



**सीमा शुल्क आयुक्त का कार्यालय,
नवीन सीमा शुल्क भवन, नया कांडला ।**

**OFFICE OF THE COMMISSIONER OF CUSTOMS,
NEW CUSTOM HOUSE, NEW KANDLA-370 210 (GUJARAT)
Phone No: 02836-271468/469, Fax No. : 02836-271467.**

A	फाइल संख्या/ File No.	S/10-202/ADJ/ADC/JF/2016-17
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/AK/30/2018-19
C	पारित कर्ता/ Passed by	SH. AJAY KUMAR, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	13.12.2018
E	जारी करने की दिनांक/Date of issue	18.12.2018
F	एस.सी.एन. सं. एवं दिनांक/ SCN No. & Date	KASEZ/CUS/MISC/01/2013/Pt-III, Dated 18/07/2013
G	नोटीसी/ पार्टी Noticee/Party	M/s. Jindal Fibres, Plot No. 49 & 58, Sector-II, Kandla Special Economic Zone (KASEZ), Gandhidham & Others.

1. यह अपील आदेश संबन्धित को नि शुल्क 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 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A (1) के अंतर्गत प्रपत्र सीए- 3 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 (1) (a) of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

**"सीमा शुल्क आयुक्त (अपील), कांडला
वीं मंजिल 7, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़
अहमदाबाद 380 009"
"THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
7th Floor, Mridul Tower, Behind Times of India, Ashram Road
Ahmedabad - 380 009."**

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 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 2/- under Court Fee Act it must accompanied by -
(i) उक्त अपील की एक प्रति और
A copy of the appeal, and
(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं.-6 में निर्धारित 2/- 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. 2/- (Rupees Two only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.
5. अपील जापान के साथ इयूटि/ 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 नियम (अपील), और सीमा शुल्क अधिनियम 1982, 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, 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.

The present proceeding has been arisen out of *de novo* Order-In-Appeal bearing No. KDL-CUSTOM-000-APP-02 to 04-18-19 dated 11.04.2018 passed by the Commissioner of Customs (Appeals), Ahmedabad. The said order is outcome of an appeal filed by M/s Jindal Fibres, Plot No. 49 & 58, Sector –II, Kandla Special Economic Zone (KASEZ), Gandhidham (**hereinafter referred to as the said unit**) against the impugned Order-In-Original bearing No. KDL/ADC/UBR/72/2016-17 dated 30.03.2017 passed by Additional Commissioner, Custom House, Kandla. The Commissioner (Appeal) has observed that the appellant no. 1 i.e. the said unit has relied upon the judgement of CESTAT in the case of M/s Tulip Exim Pvt Ltd dtd. 04.10.2017. Also the Revenue, Appellant No. 3 being aggrieved has filed an appeal arguing that why penalty under Section 114A and 114 AA had not been imposed upon M/s. Jindal Fibres and Shri Vikas Mittal, Authorized Signatory of M/s. Jindal Fibres respectively and in support placed case laws. The Commissioner (Appeal) vide Order-In-Appeal bearing No. KDL-CUSTOM-000-APP-02 to 04-18-19 dated 11.04.2018 has asked the lower authority to examine whether all facts and circumstances of the relied upon case laws are identical or otherwise and also examine the applicability of relied upon case laws. Accordingly, the Commissioner (Appeal), Ahmedabad has set-aside the impugned O-I-O and remitted the matter to the adjudicating officer, asking to examine all the facts, documents, submission and case laws relied by the appellants and then pass order afresh in this case following the principles of natural justice and legal provisions.

BRIEF FACTS OF THE CASE

2. M/s Jindal Fibres, Plot No. 49 & 58, Sector –II, Kandla Special Economic Zone (KASEZ), Gandhidham is having valid letter of Approval (LoA), issued vide F. No. KASEZ/IA/1890/2002-2003/20667 dated 03/03/2003, as amended time to time by the Development Commissioner, KASEZ, to import all types of old and used clothing. After segregation, the old and used clothing are exported. The said unit has also been clearing mutilated old and used clothing in the Domestic Tariff Area (DTA) on payment of appropriate Customs Duty.
3. Based on intelligence, a case was booked by the officers of Customs of KASEZ on 28.01.2013, two vehicles bearing Registration Nos. HR-66-3734 & HR-63B-2393 (hereinafter referred to as the 'said vehicles') loaded with DTA consignment said to contained of 'Old & used mutilated Rags (Cotton/Woolen & Synt.)' of the said unit which were located outside parking of the KASEZ were taken into possession and parked inside the KASEZ near the Check Post on 28.01.2013.
4. On 29.01.2013, the Appraiser and the Preventive Officers of Customs, KASEZ had taken the said vehicles loaded with DTA consignment of 'Old & used mutilated Rags (Cotton/Woolen & Synt.)' in the presence of the witnesses and Shri Roopchand Sharma, Manager & Authorized Signatory of the said unit, to the demarcated area i.e. Parking Area, Sector –I, near Out Gate of Check Post, KASEZ after carrying out weightment for the examination of the same. The Appraiser

of Customs, KASEZ informed the said witnesses and Shri Roopchand Sharma that the goods loaded in the said vehicles was required to be examined whether it was un-mutilated clothes or properly mutilated in accordance with CBEC Circular No. 36/2000-Customs dated 08/05/2000 read with Instruction No. 01/2011-12 dated 14.07.2011 issued under F. No. KASEZ/Cus/Used Clothing/2011-12 by the Deputy Commissioner of Customs, KASEZ.

5. The said DTA consignment of 'Old & used mutilated Rags (Cotton/Woolen & Synt.)' of the said unit cleared under Bill of Entry No. 378 dated 18.01.2013 was off-loaded from the said vehicles one by one for examination purpose in the presence of the witnesses and Shri Roopchand Sharma Manager & Authorized Signatory of the said unit. The goods were examined and it was found that it constituted of Cotton Sweaters (Knitted) only, on both the said vehicles, mutilated as described hereinafter in the Panchnama dated 29.01.2013. In order to make examination more thorough, the consignment was divided into 75 equal segments and one sample from each such segment was picked up subjected to further examination, measurement of cuts etc. During the course of examination, five representative samples of the goods loaded in respect of both the said vehicles were drawn and sealed in separate boxes in the presence of witnesses and Shri Roopchand Sharma. On examination, no uncut or with less than three cuts pieces were found and all Cotton Sweaters (Knitted) were mutilated as described at pages 4 to 6 of the Panchnama drawn on dated 29.01.2013. The relevant extracts of the said panchnama are reproduced herewith:-

a. In respect of consignment loaded in vehicle no. HR-66-3734:-

"The Cotton Sweaters were found with incisions on both the sleeves 7 to 13 Centimeters far from the shoulder seams. The length of the incision was 8 to 11 inches on an average. Incision was also found on back side of the sweater two to four inches on an average below the neck. The incision was 9 to 15 inches long on an average. All incisions are marked in the pictorial representation in the said panchnama" also mentioned in the SCN.

b. In respect of consignment loaded in vehicle no. HR-63B-2393:-

"The Sweaters were found with incisions on both the sleeves 8 to 13 centimeters far from the shoulder seams. The length of the incision was 7 to 10 inches on an average. Incision was also found on back side of the sweater two to four inches on an average below the neck. The incision was 7 to 10 inches long on an average. All incisions are marked in the pictorial representation in the panchnama."

6. Whereas, during examination, it was also found that all the "Cotton Sweater (Knitted)" had three incisions on both the sleeves 7 to 13 Centimeters far from the shoulder seams. The length of the incision was 8 to 11 inches on an average. Incision was also found on back side of the sweater two to four inches on an average below the neck. The incision was 9 to

15 inches long on an average. All incisions are marked in the pictorial representation in the common Panchama dated 29.01.2013.

