



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

OFFICE OF THE PRINCIPAL
COMMISSIONER OF CUSTOMS
11 AUG 2017
Custom House, Mundra

A	File No.	VIII/48-22/Adj./ADC/MP&SEZ/14-15
B	Order-in-Original No.	MCH/ADC/GPM/038/2017-18
C	Passed by	Shri G. P. Meena Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of Order	31.07.2017
E	Date of Issue	11.08.2017
F	SCN NO. & Date	DRI/AZU/GRU-69/2013 dated 12.08.2014
G	Noticee / Party / Importer / Exporter	

1. M/s. Aadi Oil Pvt. Ltd., Survey No. 141, Mundra Port & SEZ, Taluko Mundra (Kutch)- 370421
2. Shri Mahesh Parmar, Manager of M/s. Aadi Oil Pvt. Ltd., Survey No. 141, Mundra Port & SEZ, Taluko Mundra (Kutch)- 370421
3. M/s. Vispo Alternate Energy Pvt. Ltd., 202,Shaival Plaza, Ellisbridge, Ahmedabad-15
4. Shri Pravin Jain, Director of M/s. Vispo Alternate Energy Pvt.,Ltd., 202,Shaival Plaza, Ellisbridge, Ahmedabad-15
5. M/s. Subhi Impex,305 Ashwamegh House ,Choice Restaurant Lane, C.G. Road, Ahmadabad
6. M/s. Jainam Industries Pvt. Ltd., F-90, 91,107,108,RIICO Industrial Area, Sanward, Tehsil Mali, District- Udaipur
7. Shri Kirti Jain, Director of M/s. Jainam Industries Pvt. Ltd., F-90, 91,107,108,RIICO Industrial Area, Sanward, Tehsil Mavli, District- Udaipur
8. M/s. G.S.E.C. Ltd., 2nd Floor, Gujarat Chamber of Commerce Building, Ashram Raod, Ahmadabad- 9
9. Shri Anand Mathur, Vice President of M/s. GSEC Ltd., 2nd Floor, Gujarat Chamber of Commerce Building, Ashram Raod, Ahmedabad- 9.
10. M/s. Bagwan Petroleum, Plot No. 7 & 9,Near Aradhna Rice Mill, Barejadi Road, Near Bareja Cross Road, Bareja, Ahmedabad- 382425
11. M/s. Suzlon Enterprise, 3488/2, GIDC, Phase-IV. Chhatral, TalukoKalol, District, Gandhinagar
12. M/s. Chatrabhuj Steel, Plot No. 4217/8, Phase-IV, GIDC, Vatva, Ahmedabad.
13. M/s. Krishna Metals & Alloys Industries, B-34, Krishna Gopal Estate, Naroda Road, Ahmedabad 380 025
14. M/s. Anand Associates, 4, 1st Floor, Vinod Chambers, O/s. Dariapur Gate, Ahmedabad 380 001.
15. M/s. Dhvani Offset, 4/2093, Sahara Darwaja, Nawabwadi Main Road, Surat

- 01 This Order-in-Original is granted to the concerned free of charge.
- 02 Any person aggrieved by this Order-in-Original may file an appeal under Section 128 of the Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate inn Form C.A. 1 to :
"THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA"
having his office at 7th floor, Mridul Tower, Near Times of India Building, Ashram Road, Ahmedabad - 380 009.
- 03 Appeal shall be filed within sixty days from the date of communication of this order.
- 04 The appeal should bear Court Fee Stamp of Rs.5/- (Rupees five only) under Court Fee Act and it must be accompanied by -
- 05 A copy of the appeal , and
- 06 This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs.5/- (Rupees Five only) as prescribed under Schedule-I, Item 6 of Court Fees Act, 1870.
- 07 An appeal against this order shall lie before the Commissioner (Appeals) 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.
- 08 Proof payment of duty/interest/fine/penalty etc. should be attached with the appeal memo.
- 09 While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

Subject: - SCN No. DRI/AZU/GRU-69/2013 dated 12.08.2014 issued to M/s. Aadi Oil Pvt. Ltd., Survey No. 141, Mundra Port & SEZ, Taluko Mundra (Kutch) and others

Brief Facts of the Case:-

M/s. Aadi Oil Pvt. Ltd., Survey No. 141, Mundra Port & SEZ, TalukaMundra (Kutch)-370421 having registered office at 406-B, Sapath- IV, Opposite Karnavati Club, SG Highway, Ahmadabad (hereinafter referred to as "the main noticee" for the sake of brevity) was holding Letter of Approval (LOA) for authorized operation i.e. manufacturing of "Refined Furnace Oil" from Sludge Oil, collected from vessels arrived at Mundra Port" (**Relied upon Document No. 1 to the Showcause Notice**).

2. The main Noticee made application vide their letter dated 01.09.2009 for setting up of project to undertake manufacturing of Fuel Oil by refining waste oil. They specifically mentioned that the raw material feed stock required for the project would be procured from vessels and finished material produced would be sold to industrial units. In their Application in Form- F, i.e., "Application for setting up SEZ units" (**Relied upon document No.2 to the Show cause Notice**), they mentioned Import item as 'NIL' in Para VII of the Form-F which is for "Import and indigenous requirement of materials and other inputs". Accordingly, Letter of Approval (LOA) was granted by the Development Commissioner, MP&SEZ, Mundra vide F. No. MPSEZ/IUA/02/2009-10 dated 30.10.2009 for undertaking authorized operation "Manufacturing of Refined Furnace Oil" with certain conditions. One of the conditions, mentioned at Sr. No. (iv), clearly states: "You may import or procure from the Domestic Tariff Area all the items required for your authorized operations under this approval, except those prohibited under ITC (HS) Classifications of Export and Import Items".

3. Further, vide letter dated 22.12.2012 The main Noticee applied for broad banding (expanding of their business) and intended to import various petroleum products. It was also conceded by the Approval committee on 28.06.2013, subject to the condition that no prohibited or restricted items will be imported without obtaining prior permission from the Board of Approval (BOA).

4. Intelligence gathered by the officers of DRI indicated that the said unit was indulged in the import of Diesel Oil/ Waste Oil by mis-declaring the same as "Low Viscose Furnace Oil" and clearing it as such in DTA without processing in their plant, by declaring the same as "Refined Furnace Oil". On the basis of the said intelligence, the officers of DRI, with the prior approval of Development Commissioner of Mundra SEZ and in the presence of a Preventive Officer of Mundra SEZ, obtained samples from the dedicated raw material tank No. 102 and 103 of the main Noticee, wherein 94.160 MTs of goods declared as "Low Viscose Furnace Oil" covered under Bill of Entry No. 941/02.09.2013 was stored and the said goods were detained. Samples were also drawn from the dedicated Raw Material Tank No. 101 and dedicated finished goods tank No. 106 & 107 under regular Panchnama dated 04.09.2013 (**Relied Upon Document No.3 to the Show Cause Notice**). Quantity of these goods was 159.857 MT (88.857 MT covered

under Bill of Entry No. 812 dated 26.07.2013 + 71 MT covered under Bill of Entry No. 885 dated 08.08.2013).

5. The samples drawn under the Panchanama dated 04.09.2013 were sent to Kandla Laboratory under Test Memo No. 04/2013, 05/2013, 06/2013 of goods declared as "Low Viscose Furnace Oil" and Test Memo No. 07/2013 & 08/2013 of the goods declared as "Fuel Oil", for chemical analysis. The Test Results (**RUD No.4**) of all the aforesaid Test Memos, issued by the Joint Director, Custom House Laboratory, Kandla stated that **"The sample has the characteristics of Waste Oil as per the Circular No. 33/2001. Suitable for recycling the Waste Oil under Schedule V of Hazardous Waste (Management Handling and Trans Boundary Movement) Rule 2008"**.Whereas on receipt of the Test Result from the Joint Director, Custom House Laboratory, Kandla, it was revealed that the main Noticee had imported Waste Oil by mis-declaring the same as "Low Viscose Furnace Oil" and subsequently without carrying out any adequate process, cleared it in Domestic Tariff Area (DTA) by mis-declaring the same as "Fuel Oil". Therefore search was carried out at the premises of the main Noticee with the prior approval of the Development Commissioner and some incriminating documents were recovered and withdrawn under regular Panchanama dated 25.09.2013 (**Relied upon Document No.5 under the Showcause Notice**).

6. On the strength and evidence of the Test Result that the main Noticee had imported Waste Oil by Mis-declaring the same as "Low Viscose Furnace Oil" and cleared a part of the same in DTA by mis declaring the same as "Refined Fuel Oil", total 253.916 Mts having approximately declared value 70.24 lakhs, available in the Raw Material Tank as well as Finished goods tanks were placed under Seizure vide Seizure Memo dated 28.09.2013 (**Relied upon Document No. 6 to the Showcause Notice**). Subsequently, the said seized goods were provisionally released by the Deputy Commissioner of Customs, MPSEZ, Mundra vide letter F. No. VIII/48-161/MISC-PR/MPSEZ/13-14 dated 02.12.2012 against a Bond for Rs. 70.24 lakhs dated 27.11.2013 and Bank Guarantee No. 15300100001573 dated 27.11.2013 for Rs. 35.12 lakh.

7. The documents recovered and withdrawn from the main Noticee revealed that they had imported 'Low Viscose Furnace Oil' prior to permission for broad banding and trading, accorded by Approval committee. The main Noticee vide letter dated 30.01.2013 had made application for the addition of products (broad banding) and permission for trading which was conceded by Approval Committee meeting held on 28.06.2013 and communicated to The main Noticee vide letter F. No. MPSEZ/IUA-02/04/2009-10 dated 04.07.2013 (**Relied Upon Document No.7 to the Showcause Notice**). It appeared that the main Noticee,had imported total 739.568 MT of 'Low Viscose Furnace Oil' valued at Rs. 1,89,71,295/-, and under Bills of Entry filed before the SEZ Customs without valid Letter of Approval (LoA) granted by the Development Commissioner. The details of Bills of Entry have been marked at **Annexure-A to the Showcause Notice**. Further, it appeared that "Low Viscose Furnace Oil" was imported by the main Noticee on high

sea sale basis from M/s. Subhimpex, Ahmedabad and M/s. Vispo Alternate Energy Pvt. Ltd., Ahmedabad.

8. Further scrutiny of the documents revealed that without adequately processing the 'Sludge Oil', the main Noticee had cleared the same as "Refined Furnace Oil" to DTA. The Samples drawn by the Customs-SEZ, prior to clearance of the "Refined Furnace Oil" to DTA were sent to Custom House Laboratory, Kandla who reported that the ".....aforesaid sample does not meet the requirement of furnace oil/ fuel oil with reference to the Circular No. 33/2001 in respect of Ash Content, Water Content, Sediment & Kinematic viscosity. On further observation of hazardous testing it is indicated that the sample is not hazardous waste material but fall under the category of off specification furnace/ fuel oil".(Relied Upon Document No.8 to the Showcause Notice) Thus, it appears from the Test Reports that The main Noticee have cleared the 'Sludge Oil' without carrying out required adequate process thereon in their plant and have cleared in DTA by mis-declaring the same as " **Recycled Furnace Oil obtained from sludge oil (off specification)**" under CTH No. 27101950 vide the Bills of Entry mentioned in **Annexure-B**.

9. It further appeared that import of "Recycled Furnace Oil obtained from sludge oil (off specification)" is restricted and the procurement from SEZ is considered as import. M/s. GSEC Ltd., and M/s. Jainam Industries Pvt. Ltd, have procured/ imported the "Recycled Furnace Oil obtained from sludge oil (off specification)" from The main Noticee by circumventing the restriction. The same were cleared/ sold directly from the plant of the main Noticee to the DTA Buyers under Delivery Notes/ Invoices mentioning the goods as "R. furnace Oil". These Delivery Notes/ Invoices did not mention that the goods were Recycled Furnace Oil (Off Specification). Thus, wilfully and intentionally the actual description of the goods was suppressed in the said Delivery Note/ Invoices. The main Noticee, in spite of having the facilities of Dehydration and centrifuge and vaporization for process of sludge oil, they had not carried out required adequate process on Sludge Oil as it appeared from the test reports of their declared finished produced 'Recycled Furnace Oil' as it failed in respect of Ash Content, Water Content, Sediment & Kinematic viscosity. The main function of plant was to remove/ reduced at the aforesaid parameters to the eligible criteria for "Refined Fuel Oil". From these test results, it was established that the main Noticee had removed the Sludge Oil as such from their plant and portrayed that the Sludge Oil procured from the vessel had been processed in their plant and have been cleared in DTA by mis-declaring the same as Recycled Fuel Oil.

