

 <p style="text-align: center;">OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467 Email – commr-cuskandla@nic.in</p>		
DIN- 20260271ML0000555A3B		
A	File No.	GEN/ADJ/ADC/1202/2024 Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/VS/08/2025-26
C	Passed by	Vishwajeet Singh, Commissioner (in-situ), Custom House, Kandla
D	Date of Order	05.02.2026
E	Date of Issue	05.02.2026
F	SCN NO. & Date	GEN/ADJ/ADC/1202/2024-Adjn-O/o Commr-Cus-Kandla date 05.07.2024
G	Noticee / Party / Importer / Exporter	M/s Amar Flavours Pvt. Ltd. (IEC0508042950), Unit No.s 101, 201 & 301, Narmada SDF Complex, Phase-II, Kandla Special Economic Zone, Gandhidham

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

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

2. यदि कोई व्यक्ति इस मूल आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128A के अंतर्गत प्रपत्र सीए- 1-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

“ सीमाशुल्कआयुक्त (अपील),

7 वीं मंजिल, मृदुलटावर, टाइम्सऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS),

Having his office at 7th Floor, Mridul Tower, Behind Times of India,

Ashram Road, Ahmedabad-380009.”

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

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

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

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

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

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

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

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

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

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

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

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

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

ORDER-IN-ORIGINAL

BRIEF FACTS OF THE CASE:-

M/s Amar Flavours Pvt. Ltd. (hereinafter referred to as “*said SEZ unit*”) is a SEZ unit situated at Unit Nos. 101, 201 & 301, Narmada SDF Complex, Phase-II, Kandla Special Economic Zone, Gandhidham. Letter of Approval (LOA) No.016/2013-14 dated 11.03.2014 was granted to them vide F. No. KASEZ/IA/016/2013-14 by the Development Commissioner, Kandla SEZ under Section 15(9) of the SEZ Act, 2005 read with the Rule 18 of the SEZ Rules, 2006 to operate as a SEZ unit and carry out authorized operations of “Manufacturing activity”.

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

3. The said SEZ unit was granted LoA dated 11.03.2014 to undertaking authorized operations of “Manufacturing activity” of Pan Masala (ITC HS 21069020) and Pan Masala Containing Tobacco-Guthka (ITC HS 24039990), subject to the terms and conditions mentioned thereof. The condition no. 4 of the said LoA stipulates that the said SEZ Unit was not allowed to import items prohibited under the ITC (HS) Classifications of Export and Import items. The condition no. 4 of the LoA reads as:

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

3.1. DGFT vide notification no. 20/2015-20 dated 25.07.2018 has amended the import policy for goods falling under Chapter sub-heading 080208 from “Free” to “Prohibited” and the Policy condition is revised to “However, import is free if CIF value is Rs.251/- and above per Kilogram”. Subsequently, DGFT vide notification no. 57/2015-20 dated 14.02.2023 has

amended the import policy condition for goods falling under Chapter 0802 to “a) However, import is free if CIF value is Rs.351/- and above per Kilogram; b) MIP conditions, however, will not be applicable for imports by 100% Export Oriented Units (EOUs) and units in the SEZ subject to the condition that no DTA sale is allowed” and the import policy is not altered and mentioned as “Prohibited”. Whereas, by virtue of above said notifications the import of goods falling under Chapter sub-heading 080208 stands “Prohibited” and import is subject to MIP mentioned therein. Further, w.e.f. 15.02.2023, the imports into SEZ are exempted from MIP conditions.