7. During panchnama, on being asked by the Appraiser of Customs, KASEZ as to why these cuts should not be considered as contrary to Circular No. 36/2000-Customs dated 05/08/2000, Shri Roopchand Sharma stated that his goods did not violate the aforementioned Circular as the essence of the Circular was to subject the garments to such mutilation so that, it becomes unserviceable and beyond repair for use as the original product. In order to ensure this the circular prescribed to apply three or more cuts through the entire length of garment in a crisscross manner not along the seams as one of the methods. This is one of the options but suggested by the circular. The goods can be rendered unserviceable by resorting to other mode of cutting also. He held that his sweaters were all knitted ones and even a small incision will make the sweaters unusable. The incision on the knitted fabric cannot be repaired to make the product commercially presentable. There is no market for such a product. The purpose of selling these mutilated sweaters is to recover maximum quantity of yarn by way of yarn pulling in spinning mills in Haryana. Therefore, any haphazard cut will destroy the yarn and make the product unmarketable for any purpose and the product will be commercially unviable absolutely. The Circular has to be read in conjunction with the commercial utility of the product, accordingly any knitted sweater with even a single cut anywhere will make it beyond repair and commercially unusable as such. Hence, the condition of Customs Circular No. 36/2000 is not violated in spirit. After examination, the goods were allowed to be reloaded into the said vehicle and after covering the goods with tarpaulin, the vehicle was brought back to Check Post of KASEZ and parked there.

8. The goods loaded in the said vehicles was examined under the aforesaid Panchnama dated 29.01.2013 by the Appraiser of Customs, KASEZ and it was reported by him vide report dated 04.02.2013 that Para 1(iii) of Circular No. 36/2000-Customs dated 08.05.2000 lays down in respect of mutilation that Rags to be considered as completely mutilated should be totally unserviceable and beyond repair and this can be ensured by applying criteria of three cuts or more through the entire length of garments, in a crisscross manner, not along the seams. Hence, as per the above circular, three cuts or more in a crisscross manner are required through the entire length of garment. As regards, the goods in the said vehicles, it was opined that in order to make doubly sure that the garments are capable of being converted into fibre only, the said unit may be asked to cut the same into pieces.

9. It was evident from the above said report of the Appraiser of Customs, KASEZ that the said goods were not in conformity to CBEC Circular No. 36/2000-Customs dated 08.05.2000 read with Instruction No. 01/2011-12 dated 14.07.2011 issued under F. No. KASEZ/Cus/Used Clothing/2011-12 by the Deputy Commissioner of Customs, KASEZ. Hence, the said goods loaded in both the said vehicles total weighing 52750 Kgs. (26,700 kgs. in Vehicle No. **HR-66-3734** as per weighment slip no. 71713 dated 12.02.2013 and 26,050 kgs. in Vehicle No. **HR-63B-**

2393 as per weighment slip No. 71714 dated 12.02.2013 and 74158 dated 12.02.2013) covered under Bill of Entry No. 378 dated 18.01.2013 filed by the said unit were seized under Panchnama dated 12.02.2013 and kept in the warehouse at Shed No. 405 N-II, New Area, KASEZ. Further, both the said vehicles allegedly used for transportation of the said seized goods was also seized under Panchnama dated 14.02.2013 and custody of the said seized vehicles was given to the Security Officer/Check Post to take care of them.

10. Since, no one came forward to claim the ownership of the above said seized vehicles allegedly used for the transportation of the said seized goods as per Panchnama dated 14.02.2013, a Claimant Notice dated 14.02.2013 was issued by the Deputy Commissioner of Customs, KASEZ. After the issuance of the said Claimant Notice, the said unit vide their letter dated 15.02.2013, made a request to the Deputy Commissioner of Customs, KASEZ to release the said vehicles bearing Registration No. HR-66-3734 and HR-66B-2393 seized under Panchnama dated 14.02.2013. The Deputy Commissioner of Customs, KASEZ vide his letter dated 15.02.2013 ordered to release the said vehicles provisionally subject to execution of Bond of full value of above seized vehicles i.e. Rs. 7.00 Lakhs (Rs. 3.50 Lakhs each) and submission of the copy of Registration Certificate of the said seized vehicles. As per the said order, the said unit furnished a Bond duly notarized and covering the total seizure value of Rs. 7.00 Lakhs of the seized vehicles. Accordingly, the said vehicles were released provisionally on 15.02.2013 to Shri Vikash Mittal, Authorised Signatory of the said unit with the direction to produce the said vehicles before the Investigating Authority, as and when required, failing which, necessary legal action may be taken against him.

11. Statement of Shri Vikash Mittal, Authorized Signatory of the said unit was recorded before the Appraiser of Customs, KASEZ on 25.02.2013 under Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated that a Letter of Approval (LoA) has been granted to the said unit vide F. No. KASEZ/IA/1890/2002-2003/20667 dated 03/03/2013, as amended. Accordingly, the said unit imports various types of old and used garments in bale form mainly from USA, Canada, Malaysia, Taiwan and European countries, etc. Then they segregate the materials and sort them into grades primarily on the basis of the condition of the clothes. The lowest type of garments, subjected to mutilation in light of Circular No. 36/2000-Customs dated 08.05.2000 read with Instruction No. 01/2011-12 dated 14.07.2011 issued by the Deputy Commissioner of Customs, KASEZ are cleared into DTA for recycling purposes etc.

12. Further, he stated that consignment of 52750 Kgs of Cotton Sweaters (Knitted) covered under Bill of Entry No. 378 dated 18.01.2013 and loaded in the said two vehicles were consigned to M/s Jindal Woolen Industries Ltd., E-1, Industrial Area, Panipat (Haryana). The subject Bill of Entry was filed by the said unit on behalf of M/s Jindal Woolen Industries Ltd. The goods were loaded from demarcated area in the said vehicles and same was cleared from KASEZ on 28.01.2013. On the same day in the evening, the said loaded vehicles were taken into possession at outside parking of the Zone for further examination and investigation by the

officers of Customs; that during the whole proceedings of examination done on 29.01.2013, Shri Roopchand Sharma, Manager and authorized signatory of the said unit was present and satisfied with the proceedings; that during the seizure proceedings done on 12.02.2013 of their consignment of Cotton Sweaters (Knitted) loaded in both the said vehicles and covered under Bill of Entry No. 378 dated 18.01.2013, Shri Mani Goyal, Supervisor of the said unit was present and fully satisfied with the proceedings drawn in this connection; that after going through the records of the proceedings on both the above dates, he was fully satisfied with the manner of proceedings done in this connection. He further stated that in respect of the Cotton Sweaters (Knitted) seized on 12.02.2013, he stated that as had already stated by Shri Roopchand Sharma, Manager and authorized signatory of the said unit in Panchnama dated 29.01.2013 that his goods did not violate the aforementioned CBEC Circular No. 36/2000-Customs dated 08.05.2000 he fully endorse the views of Shri Sharma.

13. On being asked how was he associated with the provisional release of the said vehicles No. HR-66-3734 & HR-66B-2393 in which said consignment were loaded, he stated that he had engaged both the vehicles for transportation of the consignment on 28.01.2013 which was placed under seizure by Panchnama dated 12.02.2013, so it was his duty to get them released in the absence of their owners, Shri Dharmendra, V&P.O.- Riwasa, Tehsil, Dist.- Mahendragarh (Haryana) and Shri Rajesh, S/O- Sh. Raishal, V&P.O.- Chhabilli, Tehsil & Dist.- Jhajjar (Haryana) respectively. After getting the possession of the said vehicles on 15.02.2013 on provisional release, the same were handed over to their respective owners.

14. In view of the above, investigation conducted and statement of the person concerned recorded, it is found that the said unit had cleared "Cotton Sweaters (Knitted)" on 28.01.2013 into DTA on behalf of M/s Jindal Woolen Industries Ltd., E-1 Industrial Area, Panipat (Haryana) by way of violating the provisions of Circular No. 36/2000-Customs dated 08.05.2000 and mis-declaration of the said goods as 'Old and Used Mutilated Rags (Cotton/Woolen & Synt)' in their clearance document i.e. in Bill of Entry No. 378 dated 18.01.2013. Accordingly, benefit of exemption of Customs Duty is not available on the said consignments and Customs Duty is required to be demanded and recovered from the said unit. This fact was found evident in view of the following:-

- (i) On examination of the said DTA consignment loaded in vehicle No. HR-66-3734, it was found that the entire consignment loaded in the said vehicle was of "Cotton Sweaters" and they were found with incisions on both the sleeves 8 to 13 Centimeters far from the shoulder seams. The length of the incision was 7 to 10 inches on an average. Incision was also found on back side of the sweater two to four inches on an average below the neck. The incision was 9 to 15 inches long on an average. All incisions are marked in the pictorial representation in the Panchnama. And the consignment loaded in vehicle No. HR-63B-2393, it was found that the entire consignment loaded in the said

vehicle was of cotton Sweaters and they were found with incision on both the sleeves 8 to 13 Centimeters far from the shoulder seams. The length of the incision was 7 to 10 inches on an average. Incision was also found on back side of the sweater two to four inches on an average below the neck. The incision was 7 to 10 inches long on an average. All incisions are marked in the pictorial representation in the panchnama.