10. Circular No. 33/2001- Cus. dated 04.06.2001 issued from F.No.405/09/2000-Cus.III by the CBEC clearly specifies the Parameters and facilities for testing furnace oil/ waste oil. The main Noticee had grossly failed to comply with the LOA granted by the Development Commissioner as well as parameters set out in the Circular NO. 33/2001- Cus dated 04.06.2001 during DTA Clearance of such goods. Further, M/s. G.S.E.C. Ltd. and M/s. Jainam Industries Pvt Ltd. have also failed to comply with the rules and regulations set out by Customs, and DGFT as

the importation of Waste Oil without valid authorization is not allowed. However, by using the modus operandi they brought Waste Oil in their plant in SEZ and cleared the same portraying that it was processed and refined in their plant, they got it cleared from SEZ.

11. Since it appeared that the investigation could not be completed within six months of the seizure, extension for carrying further investigation was sought by issuing Show Cause Notice No. DRI/AZU/GRU-69/2013 dated 27.02.2014 which was adjudicated by the Commissioner of Customs, Kandla vide Order-In-Original No. KDL/COMMR/61/2013-14 (**RUD No.9**) dated 03.03.2014, and time period for issuance of Show Cause Notice under Section 124 of the Customs Act, 1962 was extended to 02.09.2014.

12. **During the investigation, statements of following persons were recorded:**

12.1 Statement of **Shri Gaurang Sathwara**, Production Manager of the main Noticee was recorded on 26.09.2013 (**Relied Upon Document No.10 to the SCN**) wherein he inter alia stated that their plant was a vaporization plant, mainly meant for dehydration of sludge oil *i.e.* for manufacture of refined furnace oil and there was a small in-house laboratory where they had facility to test water contents, density, flash point and viscosity; that main activities were to collect sludge oil from the vessels and to refine it to manufacture 'Refined Furnace Oil'; that they sold their final product to parties in DTA (Domestic Tariff Area) as well as units situated within MP SEZ; that Sludge Oil collected from vessels and low viscose furnace oil imported by them were stored in Raw Material Tanks and by processing the same, finished products *i.e.* Recycled Furnace Oil (Refined furnace oil) and Fuel Oil were being obtained and stored in dedicated Finished Products Tanks; that all the tanks were dedicated for their decided purpose, means the raw material was always stored in their Tank Nos. 101 to 105 and finished products were stored in Tank No. 106 and 107 only; that they had never stored the finished product in tank meant for Raw Material Storage and also never stored Raw Material in the tanks meant for finished product; that from **April' 2013, they had stopped refining Sludge Oil as no specific export grade quality was retrieved from the Sludge Oil and due to heavy maintenance expenses it was not viable to carry on the process of Sludge Oil; that from April' 2013, they started importing "Low Viscose Furnace Oil" on High Sea Sale basis from M/s. Vispo Alternate Energy, Ahmadabad and M/s. Subhimpex, Ahmedabad even prior to April'2013; that when the DRI officers had drawn the sample on 04.09.2013 from "Low Viscose Furnace Oil" imported vide Bill of Entry No. 000941 dated 02.09.2013 and stored in Raw Material Tank No. 102 & 103, total 86.484 MT of the imported "Low Viscose Furnace Oil" imported vide Bill of Entry No. 812 dated 26.07.2013 was also lying in Raw Material Tank No. 101; that finished products *i.e.*, Fuel Oil processed from the imported "Low Viscose Furnace Oil" were stored in Tank No. 106 and 107; that finished product "Fuel Oil" stored after the processing the "Low Viscose Furnace Oil" in their plant; that there was 70 MT of finished product "Fuel Oil" stored in Tank No. 106 and 40 MT finished product "Fuel Oil" in Tank No.107; that before clearance of the finished product "Fuel Oil", in DTA, samples were drawn by the officers of MPSEZ and after receipt of test result,**

they were filing Bill of Entry for clearance of Fuel Oil in DTA; that they had applied for import/ Procurement/ Blending/ process and sale of various petroleum products vide application dated 30.01.2013 and Specified Officer intimated that their application was considered subject the certain conditions as laid in their letter dated 04.07.2013; **that as per the LOA Sludge Oil/ Waste Oil were allowed to be procure from vessels and "Low Viscose Furnace Oil" was not allowed for authorized work.** He was shown Test Reports issued by the Customs Laboratory at Kandla in respect of samples obtained by the officers of DRI from the goods stored in Tank No.101,102,103,106 and 107 in their plant at SEZ Mundra wherein affirmed that all the test reports clearly show that the subject goods were having characteristics of Waste Oil; that there was no specific difference between Low Viscosity Furnace Oil and Fuel Oil produced, however the quality of fuel oil was improved as compared to imported 'Low Viscosity Furnace Oil'; that ShriBalmukundVadilal Mehta and ShriAnish Mehta were Directors in The main Noticee and Shri Mahesh Parmar, Manager of The main Noticee attends paper work pertaining to LOA and other permission/ registration with various departments and DTA sales; that main DTA buyers were M/s. GSEC Ltd, Ahmedabad, M/s. Jainam Industries Pvt. Ltd., Ahmadabad and Udaipur (Rajasthan); that authorized operation of M/s. Aadi Oil Pvt. Ltd, was to produce Refined Furnace Oil from sludge oil procured from the vessels.

12.2 Statement of **Shri Maheshbhai Parmar**, Manager of the main Noticee having registered office at 406-B, Sapath- IV, Opposite Karnavati Club, SG Highway, Ahmedabad & factory at Survey No. 141, Paiki, MPSEZ, Mundra was recorded on 30.09.2013 (**Relied Upon Document No.11 to the SCN**) wherein he inter-alia stated that hewas working as a Manager in the above company since June' 2009 and the unit was set up in Adani Port & SEZ, Mundra during October, 2010. However, it started functioning from April' 2011; that it was basically a vaporization plant, mainly meant for dehydration of sludge oil *i.e.* for manufacture of refined fuel oil; that he was looking after documentation work related to import and DTA clearance of processed goods and also looked after submission of various reports to SEZ, Gujarat Pollution Control Board and correspondence thereof; that they had LOA for manufacturing of Refined Furnace Oil from the procurement of sludge oil from the vessels and used to clear the same in DTA after filing Bills of Entry for clearance of Refined Fuel Oil; that they had stopped processing Sludge Oil since April' 2013 as no specific export grade quality could be retrieved from the Sludge Oil. Thereafter, they started importing "Low Viscose Furnace Oil" on High Sea Sale basis mainly from M/s. Subhi Impex, Ahmedabad and M/s. Vispo Alternate Energy Pvt. Ltd., Ahmadabad; that on receipt from the specifications of "Low Viscose Furnace Oil" from the High Sea Sellers, they considered those specifications, if they match with their required finished goods *i.e.*, Fuel Oil; that they entered in agreement for High Sea Purchase Agreement. On the basis of those agreements, High Seas Invoice and endorsed B/L, they used to prepare Bills of Entry and present the same before the SEZ authority; that till that day, they had purchased around 1000 MT of 'Low Viscose Furnace Oil' on high sea sale basis. He was shown Test Reports issued by the Customs Laboratory at Kandla in respect of the samples obtained by the officers of DRI from

the Raw Materials as well as Finished Goods found stored in various tanks in their plant which shows that the goods have characteristic of Waste Oil, after seeing, he stated that as per the Test Result, it was true that goods were mis-declared in Bills of Entry, but they had filed bill of entry on the basis of the documents of "Low Viscose Furnace Oil" purchased from M/s. Vispo Alternate Energy on high sea sale basis and had classified the goods under tariff item No. 27101950 which was meant for "Fuel Oil". He was shown various test reports of Kandla Customs laboratory which were test results of the goods 'Recycled Furnace Oil obtained from Sludge Oil (Off Specification)' processed from the "Sludge Oil". On seeing the same, he stated that clearance of 'Recycled Furnace Oil, obtained from Sludge Oil (Off Specification)' in DTA, were mainly sold to M/s. GSEC Ltd., Ahmadabad and M/s. Jainam Industries Pvt. Ltd., Ahmadabad, and Jainam Industries Pvt. Ltd., (trading unit), Ahmadabad without verification from their DTA buyers whether they had necessary authorization to procure/ store/ process off specification grade fuel oil issued by the Pollution Control Board; that he did not know that the off specification grade fuel oil was covered under the tariff item 27109900 and was a restricted item; that as per LOA and broad banding permission, their unit was not allowed to import prohibited goods without prior approval/ permission from BoA. They had never imported restricted goods. They had imported Low Viscose Furnace Oil which was not restricted. They were not aware that off specification furnace oil was restricted item.

12.3 Statement of Shri Anand Mathur, Vice President of M/s. GSEC Ltd., Ahmadabad was recorded on 25.11.2013 (**Relied Upon Document No.12 to the SCN**) wherein he inter alia stated that the company was initially owned by the Gujarat State Government and later on it was sold to one Shri Rakesh Shah (Chairman of M/s. GSEC Ltd.) and the custodian of Ahmadabad, Indore and Vizag Air Cargo Complexes and dealer of M/s. Essar Oil Ltd and apart from that they imported Refined Furnace Oil and Furnace Oil from the main Noticee; that they were given understanding that the Furnace Oil was derived from Low Viscose Furnace Oil and Refined Furnace Oil were derived from the Sludge Oil collected from the vessels and processed in the plant of the main Noticee; that as on 25.11.2013, they had procured 528.98 MT of Furnace Oil and 1224.16 MT of Recycle Furnace Oil from the main Noticee; that samples were not obtained from the main Noticee prior to purchase of Furnace Oil / Recycle Furnace Oil; that they made verbal contract and never asked for specific quality/ specification of the goods; **that though the goods were said as " Low Viscose Furnace Oil" but same were procured by declaring it as "Furnace Oil"**; that he was shown Test Report of samples drawn from the Tank No. 101,102,103,105 and 106 of The main Noticee which showed the goods as "Waste Oil suitable for recycling", after seeing, he stated that had they never purchased 'Waste Oil' from the main Noticee and at the time of importation of Furnace Oil or Refined Furnace Oil, it was informed by the main Noticee that the samples were drawn by the SEZ Authority and confirmed the products and thereafter they filed the Bill of Entry. Further, he stated that they were fully aware that product "Refined Furnace Oil of off specification grade" were processed product of

Sludge Oil, however they had imported Refined Furnace Oil of Off Specification grade being a cheaper in comparison to company furnace oil and Alang Ship Breaking Yard Furnace Oil; that they were not actual users, so whatever product they had imported/ procured were sold as it is to their customers and **they did not have any required licence for procurement/ import of Waste Oil or Furnace Oil of Off Specification grade**; that they had imported 'Recycled Furnace Oil' obtained from Sludge Oil (Off Specification)" from the main Noticee and had sold the same to the various customers who were the retail traders for further selling to actual user of said goods; **that neither they had necessary authorization to procure/ store/ process off specification grade fuel oil issued by the Pollution Control Board nor had they verified from their customers whether they had necessary authorization to procure/store / process off specification grade fuel oil issued by the Pollution Control Board**; that he did not know that the off specification grade fuel oil/ recycled furnace oil falls under the tariff item 27109900 and is a restricted item.

12.4 Statement of **Shri Pravin Jain**, Director of **M/s. Vispo Alternate Energy Pvt. Ltd.**, Ahmedabad was recorded on 26.11.2013 (**Relied Upon Document No.13 to the SCN**) wherein he inter alia stated that other Director was ShriAshish Jain and that was a company of Jainam group and was also Director in M/s. Jainam Industries Pvt. Ltd.; that till 26.11.2013, they had purchased six consignments of Low Viscose Furnace Oil and all those six consignments were sold to the main Noticee on high sea sale basis; that total 861.948 MT of Low Viscose Furnace Oil was sold to The main Noticee on Sea Sale basis; that before purchasing Low Viscose Furnace Oil from overseas supplier, they had inquired about specifications of the goods orally and asked for sediment content, water content, ash content, flash point and density of the product and with the import documents, they were provided "Analysis Report' of Low Viscose Furnace Oil by overseas supplier; that he had negotiated with overseas suppliers and negotiated the products confirming the density between 0.89 to 0.97 and gross calorific value near about 1000 with those suppliers; that since all the said parameters were of 'Low Viscose Furnace Oil' and it was cheaper in comparison to Furnace Oil, they had indulged in trading of that product; that before the high sea sale, they had conveyed the specification to the main Noticee and after agreeing the same, they had entered in high sea sale agreement with the main Noticee. Shri Mahesh Parmar of the main Noticee had signed all the high sea sale agreements. They had provided copies of Analysis Reports of Low Viscose Furnace Oil, received from their overseas suppliers, to Shri Mahesh Parmar; He was shown test reports of Kandla laboratory which were test results of samples drawn from the declared goods as 'Low Viscose Furnace Oil' and 'Fuel Oil'; that they were fully aware that 'Waste Oil' was prohibited and cannot be imported without valid authorization from Pollution Control Board; that they had never imported waste oil, and how the test result came as 'Waste Oil' instead of ' Low Viscose Furnace Oil' could be answered by the main Noticee as they had sold the goods on high sea sale basis and they had ordered as 'Low Viscose Furnace Oil' to their overseas suppliers; that they had not seen the cargo.

