आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा ,अहमदाबाद- 380009		OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009
फ़ोन नंबर/ PHONE No.: 079-27544557	फैक्स/ FAX : 079-27544463	E-mail:- oaahmedabad2@gmail.com

F.No:- V.54/15-01/OA/2015

आदेश की तारीख/Date of Order : -21.06.2021
जारी करने की तारीख/Date of Issue :- 21.06.2021

DIN No.:20210664WT0000000A67

द्वारा पारित/Passed by:- एम. एल.मीणा / *M.L. Meena*
अपर आयुक्त / Additional *Commissioner*

मूल आदेश संख्या / Order-In-Original No. 07/ADC/MLM/2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती हैI
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील ,इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी , अहमदाबाद 380015-को प्रारूप संख्या इ.ए-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रू .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त(अपील) के समक्ष नियमानुसार पूर्व जमा की धनराशि का प्रमाण देना आवश्यक है I

An appeal against this order shall lie before the Commissioner (Appeals) on giving proof of payment of pre-deposit as per rules .

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं;
उक्त अपील की प्रति।
निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (का न्यायालय शुल्क़ टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:
Copy of accompanied Appeal. and
Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय:- कारण बताओ सूचना/ Show Cause Notice No.V.54/15-01/OA/2015 dated 15.01.2016 issued to M/s. Skaps Industries Ltd, (100% EOU), Plot No. A-20, Survey No.423, Mahagujarat Industrial Estate, Vill. Moraiya, Tal. Sanand, Dist. Ahmedabad.

<u>BRIEF FACTS OF THE CASE</u>:

M/s. Skaps Industries (India) Ltd., (100% EOU), Plot No. A-20, Survey No.423, Mahagujarat Industrial Estate, Vill. Moraiya, Tal. Sanand, Dist. Ahmedabad (hereinafter referred to as 'SKAPS') were holding Central Excise Registration Number No. AADCP2779DXM001 are engaged in the manufacture of Slit Tape Woven Fabrics classifiable under Chapter Heading 54072090 to the First Schedule of Central Excise Tariff Act, 1985 .

2. During the course of CERA audit, it was noticed that SKAPS had transferred Semi-finished goods (Master Rolls and Yarn) to its own SEZ unit namely, M/s. Skaps Industries (India) Ltd., (MUNDRA-SEZ DIV.) Plot #10, Road 12F, Sector 12S, Mundra Integrated Textile & Apparel park (MITAP), Nr. Shantipath 4, Mundra SEZ (MPSEZ), Tal. Mundra – 370 421, Dist. Kutch, at Mundra, without payment of duty. These clearances were included in the quantum of export.

3. Para 6.13 (a) of Foreign Trade Policy 2009-14 (27th August 2009 - 31st March 2014), states that transfer of manufactured goods shall be allowed from EOU to SEZ unit or SEZ developer by following procedure prescribed in SEZ Rules, 2006. Relevant portion of Foreign Trade Policy 2009-14 (27th August 2009 - 31st March 2014), is reproduced below:

Para 6.13 (a) :

Inter Unit Transfer:

(a) Transfer of manufactured goods from one EOU /EHTP / STP / BTP unit to another EOU / EHTP / STP / BTP unit is allowed with prior intimation to concerned DC and Customs authorities, following procedure of in-bond movement of goods. ***Transfer of manufactured goods shall also be allowed from EOU / EHTP / STP / BTP unit to a SEZ developer or unit following procedure prescribed in SEZ Rules, 2006.***

(b) Capital goods may be transferred or given on loan to other EOU / EHTP / STP / BTP / SEZ units, with prior intimation to concerned DC and Customs authorities.

(c) Goods supplied by one unit of EOU / EHTP / STP/ BTP to another unit shall be treated as imported goods for second unit for payment of duty, on DTA sale by second unit.

4. Further relevant portion of per Para 6.34(5) / 6.32 (5) of Hand Book of Procedure (Vol.-1), (27th August 2009 - 31st March 2014), is reproduced hereunder for reference :

<u>Para 6.32 (5) :</u>

<u>Administration of EOUs / Powers of DC / Designated Officer :</u>

DC / Designated Officer shall have following powers in respect to units. Jurisdiction of DC is given in Appendix 14-I-K. :

(1) to (4) .....

(5) *Permit broad-banding for similar goods and activities mentioned in LoP or to provide for backward or forward linkages to existing line of manufacture*;

5. Thus from the above it appeared that SKAPS was required to obtain permission of broad-banding for similar goods and activities mentioned in LoP or to provide for backward or forward linkages to existing line of manufacture from the competent authority.

6. Further from the records it is revealed that SKAPS had **cleared/exported semi-finished goods (Master Rolls and Yarn)** to its own SEZ unit namely, M/s. Skaps Industries (India) Ltd., (MUNDRA-SEZ DIV.) without payment of duty. Such clearances appeared to be in contravention of the permission granted by the Development Commissioner, KASEZ, Gandhidham which was specifically mentioned as
"manufacture of finished goods i.e. "Slit Tape Woven Fabrics"."

7. The transfer of goods from 100 % EOU unit to SEZ has been guided by SEZ Rules, 2006 as per Para 6.13(a) of Foreign Trade Policy 2009-14 (27th August 2009 - 31st March 2014). Further it appeared that there is no Notification of Customs/ Central Excise vide which such

clearances/transfer of Semi-finished goods/ finished goods to a SEZ unit without payment of duty has been permitted. However it appeared that the said assessee had cleared the semi finished goods without obtaining any permission of broad-banding of similar goods as required under the SEZ Rules. SEZ units and developers are guided by a Self-contained statute namely SEZ Act, 2005 and SEZ Rules, 2006, and no notification providing exemption of duty on clearances of such semi finished goods have been notified in Customs/ Central Excise Act so far. Therefore it appeared that clearances of Semi-finished goods by the assessee to their SEZ unit namely, M/s. Skaps Industries (India) Ltd., (MUNDRA-SEZ DIV.) Plot #10, Road 12F, Sector 12S, Mundra Integrated Textile & Apparel park (MITAP), Nr. Shantipath 4, Mundra SEZ (MPSEZ), Tal. Mundra – 370 421, Dist. Kutch, was incorrect and hence the duty of Rs. 41,30,804/- on the clearances made by the said assessee during the period 2011-12 & 2012-13 & 2013-14, as detailed below, appeared to be recoverable from SKAPS :