- (ii) Also the classification of the "Cotton Sweaters (Knitted)" cleared in the DTA was mis-declared as 'Old and Used Mutilated Rags (Cotton/Woolen & Synt)' in the Bill of Entry no. 378 dated 18.01.2013 under CTH 63109010, whereas the same was required to be re-classified under CTH 63090000 as prescribed under Para 1(i) of the Circular No. 36/2000-Customs dated 08.05.2000 because the said "Cotton Sweaters (Knitted)" were not completely mutilated and, hence, were serviceable after repair.
- (iii) Import of "Worn clothing and other worn textile articles" falling under CTH 63.09 [ITC (HSN 63090000)] is restricted under the Foreign Trade Policy, 2009-14, however permitted for import under 63109010 under completely mutilated form or condition without a License subject to the condition that mutilation must conform to the requirement specified by the Circular No. 36/2000-Cus dated 08.05.2000.
- (iv) The said unit being a SEZ unit was allowed to import "Old and used Clothing" without payment of Customs Duty under Rules 27 & 28 of the SEZ Rules, 2006. The imported old & used clothing, after their complete mutilation subject to strict compliance of the conditions of instruction issued under CBEC Circular No. 36/2000-Customs dated 08.05.2000, are allowed to be cleared into DTA under Rules 47 & 48 of SEZ Rules, 2006 on payment of appropriate Customs Duty. However, it was found grossly violated the provisions of the said circular by the said unit. Therefore, the said unit rendered themselves ineligible for exemption of Customs Duty on the said DTA clearances of 52750 Kgs of "Cotton Sweaters (Knitted)" valued at Rs.8,74,595/-. Therefore, the differential Customs Duty on 52750 Kgs of "Cotton Sweaters (Knitted)" cleared under Bill of Entry No. 378 dated 18.01.2013 stands demandable and recoverable from the said unit amounting to Rs.2,06,837/- (As detailed in Annexure – I to the Show Cause Notice F. No. KASEZ/CUS/MISC/01/2013/Pt-III dated 18/07/2013).

15. In view of the foregoing paras, it is found that:-

The said unit found having been failed in declaring the correct description of the import goods in the Bill of Entries and contravened the provisions of Rule 11 & 14 of the Foreign Trade

(Regulation) Rules, 1993, inasmuch as they were aware that the declaration made by them was not correct. The contravention of the provisions of the Foreign Trade (Development & Regulation) Act, 1992, Foreign Trade (Regulation) Rules, 1993, and Foreign Trade Policy, 2009-14 is a prohibition of the nature as described under Section 11 of the Foreign Trade (Development and Regulation) Act, 1992. Now, in terms of Section 3 (3) of the Foreign Trade (Development and Regulation) Act, 1992, the prohibitions are deemed to be a prohibition under Section 11 of the Customs Act, 1962. Thus, the said seized goods i.e. "Cotton Sweaters (Knitted)" cleared under the said Bill of Entry No. 378 dated 18/01/2013 are cleared illegally to the importer in DTA for the reasons of having been imported contrary to the prohibitions imposed by or under this Act or any other law for the time being in force. Therefore, the said goods, i.e., 52750 Kgs of "Cotton Sweaters (Knitted)" valued at Rs.8,74,595/- are liable for confiscation under Sections 111 (d) and 111(m) of the Customs Act, 1962.

16. Moreover, the said unit for the reasons as cited herein above paras was also not entitled for exemption of the Customs Duty amounting to Rs.2,06,837/- (as detailed in Annexure-I to the SCN) on the said seized goods. i.e. "Cotton Sweaters (Knitted)" cleared in DTA under Bill of Entry No. 378 dated 18.01.2013, which was availed at the time of import thereof under SEZ scheme in terms of Rules 27 & 28 of the SEZ Rules, 2006, stands liable to be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 read with provisions of Section 30 of the SEZ Act, 2005 and Rules 25 & 34 of SEZ Rules, 2006.

17. The said unit was fully aware of the relevant provisions of the Customs Act, 1962, Foreign Trade Policy 2009-14, Foreign Trade (Development & Regulation) Act, 1992, SEZ Act, 2005 and SEZ Rules, 2006 and the guidelines as prescribed through the Circular No. 36/2000-Customs dated 08/05/2000 read with Instruction No.01/2011-12 dated 14.07.2011, issued by the Deputy Commissioner of Customs, KASEZ for import clearance of rags and they were also aware that such act on their part would render the goods liable for confiscation. Therefore, the said unit have contravened the provisions of said Acts, Rules and Circular and found willfully involved in the act rendering themselves liable for penalty under Section 112 (a) & 114 A of the Customs Act, 1962.

18. The Vehicles bearing registration No. HR-66-3734 & HR-66B-2393 were used in transportation of the said seized goods viz. "Cotton Sweaters (Knitted)" a restricted goods under CTH 63090000 and which were cleared by the said unit under Bill of Entry No. 378 dated 18.01.2013. Hence, both the said vehicles valued at Rs. 7.00 Lakh utilized for transportation of the offending goods were placed under seizure by Panchnama dated 14.02.2013, also stands liable for confiscation under Section 115 of the Customs Act, 1962.

19. Shri Vikas Mittal, Authorised Signatory of M/s Jindal Fibres, KASEZ was also found involved in mis-declaration of the description and classification of the said goods i.e. "Cotton Sweaters (Knitted)" cleared under Bill of Entry No. 378 dated 18.01.2013 into DTA as 'Old and Used Mutilated Rags (Cotton/Woolen & Synt)'. He also arranged both the said vehicle for the transportation of the said goods, which was confirmed by him under his statement dated 25/02/2013 recorded under Section 108 of Customs Act, 1962. Being authorized signatory of the said unit, he was fully aware of the provisions of the SEZ Act, SEZ Rules, Customs Act and the rules and regulations framed thereunder. However, by various acts of omission and commission as stated above, he was found responsible for the gross violation of the provisions of the Circular No 36/2000- Customs dated 08/05/2000, Customs Act, 1962, Foreign Trade Policy, 2009-14, Foreign Trade (Development & Regulation) Act, 1992, SEZ Act, 2005 and SEZ Rules, 2006, and by such acts he rendered himself liable for penalty under Section 112(a) and 114 AA of the Customs Act, 1962.

20. Accordingly, a Show Cause Notice F. No. KASEZ/CUS/MISC/01/2013/Pt-III dated 18/07/2013 was issued to M/s Jindal Fibres, Plot No. 49 & 58, Sector – II, Kandla Special Economic Zone, Gandhidham by the Deputy Commissioner of Customs, Kandla Special Economic Zone, Gandhidham asking them as to why:-

- (i) "Cotton Sweaters (Knitted)" weighing 52750 Kgs cleared by them under Bill of Entry No. 378 dated 18/01/2013 seized under panchnama dated 12/02/2013 and presently lying at Shed No. 405 N-II, New Area, KASEZ should not be re-classified under CTH 63090000.
- (ii) "Cotton Sweaters (Knitted)" weighing 52750 Kgs valued at Rs. 8,74,595/- cleared by them under Bill of Entry No. 378 dated 18/01/2013 seized under panchnama dated 12/02/2013 and presently lying at Shed No. 405 N-II, New Area, KASEZ should not be confiscated under the provisions of Section 111(d) & 111(m) of the Customs Act, 1962.
- (iii) Customs Duty amounting to Rs.2,06,837/- (as per duty calculation sheet enclosed to the SCN as Annexure – I) should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 read with provisions of Section 30 of the SEZ Act, 2005 and Rules 25 & 34 of the SEZ Rules, 2006.
- (iv) Interest should not be recovered from them on the said Customs Duty as at (iii) above, under Section 28AA of the Customs Act, 1962.
- (v) Penalty should not be imposed on them under Section 112(a) and 114A of the Customs Act, 1962.

(vi) The vehicles bearing registration no. HR-66-3734 and HR-66B-2393 valued at Rs.3.50 Lakhs each (Total Rs. 7.00 Lakhs) utilized for transportation of the said goods, seized under panchnama dated 14/02/2013, should not be confiscated under Section 115 of the Customs Act, 1962.

