OFFICE OF THE COMMISSIONER

CUSTOM HOUSE, KANDLA

NEAR BALAJI TEMPLE, NEW KANDLA

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DIN- 20250471ML00002782EB		
A	File No.	GEN/ADJ/COMM/174/2024-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KND-CUSTM-000-COM-02-2025-26
C	Passed by	M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla.
D	Date of Order	26.04.2025
E	Date of Issue	26.04.2025
F	SCN No. & Date	GEN/ADJ/COMM/174/2024-Adjn-O/o Commr-Cus-Kandla dated 29.04.2024
G	Noticee / Party / Importer / Exporter	M/s. Sequel Logistics and others

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

2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

Customs Excise & ServiceTax AppellateTribunal, West Zonal Bench,

2ndFloor, Bahumali Bhavan Asarwa,

Nr.Girdhar Nagar Bridge,GirdharNagar,Ahmedabad-380004

3. Appeal shall be filed within three months from the date of communication of this order.

4. Appeal should be accompanied by a fee of Rs.1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/-in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh(Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs(Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. The appeal should bear Court Fee Stamp of Rs.5/-under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the CourtFees Act, 1870.

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

7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.

8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in disupte, or penalty wise if penalty alone is in dispute.

BRIEF FACTS OF THE CASE-

M/s. Sequel Logistics Pvt. Ltd. (hereinafter also referred to as 'SEZ unit'), situated at Sub-Plot No. 07 of Plot No. 501, Free Trade Warehousing Zone, New Area, Kandla Special Economic Zone, Gandhidham, Kutch was granted Letter of Approval (LoA) dated 21.08.2018 vide F.No. KASEZ/IA/08/2018-19**(RUD-1)** by the Development Commissioner, Kandla SEZ under Section 15(9) of the Special Economic Zones Act, 2005 read with Rule 18 of the Special Economic Zones Rules, 2006 to operate as an SEZ unit to carry out authorized operations of warehousing of precious metals. The Unit Approval Committee (UAC) after due deliberations had approved the requests of the said SEZ unit for inclusion of additional items/precious metals in their warehousing activity and accordingly, amendments in the original LoA have been made from time to time.

2. During the test check of records for the period 2019-21, the Sr. Audit Officer (CRA-I) noticed ***short levy of Basic Customs duty and IGST due to short fixation of Tariff value*** and said observations were communicated vide HM dated 01.10.2021 **(RUD-2)** and subsequently vide LAR dated 03.11.2021 **(RUD-3)**. During the test check of records, it had been noticed that the said SEZ unit had cleared/removed "Silver Bar" (CTH 7106) to DTA applying incorrect exchange rate and tariff value applicable on the date of payment of duty. The statement showing duty calculations by the audit team for the short levy of Custom duty and IGST in respect of the clearances made by concerned KASEZ Units, had been attached as **RUD-4** to the Notice. As per the audit team statement, the short levy Custom duty and IGST on the clearances made by M/s. Sequel Logistics Pvt. Ltd. was to the tune of **Rs. 29,87,42,690/-.**

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

4. As per Section 30(b) of the SEZ Act, 2005, the rate of duty and tariff valuation, if any, applicable to goods removed from the SEZ shall be at the **rate and tariff valuation in force as on the date of such removal**, and where such date is not ascertainable, on the date of payment of duty. In the instant case, the audit team had noticed that the said SEZ unit had cleared/removed subject goods by applying the incorrect exchange rate and tariff value as applicable on the date of payment of duty. The statement showing duty calculations by the audit team, covering clearances made under 22 Bills of entry by concerned KASEZ units, has been attached as **RUD-4** to this Notice.

4.1. During the scrutiny, it is observed that, in RUD-4/Statement of audit team, in respect of one Bill of entry with request ID: 261903711381 (listed at Sr.No. 7 in Annexure-A & in RUD-4) pertaining to DTA buyer M/s. Diamond India Ltd., the Exchange rate appeared to be wrongly taken as Rs. 72.25 per USD, whereas on the date of clearance of goods, as per Notification No. 85/2019-Cus(NT) dt.21.11.2019, the applicable exchange rate was Rs. 72.75/- per USD. Accordingly, the Assessable value, Duty leviable and differential duty was re-calculated and the details are as under:

Sr No.	Request ID and DTA buyer	Calculations as per audit team (in Rs.)				Re-calculated values (in Rs.)			
		Assessable Value	Duty leviable	Duty paid	Diff. duty	Assessable Value	Duty leviable	Duty paid	Diff. duty
1	261903711381; M/s. Diamond	46,29,25,779/-	5,96,01,694/-	5,93,95,460/-	**2,06,234/-**	46,61,29,417/-	6,00,14,162/-	5,93,95,459/-	**6,18,703/-**

	India Ltd.								

Based on the above, the total differential duty payable has been re-calculated to **Rs. 29,91,55,160/-** from Rs. 29,87,42,690/-, as detailed in Annexure-A to this notice.

4.2. The audit observations were communicated to all the DTA buyers and the SEZ Unit vide letters all dated 24.01.2022 **(RUD-5)** issued from F.No. KASEZ/P&C/70/LAR-14/SEQUEL/2021-22 and requested them to submit reply.

4.2.1. In response to aforesaid KASEZ letter dated 24.01.2022, the DTA buyer M/s. Industrial and Commercial Bank of China Ltd, Mumbai vide their letter dated 16.02.2022 **(RUD- 5)**, inter-alia, submitted-

- That they got the Silver Consignment cleared through M/s. Sequel Logistics Pvt. Ltd vide BE No. 2010302, 2010301 and 2010318 dated 30.10.2019 and have paid custom duty amount of Rs. 13,36,27,339.10/-, Rs. 7,29,88,879.30/- and Rs. 4,14,75,608.66/- vide their DD No. 987023, 987022 and 987027 dated 30.10.2019, 30.10.2019 and 01.11.2019 drawn on SBI KASEZ.
- That the custom duty was informed by M/s. Sequel Logistics Pvt. Ltd as per prevailing tariff rate and exchange rate, and the custom duty was paid after due assessment of BoE by Customs and same was also concurrently audited.

4.2.2. In response to aforesaid KASEZ letter dated 24.01.2022, the DTA buyer M/s. MMTC Ltd. vide their letter dated 02.02.2022**(RUD-5)**, inter-alia, submitted

- That they got the Silver Consignment cleared through M/s. Sequel Logistics Pvt. Ltd vide BE No. 2002860 dated 19.03.2020 and have paid custom duty amount of Rs. 49633125/- vide their DD No. 793326 dated 20.03.2020 drawn on SBI KASEZ.
- That the custom duty was informed by M/s. Sequel Logistics Pvt. Ltd as per prevailing tariff rate and exchange rate, and the custom duty was paid after due assessment of BoE by Customs and same was also concurrently audited.

4.2.3. In response to aforesaid KASEZ letter dated 24.01.2022, the DTA buyer M/s. RBL Bank Ltd. vide their letter dated 24.02.2022**(RUD-5)**, inter-alia, submitted

- That RBL Bank imports Gold and Silver as per the permission granted by Reserve Bank of India. That, all imported goods are cleared from Customs after complying with all rules & regulations prevailing on the date of import.
- That the applicable custom duty has been paid as per the custom tariff rates applicable as on date of filing respective Bill of entry & there is no instance of any short payment by them.

4.2.4. In response to aforesaid KASEZ letter dated 24.01.2022, the DTA buyer M/s. Diamond India Ltd. vide their letter dated 10.02.2022**(RUD-5)**, inter-alia, submitted

That they are a Nominated Agency as notified, vide DGFT Notification 88/2008 dt 26.02.2009, by the Ministry of Commerce & Industry, Govt of India and they are entrusted with the responsibility for import of precious metals like gold and silver for supply to jewellers.

- That they had imported into KSEZ one consignment of silver bars in November 2019. That they had filed the captioned Bill of Entry (BoE) on Nov 21, 2019 for removal of goods from KSEZ to DTA for home consumption.
- That they duly paid the applicable customs duty and removed the goods on Nov 22, 2019 after arranging for the logistics.
- That the Bills of Entry has been duly presented before the Proper Officer of customs for assessment and order under Section 46 of the Customs Act, 1962 (the Act). The BoEs have been filed through the SEZ portal for clearance of goods for home consumption and these have been duly cleared by the Proper Officer.
- That the applicable customs duty has been duly paid on the goods under the provisions of the Act. That they were dutiable goods under Section 12 on which customs duty was to be paid at such rates as specified under Customs Tariff Act 1975. The duty has been duly assessed based on tariff value as determined by the Board under Section 16. The duty amount has been automatically determined based on the applicable exchange rate

and tariff value as shown on the NSDL portal. The duty has been determined on the date of payment of duty as required under Section 16 (b) of the Act. The duty amount has also been audited by the customs. Accordingly, the duly liability as determined by Customs has been duly & correctly discharged.

- That it is not a case of short payment of duty. The Notice has wrongly mentioned it as a short payment of duty. The duty has been duly calculated. The Notice has not mentioned about any error found in respect of the classification or quantity of goods, tariff value or exchange rate. Hence, no short payment is applicable/payable.
- That the Notice implies that while the duty assessment has been duly done on the date of presentation of BoE to the Proper Officer, it should also be once again done at the time of physical removal of goods from SEZ. It is not provided in the Act that that a BoE duly assessed & without error will be again assessed for duty.
- That the BoE was for clearance of goods from SEZ to DTA. The Proper Officer duly cleared the same. Thus, under the Act, it is construed as having been cleared out of SEZ for DTA. It is construed as having been physically cleared from SEZ, Now, it may cause a piquant situation where goods customs cleared from SEZ for DTA would be required to be again customs cleared from DTA to DTA. If customs clearance at the time of physical removal of goods from SEZ is again insisted upon, it would conflict with Section 16 on the date of determination of duty. Otherwise, customs clearance would be done only at the SEZ gate and not on arrival of goods or on the date of payment of duty.
- That the issue is about payment of customs duty under the Act. It is not about SEZ dues. We are also not an SEZ unit to be fastened with SEZ dues. For us, as the importers, SEZ happens to be another port for customs clearance. The Customs Officer in SEZ port has cleared the goods from SEZ, i.e. outside the borders of the country, into DTA. Therefore, customs cannot be separated from SEZ and goods cannot be doubly assessed, once by Customs & again at SEZ gate. It should be construed as having been assessed at SEZ gate only.
- That post-clearance of goods by the Proper Officer under the applicable provisions of the Act, physical removal of goods is a matter of logistics and not of law. It is a matter of arranging vehicles, organizing labour, obtaining administrative clearances/passes etc. SEZ gate, as the physical place, would not determine & overrule the legal assessment done by the Proper Officer. Instead, it should be construed as having been done at the SEZ gate in compliance with Sec. 30 of SEZ Act.

