

	<p>सीमा शुल्क (निवारक) के आयुक्त का कार्यालय, सीमा शुल्क भवन, जामनगर - राजकोट हाइवे, विक्टोरिया ब्रिज के पास, जामनगर (गुजरात) - 361 001</p> <p>Office of the Commissioner of Customs (Preventive), 'SEEMA SHULK BHAVAN', Jamnagar – Rajkot Highway, Near Victoria Bridge, Jamnagar (Gujarat) – 361 001</p> <p>Email: commr-custjmr@nic.in; adj-custjmr@nic.in</p>
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Document Identification Number (DIN)- 20250371MM0000500075

1.	फाइल क्रमांक/ File Number	CUS/607/2024-Adjn.
2.	मूल आदेश क्रमांक/ Order-In-Original Number	JAM-CUSTM-PRV-COM-13-24-25
3.	आदेश पारित करने वाला प्राधिकारी/ Authority Passing the Order	धिरेन्द्र लाल / Dhirendra Lal आयुक्त / Commissioner, सीमा शुल्क (निवारक)/ Customs (Preventive) जामनगर /Jamnagar.
4.	आदेश की तिथि/ Date of Order	21.03.2025
5.	आदेश जारी करने की तिथि/ Date of issue of Order	21.03.2025
6.	कारण बताओ नोटिस संख्या और तारीख/ Show Cause Notice number and date	संख्या/ No. / दिनांक / dated: SCN No. COMMR-03/2024-25 dated 02.09.2024
7.	नोटिस पाने वाले का नाम/ Name of the Noticee	मेसर्स रिवोल्यूशन पेट्रोकेम एलएलपी, 212, प्लॉट नंबर 13, रिद्धि सिद्धि आर्केड 1- बीएम पेट्रोल पंप के पास, हितेश मोटर्स के सामने, गांधीधाम-370201. मेसर्स साओ वियत पेट्रोल ट्रासपोर्टेशन कंपनी लिमिटेड, फ्लोर-3, वियत टॉवर नंबर 1, धाई हा स्ट्रीट दुंगलिएट वार्ड, डोंग दा, जिला हनोई, वियतनाम सी/ओ. मेसर्स जमनादास रामजी [चार्टर्ड एजेंट], 101, माइलस्टोन, पी.एन. मार्ग, पंचवटी सोसायटी, जामनगर-361002. श्री गुरेन वान होआन [पासपोर्ट नंबर K0367107-वियतनाम], मारस्टर ऑफ एम.टी. पांडा, सी/ओ. मेसर्स जमनादास रामजी [चार्टर्ड एजेंट], 101, माइलस्टोन, पी.एन. मार्ग, पंचवटी सोसायटी, जामनगर-361002.

मेसर्स श्री कृष्णा कारी प्राइवेट लिमिटेड
शॉप नंबर 7 (पीछे की तरफ), सीताराम बिल्डिंग,
एफ-ब्लॉक, ग्राउंड पलौर, मार्केट रोड, फोर्ट,
मुंबई-400001

श्री सरवन कुमार,
बार्ज एम.वी. सोनल के मास्टर
सी.ओ. मेसर्स श्री कृष्णा कारी प्राइवेट लिमिटेड,
दुकान नं. 7 (पीछे की तरफ), सीताराम बिल्डिंग, एफ-वी लॉक,
ग्राउंड पलौर, मार्केट रोड, फोर्ट, मुंबई-400-001

M/s Revolution Petrochem LLP,
212, Plot No.13, Riddhi Siddhi Arcade-1,
Near BM Petrol Pump, Opp. Hitesh Motors,
Gandhidham.

M/s. Sao Viet Petrol Transportation Co. Ltd.,
Floor-3, Viet Tower No.1, Thai Ha Street
TrungLiet Ward, Dong Da, Dist. Hanoi,
Vietnam
C/o. M/s. Jamnadas Ramji [Chartered Agent],
101, Milestone, P.N. Marg, Panchvati Society,
Jamnagar-361002.

Mr. Nguyen Van Hoan [Passport No. K0367107-Vietnam].
Master of M.T. Panda,
C/o. M/s. Jamnadas Ramji [Chartered Agent],
101, Milestone, P.N. Marg, Panchvati Society,
Jamnagar-361002.

M/s. Shree Krishna Quarry Pvt. Ltd.
Shop No.7 [Rear Side], Sitaram Building,
F-Block, Ground Floor, Market Road, Fort,
Mumbai-400001

Shri Sarvan Kumar,
Master of Barge MV Sonal
C/o. M/s. Shree Krishna Quarry Pvt. Ltd.,
Shop No.7 (Rear Side), Sitaram Building, F-VLock
Ground Floor, Market Road, Fort, Mumbai-400 001

- इस आदेश की मूल प्रति संबन्धित व्यक्ति को निशुल्क प्रदान की जाती है।

The original copy of this order is provided free of cost to the person concerned.

- इस मूल आदेश से व्यक्ति कोई भी व्यक्ति, सीमा शुल्क अधिनियम, 1962 की धारा 129A(1)(a), सीमा शुल्क (अपील) नियम, 1982 के नियम 6(1) के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से तीन महीने के भीतर फॉर्म सीए-3 में निम्नलिखित पते पर अपील दायर कर सकता है। फॉर्म सीए-3 में अपील का प्रपत्र, चार प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियों संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। (जिनमें से कम से कम एक प्रमाणित प्रति हो)।

सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण, पश्चिम जोनल बेच,

दूसरी मंजिल, बहुमाली भवन असरवा, गिरधर नगर ब्रिज के पास, गिरधर नगर, अहमदाबाद,

Customs, Excise and Service Tax
Appellate Tribunal (West Zonal
Bench)

2nd Floor, Bahumali Bhavan Asarwa, Near
Girdhar Nagar Bridge, Girdhar Nagar

(ગુજરાત) – 380 004

Ahmedabad (Gujarat) – 380 004

Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-3, within three months from the date of receipt of this order, under the provisions of Section 129A(1)(a) of the Customs Act, 1962, read with Rule 6(1) of the Customs (Appeals) Rules, 1982. The form of appeal in Form No. CA-3 shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).

3. अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये 0.50 (पचास पैसे केवल) का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची - I, मद 6 के तहत निर्धारित किया गया है।

The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paisa only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

4. अपील के साथ, सीमा शुल्क अधिनियम, 1962 की धारा 129 (A) की उप-धारा (6) के अंतर्गत किसी भी राष्ट्रीयकृत बैंक द्वारा न्यायाधिकरण की उक्त पीठ के सहायक रेजिस्ट्रार के पक्ष में रेखांकित बैंक ड्राफ्ट रु। 1000/-, रु। 5,000/- या रु। 10,000/- जैसा भी लागू हो, ऐसे स्थान पर स्थित शाखा के लिए जारी किया जाना चाहिए, जहां पर उक्त पीठ स्थित है।

The appeal should be accompanied with a cross demand draft in favour of the Assistant Registrar of the Bench of the Tribunal, on a branch of any Nationalized Bank located at a place where the bench is located for Rs. 1,000/- (in cases where the duty, interest, fine, or penalty demanded is Rs. 5 lakh or less), Rs. 5,000/- (in cases where the duty, interest, fine, or penalty demanded is more than Rs. 5 lakhs but less than Rs. 50 lakhs) and Rs. 10,000/- (in cases where the duty, interest, fine, or penalty demanded is more than Rs. 50 lakhs) as applicable under Sub-Section (6) of the Section 129(A) of the Customs Act, 1962.

5. अपीलीय ज्ञापन के साथ शुल्क भुगतान/ जुर्माना/ अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, 1962, की धारा 129 (E) के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।

Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 129 (E) of the Customs Act, 1962.

6. अपील प्रस्तुत करते समय यह सुनिश्चित करें कि सीमा शुल्क (अपील) नियम, 1982 और सिस्टेट प्रक्रिया (प्रोसीजर) नियम, 1982 के सभी नियमों का पूरा पालन हुआ है।

While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.

7. इस आदेश के खिलाफ अपील, सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के 7.5% के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।

An appeal, against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal, on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.



BRIEF FACTS OF THE CASE:

M/s Revolution Petrochem LLP, 212, Plot No. 13, Riddhi Siddhi Arcade-1, Nr. BM Petrol Pump, Opp. Hitesh Motors, Gandhidham [hereinafter referred to as "the Noticee No. 1" / "M/s. Revolution"] is a Limited Liability Partnership having Importer-Exporter Code (IEC) - AAWFR8624D and GSTIN - 24AAWFR8624D1ZV and engaged in collection of Slop/sludge Oil from the vessels arriving at ports like Sikka, Vadinar, Mundra etc. and subsequent sales thereof after processing at their factory/recycling plant at Plot No. 187, Mithirohar (GGDC) Village Mithirohar, Gandhidham-Kutch.

2. Whereas, intelligence was received regarding smuggling of the Fuel Oil by the foreign run vessels coming to Sikka Port to load / discharge the Petroleum Products. Acting on the Intelligence to the effect that a Tanker Vessel namely MT Panda was to discharge 800 MTs of Fuel Oil into a bunker barge at Sikka anchorage in guise of discharging Slop / Sludge Oil, the said tanker vessel was visited and searched by the Customs Officers on 02.02.2023 under search authorisation issued under Section 105 of the Customs Act, 1962 and the search proceedings were recorded under Panchnama dated 02.02.2023.

3. Whereas, vessel MT Panda arrived at Sikka Port anchorage on 02.02.2023 to discharge 99288.826 MTs of Fuel Oil on account of M/s. Reliance Industries Ltd. During boarding of the said vessel by the Customs Officers, a Bunker Barge namely MV Sonal, was noticed alongside the vessel MT Panda purportedly to receive the Slop / Sludge Oil. During the search operation carried out by the Officers of Customs, foreign currency i.e. USD 60,000/- was recovered from the Captain's Day Room (hidden in a pillow cover), about which Master of the vessel Mr. Nguyen Van Hoan [hereinafter referred to Noticee No. 3], failed to produce any legal documents and admitted that it was in excess of the Ship's Currency declared by him on arrival at Sikka Port, amounting totally to USD 11,600/- The Master of the vessel admitted that he did not have any documents regarding legal possession of the foreign currency of USD 60,000/-, recovered from Captain's Day Room. On being asked by the Customs Officer, Master Nguyen Van Hoan replied that he had received this amount in the morning on 02.02.2023 from a person namely Shri Pintu Batham, who was sent by Shri Haresh Harjani, who was in contact with him for discharge of Slop / Sludge Oil; that Shri Pintu Batham came on board MT Panda from bunker barge MT Sonal which came alongside to receive Fuel Oil in guise of loading Slop / Sludge Oil; that the Fuel Oil to be discharged in the bunker Barge MV Sonal was not in the Import General Manifest (IGM) filed on arrival at Sikka Port. On further being asked, the master of MT Panda confessed to have made a deal with Shri Haresh Harjani having Mobile No. 9824286952 to discharge smuggled Fuel Oil 800 MTs in guise of Slop / Sludge Oil in bunker barge MV Sonal against payment in USD directly as well as rest amount in his bank account No. 0911000047379 in Vietcom Bank; that Master was

instructed by Shri Haresh Harjani to hide all such payments from Customs and discharge the smuggled Fuel Oil after Custom's clearance of the vessel MT Panda on arrival.

4. Whereas, during the preliminary investigation by the officers of Customs, it was found that in addition to 99288.826 MTs of manifested cargo of Fuel Oil, 800 MTs of Fuel Oil was stored in the starboard side Slop Tank of the vessel MT Panda on arrival at Sikka Port which was illegally brought into India without any proper / legal documents and approximately 241 MTs of which had been discharged into barge MV Sonal on 02.02.2023. Remaining around 559 MTs of Fuel Oil was on board the vessel MT Panda, in starboard side Slop Tank. Thus 800 MTs of Fuel Oil brought illegally in Starboard Side Slop Tank per MT Panda was found not declared in IGM, without any Bill of Lading and no Bill of Entry filed for the same. Further foreign currency of USD 60,000/- was recovered from the Master's Room (Captain's Day Room) which was confessed by Master Mr. Nguyen Van Hoan to be Sales Proceeds he received in lieu of smuggling of 800 MTs of smuggled Fuel Oil through bunker barge MV Sonal. Above facts were also evidenced in view of the print outs of the WhatsApp-chat between Master of MT Panda and Shri Haresh N. Harjani, one of the partners of M/s Revolution Petrochem LLP, as retrieved during the search proceedings on 02.02.2023. In view of the above, it appears that:-

- (a) vessel MT Panda was used as a means of transport in the smuggling of goods i.e., Fuel Oil and for which vessel MT Panda was liable for confiscation under Section 115 of the Customs Act,1962.
- (b) Further, 800 MTs of un-manifested Fuel Oil whereas found to have been smuggled into India was liable for Confiscation under Section 111(f) & 111 (I) of the Customs Act, 1962.

Therefore, vide Seizure Memo dated 02.02.2023, vessel MT Panda valued at approx. USD 1,19,25,000/- (Rs. 98,00,00,000/-) as per Insurance Policy No. MHX/02121897 issued by Baominh Insurance Corporation, Vietnam was placed under seizure under the provisions of Section 110(1) of the Customs Act, 1962 under reasonable belief that the same is liable for confiscation under Section 115 of the Customs Act, 1962. Details of vessel are as under:-

Name of Vessel	MT Panda
IMO No.	9284582
Owner	SAO Viet Petrol Transportation Company Limited, Vietnam
Type	Oil Carrier
Flag	Vietnam
Master	Mr. Nguyen Van Hoan

Further, 800 MTs of Fuel Oil, value of which was ascertained to be approximately INR 4,00,00,000/- was also placed under seizure vide Seizure Memo dated 02.02.2023 under Section 110(1) of the Customs Act, 1962 under reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962. The details of the goods are as under:-

Name of Goods	Fuel Oil
Quantity (Approx)	559 MT (Remaining on board vessel)
Value (Approx)	INR 2,79,50,000/-

5. Whereas, in continuation of investigation initiated through search proceedings on vessel MT Panda, further search was also conducted on bunker barge MV Sonal by Customs Officers on 02.02.2023 wherein it was found that 241 MTs of Fuel Oil was discharged into the same from vessel MT Panda as confirmed by Shri Sarvan Kumar [hereinafter referred to as "the Noticee No. 5"] the Master of barge MV Sonal. Master of bunker barge MV Sonal informed to have no documents for cargo of 241 MTs of Fuel Oil; that one person namely Shri Pintu Batham was found present on board bunker barge MV Sonal, about whom Master of MV Sonal Shri Sarvan Kumar informed that he boarded the barge at Kandla Port and came with them to Sikka anchorage. Shri Pintu Batham, on being asked by Customs Officer about purpose of coming to Sikka anchorage on board MV Sonal, replied that he was sent by Shri Haresh Harjani with USD 60,000/- to be delivered to the Master of vessel MT Panda. Further it was found in the preliminary investigation of Customs that:-

- (i) bunker Barge MV Sonal was used in transportation of smuggled goods i.e. Fuel Oil, for which the barge MV Sonal was liable for confiscation under Section 115 of the Customs Act, 1962;
- (ii) 241 MTs of Fuel Oil on board Barge MV Sonal was smuggled into India and thus appears to be liable for confiscation under Section 111(f) & 111(g) of the Customs Act, 1962.

Therefore, Barge MV Sonal valued at Rs. 2,00,00,000/- was placed under seizure vide Seizure Memo dated 02.02.2023 under provisions of Section 110(1) of the Customs Act, 1962 under the reasonable belief that the same is liable for confiscation under Section 115 of the Customs Act, 1962. Details of the barge are as under:-

Name of Barge	MV Sonal
IMO No	8786052
Owner	M/s Bapu Shipping (as informed by the Master)

Type	Barge
Flag	Indian
Master	Sarvan Kumar

Further, it appears that 241 MTs of Fuel Oil valued approximately at Rs. 1,20,00,000/- was also placed under seizure vide Seizure Memo dated 02.02.2023, under provisions of Section 110 (1) of the Customs Act, 1962 under reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962.

6. Whereas statement of Mr. Nguyen Van Hoan, Master of the vessel MT Panda was recorded on board under Section 107 of the Customs Act, 1962 on date 02.02.2023, wherein he, inter alia, stated that :-

- 99,288.826 MTs of Fuel Oil (2 Bills of Lading) as Cargo was loaded in the vessel at Offshore Suez through STS (Ship to Ship transfer) from vessel MT SIMOON;
- The whatsapp chat noticed by the Customs Officers on his mobile, was the chat, as per which he had brought 800 MTs of Fuel Oil in Starboard Side Slop Tank in guise of Slop / Sludge Oil, which was not manifested in the IGM;
- After getting information of arrival of Customs Officer, he asked the crews to disconnect the hose pipe connected to bunker barge MV Sonal as he was afraid of being caught discharging Fuel Oil in guise of Slop / Sludge oil;
- He illegally brought 800 MTs of Fuel Oil on his voyage to Sikka Port as per his deal with Shri Haresh Harjani who promised him to pay USD 1,60,000/- out of which USD 60,000/- was paid directly to him by Shri Pintu Batham and rest amount was to be deposited into his account NO. 0911000047379 in Vietcom Bank;
- He had not declared the above received Currency of USD 60,000/- in the IGM;
- Regarding source of 800 MTs of Fuel Oil, he replied that the said cargo of 800 MTs of Fuel Oil was purchased at Suez STS Area over and above the manifested Bill of Lading quantity of Fuel Oil 99288.826 MTs;
- Regarding the value of un-manifested cargo of Fuel Oil brought illegally in Starboard Side Slop Tank, Master Mr. Nguyen Van Hoan stated that he was not aware of the value, but he was promised a total payment of USD 1,60,000/- for delivering the illegally smuggled Fuel Oil at Sikka Port;
- Regarding any of the crew/officers/vessel operator/vessel owner other than him, were aware of this smuggling of 800 MTs of Fuel Oil, he stated that he was the only one who was aware about this and involved in the operation;
- Quantity of Fuel Oil was found to be 559 MTs in the sounding of Starboard Side Slop tank of vessel MT Panda by Customs Officer, so on being asked about the

remaining quantity of Fuel Oil, he stated that the remaining quantity of 241 MTs of Fuel Oil had already been discharged into barge MV Sonal.

