om Shiva Products Inc., the importer, under the provisions of Section 114AA of the Customs Act, 1962.

(iv) I order to enforce the Bond-cum-Legal Undertaking in Form-H executed by the said SEZ Unit towards the liabilities as shown at Para 28(i), (ii) and (iii) above.

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

Vishwajeet Singh
26.12.2025
(Vishwajeet Singh)
Additional Commissioner
Customs House, Kandla

DIN: 20251271ML0000717EA3

F. No. GEN/ADJ/ADC/754/2024

Dated: 12.2025

o/c

By Speed Post/Courier
To

1. M/s Om Shiva Products Inc. (IEC No.0713021985), Unit No.s 202, 203, 210 & 301, Ganga SDF Complex, Phase-II, Kandla Special Economic Zone, Gandhidham.

Copy to:-

1. The Development Commissioner, Kandla Special Economic Zone, Gandhidham, Kutch.
2. The Commissioner of Customs, Kandla
3. The Assistant Commissioner of Customs, RRA, Customs House, Kandla.
4. The Deputy Commissioner, KASEZ, Gandhidham.
5. Guard file.

L. Patel 24/12/25