4.2.5. In response to aforesaid KASEZ letter dated 24.01.2022, the Sequel Logistics Pvt. Ltd. vide their letter dated 23.11.2021**(RUD-5)**, inter-alia, submitted

- That Sequel herein is not liable under any circumstances to pay any sort of custom duty under the Customs Act, 1962 ("Customs Act") and / or the Special Economic Zones Act, 2005 ("SEZ Act"). That the SEZ Unit of Sequel provides warehousing services to its clients / customers with respect to the silver imported by the nominated agencies permitted by the Government of India (GOI) and appointed by the Reserve bank of India (RBI). That Sequel simply and exclusively provides warehousing services to the nominated agencies.
- That Sequel will in no form or manner fall within the definition of 'importer' and Sequel is neither the importer, nor the owner nor has any interest / title in the goods.
- That the scheme of the Customs Act provides the procedure for the purpose of clearance of the goods assembled at the Unit established in the Special Economic Zone ('SEZ'). The importer is required to present a bill of entry to the proper officer, preceding the day on which the goods are to be cleared for home consumption. It is pertinent to note that the importer is required to pay the import duty on the date of presentation of bill of entry. Thereafter, where the proper officer is satisfied that said goods do not fall under the category of prohibited goods, and that the importer has paid the import duty, the proper officer makes an order for permitting the clearance of the goods, pursuant to which the goods are removed. Accordingly, it is submitted that under no circumstances they merely being a 'Unit' at the SEZ is liable to pay the purported short duty for the goods imported by the nominated agencies.
- that as per the provisions of the Custom Act and the SEZ Act, the custom duty is payable at the rate, on the date when the bill of entry is presented by the importer to the proper officer. That it is wrongly stated in the Notice that the custom duty shall be levied at the rate on the date of physical removal of goods from the Unit at the SEZ. That there is no provision under law that indicates/provides for payment of custom duty as on the day of physical removal of goods from the Unit.

- That when the importer files or presents a bill of entry through the SEZ portal (online), the exchange rate and the tariff value is automatically derived/calculated in the NSDL portal, for the reason that the tariff rates are updated by the NSDL in accordance with new or amended tariff rates prescribed by the Central Government in its latest notifications.
- That during the removal of the silver bars in the present matter, the customs officer had also audited the duty calculated and paid by the importer prior to the removal of goods. Therefore, it is submitted that the captioned notice alleging that the custom duty shall be paid as on the day of the removal of goods from the unit is baseless and unsupported by any provision of law.
- That the calculation statement enclosed to the captioned Notice suffers from severe errors on the face of it. That while calculating the short-paid amount of the custom duty, and various typographical errors with respect to the ID numbers, duties against such ID numbers, etc.

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

(i) Section 30 in The Special Economic Zones Act, 2005*:- Subject to the conditions specified in the rules made by the Central Government in this behalf:—*

(a) any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 (51 of 1975), where applicable, as leviable on such goods when imported; and

(b) the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and ***tariff valuation in force as on the date of such removal,*** *and where such date is not ascertainable, on the date of payment of duty.*

(ii) Section 51 in The Special Economic Zones Act, 2005

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

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

Rule 47 of SEZ Rules, 2006: Sales in Domestic Tariff Area

(1) *A Unit may sell goods and services including rejects or wastes or scraps or remnants or broken diamonds or by products arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area* ***on payment of Customs duties under section 30****, subject to the following conditions* **********

(2) *……*

(3) *……...*

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

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

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

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

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

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

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

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

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

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

(i) M/s. HDFC Bank Limited, Ahmedabad
(ii) M/s. Industrial & Commercial Bank of China Ltd., Mumbai
(iii) M/s. Industrial & Commercial Bank of China Ltd.- Ahmedabad
(iv) M/s. RBL Bank Ltd., Ahmedabad
(v) M/s.Diamond India Ltd. Ahmedabad, Surat
(vi) M/s. MMTC Limited – 2 Ahmedadabad

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

8. Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be. Under self-assessment, the importer or exporter has to ensure correct classification, applicable rate of duty, value and exemption notifications, if any, in respect of imported / export goods while presenting Bill of Entry or Shipping Bill. Further, Rule 75 of the SEZ Rules, 2006 also provides that unless and otherwise specified in these rules all inward or outward movements of the goods into or from SEZ by the Unit/ Developer shall be based on self-declaration made by the Unit/ Developer. While clearing subject goods to Domestic Tariff Area, the said SEZ Unit and the DTA buyers were bound for true and correct declaration and assessment. The said SEZ Unit and the DTA buyers were bound to pay subject duties at the tariff valuation in force, as on the date of removal of goods from SEZ Unit. It is pertinent to note that the date of removal of the goods from SEZ Unit is clearly ascertainable as the subject information has to be maintained by the SEZ Unit. The SEZ Unit is duty bound to maintain detailed accounts of all goods imported or procured from DTA or consumed and utilized, in proper form including of those remaining in stock and those removed into DTA. Further, it is pertinent to mention that the tariff valuation, applicable to subject goods shall be the tariff value in force as on the date of removal of goods, which is clearly ascertainable in terms of information that has to be maintained by the SEZ Unit/obligation casted on the SEZ Unit in terms of the SEZ Act, 2005. It is pertinent to mention that in terms of Section 51 of the SEZ Act, 2005 the provisions of SEZ Act shall have effect notwithstanding anything inconsistent therewith

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

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

10. Therefore, it appeared that the fact that the tariff value and rate of exchange, as on date of removal of subject goods, has been re-determined by the board was never brought to the notice of Customs officers posted at the gate. The said SEZ Unit and the DTA buyers willfully wrongly applied the rate of exchange and tariff value on the removal of "Silver Bar/Ingot" (CTH 7106) to DTA with an intention to evade Custom Duty. In the above manner, they have evaded Customs Duty totally amounting to Rs. **29,91,55,160/-**, as detailed in Annexure-A to the notice. Further, it is noticed that as per LoA dated 21.06.2018 **(RUD-1)** the risk coverage of duty amount shall be the sole responsibility of the warehousing unit and the said unit would furnish a comprehensive insurance coverage equivalent to the duty involved in favor of Government of India for the purpose transit as well as storage in the warehouse. In view of the foregoing facts, it is the fit case for invoking the extended period for demand of duty under Section 28(4) of the Customs Act, 1962.

11. The above discussed facts revealed that while clearing the subject goods into DTA, the said SEZ Unit and DTA buyers have incorrectly applied the tariff value and exchange rate, on the subject goods totally valued at Rs. 743,63,33,374/- as detailed in Annexure-A to the notice, by deliberately suppressing the material facts relating to the changed tariff value and exchange rate notified by the Board before Customs officer posted at the gate. They mis-declared the tariff valuation and rate of exchange, applicable to the goods as on the date of removal with an intention to evade the payment of appropriate duty during clearance of subject goods to DTA.

For the said act of suppression of material facts and mis-declaration of tariff value and rate of exchange, the goods mentioned in Annexure-A to this notice, totally valued at Rs. Rs.743,63,33,374/-, are liable to confiscation under section 111(m) of the Customs Act,1962, though the same are not physically available. For the act of suppression of material facts and mis-declaration, the said SEZ unit and the DTA buyers have rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962. By the act of knowingly evading Custom duty by suppressing the material facts and mis-declaring subject goods in terms of valuation of goods, the SEZ unit and the DTA buyers have also rendered themselves liable to penalty under Section 114A of the Customs Act, 1962. Since, the said SEZ unit and the DTA buyers have prepared and/or used documents showing false information about the subject goods, this act on their part has rendered themselves liable to penalty under section 114AA of the Customs Act, 1962.

12. Now, therefore, the said SEZ unit, namely, M/s. Sequel Logistics Pvt. Ltd.(IEC-0811015424/AAHCS9813P) were called upon to Show Cause to the Commissioner of Customs, Kandla having his office situated at Custom House, Near Balaji Temple, Kandla, Kutch, Gujarat-370210 within 30 days from the receipt of this notice as to why:

a) The assessable value of goods i.e. “Silver Bars/Ingots” (CTH 7106) in the Bills of entry appearing in the Annexure-A to this notice should not be rejected and the same should not be reassessed by applying correct tariff value and rate of exchange, as applicable on the date of removal of the goods from said SEZ Unit.
b) The goods mentioned in Annexure A to this notice, totally valued at Rs. 7,43,63,33,374/- (Rupees Seventy hundred and forty three crore sixty three lakh thirty three thousand three hundred and seventy four only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, though the same are not physically available.
c) Penalty under section 112(a), 114A and 114AA of the Customs Act, 1962 should not be imposed for reasons discussed above.
d) Bond-cum-Legal Undertaking in form-H executed by the said SEZ Unit should not be enforced towards its above liabilities.

12.1. Now, therefore, the DTA Buyer, namely, M/s. HDFC Bank Limited (IEC-0301022666/AAACH2702H) were called upon to Show Cause to the Commissioner of Customs, Kandla having his office situated at Custom House, Near Balaji Temple, Kandla, Kutch, Gujarat-370210 within 30 days from the receipt of this notice as to why:

a) The assessable value of goods i.e. “Silver Bars/Ingots” (CTH 7106) in the Bills of entry appearing in the Annexure-B to this notice should not be rejected and the same should not be reassessed by applying correct tariff value and rate of exchange, as applicable on the date of removal of the goods from said SEZ Unit.
b) The differential Custom duty & IGST totally amounting to **Rs. 15,94,98,123**/- (Rupees Fifteen crore ninety four lakh ninety eight thousand one hundred and twenty three only) on the goods detailed in Annexure-B to this notice should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid.
c) The goods mentioned in Annexure-B to this notice, totally valued at Rs. 363,00,73,262/- (Rupees three hundred and sixty three crore seventy three thousand two hundred and sixty two only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, though the same are not physically available.
d) Penalty under section 112(a), 114A and 114AA of the Customs Act, 1962 should not be imposed for reasons discussed above.

