

Outward No 9941

F.No. GEN/ADJ/COMM/203/2020-Adjn-Pr Commr-Cus-Mundra



प्रधान सीमा शुल्क आयुक्त का कार्यालय, मुंद्रा आयुक्तालय
 सीमा शुल्क हाउस, अदानी पोर्ट और एस.ई.जे.ड., मुंद्रा) कच्छ(,
**OFFICE OF THE PRINCIPAL COMMISSIONER OF
 CUSTOMS, CUSTOM HOUSE: MUNDRA,
 KUTCHMUNDRA PORT & SPL ECONOMIC ZONE,
 MUNDRA-370421**

Phone No.02838-271165/66/67/68 FAX.No.02838-
 271169/62



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| A. File No. | : | GEN/ADJ/COMM/203/2020-Adjn-O/o Pr Commr-Cus-Mundra. |
| B. Order-in-Original No. | : | MUN-CUSTM-000-COM-42-24-25 |
| C. Passed by | : | K. Engineer, Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra. |
| D. Date of order and Date of issue | : | 07.02.2025. 07.02.2025. |
| E. SCN No. & Date | : | SCN F. No. DRI/AZU/C1/INQ-60/(INT-11/2014)/2014 dated 26.10.2016 |
| F. Noticee(s) / Party / Importer | : | M/s. Asian Food Industries, N H.8, opposite Escorts Tractors, At PO Dabhan, Tal Nadiad, Dist Kheda-387320 |
| G. DIN | : | 20250271MO0000000CCE2 |

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 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:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.

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

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

4. उक्त अपील के साथ -/ 1000रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

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

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

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

Brief fact of the Case

Intelligence gathered by the Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad indicated that certain importers of sesame seeds were importing sesame seeds under Advance Authorization / DFIA schemes and diverting the same in the local market. Based on the said intelligence a search was carried out on 05.09.2014 at M/s. Asian Food Industries, N.H.8, opposite Escorts Tractors, at PO Dabhan, Tal Nadiad, Dist Kheda (hereinafter referred to as "M/s. Asian" for the sake of brevity)

2. During the course of the search carried out at the premise of M/s. Asian Food Industries, under Panchnama dated 05.09.2014, the officers recovered some documents relevant to the inquiry. The officers found that there are two firms which are operating in the said premise i.e. M/s. Asian and M/s Apollo Sesame Industries. The partners of the said two firms are also the same. The officers also found a total stock of natural/hulled sesame/wastage, Work in Progress totally weighing 1965 MTS at the said premises as detailed in Annexure to the panchnama dated 05.09.2014. The Sesame seeds were being processed on job work basis at M/s Apollo Sesame Industries for which M/s Asian paid job charges. They had not endorsed the name of the Supporting manufacturer in the Advance Authorizations issued to them by DGFT. Shri Ajay informed that the process loss during the manufacture of Hulled sesame seeds was around 15% to 20% depending on the quality of the raw sesame seed. Shri Ajay also informed that since the SION norms permitted only 1% wastage whereas the actual wastage was more, the export obligation in respect of the excess wastage was fulfilled by locally procured goods.

3. Statement of Shri Ajay Tahleyani, Partner of M/s. Asian Food Industries, Nadiad was recorded under Section 108 of the Customs Act, 1962 on 20.10.2016 (RUD-2) wherein he interalia stated that:-

3.1 He agreed with the panchnama dated 5.9.2014 drawn at their factory premises: On being asked about the details of exports and imports of sesame seeds made under Advance authorizations which were not closed by DGFT, he provided the details of Imports and exports of sesame seeds made under 07 (seven) Advance Authorization which are as under:

| Sr. No | Advance Authorization No. & Dt. | Qty. Imported in Mts. | Qty. Imported in Mts. | Shortage in Export Obligation (Mts) | Corresponding Qty of raw Sesame Seeds (Mts) |
|--------|---------------------------------|-----------------------|-----------------------|-------------------------------------|---|
| 1 | 3410027264 dated 17.06.2010 | 723.270 | 595.46 | 120.649 | 121.855 |
| 2 | 3410034601 dated 10.07.2012 | 561.550 | 778.640 | 222.649 (Excess) | 224.876 (Excess) |
| 3 | 3410035304 dated 05.10.2012 | 496.480 | 472.575 | 18.989 | 19.179 |
| 4 | 3410035589 dated 03.12.2012 | 627.091 | 539.385 | 81.497 | 82.312 |
| 5 | 3410035659 dated 03.12.2012 | 479.950 | 446.160 | 29.038 | 29.328 |
| 6 | 3410036415 dated 14.03.2013 | 2684.580 | 2856.65 | 198.65 (Excess) | 200.636 (Excess) |

| | | | | | |
|---|-----------------------------|----------|----------|-----------------------------|-----------------------------|
| 7 | 3410038630 dated 05.12.2013 | 555.691 | 409.125 | 141.064 | 142.474 |
| | Total | 6128.612 | 6097.995 | 391.237+421.299 (Excess) | 395.148+425.512 (Excess) |

3.2 He also stated that they have submitted two applications to DGFT for clubbing of Advance authorizations at Serial no 1 to 5 and also clubbing of Advance Authorization at Serial no 6 & 7 of the above table. A query had been raised in the first application and the second application had been rejected by DGFT Vadodara and in that case they had approached the PRC (Policy Review Committee) for resolving the issue.

3.3 During the course of manufacture of Hulled sesame seeds there is a wastage of 15% to 20%, and the SION Norms fixed by DGFT provides 1% as wastage. So in order to fulfil the export obligation in respect of the raw sesame seeds imported by them they have to export the hulled sesame seeds, purchased locally. There was no stock of imported raw sesame seeds in their factory premise as on 20.10.2016. The export obligation period in respect of all the said 07 Advance Authorizations was over as on 20.10.2016. The details of the export obligation period in respect of the said Authorizations were mentioned in their letter dated 02.09.2016 written to DRI.

