



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE: MUNDRA, KUTCH
MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421
Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62

A. File No.	: F.No. VIII/48-41/Adj./Pr.Commr./MP&SEZ/2015-16
B. Order-in- Original No.	: MUN-CUSTM-000-COM-14-18-19
C. Passed by	: Shri Sanjay Kumar Agarwal Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order / Date of issue	: 10.08.2018/10.08.2018
E. SCN No. & Date	: DRI/AZU/JRU/INT-23/2014 dated 21.10.2015
F. Noticee(s)/Party/-Importer	: M/s. Dhaval Agri Exports, "Shri Hari Kutir", Rajkot-Morbi Road, Village: Bedi, Rajkot, holding IEC No. 2499002191

1. यह अपील 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 अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129 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 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवा कर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्रीमिल कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद 380 004”
“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within three months from the date of communication of this order.
4. उक्त अपील के साथ 1000/-रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क ,व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो, 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क ,व्याज ,शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो, 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क ,दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्डपीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा। Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची-1, न्यायालय शुल्क अधिनियम, 1870 के मद सं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए। The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए। While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.
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.

Sub: SCN F. No: DRI/AZU/JRU/INT-23/2014 dated 21.10.2015 issued to **M/s. Dhaval Agri Exports, "Shri Hari Kutir", Rajkot-Morbi Road, Village: Bedi, Rajkot, holding IEC No. 2499002191**

BRIEF FACTS OF THE CASE:

M/s. Dhaval Agri Exports, "Shri Hari Kutir", Rajkot-Morbi Road, Village: Bedi, Rajkot (hereinafter also referred to as "M/s. DAE"), holding IEC No. 2499002191 are engaged in the processing of Sesame Seeds to Hulled Sesame Seeds falling under Chapter 12 of the first schedule to the Customs Tariff Act, 1975. They are also engaged in export of Natural Sesame Seeds, Hulled Sesame Seeds as manufacturer exporters and Natural Sesame Seeds, Hulled Sesame Seeds, Cotton, Cumin Seeds, Coriander Seeds, etc. as merchant exporter. They are purchasing raw Sesame Seeds from the local producers and also importing them under Advance Authorization and after process of cleaning, sorting and hulling of Sesame Seeds and exporting the Hulled Sesame Seeds to various countries from Mundra and Pipavav ports, and also supplying to buyers in India.

2. An intelligence was received to the effect that M/s. DAE were importing the Natural Sesame Seeds and clearing the same against Advance Authorisation in terms of Notification No. 96/2009-Cus. dated 11.09.2009 without payment of customs duties leviable thereon. Intelligence further indicated that they were engaged in the diversion of Raw Sesame Seeds imported under Advance Authorization by way of selling the same in the local market. The Natural Sesame Seeds falling under Chapter subheading 12074090 of the first schedule to the Customs Tariff Act, 1975 attract aggregate customs duty @ 36.136% ad valorem. All the Advance Authorization issued and utilized by M/s. DAE were issued with Actual User Condition and exempted goods imported against these authorizations were required to be utilized in accordance with the provisions of Para 4.1.5 of Foreign Trade Policy 2009-14 and in terms of Notification No. 96/2009- Cus. dated 11.09.2009.

3. **Condition No. X of the Notification No. 96/2009-Cus dated 11.09.2009** is reproduced as under:

"That the said authorisation shall not be transferred and the said materials shall not be transferred or sold;

Provided that the said materials may be transferred to a job worker for processing subject to complying with the conditions specified in the relevant Central Excise notifications permitting transfer of materials for job work".

3.1. **Para 4.1.5 of the Foreign Trade Policy 2009-14** is reproduced as under:

"Advance Authorization and / or materials imported there under will be with actual user condition. It will not be transferable even after completion of export obligation. However, Authorization holder will have option to dispose off product manufactured out of duty free inputs once export obligation is completed. In case where CENVAT credit facility on inputs have been availed for the exported goods, even after completion of export obligation, the goods imported against Advance Authorization shall be utilized only in the manufacture of

dutiable goods whether within the same factory or outside (by a supporting manufacturer), for which the authorization holder shall produce a certificate from either the jurisdictional Central Excise Supdt. or Chartered Accountant, at the option of the exporter, at the time of filing application for EODC to RA concerned. However, the actual user condition shall not be applicable in case of raw sugar to be imported from 17.02.2009, till 30.09.2009 under Advance Authorization Scheme. Further the manufacturing wastes / scrap, as allowed, can be disposed off with the payment of applicable duty even before fulfillment of export obligation”.

4. Acting on the intelligence, a search of the premises of M/s. DAE was conducted on 05.09.2014 by the officers of DRI, Jamnagar/Ahmedabad and documents related to the import and export of Sesame seeds were withdrawn under Panchnama dated 05.09.2014 (**RUD-1 of the SCN**). During the course of Panchnama the physical verification of stock of Sesame Seeds lying in the factory premises of M/s. DAE was conducted and total quantity was found to be 942.525 MT which included the imported as well as indigenously purchased Sesame Seeds and all types of material i.e. raw Sesame Seeds, Sesame Seeds in process, rejected Sesame Seeds and Hulled Sesame Seeds. The books of account maintained by them showed the stock position of imported sesame seed as on 04.09.2014 to be 620.608 MT. The record of imports and exports of M/s. DAE was also examined and it was found that they had imported 19944.560 MT of Raw Sesame Seeds under 21 Advance Authorizations out of which they shown export of 9701.346 MT of Hulled Sesame Seeds under Advance Authorization till the date of Panchnama i.e. 05.09.2014. Furthermore, M/s. DAE claimed to have exported 8140.649 MT of Hulled Sesame Seeds under drawback scheme and not under Advance Authorization Scheme. Even if their exports under drawback scheme was accounted against export under Advance Authorization, there was shortage of 1284.486 MT of imported Raw Sesame Seeds which is as detailed below. M/s. DAE failed to give any explanation for this shortage.

Sr. No.	Description	Qty. (in MT)
1	Total Import	19944.560
2	Total Export required as per SION	19747.089
3	Total Export under Advance Authorisation	9701.346
4	Export under Drawback and claimed under Advance Authorisation	8140.649
5	Stock of Sesame Seeds available at the time of Panchnama as per books of accounts	620.608
6	Shortage of imported goods found [2-(3+4+5)]	1284.486

5.1 Statement of Shri Jay Sureshbhai Chandarana, CEO of M/s. DAE was recorded under Section 108 of the Customs Act, 1962 on 08.09.2014 (**RUD-2 of the SCN**), wherein he interalia stated that:

5.1.1 M/s. Dhaval Agri Exports, Bedi is a partnership firm having Regd. Office at B-9, Marketing Yard, Rajkot, and holding the IEC No. 2499002191; that he looks after all the work related to Purchase, sale, financial matters and all type of Taxation matters of the firm; that being the CEO in the firm he was authorized signatory in respect of all the matters; that he was aware of the issue involved.

5.1.2 They are purchasing their raw material from local markets and have also imported Sesame Seeds from Dec.-2012 under Advance License; that as per their normal practice they change the imported goods packed in PP bags into Jute bags as in PP bags fumigation process is not possible; that they were not maintaining separate register / record showing different process viz. cleaning, sorting and hulling, carried out on imported materials and on indigenous material, but they were maintaining separate stock registers for imported as well as indigenously purchased raw materials and debiting the same as and when exported/sold from the respective registers.

5.1.3 As per his knowledge, total 20 Advance Licenses were issued to M/s. DAE from DGFT, Rajkot and he produced the list of Advance Licenses under which they have imported Sesame Seeds; from the 20 Advance Licenses, they got EODC in respect of 9 Advance Licenses from DGFT, Rajkot and have also applied to DGFT, Rajkot for EODC in respect of two other Advance Licenses; he produced list of 9 Advance Licenses in which EODC had been received and also produced copies of application made to DGFT for EODC in respect of 2 Advance Licenses.

5.1.4 Till date they have imported 18755.180 MT of Sesame Seeds and exported 34497.811 MT of Natural Sesame Seeds & Hulled Sesame Seeds during the period from 24.12.2014 to 04.09.2014; that out of 34497.811 MT exported Sesame Seeds, they had exported 9590.186 MT Sesame Seeds against Advance Licenses and 24907.625 MT Sesame Seeds under the Drawback Scheme.

5.1.5 On being told that on verification of the documents it was found that they had imported 18755.180 MT of Sesame Seeds under Advance Licenses, whereas, they have exported only 9590.186 MT of Sesame Seeds against such Advance License, and stock of imported Sesame Seeds as per their books of account as on 04.09.2014 was 620.608 MT thus showing a shortage of 8544.386 MT of Sesame Seeds, he stated that they have used the said 8544.386 MT of Sesame Seeds in their factory by processing and hulling it into Hulled Sesame Seeds; and out of it exported 6966.25 MT under drawback scheme instead of showing the same under Advance Licenses. He further stated that they have filed an application to the Assistant Commissioner of Customs, Custom House, Pipavav, on 05.09.2014 and two applications to the Deputy Commissioner of Customs, Customs House, Mundra on 27.08.2014 requesting them to convert their shipping bills from drawback to Advance License Scheme.