7. Whereas, 241 MTs of smuggled Fuel Oil was found discharged into bunker barge MV Sonal in guise of discharge of Slop / Sludge Oil, statement of Shri Sarvan Kumar, Master of barge MV Sonal was recorded under Section 108 of the Customs Act, 1962, on board on date 02.02.2023 wherein, he, inter alia, stated that:

- He had been asked by Mr. Uday Singh (Mob No. 9909944785) to load Slop / Sludge Oil from vessel MT Panda at Sikka anchorage point on 01.02.2023 at 9.00 PM, but quantity was not specified;
- Previously he was not aware but once the loading started he knew that vessel MT Panda was discharging Fuel Oil like liquid instead of Slop/Sludge Oil;
- Shri Pintu Batham (Adhaar No. 305982429767) boarded the barge MV Sonal at Kandla on 02.02.2023 and came along with him for assistance in illegal discharging of Fuel Oil;
- He had completed loading of approx. 241 MTs of Fuel Oil by the time Customs authority boarded the vessel MT Panda;
- On being asked about as to why he disconnected hose pipe from the vessel in midst the discharging operation of fuel oil, he replied that as soon as the Master of vessel MT Panda came to know that Customs authority was to board the vessel, he asked his crew to disconnect the hose pipe and asked the Barge Master to go away from the vessel till the Customs remain on board;
- On being asked about whether he had received any money / consideration from Mr Uday Singh or from any other person for the illegal discharge of fuel oil, Master Shri Sarvan Kumar replied in negative.

8. Whereas, Shri Pintu Batham was the person who had delivered Foreign Currency of USD 60,000/- to Mr. Nguyen Van Hoan, Master of vessel MT Panda, and his statement was therefore recorded on 02.02.2023 under Section 108 of the Customs Act, 1962 wherein he, inter alia, stated that he was an employee of M/s Revolution Petrochem LLP, and he supervise the discharge of Fuel Oil / Slop / Sludge oil from the vessels into bunker barge and Tanker Trucks; that

- he was reporting to Shri Haresh Harjani & Shri Jimmy Thacker who were Partners in firm M/s Revolution Petrochem LLP;
- he was found on board vessel MT Panda and on being asked about which he stated that he boarded the vessel MT Panda at Sikka anchorage from barge MV Sonal which he had boarded from Bandar area of Kandla Port on 02.02.2023 around 0030 Hrs.;
- his purpose for boarding barge MV Sonal was for loading of Fuel Oil from vessel MT Panda at Sikka anchorage as per direction of Shri Haresh Harjani of M/s Revolution Petrochem LLP;

- garding any further direction whether he received about discharging of Fuel Oil, he stated that he was supposed to inform both the partners Shri Jimmy Thacker and Shri Harsih Harjani, but he had informed only Shri Jimmy Thacker about leaving OTB (Kandla) which could also be confirmed from his whats-app chat on his mobile;
- On being asked about the USD 60,000/- Master of vessel MT Panda said to have received from him, Shri Pintu Batham stated that Shri Haresh Harjani gave him USD 60,000/- at the office of M/s Revolution Petrochem LLP at around 2000 Hrs. on 01.02.2023 in Gandhidham, with a direction to give to the Master of vessel MT Panda for delivering Fuel Oil to barge MV Sonal and also instructed him to update him on the quantity delivered to the barge MV Sonal;
- On being asked whether he was aware about the barge MV Sonal was coming for loading of Fuel Oil in guise of Slop / Sludge Oil, he stated that he was aware of this and for which permission was taken from Customs Sikka to unload Slop / Sludge Oil but illegally imported Fuel Oil was to be unloaded in the barge MV Sonal for which he was given USD 60,000/- which he had handed over to the Master of vessel MT Panda and the same was explained to him by Shri Haresh Harjani;
- On being asked about quantity of Fuel Oil to be unloaded in barge MV Sonal from vessel MT Panda, he stated that Shri Harsih Harjani directed Shri Pintu Batham to inform him after loading around 400 MTs in barge MV Sonal, so that he would give further direction for loading of remaining quantity of illegally imported Fuel Oil;
- That by the time Customs authority boarded the vessel MT Panda, barge MV Sonal had already received 241 MTs of Fuel Oil;
- On being asked about disconnecting hose pipe in midst of discharging of Fuel Oil, when he got to know that the Customs authority coming on board MT Panda to grant Customs clearance, he stated that Master of vessel MT Panda on knowing about Customs authority coming on board, asked his crew to disconnect the hose pipe and asked the barge to go away from the vessel till Customs Officers remain on board;
- He had given huge amount of Foreign Currency to Master of vessel in lieu of receipt of illegally imported Fuel Oil from MT Panda, so he was asked whether he himself received any amount from Master of the vessel or from Shri Haresh Harjani, or from any other person for illegal discharge of Fuel Oil, to what he denied to have received any amount from anybody.

9. Whereas, in the follow up action, search proceedings were carried out at the Office premises and manufacturing plant of M/s Revolution Petrochem LLP vide panchnarna on 07.02.2023 and 08.02.2023 respectively at the following addresses and documents and other evidences relevant to the investigation were resumed:-

- (a) 212, Plot NO. 13, Riddhi Siddhi Arcade-1, Near BM Petrol Pump, Opp. Hitesh Motors, Gandhidham (Office Premises).

(b) Plot No. 187, Mithirohar, (GGDC), Gandhidham (Manufacturing Plant).

that during the search operation at the office premises of M/s Revolution Petrochem LLP, Shri Karan Haresh Harjani, son of one of the Partners Shri Haresh Harjani remained present. On being asked by the Customs Officers, Shri Karan Harjani contacted his father Shri Haresh Harjani, and asked him to attend the search proceedings to what Shri Haresh Harjani assured to return to office within 4-5 hours, but he did not come and evaded his presence during the search proceedings.

10. Whereas, statement of Shri Amol Rajaram Gadhigaokar, an employee of M/s Omega Marine Service & M/s Omega Offshore Services was recorded on 08.02.2023 under Section 108 of the Customs Act, 1962, wherein he, inter alia, stated that:

- He was an employee of M/s Omega Offshore Services, a Partnership firm of Shri Jimmy Thakkar and Shri Karan Pandya; that these two persons are also Partners in M/s Revolution Petrochem LLP and he was asked by Shri Karan Pandya to also work for M/s Revolution Petrochem LLP on Customs and Port related works for Kandla and Mundra Ports;
- That he came to know about this incident of illegal import of Fuel Oil (Smuggled) at Sikka port on 04.02.2023 and on 07.02.2023 he got to know the full story when Shri Karan Pandya asked him to go to the office of M/s Revolution Petrochem LLP;
- That Shri Karan Pandya and Shri Haresh Harjani called him through Whats app call to go to office of M/s Revolution Petrochem LLP during the search proceedings;
- On being asked about process of sludge / slop oil from vessels and what quantity is generally discharged in one turn from each vessel, Shri Amol Rajaram replied that as he was earlier looking after the Customs clearance related work for M/s Revolution Petrochem LLP and he was aware of the process of sludge/slop oil discharge function, that generally one vessel would discharge 20 to 50 MTs in one time;
- That as a huge quantity of Fuel Oil (800 MTs) was seized for being imported illegally and so as per his understanding such big decision could not have been taken by a single partner of the firm; that Mr Haresh Harjani and Mr Karan Pandya were definitely involved in the said act as they sent him to find out what was going on in office of M/s Revolution Petrochem LLP during search proceedings of Customs.

11. Whereas statement of Shri Issrani Sunil Naresh, a person who worked for M/s Revolution Petrochem LLP and was present during search proceedings at their office premises, was recorded on 08.02.2023 under Section 108 of the Customs Act, 1962, wherein, he inter alia, stated that:

- he prepared documents for Customs related procedures for M/s Revolution Petrochem LLP for discharge of sludge / slop oil from the vessels arriving at Mundra Port and email the same to Port of Control, Mundra Port and Tuna Port;

- He was shown the Panchnama dated 07/08.02.2023 drawn at the premises of M/s Revolution Petrochem LLP, Gandhidham and after reading the same he agreed to the correctness of the same;
- On being asked about the operation of M/s Revolution Petrochem LLP, he stated that the said firm was in the operation of collecting sludge / slop oil from the vessels and sale thereof after processing in their factory/plant situated at Mithirohar, Gandhidham; that he came to know from Shri Haresh Harjani about the incident of illegal import of Fuel Oil [smuggled] at Sikka Port on 06.02.2023; that he is not aware or involved in any manner in the illegal import of Fuel Oil at Sikka Port'
- On being asked about the Number of vessels discharging sludge oil which was purchased by M/s Revolution Petrochem LLP, he stated that approx 10 to 12 vessels arrived at Mundra port for which M/s Revolution Petrochem LLP performed sludge / slop discharge function; that generally one vessel would discharge 20 to 50 MTs at a time;
- That as huge quantity of Fuel Oil (800MT) was seized for being imported illegally and so as per his understanding such big decision could not have been taken by a single partner of the firm; that Mr Haresh Harjani and Mr Karan Pandya were definitely involved in the said act as they were having regular meeting in the office on 02.02.2023 which didn't often happen.

12. Whereas statement dated 08.02.2023 of Shri Karan Haresh Harjani, the main person present at the office premises of M/s Revolution Petrochem LLP during search proceedings on 08.02.2023 was recorded under Section 108 of the Customs Act, 1962, wherein he, inter alia, stated that he was the son of Shri Haresh Harjani, one of the Partners of M/s Revolution Petrochem LLP;

- On being asked about the operation of M/s Revolution Petrochem LLP, he stated that he knew about the operations of the said firm to be collection of sludge / slop oil from the vessels and sale thereof after processing at the factory / plant of M/s Revolution Petrochem LLP at Mithirohar Village, Gandhidham;
- That he came to know about the illegal import of Fuel Oil (Smuggled) at Sikka port on Saturday i.e. on 03.02.2023 from his father Shri Haresh Harjani;
- On being asked about his role in the said smuggling of Fuel Oil through vessel MT Panda, he stated that he sat in office of M/s Revolution Petrochem LLP at Riddhi Siddhi Arcade-1, Gandhidham (Kutch) and he was not involved in the smuggling of Fuel Oil;
- Further on being asked about involvement of other partners of M/s Revolution Petrochem LLP, he stated that as huge quantity of 800MT of Fuel Oil was seized which was illegally imported / smuggled and such big decision as per his understanding was not to be taken by a single partner of the firm and so there was a strong possibility of involvement of other partners of the firm.

13. Whereas, statement of Shri Jignesh Kumar Prajapati, employee of M/s Revolution Petrochem LLP was recorded on 13.02.2023 under Section 108 of the Customs Act, 1962, wherein he, inter alia, stated that he worked in the factory of M/s Revolution Petrochem LLP at Mithi Rohar (GGDC), Gandhidham and he looked after the work of refining slop / sludge oil by the heating process;

- On being asked about the refining process he stated that there was a boiler (Thermic Fluid Heater) in the plant in which a fluid is heated and circulated to the chamber / vessels in which slop / sludge is stored for reprocessing and the moisture is removed from the slop / sludge in this process; that he maintained the inventory of input and output of the plant;
- He was shown three pages of the registers seized vide Panchnama drawn at the factory of M/s. Revolution Petrochem LLP on 07.02.2023 and was asked to explain the entries in the column "Description of Material", to which he replied that they often write the name of Slop Oil by the description of Cargo of the vessel from which slop / sludge was discharged, for example, if the vessel was carrying naphtha as cargo and discharge slop then they would write in the register as Naphtha Slop Oil;
- On being asked as to how did he know about the seizure of Barge MV Sonal and approx. 241 MT illegally imported (Smuggled) Fuel Oil through the vessel MT Panda at Sikka port, he replied that he was not aware of this incident but on 07.02.2023 he came to know about the complete incident from Mr. Karan Pandya on phone;
- On being asked about the delivery of the foreign currency USD 60000/- for smuggling of 800 MT Fuel Oil to the Master of Vessel MT Panda he stated that he met Mr. Jimmy Thacker on 08.02.2023, one of the partners of M/s. Revolution Petrochem LLP and discussed the delivery of USD 60000/- to the Master of the vessel MT Panda in lieu of delivery of smuggled fuel oil, then he got to know the complete picture of the case;
- On being asked whether he knew as to who delivered the above mentioned USD 60000/- to the master of the Vessel MT Panda, he stated affirmatively that it was told to him by Mr. Jimmy Thacker that Mr. Pintu Batham delivered the currency USD 60000/- to the master.

14. Whereas, statement of Shri Jimmy Shashikant Thacker, Partner of M/s Revolution Petrochem LLP, was recorded on 13.02.2023 under Section 108 of the Customs Act, 1962 wherein he, inter alia stated that:-

- He was the Partner of M/s Omega Marine, whose function was to collect Solid Garbage, ship-generated waste scrap from vessels; that he was also one of the Partners in M/s. Revolution Petrochem LLP, whose function was to collect Slop / Sludge from the vessel and after processing at the factory of M/s. Revolution Petrochem LLP, they sell the final product i.e. Refined / Reprocessed Furnace Oil; that the work of selling Refined / Reprocessed Furnace Oil was looked after by other partner Mr. Karan Pandya; that he

was also the partner of M/s. Omega Offshore, which owned a barge namely MT Mars & a Tug Zennie and they charter the barge & Tug to other companies/Firms;

- The main operation of M/s. Revolution Petrochem LLP, was to collect Slop / Sludge from the vessels and sale after processing the same in the factory / plant of M/s Revolution Petrochem LLP, situated at Plot No.-187, Mithirohar (GGDC) Village Mithirohar, Gandhidham-Kutch;
- On being asked about the modus operandi adopted by M/s Revolution Petrochem LLP, he stated that they were engaged in the work of collecting Slop / Sludge oil from the vessels at Kandla, Mundra, and Jamnagar Customs Commissionerate; that Mr. Haresh Harjani contacted the master of the Vessel MT Panda by communicating through E-mail for Slop / Sludge and then he exchanged his contact Nos. with the master of the vessel MT Panda and the Master of the vessel MT Panda later informed him that he had 800 MTs of fuel Oil concealed in the Slop Tanks of the Vessel and he would deliver this smuggled (Un-manifested) cargo at Sikka Port and charge USD 200/- per Metric Ton;
- On being asked about the delivery of the foreign currency USD 60000/- for smuggling of 800 MTs Fuel Oil to the Master of Vessel MT Panda, he stated that he had no idea about this earlier, but after the seizure of the Barge MV Sonal and after the statement of Mr. Pintu Batham, he was briefed on phone by Mr. Haresh Harjani about the delivery of USD 60000/- to the Master of the vessel MT Panda in lieu of delivery of smuggled fuel oil;
- On being asked about the person who delivered the above mentioned USD 60000/- to the master of the Vessel MT Panda, he replied that one of the employees of his firm M/s. Revolution Petrochem LLP, Mr. Pintu Batham delivered this currency to the master of the vessel on the vessel on board;
- On being asked as to from where did this huge amount of foreign currency of USD 60,000/- obtained, Shri Jimmy Shashikant Thacker stated that this currency was arranged by Mr. Haresh Harjani from the supply of water to the vessels and received the payments in USD from the vessels; that the above mentioned USD 60,000/- was the amount that he received from the vessels;
- Further on being asked whether other partners of M/s. Revolution Petrochem LLP or any other person involved in the smuggling of Fuel Oil, he replied that his partner Mr. Haresh Harjani was involved in this matter with him and they had planned this by taking decisions jointly;
- As mentioned above, he along with his partner had illegally imported 800 MTs of Fuel Oil at Sikka, so he was asked whether any other such illegal import was performed by him through M/s. Revolution Petrochem LLP in the guise of Slop / Sludge Oil, to what he replied that he had never smuggled Fuel oil in the guise of Slop / Sludge Oil from the vessels before this incident at Sikka.