4. EVIDENCES AVAILABLE:

4.1 From the facts discussed in the foregoing paras, documentary evidences gathered during the course of investigation, panchnama dated 05.09.2014, statements of Shri Ajay dated 20.10.2016 it appeared that:

4.2 Shri Ajay Tahelyani, Partner of M/s. Asian Food Industries, holder of IEC No. 3499001942, had obtained 11 (Eleven) Advance Authorizations from DGFT, Vadodara for importing "Natural Sesame Seeds" and exporting "Hulled Sesame Seeds" in the name of M/s. Asian Food Industries, on actual user condition basis within a period of 18 months from the issue of the Advance Authorization. Out of the above 11 Advance Authorizations, EODC has been issued by DGFT to M/s Asian Foods Industries for 04 Advance Authorizations. In case of two Advance Authorizations, the export obligation had been completed by them. In the remaining five Advance Authorizations, extension for fulfilment of export obligation was sought and last date for fulfilling the export obligation was extended by DGFT. The details of the same as per M/s Asian Foods letter dated 02.09.2016 are as under:

| Sr. No | Advance Authorization No. & Dt. | Last Date for fulfilment of export Obligation |
|--------|---------------------------------|---|
| 01 | 3410027264 dated 17.06.2010 | 16.06.2013 |
| 02 | 3410035304 dated 05.10.2012 | 04.04.2014 |
| 03 | 3410035589 dated 03.12.2012 | 03.06.2014 |
| 04 | 3410035659 dated 03.12.2012 | 13.06.2014 |
| 05 | 3410038630 dated 05.12.2013 | 04.06.2015 |

4.3 On scrutiny of the documents recovered during the course of the panchnama dated 5.9.2014 and those provided by Shri Ajay in his statement dated 20.10.2016 and comparing the same with the bills of entry/shipping bills for export under various Advance Authorizations, it was found that as on 20.10.2016, the last date for fulfilment of export obligation as granted by DGFT, in respect of all the aforesaid Advance Authorizations were over. Further it was also found that in respect of the aforesaid five advance authorizations, the export obligation in respect of the Imported raw sesame seeds was still pending and that there was no stock of imported natural or hulled sesame seeds available with them as on 20.10.2016 as stated by Shri Ajay in his statement dated 20.10.2016. The details of the quantity of raw sesame seeds in respect of which export obligation has not been fulfilled is as under:

| Sr. No | Advance Authorization No. & Dt. | Import corresponding to export obligation pending in respect of the Authorizations (Mts.) | Quantity |
|--------------|---------------------------------|---|----------|
| 01 | 3410027264 dated 17.06.2010 | 121.855 | |
| 02 | 3410035304 dated 05.10.2012 | 19.179 | |
| 03 | 3410035589 dated 03.12.2012 | 82.312 | |
| 04 | 3410035659 dated 03.12.2012 | 29.328 | |
| 05 | 3410038630 dated 05.12.2013 | 142.474 | |
| TOTAL | | 395.148 | |

4.4 As stated by Shri Ajay Tahelyani, the Bills of Entry vide which sesame seeds were imported, in respect of which export obligation was not fulfilled, were identified as the last Bills of Entry/last consignment/s Imported by them in the respective Advance Authorization and the same are tabulated as below:

| Sr. No | Advance Authorization No. & Dt. | Qty. (Mts) of Imported Natural Sesame Seeds in respect of which export obligation not fulfilled even after the expiry of the specified period | Bill of Entry No/Date | Qty. Imported and EO not fulfilled (Mts) |
|--------------|---------------------------------|---|------------------------|--|
| 01 | 3410027264 dated 17.06.2010 | 121.855 | 8109150 dt. 03.10.2012 | 61.77 |
| | | | 8107255 dt. 03.10.2012 | 60.085 |
| 02 | 3410035304 dated 05.10.2012 | 19.179 | 2232046 dt 25.05.2013 | 19.179 |
| 03 | 3410035589 dated 03.12.2012 | 82.312 | 9359496 dt 19.02.2013 | 19.091 |
| | | | 9248900 dt. 07.02.2013 | 63.221 |
| 04 | 3410035659 dated 03.12.2012 | 29.328 | 9548372 dt 12.03.2013 | 29.328 |
| 05 | 3410038630 dated 05.12.2013 | 142.474 | 6571993 dt 27.08.2014 | 142.474 |
| Total | | | | 395.148 |

5. All the aforesaid Five Advance Authorizations issued by DGFT to M/s. Asian, were Advance Authorizations with actual user conditions and goods imported thereunder were not permitted to be transferred or sold and were governed by Notification No. 96/2009-Cus dated 11.9.2009 read with the Foreign Trade Policy.

5.1 From the facts narrated in the foregoing paras and the material evidences available on record it appears that M/s Asian had Imported 395.148 Mts. of duty free Natural sesame seeds under various Advance Authorizations which were imported vide various Bills of Entry, totally valued at **Rs. 3,49,26,361/-, (Rupees Three Crore Forty-Nine Lakh Twenty-Six Thousand Three Hundred and Sixty One Only)** but had not fulfilled the export obligation within the stipulated time of 18 months or such extension granted to them by DGFT and no imported natural sesame seeds/ Hulled sesame seeds were available with them as on 20.10.2016). Customs duty foregone on the said goods amounted to **Rs 1,26,20,990/- (Rupees One Crore Twenty-Six Lakh Twenty Thousand Nine Hundred and Ninety Only)** as detailed in Annexure "A" to the Show Cause Notice.

6. From the facts discussed in forgoing paras and material evidences available on records, it appeared that M/s. Asian has not fulfilled the export obligation in respect of 395.148 Mts. of Imported duty free Natural sesame seeds, valued at **Rs. 3,49,26,361/-, (Rupees Three Crores Forty Nine Lacs Twenty Six Thousand Three Hundred and Sixty One Only)**. Thus, M/s. Asian seemed to have contravened the provisions of Chapter 4 of the Foreign Trade Policy 2009-14/para 4.22 of Handbook of Procedures as amended, the conditions of the bond executed by them for availing Duty Exemption under Advance Authorization Scheme at the time of registration of Advance Authorizations before the designated authority of Customs read with Notification No. 96/2009-Cus dated 11.09.2009 in as much as they did not have any stock of natural or Hulled sesame seeds with them as on 20.10.2016 and have not fulfilled the export obligation in respect of the aforesaid Imported goods. Para 1 (vii) of Notification No. 96/2009-Cus dated 11.09.2009 states "**that the export obligation as specified in the said authorization (both in value and quantity terms) is discharged within the period specified in the said authorization or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorization and in respect of which facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed**" and the said condition of the Notification was not fulfilled by them in as much as M/s. Asian Food Industries did not have the required stock of imported sesame seeds nor had they fulfilled the export obligation within the stipulated time period granted by DGFT.