	2011-12	2012-13	
Assessable Value	9447060	5526134	
BCD@10%	944706	552613	
CVD@10%/ @12%	1039177	729450	
EC @3% on CVD	31175	0	
Cus. EC @3%	60452	38462	
SAD@4%	460903	273866	
TOTAL DUTY	2536413	1594391	**= 4130804**

8. Further, vide letter dated 21.04.2014, the said assessee provided the details of clearances of the semi-finished goods cleared during the F.Y. 2013-14 (from April-2013 to sept-2014) to their own unit at Mundra SEZ i.e. M/s. Skaps Industries (India) Ltd., (MUNDRA-SEZ DIV.) as below :

Sr. No.	Description of the goods	Customs Invoice No./ Date	Qnty. Yd^2	FOB Value PMV Rs.
1	Woven Landscape Fabrics 100% Polypropylene Made from Strips. Strips 1.8 mm & 2.8 mm Wide No Yarn Used	C1E13140033 Dt. 05.06.2013	196050.780	1681545/-
2	- do -	C1E13140040 Dt. 19.06.2013	126076.240	1736985/-
3	- do -	C1E13140044 Dt. 26.06.2013	121273.340	1741168/-
4	- do -	C1E13140114 Dt. 07.01.2014	64797.880	1268995/-
	TOTAL			**64,28,693/-**

9. It appeared from the above that the said assessee has cleared the goods having FOB value PMV of Rs. 64,28,693/- and thereby short paid duty of Rs. 18,54,794/-, on the said clearances during the period 2013-14 as narrated below :

	2013-14
Assessable Value	6428693
BCD@10%	642869
CVD@10%/ @12%	848587
EC @3%	0
Cus. EC @3%	44744
SAD@4%	318596
TOTAL DUTY	**1854796**

10. In view of above, it appeared that the assessee had cleared the goods viz. Master Rolls and Yarn to its own SEZ unit at Mundra valued at Rs. 2,14,01,887/- (Rs. 94,47,060/- + Rs.

55,26,134/- + Rs. 64,28,693/-) during the year 2011-12, 2012-13 & 2013-14 and thereby short paid total duty to the tune of TOTAL Rs. 59,85,600/- (Rs. 41,30,804/- + Rs. 18,54,796/-).

11. Further it appeared that the said assessee had not disclosed the fact that they are clearing the semi finished goods to their own unit at Mundra SEZ. In the Shipping Bill they have mentioned the description of goods as "Master Rolls" and in the packing list/Custom Invoice mentioned as "Slit Tape Woven fabrics" which is finished goods of the said assessee. However, in the Bill of Entry filed at Mundra SEZ, the description of the product is mentioned as "Woven Fabrics W180-150 (Semi finished Product) (54072090)- Manufactured goods". At no point of time had the said assessee disclosed to the department that their finished goods i.e. Slit tape woven Fabrics were semi-finished goods for their SEZ unit situated at Mundra. The said assessee never submitted the copy of Bill of Entry to the department and therefore, it was not known to the department that the goods cleared to SEZ Mundra were semi finished goods. This fact reveals that the said assessee has willfully suppressed the material facts with regard to clearance of finished goods" in the guise of "Semi-finished" goods, with an intention to evade payment of duty.

12. The said assessee has also not mentioned the description as "Semi-finished" in ER-2 return and had, thereby, wilfully suppressed material facts with a clear motive of evasion of Central Excise duty. The said assessee was showing the consolidated value of clearances in their ER-2 monthly returns filed on ACES website. The short payment of duty came to the notice of the department during the audit of the records of the unit and had the audit not been conducted, the said short payment of duty would never have come to the knowledge of the department. Therefore, duty amounting to Rs.59,85,600/- appeared to be recoverable by invoking extended period of five years under the provision of Section 28A(4) alongwith interest under Section 28AA of the Custom Act, 1962. Though the assessee is well aware that their clearances to their SEZ unit attracted payment of duty, they have not paid the duty as mentioned above in contravention of the provisions of Custom Act and Rules made thereunder. The said amount is therefore, recoverable from them by invoking the extended period of five years under proviso to Section 28A (4) of Custom Act, 1962, alongwith interest under Section 28 AA of Custom Act, 1962 and penalty under Section 114A of the Custom Act, 1944.

13. Therefore, M/s. Skaps Industries (India) Ltd., (100% EOU), Dist. Ahmedabad were called upon to show cause to the Commissioner of Central Excise, Ahmedabad-II, having his office at 1st Floor, Custom House, Navrangpura, Ahmedabad – 380 009, as to why:

(i) Custom duty short paid amounting to **Rs.59,85,600/-** (Rupees Fifty Nine lakhs Eighty Five thousand Six Hundred only), should not be demanded and recovered from them under Section 28(4) of Custom Act, 1962;

(ii) Interest at the appropriate rate should not be recovered from them under Section 28AA of the Custom Act 1962 on the amount mentioned at (i) above;

(iii) Penalty should not be imposed upon them under Section 114A of Custom Act, 1962.

DEFENCE SUBMISSIONS :

14. The reply to the show cause notice dated 19.01.2016 was submitted by SKAPS on 11.05.2016 interalia stating that :

SKAPS is engaged in manufacture of Slit Tape Woven Fabrics classifiable under Chapter Heading No. 54072090 of the First Schedule to the Central Excise Tariff Act, 1985. The said finished product is manufactured out of Poly Propylene procured from domestic market or imported goods and is manufactured in thickness ranging from 160 to 400 mils.