3.2. Further, the audit observations were communicated to the SEZ Unit vide letter dated 13.10.2021 issued from F. No. KASEZA/CUS/D&R/Audit/13/21-22 and requested the unit to pay the entire outstanding amount along with applicable interest or submit reply. Whereas, in response to aforesaid letter, the SEZ Unit vide their letter dated 02.11.2021, inter-alia, submitted-

- that they established a manufacturing unit in Kandla Special Economic Zone as permitted vide Letter of Approval No. KASEZ/IA/016/2013-14/12407 dated 11.03.2021. Further, according to condition No. 4 of the Letter of Approval they are permitted to import or procure from the Domestic Tariff Area all the items required for their authorized operations under the said approval, except prohibited under the ITC (HS) Classifications of Export and Import items. Furthermore, they submitted that under condition No. 5 it is clearly stipulated that no DTA sale of goods manufactured shall be permitted.
- that according to sub-rule (1) of Rule 27 of the SEZ Rules, 2006 also the units in SEZ are permitted to import their raw material except prohibited items under ITC (HS) classifications of export and import items.
- that since arecanut/ betelnut is one of the raw materials used in their product, they imported the goods looking to the price to make their product competitive in the International Market. No condition as mentioned in the letter that the import CIF value is Rs.251 per Kg. or more. Further, they submitted that they filed the import Bills of entry at the tariff valued fixed by the Government of India which is always more than Rs. 251 per Kg. Furthermore, they submitted that they declared the assessable value as per the tariff value prevailing at the time of import and the same taken from the Customs (Non-tariff) Notifications in force from time to time.

- that they were not permitted to clear any manufactured goods, including waste/ scrap, in Domestic Tariff Area. Further, they submitted that they utilized the entire imported goods either for captive consumption or export after manufacturing the goods as per the approvals granted to them.
- that since they were utilizing the goods for hundred percent export imposing the condition that the CIF value of foreign exchange outflow should not be less than Rs.251 per kg. is not justified as it would amount more foreign exchange outflow. In fact, the condition is imposed to prevent under valuation of the imported betel nut and revenue loss.
- that since they have not cleared any goods into DTA, no duty is payable by them, that they exported the entire goods imported by either captive consumption or after manufacture of split betel nut as per the approval.
- that they were, therefore, not liable to pay any duty on the imports made by them.

3.3. Based on the Audit objection raised by the CRA team, analysis of import data downloaded from NSDL SEZ Online data has been carried out. During the analysis of import data, it was observed that, the said SEZ Unit indulged in unauthorized import of Arecanuts/ Betelnuts falling CTH 080280 in contravention to MIP conditions stipulated in Import Policy conditions. The details of such imports are as under:

Table-A

S. No	Request Id	BE No.	BE date	CTH No.	Item Description	Quantity	Unit Price (In Invoice Currency)	Assessable Value for the item in INR	Duty Forgone / Paid Amount	Assessable Value Per Kg (in INR)
1	1719023 48645	1013 157	11.09 .2019	0802 8020	Betel Nut	54000 Kgs	1.8 USD	71,65,879/-	86,34,885/-	132.52/-

4. Legal Provisions:

Whereas, the activities of admission and clearance of goods by SEZ units, having approval granted under Section 15 of the SEZ Act, 2005 and Rule 18 of the SEZ Rules, 2006, are regulated as per the provisions & procedures contained in the SEZ Act, 2005 and Rules made there-under. The following are the legal provisions, which are in general applicable in

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

4.1. The Customs Act, 1962:

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

4.2. SEZ Act, 2005

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

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

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

4.4. Foreign Trade (Regulation) Rules, 1993

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

5. Further, Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods by the importer and exporter himself by filing a bill of entry or shipping bill, as the case may be. Under self-assessment the importer or exporter has to ensure correct classification, applicable rate of duty, value and exemption notifications, if any, in respect of imported /export goods while presenting bill of entry or shipping bill. Further, Rule 75 of the SEZ Rules, 2006 also provides that unless and otherwise specified in these rules all inward or outward movements of the goods into or from SEZ by the Unit/ Developer shall be based on self-declaration made by the Unit/ Developer. While importing the subject goods, the said SEZ unit was bound for true and correct declaration and assessment which include importability of the subject goods. As the said SEZ unit was engaged in business of activities related to subject goods, they were fully aware of specifications, characteristics, nature, importability and approvals and other regulatory compliances in respect goods dealt by them in SEZ area. From the above, it is evident that the said SEZ unit willfully suppressed the fact that the goods falling under prohibited category and imported in contravention to the conditions stipulated in their LoA, thereby indulged in unauthorized activity.