12.5 Statement of **Shri Shailesh Jain**, Proprietor of **M/s. Subhi Impex**, Ahmedabad was recorded on 27.11.2013 (**Relied Upon Document No. 14 to the SCN**) wherein he inter alia stated that till 27.11.2013, he had purchase approx. fifteen consignment of 'Low Viscose Furnace Oil' out of which, seven consignments were sold to the main Noticee on high sea sale basis and remaining consignments were sold to M/s. Jainam Industries Pvt. Ltd., Udaipur on high sea sale basis; that at the time of booking the order for purchase of Low Viscose Furnace Oil from overseas supplier, they had inquired about the specification of the said goods orally and enquired about its sediment contents, water contents, ash contents, flash point and density of the product but did not enter in written contracts; that at the time of receiving the documents from overseas suppliers 'Analysis Report' of Low Viscose Furnace Oil was provided by overseas suppliers, however, in the last consignment sold to the main Noticee, no such report was received from overseas suppliers; that he had negotiated with overseas suppliers for the products confirming the density between 0.87 to 0.89 and Viscosity 20 to 40 cst, Ash Content below 0.01% and Sediment less than 0.07 % with those suppliers. Since all the parameters were of 'Low Viscose Furnace Oil' and was cheaper as compared to Furnace Oil, they had indulged in trading in that product; that before the high sea sale, he had conveyed the specification to Main Noticee and after agreeing the same, they had entered in high sea sale agreement with the main Noticee. Shri Mahesh Parmar of the main Noticee had signed all the high sea sale agreements. They had provided the copy of Analysis Report of Low Viscose Furnace Oil received from their overseas suppliers to Shri Mahesh Parmar; that no samples were given to Main Noticee prior to selling on high sea sale basis; that he was shown test reports of Kandla laboratory which were test results of samples drawn from the declared goods as 'Low Viscose Furnace Oil' and 'Fuel Oil' by Main Noticee; that he was fully aware that 'Waste Oil' is prohibited and cannot be imported without valid authorization from Pollution Control Board; that he had never imported waste oil, and how the test result came as 'Waste Oil' instead of 'Low Viscose Furnace Oil' can be answered by the main Noticee as goods was sold on high sea sale basis to them.

12.6 Statement of **Shri Kirti Jain**, Director of **M/s. Jainam Industries Pvt. Ltd.**, recorded on 27.11.2013 (**Relied Upon Document No.15 to the SCN**) wherein he inter alia stated that he was Director in M/s. Jainam Industries Pvt. Ltd., since 2005 and looking after production and selling of JIPOL RFO (Residue Furnace Oil) manufactured in their plant; that they had imported Refined Furnace Oil and Recycled Furnace Oil of Off specification grade (obtained from Sludge) from the main Noticee manufactured in their plant; that they have been given understanding that that Furnace Oil was derived from Low Viscose Furnace Oil and Refined Furnace Oil was derived from the Sludge Oil collected from the vessels and processed in their plant of the main Noticee; that as on 27.11.2013, they had procured approximately 200 to 300 Mt of Fuel Oil and approximately 300 MT of Recycled Furnace Oil (off specification) from the main Noticee; that

no samples were obtained from the main Noticee prior to purchase of Furnace Oil/ Recycled Furnace Oil but had received the specification of the products; that they had sold the subject goods to actual users through retailer after blending in their plant; that no actual user asked for samples but prior to dispatch telephonically specification of products were informed; that Furnace Oil was obtained from low Viscose Furnace Oil and Recycled Furnace Oil was obtained from Sludge collected from vessels; that the main Noticee had prepared and produced Bills of Entry before SEZ authority for clearance of Furnace Oil/ Recycled Furnace Oil and required authorization to file and prepare Bills of entry were given to them; that he was shown Test Report of samples drawn from the Raw material Tank No. 101,102,103 and finished goods Tank No. 105 & 107 of the main Noticee which show the Rest Results given by Customs Laboratory Kandla as "Waste Oil" suitable for recycling"; that they had never purchased the 'Waste Oil' from the main Noticee and at the time of importation of Furnace Oil or Refined Furnace Oil, they had been said by M/s. AOPL that the samples were drawn by the SEZ Authority and confirm the products and thereafter they filed the Bills of Entry; that they were fully aware that the product "Refined Furnace Oil of Off Specification grade" were the processed products from Sludge Oil, however as it was, they had imported "Refined Furnace Oil of off specification grade being cheaper as compared to company Furnace Oil and Alang Breaking yard Furnace Oil. Further he was shown various test results of Kandla Customs Laboratory which were test results of the goods 'Recycled Furnace Oil obtained from Sludge Oil (Off Specification)' processed from the "Sludge Oil"; that on seeing the same he stated that they had imported 'Recycled Furnace Oil obtained from Sludge Oil (off Specification) from the main Noticee and they had sold the same to their various customers who were the retail traders for further selling to actual user of said goods; though they had necessary authorization to procure/ store/ process of waste oil issued by the Pollution Control Board; that he did not know that the off specification grade fuel oil/ recycled furnace oil falls under the tariff 27109990 and was a restricted item; that they were aware that waste oil was restricted goods and cannot be imported without proper authorization; that they had authorization from Pollution Control Board to discharge the Waste Oil which means to procure the waste oil and not to import the waste oil and there was a pass book and whenever they procured the waste oil, entry thereof was endorsed in the pass book showing quantity of waste oil procured.

12.7 Statement of **Mr.Zahid Hussain Bagwan**, Proprietor of M/s. Bagwan Petroleum having office at Unit Block No. 1729, Plot No. 7+9, Bareja Cross Road, Near Aradhna Rice Mill, Barejdi Road, Dist. Ahmedabad was recorded on 10.07.2014 (**Relied Upon Document No.16 to the SCN**) wherein he inter alia stated that they had purchased 103.90 MT recycled Furnace Oil (off specification) from the main Noticee; that after the testing of the samples received from the main Noticee, they tested them in their in-house laboratory and checked the viscosity, density, sediments and aromatics and also checked whether the intended product would be suitable for blending or otherwise and after the arrival of suitable parameters they placed



order to the main Noticee to send the goods; that in respect of goods purchased under Bills of Entry No. 175/11.08.2011 and 173/09.082011, parameters had been checked in their in-house laboratory. He was shown various test reports of Kandla Customs laboratory which were test results of the goods 'Recycled Furnace Oil obtained from Sludge Oil (Off Specification)' processed from the "Sludge Oil"; that on seeing them he stated that they had no necessary authorization to procure/ store/ process off specification grade fuel oil issued by the Pollution Control Board and further he did not know that the off specification grade fuel oil falls under the tariff item 27109900 and is a restricted item; that they had no intention to import the restricted goods and the main Noticee had given them the aforesaid goods by issuing invoice in the name of "R Furnace Oil", and hence they never looked into this aspect; that they accepted that they made a mistake in procurement of restricted off specification goods from the main Noticee without valid authorization.

12.8 Statement of **Mr.Kalpesh Kanara**, Partner in **M/s. Suzlon Enterprise** having office at Unit at 3488/2, GIDC, Chhatral, TalukaKalol, District Gandhinagar recorded on 10.07.2014 (**Relied Upon Document No.17 to the SCN**) wherein he inter alia stated that they are manufacturing fuel used in steel plant and road construction and they had purchase 100. MT recycled Furnace Oil (off specification) from the main Noticee in 2011 without checking parameters of the said goods. He was shown various test reports of Kandla Customs laboratory which were test results of the goods 'Recycled Furnace Oil obtained from Sludge Oil (Off Specification)' processed from the "Sludge Oil". After seeing he stated that they had no necessary authorization to procure/ store/ process off specification grade fuel oil issued by the Pollution Control Board. Further he did not know that the off specification grade fuel oil falls under the tariff item 27109900 and is a restricted item and had no intention to import the restricted goods, the main Noticee had given them the aforesaid goods by issuing invoice in the name of "R Furnace Oil", so they never looked into that; that they accepted that they had made a mistake in procurement of restricted off specification goods from the main Noticee without valid authorization.

12.9 Statement of **Mr.Mukesh Partner** of M/s. Dhvani Offset, 4/2093, Sahara Darwaja, Nawabwadi Main Road, Surat was recorded 15.07.2014 (**Relied Upon Document No.18 to the SCN**) wherein inter alia stated that they were indulged in printing business, due to slack in business, we thought to diversify the business and so they purchased Furnace Oil for the first time from the main Noticee for trading. Further to this was their first and last consignment and due to problem in purchasing and selling of furnace oil they stopped the said business and again started their old business of printing; that they had purchase only 16. MT recycled Furnace Oil (off specification) from M/s. Aadi Oil Pvt. Ltd., SEZ, Mundra in August' 2011 without checking any parameters thereof as they were un experienced and said good was new for them. He was shown various test reports of KandlaCustoms laboratory which were test

results of the goods 'Recycled Furnace Oil obtained from Sludge Oil (Off Specification)" processed from the "Sludge Oil". After seeing, he stated that they had no necessary authorization to procure/ store/ process off specification grade fuel oil issued by the Pollution Control Board. Further he did not know that the off specification grade fuel oil falls under the tariff item 27109900 and is a restricted item and further stated that they had no intention to import the restricted goods, the main Noticee had given them the aforesaid goods by issuing invoice in the name of "R Furnace Oil", so they never looked at those aspect. Finally he accepted that they made a mistake in procurement of restricted off specification goods from the main Noticee without valid authorization.

12.10 Statement of **Mr. Suresh Raval**, Manager in M/s. Chatrabhuj Steel, Plot No. 4217/18, Phase- IV,GIDC, Vatva, Ahmedabad was recorded on 24.07.2014 (**Relied Upon Document No. 19 to the SCN**) wherein he inter alia stated that they had purchased only 17 MT recycled Furnace Oil (off specification) from the main Noticee in January' 2012 without checking parameters thereof; that due to high value as compared to others, they had not purchased further said material from the main Noticee. He was shown various test reports of KandlaCustoms laboratory which were test results of the goods 'Recycled Furnace Oil obtained from Sludge Oil (Off Specification)" processed from the "Sludge Oil". After seeing, he stated that they had no necessary authorization to procure/ store/ process off specification grade fuel oil issued by the Pollution Control Board. Further he did not know that the off specification grade fuel oil falls under the tariff item 27109900 and is a restricted item and further stated that they had no intention to import the restricted goods, M/s. AOPL had given them the aforesaid goods by issuing invoice in the name of "R Furnace Oil", so they never looked at those aspect. Finally, accepted that they made a mistake in procurement of restricted off specification goods from M/s. AOPL without valid authorization

12.11 M/s. Krishna Metal & Alloys Industries, Ahmedabad were summoned to remain present on 18.06.2014 or 21.07.2014 who vide their letter dated 31.07.2013 requested to consider their submission made vide their earlier letter dated 13.06.2014 as compliance to the summon. Similarly, further summons were issued to M/s. Anand Associates, Ahmedabad to remained present on 16.04.2014, 11.07.2014, 21.07.2014 or 24.07.2014, but nobody neither appeared nor responded to the summons issued.

13. Based on the above, the investigations was of the findings that
- a. The main Noticee had imported Waste Oil without permission of BoA of SEZ and proper valid authorization, by mis-declaring the same as "Low Viscose Furnace Oil", and coupled the offence by clearing the same in DTA without verifying that DTA procurers have valid licence for import of restricted 'Waste Oil" or not.
 - b. M/s. Vispo Alternate Energy Pvt. Ltd and M/s. Subhimpex appeared to be in hands in gloves with the main Noticee who procured Waste Oil under the guise of "Low Viscose

Furnace Oil" cleared the same as Refined Fuel Oil from their plant so as no one can doubt about the modus operandi adopted by them to import the waste oil which is restricted. Further M/s. Vispo Alternate Energy Pvt. Ltd., is associated with Jainam group of companies, whose one of the companies named as M/s. Jainam Industries Pvt .Ltd., is also engaged in procuring sludge oil from vessels since long time and therefore, it appeared that their one company M/s. Vispo Alternate Energy Pvt Ltd., sell the "Low Viscose Furnace Oil' to the main Noticee and their other company M/s. Jainam Industries Pvt .Ltd., procures the processed 'Refined Fuel Oil from the main Noticee with sheer motive to route the import of waste oil through the main Noticee.