15. Whereas, statement of Shri Karan Rajesh Pandya, Partner of M/s Omega Marine was recorded on 13.02.2023 under Section 108 of the Customs Act,1962 wherein, he, inter alia, that:-

- He was the Partner of M/s Omega Marine, whose function was to collect Solid Garbage, ship-generated waste scrap from vessels; that he was also one of the Partners in M/s. Revolution Petrochem LLP, whose function was to collect Slop / Sludge from the vessel and after processing at the factory of M/s. Revolution Petrochem LLP, they sell the final product i.e. Refined / Reprocessed Furnace Oil; that the work of selling Refined / Reprocessed Furnace Oil was looked after by him; that he was also the partner of M/s. Omega Offshore, which owned a barge namely MT Mars & a Tug Zennie and they charter the barge & Tug to other companies/Firms;
- The main operation of M/s. Revolution Petrochem LLP, was to collect Slop / Sludge from the vessels and sale after processing the same in the factory/plant of M/s. Revolution Petrochem LLP, situated at Plot No. 187, Mithirohar (GGDC) Village Mithirohar, Gandhidham-Kutch;
- On being asked about the modus operandi adopted by M/s Revolution Petrochem LLP, he stated that they were engaged in the work of collecting Slop / Sludge oil from the vessels at Kandla, Mundra, and Jamnagar Customs Commissionerate, that he looked after the work of sale of Refined / Reprocessed Furnace Oil, and the planning for illegal import (Smuggling) of Fuel Oil (800 MTs) at Sikka Port by Vessel MT Panda and discharge to barge MV Sonal was done by his partner Mr. Haresh Harjani and Mr. Jimmy Thacker;
- On being asked about the delivery of the foreign currency USD 60000/- for smuggling of 800 MTs Fuel Oil to the Master of Vessel MT Panda, he stated that he had no idea about this earlier, but after the seizure of the Barge MV Sonal, he was briefed on phone by Mr. Jimmy Thacker about the delivery of USD 60000/- to the Master of the vessel MT Panda in lieu of delivery of smuggled fuel oil;
- On being asked about the person who delivered the above mentioned USD 60000/- to the master of the Vessel MT Panda, he replied that one of the employees of firm M/s. Revolution Petrochem LLP Mr. Pintu Batham delivered this currency to the master of the vessel on the vessel on board;
- On being asked about the source from where this amount of USD 60,000/- was arranged he stated that he was not aware of the same;
- On being asked whether other partners of M/s. Revolution Petrochem LLP or any other person involved in the smuggling of Fuel Oil at Sikka, he stated that vessel MT Panda was being handled by his partner Mr. Jimmy Thacker and Mr. Haresh Harjani, so as per his knowledge, no other persons were involved in this matter; that he never smuggled fuel oil in the guise of slop / sludge oil from the vessels before this incident at Sikka.

16. Whereas, statement of Shri Haresh Nathumal Harjani, one of the Partners in M/s Revolution Petrochem LLP, was recorded on 13.02.2023 under Section 108 of the Customs Act, 1962 wherein he, inter alia, stated that:-

- He is the proprietor of M/s. H H Water Supply, which is engaged in supplying fresh water to vessels and he is also one of the partners in M/s. Revolution Petrochem LLP, function of which is to collect Slop / Sludge from the vessel and after processing at the factory of M/s. Revolution Petrochem LLP, they sell the final product i.e. Refined / Reprocessed Furnace Oil and the work of selling Refined / Reprocessed Furnace Oil is looked after by his partner Mr. Karan Pandya; that he is also one of the partners in M/s. Nilkanth Offshore, which owns a barge namely Success Dignity and they charter the barge to other companies/Firms;
- On being asked about the main operation of M/s Revolution Petrochem LLP he stated that main operation of M/s. Revolution Petrochem LLP is to collect Slop / Sludge from the vessels and sale after processing in the factory / plant of M/s. Revolution Petrochem LLP, situated at Plot No.-187, Mithirohar (GGDC) Village Mithirohar, Gandhidham-Kutch;
- On being asked as to how did he come to know about the seizure of Barge MV Sonal and approx. 241 MTs illegally imported (Smuggled) Fuel Oil through the vessel MT Panda at Sikka port, he replied that he came to know from Mr. Sarvan Kumar, Master of the Barge MV Sonal about this incident of illegal import of Fuel Oil (Smuggled) at Sikka port on Saturday i.e. 03.02.2023;
- On being asked to explain the modus-operandi/reasons for the illegal import (Smuggling) of Fuel Oil (800 MTs) at Sikka Port by vessel MT Panda and discharge to barge MV Sonal, he stated that they were engaged in the work of collecting Slop / Sludge oil from the vessels at Kandla, Mundra and Jamnagar Customs Commissionerate; that he contacted the master of the vessel MT Panda by communicating through E-mail for Slop / Sludge and after that they exchanged their contact Nos. and Master of the vessel MT Panda later informed him that he had 800 MTs fuel Oil concealed in the Slop Tanks of the Vessel and he would deliver that smuggled (Un-manifested) cargo at Sikka Port and charge USD 200/- per Metric Ton;
- On further being asked as to when and how had he agreed to deliver the currency for smuggling of 800 MTs Fuel Oil and how much he delivered to the Master of vessel MT Panda, to what Shri Haresh Harjani replied that he was in contact with the Master of Vessel MT Panda who informed him that vessel would anchor at Sikka on 01.02.2023 and so they agreed that after customs clearance of the vessel MT Panda, the vessel would discharge smuggled Fuel Oil into barge MV Sonal and the total amount of USD 1,60,000/- would be delivered on-board the vessel to Master of the Vessel but due to non-availability of Barge of bigger capacity, only USD 60,000/- was delivered to Master because the capacity of Barge MV Sonal is only around 400 MT;

- On being asked about the person who delivered USD 60,000/- to the Master of the vessel MT Panda, Shri Haresh Harjani replied that one of the employees of firm M/s. Revolution Petrochem LLP Mr. Pintu Batham delivered this currency to the Master on the vessel on-board;
- On being asked to explain as wherfrom he obtained that USD 60,000/- to which he replied that as he had stated earlier in this statement, he supplied water to the vessels and received the payments in USD from the vessels through his proprietorship firm M/s. HH Water Supply, so the above mentioned USD 60,000/- was the amount that he had received from the vessels. In regard to above Shri Haresh Harjani further submitted the Invoice and delivery certificate acknowledged by the Master of the Vessels;
- On being asked whether other partners of M/s. Revolution Petrochem LLP or any other person involved in the smuggling of Fuel Oil, he stated that he along with his partner Mr. Jimmy Thacker was involved in this matter and they had planned this by taking decisions jointly;
- On being further asked whether any other such illegal import was performed by him through M/s. Revolution Petrochem LLP in the guise of Slop / Sludge Oil, to which he replied that he had never smuggled Fuel oil in the guise of Slop / Sludge Oil from the vessels before this incident at Sikka;

17. Whereas, statement of Mr. Nguyen Quoc ANH, Operation Manager of M/s Sao Viet Petrol Transportation Co. Ltd., was recorded on 24.02.2023 (RUD-19) under Section 108 of the Customs Act, 1962 wherein he, inter alia, stated that:-

- Owner of seized Vessel MT Panda was M/s Sao Viet Petrol Transportation Co. Ltd. having address at Floor 3, Viet Tower, No. 1, Thai Ha Street, Trung Liet Ward, Dong Da District, Hanoi, Vietnam; that their company owned 10-Crude Oil /Chemical tankers and they were renting vessels on Time Charter to other Shipping Companies;
- That being a vessel owner they were responsible for technical management like all deck stores, engine stores, provisions, any repair, maintenance, dry docking, compliance/renewal of all required Vessel Certificates and crew management etc;
- That Vessel MT Panda was given to M/s Solid Energy Solutions DMCC, Dubai on time charter basis for one year starting from July 2022;
- That the vessel was under Time Charter and all the cargo operations i.e. type of cargo, loading-discharging of the cargo at load port/discharge port was instructed and arranged by the Time Charterer M/s Solid Energy Solutions DMCC, Dubai (UAE); that being owner they were always informed about the next voyage by the Time Charterer through e-mail; that for any communication between the Charterers and the Master of the vessel, vessel owner always remained in CC of the e-mail; that particularly for that voyage to Sikka, 99288.826 MTs of Fuel Oil was loaded from Offshore Suez, Egypt

through STS operation on 20.01.2023 and was to be discharged at Reliance Port, Sikka on 05.02.2023.

➤ Mr. Nguyen Quoc ANH was shown the permission filed by M/s Revolution Petrochem LLP for filing manual bill of Entry for discharging 800 MT of Sludge / slop from Vessel MT Panda at Sikka Port on 31.01.2023. He was further asked whether being vessel owner he had any idea about this to which he replied that he did not have any knowledge about the said permission; that ideally the Master of the vessel had to first report to owners about any discharge of sludge / slop at any port and afterwards owners would arrange everything by contacting concerned agent for the sludge / slop discharge, but in this case no such thing happened;

➤ On being asked whether he was aware of the fact being vessel owner, that MT Panda was carrying un-manifested cargo of 800 MTs of Fuel Oil in guise of sludge / slop oil in her starboard side Slop Tank along with the manifested cargo i.e. 99288.826 MT of Fuel Oil and out of 800 MTs, 241 MTs of Fuel Oil was discharged by the vessel in the barge MV Sonal to which he replied that they were not aware about this un-manifested 800 MTs of Fuel Oil and any consequent discharge into the barge MV Sonal;

➤ He was further shown the ullage report made by M/s Rochem Inspectors Cargo Surveying, Egypt at load port i.e. Suez. In the ullage report, the star board side Slope Tank was shown empty but at the discharge port i.e. Sikka port approx. 559 MTs of Fuel Oil was found during the inspection by Customs authorities. He was asked about the above, to which he replied that they have received the ullage report but they did not know anything about the cargo which was stored in the vessel's star board side Slope Tank;

➤ Mr. Nguyen Quoc ANH was further shown Para 4(f) of the Affidavit filed by his advocate in the Hon'ble High Court of Gujarat wherein it was stated that, "you were informed by the Master about 800 MTs of fuel oil that it was collected by ship's crew from tripping, slug and cleaning of cargo and not bought from anywhere nor meant for smuggling." He was further shown answer of Master of MT Panda to Q. No. 6 in statement dated 02.02.2023, wherein he stated that "a person named Haresh Harjani having contact No. 9824286942 contacted him and asked him to illegally bring 800 MTs of Fuel Oil on his voyage to Sikka and on receipt of the same, he was agreed to be paid USD 1,60,000/-". So there were two contradictory statements by Master and on being asked about the same he replied that he agreed that Master had given two different statements at two different instances about 800 MTs Fuel Oil, however he was sure that fuel oil could not be generated by from tripping, slug and cleaning of cargo;

➤ Further being vessel owner of MT Panda and as he stated earlier also that he provided crew to his vessel and his crews were indulged in smuggling of goods, so he was asked as to why not he be held responsible for this smuggling, to what he replied that, as per their employment contract, the crews were aware about the fact that they were not allowed to do illegal things and if they were found involved in any illegal activity, they

would be responsible themselves and owner were not responsible for such illegal activity. He further assured to provide the employment contract.

18. Whereas, in his further statement recorded on 07.03.2023 under Section 108 of the Customs Act, 1962, Shri Mr. Nguyen Van Hoan, Master of vessel MT Panda, inter alia, stated that as the Master of vessel MT Panda he was overall in-charge of the vessel, all operations of the vessel were performed under his directions and supervision;

➤ On being asked about the place from where he loaded 800 MTs of Fuel Oil to smuggle into India at Sikka Port through vessel MT Panda, he stated that in the previous voyage of the vessel, the cargo was Fuel Oil which was loaded from UST Luga and discharged at Tanjung Pelepas-Malaysia; that he had stolen 150 MTs Fuel Oil from manifested cargo and concealed in Slop Tank; that in the current voyage cargo was Fuel Oil which was loaded from Suez STS Area for discharge at Reliance Sikka; that in this voyage he had stolen 650 MTs of Fuel Oil from manifested cargo and concealed in Slop Tank; that as per contract there was a relaxation of 0.3% in quantity at the load port as well as at discharge port between buyer and seller therefore shortage was not noticed and in all he had stolen 800 MTs fuel oil and smuggled into India. He further submitted his last two voyage details:

➤ On being asked whether he had paid any amount to anyone for subject 800 MTs of Fuel Oil which was smuggled into India by his vessel MT Panda, to what he replied that he had not paid any amount for the said 800 MTs fuel oil; that the said fuel oil was stolen by him from manifested cargo and concealed in slop tank of the vessel MT Panda;

➤ On being asked about USD 60,000/- recovered from his possession on board MT Panda, he replied that he was in touch with Shri Haresh Harjani, Partner of M/s Revolution Petrochem LLP, and he agreed to pay him USD 200 per MT of Fuel Oil which he would deliver to him at Sikka Port; that these USD 60,000/- was delivered to him by Shri Pintu Batham who was sent by Shri Haresh Harjani; that the said foreign currency amounting to USD 60,000/- was his quid pro quo for the act of smuggling of Fuel Oil;

➤ Regarding his complete communication with Shri Haresh Harjani he replied that Shri Harjani asked him about cargo which he would bring to India and also assured him that if he brought Crude Oil, Shri Harjani would pay him USD 230/- per MT and for Fuel Oil he would be paid USD 200/- per MT; that as he smuggled Fuel Oil Shri Harjani agreed to pay him USD 200/- per MT;

➤ On being asked whether he had also carried this type of smuggling of Fuel Oil in India earlier to what he replied that he had not done this before and would never do again;

➤ Mr. Nguyen Van Hoan was shown the list which consisted of details of denominations and serial nos. of currency in US Dollar seized under Panchnama dated 02.02.2023 and was asked to verify the same, to what after going through details of

denominations and Serial nos. of the currency (USD) he verified and found the same matching with the notes of USD as per Panchnama dated 02.02.2023.

19. Whereas, M/s Sao Viet Petrol Transportation Co. Ltd., Vietnam [hereinafter referred to Noticee No. 2] has filed Special Civil Application (SCA) No. 2559/2023 before the Hon'ble High Court of Gujarat for release of the vessel MT Panda seized under Seizure Memo dated 02.02.2023 by the Customs authority. They also requested the Customs vide letter dated 08.02.2023 sent through the Standing Counsel with the SCA No. 2559/2023 for release of the vessel MT Panda. Vessel MT Panda was ordered to be released provisionally to the vessel owner through M/s Jamnadas Ramji, Chartered Agent of the vessel in terms of provisions of Section 110A of the Customs Act, 1962 vide Provisional Release Order No. CUS-SIIB-INT/64/2023 dated 20.02.2023 issued by the Additional Commissioner of Customs, Customs (Preventive) Jamnagar on the following condition :-

- a. Executing Bond for total value of Rs. 98,00,00,000/- (Rupees Ninety Eight Crore Only) being approximate value of Vessel MT Panda; that the Bond would contain an undertaking that the applicant shall pay the fine and/or penalty as may be adjudged by the adjudicating authority;
- b. Furnishing Bank Guarantee or security deposit of an amount of Rs. 4,00,00,000/- (Rupees Four Crore only) with clause of binding the issuing bank to keep it renewed till final adjudication of the case;

Owner company of vessel MT Panda, M/s Sao Viet Petrol Transportation Company Limited, executed Bond for full value of Rs. 98,00,00,000/- on 27.02.2023 and deposited Rs. 4,00,00,000/- vide DD No. 057534 dated 01.03.2023 (in SBI) as per Provisional Release Order No. CUS-SIIB-INT/64/2023 dated 20.02.2023 and in view whereof the seized Vessel MT Panda stood released provisionally.

20. Whereas, out of total 800 MTs of Fuel Oil, 559 MTs was stored in vessel MT Panda and 241 MTs of Fuel Oil was transferred and stored in Barge MV Sonal. M/s Revolution Petrochem LLP vide letter dated 28.02.2023 requested for release of Fuel Oil 800 MTs, seized under Seizure Memo dated 02.02.2023 and the same was Ordered to be released provisionally vide Provisional Release Order No. CUS-SIIB-INT/64/2023 dated 28.02.2023 issued by the Principal Commissioner of Customs, Customs (Prev.) Jamnagar, subject to fulfilment of following condition by them:-

- a. Executing Bond for total value of Rs. 4,37,83,600/- (Rupees Four Crore Thirty Seven Lakh Eighty Three Thousand and Six Hundred Only) being value of 800 MTs of Fuel Oil; that the Bond would contain an undertaking that the applicant shall pay the fine and/or penalty as may be adjudged by the adjudicating authority;

- b. Making cash deposit of duty, interest, Penalty etc. amounting to Rs. 1,08,04,134/- (Rupees One Crore Eight Lakh Four Thousand One Hundred and Thirty Four Only)
- c. Furnishing Bank Guarantee or cash deposit of an amount of Rs. 40,00,000/- (Rupees Forty Lakhs only) containing self-renewal clause binding the issuing bank to keep it renewed till final adjudication of the case.

In respect to the condition imposed as above for provisional release of 559 MTs of Fuel Oil lying in vessel MT Panda and 241 MTs of Fuel Oil lying in barge MV Sonal, M/s Revolution Petrochem LLP, deposited Customs Duty along with Interest and Penalty amounting to Rs. 75,49,389/- vide Challan No. 02/Revolution/2023 dated 01.03.2023 for 559 MTs of Fuel Oil and Rs. 32,54,745/- vide Challan No. 01/Revolution/2023 dated 01.03.2023 for 241 MTs of Fuel Oil aggregating totally to Rs. 1,08,04,134/- . Above facts were intimated through their letters both dated 01.03.2023. M/s Revolution Petrochem LLP further executed Bond for amount of Rs. 4,37,83,600/- on 01.03.2023 and furnished Bank Guarantee No. 216GT01230620001 dated 02.03.2023 of Rs. 40,00,000/- on 02.03.2023 issued by HDFC Bank, Gandhidham. In view of the above compliance, 800 MTs of Fuel Oil stood released provisionally and vide letter dated 02.03.2023, M/s Revolution Petrochem LLP, requested for permission to discharge 559 MTs of Fuel Oil from vessel MT Panda through barge MV Sonal.

20.1. Whereas, during the search proceedings on vessel MT Panda on 02.02.2023, sample of Fuel Oil was drawn from the Slop Oil Tank holding around 541 MT of Fuel Oil, and sent to Central Revenues Control Laboratory (CRCL), Vadodara for testing vide Test Memo No. IMP/473/2022-23/02.02.2023. Test Report No. RCL/Sikka/IMP/3951/09.02.2023 received from CRCL, Vadodara confirmed the sample to be Fuel Oil. Similarly sample of Fuel Oil was also drawn from tank of bunker Barge MV Sonal during search proceedings on 02.02.2023, and sent to CRCL, Vadodara vide Test Memo No. IMP/474/2022-23/02.02.2023. Test Report No. RCL/Sikka/IMP/ 3952/ 09.02.2023 received from CRCL, Vadodara confirmed the sample to be Fuel Oil.