12.2. Now, therefore, the DTA Buyer, namely, M/s. RBL Bank Ltd. (IEC-3114012302/AABCT3335M) were called upon to Show Cause to the Commissioner of Customs, Kandla having his office situated at Custom House, Near Balaji Temple, Kandla, Kutch, Gujarat-370210 within 30 days from the receipt of this notice as to why:

a) The assessable value of goods i.e. “Silver Bars/Ingots” (CTH 7106) in the Bills of entry appearing in the Annexure-C to this notice should not be rejected and the same should not be reassessed by applying correct tariff value and rate of exchange, as applicable on the date of removal of the goods from said SEZ Unit.
b) The differential Custom duty & IGST totally amounting to Rs. **1,34,414**/- (Rupees one

lakh thirty four thousand four hundred and fourteen only) on the goods detailed in Annexure-C to this notice should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid.

c) The goods mentioned in Annexure-C to this notice, totally valued at Rs.139,16,33,819/- (Rupees one hundred and thirty nine crore sixteen lakh thirty three thousand eight hundred and nineteen only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, though the same are not physically available.

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

12.3. Now, therefore, the DTA Buyer, namely, M/s. Diamond India Ltd. (IEC-0306062984/AABCD8377R) were called upon to Show Cause to the Commissioner of Customs, Kandla having his office situated at Custom House, Near Balaji Temple, Kandla, Kutch, Gujarat-370210 within 30 days from the receipt of this notice as to why:

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

(ii) The differential Custom duty & IGST totally amounting to **Rs. 6,18,703/-** (Rupees six lakh eighteen thousand seven hundred and three only) on the goods detailed in Annexure-D to this notice should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid.

(iii) The goods mentioned in Annexure-D to this notice, totally valued at Rs.46,61,29,417/- (Rupees Forty Six crore sixty one lakh twenty nine thousand four hundred and seventeen only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, though the same are not physically available.

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

12.4. Now, therefore, the DTA Buyer, namely, M/s. Industrial & Commercial Bank of China Ltd. (IEC-0313007586/AACCI6192G) were called upon to Show Cause to the Commissioner of Customs, Kandla having his office situated at Custom House, Near Balaji Temple, Kandla, Kutch, Gujarat-370210 within 30 days from the receipt of this notice as to why:

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

(ii) The differential Custom duty & IGST totally amounting to **Rs. 13,79,01,230/-** (Rupees Thirteen crore seventy nine lakh one thousand two hundred and thirty only) on the goods detailed in Annexure-E to this notice should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid.

(iii) The goods mentioned in Annexure-E to this notice, totally valued at Rs. 155,52,08,993/- (Rupees One hundred and fifty five crore fifty two lakh eight thousand nine hundred and ninety three only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, though the same are not physically available.

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

12.5. Now, therefore, the DTA Buyer, namely, M/s. MMTC Limited (IEC-0591000946/AAACM1433E) were called upon to Show Cause to the Commissioner of Customs, Kandla having his office situated at Custom House, Near Balaji Temple, Kandla, Kutch, Gujarat-370210 within 30 days from the receipt of this notice as to why:

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

(ii) The differential Custom duty & IGST totally amounting to **Rs. 10,02,690/-** (Rupees Ten lakh two thousand six hundred and ninety only) on the goods detailed in Annexure-F to this notice should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid.

(iii) The goods mentioned in Annexure-F to this notice, totally valued at Rs. 39,32,87,883/- (Rupees thirty nine crore thirty two lakh eighty seven thousand eight hundred and eighty three only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, though the same are not physically available.

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

RECORD OF PERSONAL HEARING-

13. Shri Arjun Raghvendra M, Advocate appeared for personal hearing on 21.01.2025 on behalf of **M/s. Sequel Logistics Pvt. Ltd & M/s. Diamond India Ltd** and reiterated the submission and emphasized on the following points:-

- That the case did not pertain to an act of omission/commission on behalf of the noticee, is not involving mis-declaration of goods/value or classification and hence the question of invoking Section 111 of the Customs Act does not arise. Hence no penalty can be imposed under Section 112.
- The issue does not pertain to duty evasion per se. Customs duty as has been paid in such cases, has been duly paid in this case too. The matter pertains to a technical interpretation pertaining to the relevant date and whether the date of removal of the goods from the unit will become the date on which the duty becomes liable qua the tariff notification.
- He further emphasized on the fact that there is no suppression of facts/collusion/wilfull mis-representation and that the contention that the noticee did not share the relevant notification with the proper officer of customs who issued the out of charge is bad in law. The CBIC website has all the relevant notifications and hence no submission of the same to the proper officer can not be deemed to be the sole reason for invoking extended period in this case.
- He further prayed that the penal proceedings also be dropped in the said case.

14. Shri V.Milak and Shri Jatin Padvi appeared for personal hearing on 11.02.2025 on behalf of **M/s. Industrial & Commercial bank of China Ltd.,-Mumbai and M/s. Industrial & Commercial Bank of China Ltd., Ahmedabad** and reiterated the submission made under their letter dated 10.02.2025 and resisted the demand on them.

15. Shri Mahendra Balkawade, DY. General Manager represented **M/s. MMTC Limited** and field written submission dated 11.03.2025 and appeared for personal hearing on 11.03.2025. He reiterated the submission and opposed the notice. He submitted that the SEZ provisions are not applicable to them as they are not an SEZ Unit.

16. Ms. Vasanti Ganesan, Senior Manager attended the virtual hearing on 13.03.2025 on behalf of **M/s. RBL Bank Ltd., Ahmedabad** and submitted the following points interalia:-

- The SCN travels beyond the period of limitation and accordingly the SCN is liable to be dropped.
- Section 30 of the SEZ Act, 2005 read with Rule 47 of SEZ Rules clearly implies that the provisions are applicable only in case of manufacturing, whereas the Bank is a trader in Bullion and has cleared goods as such for home by their domestic customers.
- Rule 48(2) of SEZ Rules establishes that for goods cleared for home consumption valuation shall be made as per Customs Act.
- As per Section 15 of Customs Act, relevant date to be the date on which Bill of entry for home consumption in respect of such goods is presented under that section.
- This was brought into effect in the year 2003. Earlier the relevant date was “date of removal”. Therefore, the legislative intent is to consider the relevant date as the date on which bill of entry for home consumption is presented. Reference drawn from DCM v/s UoI(SC- 1994 (9) TMI 105)
- The Tamil Nadu Authority for Advance Ruling in the matter of Sadesa Commercial Offshore De Macau Ltd [2019 (21) G.S.T.L 265 (A.A.R.GST) and the Bank of Nova Scotia [2019 (21)G.S.T.L 238 (A.A.R.- GSTL)], while pronouncing its ruling, had assumed a warehouse in FTWZ to be a custom bonded warehouse. Accordingly, Customs Act is applicable.
- The Bank is not a SEZ unit and hence the provisions of SEZ Act should not be made

applicable for clearances being initiated by the DTA importer.

- The goods were cleared only on issuance of clearances order. Once Bill of Entry is filed and payment is made, re-assessment is not possible as per the existing infrastructure provided in ICEGATE.
- It is practically not possible to obtain out of charge for all clearances on the same day.
- The fact that the Customs department has differently interpreted the applicability of SEZ Act and rules does not amount to mis-valuation of the goods. Accordingly, the invocation of Section 111(m) is not valid in terms of fact as well law.
- Since there is no short payment of duty, the question of interest and penalty doesn't arise.
- Further, the Bank has not suppressed any material facts, or evaded custom duty or submitted false documents. Accordingly, the imposition of penalty as per Section 112(a), 114A and 114A of the Customs Act, 1962 is invalid and liable to be set aside.

17. Shri S.S Gupta, Advocate appeared for personal hearing, through virtual mode, on 08.04.2025 on behalf of **M/s. HDFC Bank Limited, Ahmedabad** and reiterated the submissions made vide their letter dated 07.04.2025. He specifically referred to Para 1.1 to 1.3 read w.r.t Annexure (worksheet) to SCN to state that the SCN did not correctly considered the amounts paid by them w.r.t various Bills of Entries in question.

WRITTEN SUBMISSION-

18. M/s. Sequel Logistics Pvt. Ltd (the SEZ unit) vide their submission dated 21.01.2025 submitted that-

18.1. They were engaged in the business of warehousing of the goods including the imported precious metals i.e. gold, silver, platinum etc. as raw materials for supply to the gems and jewellery industry.

18.2. The noticee is a Free Trade Warehousing Zone (FTWZ), which is also a Special Economic Zone unit. They are authorized by the UAC for the operations of warehousing of precious metals, through Letter of Approval (LoA) dated 21.08.2018 as amended from time to time for inclusion of additional items/precious metals.

18.3. The imported goods are silver bars and ingots, imported in bulk and were warehoused in their authorized FTWZ and subsequently, they ensured that the importers paid the applicable basic Customs duty and IGST, alongwith applicable Cess, on the imported goods for clearance for home consumption to DTA from FTWZ.

18.4. CBIC fixes Tariff value of specified goods having regard to the trend of value, and where such tariff values are fixed by the Board, the duty shall be chargeable with reference to such tariff value. Therefore, the importer pays the applicable duties on the subject goods, "So;ver, in any form" shall attract the tariff value as per the Notification in force, as amended from time to time.

18.5. The aforesaid goods cleared were alleged to have been cleared to DTA, by applying incorrect exchange rate and tariff value applicable on the date of payment of duty. As per the audit team's statement, the short levy of Customs duty and IGST on the clearances made from the warehouse belonging to them was communicated with the statements showing duty calculations by the audit team on the ground that rate and tariff value in force as on the date of such removal, as per Section 30(b) of the SEZ Act, 2005 should be adopted.

18.6. **A.** The noticee is not liable to pay any duty as SEZ unit in FTWZ as they are merely providing warehousing services to their clients, who are the nominated agencies appointed as per the Notification No. 88/2008 dated 26.02.2009 by the Ministry of Commerce and Industry, for import of precious metals. The responsibility to pay customs duty is solely of the importer/owner of the goods i.e. their clients referred as DTA buyers in the SCN.

18.7. The duty payable was determined based on the tariff value and exchange rate applicable on the date of presentation of Bill of Entry, as required under Section 15 of the Customs Act, 1962. As per the provisions of Customs Act, 1962 and the SEZ Act, 2005, the relevant date for determination of duty is the date of presentation of the BoE to the Proper officer. Hence, there is no short payment of duty on part of the importers and the duty has been correctly calculated and paid based on the applicable rates on the date of payment of duty as per the provisions of law.