6.1. While probing into the compliance of conditions imposed by DGFT (Ministry of Commerce) for duty free import of inputs, it was noticed that M/s. Asian had procured duty free material under the Advance Authorization, but had failed to fulfil

the export obligation as required under the Advance Authorization scheme thereby violating the conditions of the Foreign Trade Policy-2009-14 as amended, and not fulfilling the requisite conditions for import of duty free inputs as envisaged under Advance Authorization Scheme read with Notification No. 96/2009-Cus dated 11.9.2009. M/s. Asian have failed to fulfil the export obligation within the stipulated time period and did not have the imported goods as on 20.10.2016 as discussed hereinabove thus ruling out any possibility of further export to fulfil export obligation. Even the Clubbing of advance Authorizations has not been done by DGFT in one case and in another case the same has been rejected. Therefore M/s. Asian have availed the benefit of exemption of duty on the imported raw sesame seeds (as detailed in Annexure A" to the SCN) without fulfilling the conditions of exemption Notification, whose benefit they have availed, thus rendering the Imported Natural Sesame seeds liable to confiscation under Section 111(o) of the Customs, Act, 1962 and rendering themselves liable for Penal action under Section 112(a)/114A of the Customs Act 1962.

6.2. M/s. Asian by adopting the above modus had violated the statutory conditions as laid down for Advance Authorizations and Notification No. 96/2009-Cus dated 11.09.2009 and evaded Customs duty amounting to Rs. 1,26,20,990/- (Rupees one Crores Twenty Six Lacs Twenty Thousand Nine Hundred and Ninety Only) on the said goods totally weighing 395.148 Mts. valued at Rs. 3,49,26,361/-, (Rupees Three Crores Forty Nine Lacs Twenty Six Thousand Three Hundred and Sixty One Only) as detailed in Annexure "A" to the SCN. Accordingly Customs duty amounting to Rs. 1,26,20,990/- (Rupees one Crores Twenty Six Lacs Twenty Thousand Nine Hundred and Ninety Only) leviable on the aforesaid imported Natural sesame seeds was required to be recovered from M/s. Asian Food Industries, Nadiad under Section 28(4) of the Customs Act, 1962 read with Notification No. 96/2009-Cus dated 11.09.2009 along with Interest at applicable rate under Section 28 AA of the Customs Act, 1962. Bond and Bank guarantee submitted at the time of registration of Licenses with Customs, by them, had also to be enforced and encashed towards their liability.

7. In view of the above, M/s. Asian Food Industries, NH 8. Opposite Escorts Tractors, at PO Dabhan, Nadiad were called upon to Show Cause to the Principal Commissioner of Customs, Custom House, Mundra, as to why:-

i) The imported sesame seeds in respect of which export obligation was not fulfilled i.e. 395.148 Mts., totally valued at **Rs. 3,49,26,361/-**, (Rupees Three Crores Forty Nine Lacs Twenty Six Thousand Three Hundred and Sixty One Only) imported vide various Bills of Entry, under various Advance Authorizations, imported through MP & SEZ Port, Mundra as detailed in the Annexure-A to SCN should not be held liable for confiscation under Section 111(0) of Customs Act, 1962.

ii. Customs duty on the imported goods mentioned at (1) above amounting to Rs 1,26,20,990/- (Rupees one Crores Twenty Six Lacs Twenty Thousand Nine Hundred and Ninety Only), as detailed in the Annexure-A to SCN evaded by them on the goods imported duty free under Advance Authorization scheme and export obligation in respect of which was not fulfilled, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, read with Notification no 96/2009-Cus dated 11.9.2009.

iii. Interest should not be recovered from them on the said evaded Customs duty appearing at (2) above under Section 28AA of the Customs Act, 1962 read with Notification No. 96/2009-Cus dated 11.9.2009;

iv. The Bond furnished by them against the consignments imported duty free under Advance Authorization in terms of Notification No. 96/2009-Cus dated 11.9.2009, should not be enforced and security if any furnished with bond should not be appropriated towards their duty liabilities, interest thereon, fine and penalties.

v. Penalty should not be imposed on them under Section 112(a) / 114A of the Customs Act, 1962.

8. Defence Submission

8.1 M/s Asian Food Industries vide letter dated 04.08.2023 submitted their final submission, wherein they stated that they had obtained Advance Authorizations from their jurisdictional RA of DGFT, Vadodara as under and for which they could not obtain & submit their EODC on time:

| Sr. No | Advance Authorization No. | Date |
|--------|---------------------------|------------|
| 01 | 3410027264 | 17.06.2010 |
| 02 | 3410035304 | 05.10.2012 |
| 03 | 3410035589 | 03.12.2012 |
| 04 | 3410035659 | 03.12.2012 |
| 05 | 3410038630 | 05.12.2013 |

8.2 As per the condition of the said authorizations they, the holder of the said authorizations, were supposed to submit the evidence of fulfilment of Export Obligation imposed on them together with the documents prescribed under Para 4.25 of Foreign Trade Policy 2009-14 as amended, within two months from the date of expiry of export obligation in the Office of the Jt. DGFT, Vadodara. However, they had submitted the EODC application as under:

| Sr. No | Advance Authorization No. & Dt. | Last Date for submission of EODC | Date of submission of EODC |
|--------|---------------------------------|----------------------------------|----------------------------|
| 01 | 3410027264 dated 17.06.2010 | 16.06.2013 | 14.07.2014 |
| 02 | 3410035304 dated 05.10.2012 | 04.04.2014 | 14.07.2014 |
| 03 | 3410035589 dated 03.12.2012 | 03.06.2014 | 14.07.2014 |

| | | | |
|----|-----------------------------|------------|------------|
| 04 | 3410035659 dated 03.12.2012 | 13.06.2014 | 25.05.2015 |
| 05 | 3410038630 dated 05.12.2013 | 04.06.2015 | 29.12.2016 |

They were constantly following up with their Regional Office of the Jt. DGFT, Vadodara for EODC but due to some technical reasons EODC against those Advance Authorisations got delayed. They had also submitted detailed reply to this office vide their letter dated 28.09.2017.