- In many instances, they clear the finished goods in Master-roll form to their own SEZ unit located in Mundra SEZ after following due process as prescribed under the Foreign Trade Policy, 2009-14 read with the provisions of SEZ Rules, 2006.
- The SEZ unit undertakes the process of cutting and slitting of this Master-Roll as per requirements of the customers and exports it to the customers as per order. Copies of the Letter of Permission (LOP) issued to EOU for manufacture of finished goods was submitted.
- They deny the charges and allegations levelled in the Show Cause Notice and further state that they had cleared the goods in terms of Para 6.13 (A) of Foreign Trade Policy which allows EOU unit to clear the manufactured goods to SEZ developer or unit following the procedure prescribed under SEZ Rules, 2006.
- They had complied with all the procedures as prescribed under SEZ Rules, 2006 and the Central Government had issued notification allowing EOU unit to clear the goods without payment of duty and therefore, allegation made in the captioned Show Cause Notice that they had cleared the goods without payment of duty in absence of any notification under the Customs Act/Excise Act is legally incorrect, as they were never supposed to pay the duty while clearing the goods from EOU to SEZ.
- Chapter 6 of FTP, 2009-14 deals with the provisions relating to units viz. Export Oriented Unit (EOU), Electronic Hardware Technology Park (EHTP), Software Technology Park (STP) and Biotechnology Park (BTP) who undertakes to export their production of goods manufactured for export purposes. Para 6.13(a) of the Foreign Trade Policy permits EOU/EHLPS/STPS/BTP unit to transfer manufactured goods to another EOU/EHTPS/HTP/BTP units with prior intimation to the concerned Development Commissioner and Customs authority after following procedure of in-bond movements of goods. 6.13(a) further allows EOU unit to transfer the goods to SEZ Developer or unit following procedure prescribed in SEZ Rules, 2006. Relevant extract of Foreign Trade Policy is reproduced herein-below:

  Inter Unit Transfer 6.13

  (a) *Transfer of manufactured goods from one EOU / EHTP / STP / BTP unit to another EOU / EHTP / STP / BTP unit is allowed with prior intimation to concerned DC and Customs authorities, following procedure of in-bond movement of goods. Transfer of manufactured goods shall also be allowed from EOU / EHTP / STP / BTP unit to a SEZ developer or unit following procedure prescribed in SEZ Rules, 2006.*

  (b) *Capital goods may be transferred or given on loan to other EOU / EHTP / STP / BTP / SEZ units, with prior intimation to concerned DC and Customs authorities.*

  (c) *Goods supplied by one unit of EOU / EHTP / STP / BTP to another unit shall be treated as imported goods for second unit for payment of duty, on DTA sale by second unit. Sub-Contracting*

- Para 6.14 of Handbook of Procedure (Vol.I) permits to supply goods to other EUO/EHTP/HTP/BIP/SEZ Unit for countering towards net foreign exchange provided that such goods are permissible for procurement of goods to all these units. Para 6.18 of Handbook of procedure permits EOU unit to export the goods manufactured by it through other exporter or SEZ unit subject to fulfillment of the conditions as provided therein. They reproduced relevant extract of Para 6.14 and 6.18 of Handbook of procedure.

  6.14 *Supplies to other EOU /EHTP / STP/ BTP/ SEZ units shall be counted towards NFE provided that such goods are SEZ /BTP units permissible for procurement by these units.*

  6.18 *An EOU / EHTP f STP / BTP unit may export goods other exporters manufactured / software developed by it through other exporter, or any other EOU / EHTP / STP / BTP / SEZ unit subject to condition that:*

  (a) *Goods shall be produced in EOU / EHTP / STP / BTP unit concerned.*

(b) *Level of NFE or any other conditions relating to imports and exports as prescribed shall continue to be discharged by* EOU/EHTP/ STP/BTP *unit concerned.*

(c) *Export orders so procured shall be executed within parameters of EOU / EHTP / STP / BTP schemes and goods shall be directly transferred from unit to port of shipment.*

(d) *Fulfillment of NFE by EOU / EHTP /*STP */ BTP units in regard to such exports shall be reckoned on basis of price at which goods are supplied by EOUs to other exporter or other EOU / EHTP / STP / BTP / SEZ unit.*

(e) *All export entitlements, including recognition as Status Holder would accrue to exporter in whose name foreign exchange earnings are realized. However, such export shall be counted towards fulfillment of obligation under* EOU/ EHTP/ STP/BTP *scheme only. "*

- Rule 30(14) of SEZ Rules 2006 allows a unit or developer to procure the goods without payment of duty from EOU by following procedures as prescribed under Rule 30(12). Rules 30 (12) provides the procedures for procurement of goods from warehouse which is as under:-

- 30 (12) *Procedure for procurement from warehouse shall be as under:—*

(a) where goods are to be procured from warehouse, a *Unit or Developer shall file a Bill of Entry with the Specified Officer;*

(b) the Unit or Developer shall submit Bill of Entry assessed by the Authorized Officer to the Customs Officer in charge of the warehouse from where the Special Economic Zone Unit or Developer intends to procure the goods;

(c) the Customs Officer in charge of the warehouse shall allow clearance of the goods from the warehouse for supply to the Unit or Developer without payment of duty on the cover of exbond Shipping Bill and on the basis of Bill of Entry duly assessed by the Authorized Officer.

d) where the re-warehousing certificate by way of endorsement by the Authorized Officer on the copy of ex-bond Shipping Bill is not received by the Customs Officer in charge of warehouse within forty-five days from the date of clearance of the goods from the warehouse, the Customs Officer in charge of the warehouse shall proceed to demand applicable duty from the supplier: Provided that for procurement of goods from Nominated Agency located in Special Economic Zone, the procedure as specified by Specified Officer shall be followed and there shall be no requirement of assessment of Bill of Entry or transfer of the goods under the cover of ex-bond Shipping Bill.

- *30 (14) : A Unit or Developer may also procure goods or services, without payment of duty from an Export Oriented Unit or Software Technology Park Unit or Bio-Technology Park Unit, by following procedures under sub-rule (12).*

- It gets revealed from perusal of the relevant provisions introduced under FTP and SEZ that EOU unit can transfer goods to SEZ subject to the procedure as prescribed and discussed in the foregoing para.

- Para (2a) of Notification No. 22/2003-CE dated 31.03.2003 as amended from time to time allows EOU unit to supply or transfer goods processed, manufactured, produced of package to another unit in SEZ for any of the purposes as specified in Clause a to d of Para 1 of the above mentioned notification after giving intimation to the officer and subject to maintenance of proper account of removal and receipts of goods and following the re-warehousing procedure.