Shri Vikas Mittal, Authorised signatory of M/s Jindal Fibres, KASEZ, Gandhidham, was also called upon to show cause as to why a penalty should not be imposed on him under Section 112(a) & 114AA of the Customs Act, 1962.

21. Further, a Corrigendum vide F. No. KASEZ/CUS/Misc/01/2013/Pt.III dated 06/02/2017 to the SCN bearing F. No. KASEZ/CUS/MISC/01/2013/Pt-III dated 18/07/2013 was issued. The content of the said Corrigendum is as follows:-

"In para 10 & 11 of the said Show Cause Notice dated 18/07/2013; the authority mentioned as "Deputy Commissioner of Customs, Kandla Special Economic Zone, Gandhidham" may be read as "The Additional Commissioner of Customs, Custom House, Kandla".

22. After giving an opportunity of personal hearing and going through the entire case records, the written submissions made by the unit and their authorized signatory and oral submission made during personal hearing and the relevant provisions of law, Show Cause Notice No. KASEZ/CUS/MISC/01/2013/Pt-III dated 18.07.2013 was adjudicated by the then Additional Commissioner of Customs, Custom House, Kandla vide Order-In-Original bearing No.KDL/ADC/UBR/72/2016-17 dated 30.03.2017 confirming the demand of differential duty and imposing fine/penalty on both unit and the authorized signatory.

23. Aggrieved with the above Order-In-Original, M/s. Jindal Fibre, Kandla Special Economic Zone, Gandhidham filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad. In the said appeal, they have relied upon the judgment of CESTAT issued in the case of M/s. Tulip Exim Pvt Ltd, dated 04.10.2017. The Commissioner of Customs (Appeals), Ahmedabad vide OIA No. KDL-CUSTOM-000-APP-02 to 04-18-19 dtd. 11.04.2018 has remitted the matter directing the lower authority, to examine whether all facts and circumstances of the relied upon case laws are identical or otherwise and also examine the applicability of relied upon case laws and then pass order afresh in this case following the principles of natural justice and legal provisions. Thus, present *denovo* proceeding has been taken up to decide the matter afresh.

PERSONAL HEARING AND DEFENCE REPLY:


24. For the sake of natural justice, an opportunity to be heard in person, a fresh personal hearing in the matter was given on 14.11.2018 to the noticees. Shri R.G. Chellani, Authorised representative and Shri Vikas Mittal, Authorised Signatory of the unit M/s. Jindal Fibres, Kandla

Special Economic Zone, Gandhidham appeared for Personal Hearing. During Personal Hearing they have reiterated their earlier submission and further given additional written submission dated 14.11.2018. They submitted that the Commissioner of Customs (Appeals), Ahmedabad vide OIA No. KDL-CUSTOM-000-APP-02 to 04/18-19 dated 11.04.2018 has specifically directed the lower authority to examine the case in the light of judgment dtd. 04.10.2017 passed by the CESTAT, Ahmedabad in the case of M/s Tulip Exim Pvt Ltd being the similar case. In the quoted judgment of M/s Tulip Exim Pvt Ltd the Hon'ble CESTAT, Ahmedabad has held that M/s Tulip Exim Pvt Ltd is not "importer" and as such no liability can be fastened on them. Further, they also stated that in their reply dtd. 31.07.2013 and written submission dtd. 10.12.2015 their stand was that they are not the "importer" in the present case and therefore no liability can be fastened on them following the rational of order of CESTAT, Ahmedabad.

25. Further, they submitted that apart from the case of M/s. Tulip Exim Pvt Ltd., even in the similar case of M/s. Anita Exports and M/s. Raghwani Textiles, the CESTAT has held that the SEZ unit is not the "importer" and therefore no liability can be fastened on them. The said SEZ unit in their written submission dated 31.07.2013, categorically denied all the allegations in the Show Cause Notice dated 18.07.2013 and put on record that the goods under seizure are not liable to be confiscated under Section 111 (d) & (m) of the Customs Act, 1962 and they are not liable to be penalized under Section 112(a), 114A and 114AA of the Customs Act, 1962. They also submitted that no differential duty or interest is payable by them under Section 28 of the Customs Act, 1962 read with the provisions of SEZ Act, 2005 and SEZ Rules, 2006.

DISCUSSION AND FINDINGS

26. I have carefully gone through the entire case records, written submissions made by the unit & their authorized signatory and oral/written submissions made by them during personal hearing. I have also gone through the contents of OIA No. KDL-CUSTOM-000-APP-02 to 04-18-19 dtd.11.04.2018 and the relevant provisions of law. I find that the main contention of the Noticee is that he is not the "importer" in the present case and therefore no liability can be fastened on them. The said unit argued that they are the supplier of the said goods and said goods were supplied to M/s. Jindal Woolen Industries Ltd., Panipat, a DTA buyer. Hence, M/s. Jindal Woolen Industries Ltd., Panipat is the importer and duty may be recovered from them. Thus, before discussing and commenting on the allegations made under present show cause notice, it is pertinent to discuss the Import & Export procedures laid down under Customs Act, 1962, the SEZ Act, 2005 and SEZ Rules, 2006.

27. The definition of "exporter" and "importer" is defined under Section 2(20) and 2(26) of the Customs Act, 1962 respectively, the same is reproduced as under: 

“ 2(20) "exporter", in relation to any goods at any time between their entry for export and the time when they are exported, includes ¹⁸[any owner, beneficial owner] or any person holding himself out to be the exporter;

“2(26) "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes (any owner, beneficial owner) or any person holding himself out to be the importer;”

Further, “Special Economic Zone”, “import” & “Export” is defined under Section 2(za), 2(m) & 2(o) respectively of the Special Economic Zones Act, 2005, read as under:

“2(za) “Special Economic Zone” means each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone;”

“2 (m) “export” means –

- (i) Taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or*
- (ii) Supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or*
- (iii) Supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or difference Special Economic Zone;*

“2(o) “import” means –

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

28. The objective of SEZ units is to promote exports, enhance foreign exchange earnings, to attract investment for export production and employment generation. SEZs are like a separate island within country. These are treated as if they are outside India for Customs purposes. Goods can be brought in SEZs without payment of Customs duty or excise duty. Supplies from other parts of India are treated as ‘exports’ and are entitled to all export benefits. The procedures for Import and export from SEZ are laid down under Rule 27 to 29 & Rule 46 of the Special Economic Zone Rules, 2006 respectively. The activity of import and export are complementary to each other. The Goods which are exported for one country are imports for other country and vice versa. As per sub-rule 2(a) of Rule 29, a SEZ unit shall file a Bill of Entry

for Home consumption in quintuplicate giving therein, description with specially stamped endorsement as "Special Economic Zone Cargo" along with Bill of lading or Airway Bill and Invoice and Packing list with the Authorized officer who shall register and assign a running number and assess the Bill of entry, on the basis of transaction value. A SEZ unit may import or procure goods without payment of duty, taxes & cess. Further, as per sub-rule (1) of Rule 46, if a unit in SEZ intends to export goods from SEZ, then it has to file Shipping Bill in quadruplicate, with the Authorized officer of Customs in the SEZ together with relevant documents.

29. Further, Sales in Domestic Tariff Area has been prescribed under Rule 47 of the SEZ Rules, 2006 :-

"47. Sales in Domestic Tariff Area — (1) A Unit may sell goods and services including rejects or wastes or scraps or remnants or broken diamonds or by-products arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area on payment of customs duties under section 30, subject to the following conditions, namely:—

(a) Domestic Tariff Area sale under sub-rule (1), of goods manufactured by a Unit shall be on submission of import licence, as applicable to the import of similar goods into India, under the provisions of the Foreign Trade Policy:

Provided that goods imported or procured from the Domestic Tariff Area and sold as such without being subjected to any manufacturing process shall be subject to the provisions of the Foreign Trade Policy as applicable to import of similar goods into India:

(b) Domestic Tariff Area sale under sub-rule (1) of rejects or scrap or waste or remnants arising during the manufacturing process or in connection therewith by the Unit shall not be subject to the provisions of the Import Trade Control (Harmonized System) of Classification of Export and Import Items:

Provided that the Central Government may notify restrictions, as it deems fit on all or any class of such goods mentioned under this clause."