- c. The main Noticee had set up a plant for manufacturing of Refined Furnace Oil and LOA thereof was granted by the Development Commissioner with certain conditions that he would not import or procure restricted/ prohibited goods, however, without the permission of Board of Approval (BoA) and proper authorization, they imported Waste Oil falling under CTI No. 27109990 on high sea sale basis from M/s. Subhimpex and M/s. Vispo Alternate Energy Pvt. Ltd., and cleared the same in DTA without carrying out adequate process on Waste Oil.
- d. The main Noticee without carrying any substantial processing of the 'Sludge Oil, cleared the same in DTA by falsely declaring its description as "Recycled Furnace Oil obtained from sludge oil (off specification)" under CTI 27101950". In respect of the Samples drawn prior to clearance of the "Refined Furnace Oil" to DTA, the Custom House Laboratory at Kandla reported that the samples did not meet the requirement of furnace oil/ fuel oil with reference to the Circular No. 33/2001 in respect of Ash Content, Water Content, Sediment & Kinematic viscosity. It was also reported by the laboratory that the samples were not hazardous waste materials but were covered under the category of 'off specification' furnace/ fuel oil.
- e. M/s. GSEC Ltd, M/s. Jainam Industries Pvt. Ltd., M/s. Bagwan Petroleum, M/s. Dhvani Offset, M/s. Chatrabhuj Steel, M/s. Anand Associate, M/s. Suzlon Enterprise and M/s. Krishna Metal & Alloys Industries had imported such off specification oil from the main Noticee by declaring the same as "Recycled Furnace Oil obtained from sludge oil (off specification)" under CTH No. 27101950" against the Bills of entry filed before the SEZ Authority. It was the responsibility of importers to verify the description of goods and have proper valid licence to procure the goods, which are restricted items for import. The aforesaid importers have abetted M/s. AOPL in DTA clearance of restricted goods without any valid authorization.

14. Based on the above findings, following goods were covered under the Showcause Notice:

Sl. No.	Goods	Qty	Remark

1	Waste Oil, declared as 'Low Viscose Furnace Oil'	253.916 MT	The goods were imported by M/s. AOPL in SEZ and were seized by DRI.
2	'Low Viscose Furnace Oil'	739.568 MT	The goods were imported by M/s. AOPL prior to grant of permission in LOA. The goods were not available for seizure.
3	Declared as "Recycled Furnace Oil" at the time of clearance to DTA but found to be off specification goods hence classifiable under CTI 27109900 i.e., restricted goods	4663 MT	The goods were cleared to various DTA buyers and hence were not available for seizure.

15. Accordingly, based on the above findings, a Showcause Notice was issued by the Additional Director, DRI, Ahmedabad Zonal Unit under F.No. DRI/AZU/GRU-69/2013 dated 12.8.2014, answerable to the Additional Commissioner of Customs, to the following,

- a. **The main Noticee, as to why:** - the classification of the 253.916 Mts. of Waste Oil under CTH 27101950, covered under Bills of Entry No. 812 dated 26.07.2013, 855 dated 08.08.2013 and 941 dated 02.09.2013, found available in their plant at Mundra SEZ should not be re-classified under CTH 27109900 and the Bills of Entry be assessed accordingly; that 253.916 Mts. of Waste Oil, having value of Rs.70.24 lakhs, covered under Bills of Entry No. 812 dated 26.07.2013, 855 dated 08.08.2013 and 941 dated 02.09.2013 and seized from the their plant area at Mundra SEZ should not be confiscated under Sections 111(d) & 111(m) the Customs Act, 1962; that 739.568 Mts. of 'Low Viscose Furnace Oil' having value of Rs. 1,89,71,295/- covered under Bills of Entry mentioned in Annexure-A (to the Showcause Notice) should not be held liable for confiscation under Section 111(d) of the Customs Act, 1962; that Penalty should not be imposed on them under Sections 112(a) & 112 (b) of the Customs Act, 1962.
- b. **M/s. GSEC Ltd., Ahmadabad as to why:-** the classification of the 2124 Mts. of Waste Oil under CTH 27101950, covered under Bills of Entry appearing in **Annexure-B** to the Showcause Notice should not be re-classified under CTH 27109900 and the Bills of Entry be assessed accordingly; that 2124 Mts. of Recycled Furnace Oil obtained from sludge oil (off specification), having assessable value of Rs.5,20,55,400/- cleared vide Bills of Entry appearing in **Annexure-B** to the Showcause Notice should not be held liable for confiscated under Sections 111(d) the Customs Act, 1962; that penalty should not be imposed on them under Sections 112 (a) & 112 (b) of the Customs Act, 1962.
- c. **M/s. Jainam Industries Pvt. Ltd., Udaipur as to why:-** the classification of the 2189 Mts. of Waste Oil under CTH 27101950, covered under Bills of Entry appearing in **Annexure-B** to the Showcause Notice should not be re-classified under CTH 27109900 and the Bills of Entry be assessed accordingly; the 2189 Mts. of Recycled Furnace Oil obtained from

sludge oil (off specification), having assessable value of Rs-4,83,76,980/- cleared vide Bill of Entry appearing in **Annexure-B** to the Show Cause Notice should not be held liable for confiscation under Sections 111(d) the Customs Act, 1962; that penalty should not be imposed under Section 112(a) & 112(b) of the Customs Act, 1962.

- d. M/s. Bagwan Petroleum, Ahmedabad as to why:- the classification of the 183.90 Mts. of Waste Oil under CTH 27101950, covered under Bills of Entry No. 172/05.08.12,173/09.08.12 & 175/11.08.12 should not be re-classified under CTH 27109900 and the Bills of Entry be assessed accordingly; that 183.90 Mts. of Recycled Furnace Oil obtained from sludge oil (off specification), having assessable value of Rs. 33,43,302/- cleared vide Bills of Entry No. 172/05.08.12,173/09.08.12 & 175/11.08.12 should not be held liable for confiscation under Sections 111 (d) & 111(m) the Customs Act, 1962; that penalty should not be imposed under Section 112(a) & 112(b) of the Customs Act, 1962.
- e. M/s. Suzlon Enterprise, Chhatral as to why:- the classification of the 100 Mts. of Waste Oil under CTH 27101950, covered under Bill of Entry No. 199/01.09.2011 should not be re-classified under CTH 27109900 and the Bills of Entry be assessed accordingly; that 100 Mts. of Recycled Furnace Oil obtained from sludge oil (off specification), having assessable value of Rs-18,18,000/- cleared vide Bill of Entry No. 199/01.09.2011 should not be held liable for confiscation under Sections 111(d) the Customs Act, 1962; that penalty should not be imposed under Section 112(a) & 112(b) of the Customs Act, 1962.
- f. M/s. Chatrabhuj Steel, Ahmedabad as to why:- the classification of the 17 Mts. of Waste Oil under CTH 27101950, covered under Bill of Entry No. 17/16.01.12 should not be re-classified under CTH 27109900 and the Bills of Entry be assessed accordingly; that 17 Mts. of Recycled Furnace Oil obtained from sludge oil (off specification), having assessable value of Rs-3,09,060/- cleared vide Bill of Entry No. 17/16.01.12 should not be held liable for confiscation under Sections 111(d) the Customs Act, 1962; that penalty should not be imposed under Section 112(a) & 112(b) of the Customs Act, 1962.
- g. M/s. Krishna Metal & Alloys Industries, Ahmedabad, as to why:- the classification of the 16.5 Mts. of Waste Oil under CTH 27101950, covered under Bill of Entry No. 16/16.01.12 should not be re-classified under CTH 27109900 and the Bills of Entry be assessed accordingly; that 16.5 Mts. of Recycled Furnace Oil obtained from sludge oil (off specification), having assessable value of Rs-2,99,970/- cleared vide Bill of Entry No. 16/16.01.12 should not be held liable for confiscation under Sections 111(d) the Customs Act, 1962; that penalty should not be imposed under Section 112(a) & 112(b) of the Customs Act, 1962.



- h. M/s. Anand Associates, Ahmedabad, as to why:- the classification of the 16.5 Mts. of Waste Oil under CTH 27101950, covered under Bill of Entry No. 18/17.01.12 should not be re-classified under CTH 27109900 and the Bills of Entry be assessed accordingly; that 16.5 Mts. of Recycled Furnace Oil obtained from sludge oil (off specification), having assessable value of Rs-2,99,970/- cleared vide Bill of Entry No. 18/17.01.12 should not be held liable for confiscation under Sections 111 (d) the Customs Act, 1962; that penalty should not be imposed under Section 112(a) & 112(b) of the Customs Act, 1962
- i. M/s. Dhvani Offset, Surat, as to why:- the classification of the 16.100 Mts. of Waste Oil under CTH 27101950, covered under Bill of Entry No. 176/11.08.2011 should not be re-classified under CTH 27109900 and the Bills of Entry be assessed accordingly; that 16.100 Mts. of Recycled Furnace Oil obtained from sludge oil (off specification), having assessable value of Rs-2,92,698/- cleared vide Bill of Entry No. 176/11.08.2011 should not be held liable for confiscation under Sections 111(d) the Customs Act, 1962; that penalty should not be imposed under Section 112(a) & 112(b) of the Customs Act, 1962.
- j. Also the (1) M/s. Vispo Alternate Energy Pvt. Ltd., Ahmadabad, (2) ShriPravin Jain , Director of M/s. Vispo Alternate Energy Pvt. Ltd., Ahmadabad, (3) M/s. Subhimpex, Ahmadabad and (4) Shri Mahesh Parmar, Manager of M/s. Aadi Oil Pvt. Ltd., Mundra, (5) ShriKirti Jain Director of M/s. Jainam Industries Pvt. Ltd., and (6) Shri Anand Mathur, Vice President of M/s. G.S.E.C. Ltd., Ahmadabad were also called upon to show cause as to why penalty should not be imposed upon them under Sections 112(a) & 112(b) of the Customs Act, 1962.

Personal Hearing and Defence Submissions:-

16. Pursuant to the issuance of the Showcause Notices to the Noticees, they had filed the written submissions, concerned excerpts of which are as follows,

a. **M/s Aadi Oil (Under their written submissions dated 13.10.2014):-**

- They crave to submit that the SCN places heavy reliance on the Test Reports of the CHL bearing reference 04/13. 05/13 and 06/2013 issued in respect of the samples that were drawn from the storage tank of Raw materials and as such the SCN has not adduced any other evidence besides the Test Reports to show that the goods imported were waste oil and not LVFO. There has been no mis-declaration (LVFO) on the part of the importers as the same has been declared on the import documents furnished by High Sea Sellers, specifically under the Bill of Lading and the analysis reports given by the original supplier. The main Noticee intends to rely on judgements in case of Kalyan Agro Industrial Corporation Vs. CC 2007(210) ELT 380 and Dee-Vee Metals Vs. CC 2007 (216)ELT 223 (Tri-Mum.). The procedures governing the imports at MPSEZ entail the

officers of Customs drawing the samples at the time its imports in presence of the main Noticee and subsequent tests at CHL, which in turn had found all the goods imported as LVFO and based on such test reports the Bills of Entry had been assessed and endorsed. In view of such procedure practised by the officers of Customs, the findings of the CHL have been contradictory to the ones drawn at the time of seizure, which is incorrect inasmuch as the samples should have been drawn from the Containers of the goods and not from the storage tanks as the goods under tanks are prone to contain sediments and impurities that could have been accumulated over period of time. Hence for the said reasons the main Noticee should be given the opportunity to cross examine the CHL since it had completely changed its test results pursuant to the samples being sent by the DRI. As regards the allegation that the main Noticee colluded with the High Sea Sellers to bring restricted goods into the country as the main Noticee was permitted to do so in terms of LOA, subject to obtaining the valid environmental clearances which the Noticee had duly obtained. Similarly in case of LVFO (739 MT's), imported prior to the permission for broad banding (4.7.2013) and consequently the said imports being made without valid LOA. Further, the permission for broad banding was only in connection with trading of the products enlisted therein inasmuch as in respect of goods which would be bought and sold as such i.e. without carrying any processing activity on them. The DTA buyers in either of the cases have paid excise duty equivalent to the Customs duty of 20.7% on the value of the Furnace Oil Purchased by them and had it been the case of the purchase of Wastage oil by them, former would not have paid the value of the goods including the duty element on the same.

- In view of their above say, Section 111(d) and 111(m) of the Customs Act, cannot be invoked upon them inasmuch as the goods are Restricted and not prohibited as well as the goods correspond to the entry to the particulars of the goods declared under the import. Hence the goods cannot be proposed for confiscation and once the goods are not liable for confiscation, the respective penalties cannot be imposed.
- ShriHardikModh appeared on behalf of the main Noticee on 29.12.2014 before Joint Commissioner of Customs, Mundra and the then adjudicating authority, alongwith Shri Mahesh Parmar, Manager, wherein he reiterated the earlier submissions made under their letter dated 13.10.2014 (submitted on 16.10.2014) and further to that stated
 - (1) Covered by Circular No. 33/2001
 - (2) RUD's i.e. Test reports are in their favour
 - (3) LOA covers the goods imported
 - (4) Not allowed is only prohibited not restricted,

(5) Process required out refining the goods 'imported'. As per the LOA permits trading activity

(6) Mis-declaration of classification is not correct, all Bills of Entry were assessed by the Customs Officers, not even single by RMS, hence covered by 2007 ((210) ELT 380; 2007 (216) ELT 223 and 2014 (301) ELT, 691

Hence on merit, the case needs to be dropped in toto. They would submit additional submissions by 10/01/2015.