- In the present case, SKAPS being EOU unit followed the procedure as prescribed under Para 6.13 (a) of Foreign Trade Policy read with Rule 30(14) of SEZ Rules for clearance of goods

from its factory located in EOU to SEZ unit. As per procedure prescribed under Rule 30(14) read with Rule 30(12), following procedure was followed for clearance of goods:

(1) The Customs Officer in charge of the warehouse (SKAPS) allowed clearance of the goods from the warehouse for supply to the Unit without payment of duty on the cover of ex-bond Shipping Bill;

(2) SKAPS was permitted to do factory stuffing for which the Supervision and Examining Officers examined the goods and on the basis of Bill of Entry duly assessed by the Authorized Officer;

(3) The re-warehousing certificate by way of endorsement by the Authorized Officer on the copy of ex-bond Shipping Bill has been received by the Customs Officer in charge of warehouse within forty-five days from the date of clearance of the goods from the warehouse. Copies of the above referred documents for one of transactions were submitted.

- they cleared the finished goods in Master-Roll without payment of duty as Notification No. 22/2003 permitted EOU to clear the goods without payment of duty. SEZ unit in turn, cut Master-Roll into required size and cleared to its customers.

- It is wrongly alleged in the Para 3.4 of the Show Cause Notice that even though they had cleared semi-finished goods to their own unit at SEZ, they mentioned the description of goods as "Master Roll" and in the packing list/Customs Invoice, it has been mentioned as "Slit Tape woven" which is finished goods.

- They had cleared Slit Tape Woven Fabrics in Roll Form and therefore, the same has been mentioned as Master Roll in the shipping bill. Nonetheless, the goods remained Slit Tape Woven Fabric.

  - the SEZ unit indicated the said description of goods as woven fabric W 180-150 being it was semi-finished goods for SEZ unit and the said goods when cleared by EOU unit was in form of finished goods and it was semi finished goods in hand of SEZ unit. Therefore, it is wrongly alleged in the Show Cause Notice that they wrongly mentioned description of the goods.

  - The captioned Show Cause Notice has been issued without jurisdiction as it proposes to demand Customs Duty under the provisions of Section 28 of the Customs Act by invoking extended period of limitation for goods manufactured in EOU. It is settled law that Central Excise Duty can be demanded in terms of Proviso to Section 3 of the Central Excise Act for clearance of goods from EOU unit if the same has been cleared without payment of duty or contravention of the provisions of the Act. The measure for computing the duty is as per the provisions of the Customs Act but, it does not mean that the Customs Duty can be demanded. In the following decisions, it is held that customs duty cannot be demanded on goods manufactured in EOU and cleared in contravention of the provisions of the law:

    a) Saheli Synthetics Pvt Ltd Vs C.C.Ex 2002(239) ELT 594 (T). The same has been affirmed by the Hon'ble Apex Court reported in 2015 (316) E.L.T. A29 (S.C.);
    b) C.C.Ex Vs Suresh Synthetics 2007 (216) ELT 662 (SC);
    c) Sabnam Synthetics Vs C.C.Ex 2009 (234) ELT 473 (T);

  - The captioned Show Cause Notice proposes to recover the Customs Duty under proviso to Section 28 by invoking extended period of limitation. The Show Cause Notice has been issued on 19.1.2015 covering the period from 2011-12 to 2013-14.However the larger period cannot be invoked in the present case as there was no intention to evade customs duty. It is undisputed fact that the goods cleared from EOU were supplied to

SEZ unit. It is also undisputed fact that the same were exported after having further processed it. As the duty amount is not been involved due to having the goods exported, the proposal made for invoking larger period cannot be sustained.

- the goods cleared by SKAPS were in form of finished goods in its hand and the same were semi-finished goods in the hands of SEZ. Descriptions mentioned in each of the documents were factually correct. They had filed ER-2 returns from time to time and therefore, the revenue was well aware of their business activity and consequently the allegations in respect of the non disclosure of the correct fact is baseless and devoid of merits.

- they were permitted to do the factory stuffing in terms of the permission granted by Assistant Commissioner of Customs, ICD vide F. No. VIII/48-39/FS/ICD/2008 dated 29.01.2008. The Central Excise officers and Customs officers visited the factory and examined the goods. They did not find any mis-declaration in terms of the descriptions disclosed in the exbond shipping bill and other relevant documents. In these facts, the charges levelled for mis-declaration of the description of the goods with intent to evade duty cannot be sustained.

- the imposition of penalty on SKAPS under Section 114(A) of the Customs Act, 1962 is unsustainable as they cleared the goods in accordance with the law and therefore no malafides can be attributed to them. They have correctly cleared goods without payment of duty under the Customs Act and cannot be held liable to a penalty under section 114A and Department has been unable to establish their allegations against SKAPS and therefore no penalty is imposable on them under section 114A. Where no duty liability exists a penalty cannot be imposed on an assessee. It is submitted that the Hon'ble Supreme Court has held in **Commissioner Of Customs, Mumbai vs. M.M.K. Jewellers**, [2008 (225) E.L.T. 3 (S.C.)] that when duty itself cannot be imposed, no order of imposing penalty under Section 114A of Customs Act, 1962 can be sustained. Further, it has been held by the Hon'ble Supreme Court in the same case that where there is no suppression o willful misrepresentation of facts penalty under section 114A is no imposable. It is submitted that in the present case no willful misrepresentation has been shown on the part of the assessee.

- A personal hearing was required and thereafter they would make any further submissions, as advised.

15. Personal hearing in the matter was held on 29.06.2016 before Commissioner, Central Excise, Ahmedabad-II and Shri Hardik Modh, Advocate and Shri Arjun Akruwala, CA, were present of behalf of SKAPS. They stated that the SCN demands duty under Section 28 of the Customs Act, which is not proper. Moreover, for them the impugned goods are finished goods and not semi-finished goods as contended in the notice. They also said that though the description of the product is semi-finished goods in the Bill of Entry filed by buyer, in their Shipping Bills it is only FINISHED GOODS, as evidenced in the sample S/B attached with the defense reply. Hence they requested that no case is made out against them and the notice deserves to be dropped.

16. The documents submitted by the assessee on 11.05.2016 were forwarded to the jurisdictional Assistant Commissioner for verification and comments were called for. Accordingly the Assistant Commissioner vide his letter F.No.V/3-60/D/2014 dated 14.02.2018 submitted his comments wherein he stated that-

the assessee has stated that they had cleared the goods in terms of Para 6.13(A) of Foreign Trade Policy which allows EOU unit to clear the manufactured goods to SEZ developer or unit

following the procedure prescribed under SEZ Rules, 2006. They have also complied with all the procedures as prescribed under SEZ Rules, 2006. They have also stated that Central Government has issued notification allowing EOU unit to clear the goods without payment of duty and therefore, SCN does not stands.

