M/s. Chhajed Foods Pvt. Ltd. located at 2, Suraj Estate, Nr. Plot No. 3757, GIDC, Vatva, Phase-IV, Ahmedabad-382445 (hereinafter referred to as 'CFPL' for the sake of brevity), holding IEC No.0803008350 and PAN No.AAACC7802KFT001, filed 4 Bills of Entry for import of rejected goods namely Lays Shell Pellet (Potato Pellet Sea Shell) with RITC declared to be 19059030 claiming benefit of Notification No. 158/95-Cus dated 14.11.1995. They also filed appropriate Bonds with each consignment, binding themselves that in event of failure to re-export within specified period or extension thereof;

- They shall pay on demand in the event of this failure to comply with any of the conditions of the Bond, an amount equal to the difference between the duty leviable on such goods at the time of importation but for the exemption contained therein,

- The department may recover the amount due in terms of that bond up to the limit of Bond under the provisions of Customs Act, 1962.

02. Notification No. 158/95 dated 14.11.1995 reads as under:

_In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the Ministry of Finance, Department of Revenue notification No. 98/95, dated 26th May, 1995 the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and for the purpose specified in Column (2) of the Table hereto annexed, when re-imported into India from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act._
1975 (51 of 1975) and from the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, subject to the conditions laid down in the corresponding entry in Column (3) of the said Table.

**Conditions**

(3)

1. **Such re-importation takes place within 3 years from the date of exportation;**

2. **Goods are re-exported within six months of the date of re-importation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow;**

3. **The Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied as regards identity of the goods;**

4. **The importers at the time of importation executes a bond undertaking to –**

   (a) **export the goods after repairs or reconditioning within the period as stipulated;**

   (b) **pay, on demand, in the event of his failure to comply with any of the aforesaid conditions, an amount equal to the difference between the duty levied at the time of re-import and the duty leviable on such goods at the time of importation but for the exemption contained herein.**

03 CFPL vide their letter dated 06.11.2018 submitted that:

- the export benefits like drawback, MEIS reward, Advance License, EPCG etc. which were claimed at the time of export have been returned back.

- At the time of re-import they had filed re-import Bills of Entry for the goods exported under shipping bills before GST implementation under 46/2017 notification, and under 045/2017 for those shipping bills which were exported after GST implementation, and under both notifications there was no provision to submit the re-export material within stipulated time frame.

- that they wish to sell the same material to Local market and requested to allow to sell the balance re-imported cargo to domestic market and also requested to release their Bond along with withdrawal of extension application.

04. CFPL vide their letter dated 01.07.2019 submitted that they were unable to re-export their cargo and requested to cancel their re-export bond and clear their liability.

05. The Superintendent of Customs, ICD, Sanand vide F. No. VIII/48-03/Misc/ICD-SND/2018-19 dated 14.10.2019 informed CFPL that by not exporting the goods within
specified period or within further extension thereof, they had breached the conditions of the Bond for import of rejected goods claiming benefit of Notification No. 158/95-Cus dated 14.11.1995.

In reply CFPL vide letter dated 24.10.2019 submitted that all the export incentives taken by them have been remitted back with due interest amount and requested to cancel their re-export bond since they were unable to re-export the material to any of their overseas customer. They further submitted that their product “Pappad” in any form was exempted in terms of IGST Notification no. 002/2017 Sr. No. 96 was GST.

06. The relevant portion of IGST Notification no. 002/2017 is produced herein below for reference:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Chapter / Heading / Sub-heading / Tariff item</th>
<th>Description of Goods</th>
</tr>
</thead>
<tbody>
<tr>
<td>96.</td>
<td>1905</td>
<td>Pappad, by whatever name it is known, except when served for consumption</td>
</tr>
</tbody>
</table>

It is evident from the above that “Pappad, by whatever name it is known, except when served for consumption”, is classified under SH no. 1905.

07. CFPL, have in the BoEs filed by them for re-import classified “Potato Pellet Sea Shell” under SH no. 19059030 - which pertained to “Extruded or expanded products, savoury or salted” whereas, ‘Pappad’ was classifiable under SH no. 19059040. Therefore, it appears that “Potato Pellet Sea Shell” exported and then re-imported by CFPL were not ‘Pappad’ and therefore not eligible for benefit of exemption in terms of Sr. No. 96 of IGST Notification no. 002/2017 but liable to IGST @ 18%.

08. The request of CFPL to allow the goods to be sold in local market cannot be entertained, as the intended purpose at the time of re-import was to re-export the goods, for which they had availed the exemption of duties under relevant notification, and bound themselves to follow the procedures for availing such exemption by filling proper bond. CFPL at the time of re-import of goods had filed Bills of Entry which had been assessed for the purpose of re-export, availing exemption of applicable duties under Notification No.158/95 dated 14.11.1995 and an appropriate Bond was filed with each consignment, binding themselves that in event of failure to re-export within specified period or extension they will pay on demand in the event of this failure to comply with any of the conditions of the Bond, an amount equal to the difference between the duty leviable on such goods at the time of importation but for the exemption contained therein and the department may recover the
amount due in terms of that bond up to the limit of Bond under the provisions of Customs Act, 1962.