5.1.6 On being asked whether he agreed that during the period from February-2014 to August-2014, they continued to export the Sesame Seeds Product imported duty free under Advance Licenses, under the claim of drawback in gross violation of the actual user condition of the Advance Licenses, to which he replied that as per his opinion, actual user condition means he could not sell the duty free inputs to other person for manufacturing, and then exporting the resultant product under Advance License.

5.1.7 On being asked whether they have maintained the proper account of consumption and utilization of Sesame Seeds imported under Advance Licenses, as required under Para 4.3 of HBP V-1, 2009-14, he replied in negative.

5.1.8 On being asked whether he agreed to the duty liability in respect of goods imported under Advance Licenses but not exported under the same scheme to which he replied in negative and stated that they had applied for conversion of the Shipping Bills to Advance license.

5.2 A statement of Shri Keshav Ramchandra Jiandani, Partner of M/s. N.G. Joshi, CHA, was recorded under Section 108 of the Customs Act, 1962 on 08.09.2014 (**RUD-3 of the SCN**), wherein he inter alia stated that they have been looking after the clearing work related M/s. Dhaval Agri Exports, Bedi, Rajkot for last eight years and further stated that -

5.2.1 Their main commodity was sesame seeds; that they export hulled sesame seeds to various European countries; that they receive the goods in self sealed containers from M/s. Dhaval Agri Exports with documents such as Invoice, Packing list, Self sealing permission, Self Declaration Form for clearing of the said goods for export; that they file shipping bills based on the documents provided by M/s. Dhaval Agri Exports; that during the last two years they have also attended their import work at Mundra Port wherein they imported around 50 to 60 consignments of raw sesame seeds under advance Authorization scheme.

5.2.2 They filed the shipping bills as per the instructions of M/s. Dhaval Agri Exports, Rajkot; that the shipping bills were not filed under OGL but under Drawback or Advance Licence; that M/s. DAE gave specific instructions on email as to whether the shipping bill was to be filed under drawback or under advance licence.

5.2.3 On being asked whether examination of goods was carried out at any stage before export, he stated that since the goods were under self sealing, examination of goods was not carried out; that however at Mundra Port some shipments were examined randomly.

5.2.4 On being asked why M/s. DAE had applied for conversion of the shipping bills from Drawback Scheme to Advance Licence Scheme he replied that as per instruction of Shri Jay Chandarana, CEO they filed an application to the Customs Authorities.

5.2.5 On being asked whether he was aware whether the consignment being dispatched from M/s. DAE under self sealed containers were out of material imported under Advance License or locally purchased to which he replied in negative.

5.3 A statement of Shri Parmar Yogesh Arjanbhai, CHA, Partner of M/s. ATP & Sons, Port Users Complex, Opp. Custom House, Pipavav Port, Rajula was also recorded under Section 108 of the Customs Act, 1962 on 08.09.2014 (**RUD-4 of the SCN**) authorized CHA for M/s. DAE, wherein he stated the same facts as stated by Shri Keshav Jiandani of M/s N.G. Joshi, in respect of the consignments handled by them.

5.4 A further statement of Shri Jay Sureshbhai Chandarana, CEO of M/s. DAE was recorded under Section 108 of the Customs Act, 1962 on 11.09.2014 (**RUD-5 of the SCN**), wherein he inter alia stated that he fully agreed with the Panchnama dated 05.09.2014 drawn at their factory premises and he was present during the course of Panchnama and also fully agreed with the statement tendered on 08.09.2014 and also with the statement dated 08.09.2014 of Shri Keshav Ramchandra Jiandani, Partner of M/s. N. G. Joshi, C&F Agents, Gandhidham and the statement dated 08.09.2014 of Shri Parmar Yogesh Arjanbhai, Partner of M/s. ATP & Sons, Pipavav.

5.4.1 He was shown an Annexure, wherein details of 9 (Nine) Advance Licenses were mentioned in respect of which EODC has been received from the DGFT, and as per which they had imported 5445.670 MT of Sesame Seeds under Advance Licenses, and after processing exported 5391.752 MT of Hulled Sesame Seeds and asked whether he agreed with the same to which he replied in the affirmative.

5.4.2 He was asked how they ascertained whether the exported goods were from imported or indigenous purchase since they have not maintained separate register / records showing different processes viz. Cleaning, Sorting and Hulling, mandatorily required as per para 4.7-A of FTP Handbook and maintenance of separate register for imported goods in the Appendix 23A proforma but he could not give any satisfactory explanation. He also confirmed that there was no documentary proof.

5.4.3 On being asked whether they have any documentary proof / evidence that 6966.250 MT of Hulled Sesame Seeds exported under shipping bills filed under drawback scheme were processed only from imported material under Advance Licenses, as stated in his statement dated 08.09.2014, he replied that they have no such proof / evidence.

5.4.4 On being asked whether they have maintained separate register / records showing details of each process, viz. cleaning, sorting & hulling done on imported and indigenous material for last three years i.e. 2012-13 to 2014-15 (till the date of statement) he replied in negative.

5.4.5 He was also asked whether they have maintained any register / records showing day to day details of loss of material or wastage but he could not given any such record.

5.4.6 On being asked to explain the shortage of 1578.136 MT of sesame seeds as they had imported a quantity of 18755.180 MT of sesame seeds under Advance Licenses out of which they had exported 9590.186 MT against Advance Licenses and 6966.250 MT against Drawback Scheme as claimed by them and only 620.608 MT was in balance as per record, he stated that the shortage was on account of processing losses.

5.4.7 On being asked that whether they have sold the imported Sesame Seeds or Hulled Sesame Seeds processed from imported Sesame Seeds through M/s Tirupati Agro, Rajkot, to which he replied that they sold Natural as well as Hulled Sesame Seeds which were purchased locally and processed in their unit.

5.4.8 On being asked as to what evidence they have to claim that the Sesame Seeds whether hulled or Natural sold through M/s Tirupati Agri Brokers, Rajkot were not the imported ones he replied that they do not have any documentary evidence.

5.4.9 On being shown Contract Notes No. 1087 dated 20.03.2014; 10849 dated 21.03.2014; 11098 dated 20.05.2014; 11080 dated 14.05.2014; 10786 dated 12.02.2014; 10066 dated 26.04.2013 of M/s. Tirupati Agri Brokers, Rajkot showing Seller as "Dhaval Agri Exports, Rajkot", in which under the column product description it was mentioned as "Sesame Seeds – Sudan Red Quality", "Sesame Seed – Hulled Autodry Sortex Semi Premium (Somalia) Quality", "Sesame Seed – Hulled Autodry Sortex Somalia Quality", "Sesame Seeds- Korea Quality", "Sesame Seed – Natural Sortex Korean Condition", etc. and on being asked that from the aforesaid contract notes it appeared that they have sold the materials imported under Advance Licenses to M/s. Tirupati Agri Brokers, Rajkot to which he replied that the product description shown in the contract notes were written by the Broker i.e. M/s. Tirupati Agri Brokers, Rajkot without informing them; that why the such descriptions were shown is best known to them only.

5.5 A statement of Shri Dinesh Jayantilal Tanna of M/s. Tirupati Agro was recorded under Section 108 of the Customs Act, 1962 on 09.09.2014 (**RUD-6 of the SCN**), wherein he stated that he is one of the partner in M/s. Tirupati Agri Exports, Rajkot; that they are engaged in brokerage business of Sesame Seeds on brokerage/commission basis of indigenous as well as imported sesame seeds; that they enter into contract for each transaction; that the contract includes, details of seller/buyer, specification of product, quantity, price, brokerage etc; that they raise the brokerage invoice to the buyer as well as seller.

5.6 He further stated that they are not doing direct export for any clients; they make arrangement for exporters against H-form; that their main exporters who exports sesame

seeds under H-form are 1) M/s. Rahul Agro Industries, Ajmer, 2) M/s. Sagar International, Rajkot 3) M/s. Dhaval Agri Exports, Rajkot 4) M/s. Sonpal Export, Amreli 5) M/s. Deepkamal Exports, Mumbai 6) M/s. Kanukrishna Corporation, Mumbai etc.

5.6.1 On being asked how much quantity of sesame seeds was imported by M/s. Dhaval Agri Exports, Rajkot through their indent ship and sold into the local market through them to which he replied that for M/s. Dhaval Agri Exports they have imported approximately 3425 MT; that they have sold the natural, yellow sesame, sortex as well as hulled sesame seeds in local market on party's request but it is not possible for them to state at this time whether the same was from the imported quantity only because M/s Dhaval Agri Exports did not specify the same; that they have arranged for local sale of 4953 MT of natural, yellow sesame, sortex and hulled sesame seeds all under H-Form to different exporter.

5.6.2 He further stated that as per market information in some cases it was a trend/practice to sell the imported sesame seeds locally which was possible since importers under Advance Authorization have sufficient time to fulfill their export obligation; therefore they sell the imported material on importation and at the time of export, procure indigenously and export the same.

5.7 A further statement of Shri Dinesh Jayantilal Tanna of M/s. Tirupati Agro was recorded under Section 108 of the Customs Act, 1962 on 21.01.2015 (**RUD-7 of the SCN**), wherein he agreed to his statement tendered on 09.09.2014 and 10.09.2014 and inter alia stated that they have not handled the goods physically i.e. sesame seeds of M/s. Dhaval Agri Exports; but have done only brokerage business with M/s. Dhaval Agri Exports; as they were acting as middle man between buyer and seller.