18.8. The SCN implies that the duty assessment should be done again at the time of physical removal of goods from the SEZ Units, which doesn't have any statutory backing.

18.9. The importers have duly paid the applicable customs duty on the warehoused goods in accordance with Section 68 of the Act, as per the Bills of Entry presented and the importers removed the imported goods on 22.11.2019, after arranging the logistics.

18.10. The Bill of entry was field through the ICEGATE/EDI system for clearance of goods for home

consumption as mandated under Section 68 of the Act, and it was duly cleared by the Proper officer. Hence the clearance is construed to be made from SEZ Unit through Customs and there is no statutory requirement for dual assessment or separate clearance to DTA.

18.11. Post clearance of goods by the Proper officer under the applicable provisions of the Act, physical removal of goods is a matter of logistics and not of law. It is a matter of arranging vehicles, organizing labour, obtaining administrative clearances/passes, etc. The SEZ gate, as the physical place, would not determine and overrule the legal assessment done by the Proper officer. Instead, it should be construed as having been done at the SEZ gate in compliance with Section 30 of the SEZ Act.

18.12. Duty paid by importers in respect of the imported goods as per the prescribed tariff value and rate of exchange is correct.

18.13. They had provided service to the Nominated agency for warehousing the imported silver bars/ingots, until clearance to DTA, for the intended supply to jewelers. They had warehoused the goods in Kandla SEZ in November 2019 and their clients had filed the bills of Entry through the SEZ online system on 21.11.2019 which were also presented before the proper officer for clearance and removal of goods to DTA for home consumption. The duty was duly paid as per tariff value and rate of exchange prescribed by the Notification in force on the date of presentation of Bill of Entry, i.e. on 21.11.2019.

18.14. They have relied upon the decision of Hon'ble Punjab and Haryana High Court in Rasrasna Food Pvt. Ltd v. Union of India-2019 (368) E.L.T. A351 (P&H).

18.15. Neither the SEZ Rules nor the Customs Act provide for re-assessment of Bill of Entry after Customs clearance solely on the ground that tariff value/exchange rate was revised on a later date for removal from SEZ, when the date of payment of duty is ascertainable.

18.16. The importers had presented the Bill of Entry for assessment before the proper officer of Customs with regard to the imported goods. The SEZ unit had no connection with the goods other than providing the service of warehousing to the importers.

18.17. Impugned SCN alleging suppression of facts or mis-declaration is not sustainable. After filing of BoE and payment of duty, the goods were assessed and cleared by the proper officer of customs. There is no mis declaration of any sort in the BOEs filed by their clients and the Noticee having not filed any Bill of entry cannot be alleged as having involved in suppression and mis-declaration.

18.18. The SEZ unit is obligated to only maintain accounts of receipt and removal of goods. There is no requirement on the part of the Noticee as warehousing service providers to re-assess the duty at the time of each removal. Once the Bill of entry is assessed and duty is paid by the DTA buyers, the SEZ unit is only required to update its records for accounting purpose. The actual removal happens subsequently. Hence there is no suppression.

18.19. The imported goods are not liable to be confiscated under Section 111(m) as the said provision is invocable only when erroneous or wrong value of the imported goods had been declared by the importer in the Bill of Entry presented or this sub-section applies for transshipment of goods both of which are not applicable to the facts in hand.

18.20. They have relied upon the decision of Commr. Of Customs v. Finesse creation Inc [2009 (248) ELT 122 (Bom)] and Visteon Automotive Systems india Ltd v. CESTAT, Chennai [2018 (9) GSTL 142(Mad.)]

18.21. Penalty is not imposable under Section 112(a), 114A and 114AA of the Customs Act, 1962.

19. M/s. Diamond India Limited vide submission dated 26.08.2024, interalia, submitted that-

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

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

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

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

19.5. The imported goods were warehoused in the FTWZ M/s. Sequel Logistics as the goods were imported in bulk. They paid the applicable basic customs duty and IGST on the imported goods for clearance for home consumption to DTA from FTWZ.

19.6. During the scrutiny, it was pointed out that in respect of the bill of entry pertaining to DtA buyer

M/s. Diamond India ltd., exchange rate was alleged to have been wrongly taken as Rs. 72.25 per USD while the applicable exchange rate was Rs. 72.75/- per USD. Accordingly, the assessable value, duty leviable and differential duty were re-calculated and the total differential duty payable had been re-calculated as Rs. 29,91,55,160/- from Rs. 29,87,42,690/-.

19.7. The duty by adopting the applicable tariff value and rate of exchange as on the date of presentation of BoE had been duly paid by the Noticee and cleared by the Proper officer.

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

19.9. They filed the captioned BoE through Sequel, on 21.11.2019 for removal of goods from KASEZ to DTA for home consumption.

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

19.11. They had duly paid the applicable customs duty on the date of presentation of BoE, i.e. 21.11.2019 and removed the goods on 22.11.2019 after arranging for the logistics. For the removal and clearance from Customs, the Bill of Entry was duly presented before the Proper Officer of Customs for assessment and order Section 46 of the CA, 1962. The BoE was filed through EDI system/ICEGATE for clearance of goods for home consumption, and it was duly cleared by the proper officer.

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

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

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

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

19.16. They further reiterated that ascertaining the date of removal during the presentation of Bill of entry cannot be practically possible, especially in the case of precious metals that were imported in bulk. Only after due arrangements had been made by the Noticee, the goods shall be removed. The Noticee had to make due arrangement to transport the imported goods to the DTA for supply to rhe respective jewelers.

19.17. The Customs Act does not prescribe that the tariff value of the rate of exchange had to be anticipated beforehand and value shall be declared which would be applicable on the date of removal, and the SCN attempting to advance such prescription shows non-application of mind. It can be said that SEZ Act shall override and prevail over the domestic laws, but the same cannot be the case for the payment of Customs duty. Without prejudice, even if the SEZ act is considered, Section 30 provides for adoption of value on the date of payment of duty, for which the assessment had to be made by the proper officer after presenting the BoE, when the date of removal is not ascertainable.

19.18. The goods are not liable to confiscation.

19.19. Penalty under Section 114A is not imposable.

19.20. Penalty under Section 114AA is not imposable.

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

20. M/s. HDFC bank Limited vide their submissions dated 27.06.2024 and 07.04.2025 interalia submitted that-

20.1. The SCN has been issued without considering the letter/reply dated 06.01.2023 of the noticee. They have relied upon the decision of Hon'ble Delhi HC in the matter of Shri Krishna Industries 2024(16) CENTAX 123 (Delhi HC). They have also relied upon the decision of Hon'ble HC of Madras in the matter of M/s. TVS SCS Global Freight Solutions Ltd (2024) 15 CENTAX 485.

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

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

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

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

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

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

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

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

20.10. Customs duty paid amount considered incorrectly for computation of differential duty liability resulting into inflated proposed differential duty demand by Rs. 13,82,69,791/-.

20.11. Quantification of duty-

20.11.1. They have provided the calculation as given below-

Request Id	Customs duty paid as per Annexure-B	Actual Customs Duty Paid	Excess Duty demanded
262000937811	4,96,33,125	7,67,54,639	2,71,21,514
262000698050	3,83,31,727	10,66,35,953	6,83,04,226
262000930623	4,96,33,125	7,67,16,870	2,70,83,745
261903691652	3,83,31,728	5,40,92,035	1,57,60,307
Total	**34,64,27,907**	**48,46,97,699**	**13,82,69,792**

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

Request Id	Customs duty payable as per Annexure-B	Actual Customs Duty Paid	Differential duty payable
262000937811	7,83,05,238	7,67,54,639	15,50,599
262000698050	10,90,72,275	10,66,35,953	24,36,322

262000930623	7,82,66,706	7,67,16,870	15,49,836
261902595533	7,11,71,074	6,55,41,723	56,29,351
261902595651	2,99,53,614	2,75,84,401	23,69,213
261902583165	2,27,33,242	2,09,35,132	17,98,110
261902583574	6,12,84,291	5,64,36,946	48,47,345
261903691652	5,51,39,592	5,40,92,035	10,47,557
Total	**50,59,26,032**	**48,46,97,699**	**2,12,28,333**

20.11.3. Without prejudice to their submission that the entire demand is not sustainable, the differential duty of Rs. 13,82,69,792/- is invalid and should be restricted to Rs. 2,12,28,333/-.

20.12. Entire demand is time barred. The demand has been raised for the period 31.07.2019 to 19.03.2020 in the month of April 2024. Hence even if the demand is upheld, entire demand is hit by limitation as the same is made after the time limit of 24 months. The SCN has proposed to invoke extended period of limitation on the grounds of suppression with an intent to evade duty.

20.13. The issue involves interpretation of statute.

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

20.15. Interest and penalty are not leviable.

21. M/s. ICBC vide their submissions dated 17.01.2025 and 10.02.2025, interalia, submitted the following:-

21.1. ICBC is one of the nominated banks by RBI to import gold/Silver as per guidelines. ICBC was authorized by RBI to import gold/silver in the year 2016.

21.2. In accordance with RBI approval, bank has setup Precious Metals desk and commenced bullion business in the year 2017.

21.3. The Customs Act/Tule shall prevail for all valuation and assessment of SEZ goods. Section 47(4) reads very specifically- “valuation and assessment of the goods cleared into DTA shall be made in accordance with Customs Act and rules made thereunder. Section 48(2) of SEZ Rules 2006 reads “valuation of the goods and services cleared into DTA shall be determined in accordance with provisions of Customs Act/rules made thereunder as applicable to goods when imported into India.

21.4. Section 30(b) speaks only for the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be on the date of removal and where such date is not ascertainable on the date of payment of duty.

21.5. Section 30(b) being silent on the parameter for determining the exchange rate and with Section 30/ Section 47(4)/Section 48(2) already prescribing reliance to Customs Act/Customs Rules read with overriding effect Section 51(1) not applicable here being SEZ act/rules silent to the matter.

21.6. Vital to record that when SEZ DTA clearance BOE had been submitted for necessary assessment/audit, all the parameters therein had been GOOD-so far as the custom tariff rate and exchange rate/tariff rate as prescribed through the CBIC-were much after the assessment done; there cannot be any concealment of facts or mis representation or malafide intention especially when the exchange/tariff rate is revised post the submission and assessment.