8.3 On receipt of the EODC Letter from the Regional Office of the Jt. DGFT, Vadodara, they had submitted all the documents to the Office of the Dy. Commissioner of Customs (EODC), Mundra as under:

| Sr. No | Advance Authorization No. | Date of submission |
|--------|-----------------------------|--------------------|
| 01 | 3410027264 dated 17.06.2010 | 01.11.2018 |
| 02 | 3410035304 dated 05.10.2012 | 24.10.2020 |
| 03 | 3410035589 dated 03.12.2012 | 31.08.2020 |
| 04 | 3410035659 dated 03.12.2012 | 24.10.2020 |
| 05 | 3410038630 dated 05.12.2013 | 24.10.2020 |

8.4 Advance Authorisation No. 3410027264 dated 17.06.2010: -

As per the allegations under Para 3.1 of the impugned Show Cause Notice there is excess import of Raw Sesame Seeds against Advance Authorisation No. 3410027264 dated 17.06.2010.

| Advance Authorisation No. and Date | Qty Imported in MTs (Natural Sesame Seed) | Qty Exported (Hulled Sesame Seed) | Shortage in E.O. (MTs) | Corresponding Qty of Raw Sesame Seeds (MTs) |
|------------------------------------|---|-----------------------------------|------------------------|---|
| 3410027264 dated 17.06.2010 | 723.270 | 595.460 | 120.649 | 121.855 |

In this connection they submit that initially they had submitted their four advance authorisations for EODC/Closure after Clubbing. However, their application was rejected by their RA on some technical grounds vide DGFT letter dated 21.10.2014.

However, again they had submitted their Application for EODC after clubbing 5 Advance Authorisations on 28.05.2015 to our DGFT, RA, Vadodara.

In the meantime, a letter was issued by the Head Quarter of DGFT, New Delhi, instructing all the Regional Authorities to keep all the requests for Clubbing in abeyance till further instructions are issued from Head Quarter of DGFT.

On 11.08.2016, they received a Deficiency Letter from the office of the RA, DGFT, Vadodara against the aforesaid Advance Authorisation.

Finally they received a Deficiency Letter dated 21.10.2016 from our RA, DGFT informing their request for clubbing cannot be considered in terms of Para 4.38 (c) of HBP 2015-2020 hence stands rejected.

They therefore, finally paid Customs Duty towards excess import of 121.855 MTs amounting to Rs.31,69,453.00 together with interest of Rs.26,47,750.00 vide TR6/GAR7 Challan No. MP&SEZ/875/2017-18 dated 25.05.2017 and 483 dated 01.06.2017, respectively to regularize their Advance Authorisation No.3410027264 dated 17.06.2010. Copy of Redemption/Regularization of Default of Duty Payment Letter in respect of said Advance Authorisation is enclosed.

8.5 Advance Authorisation No. 3410038630 dated 05.12.2013, & 3410035304 dated 05.10.2012: -

| Advance Authorization No and Date | Quantity Imported in MTs (Natural Sesame Seed) | Quantity Exported in MTs(Hulled Sesame Seed) | Shortage in E.O. (MTs) | Corresponding Qty of Raw Sesame Seeds (MTs) |
|-----------------------------------|--|--|------------------------|---|
| 3410038630 dated 05.12.2013 | 555.691 | 409.125 | 141.064 | 142.474 |
| 3410036415 dated 14.03.2013 | 2684.580 | 2856.65 | 198.65 (Excess) | 200.636 (Excess) |
| 3410035659 dated 14.12.2012 | 479.950 | 446.160 | 29.038 | 29.328 |
| 3410035304 dated 05.10.2012 | 496.480 | 472.575 | 18.989 | 19.179 |

As per the allegations under Para 4.3 of the impugned Show Cause Notice that in respect of 395.148 MTs of Raw Sesame Seeds Export Obligation has not been fulfilled. In this connection they would like to inform that they had clubbed the following Advance Authorisations to fulfil their Export Obligation in terms of Para 4.38 of HBP, 2015-20: -

| Advance Authorisation No and Date | Qty imported in MTs (Natural Sesame Seed) | Qty Exported in MTs (Hulled Sesame Seed) |
|-----------------------------------|---|--|
| 3410035304 dated 05.10.2012 | 496.480 | 472.575 |

| | | | |
|--------------------------|-------|-----------------|-----------------|
| 3410038630 05.12.2013 | dated | 555.691 | 409.125 |
| 3410035659 14.12.2012 | dated | 479.950 | 446.160 |
| 3410036415 14.03.2013 | dated | 2684.580 | 2856.65 |
| TOTAL | | 4216.701 | 4184.510 |

SION Norms fixed by DGFT provides 1% as wastage. Therefore, against import of 4216.701 MTs of Raw Sesame Seeds they had to export as per Export Obligation 4174.951 MTs of Hulled Sesame Seeds, whereas they had exported 4184.510 MTs of Hulled Sesame Seeds and achieved Export Obligation.

However, as per Para 4.38(xv) (a) Export Obligation period clubbed Authorisations shall be reckoned from the date of earliest import in any of the Authorisations proposed to be clubbed and, as per Para 4.38(xv)(b) Clubbing of such Authorisations shall be allowed provided all exports are completed within initial/extended Export Obligation period reckoned from date of earliest import in any of the Authorisations proposed to be clubbed.