5.7.1 On being asked what were the terms of delivery for supply to buyers and how the goods were delivered to them he replied that the goods viz. Sesame seeds were delivered from Mundra and it was the responsibility of M/s. Dhaval Agri Exports to deliver the goods and the place of receipt of imported sesame seeds was Mundra Port where the import were made and bill of entry filed by M/s. Dhaval Agri Exports.

5.7.2 Further he was shown the Contract Notes No. 10847 dated 20.03.2014; 10849 dated 21.03.2014; 11098 dated 20.05.2014; 11080 dated 14.05.2014; 10786 dated 12.02.2014; 10066 dated 26.04.2013 generated by them under which Seller is mentioned as "Dhaval Agri Exports, Rajkot", and in the column product description it is mentioned as "Sesame Seeds – Sudan Red Quality", "Sesame Seed – Hulled Autodry Sortex Semi Premium (Somalia) Quality", "Sesame Seed – Hulled Autodry Sortex Somalia Quality", "Sesame Seeds- Korea Quality", "Sesame Seed – Natural Sortex Korean Condition", etc. and told that from contract notes it appeared that they have facilitated Dhaval Agri Exports in selling the imported sesame seeds into the local market to which he replied that the product description

mentioned in the contract denotes the quality of different sesame seeds which is commonly called in the business circle.

5.7.3 He was also shown the statement of Shri Jay Sureshbhai Chandarana dtd.11.09.2014 in which while answering question No. 16 it was stated that the product description in the contract notes were written by them without informing M/s. Dhaval Agri Export and asked to comment. He stated that they generate two copies of the contract one of which is for buyer and the other for seller, as such M/s. Dhaval Agri Exports were already provided with the copy of the contract and were very well aware of the description mentioned in the contract; that the name of the quality mentioned in the contract are the different names of sesame seeds commonly known in the business.

6. During the course of investigation M/s. DAE voluntarily paid customs duties totally amounting to Rs. 2,13,41,127/- vide various Challans (**RUD-8 of the SCN**) as detailed hereunder.

Sr. No.	Challan No. & Date	Amount paid (Rs.)	Remarks
01	MP&SEZ/2047/14-15 dated 18.09.2014	50,00,000/-	Voluntary Deposit made as per DRI Investigation Under Protest
02	MP&SEZ/2048/14-15 dated 18.09.2014	50,00,000/-	Voluntary Deposit made as per DRI Investigation Under Protest
03	MP&SEZ/2145/14-15 dated 16.09.2014	15,45,401/-	Payment against Advance Authorization Lic. No. 0810131340
		32,35,088/-	Payment against Advance Authorization Lic. No. 0810128771
		10,60,638/-	Payment against Advance Authorization Lic. No. 0810130536
04	MP&SEZ/2277/14-15 dated 09.10.2014	30,00,000/-	Payment against Advance Authorization Lic. No. 0810128099
05	MP&SEZ/2506/14-15 dated 27.10.2014	25,00,000/-	Voluntary Deposit made as per DRI Investigation Under Protest
Total		2,13,41,127/-	

Charges:

7. From the investigation, it appeared that:-

(a) **Total quality imported under advance Authorization:** M/s. DAE had obtained 21 advance authorization against which they had imported 19944.560 MT of Natural Sesame Seeds without payment of customs duties in terms of Notification No. 96/2009- Customs dated 11.09.2009.

(b) **Quantity exported against Advance Authorization:** Out of these 21 Advance Authorizations the export obligation in respect of 11 Advance Authorizations appear to have been completed by exporting total quantity of 8331.752 MT of hulled sesame seeds against

import of 8413.07 MT of natural sesame seeds. The details of these Advance Authorizations are as under.

Sr. No.	Advance Authorization No.	Quantity imported in MT.	Assessable Value in Rs.	Duty Forgone in Rs.	Quantity Exported in MT.	Remarks
1	810116335	299.3600	22914135	8280252	296.3960	EODC Received
2	2410037778	304.0000	26513575	9580945	300.9900	EODC Received
3	810116650	304.0000	26513575	9580945	300.9900	EODC Received
4	810116913	285.0000	21914975	7919194	282.1780	EODC Received
5	810117245	989.8003	83845962	30298577	980.0000	EODC Received
6	810117269	294.1100	22647256	8183813	291.1980	EODC Received
7	810118205	988.7996	84740355	30621775	980.0000	EODC Received
8	810118947	989.8000	76219643	27542730	980.0000	EODC Received
9	810119347	988.8000	77203041	27898090	980.0000	EODC Received
10	810126503	989.8000	136414380	49294464	980.0000	Export Done
11	810120520	1979.6000	165206037	59698854	1960.0000	Export Done
		8413.0700	744132934	268899638	8331.7520	

(c) Total Quantity Diverted by M/s. DAE: Under the remaining 10 Advance Authorizations M/s. DAE had imported 11531.490 MT of Natural Sesame Seeds as listed in **Annexure-A** attached to the SCN. However against import of 11531.490 MT of Natural Sesame Seeds imported against these 10 (Ten) Advance Authorizations', they have exported only 1369.594 MT of Hulled Sesame Seeds as listed in Annexure-A attached to this Notice. Thus, it appeared that only 1383.290 MT of Natural Sesame Seeds (after allowing wastage of 1% as per SION norms) was used by them in manufacturing aforementioned quantity of 1369.594 MT of Hulled Sesame Seeds exported by them against Advance Authorizations as per Sr. No. K36 of the SION. At the time of physical verification under Panchnama dtd. 04.09.2014, against the remaining quantity of 10148.200 MT (11531.490 MT - 1383.290 MT) only 620.608 MT of Sesame Seeds was found in stock as per books of account maintained by them. The details are as under:

Sr. No.	Advance Authorization No.	Quantity imported in MT.	Assessable Value in Rs.	Duty Forgone in Rs.	Quantity Exported in MT.	Quantity (in MT) of Raw Sesame Seeds
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						diverted
1	810118206	946.0375	89337546	32283016	935.6440	1.03706
2	810123765	757.5000	69614996	25156311	267.1030	487.72597
3	810123766	149.3700	18308470	6615949	112.6870	35.55613
4	810127077	983.2400	141481665	51125814	54.1600	928.53840
5	810127477	989.1900	133947737	48403831	0	989.19000
6	810128099	1976.0470	273279276	98752870	0	1976.04700
7	810128771	1969.4000	270667986	97807435	0	1969.40000
8	810129251	1798.7800	238566310	86208321	0	1798.78000
9	810130536	1057.3100	142673076	51556342	0	1057.31000
10	810131340	904.6150	107379022	38802483	0	284.00700
		11531.4900	1485256084	536712376	1369.5940	9527.59156

(d) Thus, it appeared that M/s. DAE have not utilized 9527.592 MT of imported Natural Sesame Seeds for the specified purpose i.e. processing imported Sesame Seeds into Hulled Sesame Seeds and export thereof, but diverted the same into the local market in contravention of the conditions of Notification No. 96/2009- Customs dated 11.09.2009 and Para 4.1.5 of the Foreign Trade Policy 2009-14. M/s. DAE have stated that they had also exported a quantity of 8140.649 MT under drawback scheme by mistake and they have applied to Customs for conversion of Shipping Bills relating to those exports to Advance Authorization scheme but so far no such amendment has been allowed. Moreover the application for amendment was made after initiation of investigations by the DRI, therefore there appears to be no case for counting the Drawback exports as Advance Authorization exports.

(e) Therefore it appeared that M/s. DAE had imported 11531.490 MT of duty free Natural Sesame Seeds under Ten (10) Advance Authorisation through Mundra Port, as detailed in **Annexure-A** to the SCN. The said imported Sesame Seeds were to be processed and the resultant product i.e. Hulled Sesame Seeds exported. As per Sr.No.K36 of SION and the conditions of the Advance Authorization, they were required to export 11417.316 MT of hulled sesame seeds whereas M/s. DAE had exported only 1369.594 MT of Hulled Sesame Seeds as detailed in **Annexure-A** to the SCN, using the 1383.290 MT imported duty free Raw Sesame Seeds as per the Sr. No. K36 of SION. Thus, it appeared that there was a shortage of 9527.592 MT(11531.490-1383.290-620.608) of duty free imported Raw Sesame Seeds, which were not utilized by them for the specified purpose i.e. processing the same to produce Hulled Sesame Seeds for export under advance licence, and it appeared that the said quantity of Raw Sesame Seeds was diverted by them into local market, which is in contravention to the condition no.(X) of the Notification 96/2009-Customs dated 11.09.2009 and also in violation of Para 4.1.5 of the Foreign Trade Policy 2009-14. **Shri Dinesh**