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

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

7. Further, Para 9.41 of the FTP, "Prohibited" indicates the import/export policy of an item, as appearing in ITC (HS) or elsewhere, whose import or export is not permitted. In the instant case, as per the DGFT Import policy the import of subject goods is Prohibited and is not permitted by the LoA issued by the Development Commissioner, KASEZ. Whereas, Section 3 (2) of the FTDR Act, 1992 empowers the Central Government to issue order, making provisions for prohibiting, restricting or otherwise regulating, the import of goods. As per Section 3(3) of the FTDR Act, 1992, all goods to which the order under Section 3(2) applies shall be deemed to be goods the imports of which has been prohibited under Section 11 of the Customs Act, 1962 and all the provisions of that Act shall have effect accordingly. Whereas, Section 5 of the FTDR Act, 1992 empowers the Central Government to formulate and announce by notification the foreign trade policy and also empowered to amend the policy in like manner. Whereas, Section 8 of the FTDR Act, 1992, the DGFT or any other officer authorized by him empowered to pass order for suspension or cancellation of the IEC Number of a person, who has contravened any of the provisions of the FTDR Act, 1992 or any rules or orders made thereunder or the FTP or any other law for the time being in force relating to Customs or has committed any other economic offence under any other law for the time being in force. Whereas, Section 11(1) of the FTDR Act, 1992 provides that no import shall be made by any person except in accordance with the provisions of the FTDR Act, 1992, the rules and orders made thereunder and in accordance with the FTP for the time being in force. Penal provisions are also prescribed vide Section 11(2) of the FTDR Act, 1992. As per Section 11(8) of the FTDR Act, 1992, the offending goods are liable to

confiscation. Whereas, Section 12 of the FTDR Act, 1992 prescribes that the penalty imposed or confiscation made under the FTDR Act, 1992 shall not prevent the imposition of any other punishment to which the person affected thereby is liable under any other law for the time being in force. Whereas, Rule 11 of the FTDR, 1993 provides that on importation of any goods, the owner of the goods has to file Bill of Entry as prescribed under the Customs Act, 1962, stating the value, quantity, quality and description of such goods to be best of his knowledge and belief and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry. Whereas, Rule 14 of the FTR, 1993 prohibits making, signing, using or cause to be made, signed or used any declaration, statement or documents for importing any goods, knowing or having reason to believe that such declaration, statement or document is false in any material particular. Employing any corrupt or fraudulent practice in importing the goods have also been prohibited.

8. Therefore, the said SEZ Unit i.e., M/s. Amar Flavours Pvt. Ltd. (IEC0508042950) were issued show cause notice as to why: -

- i) The goods imported vide Bills of Entry as detailed at Table-A above having declared assessable value of **Rs.71,65,879/- (Rupees Seventy-One Lakh Sixty-Five Thousand Eight Hundred and Seventy-Nine Only)** should not be confiscated under Section 111(d) and 111(o) of the Custom Act, 1962 for contravening the Import Policy conditions and conditions stipulated in the LoA;
- ii) Penalty should not be imposed on them, separately under each of the provisions of Section 112 & 114AA of the Customs Act, 1962 for the reasons discussed above.
- iii) Bond-cum-Legal Undertaking in form-H executed by the said SEZ Unit should not be enforced towards its above liabilities.

9. **DEFENSE REPLY:** - The noticee vide their letter dated 25.07.2024 submitted their defense reply. At the outset they denied that they had violated the provisions of Section 46 of the Customs Act, 1962 read with the provisions of FTDR Act, 1992.

(i) they mentioned that they established a manufacturing unit in Kandla Special Economic Zone as permitted vide Letter of Approval No. KASEZ/IA/01/2013-14/12407 dated 11.03.2021. According to condition No.4 of the Letter of Approval, they were permitted to import or procure from the Domestic Tariff Area all the items required for their

authorized operations under the approval, except prohibited under the ITC (HS) Classifications. Under condition No.5 of the LoA, they were not permitted to make DTA SALE OF GOODS MANUFACTURED.