21.7. Date of removal of goods is not pre ascertained at the time of assessment /valuation and hence attention is as well drawn to the fact that being the date not ascertainable the date of payment of duty (being the intend to remove) may be considered in normal parlance to the act. This is not only mentioned under the Customs rules but also specified under the SEZ Act which has been relied upon by the CRA Audit Team.

21.8. The determination of duty at the time of physical removal i.e. at the time of out of Charge or physical gate clearance at KASEZ- would mean the assessment process and duty payment would need to be re-examined at the KASEZ Check post which is practically impossible and would be highly difficult.

21.9. CHA has received with Email from NSDL-SEZ stating that there is no provision in place for amending duty basis the exchange rate at the time of physical removal once the domestic

clearance bill of entry is filed/assessed. As stated and confirmed therefrom and reliance to the fact “Intend to clear goods”, the exchange rate would remain as was applicable on the date of filing of Bill of entry. In this scenario, if there is not any provision in law or the NSDL itself how can there by a differential duty for the purpose being claimed.

21.10. They have found that BOE values had been wrongly calculated apart from the Bill of Entries which donot fall under the described criteria of tariff valuation/duty rate and needs to be removed at the outset itself from the computation. Details of the same have been attached.

21.11. The demand is time barred.

21.12. The payment details attached in the file name “Annexure E-ICBC” do not match with the actual payments transacted by ICBC towards said BOEs:-

Invoice No	Ship Location	BoE No	Quantity (kg)	Customs Duty with IGST as per BoE	Payment made	Diff
MV0122253	Kandla	2010302	20010.3535	13,36,27.339	13,36,27,339	0
MV0122268	Kandla	2010301	10929.8987	7,29,88,879	7,29,88,879	0
MV0122323	Kandla	2010318	6210.8667	4,14,75,609	4,14,75,609	0
			Total paid amount	24,80,91,827	24,80,91,827	0

22. M/s. RBL Bank vide their submission dated 22.01.2025, interalia, submitted that-

22.1. They are engaged in the trading of bullion and for this purpose import bullion from overseas suppliers which are typically foreign banks (Bullion importers). These foreign banks import bullion into India and place it in a FTWZ based on the indent received from the Bullion importers. Typically, the foreign bank would partner with a logistic service provider (LSP), M/s. Sequel Logistics Pvt. Ltd in the instant case, to hold the consignment of bullion in the FTWZ unit of the Logistic service provider in designated vaults. No branding/changes are made to the bullion while in these vaults.

22.2. The noticee purchases the bullion from the foreign banks and the LSP get the same cleared into DTA from FTWZ Unit.

22.3. The LSP would file the BoE using the IEC and the name of the noticee. In FTWZ, the BoE is assessed by the Specified Officer (customs) and thereupon the Noticee (through LSP) discharges customs duty payment on the portal. Post filing of BoE for home consumption, the LSP would arrange for logistics to move bullion out of the FTWZ area to the designated place in DTA. During this process at the FTWZ gate the Specified Officer would issue an Out of charge ‘OoC’ which is required to physically take the goods out of the customs area.

22.4. While typically the date of filing BoE for home consumption and issuance of OOC is the same, there could be certain instances where the date of filing the BoE and date of OOC may be different (a gap of 1-2 days) for various reasons, for example -:

22.5. Technical glitch on the Customs portal due to which the customs duty payment is not reflected.
Customs Officer is on leave/ unavailable when the OOC request is made.
Additional time required for arranging logistics when bulk quantity is to be cleared.
Time of filing the BoE (late hours) and change in date post-midnight when OOC is obtained.

22.6. During the FY 2019-20, there were two instances of import of bullions from FTZ-Kandla, where there was gap in date of filing the BoE and date of OOC. The Noticee had discharged the Custom duty considering the Tariff rate and exchange rates as applicable on the date of filing the BOE. Relevant BOE and payment challans are enclosed as Annexure-3.

22.7. The SCN travels beyond the period of limitation and accordingly the SCN is liable to be dropped.

22.8. The Customs department has invoked extended period of limitation by alleging that the Noticee had suppressed the material facts and had mis-declared the tariff value/ exchange rate at the time of obtaining the clearance order from the proper officer. Accordingly, the Customs departments has invoked extended period of limitation as per Section 28 (4) of the Customs Act, 1962.

22.9. In this regard, the Noticee would like to submit that, goods can be cleared from the Custom

warehouse only on receipt of clearance order from the proper officer. For which the importer must file bill of entry specifying details of the goods (description/ quantity) etc. along with payment of the custom duty and IGST. Further, even during the preliminary investigation by the department, the Noticee had duly submitted all the documents along with the copies of Bill of entry and payment challans. Accordingly, in no event, the Noticee has suppressed any information/ data from the Customs Department. Further, difference in interpretation of applicable Tarif rate and exchange rate as per the SEZ Act/ Rules & Customs Act/ Rules, does not amount of mis-declaration of same.

22.10. Further, Rule 48(2) of the SEZ Rules also provides that the valuation of the goods cleared into DTA shall be determined in accordance with the provisions of Customs Act and rules made thereunder as applicable to goods when imported into India. Accordingly, provisions and procedure provided in the Customs Act is required to be followed.

22.11. Once the bill of entry is duly assessed and applicable duty is paid, there is no requirement to re-assess the consignment at SEZ gate. The proposition that the relevant date is the date of removal of goods means practically the duty payable will be re-assessed again at the time of removal of goods even after the bill of entry is already assessed by the proper officer. This is practically impossible since there is no option provided on SEZ online or ICEGATE portal for making such payments. Hence as per doctrine of impossibility "les non cogit ad impossibilia" law does not compel a man to do what he cannot possibly perform.

22.12. Accordingly, no interest and penalties are liable to be paid.

22.13. M/s. MMTC vide their submission dated 11.03.2025, interalia, submitted that-

22.13.1. M/s. Sequel Logistics Pvt. Ltd as per prevailing tariff value and exchange rate informed to MMTC the custom duty to be paid and accordingly MMTC paid the customs duty. Please find enclosed copy of BoE no. 2002860 dated 19.03.2020 and copy of Challan through which the applicable custom duty was paid for your ready reference.

22.13.2. Customs Exchange Rate, Tariff and their applicability:

22.13.3. M/s. Sequel Logistics Pvt. Ltd filed the Bill of Entry for MMTC's on 19.3.2020. The applicable exchange is as per notification No.20/2020-Customs (N.T.) dated 5.3.2020. Please find copy of the said notification enclosed for ready reference.

22.13.4. On 19.3.2020, Notification no. 27/2020-Customs (N.T.) was issued for exchange rate. The notification clearly states that the said notification will come into effect on 20/3/2020. Therefore, BoE filed on 19.03.2020 the exchange rate mentioned in the said notification is not applicable. Copy of the notification is enclosed for ready reference.

22.13.5. Notification No. 26/2020-Customs (N.T.) dated 18.3.2020 was applied for tariff value which was the applicable notification when the BoE was filed on 19.3.2020. Copy of the said notification is enclosed for ready reference.

22.13.6. As explained above MMTC's BoE was filed on 19.3.2020, appraised by customs on 19.3.2020 and concurrently audited on 19.3.2020 as per the applicable notifications on 19.3.2020. Thereafter, the customs duty was paid by MMTC on 20.3.2020.

22.13.7. Moreover, since MMTC Limited being a Nominated Agency for import of bullion was not an Authorised SEZ Unit in Kandla Special Economic Zone, hence SEZ Rules will not be applied to MMTC, which may also be noted.

22.13.8. As explained and clarified above, MMTC Limited, a Government of India Enterprise, paid the custom duty as per the applicable customs notification. In view of this, we request you to waive any recovery in this matter.

DISCUSSION AND FINDINGS-

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

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

a) Whether the duty is leviable on the date of filing of Bill of Entry or on the date of Out of Charge on clearance/removal of goods from SEZ to DTA;
b) Whether the goods are liable for confiscation;
c) Whether penalty is levaible;
d) Whether the Show cause notice is time barred;

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

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

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

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

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

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

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

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

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

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;
(b) in the case of goods cleared from a warehouse under section 68, on the date on which 3 [a bill of entry for home consumption in respect of such goods is presented under that section];
(c) in the case of any other goods, on the date of payment of duty:

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

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

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

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

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

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

(a) on the date of presentation of the bill of entry in the case of self assessment; or
(b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or
(c) in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf, and if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, at such rate, not less than ten per cent. but not exceeding thirty-six per cent. per annum, as may be fixed by the Central Government, by notification in the Official Gazette.]

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

WAREHOUSING

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

58. Licensing of private warehouses.—The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.

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

68. ***Clearance of warehoused goods for home consumption.****—*
[Any warehoused goods may be cleared from the warehouse] for home consumption, if—
(a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;
[(b) the import duty, interest, fine and penalties payable in respect of such goods have been paid; and]
(c) an order for clearance of such goods for home consumption has been made by the proper officer.

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

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

[Provided also that] the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.]

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

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

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

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

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

consumption in terms of Section 14 and Section 15 of the Customs Act, 1962.

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

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

27.1. ***2-Definitions-***

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

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

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

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

Exemptions, drawbacks and concessions-

26. (1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely: - Exemptions, drawbacks and concessions to every Developer and entrepreneur. 52 of 1962 51 of 1975 (a) exemption from any duty of customs, under the Customs Act, 1962 or the Custom Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or service provided in, a Special Economic Zone or a Unit, *to carry on the authorised operations* by the Developer or entrepreneur;

Domestic clearance by Units.

30. Subject to the conditions specified in the rules made by the Central Government in this behalf:- (a) ***any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs*** including antidumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported; and

(b) the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.

Act to have overriding effect-

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

SEZ to be treated outside the customs territory of India-

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

Rules of SEZ Rules, 2006-

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

47(4)- Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made there under.

27.2. In the context of the **SEZ Act, 2005**, the concept of a **taxable event** is somewhat different from normal import/export scenarios under the **Customs Act, 1962**, because SEZs are treated as

territory outside the customs territory for the purposes of trade, duties, and tariffs. No customs duties are levied when goods are brought into the SEZ for the purpose of authorized operations as SEZ in terms of Section 26 of the SEZ Act, 2005.

27.3. Further, as per Section 2(o) of SEZ Act, 2005 import is defined as bringing goods into SEZ from outside India. The removal/clearance of goods from SEZ to DTA is not considered as import. Therefore, the domestic clearance of goods from SEZ to DTA can not be treated at par with bringing goods from outside India into territorial waters of India as done under Customs Act, 1962.