Therefore, since few Shipping Bills were out of the initial Export Obligation period, a deficiency Letter bearing File No. 34/21/165/01196/AM17 dated 04.01.2017 was issued on them proposing to remit Composition Fee in terms of Para 4.38(viii)(b) of HBP 2015-20.

Accordingly, they have paid Rs.16,70,343/- to DGFT to regularize the bona fide default. Copy of their letter dated 21.09.2017 is enclosed herewith for kind reference and marked as Annexure-G.

8.6 Advance Authorisation No. 3410035589 dated 03.12.2012: -

| Advance Authorization No and date | Quantity Imported in MTs (Natural Sesame Seed) | Quantity Exported in MTs (Hulled Sesame Seed) | Shortage in E.O. (MTs) | Corresponding Qty. of Raw Sesame Seeds (MTs) |
|-----------------------------------|--|---|------------------------|--|
| 3410035589 dated 03.12.2012 | 627.091 | 539.385 | 81.497 | 82.312 |

They would like to inform that they had clubbed the following two Advance Authorisations to fulfil our Export Obligation in terms of Para 4.38 of HBP, 2015-20.

| Advance Authorisation No and Date | Qty. imported in MTs (Natural Sesame Seed) | Qty. Exported (Hulled Sesame Seed) |
|-----------------------------------|--|------------------------------------|
|-----------------------------------|--|------------------------------------|

| | | | |
|--------------------------|-------|-----------------|-----------------|
| 3410034601 10.07.2012 | dated | 561.550 | 778.640 |
| 3410035589 03.12.2013 | dated | 627.091 | 524.220 |
| TOTAL | | 1188.641 | 1302.860 |

SION Norms fixed by DGFT provides 1% as wastage. Therefore, against import of 1188.641 MTs of Raw Sesame Seeds they had to export as per Export Obligation 1176.872 MTs of Hulled Sesame Seeds, whereas they had exported 1302.860 MTs of Hulled Sesame Seeds and achieved Export Obligation.

However, there were few Shipping Bills, which were out of the initial Export Obligation period. A Deficiency Letter bearing File No. 34/21/165/00107/AM18 dated 20.04.2017 was issued to them proposing to remit Composition Fee in terms of Para 4.38(viii)(b) of HBP 2015-20. Accordingly, they paid Rs.4,12,522/- to DGFT to regularize the bona fide default. Copy of their letter dated 21.09.2017 is enclosed herewith.

In this regard they submit that they have already submitted all the EODC Letters in Original received from the office of the Jt. DGFT, Vadodara, to EODC Section of this Office as under.

| Sr. No | Advance Authorization No. | Their Letter Date |
|--------|-----------------------------|-------------------|
| 01 | 3410027264 dated 17.06.2010 | 01.11.2018 |
| 02 | 3410035304 dated 05.10.2012 | 24.10.2020 |
| 03 | 3410035589 dated 03.12.2012 | 31.08.2020 |
| 04 | 3410035659 dated 03.12.2012 | 24.10.2020 |
| 05 | 3410038630 dated 05.12.2013 | 24.10.2020 |

All their aforementioned letters along with the EODC Letters are enclosed and collectively Annexed as Annexure-C.

They would pray that since they have discharged their Export Obligation and have submitted all the EODC Letters in the Office of the Deputy Commissioner of Customs (EODC), Mundra Customs, received from RA, DGFT, Vadodara the impugned SCN may please be dealt in accordance with Circular No. 16/2017- Customs dated 02.05.2017 issued by CBEC, Drawback Division with regard to Monitoring of Export Obligation fulfilment under EPCG and Advance Authorisation Schemes and may please be dropped accordingly.

In this regard, it may be relevant to refer to the judgement of the Hon'ble High Court of Madras in the case of Ramsays Corporation Pvt Ltd. Vs. Commissioner of Customs, Chennai-IV 2022 (381) E.L.T. 372(Mad.) wherein relying on the decision of the Hon'ble Supreme Court in the case of Commissioner of Customs (Import) vs

- Tullow India Operations Ltd., reported in (2005) 13 SCC 789-2005 (189) E.L.T. 401(S.C.).

9. Record of Personal Hearing

‘*Audi alteram partem*’, is an important principle of natural justice that dictates to hear the other side before passing any order. Therefore, Noticee was given opportunity of personal hearing on 14.11.2024. Shri Sudarshan Nag, Commercial Manager of M/s Asian Food Industries appeared before me and stated that he has paid the shortfall incidence of duty and has got redemption by DGFT. He re-iterated the written submission dated 04.08.2023. He further submitted that all the Bonds have been closed by the department.

10. The Case was kept in Call Book after approval of competent authority as the status of Authorisations were not known. Once, the updated status was known, the case was retrieved from call book on 09.02.2024.

11. Discussions and Findings

11.1 I have carefully gone through the impugned Show Cause Notice No. DRI/AZU/CI/INQ-60/(INT-11/2014)/2014/2494 dated 26.10.2016 issued by the Additional Director General, DRI, Ahmedabad, relied upon documents, legal provisions and the records available before me. The main issues involved in the case which are to be decided in the present adjudication are as below whether:

- a)** The imported sesame seeds in respect of which export obligation was not fulfilled i.e. 395.148 MTs, totally valued at **Rs. 3,49,26,361/-, (Rupees Three Crore Forty Nine Lakh Twenty Six Thousand Three Hundred and Sixty One Only)** imported vide various Bills of Entry, under various Advance Authorizations, imported through MP & SEZ Port, Mundra as detailed in the Annexure-A to Show Cause Notice is liable for confiscation under Section 111(o) of Customs Act, 1962.
- b)** Customs duty on the imported goods mentioned at (a) above amounting to Rs. 1,26,20,990/- (Rupees one Crores Twenty Six Lacs Twenty Thousand Nine Hundred and Ninety Only), as detailed in the Annexure-A to Show Cause Notice evaded by them on the goods imported duty free under Advance Authorization scheme and export obligation in respect of which was not fulfilled, is liable to be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, read with Notification no 96/2009-Cus dated 11.9.2009.
- c)** Interest is liable to be recovered from them on the said evaded Customs duty appearing at (b) above under Section 28AA of the Customs Act, 1962 read with Notification No. 96/2009-Cus dated 11.9.2009;
- d)** The Bond furnished by them against the consignments imported duty free under Advance Authorization in terms of Notification No. 96/2009-Cus dated 11.9.2009, is liable to be enforced and security if any furnished with bond is liable to be appropriated towards their duty liabilities, interest thereon, fine and penalties.