30. I find that the noticee has contended that they have supplied the said goods to DTA unit and hence they are not the importer in the present case, DTA unit is the importer. As discussed above Import and Export are complementary to each other and if for an instance the contention of noticee is accepted that he is not an importer than he must be an exporter in this case. But as evident from the facts and records that no Shipping Bill has been filed by the noticee in terms of Rule 46 of the Special Economic Zone Rules, 2006 for clearance of the goods to DTA unit i.e. M/s. Jindal Woolen Industries Ltd., Panipat, Haryana. Also, when the SEZ units procure goods from DTA unit, no shipping bill is filed by the DTA unit but the benefits are given to the DTA unit as if they have exported the goods outside India. Hence, in both these conditions a situation arises when the noticee is neither an importer nor an exporter in a cross-

boundary trade, which is not possible in any kind of cross-boundary trade. However, under Rule 29 and Rule 46 of the SEZ Rules, 2006, procedure has been prescribed specifically for filing Bill of Entry and Shipping bill for every import and export under SEZ. Since, term for DTA unit as an importer has nowhere define; I find that when the goods are cleared from SEZ unit to DTA unit, **the relationship between both of them is of seller and buyer only**. In true spirit, SEZ units are the actual importers of goods being brought into India and treating them as foreign territory is only for the purpose of exempting them from payment of any duty and taxes, in order to promote exports from India. This promotional measure granted to SEZ units cannot be misinterpreted in order to escape from duty liability by them.

31. Further, as per Rule 47 of the SEZ Rules, 2006, the SEZ Unit may sell goods without processing/ manufacturing in the Domestic Tariff Area on payment of customs duties under section 30. Thus inference can be drawn that once the SEZ unit has paid the Customs duty on imported goods, the goods became part of the goods of Indian territory and therefore can be cleared / sell to any entity outside the SEZ area like the other goods available in India. In that case also, the importer remains the SEZ unit and not the DTA buyer. Thus, any goods can be brought in SEZ without payment of Customs duty or excise duty, but if the unit want to clear the same into DTA, duty liability arises and the only question remains who will pay the said duty. The same is answered in Rule 47, as narrated above, elaborates that if the goods are cleared as such duty payment liability is on SEZ unit only.

32. I find that Shri Roopchand Sharma, Authorised Representative of the SEZ Unit, M/s Jindal Fibres, at the time of Panchnama and statement recorded under section 108 of the Customs Act, 1962, accepted that the goods belongs to the SEZ Unit and their goods does not violate the provisions of Circular 36/2000. He further accepted that the said consignment was loaded by the said unit in the vehicles, which were engaged by him for transportation of the said goods on 28.01.2013, which were later placed under seizure.

33. I find that Shri Vikas Mittal , an Authored Signatory of the SEZ Unit, M/s Jindal Fibres, at the time of provisional release of the vehicles having registration No.HR-66-3734 and HR-63B-2393 has taken responsibility of the vehicles at his own and executed the Bond of Rs. 7,00,000.00 lakhs on behalf of the said unit and later handed over the said vehicles to the real owner of the vehicle Shri Dharmendra, V&P.O.- Riwasa, Theh, Dist.- Mahendragarh (Haryana) and Shri Rajesh, S/O- Sh. Raishal, V&P.O.- Chhabilli, Tehsil & Dist.- Jhajjar (Haryana).

I rely in the case of *Surjeet Singh Chhabra v. Union of India, 1997 (89) E.L.T. 646 (S.C.)*, the Supreme Court has held that confessional statement made before Customs officer is an admission and binding since Customs officers are not police officers in terms of Section 25, Evidence Act, 1973. The Madras High Court in the case of *Assistant Collector of Customs v.*

Govindasamy Ragupathy, 1998 (98) E.L.T. 50 (Mad.) held that confessional statement made under Sec. 108 of Customs Act, 1962 before Customs officers are to be regarded as voluntary. It is settled legal proposition that statement recorded under section 108 of the Act is admissible unlike a statement recorded by a Police Officer. Even noticees have not retracted/rebutted from their confessional statements. Hence, their admitted facts need not be required to be proved.

34. Thus, in view of above, I find that the SEZ units are the actual importers of goods brought into India and treating them as foreign territory is only for the purpose of exempting them from payment of any duty and taxes, in order to promote exports from India. To further elaborate, I submit that whenever any goods physically has to be brought into SEZ from a place outside India as per Rule 29 (2)(a) of the SEZ Rules, 2006, SEZ importer (unit) has to file Bill of Entry for home consumption. In the present case, goods in question were brought into Kandla Special Economic Zone, Gandhidham from a place outside India by M/s. Jindal Fibres, KASEZ being a regular importer holding LOA No. KASEZ/IA/1890/2002-2003/20667 dated 03.03.2003 as amended time to time by the Development Commissioner, KASEZ, Gandhidham.

35. Now, I would like to discuss and decide the following other points as mentioned in the Show Cause Notice No.KASEZ/CUS/MISC/01/2013/Pt-III dated 18/07/2013 which are required to be decided :-

- (i) "Cotton Sweaters (Knitted)" weighing 52750 Kgs cleared by M/s. Jindal Fibre under Bill of Entry No. 378 dated 18/01/2013 seized under panchnama dated 12/02/2013 and presently lying at Shed No. 405 N-II, New Area, KASEZ should not be re-classified under CTH 63090000.
- (ii) "Cotton Sweaters (Knitted)" weighing 52750 Kgs valued at Rs. 8,74,595/- cleared by them under Bill of Entry No. 378 dated 18/01/2013 seized under panchnama dated 12/02/2013 and presently lying at Shed No. 405 N-II, New Area, KASEZ should not be confiscated under the provisions of Section 111(d) & 111(m) of the Customs Act, 1962.
- (iii) Customs Duty amounting to Rs.2,06,837/- (as per duty calculation sheet enclosed to the SCN as Annexure – I) should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 read with provisions of Section 30 of the SEZ Act, 2005 and Rules 25 & 34 of the SEZ Rules, 2006.
- (iv) Interest should not be recovered from them on the said Customs Duty as at (iii) above, under Section 28AA of the Customs Act, 1962.

- (v) Penalty should not be imposed on them under Section 112(a) and 114A of the Customs Act, 1962.
- (vi) The vehicles bearing registration no. HR-66-3734 and HR-66B-2393 valued at Rs.3.50 Lakhs each (Total Rs. 7.00 Lakhs) utilized for transportation of the said goods, seized under panchnama dated 14/02/2013, should not be confiscated under Section 115 of the Customs Act, 1962.

Shri Vikas Mittal, Authorised signatory of M/s Jindal Fibres, KASEZ, Gandhidham, was also called upon to show cause as to why a penalty should not be imposed on him under Section 112(a) & 114AA of the Customs Act, 1962.

36. I find that based on the intelligence received, the said goods, i.e., 52750 Kgs of "Cotton Sweaters (knitted)" along with vehicles bearing registration No.HR-66-3734 and HR-63B-2393 were seized by the Custom officers of KASEZ for the reason that the cuts appeared on the said seized goods were contrary and not conforming to CBEC's Circular No.36/2000-Customs dated 08.05.2000 read with Instruction No.01/2011-12 dated 14.07.2011 issued by the Deputy Commissioner of Customs, KASEZ.

37. I find that Bill of Entry No. 378 dated 18.01.2013 was filed under Rule 48(1) of the SEZ Rules, 2006 by M/s. Jindal Fibres, KASEZ and signed by their authorized signatory Shri Vikas Mittal on behalf of the DTA buyer i.e. M/s. Jindal Woolen Industries Ltd., Panipat (Haryana) for Old & Used Mutilated Rags (Cotton/Woolen/Synthetic), by classifying the said goods under CTH 63109010. The said goods were presented under the above-stated Bill of Entry before the Customs officers for examination in demarcated area of KASEZ on 28.01.2013 to clear into DTA on payment of applicable customs duties paid by the SEZ unit. After examination by the officers, the goods were loaded by the SEZ unit into Trucks bearing Registration No. HR-66-3734 and HR-63B-2393.