Whereas it appears that Para 6.13(A) of Foreign Trade Policy 2009-14, states that transfer of manufactured goods shall be allowed from EOU to SEZ unit or SEZ developer by following procedure prescribed in SEZ rules, 2006, is reproduced below:

Para 6.13(a) Inter Unit Transfer:

(a) Transfer of manufactured goods from an EOU/EHTP/STP/BTP unit to another EOU/EHTP/STP/BTP unit is allowed with prior intimation to concerned DC and Customs authorities, following procedure of in-bond movement of goods. Transfer of manufactured goods shall also be allowed from EOU/EHTP/STP/BTP unit to SEZ developer or unit following procedure prescribed in SEZ Rules, 2006.

(b) Capital Goods may be transferred or given on loan to other EOU/EHTP/STP/BTP/SEZ units, with prior intimation to concerned DC and Customs authorities.

(c) Goods supplied by one unit of EOU/EHTP/STP/BPT to another unit shall be treated as imported goods for second unit for payment of duty, on DTA sale by second unit.

Whereas it appears that the said assessee has cleared the semi finished goods viz.Master Roll and Yarns without obtaining any permission of broad-banding of similar goods. Therefore, it appears that the permission granted by the Development Commissioner, KASEZ, Gandhidham for manufacture of finished goods i.e. "Slit Tape Woven Fabrics". No notification of Customs/Central Excise has permitted till date to transfer of Semi-finished goods/finished goods to a SEZ unit without payment of duty.

Whereas it appears that the exemption availed by the said assessee on clearance of Semi-finished goods to their SEZ unit (MPSEZ), Mundra was wrongly availed by the said assessee and hence it appears that duty on the clearances made by the said assessee during the period 2011-12 & 2012-13 & 2013-14, is required to be recovered.

The short payment of duty came to the notice of the Department during the audit of records of the unit, had the audit not been conducted, the short payment of duty would never have come to the knowledge of the department. Therefore, duty amounting to Rs.5985600/- is required to be recovered by invoking extended period of five year under the provision of Section 28A(4) of Customs Act, 1962. For reliance with the similar issue, the case law reported in 201(17)STR370 (Tri-Chennai), in the case of Lalit Enterprises Vs CST Chennai wherein it is held that extended period is invokable when the department came to know of Service charges received by appellant on verification of his accounts. The said evasion of tax was revealed only during the audit. If the said audit had not been conducted, the said evasion by the assessee would not have come to light".

17. Thereafter, in view of the Public Notice No.4/2018 dated 23.01.2018 issued by the Principal Commissioner, Customs, Ahmedabad stating that the work related to EOU will be handled by the office of Principal Commissioner, Customs, Ahmedabad, the case file was transferred to the Principal Commissioner of Customs, Ahmedabad for adjudication.

18. Subsequently, personal hearing was granted by the Principal Commissioner of Customs, Ahmedabad on 26.09.2019 and Shri Amit Chadda, Advocate, appeared for the personal hearing wherein he reiterated their reply dated 11.05.2016 and submitted that duty of Customs can not be demanded in clearance of goods by EOU to SEZ unit, that the goods cleared by them are Slit Tape Woven Fabrics only, that this is their finished goods and not semi finished goods for them, that this is semi finished for SEZ unit, that Development Commissioner permission was not required as per Para 6.13 of FTP (2009-14); that they were required to follow Para 6.18 read with

Para 6.13 of FTP and clauses No.12 & 14 of Rule 30 of SEZ Rules, 2006; that Hon'ble Supreme Court in the case of Suresh Synthetics 2007(216) ELT 662 (SC) upheld CESTAT decision that duty of Customs can't be demanded in case of clearance to DTA; that they also rely on Hon'ble Apex Court judgment in Saheli Synthetics Pvt.Ltd, 2015(316) ELT A 29(SC) upholding CESTAT's decision 2002(139)ELT 594 (Tri-Mumbai).

19. Thereafter, vide letter F.No.V.54/15-01/OA/2015 dated 21.11.2019, the Commissioner, Customs, Ahmedabad had transferred this case file to the Commissioner, CGST & Central Excise, Ahmedabad North with a comment that –

" the subject SCN was taken up for adjudication by the undersigned and a personal hearing in the matter was fixed on 26.09.2019, .when it was revealed that Customs duty amounting to Rs.59,85,600/- had been demanded from SKAPS under Section 28(4) of the Customs Act, 1962, whereas in case of clearance of goods from EOU without payment of duty or contravention of the provisions of the Act, it is the Central Excise duty which is to be demanded in terms of proviso to Section 3 of the Central Excise Act, 1944.

The proviso under sub-section (1) of Section 3 of the Central Excise Act, 1944 provides that the duties of excise payable on such goods manufactured in an export oriented unit shall be equal to the aggregate of the Customs duties leviable under Section 12 of the Customs Act, 1962 on like goods imported into India. However, levy and collection of duty are therefore, covered by the provisions of Central Excise Act. Therefore, duty of Central Excise which was required to be demanded in the Show Cause Notice under Section 11A of the Central Excise Act, 1944 and not Customs duty under Section 28(4) of Customs Act, 1962.

In this regard, reliance is placed on the decision of Hon'ble Supreme Court of India in the case of M/s.Suresh Synthetics reported as 2007(216) ELT 662(SC) wherein it was held as follows:

2. Before the Tribunal the short point raised by the assessee was that duty to be paid by a 100% export oriented unit for clearance in the Domestic Tariff Area is the duty of excise and not customs duty. There is merit in the above contention. The duty in question is excise duty and not customs duty. Even the investigations were made under the Central Excise Act, 1944. Therefore, the show cause notice was defective in law and since it was defective notice the demand was not maintainable. For the aforesaid reasons the Tribunal was right in coming to the conclusion that the show cause notice was defective.

The ratio of the above decision is squarely applicable to the present case and therefore, the case file No.V.54/15.01/OA/2015, is being transferred back to CGST & Central Excise Commissionerate, Ahmedabad North for further action including for issuance of corrigendum demanding duty under Section 11A of Central Excise Act, 1944 and adjudication thereof".