Jayantilal Tanna of M/s. Tirupati Agro, Rajkot a broker in selling of imported raw materials in his statement dated 10.09.2014 admitted that it was a trend/practice to sell the sesame imported under Advance Authorization as the importers had sufficient time to fulfill their export obligation. It is also evident from the Contract Notes No. 10847 dated 20.03.2014; 10849 dated 21.03.2014; 11098 dated 20.05.2014; 11080 dated 14.05.2014; 10786 dated 12.02.2014; 10066 dated 26.04.2013 that raw sesame seeds of Sudan and Somalia origin were sold locally by M/s. DAE. Therefore, it appeared that quantity of 9527.592 MT of Raw Sesame Seeds imported against advance authorizations and valued at Rs. 127,57,35,460/- and found short on physical verification was diverted into local market as detailed in Annexure-A to the Show Cause Notice, therefore M/s. DAE are not eligible for the exemption of duty available under Notification No. 96/2009-Customs dated 11.09.2009. They had suppressed the facts regarding the diversion of Raw Sesame Seeds imported under advance Authorizations in the local market. The above acts of omission and commission appear to have been committed willfully and consciously by M/s. DAE with intent to evade customs duties. Further M/s. DAE have not maintained the proper account of the Sesame Seeds imported under Advance authorizations, relating to consumption and utilization thereof as required under Para 4.3 of HBP V-1, 2009-14, so that they could easily divert the raw materials imported under advance authorisation. Thus it appeared that 9527.592 MT of Raw Sesame Seeds imported by them during the period from 06.03.2013 to 05.09.2014 under various Advance Authorization as listed in Annexure-A to the Show Cause Notice, totally valued at Rs. 1,27,57,35,460/-were rendered liable for confiscation under Section 111(o) of the Customs Act, 1962 and for this act of omission and commission, M/s. DAE are also liable for penalty under Section 114A of the Customs Act, 1962. Further, the customs duty amounting Rs. 46,09,99,766/- as detailed in Annexure-A to the Show Cause Notice, appeared to be recoverable from them under proviso to Section 28(4) of the Customs Act, 1962 along with applicable rate of interest in terms of Section 28 AA of the Customs Act, 1962. The above acts have also made M/s. DAE liable for penalty under Section 112(a) of the Customs Act, 1962. Rs. 2,13,41,127/- paid by M/s. DAE under various Challans is required to be appropriated against the payable duty.

8. Shri Jay Sureshbhai Chandarana, CEO of M/s. DAE was responsible for wrongful availment of Advance Authorization Scheme by importing the Raw Sesame Seeds without payment of duties under Advance Authorization Scheme and not utilizing the same for the specified purpose and diverting the same in the local market. As the CEO of the firm he was the person who looked after all the work related to Purchase, Sale, Financial matter and all type of Taxation matter in the firm. He was responsible for not utilizing the Raw Sesame Seeds, imported duty free under Advance Authorisation Scheme, for specified purpose which resulted in non-payment of Customs duties total amounting to Rs. 46,09,99,766/-, as detailed in the Annexure-A to the notice. He willfully suppressed the fact regarding sale of imported sesame seeds into the local market. This act of omission has rendered the goods totally valued at Rs.1,27,57,35,460/- liable for confiscation under Section 111(o) of the Customs Act, 1962 and made himself liable for penalty under Section 112(b) of the Customs

Act, 1962. In his statements dated 08.09.2014, 11.09.2014 he admitted to the facts. Further he has not maintained the proper account of the Sesame Seeds imported under Advance authorizations, relating to consumption and utilization thereof as required under Para 4.3 of HBP V-1, 2009-14.

9. Therefore, vide SCN F.No. DRI/AZU/JRU/INT-23/2014 dated 21.10.2015, M/s. Dhaval Agri Exports, "Shri Hari Kutir", Rajkot-Morbi Road, Village: Bedi, Rajkot, were called upon to show cause to the Principal Commissioner/Commissioner of Customs, Mundra, as to why:

- (i) **9527.592 MT** of Raw Sesame Seeds imported by them during the period from 06.03.2013 to 05.09.2014 under various Advance Authorization as listed in **Annexure-A to the Show Cause Notice**, totally valued at **Rs. 1,27,57,35,460/-** should not be held liable to confiscation under Section 111(o) of the Customs Act, 1962 read with Notification 96/2009-Customs dated 11.09.2009, though said goods are not available for confiscation.
- (ii) The Customs duty amounting to **Rs. 46,09,99,766/-** as calculated in **Annexure-A to the notice**, should not be demanded and recovered from them in terms of proviso to Section 28(4) of the Customs Act, 1962;
- (iii) Interest at the appropriate rate should not be charged in terms of Section 28 AA of the Customs Act, 1962;
- (iv) **Rs. 2,13,41,127/-** paid by them vide various Challans should not be appropriated towards the duty payable by them;
- (v) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962; and
- (vi) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962.

10. Shri Jay Sureshbhai Chandarana, CEO of M/s. Dhaval Agri Exports, "Shri Hari Kutir", Rajkot-Morbi Road, Village: Bedi, Rajkot, were called upon to show cause [vide SCN F.No. DRI/AZU/JRU/INT-23/2014 dated 21.10.2015] to the Principal Commissioner/Commissioner of Customs, Mundra] as to why:

- (i) Penalty should not be imposed on him under Section 112(b) of the Customs Act, 1962.

DEFENCE SUBMISSIONS:

11. In reply to the aforesaid show cause notice, M/s. DAE made the following submissions vide their letter dated 07.03.018:-

- M/s. Dhaval had imported 19,944.56 MTs “Raw (Natural) Sesame Seeds” valued at Rs. 222,93,89,018/- without payment of customs duty amounting to Rs.80,56,12,014/-under 21 Advance Authorisations (referred in paragraph 7(b) and 7(c) of the SCN) during the period 24.12.2012 to 23.07.2014 vide 139 Bills of Entry. They had declared and classified the goods as “Raw Sesame Seeds” under tariff item 12074090 which attracts basic customs duty 30% with 2% Education Cess and 1% Secondary & Higher Education Cess and 4% Additional duty of Customs and claimed benefit of Notification No.96/2009-Cus. dated 11.09.2009. In addition to the said quantity they had not imported any other consignment of Raw/Natural Sesame Seeds during the said period.
- Out of the said imported natural sesame seeds under Advance Authorisation they had exported 17750.100 MT (9738.944 MT under Advance Authorisation and 8011.156MT under claim of drawback). Though as per SION only 1% process loss is allowed, actual process loss is/was around 13%. As per the provisions of policy after adjusting 1% permissible process loss, goods were exported.
- Proposal of demanding customs duty with interest and imposition of penalty is based only on the sole allegation of diversion of imported natural sesame seeds (without carrying out processes) without payment of customs duty under 10 Advance Authorisation under claim of benefit of Notification No. 96/2009-Cus. dated 11.09.2009 as amended are totally baseless and without any documentary evidence as well as contrary to admitted facts on record that imported goods were processed in the factory of M/s. Dhaval and after process “Hulled Sesame Seeds” were exported under claim of Drawback instead of Advance Authorisation.
- The would like to highlight certain factual admitted facts on record which clearly proves that they had not diverted 9527.592 MTs imported Natural Sesame Seeds but processed and exported 8011.156 MT “Hulled Sesame Seeds” under claim of “Drawback” instead of “Advance Authorisation”. Even otherwise, subject to outcome of pending application for conversion of shipping from “Drawback” to “Advance Authorisation” they have exported 9396.034 MT under “Advance Authorisation” after the date of initiation of investigation i.e. 04.09.2014 plus 37.598 MT of Shipping Bill No.977445 dated 30.01.2014 against license No. 0810127077. Differential quantities 94.333 MT were not shortages but 1% process loss as admissible to them under Sr. No. K 36 of the SION, so demand of customs duty does not survive on this ground alone.
- At paragraph 7(d) page 9 of the SCN it is alleged that M/s. Dhaval have not utilized 9527.592 MT of imported Natural Sesame Seeds for the specified purpose i.e. processing imported sesame seeds into hulled sesame seeds and export thereof, but diverted the same into the local market in contravention of the condition of

Notification No.96/2009-Customs dated 11.09.2009 and Para 4.1.5 of Foreign Trade Policy – 2009-14. M/s. Dhaval have stated that they had also exported a quantity of 8140.649MT under drawback scheme by mistake and they have applied to customs for conversion of Shipping Bill relating to those exports to Advance Authorisation scheme but so far no such amendment has been allowed.

Two sentences of allegations are self contradictory and even otherwise Jay S. Chandarana in his statement date 08.09.2014 in answer to question number 6 deposed that “..... We have not sold the duty free input. We have processed the same and exported the resultant product. However, by mistake we have not exported the resultant product under Advance License.”

- In the same way in response to question No. 7 that do you agree with the duty liability in respect of the quantity of Sesame Seeds imported under Advance Licenses and not exported in Shipping Bills filed against Advance Licenses? It was deposed by him that “We do not agree to the duty liability for the same. We have already applied for conversion of the shipping bills to Advance License. Also we are ready to pay back the drawback received by us with interest. When the Shipping Bills are converted, we will no longer have any duty liability. We also wish to state that we have not sold the duty free inputs, we have only processed the same and exported the resultant product. Our only fault is that we have exported the same under drawback scheme and not against Advance License. But, this was done by mistake and not with the intention of getting any undue benefits. We are also ready to payback the Drawback with interest.”
- They submit that investigation has twisted following admitted facts while making allegations with sole intention to raise huge demand against M/s. Dhaval, which clearly proves that allegations are baseless, therefore demand and other charges are liable to be quashed on this ground too:

- At paragraph 5.1.7 page 3 of the SCN discussed statement dated 08.09.2014 of undersigned that on being asked whether they have maintained the proper account of consumption and utilisation of Sesame Seeds imported under Advance Licenses, as required under Para 4.3 of HBP V-1, he replied in negative.