38. Further, I find that based on an intelligence that the old & used mutilated cloths being cleared into DTA are not properly mutilated strictly as per the Circular No.36/2000-Cus dated 08.05.2000 to allow the import of the mutilated old and used clothing into India, the said vehicles bearing registration No. HR-66-3734 and HR-63B-2393 loaded with DTA consignment were taken into possession by the custom officers on the same day, which was located in the outside parking in the KASEZ, thereafter; the said vehicles were parked inside the KASEZ near Check-post. The goods were examined by them in the presence of Shri Roopchand Sharma, Manager and Authorised signatory of the SEZ unit & independent witnesses and it was found that the said DTA consignment contains of "Cotton sweaters (Knitted)" had three incisions. However, the officers found that the "Cotton sweaters (Knitted)" having cuts on both the sleeves 8 to 13 centimeters far from the shoulder seams. The length of the incision was 7 to 10

inches on an average. Incision was also found on the back side of the Sweater 2 to 4 inches on an average below the neck. The incision was 9 to 15 inches long on an average. These were recorded in the said panchnama dated 29.01.2013 also mentioned in the SCN as pictorial representation.

39. I find that Import of worn clothing and other worn articles falling under Chapter Tariff heading 63.09 [ITC (HSN) 6309000] is restricted under Foreign Trade Policy (FTP). Therefore, the imported old and worn clothing which are classifiable under said chapter heading i.e. 63090000 could not be cleared into DTA as such. The conditions which are specified in the Foreign Trade Policy for import of goods falling under Chapter Tariff heading ITC (HS) 6309000 and 63109010 / 63109040 are as under:

CTH	Description	Policy	Conditions if any
63090000	Worn clothing and other worn articles	Restricted	
6310	Used or New Rags, Scrap Twine, Cordage, Rope and cables and worn out articles of twine, cordage, rope or cables of Textile materials		
631010	Sorted:		
63101010	Woolen rags	Restricted	
63109010	Cotton Rags	Restricted	*

**Permitted for import in completely mutilated form without a licence subject to the condition that mutilation must conform to the requirement specified Customs Public Notice or Trade Notice.*

In this regard, I find that the CBEC has issued uniform guidelines for the said purpose, vide Circular No.36/2000-Customs dated 08.05.2000. The main reason for allowing import of old and worn clothing into India by the SEZ units is for the purpose of export after segregation of these clothes and the remaining clothes which are not worthy to export are to be mutilated in conformity to the provisions of Circular No.36/2000-Cus dated 08.05.2000 to sell them into DTA on payment of appropriate Customs Duty. Accordingly, the units were being allowed for DTA clearance of the goods as "mutilated Old and used rags" by classifying under CTH 63109010 into DTA on payment of appropriate of customs duties in compliance with the CBEC Circular No.36/2000-Customs dated 08.05.2000. I find that the unit's submission that no Trade Notice or Public Notice has been issued against the condition ITC (HS) 63109010 is without merit. As mentioned above, the CBEC issued uniform guidelines for the said purpose vide Circular No. 36/2000-Cus dated 08/05/2000 which has more legal force than any Trade Notice.

40. The goods falling under CTSN No.6310 (ITC HS No.63109010) is also restricted but permitted for import in completely mutilated form without a license subject to the condition that mutilation must conform to the requirement specified by the Customs public notice / trade notice which in this case is Circular No.36/2000-Customs dated 08.05.2000.

The uniform guidelines prescribed in the CBEC's Circular No. 36/2000 dated 08.05.2000 is as under:-

- i. If the garments are old and used but serviceable after repair, they must be classified under CTH 63.09. Only such garments which are **totally unserviceable and beyond repair**, should be classified under CTH 63.10
- ii. In cases where garments declared to be rags are actually found to be only old and used garments falling under heading 63.09, as is mostly the case, the imposition of fine and penalty for violation of EXIM Policy should be such that it not only wipes out the margining of Profit (MOP) but also acts as a deterrent against repeated imports.
- iii. Rags to be considered as completely mutilated should be totally unserviceable and beyond repair and this can be ensured by applying criteria of three cuts or more, through the entire length of the garment, in a criss- cross manner, not along the seams.
- iv. Only such garments, which are found to be completely mutilated rags, as imported, should be allowed clearance without licence. Clearance subject to post importation mutilation must not be allowed.
- v. In case, it is found that garments are not completely mutilated rags i.e. garments having less than 3 cuts, the same should be allowed clearance only on such fine and penalty which not only wipes out the MOP but also acts as deterrent against future imports.

41. I find that the said goods are having three or four cuts, but are not in the manner specified in the guidelines outlined in the Circular No. 36/2000-Customs dated 08.05.2000. Besides, it is found that the said three or four cuts are very near to the seams in a specific sizes explained at para 3.1.5 above which does not make the said old and used cloths completely mutilated and can be serviceable. The language and spirit of the Circular No. 36/2000-Cus.dated 08.05.2000 is clear, explicit and without any space of ambiguity, therefore not subject to vague prejudiced interpretation. Circular No.36/2000-Cus.dated 08.05.2000 clearly says that the old and used worn cloths must be subjected to three or more cuts through the entire length of the garment, in a crisscross manner, not along the seams for import into India. Then only the Rags are to be considered completely mutilated and totally unserviceable and beyond repair.

Here the basic bone of contention of the said unit is heavily relying upon the word "**this can be ensured**" in para 3 of the said Circular No.36/2000-Customs dated 08.05.2000. Here the

world is “can” and has to be construed accordingly because this shows the intention of the circular whereas the unit or his authorized representative/authorized signatory is interpreting it as “may” by making their own interpretation as other manner of mutilation. Therefore, “can be ensured” is not to be interfered within the light of the fact that the said circular clearly draws the demarcation line that if the goods are not properly mutilated it will fall under CTH 63.09 not under CTH 63.10. Further as contended by the unit that the Para 1 of the said Circular says only about unserviceable & irreparable nature of the old & used goods. However, Para 1 of the said Circular No. 36/2000-Cus dated 08/05/2000 cannot be read independently but have to be read in conjunction with Para 3, 4 and 5 of the said Circular. Therefore, it is wrongly submitted by the unit that the old used & worn clothes, if unserviceable & beyond repair should be classified under 63.10 but it has been amply clarified by Para 3 & 4 that this unserviceable character must be of more than three cuts or more through the entire length of the garment in a criss-cross manner, not along the seams.

The Circular was envisaged after a great deliberation at the highest level and after the Hon'ble Supreme Court's orders and soul of the Circular is that the prescribed cuts as explained in its para 3 which not only makes uniformity for all but to put an end to disputes. In the para (2), (4) and (5) of the circular it serves the procedures for clearance of the rags. Now for the old and used worn cloths to qualify for falling under ITC Chapter heading No.63109010, the only condition is that it should conform the norms of the mutilation explained in the said Circular No. 36/2000-Customs dated 08.05.2000. Therefore, I find that the language and spirit of the Circular No.36/2000-Cus dated 08.05.2000 is clear, explicit and without any space of ambiguity and it cannot be interpreted in any other way in breach of the spirit of the circular.

The contention of the unit that the said old & used worn clothes – cotton sweaters (Knitted), in this case, were completely mutilated, appears to be wrong from the description in the Panchnama and the unit's Authorised Representative in their written statement/acceptance at the time of Panchnama and reiterated later in their written submission. The unit's contention that their cotton sweaters were all knitted ones and even a small incision will make the sweaters unserviceable; that the incision on the knitted fabric cannot be repaired to make the product commercially presentable;

The unit and their authorized signatories explained the cuts in his own way that “their goods did not violate the aforementioned Circular as the essence of the Circular was to subject the garments to such mutilation so that it becomes unserviceable and beyond repair for use as the original product. In order to ensure this the circular prescribed to apply three or more cuts through the entire length of garment in a crisscross manner not along the seams as one of the methods. This is one of the options suggested by the circular. The goods can be rendered unserviceable by resorting to other mode of cutting also. He held that his sweaters were all

knitted ones and even a small incision will make the sweaters unusable. The incision on the knitted fabric cannot be repaired to make the product commercially presentable. There is no market for such a product. The purpose of selling these mutilated sweaters is to recover maximum quantity of yarn by way of yarn pulling in spinning mills in Haryana. Therefore, any haphazard cut will destroy the yarn and make the product unmarketable for any purpose and the product will be commercially unviable absolutely. The Circular has to be read in conjunction with the commercial utility of the product, accordingly any knitted sweater with even a single cut anywhere will make it beyond repair and commercially unusable as such. Hence, the condition of Customs Circular No. 36/2000 is not violated in spirit."