(ii) they further submitted that under the sub-rule (1) of Rule 27 of the SEZ Rules, 2006, SEZ units are permitted to import raw materials except prohibited items.

(iii) The DGFT revised the Import Policy for Exim Code 08028010 and 08028020 (Arecanut/betel nut). Import is free if the CIF value is Rs.251/- or above per Kilogram (later revised to Rs.351/- or above). The MIP condition will not be applicable for imports by SEZ units subject to the condition that no DTA sale is allowed. In their case, no DTA sale is allowed.

(iv) Arecanut/betel nut is the major raw material used for our production. Therefore, they imported the goods to make their product competitive in the International Market. During the year, they exported their finished goods valued Rs.890.55 lakhs and achieved Net Foreign Exchange of Rs.496.99 lakhs. Moreover, the Assessing Officer passed the Bill of Entry and permitted them to import the goods and bring the same inside the Zone for manufacture of goods for hundred percent export. They fully utilized the imported goods for manufacture of goods and exported the entire quantity to foreign Countries. They are not permitted to make DTA sale of manufactured goods including waste/scrap. They further submitted that since they fully utilized the imported goods for manufacture and exported the entire quantity, confiscation under Section 111(d) and 111(o) does not arise. They are not liable for any penalty under Section 112 and 114AA. Therefore, there is no question of enforcing the Bond-cum-Legal Undertaking in form-H. They requested a personal hearing before deciding the case finally. Further, they requested to drop the charges framed against them.

10. RECORD OF PERSONAL HEARING

Opportunities for personal hearings were provided to the noticee by sending Personal hearing letters fixing date of personal hearing on 04.06.2025, 10.07.2025 and 16.07.2025 however neither the Noticee appeared for the personal hearing nor anything else is heard from their end. As the same were not complied by the Noticee, another Personal Hearing letter fixing the date of personal hearing on 06.01.2026 was also sent through e-mail. But neither the notice nor any representative appeared for personal hearing.

DISCUSSION AND FINDINGS-

11. I have carefully gone through the Show Cause Notice dated 05.07.2024, written submission dated 25.07.2024 and all the evidences placed on record.

12. I find that in order to achieve the principal of natural justice, the Noticee were given ample opportunities to appear before the adjudicating authority to defend their case, but the Noticee did not appear on any of the given date. Therefore, the adjudicating authority is left with no option, but to proceed with the documentary evidences available with this office. Accordingly, I am proceeding to adjudicate this case.

13. M/s Amar Flavours Pvt. Ltd., the SEZ unit, were granted Letter of Approval (LOA) No.016/2013-14 dated 11.03.2014 by the Development Commissioner, Kandla SEZ under Section 15(9) of the SEZ Act read with Rule 18 of the SEZ Rules, 2006 to operate as a SEZ unit and carry out authorized operations of "Manufacturing activity".

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

15. The said SEZ was granted LoA dated 11.03.2014 to undertake authorized operations of "Manufacturing activity" of Pan Masala (ITC HS 21069020) and Pan Masala Containing Tobacco- Guthka (ITC HS 24039990), subject to terms and conditions mentioned thereof. The condition no. 4 of the said LoA stipulates that the said SEZ Unit is not allowed to import items prohibited under the ITC (HS) Classifications of Export and Import items. The condition no. 4 of the LoA reads as:

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

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

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

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

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

- (i) Whether the SEZ Unit had engaged in carrying out un-authorized operations;
- (ii) Whether the imported goods were prohibited in terms of MIP conditions imposed vide DGFT notification no. 20/2015-2020 dated 25.07.2018;
- (iii) Whether the goods were liable for confiscation under Section 111 of the Customs Act, 1962.
- (iv) Whether penalties under Sections 112 and 114AA are attracted in the instant case;