- Shri Mahesh Patni, Director with the main Noticee appeared under Personal Hearing held on 19.1.2017 and re-iterated his written submissions already made in this regards

b. **Shri Mahesh Parmar** :-is an employee/Executive of the Company and was not in any manner interested in the impugned goods nor did he stand to derive any economic benefit on account of the alleged mis-declaration. He has merely acted in good faith and made the declaration on the Bill of Entry by following the import documents submitted by the High Sea Seller/Test Reports issued by CHL. Accordingly once the employer/company is exonerated from the penal provisions, it would be imprudent to penalise the said employee. The defence rests on the decision in case of Commissioner Vs. Hindustan Zinc Ltd., reported at 2004 (169) ELT A37 (SC).

In view of the change of the adjudicating authorities, Shri Mahesh Parmar, appeared on 19.1.2017 for himself, being the Noticee in the SCN and submitted that he had already submitted his submissions and that the submissions of M/s Adi Oil may also be accepted as his submissions also.

c. **M/s GSEC Limited (under their written submissions dated 5.11.2014& 22.12.2014):-**

- The issuance of the Showcause Notice has been without jurisdiction inasmuch as it is an admitted and undisputed position that procurement of the goods by an unit in DTA area from the unit in SEZ does not amount to Import under the provisions of Section 2(23) of the Customs Act, 1962. Besides, they have paid the Sales Tax on those goods in itself fortifies their stand that the goods were not imported but sold/transferred within India and thus provisions of the Import policy would not at all be applicable in the present case.
- The Bills of Entry shown under Annexure B to the Showcause Notice have been assessed by the Officers of Customs and appropriate authority too. However, the same have not been appealed against by the department and thus the assessments of such Bills of Entry have attained finality and therefore the same

is binding on them as well as the Department. Accordingly larger period cannot be too invoked under the Showcause Notice.

- The Showcause Notice although alleges upon the import of sludge Oil as a Restricted item without disclosing the proper provisions of law under which the same has been restricted.
- ShriParitosh Gupta appeared on behalf of M/s GSEC and Shri Anand Mathur, Vice President of M/s GSEC (Noticee Nos. 8 & 9 to the Showcause Notice) on 27.11.2014 before Joint Commissioner of Customs, Mundra and the then adjudicating authority, wherein he stated that the goods were imported by the main Noticee, not by them and they too the goods from the main Noticee from SEZ, that being a case, in accordance of the provisions of the SEZ Act, 2005, hence no penalty can be there as held by Honourable High Court of Gujarat in the decision reported at TIOL-2009-674-HC-AHM-CUS; that RUD's in particular TR's are in their favour if read with Para 2 and 8 of the Circular No. 33/2001; that there is no case of mis-declaration of Imports, classification was job of the Customs officers in the Development Commissioner (SEZ) office; that they will further submit the detailed reply in 2 weeks' time.
- **Further submissions dated 22.12.2014** mentioned that upon going through the relied upon documents mentioned at Sl No. 8 to the Showcause Notice, only few test reports were made available and moreover it was also not clear whether the test reports so communicated were connected with the purchases made by them and since in absence of such supply of documents to them, it would be violation of principles of natural justice if the matter is proceeded with adjudication. They state to have been dealing in trading of various variety of oils which are further used by industries like the re-rolling mills etc. and during the period August 2011 to August 2013 they had purchased a total quantity of 2124 MT's of "Recycled Furnace Oil" from the main Noticee on the basis of the Bills of Entry filed by them, assessed by the proper officers of Customs and the goods were cleared to them after payment of appropriate Customs duty and the Test reports had been duly filed with the concerned officers at the time of assessments and clearances. No doubt or dispute had been raised in the present proceeding that such test reports were incorrect or fabricated and thus declaration made on such Test Reports have not been disputed by the department in this case. Out of the total 2124 MT's that was purchased by them from the main Noticee, 5 transaction beings Bill of Entry Nos. 0000583/29.8.2013, 0000546/13.8.2013, 0000530/8.8.2013, 0000493/23.7.2013 and 0000410/17.6.2013 were of "Fuel Oil" whereas the remaining consignments were of "Recycled Furnace Oil obtained from Sludge Oil (Off Specification)". It appears that a factual error has further crept in the Showcause Notice

inasmuch as all the transaction 2124 MT have been considered as "Recycled Furnace Oil obtained from Sludge Oil (Off Specification)", where in fact, aforesaid 5 consignments were of "Fuel Oil" as is evident from the Import documents related to such transactions. They state to emphasize that the description of goods and the classification claimed by them was not only on the basis of the agreement entered between them and the main Noticee and the connected documents but also on the basis of the reports of samples of each consignment which was obtained prior to its clearance from the SEZ Unit. The Showcause Noticee issued to them fails to incorporate the documents and evidence on the basis of which a case is sought to be made out against them inasmuch as the documents supplied to them (SI No. 8 to the Annexure C – Relied Upon Documents) are not connected to the goods imported by them. Assuming that the said Test Reports were connected to the consignments imported by them, even then it is not clear as to how few random test reports ranging from the period April to June 2012 could be made as a basis for rejecting the description and classification claimed for the transactions ranging from May 2012 to June 2013 – hence there appears to be a clear violation of their unalienable right of defence.

- In light of the evidences placed under SCN, it was imperative upon the department to show as to how such "off Specification furnace oil/fuel oil" was restricted and how the appellant had mis-declared the said goods. In their case, the goods purchased by them were "off Specification furnace oil/fuel oil" and not "Waste Oil/Sludge Oil" as presumed by the Department, and hence, the issue of importing a restricted category of goods without any authorization does not survive.
- Penalties imposed under Section 112(a) and 112(b) are legally non tenable in light of the fact that the goods were not imported by them but purchased by them from the main Noticee in view of Section 30 of the CSEZ Act, wherein the legislature provides that any goods removed from SEZ to DTA shall be chargeable to duties of Customs under the DTA as leviable on such goods when imported and hence the sale from SEZ Unit to a DTA is not a case of actual import. Hence under the aforesaid Section only the levy of the Customs duty is created under the provisions of CSEZ Act, 2005 and no other provisions of the Customs Act, 1962 are otherwise incorporated. The term "Import" has been defined under Section 2(o) of the SEZ Act, 2005 to mean bringing goods, or receiving services in a SEZ by a unit Developer from place outside India. It is also provided that the term Import includes receiving goods or services by unit or developer from another unit or developer of the same SEZ or a different SEZ. Whereas the term "Import" in terms of Section 2(23) of the customs Act, 1962, means bringing into



India from a place outside India. Moreover the term "Imported goods" under Section 2(25) to mean and included any goods brought into India from a place outside India but does include the goods which have been cleared for home consumption. Thus in view of the aforesaid definitions and the precise incorporation of levy under Section 30 of the CSEZ Act, it is clear that the sale by a SEZ unit to DTA unit is not a case of either import or even deemed import only a levy is created therein which is to be calculated on the basis of such levy under the Customs Act. When it is not a case of import, there has been no contravention of the provision of Customs Act enough to attract its provisions and thus penalty imposed upon them under the Customs Act is without jurisdiction and needs to be dropped. They have relied upon the judgement of Honourable High Court of Gujarat in case of Essar Steel Ltd reported in 2009-TIOL-674-HC-AHM-CUS wherein the scheme of CSEZ Act was deeply analysed and it was concluded by the Honourable Court that the deeming fiction/definition under the SEZ Act cannot be imported into the Customs Act.

- The present circumstances under this case render the proposals of reassessment/reclassification and imposition of penalty out of the jurisdiction and required to be dropped as illegal. They intend to rely on the decision of the Honourable Supreme Court in case of Priya Blue Industries reported at 2004 (172) ELT 145 (SC) and Flock (I) Pvt Ltd reported at 2000 (120) ELT 285 SC.

d. M/s Krishna Metal & Alloys Industries (under their written submissions dated 18.11.2014):-

- They have not directly imported the goods viz., Waste Oil but have purchased from M/s Anand Associates and after this transaction and thus cannot be termed as Importer and accordingly the Showcause Notice in their case is not sustainable inasmuch as the penalty also does not survive in their case. Similarly, the charges of mis-declaration stand on the part of the main Noticee who has mis-classified the goods and not them. As regards the proposal of the confiscation of 16.5 MT's of the goods is not available and therefore confiscation under Section 111(d) is improper.
- Shri Naimesh Oza appeared on behalf of M/s Krishna Metal Industries, (Noticee No. 13 to the Showcause Notice) on 27.11.2014 before Joint Commissioner of Customs, Mundra and the then adjudicating authority and re-iterated their above written submissions. Besides they stated that they had got the goods from M/s Anand Associates and made all declarations accordingly, hence neither prime nor secondary person responsible for the alleged contraventions, hence not liable for penal action as proposed under Para 25 of the SCN.

- M/s Krishna Metal Industries, on account of change of adjudicating authority had been requested to attend PH scheduled to be held on 20.1.2017, to which they had filed a letter dated 13.1.2017, wherein they contended that they had already attended the PH's earlier and requested to consider the said earlier submissions only and they did not want any further personal hearings in the matter.

e. **M/s Chaturbhuj Steel, Ahmedabad:- (under their PH dated 27.11.2014):-**

Shri Suresh F. Rawal, appeared on behalf of M/s Chaturbhuj Steel (Noticee No. 12 to the Showcause Notice) on 27.11.2014 before Joint Commissioner of Customs, Mundra and the then adjudicating authority, wherein he stated that they were not liable for penal action proposed under Section as proposed under Para 24 of the SCN being genuine importer and he would submit detailed reply in writing within 10 days.

f. **M/s Suzlon Enterprise (under their written submission dated 17.10.2014):-**

- They had not received any test memo and test report corresponding to the goods for which they had filed Bill Of Entry No. 199/1.9.2011 and clearance was permitted to them after due assessment and examination (which included sampling and testing in accordance with law). As per Para 9 to the SCN, the authorities had drawn samples prior to the clearance and based on the testing of those samples that the main Noticee had sold the goods to them and were found to be off specification furnace oil/fuel oil. Hence they crave to state that all the test memos received by them pertain to the goods covered by Bills of Entry that were filed by the main Noticee in 2012 onwards whereas they (Suzlon) had purchased the goods from the main Noticee and filed their Bill of Entry in 2011. They undertook to file a detailed written submissions on receipt of the Test Memos and the Test Result corresponding to the goods cleared by them under B/E No. 199/1.9.2011.
- ShriUmit R. Jani appeared on behalf of M/s Suzlon (Noticee Nos. 11 to the Showcause Notice) on 22.1.2014 before Joint Commissioner of Customs, Mundra and the then adjudicating authority, wherein he submitted that the goods are assessed by the Customs officers of the office of the DC and classification is done by them without having any connivance with the officers; how can they as purchaser of the goods from the importer i.e. M/s Adi Oil P Ltd, be punished under the provisions of the Customs Act, 1962, 112(a) and (d). Further they assured of submitting a detailed reply with relevant documents within 3 weeks period. He also submitted the copy of the interim reply said to be given under letter dated 17.10.2014 and requested to consider the same in their defence.
- ShriUmit R Jani, appeared on behalf of M/s Suzlon Industries during the Personal Hearing held on 17.2.2017 and submitted that they were innocent at the time of making deal with the main Noticee; that at the time of purchase they had made

the payment as if it was not Waste Oil but Recycled Fuel Oil (RFO). Before the said deal they had purchased the oil in the same manner and there was no complaint received from their customers; that they had made all the procedures in connection with purchase of goods as if they were purchasing RFO.