09. All the above facts lead to establish that by not exporting the goods within specified period or within further extension thereof, CFPL appeared to have breached the conditions of the Bond. CFPL by not discharging payment of Customs duty amounting to Rs. 91,63,943/- (Rupees Ninety One lakhs sixty three thousands nine hundred and forty three only) as per Annexure-A (copy enclosed) has rendered themselves liable for payment of such customs duty. The said duty is required to be demanded and recovered under Section 28(1) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962.

10. Pre-notice consultation in terms of proviso to Section 28(1)(a) of the Customs Act, 1962 held on 18.11.2019 was attended by Shri Rajesh Chhajed, Managing Director, CFPL. He has during pre-notice consultation submitted that their goods were classifiable under 19059040 and not 19059030 which was filed by mistake and that they would submit relevant details.

11. It is evident from above that CFPL has been deliberately trying to evade discharging their duty liability even when such duty liability was specifically pointed out to them by the Superintendent of Customs, ICD, Sanand as discussed in Para 5 above. The aforesaid acts of omission and commission on the part of CFPL has rendered themselves for penalty under Section 117 of the Customs Act, 1962.

12. Now, therefore, M/s. Chhajed Foods Pvt. Ltd., 2, Suraj Estate, Nr. Plot No. 3757, GIDC, Vatva, Phase-IV, Ahmedabad-382445 are hereby called upon to Show Cause to the Principal Commissioner of Customs, Ahmedabad having his office at Custom House, 1st Floor, Near All India Radio, Navrangpura Ahmedabad as to why :-

(i) Customs duty short paid amounting to Rs. 91,63,943/-/- (Rupees Ninety One lakhs sixty three thousands nine hundred and forty three only) (details as per Annexure-A) should not be demanded and recovered from them under Section 28 (1) of the Customs Act, 1962;

(ii) Interest should not be recovered from them under Section 28 AA of the Customs Act, 1962 on the duty short paid;

(iii) Penalty should not be imposed on them under Section 117 of the Customs Act, 1962.

13. The documents/records relied upon for this Show Cause Notice are already available with the noticee and hence, not being supplied to them.
14. If no cause is shown against the action proposed above within 30 days from the receipt of this Show Cause Notice, it will be presumed that CFPL does not desire to make any submissions and the case will be decided ex-parte on the basis of facts and evidences available on record without any further communication.

15. This Show Cause Notice is issued without prejudice to any other action that may be taken against CFPL or any other persons concerned in respect of the aforesaid goods under the Customs Act, 1962 and/or any other law for the time being in force in India.

F.No. VIII/10-66/Pr.Commr./O&A/2019

To,
M/s.Chajed Foods Pvt.Ltd.
2, Suraj Estate, Nr. Plot No. 3757,
GIDC, Vatva, Phase-IV,
Ahmedabad-382445.

Copy to :-
1. The Assistant Commissioner of Customs, ICD Sanand, Ahmedabad.
2. Guard File.

RECEIVED

CUSTOMS (HQ), ABAD.
DATE: 25.11.19
SIGN: SP

Date: 25.11.2019

(Kumar Santosh)
Principal Commissioner
### Annexure-A

**Statement showing short levy of duty of Chhajed Foods Pvt Ltd**

<table>
<thead>
<tr>
<th>BE No.</th>
<th>BE date</th>
<th>Out of Charge date</th>
<th>Re export limit time (upto date)</th>
<th>Re export limit time (extended upto)</th>
<th>Import Qty</th>
<th>Item Description</th>
<th>CTH</th>
<th>Assessable value (item)</th>
<th>BCD @30%</th>
<th>SWC @3 or 10%</th>
<th>IGST @18%</th>
<th>Total Duty liabilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>3435318</td>
<td>29.09.2017</td>
<td>28.11.2017</td>
<td>27.05.2018</td>
<td>26.08.2018</td>
<td>57213</td>
<td>Lays shell pellets (Potato Pellet Sea Shell)</td>
<td>19059030</td>
<td>7094999</td>
<td>2128500</td>
<td>63854.991</td>
<td>1671723.7</td>
<td>3864078.355</td>
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<tr>
<td>5277564</td>
<td>19.02.2018</td>
<td>09.03.2018</td>
<td>05.09.2018</td>
<td>N.A.</td>
<td>36613</td>
<td>Lays shell pellets (Potato Pellet Sea Shell)</td>
<td>19059030</td>
<td>4721723</td>
<td>1416517</td>
<td>141651.69</td>
<td>1130380.5</td>
<td>2688549.076</td>
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<tr>
<td>4887496</td>
<td>20.01.2018</td>
<td>17.02.2018</td>
<td>16.08.2018</td>
<td>N.A.</td>
<td>13284</td>
<td>Lays shell pellets (Potato Pellet Sea Shell)</td>
<td>19059030</td>
<td>1707792</td>
<td>512337.6</td>
<td>15370.128</td>
<td>402389.95</td>
<td>930097.679</td>
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<tr>
<td>4766980</td>
<td>11.01.2018</td>
<td>13.02.2018</td>
<td>12.08.2018</td>
<td>N.A.</td>
<td>24048</td>
<td>Lays shell pellets (Potato Pellet Sea Shell)</td>
<td>19059030</td>
<td>3086955</td>
<td>926086.5</td>
<td>27782.595</td>
<td>727348.34</td>
<td>1681217.432</td>
</tr>
</tbody>
</table>

**Grand total** 9163942.5427