21. Whereas, M/s Shree Krishna Quarry Private Limited, Mumbai [hereinafter referred to Noticee No. 4] vide letter dated 03.02.2023 requested for release of Barge MV Sonal seized under Seizure Memo dated 02.02.2023. The above request was addressed through the Provisional Release Order dated 28.02.2023, subject to fulfilment of the following condition:-

- a. Executing Bond for full value of Rs. 2,00,00,000/- (Rupees Two Crores Only) of the seized barge containing an undertaking that the importer would pay the duty, fine and/or penalty as may be adjudged by the adjudicating authority.

- b. Furnishing Bank Guarantee or Cash deposit of Rs. 20,00,000/- (Rupees twenty Lakhs Only) containing self-renewal clause binding the issuing bank to keep it renewed till final adjudication of the case.
- c. The barge owner shall properly hand over the seized 241 MT of Fuel Oil to the M/s Revolutionary Petrochem LLP, Gandhidham.

M/s Shree Krishna Quarry Private Limited, fulfilled the condition as explained above and executed the Bond for full value of barge and furnished Bank Guarantee No 216GT01230650002 dated 06.03.2023 issued by HDFC Bank, Gandhidham in terms of order as above and handed the same to the department vide letter dated 07.03.2023 and accordingly seized barge MV Sonal stood released provisionally to them.

22. Whereas, Foreign Currency viz. USD 60,000/- recovered from possession of Master of vessel MT Panda during search proceedings under Panchanama dated 02.02.2023 on vessel MT Panda was further deposited into the Government Account in SBI, Lal Bungalow Branch, Jamnagar through Principal Commissioner of Customs, CCP, Jamnagar on date 13.03.2023.

23. Whereas, in view of the facts and circumstances as discussed in the foregoing paras and the statutory provisions of the Customs Act, 1962 explained herein above, it appears that M/s Revolution Petrochem LLP has conspired to smuggle 800 MTs of Fuel Oil through vessel MT Panda, in collusion with the Master of the vessel MT Panda through the Barge MV Sonal in consideration of illicit payment of USD 1,60,000/- to the Master of MT Panda Mr. Nguyen Van Hoan. Barge MV Sonal had been arranged by M/s Revolution Petrochem LLP purportedly for receiving Slop / Sludge Oil from vessel MT Panda, however which was used unlawfully into clandestinely clearing smuggled 800 MTs of Fuel Oil from the vessel MT Panda which arrived at Sikka Port on 02.02.2023 to discharge 99288.826 MTs of manifested Fuel Oil. At the time when Fuel Oil was illicitly being transferred from vessel MT Panda into barge MV Sonal, Customs Officers from Customs (Prev.) Commissionerate, Jamnagar arrived on board the vessel MT Panda and conducted the search on board, under Panchanama dated 02.02.2023. An amount of USD 60,000/- was recovered by the Customs Officers during search on 02.02.2023 from the possession of the Master of the vessel MT Panda, Mr. Nguyen Van Hoan, which he admitted to have received on board as part payment for 800 MTs of Fuel Oil, from Shri Pintu Batham, an employee of M/s Revolution Petrochem LLP. Master of the vessel MT Panda further informed that Shri Pintu Batham was sent by Shri Haresh Harjani, Partner of M/s Revolution Petrochem LLP with USD 60000/- to hand him on board the vessel. By the time Customs arrived on board MT Panda, 241 MTs of Fuel Oil had been transferred out of stock of 800 MTs from the Slop Tank of vessel MT Panda to barge MV Sonal as revealed in search proceedings carried on board.

24. Whereas, based on the available facts at the material time, investigation was conducted by the Customs Officers and statements of the concerned were recorded under provisions of Section 108 of the Customs Act, 1962 and search operations were conducted to recover the documents and evidences about smuggling of 800 MTs of Fuel Oil through vessel MT Panda which have been duly explained in the Paras above. The evidences obtained / retrieved during the investigation confirming the smuggling of 800 MTs of Fuel Oil and the role of the various persons crucial in the smuggling are as under:-

- (i). Foreign Currency of USD 60,000/- recovered from possession of Master of vessel MT Panda during search proceedings carried out on board, under Panchnama dated 02.02.2023, which was neither declared in the Ship's Currency Declaration nor in any documents of IGM. The Master of vessel MT Panda admitted to have received USD 60000/- from Shri Pintu Batham as part payment for smuggling of 800 MTs Fuel Oil. Also the Print-outs of WhatsApp chat between Master of vessel MT Panda and Shri Haresh Harjani, Partner of M/s Revolution Petrochem LLP retrieved under Panchnama dated 02.02.2023 clearly showed how 800 MTs of Fuel Oil was negotiated to be discharged into barge MV Sonal from the vessel MT Panda in guise of transfer of Slop Oil against payment of USD 1,60,000/- to Master. WhatsApp chat also had picture of Shri Pintu Batham with message that he would hand over USD 60,000/- to Master on board. Master kept updating Shri Haresh Harjani about the latest position of the vessel MT Panda. During the search operation conducted on board MT Panda, it was also found that Master of vessel MT Panda had illicitly stored 800 MTs of Fuel Oil in the Starboard Side Slop Tank of vessel separately for transfer to barge MV Sonal which was un-manifested and out of which 241 MTs was transferred by the time Customs Officers arrived on board for search operation.
- (ii). During the search operation conducted on barge MV Sonal floating near MT Panda, under Panchnama dated 02.02.2023, Shri Pintu Batham was present on board who had handed over USD 60,000/- to Master of MT Panda just a while ago. Barge MV Sonal was found with 241 MTs of Fuel Oil which Shri Sarvan Kumar, Master of barge MV Sonal confirmed to have received from vessel MT Panda. Barge MV Sonal has arrived at Sikka anchorage purportedly for receiving Slop/ Sludge Oil from vessel MT Panda and in relation to which they had requested the competent authority vide their letter dated 31.01.2023 for permission to file manual Bill of Entry. However, during search proceedings by Customs Officers on 02.02.2023 on barge MV Sonal, barge MV Sonal was found to have received 241 MT of Fuel Oil in guise of transfer of Slop/ Sludge Oil.
- (iii). Statement of Master of vessel MT Panda dated 02.02.2023, wherein he confessed to have illegally brought 800 MTs of Fuel Oil in Starboard Side of Slop Tank, which was not manifested and intended for illegal transfer to barge MV Sonal on receipt

of consideration of USD 1,60,000/- from Shri Haresh Harjani, Partner of M/s Revolution Petrochem LLP with whom he negotiated the deal. He also confirmed in his statement about USD 60,000/- recovered from his possession to be part payment of the same. He also admitted to have transferred 241 MTs of Fuel Oil out of stock of 800 MTs of Fuel Oil in Slop Tank to barge MV Sonal by the time Customs Officers reached the vessel on 02.02.2023. In his statement dated 02.02.2023, Master of vessel MT Panda also admitted to have brought 800 MTs of Fuel Oil and above the manifested B/L quantity of Fuel Oil 99288.826 MTs.

(iv). Statement of Master of Bunker Barge MV Sonal, namely Shri Sarvan Kumar dated 02.02.2023 wherein he admitted to have received 241 MTs of Fuel Oil from vessel MT Panda by the time Customs authority boarded the vessel MT Panda. He also stated that he had arrived for receiving Slop/sludge Oil from vessel MT Panda on 01.02.2023, but Shri Pintu Batham accompanied him on board barge MV Sonal to assist him in illegal discharging of un-manifested Fuel Oil.

(v). Statement of Shri Pintu Batham, an employee of M/s Revolution Petrochem LLP dated 02.02.2023 wherein he stated that he had come to Sikka Port through Barge MV Sonal and boarded vessel MT Panda at Sikka anchorage to manage the discharge of 800 MTs of Fuel Oil from MT Panda into MV Sonal. He admitted to have received USD 60,000/- from Shri Haresh N. Harjani, Partner of M/s Revolution Petrochem LLP, which he handed over to the Master of vessel MT Panda as per instruction of Shri Haresh N. Harjani as consideration against illegal receipt of Fuel Oil. He also admitted to the fact of full knowledge of commission of illegal smuggling of 800 MTs of Fuel in guise of receipt of Slop/Sludge Oil from vessel MT Panda in barge MV Sonal.

(vi) Statement of Shri Haresh Nathumal Harjani, partner of M/s Revolution Petrochem LLP dated 13.02.2023 wherein he confessed to have received an offer of 800 MT of Fuel Oil, brought illegally by Master of vessel MT Panda in Slop Tank of vessel at Sikka Port against consideration of USD 1,60,000/- at the rate of USD 200/- PMT and to which he agreed. He admitted to the adopted modus operandi of receiving Fuel Oil illegally in guise of receipt of Slop / Sludge Oil from vessel MT Panda. He admitted to have been in regular contact with Master Mr. Nguyen Van Hoan of vessel MT Panda to receive 800 MTs of Fuel Oil at Sikka Port anchorage and to deliver USD 1,60,000/- to the Master, but due to the reason that barge MV Sonal could have received maximum 400 MTs of Fuel Oil at a time, he deputed his employee Shri Pintu Batham with USD 60,000/- to be delivered to the Master of vessel MT Panda. Further, regarding source of the said USD 60,000/- he stated that he received USD 60,000/- from the income he earned in USD through water supply he made to the vessels through his proprietorship firm namely M/s H.H. Water Supply.

(vii) Statement of Shri Jimmy Shashikant Thacker, Partner of M/s Revolution Petrochem LLP dated 13.02.2023 wherein he admitted to the modus operandi of receiving Fuel Oil illegally in guise of discharge of Slop / Sludge Oil from the vessel MT Panda and he confirmed that Shri Haresh N. Harjani contacted Master of vessel MT Panda through e-mail for Slop / Sludge Oil and then he exchanged contact number with Master. He also confirmed that Master of vessel MT Panda has illegally brought 800 MTs of Fuel Oil concealed in Slop Tank of vessel which he offered to deliver to them at Sikka Port on charging USD 200/- per MT. He also confirmed that Shri Pintu Batham was instructed by Shri Haresh Harjani to deliver USD 60,000/- to Master of the vessel MT Panda which was earned by Shri Haresh Harjani through water supply to vessels. He confirmed that the said smuggling of 800 MTs of Fuel Oil from vessel MT Panda was jointly planned by him with Shri Haresh N. Harjani.

(viii) Further, statement of Mr. Nguyen Van Hoan, Master of vessel MT Panda, dated 07.03.2023, wherein he stated that in the previous voyage when vessel MT Panda was to discharge Fuel Oil at Tanjung Pelepas- Malaysia, he stole 150 MTs of Fuel Oil from manifested cargo in the Slop Tank and remaining 650 MTs of Fuel Oil was stolen and stored in Slop Tank by him from the current voyage cargo when Fuel Oil was to be discharged at Sikka Port; that as per the contract 0.3% variation was allowed at load and discharge port and so his above act was not noticed. He reiterated that he was regularly in contact with Shri Haresh N. Harjani for executing plan of smuggling of 800 MTs of Fuel Oil @ USD 200/- per MT and USD 60,000/- which he received from Shri Pintu Batham was his quid pro quo for the act of smuggling of Fuel Oil.

(ix) Statement dated 24.02.2023 of Mr. Nguyen Quoc ANH, Operation Manager of M/s Sao Viet Petrol Transportation Co. Ltd., owner company of the vessel MT Panda, wherein he identified the Master of vessel MT Panda to be Mr. Nguyen Van Hoan and stated that he received 99288.826 MTs of Fuel Oil from Offshore Suez, Egypt through STS operation for discharge at Reliance Port, Sikka. He also stated that Master of vessel MT Panda had not informed the owners about any intended discharge of Slop / Sludge Oil at Sikka Port, which he was bound to intimate in advance to the owner and it was the owner who would arrange everything for discharge of Slop / Sludge Oil. Regarding unmanifested 800 MTs of Fuel Oil concealed in Slop Oil Tank as Slop / Sludge Oil, he stated that Owner Company was not aware of any such un-manifested Fuel Oil stocked in Slop Tank.

(x) Printouts of WhatsApp-Chat between Master of MT Panda and Shri Haresh N. Harjani, retrieved during search proceedings on board MT Panda on 02.02.2023 revealed the fact relating to planning of illegally importing 800 MTs of Fuel Oil through vessel MT Panda concealed in Slop Tank and subsequent delivery of which through barge MV Sonal at Sikka Port in guise of Slop / Sludge Oil discharge against illicit consideration of USD

1,60,000/- This was duly admitted by the Master of vessel MT Panda and Shri Haresh N. Harjani in their respective statements recorded under Section 108 of the Customs Act, 1962.

(xi) An Ullage Report made by M/s Rochem Inspectors Cargo Surveying, Egypt which reported the star board side Slop Tank to be empty at Load Port, but the same tank showed stocking 559 MTs of Fuel Oil at discharge port Sikka, after discharging 241 MTs into barge MV Sonal on 02.02.2023 in search proceedings by the Customs authority.

25. Whereas, in view of the documentary evidences and the corroborative statements of the concerned as discussed in the above para, it appears that:-

(i) Shri Haresh N. Harjani, Partner of M/s Revolution Petrochem LLP and Master of vessel MT Panda entered into a deal to smuggle 800 MTs of Fuel Oil against consideration of USD 1,60,000/- to be paid in cash to the Master of vessel MT Panda on board on receipt of full quantity of Fuel Oil by M/s Revolution Petrochem LLP at Sikka Port.

(ii) To execute the above plan, Mr. Nguyen Van Hoan, Master of vessel MT Panda smuggled 800 MTs of Fuel Oil through vessel MT Panda, concealed in its Slop Tank which he intended to clandestinely discharge into barge MV Sonal in guise of discharge of Slop / Sludge Oil.

(iii) 800 MTs of Fuel Oil was brought illegally by Master of vessel MT Panda, Mr. Nguyen Van Hoan through vessel MT Panda at Sikka Port which was un-manifested and concealed in star board side Slop Tank as Slop / sludge Oil. Vessel MT Panda had arrived at Sikka Port to discharge manifested import cargo of 99288.826 MTs of Fuel Oil.

(iv) By the time Customs Officers boarded the vessel MT Panda, 241 MTs of Fuel Oil had illegally been discharged in barge MV Sonal and 559 MTs of Fuel Oil remained in Slop Tank of MT Panda. Master of the vessel MT Panda was found in possession of USD 60,000/- which he confessed to be the part payment of USD 1,60,000/- which he had received from Shri Pintu Batham, an employee of M/s Revolution Petrochem LLP. Master of the vessel MT Panda confessed to have smuggled 800 MTs of Fuel Oil out of which he had illegally transferred 241 MTs of smuggled Fuel Oil into barge MV Sonal which purportedly came alongside to receive Slop / sludge Oil.

(v) Above facts were evidenced in the search operations conducted by Customs Officers on 02.02.2023, on board the vessel MT Panda and barge MV Sonal and subsequent statements of the concerned recorded under Section 108 of the Customs Act, 1962 and as explained herein above.

26. Therefore, M/s Revolution Petrochem LLP first caused smuggling of 800 MTs of Fuel Oil through vessel MT Panda in collusion with Master of the Vessel MT Panda and then tried to clandestinely clear the same through the barge MV Sonal in guise of discharge of Slop / Sludge Oil. It, therefore, appears that:-

- a. 800 MTs of Fuel Oil valued at Rs. 4,37,83,601/-, which was seized under Seizure memo dated 02.02.2023 was brought illegally by Master of vessel MT Panda and was not manifested, neither Bill of Entry filed in respect of the said goods nor the Customs Duty paid thereon, was illegally being discharged (241 MTs) in barge MV Sonal in contravention of the provisions of Section 12, 30, 32 and 46 of the Customs Act, 1962 and therefore, in view of the same, the said goods appears to be liable for confiscation under Section 111(d), 111 (f), 111 (l) and 111 (m) of the Customs Act, 1962
- b. Vessel MT Panda seized under Seizure memo dated 02.02.2023 was used for transportation in smuggling of 800 MTs of Fuel Oil to Sikka Port resulting into contravention of the provisions of Section 12, 30, 32 and 46 of the Customs Act, 1962 and therefore, the said vessel appears to be liable for confiscation under Section 115 (2) of the Customs Act, 1962. Further, for the acts and omission rendering the goods viz. 800 MTs smuggled Fuel Oil liable for confiscation under Section 111 of the Customs Act, 1962, M/s. Sao Viet Petrol Transportation Co. Ltd. appears to have rendered themselves liable for penalty under the provisions of Section 112 of the Customs Act, 1962.
- c. Barge MV Sonal seized under Seizure memo dated 02.02.2023 was used in transportation of smuggled Fuel Oil at Sikka Port in contravention of the provisions of Section 12, 30, 32 and 46 of the Customs Act, 1962 and therefore, the said barge appears to be liable for Confiscation under Section 115 (2) of the Customs Act, 1962. Further, for the acts and omission rendering the goods viz. 800 MTs smuggled Fuel Oil liable for confiscation under Section 111 of the Customs Act, 1962, M/s. Shree Krishna Quarry Pvt. Ltd. appears to have rendered themselves liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

26.1. Admitting illicit import of un-manifested 800 MTs Fuel Oil valued at Rs. 4,37,83,601/- (Rupees Four Crore Thirty Seven Lakhs Eighty Three Thousand Six Hundred One Only) through Vessel MT Panda and discharge thereof through Bunker Barge MV Sonal, M/s Revolution Petrochem LLP, Gandhidham requested for provisional release of the goods viz. 800 MTs of smuggled Fuel Oil. As per the Test Report of CRCL, Vadodara, smuggled Fuel Oil was confirmed to be meeting specification of Fuel Oil as per IS: 1593:2018 and classifiable under CTH 271019 chargeable to Customs Duty in terms of Sr. No. 147B of the Notification No. 50/2017-Customs dated 30.06.2017 as amended vide Notification No. 02/2022-Customs dated 01.02.2022 (Duty Calculation Sheet as per Annexure-1 to this SCN).