27.4. In this regard, reliance is placed on the decision of Hon'ble High Court of Gujarat in the matter of M/s. Adani power Ltd. Vs. Union of India 2015 (330) E.L.T. 883 (Guj.)-

> **"33.** The effect under Section 26 cannot exceed the charging provision. Section 25 contains a power to issue subordinate legislation which must be within the power to levy and cannot exceed the power to levy. If the power to levy duty under Section 12 of the Customs Act is extended to provide for levy on goods removed from SEZ into DTA, it shall render Section 12 beyond legislative competence since Entry 83 of List I of Schedule VII of the Constitution of India and the powers the Parliament only to provide for levy of customs duty on goods imported from a country or territory outside India, into India. It is also equally settled law that liability and exemption are two different aspects as held by the Apex Court in *Associated Cement Company* v. *State of Bihar and Others,* 2004 (7) SCC 642. The question of exemption arises only after the liability is fixed. If there is no liability, the question of exemption does not arise at all. There is no liability of developers and units situated within SEZ under the Customs Act for removal of goods from SEZ into DTA or non-processing areas because in neither case, are these "imports" as defined in Section 2(23) of the Act read with definition of "India" as defined in Section 2(27) thereof. As there is no liability under the said Act, the question of exempting partial or conditional, electrical energy removed from SEZ into DTA or non-processing area of SEZ @ 16% *ad valorem* or any other rate does not arise at all. The impugned notification is a piece of delegated or subordinate legislation and, therefore, cannot travel beyond the provisions of the charging section.
>
> **34. Section 30 of the SEZ Act is divided into two parts. First part creates liability only on removal of goods from SEZ to DTA.** Section 30 does not provide for levy of duty on goods removed from SEZ processing area into non-processing areas. ***To the extent of Section 30 provides for levy of duty on goods removed from SEZ into DTA for the purposes for levy of duty on goods removed from SEZ into DTA for the purposes of quantification by reference, the duty is to be calculated with reference to the provisions of the said Act and CTA for determining the rate of duty classification and valuation. This is referred to as incorporation of reference but Section 30 of the SEZ Act is independent from Section 12 of the said Act. Section 30 of the SEZ Act is distinct and different from Section 12 of the said Act and the two operate in different fields. Section 30 of the SEZ Act does not refer to the word "import". Section 30 of the SEZ Act does not provide for levy of goods imported into SEZ as per the word "import" defined in SEZ Act. For goods imported into SEZ, customs duty is levied under Section 12 of the said Act, but on account of Section 26 of the SEZ Act, there is an exemption from payment of such customs duty. The provisions of Section 12 of the said Act are applicable to SEZ only insofar as and limited to import of goods into SEZ from a place outside India. The provisions of the said Act are not applicable at any stage thereafter insofar as SEZ Act is concerned.*** At the point of entry of the goods into the territorial waters of India from a place outside India where the provisions of the Customs Act are applicable insofar as SEZ is concerned, no customs duty is payable by virtue of the exemption under Section 26 thereof. The provisions of the Customs Act are thereafter exhausted and have no further role to play. **Consequently, when goods are removed from SEZ into DTA, it is the provision of Section 30 of the SEZ Act which shall prevail. This is also provided for in Section 51 of the SEZ Act which contains the overriding provision.** Section 51 of the SEZ Act provides that notwithstanding anything contained in any other law for the time being, the provisions of SEZ Act shall prevail. Therefore, the Parliament cannot make any law providing for levy of customs duty on removing the goods from SEZ into DTA, and any such law being so made shall be *ultra vires* Entry 83 of List I of Schedule VII to the Constitution of India read with Section 12 of the said Act. Thus, impugned notification cannot provide for levy on goods removed from SEZ into DTA or non-processing areas which is a field covered and occupied by Section 30 of the SEZ Act. The impugned notification is also *ultra vires* Section 30 of the SEZ Act which has an overriding effect and shall prevail.
>
> .....
>
> **43.** Section 30 of the SEZ Act, 2005 is the charging section whereby duty is imposed in respect of goods removed from SEZ to DTA. ***Section 30(a) provides that any goods removed from SEZ to DTA shall be chargeable to customs duties, etc. as leviable on such goods when imported. Section 30(b) provides that the rate of duty applicable shall be the rate on the date of removal.*** The said section, therefore, incorporates by reference rates of customs duties as applicable when goods are imported into India from outside India for goods removed from SEZ to DTA and that the levy of duty is not under the Customs Act. Section 51 of the SEZ Act gives overriding to the provisions of SEZ Act and that being so, the same will prevail over any other law including the Customs Act. Thus, when no customs duty is payable on goods imported in India, no duty would be payable on similar goods transferred from SEZ to DTA in view of Section 30 read with Section 51 of the SEZ Act.
>
> .....
>
> **48.** Thus, from the above, it can be seen that in order to give an impetus to exports, the SEZ Act was enacted. The SEZ Act envisages a deeming fiction where a SEZ area would be considered outside the customs area of the country. It is also noticed that Section 30 of the SEZ Act permits DTA clearances to a SEZ unit under certain conditions. One of the conditions being the goods removed from SEZ to DTA would be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 where applicable

as leviable on such goods when imported."

27.5. On perusal of the above provisions of Customs Act, 1962, SEZ Act, 2005 and the above mentioned judicial pronouncement, it is observed that chargeability of customs duties in SEZ Act and Customs Act operate in two different fields. Chargeability of customs duties, under Customs Act, arises on bringing goods from outside India to territorial waters of India (defined as import of goods) under the provisions of Section 12 of the Customs Act, 1962. When the goods are brought into SEZ from outside India, Section 12 of the Customs Act, 1962 kicks in, however Section 26 overrides the chargeability of Section 12 for the purpose of carrying out authorized operations by the SEZ unit in order to boost exports of India. Further, if the goods are cleared/removed from SEZ to DTA, the SEZ Act, levies duties of Customs in terms of Section 30 of the SEZ Act, 2005. The SEZ Act clearly spells out that removal of goods from SEZ to DTA is not to be considered as import as defined under Section 2(o) of the SEZ Act, 2005. Further such clearance is also not to be considered within the definition of Section 2(23) of the Customs Act, 1962 as import is bringing goods from outside India into India and SEZ, though beyond the customs territory of India, is located within the territory of India. Clearly, the intent of the legislature was clear, while enacting SEZ Act, that the goods entering into SEZ will be exempted from the duties of Customs for the purpose of boosting exports and earning foreign exchange for India, however, if the goods are cleared/removed from SEZ, the duties of Customs are levied by creating a fiction of 'deemed import'. The taxable event as per Section 30(a) of SEZ Act, 2005 is ***"removal of goods'***. Clearly, it is a settled law that first chargeability arises and then the rate and value of the goods may arise. As discussed in the aforementioned paras, all the events can happen at different points of time. The taxable event and rate and valuation of event may or may not occur at the same time. Under Customs Act, 1962 the taxable event is entering of the goods in territorial waters whereas under SEZ Act, 2005 taxable event/chargeability arises on removal of goods from SEZ to DTA. Mere filing of Bill of entry is not a taxable event. Filing of Bill of Entry for home consumption and payment of duties of customs is only a procedure to remove the goods from SEZ to DTA however if the bill of entry is filed and goods are not removed from the SEZ, the duty liability shall not arise. Unless the goods cross SEZ area, the goods are not levaible to duties of Customs.

27.6. Further, as per Section 30(b) of the SEZ Act, 2005, it is crystal clear that the rate of duty and tariff valuation applicable to goods shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.

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

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

28. I further find that the noticees have argued that Valuation and assessment of the goods is to be done as per Section 15 of the Customs Act, 1962 in terms of Rule 47(2) of the SEZ Rules, 2006. In this regard, it is pertinent to note that on removal of goods from SEZ to DTA, the SEZ Act mandates that the rate of duty and tariff valuation shall be done on the date of removal of goods. However, the valuation and assessment has to be carried out as provided under the provisions of Customs Act, 1962. The valuation and assessment given under Section 14 and 15 of the Customs Act, 1962 kicks in once the goods are removed from SEZ to DTA interms of

Rule 47(4) of the SEZ Rules, 2006, however, the point of taxation which decides the valuation and rate of duty is to be done under the provisions of Section 30(b) of SEZ Act and the Section 30(b) of SEZ Act, shall prevail over Section 14/Section 15 of the Customs Act, read with Rule 47(4), insofar to the extent the point of taxation is concerned. The remaining provisions of Section 14/15 of the Customs Act, 1962 will remain in force.

WHETHET DATE OF REMOVAL IS ASCERTAINABLE-

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

30. I find that during the test check of records for the period 2019-21, the Sr. Audit Officer (CRA-I) noticed ***short levy of Basic Customs duty and IGST due to short fixation of Tariff value.*** It was noticed that the said SEZ unit had cleared/removed "Silver Bar" (CTH 7106) to DTA applying incorrect exchange rate and tariff value applicable on the date of payment of duty. As per the audit team statement, the short levy Custom duty and IGST on the clearances made by M/s. Sequel Logistics Pvt. Ltd. was to the tune of Rs. 29,87,42,690/-.

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

32. As per Section 30(b) of the SEZ Act, 2005, the rate of duty and tariff valuation, if any, applicable to goods removed from the SEZ shall be at the **rate and tariff valuation in force as on the date of such removal**, and where such date is not ascertainable, on the date of payment of duty. In the instant case, the audit team had noticed that the said SEZ unit had cleared/removed subject goods by applying the incorrect exchange rate and tariff value as applicable on the date of payment of duty.