- e) Importer is liable to be penalised under Section 112(a) / 114A of the Customs Act, 1962.

11.2 After having framed the main issues to be decided, now I proceed to deal with each of the issues herein below. The foremost issue before me is to decide in this case is as to whether the export obligations in respect of imported sesame seeds i.e. 395.148 MTs are not fulfilled and whether the same are liable for confiscation under Section 111 (o) of the Customs Act, 1962.

Further, Ongoing through the Show Cause Notice, RUDs and Submission of the Noticee, I find that due to inadvertent error, in case of Advance Authorisation No.3410035659 date has been mentioned as 03.12.2012 in the Show Cause Notice. However, correct date of issuance is 14.12.2012 as mentioned on the Advance Authorisation, EODC/redemption certificates and Importer's letter dated 02.09.2016 relied as RUD-3 in the Show Cause Notice. Further, DRI vide email dated 05.02.2025 has clarified that the correct date of issuance of Authorisation No. 3410035659 is 14.12.2012. This inadvertent error doesn't impact any revenue or legal angle in the adjudication process. Accordingly, the correct date of issuance of Advance Authorisation No. 3410035659, i.e. 14.12.2012 has been used for further discussions in this order.

11.3 Non-Fulfilment of Export obligation and confiscation of Goods under Section 111(o) of the Customs Act, 1962:

i) I find that during investigation of the case it was found that in respect of five Advance Authorizations, last date of fulfilment of export obligation as granted by DGFT was over. Further, there was no stock of imported natural or hulled sesame seeds available with them as on 20.10.2016. The details of the quantity of raw sesame seeds in respect of which export obligation has not been fulfilled is as under:

| Sr. No | Advance Authorization No. & Dt. | Import Quantity corresponding to export obligation pending in respect of the Authorizations (Mts.) | Last date of fulfilment of export obligation |
|--------------|---------------------------------|--|--|
| 01 | 3410027264 dated 17.06.2010 | 121.855 | 16.06.2013 |
| 02 | 3410035304 dated 05.10.2012 | 19.179 | 04.04.2014 |
| 03 | 3410035589 dated 03.12.2012 | 82.312 | 03.06.2014 |
| 04 | 3410035659 dated 14.12.2012 | 29.328 | 13.06.2014 |
| 05 | 3410038630 dated 05.12.2013 | 142.474 | 04.06.2015 |
| TOTAL | | 395.148 | |

ii) It has been alleged in the Show Cause Notice that Noticee had procured duty free material under the Advance Authorization, but had failed to fulfil the export obligation thereby violating the conditions of FTP 2009-14 as amended and not fulfilling the requisite conditions under Notification No. 96/2009-Cus dated

11.09.2009 which states that "***the export obligation as specified in the said authorization (both in value and quantity terms) is discharged within the period specified in the said authorization or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorization and in respect of which facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed***". Further, they did not have the imported goods as on 20.10.2016, thus ruling out any possibility of further export to fulfil export obligation. Even clubbing of advance authorization has not been done by DGFT in one case and in another case, the same has been rejected. As they have not fulfilled the conditions of exemption notification, the imported duty free goods are liable to be confiscated under Section 111 (o) of the Customs Act, 1962.

iii) Noticee in his submission dated 04.08.2023 has contended that for authorisation No. 3410027264 dated 17.06.2010, they have initially submitted four advance authorisation to DGFT for EODC/closure after clubbing in terms of para 4.38 of HBP, 2015-2020. However, their request for clubbing was rejected by Regional authority on some technical grounds vide letter dated 21.10.2014. Again they submitted their application for EODC after clubbing 5 Advance Authorisation, and finally the same was also rejected vide deficiency letter dated 21.10.2016 by DGFT. Hence, they paid Customs Duty toward excess import of 121.855 MTs amounting to Rs 31,69,453/- along with interest of Rs. 26,47,750/- to regularise their Advance Authorisation No. 3410027264 dated 17.06.2010. Redemption /Regularisation of Default of Duty Payment letter in respect of the said Advance Authorisation has been issued by DGFT. Ongoing through the records of the case, I find that Noticee has produced the EODC and Redemption /Regularisation of Default of Duty Payment letter to this office. I also observe that EODC section, Customs House Mundra vide letter dated 05.03.2021 has intimated the Noticee that matter for which the bond was furnished in respect of Advance Authorisation No. **3410027264 dated 17.06.2010** has been finally settled.

iv) Noticee vide submission dated 04.08.2023 further contended that they had requested DGFT to club the Advance Authorisation No. 3410035304 dated 05.10.2012, 3410038630 dated 05.12.2013, 3410035659 dated 14.12.2012 and 3410036415 dated 14.03.2013 to fulfil their export obligation in terms of para 4.38 of HBP, 2015-20. They have achieved the export obligations (cumulatively) in respect of four advance licenses as per SION Norms allowing wastage of 1%.

| Advance Authorisation No and Date | Qty imported in MTs (Natural Sesame Seed) | Qty Exported in MTs (Hulled Sesame Seed) |
|-----------------------------------|--|---|
| 3410035304 dated 05.10.2012 | 496.480 | 472.575 |

| | | | |
|--------------------------|-------|-----------------|-----------------|
| 3410038630 05.12.2013 | dated | 555.691 | 409.125 |
| 3410035659 14.12.2012 | dated | 479.950 | 446.160 |
| 3410036415 14.03.2013 | dated | 2684.580 | 2856.65 |
| TOTAL | | 4216.701 | 4184.510 |

As per deficiency letter dated 04.01.2017 issued by DGFT, they paid composition fee in terms of para 4.38 (viii) (b) of HBP 2015-20 and finally EODC for Advance Authorisation No. **3410035304 dated 05.10.2012, 3410038630 dated 05.12.2013, 3410035659 dated 14.12.2012** was granted by DGFT.