26.1.1. Whereas, M/s Revolution Petrochem LLP appears to have intently smuggled the 800 MTs Fuel Oil valued at Rs. 4,37,83,601/- (Rupees Four Crore Thirty Seven Lakhs Eighty Three Thousand Six Hundred One Only) through Vessel MT Panda which was un-manifested and was illegally being transferred to bunker barge MV Sonal by mis-declaring the same as Slop/sludge Oil as revealed in investigation and as a result of which, it appears that the said smuggled goods i.e., 800 MTs Fuel Oil valued at Rs. 4,37,83,601/- is liable for confiscation under Section 111(d), 111(f), 111(l) & 111(m) of the Customs Act, 1962. It further appears that for the above acts and omission rendering the above goods liable for confiscation under Section 111 of the Customs Act, 1962, M/s Revolution Petrochem LLP is also liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

26.2. Whereas 800 MTs of Fuel Oil valued at Rs. 4,37,83,601/- imported illicitly through vessel MT Panda at Sikka Port, and being cleared clandestinely by M/s. Revolution Petrochem LLP, Gandhidham through bunker barge MV Sonal without payment of Customs Duty amounting to Rs. 93,01,826/- (Rupees Ninety Three Lakhs One Thousand and Eight Hundred and Twenty Six Only) (Duty Calculation Sheet as per Annexure-1 to this SCN). It, therefore, appears that the said amount of Customs Duty, not levied and not paid by M/s. Revolution Petrochem LLP, Gandhidham by reason of willful mis-statement and suppression of facts with an intent to evade payment of Duty, is liable to be recovered from M/s Revolution Petrochem LLP, Gandhidham, under the provisions of Section 28(4) of the Customs Act, 1962 along with appropriate interest under Section 28AA of the Customs Act, 1962.

26.3. Whereas it further appears from the above that M/s Revolution Petrochem LLP has illegally imported 800 MTs of Fuel Oil through vessel MT Panda at Sikka Port, which was un-manifested, without any valid documents and tried to illicitly clear the same, without discharging Customs Duty by clandestinely discharging into bunker barge MV Sonal, disguising as Slop / Sludge Oil. It, therefore, appears that this act of illicit import of 800 MTs of Fuel Oil without payment of Customs Duty by willfully declaring the same as Slop / Sludge Oil, rendered M/s Revolution Petrochem LLP liable for penalty under Section 114A of the Customs Act, 1962.

26.4. Whereas, M/s Revolution Petrochem LLP, Gandhidham seeking provisional release of seized Fuel Oil to them, in addition to execution of Bond for full value and furnishing BG of Rs. 40 Lakhs, also discharged the Customs Duty on 800 MTs of Fuel Oil, with interest and penalty against Provisional Release Order No. CUS/SIIB-INT/64/2023 dated 28.02.2023 totally amounting to Rs. 1,08,04,135/-. Therefore, the said amount paid towards duty/ interest/ penalty appears to be liable for appropriation. The details of amount paid towards duty/ interest/ penalty are as under:

Sr. No.	Particular	Amount	Paid Vide
01.	Customs Duty [BCD @ 2.5% of Value] + [SW Cess @ 10% of BCD] + IGST @ 18% of (Value + BCD + SW Cess))	Rs. 93,01,826/- [BCD= Rs. 10,94,590/-] [SW Cess = 1,09,459/-] (IGST-Rs. 80,97,777/-)	TR-6 Challan No. 01/Revolution/2023 & 02/Revolution/2023 both dated 01.03.2023
02.	Interest [Calculated @ 15% per annum]	Rs. 1,07,035/-	TR-6 Challan No. 01/Revolution/2023 & 02/Revolution/2023 both dated 01.03.2023
03.	Penalty [Calculated @ 15% of total Duty]	Rs. 13,95,274/-	TR-6 Challan No. 01/Revolution/2023 & 02/Revolution/2023 both dated 01.03.2023

27. Mr. Nguyen Van Hoan, Master of the Vessel MT Panda was instrumental and he appears to have:-

- (i) acquired possession and smuggled 800 MTs of Fuel Oil carrying through the vessel MT Panda by concealing the same in Slop Tank of vessel and wilfully not declared the same in IGM filed at Sikka Port and thereby contravened provisions of Section 30 of the Customs Act,1962.
- (ii) illegally transferred 241 MTs of Fuel Oil from vessel MT Panda to barge MV Sonal in the guise of discharging Slop / Sludge Oil by the time Customs Officers arrived on board the vessel MT Panda with remaining 559 MTs Fuel Oil in Slop Tank in violation of provisions of Section 32 of the Customs Act,1962.
- (iii) received illegal consideration of USD 60,000/- on board the vessel MT Panda as part payment of total USD 1,60,000/- , for handing over smuggled 800 MTs Fuel Oil to M/s Revolution Petrochem LLP.
- (iv) acted in smuggling of 800 MTs of Fuel Oil through Vessel MT Panda by way of concealing in the Slop / Sludge Oil Tank, which rendered both the vessel MT Panda and

800 MTs Fuel Oil liable for confiscation under the provisions of Section 115(2) and Section 111 of the Customs act, 1962, respectively.

27.1. Mr. Nguyen Van Hoan, Master of the Vessel MT Panda, confessed to the above acts of smuggling of 800 MTs of Fuel Oil and receipt of USD 60,000/- in his statements dated 02.02.2023 and 07.03.2023 and in view thereof, he appears to have rendered himself liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

28. USD 60000/- recovered from possession of Master of vessel MT Panda under Panchnama dated 02.02.2023 was over and above the amount declared Ship's Currency Declaration of USD 11,600/- and was not found declared under IGM No.2334045 dated 30.01.2023 filed for vessel MT Panda, either under head of Ship's Currency Declaration or Crew Currency Declaration or in any other documents of IGM. This was admittedly part payment for smuggling of 800 MTs Fuel Oil received from M/s Revolution Petrochem LLP. Therefore, USD 60,000/- found in possession of Master of vessel MT Panda on board, which did not correspond in respect of value or in other particular with the IGM of vessel MT Panda and which was admitted by Master of vessel MT Panda to be part payment of sales proceeds of smuggled Fuel Oil and therefore, the same appears to be liable for confiscation under the provisions of Section 121 of the Customs Act, 1962.

29. Shri Sharvan Kumar, Master of barge MV Sonal was found to have received 241 MTs of Fuel Oil illegally in the barge MV Sonal from vessel MT Panda on 02.02.2023 out of un-manifested stock of 800 MTs Fuel Oil. The above act of illegal transfer of 241 MTs of un-manifested Fuel Oil from vessel MT Panda was evidenced under Panchanama dated 02.02.2023, which was later confessed by the Master of barge Shri Sharvan Kumar in his statement dated 02.02.2023. In his statement dated 02.02.2023 recorded on board the barge, he admitted to have full knowledge of receiving illegally imported Fuel Oil from vessel MT Panda in guise of Slop / Sludge Oil. It, therefore, appears from the above that Shri Sharvan Kumar acquired possession of smuggled Fuel Oil and concerned himself in carrying, depositing, keeping and concealing the smuggled Fuel Oil which he knew or had reason to believe was liable for confiscation under Section 111 of the Customs Act, 1962 and thereby rendered himself liable to penalty under the provisions of Section 112 of the Customs Act, 1962.

30. M/s Shree Krishna Quarry Private Limited, Mumbai, owner company of barge MV Sonal provided / leased out their barge to M/s Revolution Petrochem LLP for clandestinely clearing 800 MTs of Fuel Oil smuggled by vessel MT Panda, in guise of Slop / Sludge Oil. They had reasons to believe that 800 MTs of Fuel Oil on board the vessel MT Panda was un-manifested and was liable for confiscation under Section 111 of the Customs Act, 1962. Barge MV Sonal was found with 241 MTs of un-manifested Fuel Oil discharged from vessel MT Panda in violation of Section 32 of the Customs Act, 1962.

Therefore M/s Shree Krishna Quarry Private Limited, Mumbai appears to have abetted in smuggling of 800 MTs of Fuel Oil by way of leasing out their barge MV Sonal for smuggling of Fuel Oil and thereby rendering the same liable for confiscation under provisions of Section 111 of the Customs Act, 1962 and therefore, appears to have rendered themselves liable to penalty under the provisions of Section 112 of the Customs Act, 1962.

31. Accordingly, Show Cause Notice No. COMMR-03/2024-25 dated 02.09.2024 was issued to Noticee No. 1 M/s. Revolution Petrochem LLP, 212, Plot No. 13, Riddhi Siddhi Arcade-1, Nr. BM Petrol Pump, Opp. Hitesh Motors, Gandhidham, Gujarat-361345, whereby it was called upon to show cause to the Commissioner of Customs (Preventive), having his office at "Seema Shulk Bhavan", Rajkot-Jamnagar Highway, Near Victoria Bridge, Jamnagar – 361 001, as to why -

- (i) The goods viz. 800 MTs of smuggled Fuel Oil valued at Rs. 4,37,83,601/- (Rupees Four Crore Thirty Seven Lakhs Eighty Three Thousand Six Hundred One Only) seized vide Seizure Memo dated 02.02.2023, released provisionally on payment of duty, interest and penalty and on execution of Bond for full value and on furnishing surety as BG for value of Rs. 40,00,000/-, should not be confiscated under Section 111(d), 111(f), 111(l) & 111(m) of the Customs Act, 1962.
- (ii) Customs Duty not levied and not paid amounting to Rs. 93,01,826/- (Rupees Ninety Three Lakhs One Thousand Eight Hundred and Twenty Six Only) payable on the 800 MTs of smuggled Fuel Oil should not be charged and recovered from them under Section 28(4) of the Customs Act, 1962 (Duty calculation sheet as per Annexure-1 to this SCN) and an amount of Rs. 93,01,826/- deposited by them vide Challan No. 01/Revolution /2023 & 02/Revolution/2023 both dated 01.03.2023 towards duty on un-manifested 800 MTs of Fuel Oil, should not be appropriated.
- (iii) Interest payable on the amount of Customs Duty mentioned at (ii) above should not be charged and recovered from them under Section 28AA of the Customs Act, 1962 and an amount of Rs. 1,07,035/- (Rupees One Lakh Seven Thousand Thirty Five Only) deposited by them vide Challan No. 01/Revolution /2023 & 02/Revolution/2023 both dated 01.03.2023 towards interest should not be appropriated.
- (iv) Penalty should not be imposed on them under Section 112 and/ or Section 114A of the Customs Act, 1962 and an amount of Rs. 13,95,274/- (Thirteen Lakhs Ninety Five Thousand Two Hundred and Seventy Four Only) deposited by them vide Challan No. 01/Revolution /2023 & 02/Revolution/2023 both dated 01.03.2023 towards penalty should not be appropriated.

32. Accordingly, Show Cause Notice No. COMMR-03/2024-25 dated 02.09.2024 was issued to Noticee No. 2 i.e., M/s Sao Viet Petrol Transportation Co. Ltd., having their office located at 3, Viet Tower, No. 1, Thai Ha Street, Trung Liet Ward, Dong Da District, Hanoi, Vietnam, whereby it was called upon to show cause to the Commissioner of Customs (Preventive), having his office at "Seema Shulk Bhavan", Rajkot-Jamnagar Highway, Near Victoria Bridge, Jamnagar – 361 001, as to why –

- (i). Vessel MT Panda valued at Rs. 98,00,00,000/- (Rupees Ninety Eight Crore Only) seized vide Seizure Memo dated 02.02.2023 and provisionally released on execution of Bond for full value and furnishing Security Deposit of Rs. 4,00,00,000/- in SBI vide DD No. 057534 dated 01.03.2023 should not be confiscated under Section 115(2) of the Customs Act, 1962.
- (ii) Penalty should not be imposed on them under Section 112 of the Customs Act, 1962.

33. Accordingly, Show Cause Notice No. COMMR-03/2024-25 dated 02.09.2024 was issued to Noticee No. 3 i.e., Master of the vessel MT Panda, Mr. Nguyen Van Hoan, resident Vietnam is hereby called upon through his Chartered Agent M/s Jamnadas Ramji, 101, Milestone, P.N.Marg, Panchvati Society, Jamnagar-361002, whereby it was called upon to show cause to the Commissioner of Customs (Preventive), having his office at "Seema Shulk Bhavan", Rajkot-Jamnagar Highway, Near Victoria Bridge, Jamnagar – 361 001, as to why –

- (i) Sales proceeds of smuggled Fuel Oil in Foreign Currency of USD 60,000/- (US Dollars Sixty Thousand only) seized from his possession during search proceedings on 02.02.2023 on vessel MT Panda should not be confiscated under provisions of Section 121 of the Customs Act, 1962.
- (ii) Penalty should not be imposed on him under Section 112 of the Customs Act, 1962.

34. Accordingly, Show Cause Notice No. COMMR-03/2024-25 dated 02.09.2024 was issued to Noticee No. 4 i.e., M/s Shree Krishna Quarry Private Limited, Shop No. 7 (Rear Side), Sitaram Building, F-Block, Gorund Floor, Market Road, Fort, Mumbai- 400001, owner company of barge MV Sonal, whereby it was called upon to show cause to the Commissioner of Customs (Preventive), having his office at "Seema Shulk Bhavan", Rajkot-Jamnagar Highway, Near Victoria Bridge, Jamnagar – 361 001, as to why –

- (i) The Barge MV Sonal valued at Rs. 2,00,00,000/- (Rupees Two Crores only), seized vide Seizure Memo dated 02.02.2023, released provisionally to them on execution of Bond for full value and furnishing Bank Guarantee No.

216GT01230650002 dated 06.03.2023 issued by HDFC Bank, Gandhidham for Rs. 20,00,000/- (Rupees Twenty Lakhs Only), should not be confiscated under Section 115(2) of the Customs Act, 1962.

(ii) Penalty should not be imposed upon them under Section 112 of the Customs Act, 1962.

35. Accordingly, Show Cause Notice No. COMMR-03/2024-25 dated 02.09.2024 was issued to Noticee No. 5 i.e., Shri Sarvan Kumar, resident of Belhar, Post-Darihara, Sonepur, District-Saran, Bihar-841101, Master of barge MV Sonai, whereby it was called upon to show cause to the Commissioner of Customs (Preventive), having his office at "Seema Shulk Bhavan", Rajkot-Jamnagar Highway, Near Victoria Bridge, Jamnagar – 361 001, as to why penalty should not be imposed on him under Section 112 of the Customs Act, 1962.

DEFENCE REPLY:-

36. M/s. Revolution Petrochem LLP, 212, Plot No. 13, Riddhi Siddhi Arcade-1, Nr. BM Petrol Pump, Opp. Hitesh Motors, Gandhidham, Gujarat-361345, has vide their letter dated 30-09-2024, submitted that they have made payments as under:

Details	Amount in (Rs.)	Challan No. & Date
Customs Duty	93,01,826/-	01/Revolution/2023 & 02/Revolution/2023, both dated 01.03.2023
Interest on Customs Duty	1,07,035/-	01/Revolution/2023 & 02/Revolution/2023, both dated 01.03.2023
Penalty @ 15%	13,95,274/-	01/Revolution/2023 & 02/Revolution/2023, both dated 01.03.2023

36.1 The Noticee No 1 has further submitted that the provisions under Section 28(5) & (6) of the Customs Act, 1962 provides that if due amount of duty with interest and penalty @ 15% is paid within thirty days of the receipt of the notice and inform the proper officer of such payment in writing, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140, be deemed to be conclusive as to the matters stated therein. The Noticee No.1 has further stated that as detailed in table above, they have made payment of due amount of duty with interest and penalty at the rate of 15% much before expiry of period of thirty days from the date

of receipt of SCN and since their case is squarely covered in the provisions of section 28(6), the proceedings in thier case may be considered for deemed conclusion under section 28(6) of the Customs Act, 1962.

37. The Noticee No.2 M/s Sao Viet Petrol Transportation Co. Ltd., having their office located at 3, Viet Tower, No. 1, Thai Ha Street, Trung Liet Ward, Dong Da District, Hanoi, Vietnam, has vide their letter dated 25-10-2024 submitted that they deny and disputes all the contents and allegations made against them in the Notice; that unless specifically admitted, no part of the Notice shall be deemed admitted by Noticee No. 2 for

want of specific traverse; that the charges made against Noticee No. 2 are untenable in law. No case is made out for either confiscating the Vessel under Section 115 of the Customs Act nor imposing any penalty on Noticee No. 2 under Section 112 of the Act or otherwise; that the Vessel is not liable for confiscation under Section 115(2) of the Customs Act in as much as Noticee No. 2 was at no point of time aware of the Master's activities with respect to the 800 MTs of Fuel Oil. The Master himself, in his statement under Section 107 of the Customs Act, 1962, clearly states that he was the only one who was aware of the presence of the 800 MTs of Fuel Oil on board the Vessel; that in response to Question No. 11 that Does any one of your Crew/ officers/ Vessel operator/vessel owner of the vessel MT Panda know about this smuggling of this 800 MT Fuel Oil?; his answer to the question was "No, I am the only one who is aware about it and involved in the above operation." ; that it is further brought out by the statement of Mr Nguyen Quoc Anh, Operational Manager of Noticee No. 2, under Section 108 of the Customs Act. In his answer to Q. No. 8, Mr. Anh states that Noticee No. 2 did not have any idea about the permission filed by Noticee No. 1 for filing a manual Bill of Entry for discharging the sludge / slop 800 MT from the Vessel. Mr. Anh stated that any discharge of sludge / slop at any port must be reported by the Master of the Vessel to the Vessel's owners for their arrangement. In this case, Mr. Anh says, this did not happen. Mr. Anh further answers that Noticee No. 2 were not aware about the unmanifested 800 MT of fuel oil and any consequent discharge into a barge. Further, on being asked why Noticee No. 2 should not be held responsible, Mr. Anh answered that, as per the employment contract with Noticee No. 2's crew, the crew are aware that they are not supposed to indulge in illegal enterprises and if they are so involved, they would be responsible for themselves- Noticee No. 2 would not be responsible. Nothing in Mr. Anh's testimony has been questioned or controverted in the Notice and no material to the contrary has been brought on record. As such, it is an uncontroverted position of fact that Noticee No. 2 was completely in the dark about the activities of the Master.