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

> ***Section 14 in the Customs Act, 1962 14 Valuation of goods. —***
> *(3) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf: .....*
>
> *(4) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff*

values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, ***and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.***

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

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

CONFISCATION OF GOODS-

35. Under the regime of self assessment, the rate of duty, tariff value and the correct exchange rate is required to be correctly mentioned in the Bill of entry for the purpose of Section 30(b) of SEZ Act, 2005. If there is any change in the rate of duty, tariff value and exchange rate on the date of removal of goods, the onus is on the DTA Units and or the authorized representatives who filed the Bills of Entry to pay the differential duty on the date of physical removal of goods in terms of Section 30(b) of SEZ Act, 2005. Since it is established that the noticees (DTA buyers as well as SEZ Unit) field incorrect details viz. rate of duty and tariff value along with exchange rate in the Bills of Entry, the goods are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

36. I find that the noticees have argued that since the goods are not available for confiscation, the same can not be done while referring to the decision of Shiv Kripa Ispat Pvt. Ltd Vs Commissioner of Central Excise, Nasik, 2009 (235) ELT. In this regard, it is pertinent to note that the availability of the goods is not necessary for imposing redemption fine as once the goods are liable for confiscation and the confiscation is authorized by the act, the redemption fine is imposable in terms of Section 125 of the Customs Act, 1962. In this regard, I place reliance on the decision of Hon'ble High Court of Madras in the matter of *Visteon Automotive Systems India Pvt Ltd Vs CC Chennai* dated 11.08.2017 [2018 (9) G.S.T.L. 142 (Mad.)] wherein the Hon'ble Court held that-

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

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

37. I find that SEZ unit M/s. Sequel Logstics has argued that they had no role to play in the said transactions and therefore they are not liable for confiscation of goods and consequently the penalties thereof.

38. In this regard, while going through the Para 4 of the SCN dated 29.04.2024, I find that the DTA buyers have affirmed that the amount of duty had been informed by the SEZ Unit to them and they had accordingly paid the amount. The Para 4 of the SCN is reproduced herein below:

"In response to aforesaid KASEZ letter dated 24.01.2022, the DTA buyer M/s. Industrial and Commercial Bank of China Ltd, Mumbai vide their letter dated 16.02.2022 **(RUD- 5)**, inter-alia, submitted-

- That they got the Silver Consignment cleared through M/s. Sequel Logistics Pvt. Ltd vide BE No. 2010302, 2010301 and 2010318 dated 30.10.2019 and have paid custom duty

amount of Rs. 13,36,27,339.10/-, Rs. 7,29,88,879.30/- and Rs. 4,14,75,608.66/- vide their DD No. 987023, 987022 and 987027 dated 30.10.2019, 30.10.2019 and 01.11.2019 drawn on SBI KASEZ.

- ***That the custom duty was informed by M/s. Sequel Logistics Pvt. Ltd*** as per prevailing tariff rate and exchange rate, and the custom duty was paid after due assessment of BoE by Customs and same was also concurrently audited.

In response to aforesaid KASEZ letter dated 24.01.2022, the DTA buyer M/s. MMTC Ltd. vide their letter dated 02.02.2022**(RUD-5)**, inter-alia, submitted

- That they got the Silver Consignment cleared through M/s. Sequel Logistics Pvt. Ltd vide BE No. 2002860 dated 19.03.2020 and have paid custom duty amount of Rs. 49633125/- vide their DD No. 793326 dated 20.03.2020 drawn on SBI KASEZ.
- ***That the custom duty was informed by M/s. Sequel Logistics Pvt. Ltd*** as per prevailing tariff rate and exchange rate, and the custom duty was paid after due assessment of BoE by Customs and same was also concurrently audited.

39. It is clear that the SEZ had been guiding them about the payment of duties of Customs and they are the one who were filing DTA Bills of Entry for Home consumption on behalf of the DTA buyers. The Bills of Entry were signed by the SEZ Unit only.

40. M/s. Sequel Logistics Pvt. Ltd vide email dated 21.04.2025 provided agreement entered into between SEZ unit and Diamond India Ltd. On perusal of the Agreement dated 12.08.2020 between SEZ unit and Diamond India (DTA buyer), I find that the Sequel is engaged in providing the said Supply chain and logistics services. The Clause 2 of the agreement further states that Storage, logistics & distribution of valuable and vulnerable cargo, with all the statutory documents accompanying the same. It further states that Sequel shall use multi-modal transportation and third party service provider, as it deems fit and appropriate to pick-up and deliver the valuable and vulnerable shipments. Further Clause 3(d) of the said agreement states that the responsibility of Sequel in respect of the shipment ceases immediately once the shipment is duly received at the point of destination by the recipient. Further, Clause 4 of the agreement states that Sequel shall ensure that the valuable goods stored in it vaults or transported by it are always covered by appropriate insurance cover(All risks), unless it is covered by the overseas suppliers.

41. The SEZ Act, 2005 casts a bigger responsibility on the SEZ unit to carry out authorized operations on the goods on which exemptions have been availed by them in order to export the same. However, in case they are allowed to clear goods into DTA, there is even a bigger role to pay by the SEZ unit to ensure that the correct duties of customs are paid. Since in the instant case, the SEZ unit was responsible for the transportation of goods. M/s. Sequel Logistics Private Limited is one of the key Vaulting agents in India. Sequel Logistics is a registered Vault Manager for the Domestic Gold Spot Exchange and India International Bullion Exchange (IIBX). They provide vaulting services for bullion and manage the supply chain for precious commodities. The argument of the noticee that they were providing only the warehousing services is incorrect as they are the vaulting manager and they are responsible for storage, transportation and safety of the valuable metals/bullions. Their responsibilities do not end on mere filing of Bill of entry. Their agreements with the DTA clients clearly show that they were actively involved in the import and clearance, involving safe transportation, of the goods from SEZ to DTA.

42. Clearly, their acts have rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962 which in turn has rendered them liable for penal action under Section 112(a) of the Customs Act, 1962.

43. However, with regard to proposal of Penalty under Section 114A of the Customs Act, 1962, I find that penalty under Section 114A is imposed on the persons who is liable to pay duty. In the instant case, DTA buyers are liable to pay differential duties of customs, therefore, SEZ unit is not liable to penal action under Section 114A of the Customs Act, 1962.

44. Further, with regard to penal provisions under Section 114AA of the Customs Act, 1962, I find that since the SEZ unit was dealing in silver bars/ingots whose rate of duty and tariff values are very volatile and changes frequently and further being aware of the fact that Section 30(b) of the SEZ Act, 2005, the duty is leviable on removal of goods, they filed incorrect details in the Bills of Entry and presented the same before the officers of Customs, therefore, they are liable to penal action under Section 114AA of the Customs Act, 1962.

PENALTIES UPON DTA BUYERS- M/s. HDFC BANK Limited, M/s. RBL bank Limited, M/s. Diamond India Ltd., M/s. Industrial and Commercial Bank of China Ltd., M/s. MMTC Limited-

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

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

Whether extended period is invocable-

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

QUANTIFICATION OF DUTY-

48. The demand of duty in respect of **M/s. HDFC Bank Limited**, as per Annexure-B to the Show cause notice is Rs. 15,94,98,123/-. M/s. HDFC Bank Limited in their submission has argued that the CRA Audit has taken the wrong value of the amount of duties paid by them. The details of excess amount of duty demanded by them is as given below:-

Request Id	Customs duty paid as per Annexure-B	Actual Customs Duty Paid	Excess Duty demanded
262000937811	4,96,33,125	7,67,54,639	2,71,21,514
262000698050	3,83,31,727	10,66,35,953	6,83,04,226
262000930623	4,96,33,125	7,67,16,870	2,70,83,745
261903691652	3,83,31,728	5,40,92,035	1,57,60,307
Total	**34,64,27,907**	**48,46,97,699**	**13,82,69,792**

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

Request Id	Customs duty payable as per Annexure-B	Actual Customs Duty Paid	Differential duty payable
262000937811	7,83,05,238	7,67,54,639	15,50,599
262000698050	10,90,72,275	10,66,35,953	24,36,322
262000930623	7,82,66,706	7,67,16,870	15,49,836
261902595533	7,11,71,074	6,55,41,723	56,29,351
261902595651	2,99,53,614	2,75,84,401	23,69,213
261902583165	2,27,33,242	2,09,35,132	17,98,110
261902583574	6,12,84,291	5,64,36,946	48,47,345
261903691652	5,51,39,592	5,40,92,035	10,47,557
Total	**50,59,26,032**	**48,46,97,699**	**2,12,28,333**

In view of the same, this office vide letter dated 21.04.2025 requested the office of DC, Customs, KASEZ to verify the details of payment made by them and provide the revised amount of duties of Customs which is required to be recovered under the provisions of Section 28(4) of the Customs Act, 1962.

In response to the same, the Specified officer, Customs, KASEZ vide letter dated 25.04.2025 informed that the calculation given by HDFC Bank is correct and the same has been verified from the SBI, KASEZ, Gandhidham. The Specified officer, Customs, Kasez further informed that some mistakes occurred in the statement prepared by CRA office due to drag down issue in excel sheet resulting in nearly same amount shown as duty payment against many BoEs.

Since the excess amount (amount paid – amount demanded in show cause notice) has been paid at the time of filing of bill of entry and before the Audit observations were made, the excess amount of differential duty is required to be dropped. In view of the same, I hold that M/s. HDFC Bank Limited is liable to pay duties of Customs amounting to **Rs. 2,12,28,333/-** under the provisions of Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962.

49. The demand of duty in respect of **M/s. ICBC Limited**, as per Annexure-E to the Show cause notice is Rs. 13,79,01,230/-. M/s. ICBC Limited in their submission has argued that the Annexure-E is inconsistent with the payments they made. They provided the details as given below:-

Invoice No	Ship Location	BoE No	Quantity (kg)	Customs Duty with IGST as per BoE	Payment made
MV0122253	Kandla	2010302	20010.35	13,36,27.339	13,36,27,339
MV0122268	Kandla	2010301	10929.9	7,29,88,879	7,29,88,879
MV0122323	Kandla	2010318	6210.867	4,14,75,609	4,14,75,609
			Total paid amount	24,80,91,827	24,80,91,827

I find that as per the Annexure-E, the total duty payable was Rs. 25,28,96,422/- and they paid Rs. 11,49,95,192/-. However, they claimed to have paid Rs. 24,80,91,827/- at the relevant time. Therefore, this office requested the office of DCC, KASEZ vide this office letter dated 21.04.2025 to verify the claim of M/s. ICBC and provide a report on the same. In response to the same, the Specified officer, Customs, KASEZ vide letter dated 25.04.2025 informed that calculation given by M/s. ICBC is correct and the same has been verified from the SBI, KASEZ, Gandhidham. The Specified officer, Customs, Kasez further informed that some mistakes occurred in the statement prepared by CRA office due to drag down issue in excel sheet resulting in nearly same amount shown as duty payment against many BoEs.

Since the excess amount (amount paid – amount demanded in show cause notice) has been paid at the time of filing of bill of entry and before the Audit observations were made, the excess amount of differential duty is required to be dropped. In view of the same, I hold that M/s. ICBC Limited is liable to pay duties of Customs amounting to Rs. 48,04,595/- (25,28,96,422- 24,80,91,827) under the provisions of Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962.