g. M/s Anand Associates (in their written submissions dated 9.3.2015):-

They submitted that they had not filed any High Seas Documents or not deposited any duty directly to the Customs Office from their side against the mentioned invoice. They had made a payment of the said goods of Rs. 2,84,625/- to the main Noticee through Cheque No. 90384 dated 20.1.2012; Vijay Co-op Bank Ltd, Meghaninagar Branch, Ahmedabad 16 against Invoice No. AOPL/SI/11-12/00083 dated 18.1.2012. Also paid other amount of Rs. 62229/- through cheque No. 90392 dated 3.2.2012, Vijay Co-op Bank Ltd, Meghaninagar Branch, Ahmedabad 16, as Customs duty to the main Noticee. They had not paid any payment or signed any document to the Customs Office. **They did not want any personal hearing in this issue.**

h. Jainam Industries (under their written submissions dated 27.3.2015):-

They had specifically requested for Relied Upon Documents under their letters dated 12.11.2014, 20.11.2014, 21.01.2015, 9.3.2015 and letter dated 8.3.2015, however but to no avail. The statement given by them are exculpatory and clears all the allegations against them. The test report that has been relied upon under the Showcause Notice incorporates "... Samples does not meet the requirements of furnace oil/fuel oil with reference to the Circular No. 33/2001 in respect of Ash Content, water content, sediment, kinematic viscosity. On further observation of the hazardous testing it is indicated that the sample is not hazardous waste material but fall under the category of off specification furnace/fuel oil", which means that the goods were allowed to clear after examination and test result as well as on being satisfied by the proper officer that goods can be allowed to be imported in DTA and same are not restricted goods. The Showcause Notice clearly admits and not disputing those test results and considers that the goods imported by them as "Recycled Furnace Oil obtained from Sludge Oil (Off Specification)" but at the same time while making the allegation in Para 18.5 of the SCN, it is wrongly alleged that M/s Jainam have imported "Sludge Oil" by mis-declaring the same as "Recycled Furnace Oil obtained from Sludge Oil (Off-specification)" which is nothing but waste oil and is restricted without any base. The Showcause Notice nowhere proves or relies upon any document which supports the said allegation. On the contrary as per the said Circular No. 33/2001-Cus dated 4.6.2001 "Off Specification Furnace Oil/Waste Oil can be further classified as (i) Off Specification Furnace Oil (ii) Waste/Used Oil fit for refining and (iii) hazardous waste, it means "Off Specification Furnace Oil is different from Waste Oil fit for refining". Therefore as per admitted

position based on Test Results goods imported by M/s Jainamwere "Off Specification Furnace Oil" and not "Waste Oil" or "Hazardous Waste". Thus classification of goods cannot be changed from "Off Specification Furnace Oil" or Tariff Item 27101950 to Waste Oil 27109900. Since the imported goods were "Off Specification Furnace Oil/Fuel Oil" merit classification under 27101950, which is freely importable without any restriction as per ITC (HS) Schedule – 1, Section 5, Chapter 27 under FTP, same are not liable to confiscation under Section 111(d) of the Customs Act, 1962.

- Shri P D Rachchh, Advocate, appeared on behalf of the M/s Vispo Energy, ShriPravin Jain, M/s Jainam Industries and ShriKirti Jain during the Personal Hearing held on 13.3.2015 before the then Joint Commissioner of Customs. He stated that As per the TR of the B/E No. 553/21.5.2013, the goods were found as declared and load port certificate also confirms; that Para 14.4., - Page 8 of the SCN, even statement is not inculpatory; that even for clearance from SEZ to DTA and TR (is) in their favour; that the goods have been assessed by the officers of Customs, classification and re-classification even if sustainable cannot be reasons for imposition; that H.S.S took place outside India, hence no case of penalty; that within 15 days he will submit detailed written reply alongwith relevant evidence.
- Shri P D Rachchh, Advocate, had again appeared on behalf of the M/s Vispo Alternative Energy, ShriPravin Jain, M/s Jainam Industries and ShriKirti Jain, Director with M/s Jainam Industries during the Personal Hearing held on 20.2.2017 before the Joint Commissioner of Customs. He stated that he had already submitted written submissions in response to the SCN and re-iterates the same.

Discussions and Findings:-

17. The present case is taken up for adjudications keeping in view the Gazette Notification No. 772(E) dated 5.8.2016 issued from F.No. 6/40/2012 – SEZ) which as amended, wherein under the said SEZ Rules, 2006 in rule 47, after the sub rule (4) has been inserted, namely,

"Refund, Demand, Adjudication, Review and Appeal with regard to matters relating to authorized operations under Special Economic Zones, Act, 2005, transactions and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, the Central Excise Act, 1944 and the Finance Act, 1994 and the rules made thereunder of the notification issued there under."

18. I have carefully gone through the facts of the case, the Showcause Notice issued in this regards and the defence placed across. I have carefully gone through the Documents relied upon under the Showcause Notice. I find that sufficient time has elapsed since the issuance of the Showcause Notice until its final adjudication, as there has been a change of adjudicating

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authorities inasmuch as undue procrastination by the noticees in the instant case who continued with showing up of their inabilities to attend Personal Hearings granted to them from time to time. However as on date, sufficient opportunities have been provided and also majority of the Noticees have attended the Personal hearings and have submitted their written as well as oral submissions before the respective adjudicating authorities, I find that same as adequate enough and within judicial prudence to decide the case.

19. I find the following major issues to be decided under the Showcause Notice

1. The main Noticee:-

- a) Import of 739.568 Mts. of 'Low Viscose Furnace Oil' having value of Rs. 1,89,71,295/- covered under Bills of Entry mentioned in Annexure-A (of the Showcause Notice) rendered liable for confiscation under Section 111(d) of the Customs Act, 1962, and
- b) Import of 253.916 Mts. of Waste Oil, having value of Rs.70.24 lakhs covered under Bills of Entry No. 812 dated 26.07.2013, 855 dated 08.08.2013 and 941 dated 02.09.2013 and seized from the their plant area at Mundra SEZ, rendered liable for confiscation under Sections 111(d) & 111(m) the Customs Act, 1962, and
- c) Consequent penalties proposed under Sections 112(a) & 112 (b) of the Customs Act, 1962.

2. The buyers or (importers in this case) from the main Noticee:-

- a) Various quantities of Recycled Furnace Oil obtained from sludge oil (off specification) imported by M/s. GSEC Ltd., Ahmadabad, M/s. Jainam Industries Pvt. Ltd., Udaipur, M/s. Bagwan Petroleum, Ahmedabad, M/s. Suzlon Enterprise, Chhatral, M/s. Chatrabhuj Steel, Ahmedabad, M/s. Krishna Metal & Alloys Industries, Ahmedabad, M/s. Anand Associates, Ahmedabad, M/s. Dhvani Offset, Surat (as detailed under Annexure B to the Showcause Notice) rendered liable for re-classification under CTH 27109900 and thereby rendered liable for confiscation under Sections 111(d) the Customs Act, 1962.
 - b) Consequent penalties proposed under Sections 112(a) & 112 (b) of the Customs Act, 1962.
3. (1) M/s. Vispo Alternate Energy Pvt. Ltd., Ahmadabad, (2) ShriPravin Jain, Director of M/s. Vispo Alternate Energy Pvt. Ltd., Ahmadabad, (3) M/s. Subhimpex, Ahmadabad and (4) Shri Mahesh Parmar, Manager of M/s. Aadi Oil Pvt. Ltd., Mundra, (5) ShriKirti Jain Director of M/s. Jainam Industries Pvt. Ltd., and (6) ShriAnandMathur, Vice President of M/s. G.S.E.C. Ltd., have been rendered liable for imposition of penalties under Sections 112(a) & 112 (b) of the Customs Act, 1962 under the showcause Notice.

20. Now coming to the first issue is that of the imports of Low Viscose Furnace Oil to the tune of 739.57 Metric Tonnes and having an assessable Value of Rs. 1.89 crores from different importers on the High Sea Sales Basis (as detailed under Annexure A to the Showcause Notice). On-going through the RUD No.2, i.e. Letter F.No. MPSEZ/IUA/02/2009-10 dated 30.10.2009, which is in response to the Application dated 1.9.2009 made by the main Noticee. As per the

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Showcause Notice, the main Noticee has declared that the raw material feed stock required for the project would be procured from vessels and finished material produced would be sold to industrial units inasmuch as in their Application in Form- F, i.e., "Application for setting up SEZ units" (RUD No.2), they have mentioned Import item as 'NIL' in Para VII of the Form-F which is for "Import and indigenous requirement of materials and other inputs". On-going through the said Form placed along with the Showcause Notice (and marked at RUD No.2 to the Showcause Notice), it is clear that the main Noticee mentioned of the following under their Application (reproduced as such),

VII. Import and Indigenous requirement of materials and other inputs

	(Value in Rupees)	
	Import	Indigenous
a) Capital Goods	NIL	-
b) Raw material, components, consumables, packing material, fuel etc., for 5 years (Give details in project report, namely list of Capital Goods, description of raw materials and other inputs, etc.,)	NIL	(R/M) WASTE OIL (ITC CODE: 27101990) RS. 19.50* CRORES/ANNUM (FUEL) FURNACE OIL RS. 1.50* CRORES/ANNUM
TOTAL		Rs. 21.00* CRORES/ANNUM

*The above figures have been worked out on 100% capacity

21. In response to the above application, the main Noticee had been granted the approval under Letter F.No. MPSEZ/IUA/02/2009-10 dated 30.10.2009, wherein they have been extended the facilities and entitlements admissible to their Unit under SEZ for undertaking the authorized operations namely, manufacture of "Refined Furnace Oil (Annual Capacity – 32850 KL)" inasmuch as followed by the conditions and mainly the one at Sl. No. (iv) annexed with the said letter viz., "(iv) You may import or procure from the Domestic Tariff Area all the items required for your authorized operations under this approval, except those prohibited under the ITC (HS) Classifications of Export and Import Items".

22. Further, as regards, the procurements by the main Noticee by way of imports by way of High Sea Sales viz., 739.57 Metric Tonnes of goods declared as "Low Viscosity Furnace Oil", having an assessable Value of Rs. 1,89,71,295/- and as detailed under Annexure A to the Showcause Notice from M/s Subhi Impex and M/s Vispo Alternate Energy Ltd. Only, it is obvious that the Letter of Approval fails to encompass under its ambit the said imports. Inasmuch as the permission sought were to acquire the Raw Material viz., Waste Oil/Furnace Oil indigenously and not exactly the on the basis of the imports (including on the basis of the High Sea Sales). The above imports are further affirmed by **Shri Gaurang Sathwara**, Production Manager of the main Noticee, under his statement recorded on 26.09.2013, wherein he had categorically admitted the fact that they had imported the "Low Viscose Furnace Oil" from M/s Subhi Impex and M/s Vispo Alternate Energy Ltd., before April 2013 or broad banding

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permission accorded to them inasmuch as the LOA did not allow them to import "Low Viscose Furnace Oil" for their authorized operations. Shri Maheshbhai Parmar, Manager of the main Noticee by way of his statement recorded on 30.09.2013, wherein he has categorically confessed to having imported/purchased around 1000 MT of 'Low Viscose Furnace Oil' on high sea sale basis.

23. Statement of Shri Pravin Jain, Director of M/s. Vispo Alternate Energy Pvt. Ltd., Ahmedabad recorded on 26.11.2013, also confirms to the fact that they had in all sold the six consignments to the main Noticee on high sea sale basis which amounted to total 861.948 MT of Low Viscose Furnace Oil and that before purchasing the same from their overseas supplier, they had inquired about specifications of the goods which was provided to them in form of "Analysis Report" and that too of Low Viscose Furnace Oil by overseas supplier. Further they had conveyed the same specifications to the main Noticee and after agreeing on the same, they had entered in High sea sale agreement with them. Also Shri Mahesh Parmar had signed all the high sea sale agreements and had been provided with the copies of Analysis Reports of Low Viscose Furnace Oil, received from their overseas suppliers. It thus goes without doubt that the main Noticee was not oblivious of the composition and nature of the imports vis-a-vis the LOA granted to them for the authorized operation, which never included such kind of imports. Shri Shailesh Jain, Proprietor of M/s. Subhi Impex, Ahmedabad under his statement recorded on 27.11.2013, also confessed of the similar facts that they had sold the Low Viscose Furnace Oil to the main Noticee after conveying the specification to the main Noticee and only after agreeing to the same, they had entered in high sea sale agreement wherein Shri Mahesh Parmar had signed all the high sea sale agreements on behalf of the main Noticee. **The confessional statements alongwith the Test Results mentioned under RUD No.8 to the Showcause Notice are indicative enough of the acts of violation on the part of the main Noticee.**

24. Coming to the defence placed by the main Noticee that the test reports of the imports of the respective consignments (purchased on High Sea Sale Basis) were available with the officers of Customs (SEZ) and the goods so imported in contravention to the LOA cannot be rendered for confiscation. I find that the investigations has gathered sufficient evidence both at the imports stage inasmuch as from subsequent clearances to the DTA buyers, confirming the fact that the goods were not subjected to any process and cleared as such is enough to establish the element of suppression and culpability on the part of the main Noticee. Hence, there is a gross violation of the permissions granted under the LOA and accordingly the imports of 739.57 Metric Tonnes of Low Viscous Furnace Oil are held liable for confiscation under Section 111(d) of the Customs At, 1962.

25. However, since the said goods viz., 739.57 Metric Tonnes of Low Viscous Furnace Oil were/are not available at the time of seizure, the same cannot be made liable for Redemption

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Fine under Section 125 of the Customs Act, 1962 as the same issue has already been settled in the case of Commissioner of Customs, Amritsar Vs. Raja Impex (P) Ltd., (2008-TIOL-280-HC-P&H-CUS) when the High Court, after considering the apex Court's judgment in Weston Components case (2002-TIOL-176-SC-CUS), held that redemption fine could not be imposed in the absence of the goods which had already been released by the customs authorities to the importer without execution of any bond/undertaking by the latter.