37.1 The Noticee No.2 further submitted that at the relevant time, the Vessel had been time-chartered to one Solid Energy Solutions DMCC on a SHELLTIME 4 (Dec

1984) charter dated 28th June 2022 and clean fixture recap dated 28th July 2022. Further, Clause 13(a) of the SHELLTIME 4 reads:

"13. (a) The master (although appointed by Owners) shall be under the orders and direction of Charterers as regards employment of the vessel, agency and other agreements ..."

Thus, it cannot be said that he was an agent of Noticee No. 2 at the relevant time for the purpose of the voyage since he was under the command and control of the time charterer.

Without prejudice to the above, assuming without admitting that the Master of the Vessel may be considered as the agent of Noticee No. 2, Noticee No. 2 at no point has ratified the behaviour of the Master of the Vessel. As stated above, the Master was independently involved in any activities relating to the 800 MTs of Fuel Oil, without any involvement of Noticee No. 2. The Hon'ble Supreme Court, in the case of *Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt* 1966 SCR (3) 727, has stated that -

"The law is settled that master is vicariously liable for the acts of his servants acting in the course of his employment. Unless the act is done in the course of employment, the servant's act does not make the employer liable."

In other words, for the master's liability to arise, the act must be a wrongful act authorised by the master or a wrongful and unauthorised mode of doing some act authorised by the master. The driver of a car taking the car on the master's business makes him vicariously liable if he commits an accident. But it is equally well-settled that if the servant, at the time of the accident, is not acting within the course of his employment but is doing something for himself the master is not liable. There is a presumption that a vehicle is driven on the master's, business and by his authorised agent or servant but the presumption can be met. It was negatived in this case, because the vehicle was proved to be driven by an unauthorised person and on his own business. The de facto driver was not the driver or the agent of the owner but one who had obtained the car for his own business not even from the master but from a servant of the master. *Prima facie*, the owner would not be liable in such circumstances."

37.1.1 In view of the above, Noticee No. 2 cannot be put to grave disadvantage (confiscation of the Vessel) for the independent and unendorsed misadventures of the Master of the Vessel. Without prejudice to the above, and without admitting that the Vessel is liable for confiscation under Section 115(2) of the Customs Act, since the Vessel has been provisionally released pursuant to Provisional Release Order No. CUS-SIIB-INT/64/2023 dated 20.02.2023, no order of confiscation can be made against it under Section 115(2) of the Customs Act. It is settled law that, when the conveyance is not in physical possession of the Customs department and has been provisionally released, it cannot be confiscated under Section 115(2) of the Customs Act. The Hon'ble

CEGAT, in the case of Ram Anek Jha v. Commissioner of Customs 2000 sec OnLine CEGAT 1659, has observed held that:

"4. Heard both sides. The fact of provisional release to the impugned vehicle is not in dispute. The only question that is required to be decided is whether the vehicle which is not in the physical possession of the Customs Authorities can be confiscated under Section 115(2) of the Customs Act, 1962."

37.1.2 In this regard there are clear instructions of the Central Board of Excise and Customs, New Delhi to the effect that in such a situation the only course left to the adjudicator is to enforce the terms of the bond and not to order confiscation. Further, the Noticee No.2 contended that without admitting that the vessel is liable for confiscation under Section 115(2) of the Customs Act, in the facts and circumstances of the present case, the case is fit for imposing only a token redemption fine under Section 115(2). Under the proviso to Section 115(2) of the Customs Act, an option must be given to pay in lieu of the confiscation of the conveyance a fine "not exceeding" the market price of the goods. As such, the Customs Act gives the Adjudicating Authority discretion to decide the quantum of the redemption fine based on the facts and circumstances of each case, that they have put in sufficient security to cover the amount of the redemption fine under the proviso to Section 115(2) of the Customs Act, that under the Provisional Release Order No. CUS-SIIB-INT/64/2023 dated 20.02.2023, the Vessel was provisionally released to Noticee No 2 upon the execution of a bond of Rs 98,00,00,000/-, being the approximate value of the vessel, and (2) a deposit in the State Bank of India of Rs. 4,00,00,000/- "to cover the amount of fine in lieu of, confiscation under Section 125 ... read with proviso to section 115 and the amount of penalties that may be levied under the Customs Act, 1962". As such, considering the wording of the Provisional Release Order, any redemption fine imposed by the Adjudicating Authority under the proviso to Section 115(2) of the Customs Act would necessarily have to be recovered from the monies so deposited. It is further submitted that, in the facts of the present case, the redemption fine imposable in lieu of confiscation under Section 115(2) of the Customs Act ought to be reduced to a nominal figure. This is owing to the fact that the Noticee No. 2 had no knowledge regarding the alleged smuggling activities of the Master of the Vessel, as has been elaborated above; that the Master acted completely independently in his alleged misdemeanours without confiding in or conniving with Noticee No. 2; that after having gained knowledge of the misconduct of the Master, they promptly took actions denouncing the Master's criminal act to the police authorities of Vietnam via a letter dated 28th February 2023; that since the beginning of the investigation by Customs Authorities, Noticee No. 2 has fully cooperated with the Customs department.

37.2 The Noticee No. 2 further contended that they are not liable for any penalty under Section 112, since the Notice neither specifies the sub-section of Section 112

under which penalty is sought to be imposed on Noticee No. 2 nor makes clear the allegations against Noticee No. 2 under Section 112; that without prejudice to the above, Noticee No. 2 did not have knowledge of the activities of the Master in the unlawful carriage of the 800 MT of Fuel Oil on the Vessel; it is settled law that knowledge is an essential ingredient to impose penalty under Section 112; that the Notice does not specify which sub-section of Section 112 the penalty is imposable under. This ambiguity is not permitted by law; that they cannot be asked to meet an incomplete case; that it is settled law that the ingredients of Section 112(a) and 112(b) of the Customs Act are distinct. They, relying upon in the case of B. Lakshmichand v. Government of India 1981 SCC Online Mad 461, argued that the Notice does not elaborate on which sub-section of Section 112- either (a) or (b)- the Notice contemplates that the penalty would be imposable under; that since the ingredients under the two sub-sections are different, Noticee No. 2 is at a distinct disadvantage as to the specifics of the case that the Notice calls upon them to meet in the present reply; that in light of the settled position of law reproduced above, the Notice cannot be sustained, and no penalty can be imposed on Noticee No. 2, the Notice being contrary to the principles of natural justice. Further, it is also settled law that a notice cannot be issued to invite a noticee to show cause why penalty should not be imposed on him under Section 112 without charging him with the ingredients of the offence which would expose him to a penalty. There must be specific allegations made under Section 112 against a noticee in the Show Cause Notice, in line with the ingredients of either sub-clause of Section 112. Otherwise, the notice would not be able to defend himself properly or put his case. This would be in clear violation of the principles of natural justice and thus impermissible. In support of their above contentions, the Noticee No. 2 has relied upon in the case of Charandas v. Assistant Collector of Customs A.I.R. 1968 Cal. 28., in the case of Rajeev Khatri v. Commissioner of Customs (Export) 2023 SCC Online Del 3840, Bal Raj v. Collector of Customs 1999 SCC Online CEGAT 839, of Customs Patna 2001 (131) ELT 278, Shri Ram v. State of U.P. (1975) 3 SCC 495, Commissioner of Customs v. M. Vasi 2002 SCC Online CEGAT 333 and contended that in the present case, no case whatsoever has been made out against Noticee No. 2 for abetment under the second part of Section 112(a) for want of any knowledge of the alleged activities of the Master of the Vessel; that none of the Master of the Vessel's or Mr. Anh's testimony has been questioned or controverted in the Notice and no material to the contrary has been brought on record. Only a mere assertion has been made that "for the acts and omission rendering the goods ... liable for confiscation ... [Noticee No. 2] appears to have rendered themselves liable for penalty under Section 112 ... ". Thus, for want of intention or knowledge on the part of Noticee No. 2, Noticee No. 2 cannot be said to have committed, omitted, or abetted any smuggling of goods as alleged in the Notice or otherwise. As a result, no penalty can be imposed on Noticee No. 2 under Section

112(a) or Section 112(b). The Noticee has, in light of the foregoing contentions, requested to withdraw and quash the Notice against them.

37.3 The Noticee No.2 has vide their letter dated 16-01-2025 made further submissions wherein they have submitted that the Vessel is not liable to be confiscated under Section 115(2) of the Customs Act in as much as the Noticee No. 2 was not aware of the activities of the Master of the Vessel that led to the captioned SCN being issued; that in the Master's statement dated 02.02.2023, the Master has stated that Noticee No. 2 was not aware of his smuggling activities; that in the statement of Mr Nguyen Quoc Anh on behalf of Noticee No. 2 dated 24.02.2023, Mr Anh has confirmed the said facts and the said position has not been controverted in the SCN; that at the relevant time, the Master cannot be said to have been an agent of Noticee No. 2, that the Vessel was under time charter, Clause 13(a) of which stated that the Master was to be under the orders and direction of the charterers as regards the employment of the vessel; that even assuming without admitting that the Master could be so considered, Noticee No. 2 at no point of time ratified or confirmed the acts of the Master that led to the SCN being issued; that in fact, Noticee No. 2 has denounced the Master in a letter to the police authorities of Vietnam; that it is settled law that a master cannot be held vicariously liable for the acts of his servant done without authority and outside the course of employment; that in fact, under the employment contract of the crew, if any illegal activities are committed, the Noticee No. 2, that without prejudice to the above, since the Vessel has been provisionally released by order dated 20.02.2023, it cannot be confiscated under Section 115(2) of the Customs Act; that it is the settled position of law as per the decision of the Hon'ble CEGAT in Ram Anek Jha v Commissioner of Customs 2000 SCC Online CEGAT 1659; that in light of the above, the Vessel is not liable to be confiscated under Section 115(2) of the Customs Act. Consequently, there is no question of a redemption fine being levied under the proviso to Section 115(2) of the Customs Act. Also, if it was to be found notwithstanding the above submissions that the Vessel is liable to be confiscated under Section 115(2) of the Customs Act, the present is a fit case for imposing only a token redemption fine on Noticee No. 2 in lieu of confiscation of the Vessel under the proviso to Section 115(2) of the Customs Act; that it is settled law that the language employed, i.e., "shall not exceed", indicates that the Customs authorities are empowered to impose redemption fine less than the market price of the goods confiscated and thus, a discretion is vested on the authorities with a rider that the imposition of redemption fine should not exceed the market price.

37.4 The Noticee No.2 has further contended that the Hon'ble CESTAT / CEGAT has, in several cases, been pleased to impose only a token redemption fine under the proviso to Section 115(2) of the Customs Act in cases where the owner of the conveyance in question had no knowledge of the conveyance being used for smuggling

activities and was in no way involved with such smuggling activities, in light of the fact that the redemption fine has to be paid out of the pocket of the conveyance owner who could not be faulted. The Hon'ble CESTAT, in the case of Kartick Kumar Saha v Customs & Central Excise 2012 SCC Online CESTAT 1546 observed that "5.... I find that the Id. Commissioner (Appeals) had observed that the appellant has no knowledge of the fact that the impugned vehicle was used by the driver in carrying red sander wood. Accordingly, keeping in view of all the attendant circumstances, I am of the opinion that ends of justice would meet if the fine is reduced to Rs. 25,000/- (Rupees twenty five thousand only). Accordingly, I reduce the fine from Rs. 50,000/- to Rs 25,000/- (Rupees twenty five thousand only). Appeal is disposed of in the above manner."

37.5 The Noticee No.2 further stated that the present is not a fit case for imposing penalty on Noticee No. 2 under Section 112 of the Customs Act in as much as the SCN does not disclose precisely which sub-section of Section 112 of the Customs Act the Noticee No. 2 has been called upon to show cause under; that the settled law in the Hon'ble Madras High Court's decision in B. Lakshmichand v Government of India 1981 SCC Online Mad 461. The ingredients of Section 112(a) and 112(b) differ and there is ambiguity in the SCN regarding the specific allegations made against Noticee No. 2 and the true nature of the case that the SCN calls upon Noticee No. 2 to meet. This contravenes the principles of natural justice; that without prejudice to the above, the Noticee No. 2 is not liable to be penalised under either Section 112(a) or Section 112(b) of the Customs Act.

37.6 The Noticee No.2 has, on the basis of the above submissions, requested that the Hon'ble Adjudicating Authority to withdraw the SCN issued to Noticee No. 2.

38. The Noticee No.3 Mr. Nguyen Van Hoan, Master of the Vessel MT Panda did not submit any defence reply to the show cause notice issued to him.

39. The Noticee No.4 M/s. Shree Krishna Quarry Pvt. Ltd., Shop No.7 (Rear side), Sitaram Building, F-Block, Ground Floor, Market Road, Fort, Mumbai-400 001, has vide their letter dated 16-09-2024, submitted their defence reply to the show cause notice, wherein they have contended that the allegations and averments levelled in the SCN are denied at the outset; that in respect of section 115(2) charged against them for confiscation of barge, they contend that to ascertain whether they, being the owner of the barge MV Sonal, had prior knowledge about the alleged offence, no statement of any director or authorized signatory was recorded; that the only piece of evidence that is cited to support the proposal is the statement of master of the barge; however, the deposition of the master does not provide the legal support required under the law to order confiscation of the barge under Section 115(2) of the Customs Act, 1962; that it is

evident that the master of the barge was not aware about the proposed use of barge by Shri Pintu Batham and other persons associated with M/s. Revolution Petrochem LLP; that the department never suspected involvement of the Directors or Authorized Signatory of M/s. Shree Krishna in the alleged offence, which is evident from the fact that none of them were even summoned to record statement; that therefore, it is established that the notice does not bring out any evidence to contradict the submission advanced that the barge was used without the knowledge or connivance of the owners and thereby made submission that the barge is not liable to confiscation under section 115(2) of the Customs Act, 1962.

39.1 The Noticee No.4 has further submitted that they were not liable to penalty under Section 112 of the Customs Act, 1962 in as much as the barge was leased/chartered by them to M/s. Revolution Petrochem LLP by charterparty dated 02-04-2022; that when the incident occurred the barge was in the control of M/s. Revolution Petrochem LLP, which was exclusively leased/chartered for the purpose of removing and storing sludge; that the loading and other operations of the barge were under the control of the charterers M/s. Revolution Petrochem LLP; that there is no evidence to support the allegation that they had provided/ leased out the barge to M/s. Revolution Petrochem LLP for clandestinely clearing fuel oil smuggled by vessel M.T. Panda in guise of slop/ sludge oil; that there is no evidence to support the allegation that they had any reason to believe that 800 MT of fuel oil on board vessel MT Panda was not manifested by the master and was liable for confiscation under Section 111 of the Customs Act, 1962; that there is no evidence to support the allegation that they had abetted smuggling of 800 MT of fuel oil by way of leasing out barge MV Sonal for smuggling of fuel oil; that no person representing M/s. Revolution Petrochem LLP have stated that they had taken barge from them on lease for smuggling of fuel oil under any pretext.

39.2 The Noticee No.4 further relying upon in the case of P.P. Dutta Wing Cdr (Retd.) v/s. Commissioner of Customs, New Delhi, 2013 (293) ELT 127 (Tri. – Del) submitted that in the totality of facts and circumstances narrated in the notice, they are not liable to penalty under Section 112 of the Customs Act, 1962 and prayed to consider their above submissions and vacate the notice issued to them.

40. The Noticee No.5 Shri Shravan Kumar, Master of Barge MV Sonal has vide letter dated 28.02.2025, requested for closure of the case against him, in terms of the clarification issued by the CBIC vide Circular No 11/2016-Cus. dated 15-03-2016.

PERSONAL HEARING:

41. The Noticees involved in the present show cause notice were intimated vide letter dated 18-12-2024 in respect of schedule of personal hearing fixed on 27-12-

2024. Responding to the above letter of intimation for personal hearing, Shri Vikas Mehta, Authorized Representative, remained present virtually for the personal hearing before the adjudicating authority, on behalf of Noticee No.1 M/s. Revolution Petrochem LLP, Gandhidham and Noticee No.4 M/s. Shree Krishna Quarry Pvt. Ltd., Mumbai. Shri Vikas Mehta had during the personal hearing, representing Noticee No.1 M/s. Revolution Petrochem LLP, Gandhidham reiterated to their written submission dated 30-09-2024 and once again requested to conclude the proceedings under Section 28(6) of the Customs Act, 1962, since they have complied with all the conditions stipulated in Section 28(5) of the said Act.