50. I find that in respect of one Bill of entry with request ID: 261903711381 pertaining to DTA buyer M/s. Diamond India Ltd., the Exchange rate had been wrongly taken as Rs. 72.25 per USD, whereas on the date of clearance of goods, as per Notification No. 85/2019-Cus(NT) dt.21.11.2019, the applicable exchange rate was Rs. 72.75/- per USD. Accordingly, the Assessable value, Duty leviable and differential duty was re-calculated and the details are as under:

Sr No.	Request ID and DTA buyer	Calculations as per audit team (in Rs.)				Re-calculated values (in Rs.)			
		Assessable Value	Duty leviable	Duty paid	Diff. duty	Assessable Value	Duty leviable	Duty paid	Diff. duty
1	261903711381; M/s. Diamond India Ltd.	46,29,25,779/-	5,96,01,694/-	5,93,95,460/-	**2,06,234/-**	46,61,29,417/-	6,00,14,162/-	5,93,95,459/-	**6,18,703/-**

Therefore, the DTA buyer i.e. M/s. Diamond India Limited is liable to pay duties of Customs amounting to Rs. 6,18,703/- under the provisions of Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962.

51. Further, M/s. MMTC Limited and M/s. RBL Bank are also liable for payment of duties of Customs amounting to Rs. 10,02,690/- and Rs. 1,34,414/- respectively under the provisions of Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962.

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

52.1. **ORDER IN RESPECT OF M/s. SEQUEL LOGISTICS PVT. LTD (IEC-0811015424/AAHCS9813P) -**

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

(ii) I order to confiscate the goods mentioned in Annexure A to the notice, totally valued at Rs. 7,43,63,33,374/- (Rupees Seventy hundred and forty three crore sixty three lakh thirty three thousand three hundred and seventy four only) under Section 111(m) of the Customs Act, 1962, though the same are not physically available.
However, I don’t impose any redemption fine on the SEZ unit as DTA buyers being the owner of goods shall be liable for redemption fine.

(iii) I impose penalty amounting to Rs. 25,00,000/-(Rupees Twenty Five lakhs only) under section 112(a) of the Customs Act, 1962.

(iv) I don’t impose penalty under 114A of the Customs Act, 1962 for the reasons discussed above.

(v) I impose penalty amounting to Rs. 25,00,000/-(Rupees Twenty Five lakhs only) under section 114AA of the Customs Act, 1962.

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

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

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

(ii) I determine and confirm the differential Custom duty & IGST totally amounting to **Rs. 2,12,28,333/-** /- (Rupees Two Crore Twelve lakhs Twenty Eight Thousands Three Hundred and Thirty Three only) on the goods detailed in Annexure-B to the notice and order to recover the same from them under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid.

I drop the remaining amount of Rs. 13,82,69,790/- for the reasons discussed above.

(iii) I order to confiscate the goods mentioned in Annexure-B to the notice, totally valued at Rs. 363,00,73,262/- (Rupees three hundred and sixty three crore seventy three thousand two hundred and sixty two only) under Section 111(m) of the Customs Act, 1962, though the same are not physically available.

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

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

(v) I don't impose penalty under section 112(a) of the Customs Act, 1962.

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

52.3 **ORDER IN RESPECT OF DTA Buyer, namely, M/s. RBL Bank Ltd. (IEC-3114012302/AABCT3335M)**

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

(ii) I determine and confirm the differential Custom duty & IGST totally amounting to **Rs. 1,34,414**/- (Rupees one lakh thirty four thousand four hundred and fourteen only) on the goods detailed in Annexure-C to the notice and order to recover the same from them under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid.

(iii) I order to confiscate the goods mentioned in Annexure-C to the notice, totally valued at Rs.139,16,33,819/- (Rupees one hundred and thirty nine crore sixteen lakh thirty three thousand eight hundred and nineteen only) under Section 111(m) of the Customs Act, 1962, though the same are not physically available.

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

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

(v) I don't impose penalty under section 112(a) of the Customs Act, 1962.

(vi) I impose penalty amounting to Rs. 60,000/-(Rupees Sixty Thousand only) under section 114AA of the Customs Act, 1962.

52.4 **ORDER IN RESPECT OF DTA BUYER NAMELY, M/S. DIAMOND INDIA LTD. (IEC-0306062984/AABCD8377R)**

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

(ii) I determine and confirm the differential Custom duty & IGST totally amounting to **Rs.**

6,18,703/- (Rupees six lakh eighteen thousand seven hundred and three only) on the goods detailed in Annexure-D to the notice and order to recover from them under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid.

(iii) I order to confiscate the goods mentioned in Annexure-D to the notice, totally valued at Rs.46,61,29,417/- (Rupees Forty Six crore sixty one lakh twenty nine thousand four hundred and seventeen only) under Section 111(m) of the Customs Act, 1962, though the same are not physically available.

However, I impose redemption fine of Rs. 75,000/- (Rupees Seventy Five Thousand only) under Section 125 of the Customs Act, 1962.

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

(v) I don't impose penalty under section 112(a) of the Customs Act, 1962.

(vi) I impose penalty amounting to Rs. 2,25,000/-(Rupees Two lakhs Twenty Five Thousands only) under section 114AA of the Customs Act, 1962.

52.5 **ORDER IN RESPECT OF DTA BUYER NAMELY, M/S. INDUSTRIAL & COMMERCIAL BANK OF CHINA LTD. (IEC-0313007586/AACCI6192G)-**

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

(ii) I determine and confirm the differential Custom duty & IGST totally amounting to **Rs. 48,04,595/-** (Rupees Forty Eight lakhs Four Thousand Five Hundred and Ninety five only) on the goods detailed in Annexure-E to the notice and order to recover the same from them under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid.

I drop the remaining amount of Rs. 13,30,96,635/- for the reasons discussed above.

(iii) I order to confiscate the goods mentioned in Annexure-E to the notice, totally valued at Rs. 155,52,08,993/- (Rupees One hundred and fifty five crore fifty two lakh eight thousand nine hundred and ninety three only) under Section 111(m) of the Customs Act, 1962, though the same are not physically available.

However, I impose redemption fine of Rs.5,75,000/-(Rupees Five Lakhs Seventy Five Thousand only) under Section 125 of the Customs Act, 1962.

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

(v) I don't impose penalty under section 112(a) of the Customs Act, 1962.

(vi) I impose penalty amounting to Rs. 17,25,000/- (Rupees Seventeen lakhs Twenty Five thousand only) under section 114AA of the Customs Act, 1962.

52.6 **ORDER IN RESPECT OF DTA BUYER, NAMELY, M/S. MMTC LIMITED (IEC-0591000946/AAACM1433E)**

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

(ii) I determine and confirm the differential Custom duty & IGST totally amounting to **Rs. 10,02,690/-** (Rupees Ten lakh two thousand six hundred and ninety only) on the goods detailed in Annexure-F to the notice and order to recover the same from them under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid.

(iii) I order to confiscate the goods mentioned in Annexure-F to the notice, totally valued at Rs. 39,32,87,883/- (Rupees thirty nine crore thirty two lakh eighty seven thousand eight hundred and eighty three only) under Section 111(m) of the Customs Act, 1962, though the same are not physically available.

However, I impose redemption fine of Rs. 1,25,000/- (Rupees One Lakh Twenty Five Thousand only) under Section 125 of the Customs Act, 1962.

(iv) I impose penalty equal to the duty plus interest confirmed above at (ii) under 114A of the

Customs Act, 1962.

(v) I don't impose penalty under section 112(a) of the Customs Act, 1962.

(vi) I impose penalty amounting to Rs. 3,75,000/- (Rupees Three Lakhs Seventy Five Thousand only) under section 114AA of the Customs Act, 1962.

53. This order is issued without prejudice to any other action that can be taken against the SEZ Unit or any other person under this Act or any other law in force.

(M. Ram Mohan Rao)
Commissioner
Custom House kandla

Signed by
M Ram Mohan Rao
Date: 26-04-2025 23:49:52

F.No. GEN/ADJ/COMM/174/2024-Adjn-O/o Commr-Cus-Kandla
DIN- 20250471ML00002782EB

To,

i. M/s. Sequel Logistics Pvt. Ltd. (IEC-0811015424/AAHCS9813P), Sub-Plot No. 07 of Plot No. 501, Free Trade Warehousing Zone, New Area, Kandla Special Economic Zone, Gandhidham, Kutch.
ii. M/s. HDFC Bank Limited (IEC-0301022666/AAACH2702H), 2nd floor, Tej Enclave, ABV – Emerald Honda, Nr Gandhigram Railway Station, Off Ashram Road, Ahmedabad, Gujarat-380009
iii. M/s. RBL Bank Ltd. (IEC-3114012302/AABCT3335M), 1st floor, Viva Complex, Opp. Parimal garden, Nr. JMC House, Ellisbridge, Ahmedabad, Gujarat – 380006
iv. M/s. Diamond India Ltd. Ahmedabad (IEC-0306062984/AABCD8377R), 6/1950 Office No. 105-106, Simandhar, Diamond Building, Mahidhapura, Surat, Gujarat – 370201
v. M/s. Industrial & Commercial Bank of China Ltd.(IEC-0313007586/AACCI6192G), Mumbai (Andheri East), Ground Floor, Brink India Pvt. Ltd., 12 Karmayog, Mumbai Suburban, Maharashtra – 400053
vi. M/s. Industrial & Commercial Bank of China Ltd.(IEC-0313007586/AACCI6192G)- Ahmedabad C/o – Brinks India Pvt. Ltd., Plot No. 28/15/1, Opp. Nobatsingh Chembers, Nr. Dudheswar Water Tank, Tavdipura, Gujarat –380004
vii. M/s. MMTC Limited – 2 (IEC-0591000946/AAACM1433E), Nagindas Chambers, Ashram Road, Ahmedabad, Gujarat – 380014

Copy to:-

i. The Chief Commissioner, Customs Zone, Gujarat, Ahmedabad for the purpose of Review.
ii. The Development Commissioner, Kandla Special Economic Zone, Gandhidham, Kutch.
iii. The Deputy/ Assistant Commissioner of Customs, EDI, Custom House, Kandla for uploading on the website of Kandla Customs.
iv. The Deputy Commissioner of Customs, Kandla Special Economic Zone, Gandhidham, Kutch.
v. Guard File.