26. However, this does not completely vindicate the main Noticee from the penalties proposed under Section 112 (a) of the Customs Act, 1962. I find that the main Noticee has declared before the SEZ authority that they have Dehydration, Centrifugal and vaporization facility in their plant to carry out the authorized operations **and at the same time have** violated the conditions of Letter of Acceptance, by importing the goods different than what was stipulated under LOA, and thus their acts of commission and omission rendered 739.57 Metric Tonnes of Low Viscous Furnace Oil liable to confiscation under Section 111(d) of the Customs Act, 1962 and thereby renders themselves liable for penal action under Section 112(a) of the Customs Act, 1962.

27. Further, in this case, the suppliers in this case viz., M/s Vispo Alternate Energy and M/s Shubhimpex fail to fall within the ambit of penal clause, as they had been high sea sellers in this whole episode. In any case, High sea sales involve contract/ agreement signed after dispatch of goods from origin & prior to their arrival at destination inasmuch as the same is legalised by way of agreement being on stamp paper. Subsequent to such an event, the title of goods transfers to HSS buyer prior to entry of goods in territorial jurisdiction of India and thus the delivery from customs is therefore on account of HSS buyer. Hence, with shift of the title, the liability also transfers to the new buyer and thus the investigations which proved the violation of the LOA in the intervening period puts the onus on the main Noticee only. Hence, it would be of judicial imprudence to include the High Sea Sellers namely M/s Shubhimpex and M/s Vispo Alternate Energy under **penal clauses** proposed under the Showcause Notice alongwith that on the main Noticee. Hence, the M/s Shubhimpex and M/s Vispo Alternate Energy stand vindicated from the Penalties imposed upon them and proceedings to that extent stands dropped.

28. Coming to the imports of 253.916 Mts. of Waste Oil, having value of Rs.70.24 lakhs covered under Bills of Entry No. 812 dated 26.07.2013, 855 dated 08.08.2013 and 941 dated 02.09.2013 by the main Noticee and seized from their plant area at Mundra SEZ. **The admitted facts in the case are that the samples from the import consignments covered under Bill of Entry No. 0000941/02.09.2013 were drawn from the Raw Material Tank - 102 and Tank- 103 inasmuch as from earlier imported consignment declared as "Low Viscose Furnace Oil" lying in another Raw Material Tank-101 were drawn. Similarly the finished goods stored in their**

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dedicated tanks for storage of finished goods i.e., "Refined Fuel Oil" i.e. Tank 106 and T-107 were also drawn under the Panchanama dated 04.09.2013. The samples drawn under the Panchanama dated 04.09.2013 were sent to Kandla Laboratory under Test Memo No. 04/2013, 05/2013, 06/2013 of goods declared as "Low Viscose Furnace Oil" and Test Memo No. 07/2013 & 08/2013 of the goods declared as "Fuel Oil", for chemical analysis. The Test Results (RUD No.4) of all the aforesaid Test Memos, issued by the Joint Director, Custom House Laboratory, Kandla stated that *"The sample has the characteristics of Waste Oil as per the Circular No. 33/2001. Suitable for recycling the Waste Oil under Schedule V of Hazardous Waste (Management Handling and Trans Boundary Movement) Rule 2008"*.

29. In view of the facts discussed in the foregoing paras, it is clear that the status of the goods continued to remain the same inasmuch as no processing or any authorized operations were carried out by them as stipulated under the LOA or under the Broad Banding permission issued to them under F.No. MPSEZ/IUA-02/04/2009-10 dated 4.7.2013 (RUD No. 7 to the Showcause Notice) imported by the main Noticee and consequently latter, continued with the clearances to the DTA Area. Shri Gaurang Sathara, Production Manager under his statement dated 26.9.2013 has confessed to this fact wherein he had categorically deposed that *"that from April' 2013, they had stopped refining of Sludge Oil as no specific export grade quality was retrieved from the Sludge Oil and due to heavy maintenance expenses it was not viable to carry on the process of Sludge Oil"*.

30. It is evident that the main Noticee has grossly deviated from the authorized operations which were duly granted by the competent SEZ authorities and continued with the clearances of the Raw material (imports - Waste Oil) as such. The same has been admitted by the main Noticee by way of statements of Shri Gaurang Sathara, Production Manager and Shri Mahesh Parmar, Manager with the main Noticee. The confessional statements alongwith Test reports drawn on the basis of samples drawn from the dedicated raw material tank No. 101, 102 and 103 of AOPL, dedicated finished goods tank No. 106 & 107, pertaining to the different Bills of Entry (as mentioned in the foregoing paras) are clear indication of the contravention done by the main Noticee in terms of the LOA granted to them.

31. Coming to the contentions of the main Noticee stated under their defence, it is evident that original LOA granted to the them has to be strictly perceived in terms of the permission of authorized operations granted to them viz., Conversion of Waste Oil into the Refined Furnace Oil. Secondly, there existed no trading permission inasmuch as the Broad Banding permission granted at the later date, which is clearly conspicuous of the absence of the trading of the Waste Oil. **In no circumstances it can be held that the Waste Oil was allowed to be traded as such in the DTA.** Hence, the argument of the importer fails to hold the ground and the facts indicate the gross violation done by the main Noticee. Hence, the 253.916 Mts. of Waste Oil ,

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having value of Rs.70.24 lakhs covered under Bills of Entry No. 812 dated 26.07.2013, 855 dated 08.08.2013 and 941 dated 02.09.2013 and seized from the their plant area at Mundra SEZ, stand liable for confiscation under Sections 111(d) & 111(m) the Customs Act, 1962. Further, as evident from the Showcause Notice, the said seized goods were provisionally released by the Deputy Commissioner of Customs, MPSEZ, Mundra vide letter F. No. VIII/48-161/MISC-PR/MPSEZ/13-14 dated 02.12.2012 against a Bond for Rs. 70.24 lakhs dated 27.11.2013 and Bank Guarantee No. 15300100001573 dated 27.11.2013 for Rs. 35.12 lakh and hence the goods are not available for confiscation. However, the decision of the Honorable Apex Court in case of Weston Components Vs. Commissioner of Customs, New Delhi, reported at 2005 (115) ELT 278 (SC), again, squarely applies in this case. Hence, the redemption fine against the confiscation proposed in this case of seizure of 253.916 Mts. of Waste Oil, having value of Rs.70.24 lakhs, stands imposed.

[Order]. - It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine.

32. Similarly, the Main Noticee has committed an act of commission and omission and thus rendered 253.916 Mts. of Waste Oil liable to confiscation under Section 111(d) & 111 (m) of the Customs Act, 1962 and thereby renders themselves liable for penal action under Section 112(a) of the Customs Act, 1962 inasmuch as I propose to impose the penalty under Section 112(a) of the Customs Act, 1962, also.

33. Coming to the aspect of the various quantities of Recycled Furnace Oil obtained from Furnace Oil (off specification) imported by M/s. GSEC Ltd., Ahmadabad, M/s. Jainam Industries Pvt. Ltd., Udaipur, M/s. Bagwan Petroleum, Ahmedabad, M/s. Suzlon Enterprise, Chhatral, M/s. Chatrabhuj Steel, Ahmedabad, M/s. Krishna Metal & Alloys Industries, Ahmedabad, M/s. Anand Associates, Ahmedabad, M/s. Dhvani Offset, Surat (as detailed under Annexure B to the Showcause Notice and hereinafter referred to as the DTA buyers for the sake of brevity) rendered liable for re-classification under CTH 27109900 and confiscation under Sections 111(d) of the Customs Act, 1962. The investigations on this aspect are based upon the Test reports as detailed under RUD No. 8 to the Showcause Notice, which are obvious of the fact that the same are being drawn from the DTA (Finished goods) Tanks No. 106 and 107 at different intervals of time and pertain to the finished goods. The fact continues to remain that the main Noticee was given permission to manufacture/authorised operations with reference to the Refined Furnace Oil. Howsoever, the Test reports of CRCL broadly indicated the following fact (crux mainly), which is nothing but Furnace Oil/Fuel Oil (off specifications),

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"Test Report No. 235

16 APR 2012

B/E No. DTA Tank No. 107/16.4.12

The sample is in the form of blackish liquid. It is composed of mineral hydrocarbon oil having flash point above 66 C. It has following constants.

Ash content = 1.3%

Sediment = 1.4%

Water Content= 1.4%

Acidity (Inorganic) = Nil

Flash Point = above 66 C

Kinematic Viscosity at 50 C = 353.6 CST

Density at 15 C = 0.9861gm/ml.

The above said sample does not meet the requirement of Furnace Oil/Fuel Oil with reference to the Circular No. 33/2001 in respect of Ash Content, Sediment and water content. On further observation of hazardous testing it is indicated that the sample is not hazardous waste material but falls under the category of off-specification furnace Oil/ fuel oil."

34. At this stage, Circular No. 33/2001 dated 4.6.2001 needs to be referred. The relevant excerpt of the Circular in context to the above Test result is reproduced as follows,

"The product imported should be subject to certain minimum screening tests for acidity, ash contents, sediment and water to consider whether any imported product is a regular grade furnace oil or fuel oil and these should be classified as off-specification furnace oil or waste oil. The prescribed limits being as follows:-

S.No.	Test	Prescribed Limit (Max.)
1.	Acidity (inorganic)	Nil
2.	Ash Content	0.1%
3.	Sediment	0.25%
4.	Water	1%

1. Products/furnace oil which fail the screening test should be classified as off specification furnace oil/waste oil.
2. Products/furnace oil which pass the above screening test should be subject to further testing for the remaining BIS specifications. The products should be first tested for viscosity. Products/furnace oil which has a viscosity greater than 370 centistokes at 50 degree centigrade should be classified as off specification furnace oil/waste oil....."

35. As per the Circular and the Test reports, it is evident that the sample failed at the screening test in terms of its regular grade and continues to be referred as Off Specification Furnace Oil/Waste Oil. Moving further in terms of the ITC (HSN), it is clear that the said goods fall under the Restricted Category (relevant excerpt of the ITC HSN is reproduced as follows,

2710	PETROLEUM OILS AND OILS OBTAINED FROM BITUMINOUS MINERALS (OTHER THAN CRUDE) AND PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED, CONTAINING BY WEIGHT 70% OR MORE OF PETROLEUM OILS OR OF OILS OBTAINED FROM BITUMINOUS MINERALS, THESE OILS BEING THE BASIC CONSTITUENTS OF THE PREPARATIONS OTHER THAN THOSE CONTAINING BIODIESEL AND OTHER		
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<i>THAN WASTE OILS.</i>			
<i>Waste oil:-</i>			
27 10 91 00	<i>Containing polychlorinated biphenyls (PCBs) polychlorinated terphenyls (PCTs) or polybrominated biphenyls (PBBs)</i>	<i>Restricted</i>	<i>Import subject to Policy Condition (3) below.</i>
27 10 99 00	<i>Others</i>	<i>Restricted</i>	

The commodity Waste Oil or its derivatives in form of Off specification Furnace Oils do fall within the ambits of Restricted Commodity. In the present case the DTA based buyers (or importers) in their statements recorded during the Investigations, it is seen that they have not denied this fact that they have received the said goods.

36. Coming to the aspect of various buyers in this case, a list of common observations appears from the investigations vis-a-vis the confessional statements of the authorized person of the said buyers, the things that come out in common are (except for Jainam Industries) that **neither of them had necessary authorization to procure/ store/ process off specification grade fuel oil issued by the Pollution Control Board; that they did not know** that the off specification grade fuel oil falls under the tariff item 27109900 and is a restricted item. Further, the findings under the investigations do not stand ill founded that M/s Jainam Industries is a part of M/s. Vispo Alternate Energy Pvt. Ltd., and in a way M/s Vispo Alternate Energy Pvt. Ltd. has used the former as a route to import the waste Oil through the main Noticee. The intentions of all the buyers indicates culpability in terms of the "mens-rhea", which otherwise was also equally incumbent upon them not to buy the goods in terms of Import policy existing at the material time, which ultimately rendered these goods as "Restricted" and should have been imported only in terms of the conditions prescribed.