41.1 Shri Vikas Mehta had during the personal hearing, representing Noticee No.4 M/s. Shree Krishna Quarry Pvt. Ltd., Mumbai, submitted that Noticee No.4 is the owner of the barge, which was leased out to M/s. Revolution, who was found to commit an offence by receiving fuel oil that was not manifested or non-duty paid; that the SCN proposed to confiscate the barge under section 115 (2) of the act, wherein the onus to prove otherwise is on the noticee. He submitted that if the person who hires the barge, commits offence, which was not in the noticee's knowledge and the department is unable to bring on record any evidence regarding any transaction or financial flow to the noticee, or statements of the owner of the barge, showing his direct or indirect involvement in the offence committed by Revolution and the master of the vessel, and apart from that the critical point in the noticee's favour is in the entire investigation, no statement of director/ partner of the noticee has been recorded. The investigation never gave an inclination or indication that anybody from the firm Shree Krishna was involved in the offence. Further, the master of the barge also in his statement, has stated that he did not know why the barge was instructed to go near the vessel Panda. Therefore, the environment of Section 115 (2) is not satisfied in the present case. The usage of barge per se will not bring it in the ambit of section 115(2) because 115(2) has a condition that the owner must be given an opportunity to show that he was not aware, which is the qualification of touching the barge. As regard proposal of penalty on the noticee under section 112, he read concerned portion of para 31 of the SCN and submitted that since there is no evidence on record, as already stated hereinabove, particularly the act of commission & omission without recording a statement and therefore, requested to drop the proceedings against M/s Shree Krishna Quarry Pvt. Ltd., Mumbai.

42. In pursuance to letter dated 27-12-2024 intimating the next date for personal hearing scheduled for 09-01-2025, Shri Prathamesh N. Kamat, Advocate & Authorized Representative for M/s. Sao Viet Petrol Transportation Co. Ltd., Vietnam [Noticee No.2] remained present for the personal hearing in virtual mode and submitted that the Vessel MT PANDA ("Vessel") is not liable to be confiscated under Section 115(2) of the Customs Act, 1962 ("Customs Act") on the following grounds:

- a. The Noticee No. 2 was not aware of the activities of the Master of the Vessel MT PANDA that led to the SCN being issued. In the Master's statement dated 02.02.2023, the Master has stated that Noticee No. 2 was not aware of his smuggling activities. Further, in the Statement dated 24-02-2024 of Mr Nguyen Quoc Anh on behalf of Noticee No. 2 dated 24.02.2023, Mr Anh has again confirmed that the owner of the vessel was not aware of his smuggling activities and this position has not been controverled in the SCN;
- b. At the relevant time, the Master cannot be said to have been an agent of Noticee No. 2. The Vessel was under time charter, Clause 13(a) of which stated that the Master was to be under the orders and direction of the charterers as regards the employment of the vessel.
- c. That even assuming without admitting that the Master could be so considered, Noticee No. 2 at no point of time ratified or confirmed the acts of the Master that led to the SCN being issued. The Noticee, referring to the case law viz. Sitaram Motilal Kalal v Santanuprasad Jaishankar Bhatt [1966 SCR (3) 727] submitted that a master cannot be held vicariously liable for the acts of his servant done without authority and outside the course of employment and contended that in fact, under the employment contract of the crew, if any illegal activities are committed, Noticee No. 2 is not to be responsible.
- d. Since the Vessel has been provisionally released by order dated 20.02.2023, it cannot be confiscated under Section 115(2) of the Customs Act. This is the settled position of law as per the decision of the Hon'ble CEGAT in Ram Anek Jha v Commissioner of Customs 2000 SCC Online CEGAT 1659.
- e. That if it was to be found notwithstanding the above submissions that the Vessel is liable to be confiscated under Section 115(2) of the Customs Act, the present case is a fit case for imposing only a token redemption fine on Noticee No. 2 in lieu of confiscation of the Vessel under the proviso to Section 115(2) of the Customs Act.

42.1 The Noticee No. 2 has further submitted that the present case is not a fit case for imposing penalty on Noticee No. 2 under Section 112 of the Customs Act on the following grounds:

- a. that the SCN does not disclose precisely which sub-section of Section 112 of the Customs Act the Noticee No. 2 has been called upon to show cause, in con-travention of the settled law in the Hon'ble Madras High Court's decision in B. Lakshmidand v Government of India 1981 SCC OnLine Mad 461 [Reply to SCN @ Annexure 'F']. The ingredients of Section 112(a) and 112(b) differ and there is ambiguity in the SCN regarding the specific allegations made against Noticee No. 2 and the true nature of the

case that the SCN calls upon Noticee No. 2 to meet, which contravene the principles of natural justice;

b. that the Noticee No. 2 is not liable to be penalised under either Section 112(a) or Section 112(b) of the Customs Act for the reason that-

i. Under Section 112(a) of the Customs Act, there must be any commission, omission, or abetment on the part of Noticee No. 2 that makes goods liable to confiscation under Section 111 of the Customs Act and referred to case law Rajeev Khatri v Commissioner of Customs (Export) 2023 SCC OnLine Del 3840, and contended that for invoking section 112(a), positive and tangible evidence has to be produced, whereas no such evidence against Noticee No. 2 has been produced in the SCN.

ii. Further, to show abetment, the Noticee contended that it must be shown that there was knowledge of the proposed offence and some benefit accruing to the abettor and relied upon the case laws Shri Ram v State of U.P. (1975) 3 SCC 495; Commissioner of Customs v M. Vasi 2002 SCC OnLine CEGAT 333. The SCN makes out no case of abetment against Noticee No. 2, since there was no knowledge of the Master's activities on the part of Noticee No. 2—a fact that the SCN produces no material to controvert;

iii. that a similar requirement of knowledge is essential for liability under Section 112(b) citing case law- Lalit Jain v C.C.-Ahmedabad 2022 SCC OnLine CESTAT 2962), and contended that as such, the Section 112(b) standard has also not been met in the present case.

42.2 The, Noticee No.2 has, on the basis of the above submissions, requested that the Adjudicating Authority may withdraw the SCN issued to Noticee No. 2.

43. Further, in pursuance of letter dated 25-02-2025 intimating the schedule for personal hearing fixed on 04-03-2025 to Mr. Nguyen Van Hoan, Master of MT Panda [Noticee No.3] and Shri Sarvan Kumar, Master of Barge MV Sonal, Shri Jay Davda, CHA, M/s. Jamnadas Ramji, Jamnagar & Authorized Representative of Noticee No.3 remained present for the personal hearing in virtual mode and pleaded that relief may be granted in the case to his client Mr. Nguyen Van Hoan, master of MT Panda. Further, neither Shri Sarvan Kumar, Master of Barge MV Sonal [Noticee No.5] nor any representative on his behalf appeared for the personal hearing.

DISCUSSIONS & FINDINGS:

44. Before delving into the merits of the case, it is pertinent to mention here that in the case of Show Cause Notice No.COMMR-03/2024-25 dated 02-09-2024 issued

to M/s. Revolution Petrochem LLP, Gandhidham [Noticee No.1] and Shri Shravan Kumar [Noticee No.5], Master of Barge MV Sonal, amid other Noticees:-

- (i) M/s. Revolution Petrochem LLP, Gandhidham [Noticee No.1] has vide their letter dated 30-09-2024 submitted that since they have made payment of due amount of duty with interest and penalty at the rate of 15% much before expiry of period of thirty days from the date of receipt of SCN as mandated in Section 28(5), and since their case is squarely covered in the provisions of section 28(6), the proceedings in their case may be considered for deemed conclusion under section 28(6) of the Customs Act, 1962.
- (ii) Shri Shravan Kumar [Noticee No.5], Master of Barge MV Sonal has vide letter dated 28.02.2025, requested for consider his case for deemed conclusion under section 28(6) of the Customs Act, 1962, in terms of the clarification issued by the CBIC vide Circular No. 11/2016-Cus. dated 15-03-2016.

45. I find that the SCN COMMR-03/2024-25, dated 02.09.2024, issued to M/s Revolution Petrochem LLP, Gandhidham [Noticee No.1], and Shri Sarvan Kumar, Master of Barge MV Sonal, C/o. M/s. Shree Krishna Quarry Pvt. Ltd., Mumbai [Noticee No.5] proposes:

- (i) Confiscation of 800 MTs of illegally imported 'Fuel Oil', valued at Rs. 4,37,83,601/- seized under seizure memo dated 02.02.2023, pursuant to Section 111(d), 111(f), 111(i), and 111(m) of the Customs Act, 1962;
- (ii) Confirm and recovery of the Customs Duty amounting to Rs. 93,01,826/- in respect of the smuggled 'Fuel Oil' under Section 28(4), along with interest under Section 28AA of the Customs Act, 1962, and appropriation of duty amount Rs.93,01,826/- and Interest amount of Rs. 1,07,035/- already paid towards recovery;
- (iii) Penalty under Section 114A of the Customs Act, 1962, and appropriation of Rs. 13,95,274/- (15% of duty) already paid towards recovery.
- (iv) Penalty under Section 112 of the Customs Act, 1962 upon Shri Sarvan Kumar, Master of barge MV Sonal.

46. I find that the importer, vide letter dated 30.09.2024, submitted that they have paid the differential Customs duty of Rs. 93,01,826/-, interest of Rs. 1,07,035/-, and penalty @ 15% amounting to Rs. 13,95,274/- via TR-6 Challans, all dated 01.03.2023. The payments made by Noticee No. 1 have been confirmed by the Superintendent (Preventive Wing), Customs (Preventive), Jamnagar, via his letter F No CUS/SIIB/INT/64/2023-Prev., dated 31.01.2024. In their letter dated 30.09.2024, the Noticee No. 1 further contended that, since they have already paid the duty along with

applicable interest and penalty @ 15% of the duty involved in the case, their case is squarely covered under the provisions of Section 28(6) of the Customs Act, 1962. They therefore, requested that their case may be ordered to be deemed conclusive. The Noticee No. 1 has reiterated the same during the personal hearing held on 27.12.2024.

47. I have considered the submission made by the importer. After perusal of the case records, I find that 800 MTs of smuggled 'Fuel Oil', valued at Rs. 4,37,83,601/-, is liable for confiscation under Sections 111(d), 111(f), 111(l), and 111(m) of the Customs Act, 1962. I also confirm the Customs Duty amounting to Rs. 93,01,826/- leviable on the 800 MTs of smuggled Fuel Oil, under Section 28(4) of the Customs Act, 1962, along with interest under Section 28AA of the said Act. I further find that the importer, M/s. Revolution Petrochem LLP, Gandhidham, has already paid the differential Customs duty of Rs. 93,01,826/-, along with interest of Rs. 1,07,035/- and a penalty of Rs. 13,95,274/- (15% of the duty amount) on 01-03-2023, i.e. prior to the issue of the SCN. I also find that M/s. Revolution Petrochem LLP, Gandhidham has requested, both in their letter dated 30-09-2024 and during the personal hearing held on 27-12-2024, that the proceedings be concluded under Section 28(6) of the Customs Act, 1962. Additionally, I find that the Superintendent (Preventive Wing), Customs (Preventive), Jamnagar, in his letter F.No. CUS/SIIB/INT/64/2023-Prev dated 31-01-2024, has confirmed that M/s. Revolution Petrochem LLP has discharged the Customs Duty of Rs 93,01,826/-, along with the interest of Rs. 1,07,035/- and the penalty of Rs. 13,95,274/- applicable to the 800 MTs of Fuel Oil. Therefore, I find that in terms of provisions under Section 28(6)(i) of the Customs Act, 1962, the proceedings in respect of the Noticee No.1 to whom the above notice is served under Section 28(4) of the Customs Act, 1962 shall be deemed to be conclusive as to the matters stated in this Show Cause Notice. The payment made by the importer towards duty, interest and penalty mentioned as above, is appropriated.

48. Since the 800 MTs of Fuel Oil, valued at Rs. 4,37,83,601/-, were imported illegally by Noticee No. 1 through smuggling, they are held liable for confiscation under Sections 111(d), 111(f), 111(l), and 111(m) of the Customs Act, 1962. However, since the proceedings are deemed to be concluded under clause (i) of sub-section (6) of Section 28, and since the goods are neither prohibited nor restricted, no fine is imposable in accordance with the first proviso to clause (1) of Section 125. Accordingly, the goods, namely the "800 MTs of Fuel Oil" seized on 02.02.2023, are released to Noticee No. 1 without imposition of any redemption fine under Section 125(1) of the Customs Act, 1962.

49. Further, the present Show Cause Notice (SCN) is also issued to Shri Sarvan Kumar, Master of Barge MV Sonal [Noticee No. 5], which received 241 MTs of 'Fuel Oil' illegally from vessel MT Panda on 02.02.2023. This transfer occurred out of the

un-manifested stock of 800 MTs of Fuel Oil. The illegal transfer of 241 MTs of un-manifested 'Fuel Oil' from vessel MT Panda was documented in the Panchanama dated 02.02.2023, and was later confessed by Shri Sarvan Kumar in his statement dated 02.02.2023. In his statement, recorded on board the barge, he admitted to having full knowledge of receiving the illegally imported Fuel Oil from vessel MT Panda under the guise of Slop/Sludge Oil. It, therefore, appears that Shri Sarvan Kumar acquired possession of the smuggled Fuel Oil and was involved in carrying, depositing, keeping, and concealing it, all of which he knew, or had reason to believe, were liable for confiscation under Section 111 of the Customs Act, 1962. As a result, he has rendered himself liable to a penalty under Section 112 of the Customs Act, 1962.

50. The Noticee No.5 has vide letter dated 28.02.2025, has requested for closure of the case against him, in terms of the clarification issued by the CBIC vide Circular No.11/2016-Cus. dated 15-03-2016. Relevant portion of Circular No.11/2016-Cus. dated 15-03-2016 is stipulated hereunder for reference:

"(5) The provision of deemed conclusion is contingent upon the person to whom a SCN has been issued under sub-section (1) or sub-section (4) paying up all the dues of duty, interest and penalty as the case may be. Only in such a circumstance of compliance, shall closure of proceedings against other persons come into effect. Therefore, as a corollary, other persons implies person(s) to whom no demand of duty is envisaged with notice served under sub-section (1) or sub-section (4) as the case may be. Other persons who happen to be co-noticees in the SCN for their acts of commission or omission other than demand of duty would be benefitted by the deemed closure in cases where the compliance of conditions mentioned in proviso to sub-section (2) or clause (i) of sub-section (6), as the case may be by the main noticee to whom inter-alia a demand of duty has been issued has been fulfilled. Further, all such cases where proceedings reach closure stage under the provisions of Section 28, an order to the effect must be invariably issued by the concerned adjudicating authority."

However, I would also like to visit para (6) of the said Circular also, which stipulates as under:

"(6) Section 28 primarily deals with the recovery of duty or erroneous refund. While introducing the facility of deemed conclusion, enabling provision was made for payment of interest and/ or penalty. Therefore, all such SCNs or cases which involve duty, interest and/ or payment of penalty shall be covered by the above clarification. Further, it may be noted that the cases involving seizure of goods under Section 110 of the Customs Act, or cases where confiscation provisions under sections 111, 113, 115, 118, 119, 120 and 121 are invoked, would be out of purview of this Circular."

Taking into consideration the above clarification, I find that the present SCN does not propose the imposition of Sections 111, 113, 115, 118, 119, 120, and 121 of the Customs Act, 1962 upon Noticee No. 5, as stipulated in paragraph 6 of the said Circular. Further, since only Section 112 is proposed on Noticee No.5 and since proceedings under Section 28(6)(i) has been concluded against Noticee No.1 i.e. the main Noticee

as discussed in paras supra, I find that Noticee No.5 is eligible for immunity under Section 28(6)(i). Accordingly, in terms of the provisions under Section 28(6)(i) of the Customs Act, 1962, the proceedings in respect of Co-Noticee No. 5, to whom the above notice is served under Section 112 of the Customs Act, 1962, shall be deemed conclusive as to the matters stated in this Show Cause Notice.

51. Therefore, in terms of the provisions of Section 28(6) of the Customs Act, 1962, the issues stated in SCN No. COMMR-03/2024-25 dated 02 09.2024 are deemed to be concluded as above in the case of Noticee No.1 M/s Revolution Petrochem LLP, Gandhidham and Noticee No.5 Shri Sarvan Kumar, Master of Barge MV Sonal, without prejudice to the provisions of Section 135 and 140 of the Customs Act, 1962, and I hold accordingly

52. I further find that, with respect to Noticee No. 2, M/s. Sao Viet Petrol Transportation Co. Ltd. (Vietnam), Noticee No. 3, Mr. Nguyen Van Hoan, the Master of vessel MT Panda, and Noticee No. 4, M/s. Shree Krishna Quarry Pvt. Ltd., since they are charged under Sections 115 and 121, and in accordance with the clarification issued by CBIC in Circular No. 11/2016-Cus. dated 15-03-2016, they do not qualify for the conclusion of proceedings under Section 28(6) of the Customs Act, 1962 and therefore, decided on merits. I further find that, with respect to Noticee No. 2, M/s. Sao Viet Petrol Transportation Co. Ltd. (Vietnam), Noticee No. 3, Mr. Nguyen Van Hoan, the Master of vessel MT Panda, and Noticee No. 4, M/s. Shree Krishna Quarry Pvt. Ltd., since they are charged under Sections 115 and 121, in accordance with the clarification issued by CBIC in Circular No. 11/2016-Cus. dated 15-03-2016 they do not qualify for the conclusion of proceedings under Section 28(6) of the Customs Act, 1962 and therefore, the matter is decided on merits against these Noticees.