20. Subsequently, corrigendum was prepared and submitted for the signature of Hon'ble Commissioner for change of Adjudicating Authority from Commissioner to Additional Commissioner. The Hon'ble Commissioner has remarked in the note-sheet that-

"As the case falls under the competency of Additional Commissioner (jurisdictional), is the appropriate authority to issue the SCN/issuing corrigendum/deciding the SCN. Therefore, ADC should exercise his discretion/power to also issue corrigendum in this case"

21. A corrigendum dated 28.08.2020 was issued to read the Show Cause Notice/demand under Section 11A(1)(4) of Central Excise Act, 1944, interest under Section 11AA of the Central Excise Act, 1944 and penalty under Section 11AC(1) (c) of the Central Excise Act, 1944.

22. Accordingly, this case is taken up for adjudication as the matter is pending since long. Personal hearing in this case was also fixed before Additional Commissioner on 25.09.2020, 02.11.2020, 31.12.2020 and 02.02.2021. On the oral request of the Consultant, the personal hearing was postponed to 03.02.2021 and accordingly personal hearing was held at 1600 hrs of

03.02.2021. Shri Arjun Akruwala, CA appeared for the personal hearing. He stated that as he was not feeling well, he could not attend the hearing on 02.02.2021. He reiterated the earlier submissions made in their defence and stated that they have removed their finished goods as per LOP only. Further, he wished to submit an additional written submission within a weeks time.

23. In this case, Show Cause Notice was issued by the Commissioner, Central Excise, Ahmedabad-II vide SCN No.V.54/15-01/OA/2015 dated 15.01.2016 and based on letter dated 23.01.2020 of Commissioner of Customs, Ahmedabad a corrigendum dated 28.02.2020 was issued by the Additional Commissioner making the show cause notice answerable to the Additional Commissioner, CGST & Central Excise, Ahmedabad North. This is contrary to the guidelines issued by the Board to issue corrigendum to the show cause notices. The CBEC, vide Master Circular No.1053/02/2017-CX dated 01.03.2017 issued guidelines on various issues relating to show cause notice, adjudication, Demand related to CERA Audit etc. As per the said circular, the authority who issued the Show Cause Notice has to issue the corrigendum and then transfer the file to the new adjudicating authority. Accordingly, fresh corrigendum has been issued by the Commissioner, CGST & Central Excise, Ahmedabad North vide corrigendum dated 27.05.2021 making the show cause answerable to the Additional/Joint Commissioner, CGST & Central Excise, Ahmedabad North. Therefore, a fresh personal hearing was granted to M/s.Skaps Industries (I) Ltd 100% EOU. Shri Arjun Akruwala, CA, appeared for personal hearing. He stated that hearing in this case was granted earlier and the case was explained in detail. The written submission had also been submitted. He requested to take into consideration the submissions made earlier including written submission and various case laws submitted therein. He requested to drop the proceedings as there is no Customs duty evasion. Therefore, I am proceeding with the adjudication of the case.

Discussion and Findings:

24. I have carefully gone through the records of the case, defence reply submitted by SKAPS and submissions made before me during the course of personal hearing. I find that in the present case, two personal hearings were conducted, one before Commissioner of Central Excise, Ahmedabad II and Principal Commissioner, Customs Ahmedabad.

25. The allegation in the show cause notice is that SKAPS had transferred Semi-finished goods (Master Rolls and Yarn) to its own SEZ unit namely, M/s. Skaps Industries (India) Ltd., (MUNDRA-SEZ DIV.) Plot #10, Road 12F, Sector 12S, Mundra Integrated Textile & Apparel park (MITAP), Nr. Shantipath 4, Mundra SEZ (MPSEZ), Tal. Mundra – 370 421, Dist. Kutch, at Mundra, without payment of duty. These clearances were included in the quantum of export and they violated Para 6.13 (a) of Foreign Trade Policy 2009-14 (27th August 2009 - 31st March 2014), as per the said para, the transfer of manufactured goods shall be allowed from EOU to SEZ unit or SEZ developer by following procedure prescribed in SEZ Rules, 2006. Relevant portion of Foreign Trade Policy 2009-14 (27th August 2009 - 31st March 2014), is reproduced below:

Para 6.13 (a) :

Inter Unit Transfer:

(a) Transfer of manufactured goods from one EOU /EHTP / STP / BTP unit to another EOU / EHTP / STP / BTP unit is allowed with prior intimation to concerned DC and Customs authorities, following procedure of in-bond movement of goods. ***Transfer of manufactured goods shall also be allowed from EOU / EHTP / STP / BTP unit to a SEZ developer or unit following procedure prescribed in SEZ Rules, 2006.***

(b) Capital goods may be transferred or given on loan to other EOU / EHTP / STP / BTP / SEZ units, with prior intimation to concerned DC and Customs authorities.

(c) Goods supplied by one unit of EOU / EHTP / STP/ BTP to another unit shall be treated as imported goods for second unit for payment of duty, on DTA sale by second unit.

26. Relevant portion of per Para 6.34(5) / 6.32 (5) of Hand Book of Procedure (Vol.-1) , (27th August 2009 - 31st March 2014), is reproduced hereunder for reference :

Para 6.32 (5) :

Administration of EOUs / Powers of DC / Designated Officer :

DC / Designated Officer shall have following powers in respect to units. Jurisdiction of DC is given in Appendix 14-I-K. :

(2) to (4) .....

(6) *Permit broad-banding for similar goods and activities mentioned in LoP or to provide for backward or forward linkages to existing line of manufacture*;

27. The Department's contention is that SKAPS was required to obtain permission of broad-banding for similar goods and activities mentioned in LoP or to provide for backward or forward linkages to existing line of manufacture from the competent authority.

28. From the records it is revealed that SKAPS had **cleared/exported semi-finished goods (Master Rolls and Yarn)** to its own SEZ unit namely, M/s. Skaps Industries (India) Ltd., (MUNDRA-SEZ DIV.) without payment of duty. As per the SCN, such clearances were in contravention of the permission granted by the Development Commissioner, KASEZ, Gandhidham which was specifically mentioned the goods as "manufacture of finished goods i.e. "Slit Tape Woven Fabrics"."