Noticee has further submitted that in respect of Advance Authorisation No. 3410035589 dated 03.12.2013 they had requested to club the two licenses. They had achieved the export obligations (cumulatively) in respect of two advance licenses as per SION Norms allowing wastage of 1%.

| Advance Authorisation No and Date | Qty. imported in MTs (Natural Sesame Seed) | Qty. Exported in MTs (Hulled Sesame Seed) |
|-----------------------------------|---|--|
| 3410034601 10.07.2012 | 561.550 | 778.640 |
| 3410035589 03.12.2013 | 627.091 | 524.220 |
| TOTAL | 1188.641 | 1302.860 |

Similarly, as per deficiency letter dated 20.04.2017 issued by DGFT, they paid composition fee in terms of para 4.38 (viii) (b) of HBP 2015-20 and finally EODC for Advance Authorisation No. **3410035589 dated 03.12.2013** was granted by DGFT.

v) Hence from above facts, I observe that Noticee has got the EODC/redemption certificate in respect of all the five Advance Authorisations. Further, I find that EODC section, Mundra Customs vide letter dated 18.01.2024 has intimated that they have closed all the Bonds submitted against the availment of exemption notification under Advance Authorisations. In case of three Advance Authorisations, Show Cause Notice was also given by EODC Section, Mundra Customs and the same was dropped as the Noticee has got the redemption certification/EODC from DGFT. The summary of the reply received from EODC Section, Mundra is mentioned as below:

| Sr N o | Advance Authorizatio n | Date | EODC Submissio n | Condition fulfilled/n ot fulfilled | OIO Status |
|--------|------------------------|------|------------------|------------------------------------|------------|
| | | | | | |

| | | | | | |
|---|------------|----------|-------------------------|---------------------|---|
| 1 | 3410027264 | 17.06.10 | Submitted & Bond Closed | Condition fulfilled | NA |
| 2 | 3410035304 | 05.10.12 | Submitted & Bond Closed | Condition fulfilled | OIO No. MCH/866 to 873/DC/CKP/EODC/2 021 issued and SCN dropped |
| 3 | 3410035589 | 03.12.12 | Submitted & Bond Closed | Condition fulfilled | OIO No. MCH/866 to 873/DC/CKP/EODC/2 021 issued and SCN dropped |
| 4 | 3410035659 | 14.12.12 | Submitted & Bond Closed | Condition fulfilled | OIO No. MCH/866 to 873/DC/CKP/EODC/2 021 issued and SCN dropped |
| 5 | 3410038630 | 05.12.13 | Submitted & Bond Closed | Condition fulfilled | NA |

vi) Noticee vide additional submission dated 30.01.2025 has stated that with reference to para 4.4 of the Show Cause Notice, as per practise first come first go, duty has to be calculated against excess import made under the last Bill of Entry. Accordingly, they have paid the duty liability with interest as per last Bill of Entry. They have also got a confirmation letter dated 16.10.2018 from EODC Section, Mundra Customs regarding payment of duty and interest. Ongoing through the records of the case, I find that on payment of duty and interest for shortage of export, DGFT has issued redemption/EODC for Advance Authorisation No. 3410027264 dated 17.06.2010. Further in respect of three Advance Authorisation i.e. 3410035304 dated 05.10.2012, 3410038630 dated 05.12.2013 and 3410035659 dated 14.12.2012 clubbing with Advance Authorisation No. 3410036415 dated 14.03.2013 was allowed by DGFT and after payment of composition fee, the redemption certificates/EODCs was issued. In respect of Advance Authorisation No. 3410035589 dated 03.12.2013 clubbing with Advance Authorisation No. 3410034601 dated 10.07.2012 was allowed by DGFT and after payment of composition fee, the redemption certificates/EODCs was issued. Hence from above discussions, it can be concluded that for all the impugned five Advance Authorisation, EODCs have been issued by DGFT. Further, Bonds related to the said Advance Authorisations have also been closed as evident from the letter received from EODC, Section Mundra Customs as discussed in point no. (vi) above.

vii) Noticee has placed reliance on the judgment of Hon'ble High Court of Madras in case of **M/s Ramsays Corporation Pvt Ltd vs Commissioner of Customs, Chennai-IV 2022 (381) E.L.T. 372 (Mad)** wherein it was pronounced that:

"In the present case, the appellant has discharged their Export Obligation and the same is also evident from the Redemption Letter dated 27-10-2021 and that, the delay

- in obtaining the same from ADGFT ought not result in denial of the benefit under EPCG Scheme."

I also agree with the contention raised by Noticee here. At this point of time there is no duty incidence pending, as the Export Obligation Discharge Certificate has been issued by DGFT in terms of para 4.47 (b) of Foreign Trade Policy for all impugned Advance Authorisation. I also place reliance on the judgment dated 23.01.2025 pronounced by Hon'ble Tribunal in case of **M/s Skipper Limited vs Commissioner of Customs in Customs Appeal No. 79219/2018** wherein it was held that once the export obligation has been discharged and Bond has been released, the demand of customs duty is bad in law. The relevant part of the judgment is reproduced below:

"In view of the above findings, we hold that the Appellant has not contravened the conditions of the exemption Notification No. 96/2009-Cus. dated 11.06.2009, as amended. As the appellant has discharged their export obligation and EODC has been issued by DGFT and the Customs authorities have also released the bond executed by them after satisfying that the appellant has fulfilled all the conditions, we hold that confirming the demand of Customs duty alleging violation of the conditions of the said Notification is bad in law. Therefore, we hold that the demand of Customs duty confirmed in the impugned order is not sustainable."