It is clear from the explanation put forth by the unit and their authorized representative, who was also looking after the operations of the unit and authorized to represent on behalf of the unit, regarding the inappropriate cuts not conformable to the uniform procedure/manner of cuts prescribed in the said Circular No.36/2000-Customs dated 08.05.2000 to make any old and used worn cloths to qualify for CTSN No.63101020 and importable into India without a license, is nothing but an afterthought diversionary argument. As admitted by him, the goods are not properly mutilated as per the para 3 of the Circular No.36/2000-Customs dt.08.05.2000 but mutilated to suit their interest of enhanced commercial value which may be fetched and further bolstered from the authorized representatives' submissions that the said old cloths were serviceable. It is thus crystal clear from the arguments put forth by the authorized representative and the incisions found at the time of panchnama that the goods "old and used worn cloths" were not properly mutilated **in a criss-cross manner but intentionally along the seams and does not qualify the provisions of Circular No.36/2000-Customs dt.08.05.2000** and therefore does not qualify to be classified under CTH 63.10 but under CTH 63.09 only. This is further strengthened from the language of the said circular which clearly draws the demarcation line that if the goods "old and used worn cloths" are not properly mutilated then it will fall under CTH 63.09 not under CTH 63.10.

Further, M/s. Jindal Fibre, KASEZ contended that they have filed Home Consumption Bill of Entry No. 378 dated 18.01.2013 for DTA clearance of 'Old and Used Mutilated Rags (Cotton, Woolen & Synt)' on behalf of DTA buyer M/s Jindal Woolen Industries Ltd., Panipat. They have sold the goods to DTA unit i.e. Buyer, **hence they are seller of the goods and not the importer.** In the instant case, DTA unit is an importer, hence, onus of payment of customs duty lies on importer and no customs duty liability can be fastened on them following the rationale of order of CESTAT, Ahmadabad in the case of M/s. Tulip Exim Pvt Ltd being the similar case.

42. I find that M/s. Jindal Fibre, KASEZ vide valid LOA have been granted permission to import all types of "Old and Used Clothing" without payment of duty and after segregation they are required to export them. The said unit is a regular importer of "Old and Used Clothing"

goods. I find that the said unit is also clearing mutilated old and used clothing in the Domestic Tariff Area (DTA) on payment of appropriate Customs duty on regular basis. For this purpose, the said unit is filing home consumption Bill of Entries for both, goods to be imported into SEZ as well as for DTA clearance. I find that in the present case also imports of said goods were made by the said unit and for DTA clearance they had filed Bill of Entry No.378 dated 18.01.2013 on behalf of DTA unit. Thus, as discussed above and from combined reading of definition of "import" as per SEZ Act, 2005 and "importer" as per Customs Act, 1962, it is clear that the said goods are imported goods as the same were bought into SEZ from place outside India and it is also a fact that the same are imported by M/s. Jindal Fibres (KASEZ unit) into Kandla Special Economic Zone.

43. Moreover, as discussed in para supra, the goods to be cleared into DTA i.e. 'Old and Used Mutilated Rags (Cotton/Woolen & Synt)' were found to be mis-declared and were found not to be in the conformity with the CBEC's Circular No.36/2000-Customs dated 08.05.2000, which concludes that M/s. Jindal Fibre has placed the imported goods as such for DTA clearance. Thus, I find that the said unit for the reasons as cited above was not entitled for exemption of the Customs Duty amounting to Rs.2,06,837/- (as detailed in Annexure-I to the SCN), which was given at the time of import thereof under SEZ scheme in terms of Rules 27 & 28 of the SEZ Rules, 2006 on the said seized goods to be cleared into DTA under Bill of Entry No. 378 dated 18.01.2013. Thus, the said unit has rendered themselves liable for penal action and differential duty required to be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 read with provisions of Section 30 of the SEZ Act, 2005 and Rules 25 & 34 of SEZ Rules, 2006.

44. Further, I find that from the combined reading of definition of "import" and "export" as defined under Section 2(m) and 2(o) of the SEZ Act, 2005, supplying goods to a DTA is not an 'export' and equally purchasing goods from SEZ unit by a DTA unit does not covered under definition of 'import'. Hence, SEZ unit's contention that they are the supplier of goods, so they are exporter and DTA unit who is buyer of the said goods is the importer in the present case and thus customs duty liability lies on them is not legally tenable because M/s Jindal Fibres never filed any Export Shipping Bill for exportation of the impugned goods and therefore, I hold that the said SEZ unit is the importer of the imported goods i.e. "old and worn clothing" and as home consumption Bill of Entry No. 378 dated 18.01.2013 for DTA clearance was filed by them, they are the "beneficial owner" of the said goods i.e. "Old and used mutilated rags" which are not in conformity to CBEC's Circular No.36/2000-Customs dated 08.05.2000 read with Instruction No.01/2011-12 dated 14.07.2011 issued by the Deputy Commissioner of Customs, KASEZ.

45. Thus, I find that for the DTA sale of waste/rejects or by products of imported goods, SEZ unit's are being authorized under Rule 48 of SEZ Rules, 2006 to file Bill of Entry for home

consumption on behalf of the DTA buyer. Even though, if once DTA clearance be assumed as good as imports, I find that in the present case also for DTA clearance M/s. Jindal Fibre had filed Bill of Entry No.378 dated 18.01.2013 on behalf of DTA unit for DTA clearance and the goods to be cleared into DTA were in the custody of the said unit till the clearance of the said goods for home consumption into DTA or till the goods are to be delivered to the DTA buyer situated at Panipat or elsewhere in India. Thus, from the definition of "importer" as defined under Section 2 (26) of the Customs Act, 1962, it is very clear that M/s. Jindal Fibre is the importer of the said goods as the same were imported into Kandla Special Economic Zone by them by sea from outside India and also when the goods were cleared into DTA, the said goods were in the custody of M/s. Jindal Fibre till the seizure of the same. Thus, I strongly hold that M/s. Jindal Fibres, KASEZ, Gandhidham is the main importer and key player of all the acts of omission and commission and are liable for differential customs duty, fine, penalty etc. under Customs Act, 1962 and SEZ Act, 2005 read with SEZ Rules, 2006.

I would also like to refer to the Instruction No. 01/2011-12 dated 14.07.2011 issued by the Deputy Commissioner of Customs, KASEZ, the said instruction was issued especially for DTA clearance of mutilated "old and used clothing" prescribing examination procedure in the demarcated area and vide para 5 of the above instructions, fixing responsibilities if any mis-declaration was found in any DTA clearance.

46. From the above, I find that a unit situated in SEZ has been permitted to sale waste and rejects into DTA and as per Rule 48 of SEZ Rules, 2006 are being authorized to file Bill of Entry for home consumption, produce documents for assessment and present the goods before the customs for examination and clearance and customs duty payment, where DTA buyer is not in picture anywhere and thus above Instruction No. 01/2011-12 dated 14.07.2011 was issued by the Deputy Commissioner of Customs, KASEZ, to ensure that old and use clothes are to be completely mutilated and should be in accordance with Circular No.36/2000-Customs dated 08.05.2000 and if any mis-declaration found in any DTA clearance, SEZ unit will be held responsible.

47. I further elaborate the findings to understand it in a broad way. I find that the said unit has filed the Bill of Entry No. 378 dated 18.01.2013 for clearing 52,750 kgs. of Old & Used Mutilated Rags (Cotton/ Woolen/ Synt.) by classifying the CTH 63109010 on behalf of M/s Jindal Woolen Industries Ltd., E-1, Industrial Area, Panipat (Haryana) and also signed the said B/E by their authorized signatory Shri Vikas Mittal under Rule 48 (1) of the SEZ Rules, 2006. The said unit had also paid the necessary customs duties vide Challan Nos.121, dated 28.01.2013 for the said goods to clear these into DTA under Rule 47 (4) of the SEZ Rules, 2006. Further, they have also presented the said goods in the demarcated area for examination by Customs officers. Hence, I find that there is no direct involvement of the DTA buyer in the instant case and even

no role played by DTA buyer in this matter. I find that as per Rule 48 (1) of the SEZ Rules, 2006, SEZ unit can file the bill of entry on behalf of the DTA unit. Relevant text of the said rule reads as under:

“48. Procedure for Sale in Domestic Tariff Area — (1) Domestic Tariff Area buyer shall file Bill of Entry for home consumption giving therein complete description of the goods and/or service namely, make and model number and serial number and specification along with invoice and packing list with the Authorised Officers.