29. In reply to the show cause notice, M/s. SKAPS vide their letter dated 11.05.2016 stated that -

- SKAPS is engaged in manufacture of Slit Tape Woven Fabrics classifiable under Chapter Heading No. 54072090 of the First Schedule to the Central Excise Tariff Act, 1985.
- The said finished product is manufactured out of Poly Propylene procured from domestic market or imported goods and is manufactured in thickness ranging from 160 to 400 mils.
- In many instances, they clear the finished goods in Master-roll form to their own SEZ unit located in Mundra SEZ after following due process as prescribed under the Foreign Trade Policy, 2009-14 read with the provisions of SEZ Rules, 2006.
- The SEZ unit undertakes the process of cutting and slitting of this Master-Roll as per requirements of the customers and exports it to the customers as per order. Copies of the Letter of Permission (LOP) issued to EOU for manufacture of finished goods was submitted.
- Para (2a) of Notification No. 22/2003-CE dated 31.03.2003 as amended from time to time allows EOU unit to supply or transfer goods processed, manufactured, produced of package to another unit in SEZ for any of the purposes as specified in Clause a to d of Para 1 of the above mentioned notification after giving intimation to the officer and subject to maintenance of proper account of removal and receipts of goods and following the re-warehousing procedure.
- They had cleared Slit Tape Woven Fabrics in Roll Form and therefore, the same has been mentioned as Master Roll in the shipping bill. Nonetheless, the goods remained Slit Tape Woven Fabric.

30. M/s. SKAPS has also contended that the demand cannot be raised under Customs Act as per the decision of Hon'ble Supreme Court in the case of -

a. Saheli Synthetics Pvt Ltd Vs C.C.Ex 2002(239) ELT 594 (T). The same has been affirmed by the Hon'ble Apex Court reported in 2015 (316) E.L.T. A29 (S.C.);

b. C.C.Ex Vs Suresh Synthetics 2007 (216) ELT 662 (SC);

c. Sabnam Synthetics Vs C.C.Ex 2009 (234) ELT 473 (T)

31. I find that the Department has already issued a corrigendum F.No.V.54/15-01/OA/2015 dated 28.08.2020 to read the show cause notice under Central Excise Act, 1944. Further, as per Circular F.No.450/17/2017-Cus-IV dated 10.01.2019, the CBIC has clarified that –

- Cases where the SCN or the issue in dispute either at the adjudication or at the appellate stage involves the Customs duty under Section 28 of the Customs Act, 1962 then the SCN or pending appeals may be decided by the Customs officers of appropriate rank or by the Commissioner(Appeals) of Customs as the case may be;
- Cases where both Customs as well as excise duty have been demanded simultaneously or the dispute in appeal relates to the either of the two duties demanded, then the adjudications may be done or appeals may be decided by the officers of the Central Tax or by the Commissioner (Appeals) of the Central Tax respectively.

32. I find that in the present case, the Central Tax Department is competent to decide the matter and accordingly, I proceed to decide the case. Therefore, the contention of M/s.SKAPS regarding issue of demand under Central Excise Act is unwarranted and not justifiable.

33. I find that in this case, personal hearing were held earlier before two authorities viz, Commissioner, Central Excise Ahmedabad-II and Commissioner, Customs Ahmedabad and on both the occasion, the contention of SKAPS were mainly-

- The Show Cause Notice has been issued without jurisdiction as it proposes to demand Customs Duty under the provisions of Section 28 of the Customs Act by invoking extended period of limitation for goods manufactured in EOU. It is settled law that Central Excise Duty can be demanded in terms of Proviso to Section 3 of the Central Excise Act for clearance of goods from EOU unit if the same has been cleared without payment of duty or contravention of the provisions of the Act. The measure for computing the duty is as per the provisions of the Customs Act but, it does not mean that the Customs Duty can be demanded. In the following decisions, it is held that customs duty cannot be demanded on goods manufactured in EOU and cleared in contravention of the provisions of the law:
  a) Saheli Synthetics Pvt Ltd Vs C.C.Ex 2002(239) ELT 594 (T). The same has been affirmed by the Hon'ble Apex Court reported in 2015 (316) E.L.T. A29 (S.C.);
  b) C.C.Ex Vs Suresh Synthetics 2007 (216) ELT 662 (SC);
  c) Sabnam Synthetics Vs C.C.Ex 2009 (234) ELT 473 (T);

- They also stated that the Show Cause Notice has been issued on 19.1.2016 covering the period from 2011-12 to 2013-14. However the larger period cannot be invoked in the present case as there was no intention to evade customs duty. As the duty amount is not been involved due to having the goods exported, the proposal made for invoking larger period cannot be sustained.
- M/s. SKAPS also stated that the goods cleared by SKAPS were in form of finished goods in its hand and the same were semi-finished goods in the hands of SEZ. Descriptions mentioned in each of the documents were factually correct. They had filed ER-2 returns from time to time and therefore, the revenue was well aware of their business activity and consequently the allegations in respect of the non disclosure of the correct fact is baseless and devoid of merits.

34. On going through the letter dated 11.05.2016 submitted by M/s.SKAPS along with copies of the clearance documents such as copies of invoices, packing lists, Ex-bond Shipping Bill for export of Duty Free Goods, photocopies of Bills of Entry submitted by them, I find that the goods in question were removed from the unit situated at Plot No. A-20, Survey No.423, Maha Gujarat Industrial Estate, Vill. Moraiya, Tal. Sanand, Dist. Ahmedabad were under Ex-bond Shipping Bill for Export of Duty Free Goods under Central Excise supervision duly sealed with Plier Seal./Central Excise seal. The documents bear the signature of both the Superintendent and

Inspector of the Range showing Factory Stuffing under Central Excise supervision. The remarks were made on the reverse of Invoices - under the examination report states that – *"As per stuffing permission granted by A.C.Customs ICD, Ahmedabad vide F.No. VIII/48-39/FS/ICD/2008 dated 29.01.2008 valid for until further order".*

35. Further, vide para 3.4 of the show cause notice itself states that, it has been stated that " *In the Shipping Bill they have mentioned the description of goods as "Master Rolls" and in the packing list/Custom Invoice mentioned as "Slit Tape Woven Fabrics" which is finished goods of the said assessee. However, in the Bill of Entry filed at Mundra SEZ, the description of the product is mentioned as Woven Fabrics W180-150 (Semi finished product) 54072090) – Manufactured goods". In the Bill of Entry which is filed in SEZ the said assessee has mentioned "Semi-finished goods".* Therefore, from the show cause notice itself, it is revealed that they have not removed unmanufactured goods or raw material as it is.