Further, I place reliance on **M/s. Aditya Birla Nuvo Ltd. v. Commissioner of Cus., Bangalore (2010)(249) E.L.T. 273 (Tri Bangalore)** wherein it was held that no case exist if EODC has been issued and Bond has been cancelled. The relevant part of the judgment is reproduced below:

"In the instant case before us, as per certain other facts above discloses, the Joint DGFT issued EODCs, certifying that the appellant had discharged export obligation which was cast on them in respect of the advance licenses. It has been contended by the appellant before the Commissioner that in view of the said EODC, the case against them, could not survive. However, it must be mentioned here that the Commissioner had failed in considering this effect of undisputed EODC issued by the DGFT in the context of this licenses acting upon which, even the bonds were already cancelled. Moreover, no condition of the exemption was violated and therefore there cannot be any liability of penalty as well."

viii) Section 111 (o) of the Customs Act, 1962 stipulates that any goods exempted subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which **the condition is not observed** unless the non-observance of the condition was sanctioned by the proper officer shall be liable for confiscation.

As per discussions held in foregoing paras, I find that the export obligations have been fulfilled by the Noticee as evident from the EODCs/Redemption

certificates issued by DGFT. Further, EODC Section, Mundra Customs has closed the bond stating that conditions have been fulfilled. Accordingly, I hold that goods are not liable for confiscation under Section 111 (o) of the Customs Act, 1962.

11.4 Demand of Customs Duty under Section 28 (4) of the Customs Act, 1962 with applicable interest under Section 28(AA) of the Customs Act, 1962.

i) The present Show Cause Notice has been issued under the provisions of Section 28(4), therefore it is imperative to examine whether the section 28(4) of Customs Act, 1962 has been rightly invoked or not. The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts."

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

The term "relevant date" For the purpose of Section 28 ibid, has been defined in Explanation 1, as under:

Explanation 1 . - For the purposes of this section, "relevant date" means,-

(a) in a case where duty is 21[not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.

ii) The demand of differential duty with interest was raised on the basis of the non-fulfilment of the export obligations. In the foregoing paras, I have held that the export obligations have been fulfilled w.r.t. all the advance authorisations as evident from the EODCs/redemption certificates issued by DGFT. Subsequently on submission of EODCs to the concerned section, Bonds have also been closed by the concerned Customs Authorities. As the export obligations have been fulfilled, there

is no question of demand of customs duty and interest thereon. I also place reliance on the judgment pronounced in case of ***M/s Skipper Limited vs Commissioner of Customs in Customs Appeal No. 79219/2018*** wherein it was held that once the export obligation has been discharged and Bond has been released, the demand of customs duty is bad in law. In view of the above, I hold that in the current scenario the demand of customs duty amounting to Rs. 1,26,20,990/- under section 28 (4) of the Customs Act, 1962 with applicable interest under section 28 (AA) of the Customs Act, 1962 is unsustainable.

11.5 Appropriation of Bond and Security

i) It has been already discussed in the para 11.3 (v) that EODC Section, Mundra Customs has closed the Bond submitted with respect to all the five Advance Authorisations subsequent to the submission of EODC issued by DGFT. Hence, I find that since the bonds are already closed in view of the fulfilment of the conditions, there is no question of enforcement of the same and appropriation of Securities if any.

11.6 Imposition of Penalty under Section 112(a)/114A of the Customs Act, 1962

i) Section 114A stipulates that the person, who is liable to pay duty by reason of collusion or any wilful mis-statement or suppression of facts as **determined under section 28(8)** ibid, is also liable to pay penalty under section 114A.

Further, Section 112A of the Customs Act, 1962 stipulates that any person, who in relation to any goods, does or mots to do any act which act or omission would render such goods **liable to confiscation** under Section 111 or abets the doing or omission of such an act.

ii) Here, in this case, in the foregoing paras I have held that goods are not liable for confiscation under Section 111 (o) of the Customs Act, 1962. Further, I have also held that demand of duty under section 28(4) of the customs act and interest levied thereon is not sustainable. Since goods are not liable for confiscation and also duty demand under section 28 (4) is not sustainable, hence no penalty can be imposed under Section 112A/114A of the Customs Act, 1962. So, the last issue has also been decided in this case.

12. In view of the above, I pass the following order:

Order

12.1 I hold that imported sesame seeds i.e. 395.148 MTs totally valued at **Rs. 3,49,26,361/- (Rupees Three Crore Forty Nine Lakh Twenty Six Thousand Three Hundred Sixty One Only)** imported vide various Bills of Entry, under various Advance Authorisations imported through MP&SEZ Port, Mundra are not liable for

confiscation under Section 111 (o) of the Customs Act, 1962 for the reasons discussed above.

12.2 I drop the proposal of demand of Customs Duty amounting to **Rs. 1,26,20,990/- (Rupees One Crore Twenty Six Lakh Twenty Thousand Nine Hundred Ninety Only)** under Section 28(4) of the Customs Act, 1962 with applicable interest under section 28AA of the Customs Act, 1962.

12.3 I hold that Bond furnished by Noticee against the consignment imported duty free under Advance Authorisation in terms of Notification No. 96/2009-Cus dated 11.09.2009 are not liable for enforcement as the same has been already closed by the concerned authority after fulfilment of conditions. Similarly, Securities if any, furnished with Bond are also not liable for appropriation.

12.4 I refrain from imposing any penalty on M/s Asian Food Industries under the provisions of Section 112A/114A of the Customs Act, 1962 for the reasons discussed above.

13. This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.



(K. Engineer)

Pr. Commissioner of Customs,
Custom House, Mundra.

By Speed post/ By Hand/by E-mail

To,

1. M/s Asian Food Industries, NH8, Opp Escorts Tractors, at PO Dabhan, Tal Nadiad, Kheda, Gujarat- 387320

Copy to;

- (i) The Additional Director General, DRI, Ahmedabad.
- (ii) The Deputy/ Assistant Commissioner of Customs (RRA), CCO, Ahmedabad.
- (iii) The Deputy/ Assistant Commissioner of Customs (EDI), Custom House, Mundra.
- (iv) The Assistant/Deputy Commissioner of Customs, TRC Section, Mundra
- (v) The Assistant/Deputy Commissioner of Customs, Legal Section, Mundra
- (vi) Notice Board
- (vii) Guard file.