However, as per paragraph 4 page 2 of the SCN wherein panchnama proceedings are discussed and stated that “the books of accounts maintained by them showed the stock position of imported sesame seeds on 04.09.2014 to be 620.608 MT.”

Even as per third paragraph page 2 of Panchnama dated 05.09.2014 drawn at the factory premises of M/s. Dhaval it is stated that “On being asked by the officers about the stock position as on today he produces a print out as per

which the total stock of sesame seed which includes imported as well as indigenous purchase lying in the unit as 1359012.

- At paragraph 5.4.2 page 5 of the SCN discussed statement dated 11.09.2014 of the undersigned that “he was asked how they ascertained whether the exported goods were from imported or indigenous purchase since they have not maintained separate register / records showing different processes viz. Cleaning, Sorting and Hulling mandatorily required as per para 4.7.-A of FTP Handbook and maintenance of separate register for imported goods in the Appendix 23A proforma but he could not give any satisfactory explanation. He also confirmed that there was no documentary proof.”

Actually, the said Para 4.7 – A and Appendix 23A are pertaining to “Advance Authorisation for Pharma Products under Non-Infringing (NI) process and not for any other goods. Even otherwise none of the para or Appendix not to speak of said para 4.7-A and Appendix 23A mandatorily requires to maintain accounts process wise. Apart from that they have maintained Register / Account Bills of Entry wise for the goods imported and exported the goods from the said imported goods, which were produced before the officer during the course of panchnama.

- At paragraph 7(e) page 9 of the SCN it is alleged that Shri Dinesh Jayantilal Tanna of M/s. Tirupati Agro, Rajkot a broker in selling of imported raw materials in his statement dated 10.09.2014 admitted that it was a trend / practice to sell the sesame imported under Advance Authorisation as the importers had sufficient time to fulfil export obligation. It is also evident from the Contract Notes No.10847 dated 20.03.2014; 10849 dated 21.03.2014; 11098 dated 20.05.2014; 11080 dated 14.05.2014; 10786 dated 12.02.2014; 10066 dated 26.04.2013 that raw sesame seeds of Sudan and Somalia origin were sold locally by M/s. Dhaval.

The first part of the said allegation is twisted one as it is clearly evident from the original reply to question No. 6 that “as per market information in some cases it is a trend/practice to sell the imported sesame seeds locally.” Thus, it is twisted one by omitting vital initial version of the statement and also based on hear say of broker and not based on any documentary evidence.

As regard to second part the same Dineshbhai in his statement dated 21.01.2015 in answer to question No.4 for the said six Contract Notes deposed that “In this regard I have to state that the product description in the contract mentioned are of the quality of different sesame seeds which is

commonly called in business circle. As such it cannot be said that they are the imported sesame seeds.”

- Apart from the above, even otherwise out of six contract notes three contract notes viz. 10847 dated 20.03.2014, 10839 dated 21.03.2014 and 11098 dated 20.05.2014 were cancelled and against remaining three contract notes viz. Contract Note No. 10066 dated 26.04.2013 goods were exported to Korea as per Export Invoice No. 072 dated 09.05.2013 and Invoice No. 081 dated 13.05.2013. Similarly in Contract Note No.10786 dated 12.02.2014 though goods were mentioned as “Korea Quality” same were sold for export against Form – H and “Sesame Seeds” are never imported from Korea but it remains the largest market for export of Sesame Seeds and Contract Note No. 11080 dated 14.05.2014 nowhere refer any other country quality goods were sold for export against Form H. They further submit that Quality with the name of other country and goods of origin of other country are two different things in the trade of Sesame Seeds. By mentioning the name of other country as quality it does not mean that particular goods are origin from that country.
- They submitted that based on the above admitted facts etc. it clearly reveals that goods as such viz. natural sesame seeds were never diverted in local market but entire quantities were processed into hulled sesame seeds. Out of total imported quantity 9,527.592 MT (Actually one Shipping Bill No.977445 dated 30.01.2014 for 37.598 MT was not taken into account while arriving the figure of 9,527.592), M/s. Dhaval had exported 8011.156 MT “Hulled Sesame Seeds” under claim of “Drawback” instead of “Advance Authorisation”. Even otherwise, subject to outcome of pending application for conversion of shipping from “Drawback” to “Advance Authorisation” they have exported 9396.034 MT under “Advance Authorisation” after the date of initiation of investigation i.e. 04.09.2014 plus 37.598 MT of Shipping Bill No.977445 dated 30.01.2014 against license No. 0810127077. Differential quantities 94.333 MT were not shortages but 1% process loss as admissible to them under Sr. No. K 36 of the SION, so demand of customs duty does not survive on this ground alone.
Thus, there is no violation of any of the provisions of Foreign Trade Policy as well as Customs Notification not to speak of paragraph 4.1.5 of the FTP, 2009-14, para 4.3 of HBP V-1 2009-14 and Notification No.96/2009-Cus. dated 11.09.2009.
- They further submitted that condition No.(x) of Notification No.96/2009-Cus. dated 11.09.2009 provides that Advance Authorisation is not transferable nor the material imported can be transferred or sold; and paragraph 4.1.5 of Chapter 4 of the Foreign Trade Policy, 2009-14 provides that (a) Advance Authorisation and / or materials imported there under will be with actual user condition. It will not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose off product manufactured out of duty free inputs once export

obligation is completed; therefore, as per admitted facts on record there was no violation of any of the said provisions.

- It is also admitted facts on record that M/s. Dhaval had applied for conversion of shipping bills from drawback into Advance Authorisation with willingness to payback of drawback with interest even prior to investigation initiated by way of panchnama dated 05.09.2014 around 1145 hours as such application to Mundra were submitted on 27.08.2015 and at Pipavav on 05.09.2014 under letters dated 02.09.2014. Therefore, allegation of application for amendment in shipping bills were made after initiation of investigation made at paragraph 7(d) in page 9 of the impugned show cause notice is totally baseless.
- M/s. Dhaval had maintained accounts of consumption and utilisation of duty free imported goods against each authorisation and copy thereof was submitted to the officer at the time of panchnama and based on that only so called shortages and diversion figures are arrived at.

Actually, such stock register was maintained in the form of Sales Purchase Register containing Bills of Entry wise and out of such imported natural sesame seeds they had exported processed hulled sesame seeds. In the said register invoice numbers of processed goods exported were also mentioned, which were mentioned in the Shipping Bills. Based on the same it clearly proves that imported natural sesame seeds were processed and hulled sesame seeds were exported. The same were withdrawn by the investigation as mentioned at Sr. No. 25 & 26 of panchnama dated 05.09.2014. Even physical stock was compared with book stock mentioned in the said register as mentioned in the panchnama.

- They submitted that even otherwise there is no evidence of diversion of imported natural sesame seeds and no attempt was made to verify to whom they had sold if any such natural sesame seeds, such baseless allegations are not sustainable at all.
- They further submitted that after receipt of impugned show cause notice they had inquired from the Custom Brokers about how they had filed shipping bills under claim of drawback instead of under advance authorisation especially when they were instructed to file under "Advance Authorisation", they clarified that they had filed each shipping bill under Advance Authorisation in EDI systems and due to some technical reason they had filed fresh shipping bills under claim of drawback for the same goods and same export invoice. All such cancelled / unutilized shipping bills are on the record of the department and M/s. Dhaval have made specific request for copy of the same in their reminder letter dated 11.06.2016 for conversion of shipping bill from drawback to advance authorisation.

- These documentary evidences clearly prove that imported natural sesame seeds were not only processed but exported, therefore, allegation of diversion of as such natural sesame seeds are far from the truth.
- They further submitted that since they have not diverted imported goods as such but exported under drawback and in absence of any reply from the department on applications for conversion of shipping bills, to avoid further complication in the matter they have exported other processed sesame seeds against the said 10 Advance Authorisation as per the provisions of Foreign Trade Policy, 2009-14, Foreign Trade Development Officer, Ahmedabad has issued EODC/Bond waiver cum Redemption Letters. On submission of the same before the Assistant Commissioner, Customs, Mundra vide various letters has also discharged bonds.
- Thus, in any case once goods are exported under the said 10 Advance Authorisations no duty can be demanded, therefore, on this ground too demand does not survive.
- They further submitted that once EODC issued by the DGFT customs cannot demand duty against those licenses. As per settled position of law decision of DGFT is final in case of any doubt about interpretation of policy etc.
- They submitted that it is also alleged about suppression etc. but it is admitted facts on record that they had applied for conversion of shipping bills from Drawback to Advance Authorisation prior to initiation of investigation, it means facts were within the knowledge of the department and no facts were suppressed from the department. Therefore, no penalty is imposable upon them.
- They further submitted that as per 5th proviso to Section 114A of the Customs Act, 1962, once penalty is imposed under Section 114A no separate penalty under Section 112 can be imposed.
- They further submitted that there is proposal to impose penalty under Section 112(b) of the Customs Act, 1962 upon him on the grounds stated in paragraph 8 of the SCN.
- As submitted in para supra goods were never diverted as such but after process exported under claim of drawback instead of under Advance Authorisation, therefore, not violated any condition of notification not to speak of condition No.(x). Therefore, goods are not liable to confiscation under Section 111(o) of the Customs Act, 1962, thereby not liable to penalty under Section 112(b) of the Customs Act, 1962.
- It is further submitted that penalty under Section 112(b) can be imposed only when a person deals with goods in any manner which he knows or has reason to believe are liable to confiscation under section 111. There is no such allegation about reason to

believe and both the statements are exculpatory, therefore, no penalty is imposable upon undersigned.