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

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

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

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

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

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

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

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

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

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

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

23. In the instant case, the authorised operation of the SEZ unit i.e. M/s Amar Flavours Pvt. Ltd. was 'manufacturing activity of Pan Masala and Pan Masala containing Tobacco-Guthka'. As per condition no. 4 of LoA, in order to carry out the said authorised operation, they were allowed to either import or procure the raw material (Betel Nuts) from DTA **except those prohibited under the ITC (HS) Classifications of Export and Import Items**. I find that they have imported Betel Nuts below the MIP rate and which is prohibited as per the DGFT Notification for carrying out the manufacturing activity of Pan Masala and have

exported the finished goods. Even though they were allowed to import the raw material (Betal Nut) into SEZ and then finished goods were allowed to be exported at the material time by the KASEZ customs, the importation of prohibited goods was not allowed in the LOA granted to the Noticee.

24. Thus, it is clear that they have violated the LOA granted by the Development Commissioner and accordingly have engaged themselves in un-authorized operation as alleged in the show cause notice.

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

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

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

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

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

29. Further, the Noticee have contended that they had fully utilized the imported goods for manufacture and exported the entire quantity. Accordingly, the confiscation under Section 111 (d) and 111 (o) does not arise.

In this regard, I find that the issue to be decided before me is not whether the imported goods had been utilized for manufacture and exported or not. The issue is whether the goods were allowed to be imported, below the MIP condition to the Noticee or not. In the foregoing para, I have held that I do not find any merit in the contention of the Noticee that the MIP Condition will not be applicable for import by SEZ Unit subject to the condition that no DTA sale is allowed.

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

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

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

33. In view of the above discussion and findings, I do not find any merit in the contention of the Noticee and hold that the goods are liable for confiscation under Section 111(d), 111(m) and 111(o) of the Customs Act, 1962.

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

35. With regard to penal action under Section 112 and 114AA of the Customs Act, 1962, I find that the goods have been imported in violation of conditions of the Notification which has rendered the goods liable for confiscation and imported in violation of MIP conditions, rendering the goods liable for confiscation, thus attracting penalty under Section 112 and 114AA of the Customs Act, 1962.

36. Further, I find that since the Noticee has imported the goods below the MIP condition, which is prohibited as per the DGFT Notifications mentioned supra, thereby they have violated the LOA granted to them by the Development Commissioner, KASEZ and the same were liable for confiscation alongwith imposition of penalty under Section 112 and 114AA of the Customs Act, 1962. Accordingly, I hold that the Bond-cum-legal Undertaking in Form-H

furnished by the Noticee should be enforced towards the liabilities arising out of the subject goods.

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

-ORDER-

i) I hold that the goods imported vide bills of entry mentioned at Table-A above having declared assessable value of **Rs.71,65,879/- (Rupees Seventy-One Lakh Sixty-Five Thousand Eight Hundred and Seventy-Nine Only)** are liable to confiscation under Section 111(d) and 111(o) of the Custom Act, 1962 for contravening the Import Policy conditions and conditions stipulated in the LoA;

Since, the goods are not available for confiscation, I impose Redemption fine of **Rs.25,00,000/- (Rupees Twenty-Five Lakh Only)** under Section 125 of the Customs Act, 1962.

ii) I impose penalty of **Rs.17,91,470/- (Rupees Seventeen Lakh Ninety-One Thousand Four Hundred Seventy Only)** under Section 112 of the Customs Act, 1962 for the reasons discussed above.

iii) I impose penalty of **Rs.71,65,879/- (Rupees Seventy-One Lakh Sixty-Five Thousand Eight Hundred and Seventy-Nine Only)** under Section 114AA of the Customs Act, 1962 for the reasons discussed above.

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

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

(VISHWAJEET SINGH)
Commissioner (in-situ),
Custom House, Kandla

F. No. GEN/ADJ/ADC/1202/2024-Adjn-O/o-Commr-Cus-Kandla

By Speed Post/Courier**To****M/s Amar Flavours Pvt. Ltd. (IEC0508042950),**

Unit No. S 101, 201 & 301,

Narmada SDF Complex,

Phase-II, Kandla Special Economic Zone,

Gandhidham.

Email:- amarflavourspltd@gmail.com**Copy to:-**

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