53. I have read the charges adduced in the Show Cause Notice dated 02 09 2024 against Noticee No.2, Noticee No.3 and Noticee No.4, perused the relied upon documents, the written submissions filed by the Noticees, the submissions made at the time of personal hearing and considered other evidences available on record

54. The Show Cause Notice alleges that vessel MT Panda, under the ownership of M/s. Sao Viet Petrol Transportation Co. Ltd., Vietnam [Noticee No.2], seized under Seizure memo dated 02.02.2023, was used for transportation in smuggling of 800 MTs of Fuel Oil to Sikka Port resulting into contravention of the provisions of Section 12, 30, 32 and 46 of the Customs Act, 1962 and therefore, the said vessel appears to be liable for confiscation under Section 115 (2) of the Customs Act, 1962 and penalty should not be imposed under Section 112 for the act of omission and commission. Further, for the acts and omission rendering the goods viz. 800 MTs smuggled Fuel Oil liable for confiscation under Section 111 of the Customs Act, 1962.

M/s. Sao Viet Petrol Transportation Co. Ltd. appears to have rendered themselves liable for penalty under the provisions of Section 112 of the Customs Act, 1962. The show cause notice further alleges that unaccounted foreign currency of USD 60000/- recovered from possession of Mr. Nguyen Van Hoan, Master of vessel MT Panda, appears to be liable for confiscation under Section 121 of the Customs Act, 1962, being the sales proceed of seized un-manifested Fuel Oil and for the acts and omission rendering the goods viz. 800 MTs smuggled Fuel Oil liable for confiscation under Section 111 of the Customs Act, 1962. The Notice also alleges that M/s Shree Krishna Quarry Private Limited, Mumbai, owner company of barge MV Sonal [Noticee No.4], provided their barge to M/s Revolution Petrochem LLP for clandestinely clearing 241 MTs. Of un-manifested Fuel Oil, which appears to be liable for confiscation under Section 111 of the Customs Act, 1962, thereby appears to have abetted in smuggling of Fuel Oil by way of leasing out their barge MV Sonal for smuggling of Fuel Oil and thereby rendering the same liable for confiscation under provisions of Section 111 of the Customs Act, 1962 and therefore, appears to have rendered themselves liable to penalty under the provisions of Section 112 of the Customs Act, 1962.

54.1 I find from the records that the vessel MT Panda had been time chartered to one Solid Energy Solutions DMCC on a SHELLTIME 4 (Dec 1984) charter dated 28-06-2022, and the clean fixture recap dated 28-07-2022, wherein Clause 13(a) specifically stipulates – *"13.(a) The master (although) appointed by Owners) shall be under the orders and direction of Charterers as regards employment of the vessel, agency and other agreements..."* From the said clause it can be construed that the Captain was, at the material point of time, the agent/ under the instructions of Noticee No.2 for the purpose of voyage, since he was under the orders/ control of the time charterers.

54.2 I further find that the master of the vessel MT Panda has in his statement recorded under section 108 of the Customs Act, 1962, admitted that he was the sole person involved in the smuggling of 800 MTs of Fuel Oil, and **the vessel owners/crews/ officers/ vessel operators were not aware of the said smuggling activity.** This admission is corroborated with the statements of Shri Harish Harjani, partner of M/s Revolution Petrochem LLP [Noticee No.1], Shri Jimmy S. Thakker, and their staff Shri Pintu Batham, who were in exclusive and direct contact of Mr. Nguyen Van Hoan, Master of the said vessel MT. Panda to carry out the said illegal activity. It is also evident on record and an admitted fact that Shri Pintu Batham was the person who had delivered Foreign Currency of USD 60,000/- directly to Mr. Nguyen Van Hoan, Master of vessel MT Panda for the delivery of smuggled fuel oil.

54.3 I also find that Mr. Nguyen Quoc ANH, Operation Manager of M/s Sao Viet Petrol Transportation Co. Ltd., has in his statement, recorded under section 108, stated

that the Noticee No.2 were never intimated regarding the permission sought by the Noticee No.1 to file manual Bill of Entry to discharge 800 MT. sludge/ slop from the vessel, whereas factually the Master of the vessel had to first inform the owners in case of any discharge of sludge/ slop at any port and the owners would arrange by appointing an agent for discharge of sludge/ slop, but in the present case no such thing happened. Mr. Nguyen has also stated that in terms of the employment contract between the Noticee No.2 and the crews, they are aware that they are not supposed to indulge in any illegal activities, and if involved they would be solely responsible for such illegal activities. It is also apparent from the available records that the Noticee No.2 has in fact, upon knowing about the smuggling activity carried out by the Master of the vessel MT. Panda & Noticee No.3 Mr. Nguyen Van Hoan, filed a Denouncement Letter dated 28-02-2023 with the Vietnamese Police Agency.

54.4 I further find from the records that the Noticee No.1 has vide their letter dated 30-09-2024 submitted that since they have made payment of due amount of duty with interest and penalty at the rate of 15% much before expiry of period of thirty days from the date of receipt of SCN as mandated in Section 28(5), and since their case is squarely covered in the provisions of section 28(6), the proceedings in their case may be considered for deemed conclusion under section 28(6) of the Customs Act, 1962. Therefore, it is evident that M/s. Revolution Petrochem LLP [Noticee No.1] is in admission of the fact that he has connived with the Master of the vessel MT. Panda Mr. Nguyen Van Hoan [Noticee No.3] to smuggle 800 MTs of Fuel Oil through vessel MT Panda, concealed in its Slop Tank and clandestinely discharge into barge MV Sonal in guise of discharge of Slop/ Sludge Oil, which was un-manifested and concealed in star board side Slop Tank as Slop/ sludge Oil. This fact was further evidenced with seizure of USD 60,000/- from the Master of the vessel MT Panda, who has admitted the currency to be the part payment for the illegal smuggling activity. I find that these facts has been further corroborated with the printouts of WhatsApp-Chat between Master of MT Panda and Shri Haresh N. Harjani, retrieved during search proceedings on board MT Panda on 02.02.2023, wherein the planning to illegally import 800 MTs of Fuel Oil through vessel MT Panda concealed in Slop Tank and subsequent delivery through barge MV Sonal at Sikka Port in guise of discharge of Slop/ Sludge Oil in lieu of illicit consideration of USD 1,60,000/-, is revealed. This was duly admitted by the Master of vessel MT Panda and Shri Haresh N. Harjani in their respective statements recorded under Section 108 of the Customs Act, 1962. I also find that the foreign currency of USD 60000/- recovered from possession of Mr. Nguyen Van Hoan, was in addition to the amount mentioned in Ship's Currency Declaration for USD 11,600/- declared under IGM No.2334045 dated 30.01.2023, filed for vessel MT Panda.

54.5 Also, from the statement of Mr. Nguyen Van Hoan, Master of vessel MT Panda, it transpires that he has explicitly explained in detail the modus operandi adopted by him to acquire un-manifested cargo of Fuel Oil, wherein taking the benefit of contractual variation of 0.3% allowed at load and discharge port, during the previous voyage while discharging Fuel Oil at Tanjung Pelepas- Malaysia, he purloined 150 MTs of Fuel Oil from manifested cargo and stored it into the Slop Tank and remaining 650 MTs of Fuel Oil was purloined and stored in Slop Tank from the current voyage cargo, during discharge at Sikka Port. It is to accentuate that at no point of time till the adjudication of the case, neither Noticee No.1 nor Noticee No.3 retracted from their statements in any manner.

54.6 I find that the Section 115(2) stipulates that "*(2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal*". From the above, it is apparent that any conveyance to be held liable for confiscation, such action of transporting of illegal or smuggled goods in a conveyance require the knowledge or connivance of the owner himself, his agent or person in charge of the conveyance. However, in the present case as regards the owner of the vessel MT Panda [Noticee No.2] is concerned, as discussed in paras supra, I find that the investigation could not allude an iota of evidence against the owner of the vessel MT Panda which could point out that the Noticee No.2 had knowledge of the illegal action of the Master of MT Panda, or have connived with him for the smuggling activity. Moreover, though the person in-charge of the conveyance was the main person involved in the illicit smuggling activity, the Noticee No.2 had immediately filed police complain against the master of the vessel. Also, as a caveat there has been employment contract between the employer i.e. Noticee No.2 and the crews of the vessel MT Panda, wherein they are very well aware that they are not supposed to indulge in any illegal activities, and if involved they would be solely responsible for such illegal activities, which absolves Noticee No.2 from the illegal action of Noticee No.3. In view of the above, I am of a considered view that vessel MT Panda valued at Rs.98,00,00,000/- owned by M/s Sao Viet Petrol Transportation Co. Ltd. [Noticee No.2] seized vide Seizure Memo dated 02-02-2023 and provisionally released on execution of Bond for full value and furnishing Security Deposit of Rs. 4,00,00,000/- in SBI vide DD No. 057534 dated 01.03.2023, is not liable for confiscation under Section 115(2) of the Customs Act, 1962 and I hold accordingly. Further, since the vessel MT Panda is not held liable for confiscation and since Noticee No.2 has not resorted to any illegal acts or omission, the Noticee No.2 is not liable for penalty under Section 112 of the Customs Act, 1962 and I hold accordingly.

54.7 Now, in view of the discussions made in paras supra in respect of Mr. Nguyen Van Hoan [Noticee No.3], a resident of Vietnam, I find that the Noticee No.3 was the main person and the mastermind who has colluded with M/s. Revolution Petrochem LLP, Gandhidham, to smuggle 800 MTs of un-manifested Fuel Oil. This was illegally carried by concealing it in the slop/ sludge tank and subsequently removed it into barge MV Sonal. Additionally, the Noticee No.3 received an illegal consideration of USD 60,000/- on board the vessel MT Panda as part payment of total USD 1,60,000/-, for delivering smuggled 800 MTs Fuel Oil to M/s Revolution Petrochem LLP, rendering the smuggled goods liable for confiscation under Section 111 of the Customs Act, 1962. This act of omission and commission by Mr. Nguyen Van Hoan [Noticee No.3], has rendered him liable for penalty under Section 112(b) of the Customs Act, 1962, and I hold accordingly. Also, the illegal consideration of USD 60,000/- recovered from the possession of Mr. Nguyen Van Hoan [Noticee No.3], Master of vessel MT Panda, under Panchnama dated 02.02.2023, is liable for absolute confiscation under Section 121 of the Customs Act, 1962, and I hold accordingly, as the Noticee No.3 has neither made any written or oral submissions, except seeking relief in the matter during personal hearing through his authorized representative. Further, as discussed herein above, the Noticee No.3 was the person who was in the possession of smuggled 800 MTs. Of Fuel Oil, was the person concerned in keeping, concealing, carrying, removing and selling the goods which he knew or has reason to believe was un-manifested and illegal, are liable to confiscation under section 111, and therefore, the Noticee No.3 has rendered himself liable for penalty under 112(b) of the Customs Act, 1962, and I hold accordingly.

54.8 Further, as regards M/s. Shree Krishna Quarry Pvt. Ltd., Mumbai [Noticee No.4], I find from records that the barge MV Sonal owned by them, was chartered/ leased to M/s. Revolution Petrochem LLP for the purpose of removing and storing sludge, thereby the loading and other operations of the barge were under the exclusive control of the charterers M/s. Revolution Petrochem LLP. I further find that there is no evidence on record to suggest that the said barge was knowingly leased out by Noticee No.4, to M/s. Revolution Petrochem LLP to clandestinely remove 800 MT of un-manifested Fuel Oil from vessel MT Panda, which was liable for confiscation under Section 111 of the Customs Act, 1962, thereby abetting such illegal activity. I also find from records that at no point of time was Noticee No.4 summoned nor their statement recorded under section 108 that could corroborate their involvement in any manner to the said illegal activity. Now, in terms of Section 115(2), the essential component for a conveyance to be held liable for confiscation, is the requirement of knowledge or connivance of the owner himself regarding the transportation of illegal or smuggled goods in that conveyance, which is inexplicable in the case of Noticee No.4 in as much as I find that the investigation failed to establish beyond doubt that the Noticee No.4

had any knowledge of the smuggling activity carried out by the Master of MT Panda, in connivance with M/s. Revolution Petrochem LLP.

54.9 In view of the above, I am of a considered view that the barge MV Sonal, valued at Rs.2,00,00,000/-, owned by M/s Shree Krishna Quarry Pvt. Ltd., Mumbai [Noticee No.2], seized vide Seizure Memo dated 02-02-2023 and provisionally released on execution of Bond for full value and furnishing Bank Guarantee No.216GT01230650002 dated 06-03-2023 issued by the HDFC Bank, Gandhidham for Rs.20,00,000/- is not liable for confiscation under Section 115(2) of the Customs Act, 1962 and I hold accordingly. Further, since the barge MV Sonal is not held liable for confiscation and since Noticee No.4 has not resorted to any illegal acts or omission, the Noticee No.4 is not liable for penalty under Section 112 of the Customs Act, 1962 and I hold accordingly.

60. In view of the above discussion and findings, I pass the following order:-

ORDER

- (i) The issues stated in SCN No. COMMR-03/2024-25 dated 02.09.2024 are deemed to be concluded in terms of the provisions of Section 28(6) of the Customs Act, 1962, as recorded in Para 47 and 48 above, in the case of M/s Revolution Petrochem LLP, Gandhidham [Noticee No.1] and Shri Sarvan Kumar, Master of Barge MV Sonal [Noticee No.5].
- (ii) I do not order for confiscation of vessel MT Panda valued at Rs.98,00,00,000/- owned by M/s Sao Viet Petrol Transportation Co. Ltd., Vietnam [Noticee No.2], seized vide Seizure Memo dated 02-02-2023 and provisionally released on execution of Bond for full value and furnishing Security Deposit of Rs 4,00,00,000/- in SBI vide DD No. 057534 dated 01.03.2023, under Section 115(2) of the Customs Act, 1962.
- (iii) I do not impose penalty on M/s Sao Viet Petrol Transportation Co. Ltd., Vietnam [Noticee No.2], owner of vessel MT Panda, under Section 112 of the Customs Act, 1962.
- (iv) I order for absolute confiscation of sales proceeds of smuggled Fuel Oil in Foreign Currency of USD 60,000/- (US Dollars Sixty Thousand only) seized from possession of the Mr. Nguyen Van Hoan, Master of vessel MT Panda [Noticee No.3] and resident of Vietnam, which was placed under seizure on 02.02.2023 under the provisions of Section 121 of the Customs Act, 1962.

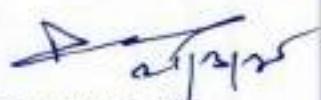
(v) I do not order for confiscation of Barge MV Sonal, valued at Rs. 2,00,00,000/- (Rupees Two Crores only) owned by M/s. Shree Krishna Quarry Pvt. Ltd., Mumbai [Noticee No.4], seized vide Seizure Memo dated 02.02.2023, released provisionally to them on execution of Bond for full value and furnishing Bank Guarantee No. 216GT01230650002 dated 06.03.2023 issued by HDFC Bank, Gandhidham for Rs. 20,00,000/- (Rupees Twenty Lakhs Only), under Section 115(2) of the Customs Act, 1962

(vi) I impose penalty of Rs.930183/- [Rupees Nine Lakh Thirty Thousand One Hundred Eighty Three Only] on the Noticee No.3 Mr. Nguyen Van Hoan, Master of vessel MT Panda, under Section 112(b)(ii) of the Customs Act, 1962.

(vii) I do not impose penalty on M/s Shree Krishna Quarry Pvt. Ltd., Mumbai [Noticee No.4], under Section 112 of the Customs Act, 1962.

61. This order is issued without prejudice to any other action that may be taken against the Noticee or any other person under the Customs Act, 1962 or any other law for the time being in force.




[Dhirendra Lal]
Commissioner

F. No. CUS/607/2024-Adjn.
BY SPEED POST/ E-Mail/ Hand Delivery To:

Date: 21.03.2025

1. M/s. Revolution Petrochem LLP,
212, Plot No. 13, Riddhi Siddhi Arcade-1,
Nr. BM Petrol Pump, Opp. Hitesh Motors,
Gandhidham (Kutch) – 370201
2. M/s Sao Viet Petrol Transportation Co. Ltd., [Noticee No.2]
Floor-3, Viet Tower, No. 1, Thai Ha Street,
TrungLiet Ward, Dong Da District, Hanoi,
Vietnam
Through chartered agent
M/s Jamnadas Ramji 101, Milestone, P.N.Marg,
Panchvati Society, Jamnagar-361002
3. Master of the Vessel MT Panda, [Noticee No.3]
Mr. Nguyen Van Hoan,
Passport No. K0367107 (Vietnamese)
Through chartered agent
M/s Jamnadas Ramji 101, Milestone, P.N.Marg,
Panchvati Society, Jamnagar-361002
4. M/s Shree Krishna Quarry Private Limited, [Noticee No.4]
Shop No. 7 (Rear Side), Sitaram Building,
F-Block, Ground Floor, Market Road,
Fort, Mumbai- 400001

5. Shri Sarvan Kumar Master of barge MV Sonal,
M/s Shree Krishna Quarry Private Limited,
Shop No. 7 (Rear Side), Sitaram Building,
F-Block, Gorund Floor, Market Road,
Fort, Mumbai- 400001

Copy submitted to:

- (1) The Principal Chief Commissioner, Customs, Ahmedabad.
- (2) The Additional Commissioner (Prev.), Customs (prev.), Jamnagar
- (3) The Assistant Commissioner, Custom House, Sikka.
- (4) The Deputy Commissioner, STF/Systems, Hqrs., Customs (P), Jamnagar.
- (5) Guard File.