37. In view of the above, M/s. GSEC Ltd, M/s.Jainam Industries Pvt. Ltd., M/s. Bagwan Petroleum, M/s. Dhvani Offset, M/s. Chatrabhuj Steel, M/s. Anand Associate, M/s. Suzlon Enterprise and M/s. Krishna Metal & Alloys Industries have imported such off specification oil from the main Noticee by declaring the same as "Recycled Furnace Oil obtained from sludge oil (off specification)" under CTH No. 27101950" against the Bills of entry filed before the SEZ Authority and as detailed under Annexure B to the Showcause Notice. Further, the said DTA buyers failed to carry the necessary authorization issued by the Pollution Control Board to procure/ store/ process "off specification fuel oil" and hence a total 4663 MT of "Recycled Furnace Oil obtained from sludge oil (off specification)" having total value of Rs. 10,67,95,380/- (as detailed under Annexure B to the Showcause notice) is liable for confiscation under Section 111(d) of the Customs Act, 1962. However, since the same is not available for confiscation, the same cannot be made liable for Redemption Fine under Section 125 of the Customs Act, 1962 for the reasons discussed under Para 23 above.

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However, that does not restrict me from imposing penalties under Section 112(a) of the Customs Act, 1962 as the said DTA buyers have abetted the main Noticee in DTA clearance of the restricted goods without any valid authorization by way of purchasing and further disseminating (selling) in the Domestic market without any valid authorization. Accordingly, M/s. GSEC Ltd and its Vice President Shri Anand Mathur respectively, Vice, M/s. Jainam Industries Pvt. Ltd. and its Director Shri Kirti Jain respectively, M/s. Bagwan Petroleum, M/s. Dhvani Offset, M/s. Chatrabhuj Steel, M/s. Anand Associate, M/s. Suzlon Enterprise and M/s. Krishna Metal & Alloys Industries stand penalized under Section 112(a) of the Customs Act, 1962. I find a similar observation in case of decision of Honorable Tribunal in case of M/s Paswara Impex Ltd., Vs. Commissioner of Customs, Kandla, reported at 2013 (292) ELT 0562 (Tri.-Ahd.).

38. I find Shri Mahesh Parmar, who has been instrumental in all the negotiations during the course of High Sea Sales and an authorized signatory on the behalf of the main Noticee during the purchase of the goods on High Sea sales, equally has rendered himself liable for penalty as he has knowingly committed the act which has rendered 253.916 Mts. of Waste Oil, having value of Rs.70.24 lakhs, covered under Bills of Entry No. 812 dated 26.07.2013, 855 dated 08.08.2013 and 941 dated 02.09.2013 for confiscation under Section 111(d) & (m) of the Customs Act, 1962 as well as 739.568 Mts. of 'Low Viscose Furnace Oil' having value of Rs. 1,89,71,295/- covered under Bills of Entry mentioned in Annexure-A to the Showcause Notice liable for confiscation under Section 111(d) of the Customs Act, 1962, liable for penalty under Section 112(a) of the Customs Act, 1962.

39. In view of the above, I pass the following orders,

ORDER

- i. I order to re-classify 253.916 Mts. of Waste Oil, covered under Bills of Entry No. 812 dated 26.07.2013, 855 dated 08.08.2013 and 941 dated 02.09.2013, found available in their plant at Mundra SEZ the same under Customs Tariff heading 27109900 of the First Schedule to the Customs Tariff Act, 1975 and the Bills of Entry be assessed accordingly.
- ii. I order for confiscation of 253.916 Mts. of Waste Oil, having value of Rs.70.24 lakhs, covered under Bills of Entry No. 812 dated 26.07.2013, 855 dated 08.08.2013 and 941 dated 02.09.2013 and seized from the their plant area at Mundra SEZ, under sections 111(d) & 111(m) the Customs Act, 1962. As the goods in question are not available for confiscation since they have been provisionally released, I thereby order for redemption fine of Rs. 10,00,000/- (Rupees Ten Lakhs Only) in lieu of confiscation under Section 125 of the Customs Act, 1962.

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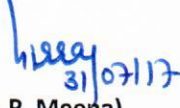
- iii. I order for confiscation of 739.568 Mts. of 'Low Viscose Furnace Oil' having value of Rs. 1,89,71,295/- covered under Bills of Entry mentioned in Annexure-A to the Showcause Notice under sections 111(d) of the Customs Act, 1962. As the goods in question are not available for confiscation as they have already been cleared by M/s. Aadi Oil Pvt. Ltd. (the main Noticee in this case, I refrain from imposing any redemption fine under Section 125 of the Customs Act, 1962, as discussed in the foregoing paras.
- iv. I impose a penalty of Rs. 8,00,000/- (Rupees Eight Lakhs Only) on M/s. Aadi Oil Pvt. Ltd., Survey No. 141, Mundra Port & SEZ, Taluka Mundra (Kutch)- 370421 having registered office at 406-B, Sapath- IV, Opposite Karnavati Club, SG Highway, Ahmadabad under Section 112 (a) of the Customs Act, 1962.
- v. I impose a penalty of Rs. 5,00,000/- (Rupees Five Lakhs Only) on Shri Mahesh Parmar, Manager of M/s. Aadi Oil Pvt. Ltd., Mundra under Section 112 (a) of the Customs Act, 1962.
- vi. I order to reclassify 2124 MT's of Waste Oil cleared by the main Noticee to M/s. GSEC Ltd., Ahmadabad covered under Bills of Entry appearing in **Annexure-B** to the Showcause Notice under CTH 27109900 and the Bills of Entry be assessed accordingly.
- vii. I order for confiscation of 2124 Mts. of Recycled Furnace Oil obtained from sludge oil (off specification), having assessable value of Rs.5,20,55,400/- cleared vide Bills of Entry appearing in **Annexure-B to the Showcause Notice by the main Noticee to M/s GSEC Ltd., Ahmedabad**. As the goods in question are not available for confiscation, I refrain from imposing any redemption fine under Section 125 of the Customs Act, 1962, as discussed in the foregoing paras.
- viii. I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakhs Only) on M/s. GSEC Ltd., Ahmadabad and also on Shri Anand Mathur, Vice President of M/s. G.S.E.C. Ltd., Ahmadabad of Rs. 2,00,000/- (Rupees Two Lakhs only) under Section 112 (a) of the Customs Act, 1962 respectively.
- ix. I order to reclassify 2189 Mts. of Waste Oil cleared by the main Noticee to M/s. Jainam Industries Pvt. Ltd., Udaipur covered under Bills of Entry appearing in **Annexure-B** to the Showcause Notice under CTH 27109900 and the Bills of Entry be assessed accordingly.
- x. I order for confiscation of 2189 Mts. of Recycled Furnace Oil obtained from sludge oil (off specification), having assessable value of Rs. 4,83,76,980/- cleared vide Bills of Entry appearing in **Annexure-B to the Showcause Notice by the main Noticee to M/s. Jainam Industries Pvt. Ltd., Udaipur**. As the goods in question are not available for



- xxi. I order to reclassify 16.5 Mts. of Waste Oil under CTH 27101950, covered under Bill of Entry No. 16/16.01.12 and cleared by the main Noticee to M/s. Krishna Metal & Alloys Industries, Ahmedabad under CTH 27109900 and the Bills of Entry be assessed accordingly.
- xxii. I order for confiscation of 16.5 Mts. of Recycled Furnace Oil obtained from sludge oil (off specification), having assessable value of Rs. 2,99,970/- **by the main Noticee to** M/s. Krishna Metal & Alloys Industries. As the goods in question are not available for confiscation, I refrain from imposing any redemption fine under Section 125 of the Customs Act, 1962, as discussed in the foregoing paras.
- xxiii. I impose a penalty of Rs. 40,000/- (Rupees Forty Thousands Only) on M/s. Krishna Metal & Alloys Industries under Section 112 (a) of the Customs Act, 1962.
- xxiv. I order to reclassify 16.5 Mts. of Waste Oil under CTH 27101950, covered under Bill of Entry No. 16/16.01.12 and cleared by the main Noticee to M/s. Anand Associates, Ahmedabad under CTH 27109900 and the Bills of Entry be assessed accordingly.
- xxv. I order for confiscation of 16.5 Mts. of Recycled Furnace Oil obtained from sludge oil (off specification), having assessable value of Rs. 2,99,970/- **by the main Noticee to** M/s. Anand Associates, Ahmedabad. As the goods in question are not available for confiscation, I refrain from imposing any redemption fine under Section 125 of the Customs Act, 1962, as discussed in the foregoing paras.
- xxvi. I impose a penalty of Rs. 40,000/- (Rupees Forty Thousands Only) on M/s. Anand Associates, Ahmedabad under Section 112 (a) of the Customs Act, 1962.
- xxvii. I order to reclassify 16.100 Mts. of Waste Oil under CTH 27101950, covered under Bill of Entry No. 176/11.08.2011 and cleared by the main Noticee to M/s. Dhvani Offset, Surat under CTH 27109900 and the Bills of Entry be assessed accordingly.
- xxviii. I order for confiscation of 16.100 Mts. of Recycled Furnace Oil obtained from sludge oil (off specification), having assessable value of Rs. 2,92,698/- cleared vide Bill of Entry No. 176/11.08.2011 **by the main Noticee to** M/s. Dhvani Offset, Surat. As the goods in question are not available for confiscation, I refrain from imposing any redemption fine under Section 125 of the Customs Act, 1962, as discussed in the foregoing paras.
- xxix. I impose a penalty of Rs. 40,000/- (Rupees Forty Thousands Only) on M/s. Dhvani Offset, Surat under Section 112 (a) of the Customs Act, 1962.
- xxx. I impose a penalty upon Shri Anand Mathur Vice President of M/s. GSEC Ltd and Shri Kirti Jain Director of M/s. Jainam Industries Pvt. Ltd. of Rs. 75,000/- (Rupees Seventy Five Thousands only) each respectively,
- xxxi. I drop the proceedings upon Shri Pravin Jain, Director of M/s. Vispo Alternate Energy Pvt. Ltd., Ahmedabad, initiated under the Showcause Notice F.No.DRI/AZU/GRU-69/2013 dated 12.8.2014, as discussed in the foregoing paras.

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xxxii. I order to enforce the Bond and Bank Guarantee,executed by M/s. Aadi Oil Pvt. Ltd., Survey No. 141, Mundra Port & SEZ, Taluka Mundra (Kutch)- 370421 having registered office at 406-B, Sapath- IV, Opposite Karnavati Club, SG Highway, Ahmadabad, during the provisional release of the seized goods and to appropriate the same to recover the demand of duties (arising out of the re-assessment of the Bills of Entry), Interest and Penalties, as ordered above.


 (G. P. Meena)
ADDITIONAL COMMISSIONER
CUSTOM HOUSE, MUNDRA

F. No: VIII/48-22/Adj/JC/MP&SEZ/14-15

Dated:- 31.07.2017

By Registered Post Acknowledgement Due
To,

1. M/s. Aadi Oil Pvt. Ltd., Survey No. 141, Mundra Port & SEZ, Taluko Mundra (Kutch)- 370421
2. Shri Mahesh Parmar, Manager of M/s. Aadi Oil Pvt. Ltd., Survey No. 141, Mundra Port & SEZ, Taluko Mundra (Kutch)- 370421
3. M/s. Vispo Alternate Energy Pvt. Ltd., 202,Shaival Plaza, Ellisbridge, Ahmedabad-15
4. ShriPravin Jain, Director of M/s. Vispo Alternate Energy Pvt. Ltd., 202,Shaival Plaza, Ellisbridge, Ahmedabad-15
5. M/s.Subhi Impex,305 Ashwamegh House ,Choice Restaurant Lane, C.G. Road, Ahmadabad
6. M/s. Jainam Industries Pvt. Ltd., F-90, 91,107,108,RIICO Industrial Area, Sanward, Tehsil Mali, District- Udaipur
7. ShriKirti Jain, Director of M/s. Jainam Industries Pvt. Ltd., F-90, 91,107,108,RIICO Industrial Area, Sanward, Tehsil Mavli, District- Udaipur
8. M/s. G.S.E.C. Ltd., 2nd Floor, Gujarat Chamber of Commerce Building, Ashram Raod, Ahmadabad- 9
9. ShriAnandMathur, Vice President of M/s. GSEC Ltd., 2nd Floor, Gujarat Chamber of Commerce Building, Ashram Raod, Ahmedabad- 9.
10. M/s. Bagwan Petroleum, Plot No. 7 & 9,Near Aradhna Rice Mill, Barejadi Road, Near Bareja Cross Road, Bareja, Ahmedabad- 382425
11. M/s. Suzlon Enterprise, 3488/2, GIDC, Phase-IV. Chhatral, TalukoKalol, District, Gandhinagar
12. M/s. Chatrabhuj Steel, Plot No. 4217/8, Phase-IV, GIDC, Vatva, Ahmedabad.
13. M/s. Krishna Metals & Alloys Industries, B-34, Krishna Gopal Estate, Naroda Road, Ahmedabad 380 025
14. M/s. Anand Associates, 4, 1st Floor, Vinod Chambers, O/s. Dariapur Gate, Ahmedabad 380 001.
15. M/s. Dhvani Offset, 4/2093, Sahara Darwaja, Nawabwadi Main Road, Surat