- They submitted that before taking any decision on the impugned show cause notice, their applications dated 27.08.2014 for conversion of drawback shipping bills into advance authorisations may be decided in view of reminder letter dated 11.06.2016. The said request is simply rejected without assigning any reason vide your office letter F.No. VIII/48-655/EXP/AMD/MP&SEZ/16-17 dated 23.01.2017. Since that letter is non speaking their request for conversion of shipping bills may be re-considered in view of settled position of law.

12. M/s. DAE submitted further written submissions vide their letter dated 24.04.2018, wherein they conteded as under:-

- They submitted that M/s Dhaval Agri Exports has approached the DGFT for clarification on the issue vide letter dt.18.11.2017. The issue was discussed in Policy Interpretation Committee of DGFT and DGFT vide its ruling dated 12.01.2018 has decided that;

'Taking in to consideration the above stipulation and submission of the applicant, it is clarified that Advance Authorization holder has option to export resultant product using duty paid materials procured from domestic sources also within the validity period of Authorization and subject to Actual User condition in respect of inputs imported there under. Only inputs which are declared in the shipping bills shall be allowed to be imported'.

- They submitted that in view of Para 2.3 of FTP, interpretation of the DGFT shall be final and binding for all. In this regard, reliance is placed on the decision of the Hon'ble Tribunal Mumbai held in the case of **Commissioner of Customs (Gen) Mumbai Vs AKM Trading Corporation reported as 2007(208) ELT 406(Tri-Mum)**, wherein, the Hon'ble Tribunal held that ;

"the decision of the DGFT on interpretation of the Policy is final and binding in the light of Apex court decision in the case Tarachand Gupta & Brothers {1983(13) ELT 1456 (SC)}".

In view of above clarification and legal decisions, the issue regarding fulfillment of Export obligation by procuring Sesame seeds domestically has attained finality in the present case.

- It is further submitted that vide the said SCN the Revenue has alleged that M/s Dhaval Agri Exports has diverted 9527.59156 MT of imported Sesame seeds in domestic market and demanded duty on the same. The allegation of the Department

is not correct since there was no diversion in the domestic market. In the table given in para 4 of the SCN the investigating agency has explained that 8140.649 MT of Sesame Seeds has been exported under drawback scheme. This cannot be termed as diversion of imported material in domestic market. In the same Para DRI has explained that there is a shortage of 1284.486 MT. This shortage @ 13% approx. was due to process loss. It is also brought to the kind notice that this Process loss is now revised to 33% in place of erstwhile 1% in SION. Further M/s. DAE has fulfilled the export obligation within the validity period of the licenses after procuring raw material from domestic market. Hence no demand is maintainable.

- The validity periods of Advance Authorizations were from 05.08.2014 to 14.11.2015 and the subject **panchanama** on which basis, shortage was computed was drawn on 05.09.2014 and SCN has been issued on 21.10.2015. The shortage computed before the expiry of validity period of subject authorizations was premature and SCN deserves to be dropped on this issue itself.
- The processing loss in Hulling industries of Sesame seeds was permitted as 1% as per Standard Input Output Norms (SION). However, the actual process loss in hulling industry is upto 33% (13% in case of M/s. DAE) depending upon the raw material used. This fact is now acknowledged by DGFT and the permissible loss in SION is now revised to 33% on 03.01.2018 vide Public Notice No. 49/2015-20. In past because of this disparity all exporters of hulled Sesame seeds are required to fulfill the requisite export obligation after procuring raw materials from domestic market against the processing loss. Hence, no liability is maintainable against shortage due to process loss.
- The EODC/Bond Waiver letters in respect of all 10 subject Advance Authorizations have been issued by the JT. DGFT, Ahmadabad, the Licensing Authority. The Bonds are also released by the Customs department in respect of all 10 Advance Authorizations. In such circumstances, no action is warranted in respect of aforesaid Advance Authorizations since required export obligations is already fulfilled. Therefore, SCN dated 21.10.2015 becomes infructuous at this stage and deserve to be quashed.
- The demand of Duty amounting to Rs. 46,09,99,766/- is not correct since there was no diversion into domestic market. The DBK benefit claimed was Rs. 1.34 Crore. The same alongwith interest of Rs. 6,04,519/- is already recovered by DRI. However, Since DAE has fulfilled the export obligation there was no liability left on them.
- They submitted that there was no diversion of imported good as alleged by the Department. The shortages in quantity of imported Sesame seeds as noticed was on

account of Processing loss as well as on account of exports made inadvertently under Drawback scheme. On noticing, the party immediately approached concerned Commissioner for conversion of DBK Shipping Bills into DEEC Shipping Bills, before 05.09.2014, i.e. the visit of DRI to the factory premises. Hence, there was no **mens-rea**. In respect of shortage due to process loss it is brought to the notice that DGFT vide PN No.49/2015- 2020 dated 03.01.2018 has increased the quantum @ 33% instead of 1% in SION. Further M/s. DAE has already fulfilled export obligation under subject authorizations after procuring duty paid material from domestic market, hence there is no financial implication left in the case. The Drawback amount recovered during investigation needs to be refunded.

- In para 6(e) of SCN, it is alleged that M/s. DAE was not maintaining proper accounts of consumption and utilization of imported Sesame seeds as required under Para 4.3 of HBP V-I (2009-2014). In this regard it is brought to the notice that CEO of M/s. DAE has clarified in his statement that “.....but we are maintaining separate stock registers in our books of A/cs and making entries in the books of accounts either debiting from the stock of imported goods or indigenous goods as and when the goods are sold /cleared from the unit. When finished product from imported material is sold, it is debited from the stock of imported goods and when product made from local market is sold, it is debited from stock of indigenous purchase”.

Further, Authorization holder is required to submit all such maintained records to DGFT for redemption of the Licenses and no irregularities were observed by DGFT and they have issued EODC/Bond Waiver letters. In view of above, the Department's allegation is factually not correct hence un-justified.

- It is submitted that M/s. DAE during investigation had actually deposited Rs. 2,38,41, 127/- and not Rs. 2,13,41,127/- as shown in Para 6 (Page No. 7) of the SCN. It is seen that one amount of Rs. 25,00,000/- paid vide GAR-7/TR-6 Challan No. MP &SEZ/2785/14-15 dated 21.11.2014 has not been considered while arriving total deposit made during investigation and thus total deposit during investigation comes to Rs. 2,38,41,127. This should be ordered to be refunded with consequential benefits please.
- Reliance in this regard is placed on the decision of Madras High Court in case of **Chitra Builders (P) Ltd. Vs. Additional Commissioner Central Excise and Service Tax, Coimbatore [Reported in 2013 (31) S.T.R. 515 (Mad.)]** The relevant portion of the decision is reproduced below for ready reference:-

“It is a well settled position in law that no tax could be collected from the assessee, without an appropriate assessment order being passed by the

authority concerned and by following the procedures established by law. However, in the present case, it is noted that no such procedures had been followed by the respondent, while collecting the sum of Rs. 2 crores, from the petitioner-company, during the search conducted, on 1-3-2012. In such circumstances, this Court finds it appropriate to direct the respondents to return the sum of Rs. 2 crores, collected from the petitioner, during the search conducted, on 1-3-2012, within a period of ten days from the date of receipt of a copy of this order. Accordingly, the writ petition stands allowed. No costs.”

- They submitted that conversion of DBK Shipping Bills into DEEC Shipping Bills is being normally allowed by Customs as well as DGFT. Reliance is placed on Minutes of DGFT Grievance Committee meeting held on 13.9.2006 (Case No. 5) where similar issue of conversion from DBK Scheme to Advance Authorization scheme has been allowed where availed DBK amount alongwith interest has been returned by the Licensee. Since Export obligation is already fulfilled by procuring duty paid material from domestic market, no need is left for conversion of shipping bills now . However it is on record that DBK availed against disputed shipping bills was amounting to Rs.1,37,36,994/-(inclusive of interest of Rs. 6,04,519 till deposit) against which Rs. 2,38,41,127/- was recovered by DRI from M/s. DAE during investigation. The same is required to be refunded since EO already fulfilled.
- Further, on seeking clarification from DGFT as to whether “**export obligation can be fulfilled against impugned 10 Advance Authorization by procuring duty paid Sesame seeds domestically within validity period**”, the DGFT vide Letter F.No. 01/60/162/618/AM-18/PRC dt. 12.01.2018 has approved the same and therefore, the issue as attained finality in terms of Policy provisions of FTP.