36. I find from the explanations given by "SKPS" that the goods namely *"Slit Tape Woven Fabrics"* removed by them to their Mundra Plant (SEZ unit) are subsequently exported from their Mundra SEZ unit. Further the goods in Master Rolls removed by them are in sheet form and they cut into pieces as per the requirement of their buyer. They also explained that the goods in question were physically exported out of India and earned foreign exchange. On the basis of submission made by SKAPS, I also find that the raw material for manufacturing the said goods is Polypropelene and after process, they made Master Roll and ultimate process of cutting into sizes has taken place at Mundra. Logically, manufacture has taken place at their Moraiya unit. They had not sent the raw material as it is to their Mundra SEZ unit. Further, the goods viz. Master rolls so sent to their SEZ Mundra unit also can not be treated as semi-finished goods for the EOU unit. Since these are in fabrics form, it is a manufactured item. Similarly, Yarn is also manufactured from Polypropylene, but not ready for export as further process is required to make it Master Rolls. Therefore, sending the yarn to their SEZ unit can not be termed as removal without manufacturing. They are ultimately exported out of India, I am of the view that no duty can be demanded on the goods exported.

37. The duty liability on any manufactured goods cleared by an EOU arises when it is cleared in DTA, without exporting the same. I find that in the instant case, there is no allegation in the show cause notice that the goods were not received by the SEZ unit, but diverted in DTA. On the contrary, I find from the documents that the goods were cleared from EOU under the physical supervision of the departmental officers and under lead seal; and re-warehousing certificate issued by the customs officer in charge of the SEZ unit has been received in respect of each of the consignments. Thus, I find that there is no dispute in the fact that the goods reached the SEZ unit.

38. SEZ is a specially demarcated enclave that is deemed to be outside the Customs jurisdiction and therefore considered to be a deemed foreign territory. Being a clearly demarcated area, there is substantial control over the physical movement of goods to and from SEZs. Thus, if the goods have reached SEZ, they may either export it or clear it in DTA on payment of applicable duty. Further, I find that as per Para 6.8 (a) of the Foreign Trade Policy 2009-14 sales made to a unit in SEZ shall also be taken into account for purpose of arriving at FOB value of export by EOU provided payment for such sales are made from Foreign Currency Account of SEZ unit.

39. I find that the show cause notice nowhere states about evasion of Customs/Central Excise duty. Once the goods reached SEZ and finally exported out of India, the duty can not demanded on it. Therefore, sending their manufactured products to their own unit situated at SEZ Mundra, is, in fact, can not be termed as violation of FTP 2009-14. Further, I find that the goods in question were removed from their Moraiya unit under the supervision of Central Excise officers

and duly sealed with Plier seal/Central Excise seal under Ex-bond Shipping Bills for Export of Duty Free Goods. Therefore, it can not be said that the goods were illegally removed.

40. Further, I also find that para 2(i) of Notification No.22/2003-CE dated 31.03.2003 allows to permit the goods processed, manufactured, produced or packaged to be supplied or transferred from a user industry to another unit, or unit in the special economic zone (SEZ), or Software Technology Parks (STP) unit or Electronic Hardware Technology Park (EHTP) unit, as the case may be, for any of the purposes as specified in clauses (a) to (d), or for export.

41. I have also gone through the copy of LOP submitted by SKAPS, issued by the Development Commissioner, Kandla Special Economic Zone, Gandhidham vide F.No.KASEZ, 100% EOU/II/98/2004-05 dated 14.09.2004. As per the said LOP, the item of manufacture is "Slit Tape Woven Fabrics" unit " Sq.Mtrs" Annual Capacity – "147.50 Lakhs Sq.Mtrs". I find that in the letter of permission (LOP) issued by the Development Commissioner, prescribes for penal action for non-achieving of NFE. The condition No.(ii) of the LOP states that –

"(ii) the unit would be required to achieve positive Net Foreign Exchange (NFE) as prescribed in EOU scheme for a period of five years from the date of commencement, failing which it would be liable for penal action".

42. In view of the above discussion, in the instant case, the substantial requirement of reaching the goods physically to SEZ unit has happened. Also, as explained by "SKAPS" final export of these goods out of India has been done and they have earned foreign exchange. Had they sent the goods to DTA, the situation would have been different and the demand for Customs duty/Central Excise Duty would have been legitimate and liable to be recovered from them along with interest and penalty under the relevant provisions. In such a scenario, I find that demanding of excise duty on such goods which physically reached SEZ in presence of officers is not justifiable, and if at all any technical irregularity has happened, the same needs to be overlooked. I am of the view that the present show cause notice does not cause any revenue loss as they have removed the goods under Central Excise supervision, manufactured out of raw material (Polyprolelene) and subsequently exported out of India. Therefore, demanding Customs/Excise duty on the goods cleared to SEZ and subsequently exported is not justifiable and not sustainable in law. Therefore, the said show cause notice is to be vacated. As the demand is not sustainable, interest and penalty demanded is also not sustainable.

43. Accordingly, I pass the following orders-

ORDER

44. I drop the proceedings initiated against M/s.Skaps Industries Ltd, (100% EOU), Plot No. A-20, Survey No.423, Mahagujarat Industrial Estate, Vill. Moraiya, Tal. Sanand, Dist. Ahmedabad vide Show Cause Notice No.V.54/15-01/OA/2015 dated 15.01.2016

(M. L. Meena)
Additional Commissioner 21/6
CEx & CGST, Ahmedabad North

Date : 21.06.2021.

F.No.V.54/15-01/OA/2015
By Registered A.D.
To
M/s.Skaps Industries Ltd, (100% EOU) ,
Plot No. A-20, Survey No.423,
Mahagujarat Industrial Estate,
Vill. Moraiya, Tal. Sanand, Dist. Ahmedabad

Copy to : 1) The Commissioner, CGST & Central Excise, Ahmedabad North.

2) The Deputy Commissioner, CGST & Central Excise, Division-IV, Ahmedabad North.

3) The Superintendent, CGST & Central Excise, Range-IV, Division-III, Ahmedabad North.

4) Guard file.