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

I find that onus to file the correct documents always lies upon the person who files the bill of entry before the customs for assessment and examination purpose. Here in the instant case the SEZ unit has filed the documents and bill of entry as per the Rule 48 (*supra*), they have also loaded the goods in the trucks, other than the goods what was examined by the customs. Therefore sole responsibility lies upon the SEZ unit that whatever goods have been examined by the customs should be loaded in the truck. In view of the above, I find that the unit's contention is completely incorrect and there are no merits to consider their argument; thus the said unit is held responsible.

It is also pertinent to mention here that the ownership of the goods was not changed till the time of seizure, which is evident from the fact that Bill of Entry filed by the SEZ unit on behalf of the DTA unit, paid the self assessed Customs duty on the goods imported by the DTA unit, vehicle arranged by the SEZ unit whereby means took all the responsibility of DTA Sale for delivery of the goods. In the instant case, the trucks were parked in the parking area of the SEZ. The said parking area is within the vicinity of the SEZ. Therefore the argument of the unit/authorised representative that the differential duties should be charged from the DTA units does not hold correct and is a simple diversion of argument.

Further, argument by the unit that the mutilations are proper but the differential customs duty should be charged from the DTA unit. It is again a peculiar situation. The SEZ unit owning the goods, paying the duty, arranging the transports for delivery of the goods to the purchaser's end but shy away from the consequences of the seizure of the goods. The unit's argument to shift the onus of payment of differential customs duty on the DTA unit being importer is void of any logic, reason or merit. Moreover, as the said unit M/s. Jindal Fibre, KASEZ, Gandhidham itself arguing that the liability of duty is on the importer. As discussed in earlier paras, I again put that in the present case till the clearance of goods for home consumption into DTA, importer of the said goods was M/s. Jindal Fibre, KASEZ, Gandhidham.

Hence, all the acts of omission and commission under law with respect to present case remain on M/s. Jindal Fibre, KASEZ, Gandhidham.

48. Now, I would like to refer to judgment of Hon'ble CESTAT in the case of M/s. Tulip Exim Pvt Ltd, Kandla Special Economic Zone, wherein it has been opined that as per the definition of "importer" under Customs Act, 1962, SEZ unit is not an importer, hence no duty liability arises and goods even if they are liable for confiscation no duty liability arises on the appellant herein.

I find that in the case of M/s. Tulip Exim Pvt Ltd. nothing argued on the point of importation of goods, moreover definition of "import" and "export" as defined under SEZ Act, 2005 was not challenged and taken into consideration. Thus, I find that the said case is not squarely applicable to present case, though the case is of similar nature. Moreover, I find that department has accepted the above said order of CESTAT on monetary grounds and not on merits and question of law.

49. I find that the said goods valued at Rs. 8,74,595/- are liable for confiscation for mis-declaring the description and the value of the goods in terms of Section 111 (d) & (m) of the Customs Act, 1962.

50. In view of above discussion and findings, I hold that demand of differential duty amount of Rs. 2,06,837/- on the said goods i.e 52750 Kgs of old and used "Cotton Sweaters (Knitted)" along with appropriate interest under Section 28AA of the Customs Act, 1962 is recoverable from M/s. Jindal Fibres, Kandla Special Economic Zone, Gandhidham under Section 28 (4) of the Customs Act, 1962 read with provisions of Section 30 of the SEZ Act, 2005 and Rules 25 & 34 of the SEZ Rules, 2006. I also hold that the said unit is liable for penalty under Section 114 A of the Customs Act, 1962 for wilful suppression of facts and for their omissions and commissions explained at above in the light of the judgement Visen Industries Ltd V/s. Commissioner of Customs 2017 (354) ELT 319 (Guj.). I also hold that Shri Vikas Mittal, being Authorised Signatory of the said unit has played an active role, hence, I hold for imposition of penalty on Shri Vikas Mittal, Authorised Signatory of the said unit under Section 114 AA of the Customs Act, 1962 for his act of omissions and commissions explained at above in the light of the judgements 2009 (235) ELT 496 (Tri- Del) Rajneesh Bedi V/s Commissioner Customs, Amritsar and 2009 (245) ELT 482 (Tri- Ahmd) Commissioner of Central Excise, Vapi V/s. Bharat Singh.

51. In view of the above, I pass the following Order:-

ORDER


- i) The goods i.e. 52750 Kgs of old and used "Cotton Sweaters (Knitted)" cleared under Bill of Entry No. 378 dated 18.01.2013 seized under Panchnama dated 12.02.2013 are not "Old and used Mutilated Rags (Cotton/ Woolen& Synt.)" in

conformity to the mutilation norms prescribed in the said Circular No.36/2000-Cus dated 08.05.2000 issued as required in the Foreign Trade Policy for import of the goods under 63109010 and are appropriately classifiable under CTH 63090000.

- ii) I accept the value of the imported goods i.e. 52750 Kgs. of old and used "Cotton Sweaters (Knitted)" and arrived to Rs. 8,74,595/- (detailed in the Annexure-I enclosed with the SCN). For the reason discussed above, I order for confiscation of the said goods valued at Rs. 8,74,595/- of M/s. Jindal Fibres, KASEZ, Gandhidham under Section 111 (d) & (m) of the Customs Act, 1962. However I give an option to said unit to redeem the goods on payment of fine of Rs.4,00,000.00 (Rupees Four Lakh only) under Section 125 (1) of the Customs Act, 1962.
- iii) I confirm the demand and order for recovery of differential duty of Rs. 2,06,837/- (Rupees Two Lakh Six Thousand Eight Hundred and Thirty Seven only) as proposed in the SCN on the goods i.e. 52750 Kgs of old and used "Cotton Sweaters (Knitted)" valued at Rs. 8,74,595/- under Section 28(4) of the Customs Act, 1962 read with provisions of Section 30 of the SEZ Act, 2005 and Rules 25 & 34 of the SEZ Rules, 2006 made there under.
- iv) I order for recovery of interest at the applicable rates on the differential customs duty amount mentioned at (iii) above, from them till the date of actual payment under the provisions of Section 28AA of the Customs Act, 1962.
- v) I impose a penalty of Rs. 2,06,837.00 (Rupees Two Lakh Six Thousand Eight Hundred and Thirty Seven only) on M/s. Jindal Fibres, Plot No. 49 & 58, Sector-II, Kandla Special Economic Zone(KASEZ), Gandhidham under Sections 114A of the Customs Act, 1962. However, I do not impose penalty under section 112 of the Customs Act, 1962 as provided U/s 114A "that where any penalty has been levied under this Section, no penalty shall be levied under Section 112 or Section 114.
- vi) I impose a penalty of Rs. 20,000/- (Rupees Twenty Thousand only) under Section 112(a) of the Customs Act, 1962 and Rs. 1,00,000/- (Rupees One Lakh only) under Section 114(AA) of the Customs Act, 1962 on Shri Vikas Mittal, Authorised Signatory of M/s. Jindal Fibres, Plot No. 49 & 58, Sector-II, Kandla Special Economic Zone (KASEZ), Gandhidham.

vii) I order for confiscation of two Trucks having Registration No. HR-66-3734 & HR-63B-2393, valued at Rs.3,50,000/- each (Total Rs. 7,00,000/- only), which were utilised for transportation of the said seized goods. However I give an option to said unit to redeem the same on payment of fine of Rs.1,00,000/- (Rupees One Lakh only) under Section 125 (1) of the Customs Act, 1962.

52. This order is passed without prejudice to any other action which may be contemplated against the importer or any other person in terms of any provision of the Customs Act, 1962 and/or any other law for the time being in force.


(AJAY KUMAR)

ADDITIONAL COMMISSIONER

F. No. S/10-202/ADJ/ADC/JF/2016-17

Date : 13.12.2018

To,

1. M/s. Jindal Fibres, Plot No. 49 & 58, Sector-II, Kandla Special Economic Zone (KASEZ), Gandhidham.
2. Shri Vikas Mittal, Authorised Signatory of M/s. Jindal Fibres, Plot No. 49 & 58, Sector-II, Kandla Special Economic Zone (KASEZ), Gandhidham.

Copy to:

1. The Development Commissioner, KASEZ, Gandhidham,
2. The Deputy/Assistant Commissioner (RRA), Customs House, Kandla.
3. The Deputy/Assistant Commissioner (Recovery), Customs House, Kandla.
4. Guard file.