They relied on the decision of the Hon'ble Tribunal- Bangalore held in the matter of **VBC Industries Ltd Vs Commissioner of Customs, Chennai reported as {2003 (156) ELT 872(Tri-Bang)}**, wherein it is held that:

“Para 2(f)- Since the condition of the Exemption Notification No. 160/92 has been fulfilled on payment of duties, this is no cause to uphold the confiscation under Section 111(o) of the Customs Act, 1962. The exemption Notification granted exemption from payment of Customs duties on the imported capital goods subject to export of specified products by the appellants. If exports as contemplated in the said exemption is not undertaken, then as per exemption notification, appellants were liable to pay the duty foregone.....Thus, the non-observation of the condition of the exemption has sanction of the proper officer as regards non fulfillment of the condition of the notification. Thus by virtue of the last limb of Section 111(o), confiscation of the imported goods cannot be upheld. Further since

the confiscation cannot be upheld, the penalty under Section 112 of the Customs Act, 1962 cannot be sustained”.

They also relied on the decision of the Hon’ble Tribunal- (Bom) held in the matter of **Oriental Containers Ltd. Vs UOI reported as {2003 (157) ELT 503(Tri-Bom)}**, wherein it is held that:

“Para 9.....In the present case, when the petitioner has been given a clean chit and there is no violation of the provisions of the Customs act, 1962 committed by the Petitioners and no revenue loss is caused by wrong supply of goods by the foreign supplier, the Collector of Customs was not justified in confiscating the goods.

In this view of the matter, we are of the opinion that confiscation of the goods was wholly unjustified and the order impugned in the petition is liable to be quashed and set aside.”

- Since the captioned Sesame seeds are not liable to confiscation under Section 111(o) of the Customs Act as there is no violation of any condition of any Notification or any other law by the Authorization holder so penalty under Section 112(a)/Section 114A cannot be imposed. Reliance is placed on the decision of the Hon’ble Tribunal- Bangalore held in the matter of **VBC Industries Ltd Vs Commissioner of Customs, Chennai reported as {2003 (156) ELT 872(Tri-Bang)}**, wherein it is held that:

“Para 2(f)- Since the condition of the Exemption Notification No. 160/92 has been fulfilled on payment of duties, this is no cause to uphold the confiscation under Section 111(o) of the Customs Act, 1962. Thus, by virtue of the last limb of Section 111(o), ;’confiscation of the imported goods cannot be upheld. Further since the confiscation cannot be upheld, the penalty under Section 112 of the Customs Act, 1962 cannot be sustained”

- They submitted that during investigation, the department has recorded statements of Advance Authorization holder, CHA and Broker wherein, facts which were available in records have been narrated by them which would not prove allegation of diversion. The Department concluded the allegation of diversion merely on assumptions/presumption and demanded duty of Rs. 46,09,99,766/-. The department has failed completely in appreciating factual position of export of sesame seeds inadvertently under DBK Scheme and Processing loss in the Hulling industries. Further the statement of Broker and notes indicating that Sudani Sesame Seeds and Somalian Sesame seeds are sold by him does not denote the origin but Quality of Sesame seeds. Further diversion cannot alleged on the basis of statement of one

person, which also nowhere has confirmed the diversion of imported sesame seeds by M/s DAE. It is settled proposition of law that allegation framed on the basis of mere assumption is legally un-sustainable and bad in law.

In this regard, they relied on the decision of the Hon'ble Supreme Court held in the matter of **Oudh Sugar Mills Ltd Vs UOI reported as {1978(2) ELT (J-172)(SC)}**, wherein it is held that::

“Para 13-In the circumstances, therefore we must hold that the is based only on inferences involving unwarranted assumptions. The findings is thus vitiated by an error of law.

Para 14.- The other findings that the registers were not properly maintained as required by Rule 83 is also an inferential findings based upon the calculations made by the Assistant Chemical Examiner. As we have already held those calculations being based upon unwarranted assumptions cannot form legal basis for a finding that more juice than what was recorded in the Register had gone in the production of sugar.”

Hon'ble Supreme Court in another matter in the case of **Gian Mahtani And Anr Vs the State of Maharashtra & Anr reported as (AIR 1971 SC 1898)** held that;

Para 14.....But according to the system of jurisprudence which we follow, conviction cannot be based on suspicion nor on the conscience of the court being morally satisfied about the complicity of an accused person. He can be convicted and sentenced only if the Prosecution proves the case beyond all reasonable doubt.

Similarly, Hon'ble Tribunal through various decisions held similar views. Reliance is placed on the decision of the Hon'ble Tribunal- Delhi held in the matter of **Riba Textiles Ltd. Vs Commissioner of C.Ex. & ST, Rohtak reported as {2016(344) ELT 227(Tri-Delhi)}**, wherein it is held that:

“Para 14: In this case also, the Revenue relied on the assumptions that the PTY/PFY is not an input for the appellant to manufacture their final product which is found incorrect.

Para 15: Therefore, in the absence of any corroborative evidence produced by the Revenue, the case of Revenue is not sustainable.”

- They prayed that since their case is covered under DGFT Ruling and decisions of Hon'ble Supreme Court and other Courts, the decision is required to be taken following the Judicial discipline;

The Hon'ble Supreme Court vide its decision passed in the matter of **UOI Vs Kamlakshi Finance Corporation Ltd {1991(55) ELT 433 (SC)}** has prescribed a principle of Judicial discipline **which has to be followed mandatorily by every authorities**. In the said decision, the Hon'ble Apex Court about judicial discipline has held as under:

“Para 8. We have dealt with this aspect at some length, because it has been suggested by the learned Additional Solicitor General that the observations made by the High Court, have been harsh on the officers. It is clear that the observations of the High Court, seemingly vehement, and apparently unpalatable to the Revenue, are only intended to curb a tendency in revenue matters which, if allowed to become widespread, could result in considerable harassment to the assesses-public without any benefit to the Revenue. We would like to say that the department should take these observations in the proper spirit. The observations of the High Court should be kept in mind in future and utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them”

Further, Article 141 of the **Constitution of India** provides that the law declared by the Supreme Court shall be binding on all courts within the territory of **India**. Meaning thereby, the case decided by SC will attain finality and would be treated as binding for future decisions by other courts in India.

- Considering the aforesaid submissions, they requested to set aside the subject SCN dated 21.10.2015 alongwith with consequential benefit.

PERSONAL HEARING:

13. The personal hearing in the instant matter was held on 01.08.2018, which was attended by Shri P.D. Rachchh, Advocate and Shri Jay Chandarana, CEO of M/s. DAE, who reiterated the submissions already filed and also submitted a summary of the same at the time of P.H. They stated that the Raw Sesame Seeds imported against the advance licenses were never diverted by them and processed in their factory to make hulled sesame seeds. By mistake for some period the export was made under DBK scheme but on realizing the mistake they made application for conversion from DBK to Advance License in such shipping bills even before the search was made by the DRI. Their process loss is 13% and since during material time process loss allowed under SION was 1%, they made good the export obligation by procuring raw sesame seeds from local market and after processing they exported the hulled seed which is permissible as per FTP and also clarified by the

DGFT. He further submitted that after fulfillment of E.O. in respect of these 10 licenses, the DGFT office issued EODC and their bond is also discharged by the department even before the SCN was issued by the DRI. They relied upon certain case laws and prayed to drop the proceedings.

DISCUSSION AND FINDINGS:

14. I have gone through the Show Cause Notice, relied upon documents, import documents, submissions made in written replies as well as submissions made during the personal hearing.
15. I find that the following main issues are involved in the subject Show Cause Notice, which are required to be decided:-
- (i) Whether the **9527.592 MT** of Raw Sesame Seeds imported by M/s. DAE during the period from 06.03.2013 to 05.09.2014 under various Advance Authorization as listed in **Annexure-A to the SCN**, totally valued at **Rs. 1,27,57,35,460/-**, are liable to confiscation under Section 111(o) of the Customs Act, 1962 read with Notification 96/2009-Customs dated 11.09.2009, though said goods are not available for confiscation.
 - (ii) Whether the Customs duty amounting to **Rs. 46,09,99,766/-** as calculated in **Annexure-A to the SCN**, is required to be demanded and recovered from them in terms of proviso to Section 28(4) of the Customs Act, 1962, along with interest under Section 28AA *ibid*, and whether the amount of **Rs.2,13,41,127/-** paid by them vide various Challans is required to be appropriated towards the duty payable by them;
 - (iii) Whether penalty is imposable on M/s. DAE under Section 112(a) and Section 114A of the Customs Act, 1962; and
 - (iv) Whether penalty is imposable on Shri Jay Sureshbhai Chandarana, CEO of M/s. DAE, under Section 112(b) of the Customs Act, 1962.
16. After having framed the main issues to be decided, now I proceed to deal with each of the issues individually, herein below.
17. I find that the entire Show Cause Notice is based on the allegation that M/s. DAE has diverted the raw sesame seeds imported under Advance License in the domestic market and therefore, they have not fulfilled the actual user condition as envisaged in the Notification No. 96/2009- Customs dated 11.09.2009. In support of this allegation, the evidences relied upon by the investigating agency are the Statement dated 10.09.2014 of Shri Dinesh Jayantilal Tanna of M/s. Tirupati Agro, Rajkot (a broker in selling of imported raw materials) and six contract notes bearing No. 1087 dated 20.03.2014; 10849 dated 21.03.2014; 11098 dated 20.05.2014; 11080 dated 14.05.2014; 10786 dated 12.02.2014 and 10066 dated 26.04.2013 of M/s. Tirupati Agri Brokers, Rajkot showing Seller as "Dhaval

Agri Exports, Rajkot". Further, the shortage of imported goods to the tune of 1284.486 MTs noticed during the course of physical stock verification carried out under Panchnama dated 05.09.2014 is also relied as evidence of diversion by the investigating agency. No other evidence of diversion is available on record. Now, I proceed to examine these evidences one by one hereinunder.

17.1. It has been alleged in the SCN that Shri Dinesh Jayantilal Tanna of M/s. Tirupati Agro, Rajkot, a broker in selling of imported raw materials, in his statement dated 10.09.2014, admitted that it was a trend/practice to sell the sesame imported under Advance Authorization as the importers had sufficient time to fulfill their export obligation and it is also evident from the Contract Notes No. 10847 dated 20.03.2014; 10849 dated 21.03.2014; 11098 dated 20.05.2014; 11080 dated 14.05.2014; 10786 dated 12.02.2014; 10066 dated 26.04.2013 that raw sesame seeds of Sudan and Somalia origin were sold locally by M/s. DAE. However, on going through the statement dated 10.09.2014 of Shri Dinesh Jayantilal Tanna of M/s. Tirupati Agro, Rajkot, I observe that the original reply to No.4 for the said six Contract Notes was that "In this regard I have to state that the product description in the contract mentioned are of the quality of different sesame seeds which is commonly called in business circle. As such it cannot be said that they are the imported sesame seeds." Thus, the investigating agency has selectively relied upon the first sentence of his deposition while completely ignoring the second sentence.

17.2. Further, on going through the aforesaid contract notes, it is observed that out of six contract notes, on two contract notes viz., 10847 dated 20.03.2014 and 10849 dated 21.03.2014, the product specification is mentioned as "Sesame Seeds – Sudan Red Quality" while on Contract Note No. 11098 dated 20.05.2014, the product specification is "Semi Premium (Somalia) Quality". Further, two Contract Notes bearing Nos. 10786 dated 12.02.2014 and 10066 dated 26.04.2013 show the product specification as Korea Quality/Korea Condition while the sixth Contract Note No. 11080 dated 14.05.2014 nowhere refers any country name to indicate the quality of the goods. In this regard, I note that the investigating agency has interpreted the country name mentioned in the product specification to indicate the country of origin of goods. However, this conclusion is not tenable as two contract notes show product specification as "Korea Quality/Condition" even though no sesame seeds are imported from Korea, rather it is the country of destination for export of sesame seeds. Further, one of the contract notes does not reflect any country name to indicate the quality of the goods. Therefore, I find force in the defense submission of M/s. DAE wherein they have contended that the name of any country mentioned on the contract note to indicate its quality does not mean that the particular goods have originated from that country. Also in two contract notes, the sesame seeds mentioned are hulled, which is the processed product of M/s. DAE and not the raw material imported by them. Moreover, these contracts are under 'H' form for exports out of country and not for domestic sale. Hence, the allegation that M/s. DAE were diverting imported sesame seeds in the domestic market is not supported by the evidences on record.

17.3. In regard to the shortage of imported goods to the tune of 1284.486 MTs noticed during the course of physical stock verification carried out under Panchnama dated 05.09.2014 (as referred in para 4 of the SCN), I find that M/s. DAE in their statements before the investigating agency, as well as their defense reply, contended that this shortage @ 13% approx. was due to process loss, while the DRI has allowed for only 1% process loss as per the SION norms. In this regard, they have submitted that the actual process loss in hulling industry is upto 33% (13% in their case) depending upon the raw material used and that this fact is now acknowledged by the DGFT and the permissible loss in SION is now revised to 33% on 03.01.2018 vide Public Notice No. 49/2015-20. In view of the revised SION norms allowing for process loss of 33% instead of just 1% allowed earlier, I find it reasonable to accept the importer's contention regarding 13% process loss and hence, the said quantity of shortage of imported goods arrived at by the DRI cannot be accepted as evidence of diversion by M/s. DAE. As there is no other independent evidence of diversion on record, I find that the allegation of diversion of duty free goods imported under Advance License by M/s. DAE is based on assumption & presumption and is not legally sustainable.

18. Further, it is alleged in the Show Cause Notice that M/s. DAE has failed to observe the actual user condition stipulated under the Notification No. 96/2009- Customs dated 11.09.2009 for the sesame seeds imported duty free under Advance License. However, in the absence of any documentary evidence whatsoever or admission in statements recorded by the investigating agency, of diversion of imported goods, I find that the actual user condition has not been violated by M/s. DAE.

19. Further, I find that it has been proposed in the SCN that the entire quantity of 9527.592 MT of Raw Sesame Seeds imported by M/s. DAE during the period from 06.03.2013 to 05.09.2014 under various Advance Authorization (as listed in Annexure-A to the Show Cause Notice), is liable for confiscation as the same has been diverted in the domestic market. However, it is an admitted fact in the SCN itself that M/s. DAE had exported 8140.649 MT of Hulled sesame seeds manufactured out of the imported Sesame seeds under Drawback Scheme which cannot be termed as diversion in domestic market.

20. I also find that noticee had applied for conversion of shipping bills from Drawback to Advance Authorisation along with willingness to pay back the amount of drawback with interest even before the investigation was initiated by the DRI. However, their application for said conversion was denied by the competent authority and they proceeded to fulfill their export obligation by procuring raw material from the indigenous market. In this regard, I find that M/s. DAE had approached the DGFT for clarification on the issue vide their letter dated 18.11.2017. The issue was discussed in Policy Interpretation Committee of DGFT and the DGFT vide its ruling dated 12.01.2018 decided as under:

'Taking into consideration the above stipulation and submission of the applicant, it is clarified that Advance Authorization holder has option to export resultant product using duty paid materials procured from domestic sources also within the validity

period of Authorization and subject to Actual User condition in respect of inputs imported there under. Only inputs which are declared in the shipping bills shall be allowed to be imported'.

21. I find force in M/s. DAE's submission that in view of Para 2.3 of FTP, interpretation of the DGFT shall be final and binding. In this regard, reliance is placed on the decision of the Hon'ble Tribunal, Mumbai, in the case of **Commissioner of Customs (Gen) Mumbai Vs AKM Trading Corporation reported as 2007(208) ELT 406(Tri-Mum)**, wherein, the Hon'ble Tribunal held that ;

"the decision of the DGFT on interpretation of the Policy is final and binding in the light of Apex court decision in the case Tarachand Gupta & Brothers {1983(13) ELT 1456 (SC)}".

22. Further, I find that on the basis of exports made by M/s. DAE against the Advance Licenses, the DGFT has issued EODC in all cases and accordingly, the Bonds submitted by them at Custom House, Mundra, for duty free import have also been discharged/released by the Assistant Commissioner of Customs, Custom House, Mundra.

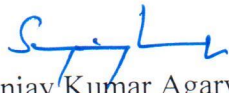
23. In view of the above, I find that M/s. DAE has not violated the conditions of duty free import under Advance Licenses and therefore, the proposal for confiscation of 9527.592 MT of Raw Sesame Seeds imported by them during the period from 06.03.2013 to 05.09.2014 under various Advance Authorizations (as listed in Annexure-A to the Show Cause Notice), totally valued at Rs. 1,27,57,35,460/-, under Section 111(o) of the Customs Act, 1962, is not legally sustainable. Moreover, as the charge of diversion of duty free imported goods could not be established, therefore the demand for Customs duty leviable thereon does not survive.

24. Interest & penalty: In view of discussions and findings contained in the foregoing paras, I find that the duty demand proposed in the Show Cause Notice is not sustainable. Consequently, the demand of interest and penalty would not stand.

In view of the aforesaid findings, I pass the following Order:

ORDER

I hereby drop the proceedings initiated vide Show Cause Notice F.No. DRI/AZU/JRU/INT-23/2014 dated 21.10.2015.


(Sanjay Kumar Agarwal)
Commissioner of Customs
Custom House Mundra

To;

1. M/s. Dhaval Agri Exports, "Shri Hari Kutir", Rajkot-Morbi Road, Village: Bedi, Rajkot.
2. Shri Jay Sureshbhai Chandarana, CEO of M/s. Dhaval Agri Exports, "Shri Hari Kutir", Rajkot-Morbi Road, Village: Bedi, Rajkot.

Copy to:

- (i) The Chief Commissioner of Customs, CCO, Ahmedabad.
- (ii) The Additional Director General, DRI, Ahmedabad Zonal Unit, Ahmedabad.
- (iii) The Deputy Commissioner, Import Assessment, Group-I, Custom House, Mundra.
- (iv) The Deputy Commissioner (RRA), Custom House, Mundra.
- (v) The Deputy/Assistant Commissioner (Recovery), Custom House Mundra.
- ✓(vi) The Deputy/Assistant Commissioner (EDI), Custom House, Mundra.
- (vii) Guard file.