

	OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS, 1 st Floor, Air Cargo Complex, Old Airport, Ahmedabad 380003
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PREAMBLE

A	फाइलसंख्या/File No.	:	F. No. GEN/ADJ/ADC/125/2024-ACC-AHMD-CUS-COMMRTE-AHMEDABAD
B	SCN	:	F. No. VIII/10-02/ACC/O&A/HQ/2023-24 dated 27.04.2023
C	मूलआदेशसंख्या/Order- in – Original No.	:	56/ADC/ACC/OIO/Kumar Corporation/23-24
D	द्वारापारित/Passed by	:	Arun Richard Additional Commissioner AirCargo Ahmedabad Customs
E	आदेशतिथि /Date of Order	:	21.03.2024
F	जारीकरनेकीतारीख/Date of Issue	:	21.03.2024
G	नामऔरपता/Name and Address of Noticees	:	1. M/s. Kumar Corporation , GF, 180/1, Vijay Vihar, PH-II, North Delhi- 110085 Residence address: 1680/82, Bachant Kaur, 2 nd Floor, Main Bazar, Paharganj, Swami Ram Tirthnagar, Central Delhi 2. M/s. AFT Shipping , C-405/406, Supath II Complex, Nr. Old Wadaj Bus Stop, Ashram Road, Ahmedabad- 380013.
H	DIN No.	:	20240371MN0000111AD3

(1) This is granted free of charge for the use of person to whom it is issued

(2) Any person deeming himself aggrieved by this order may appeal against the order to the Commissioner of Custom (Appeals), 4th Floor, Hudco Bhavan, Near Stadium, Navrangpura, Ahmedabad within sixty (60) days from the date of receipt of the order.

(3) The appeal should bear a Court Fee stamp of Rupees Two only (Rs. 2.00), and it must be accompanied by

- i. A copy of the appeal and
- ii. This copy or any copy of this order will must bear a Court fee Stamp of Rupees Two only (Rs. 2.00/-)

(4) Any person desirous of appealing against this order shall deposit 7.5% (subject to maximum of Rs. 10 crores) of duty demanded, in case where duty or penalty levied, where such penalty is in dispute and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance of the provisions of Section 129 of the Customs Act, 1962.

Brief Facts of the Case

M/s. Kumar Corporation (IEC: BISPA4867L) having registered address at GF, 180/1, Vijay Vihar, PH-II, North Delhi-110085 (hereinafter referred to as 'The exporter') filed Shipping bills Nos. 5156040 dtd 31.10.2022, 5156463 dtd 31.10.2022 & 5173635 dtd 01.11.2022 for the export of "Assorted chewing tobacco" (hereinafter referred to as 'the goods') under CTH 24039930. They filed subject Shipping Bills through their Customs Broker M/s AFT Shipping, address at C-405/406, Supath II Complex, Nr. Old Wadaj Bus Stop, Ashram Road, Ahmedabad- 380013, having license No. CB/JMR/R/04/2016 (PAN-AGFPT1473K) (hereinafter referred to as 'Customs Broker') alongwith Tax invoices and packing list (R.U.D- 1). The consignee of the goods was M/s Royal Cargo LLC, P.O Box 5260, Dubai, UAE and buyer of the goods was M/s City Express Cargo Ltd, Former KBC Garage, Eastleigh Godown No. 01, Nairobi Kenya. The details of the Shipping Bills are tabulated as under:

Table-I

Shipping Bill no./date	Declared description of the goods	No. of Package	Declared Net weight	Declared FOB(INR)	Claimed IGST + compensation cess(INR)
5156463 dtd 31.10.2022	Assorted chewing tobacco	7	199.5 Kgs	9,40,640.90/-	17,36,279/-
5156040 dtd 31.10.2022	Assorted chewing tobacco	7	193.5 Kgs	9,12,350.95/-	16,84,059/-
5173635 dtd 01.11.2022	Assorted chewing tobacco	7	199.5Kgs	9,40,640.90/-	17,36,279/-
Total		21	592.5 Kgs	27,93,632.75/-	51,56,617/-

2. In respect of above Shipping Bills, the exporter had produced purchase invoice No. 22-23/1040 dated 28.10.2022 of Rs. 25,34,241.60, 22-23/1041 dated 28.10.2022 of Rs. 24,57,446.40/- & 22-23/1043 dated 29.10.2022 of Rs. 25,34,242/- (R.U.D-2), issued by M/s Arihant Trading Co., having address at Plot No. 1/724, G/F, West Rohtash, Nagar, Shahdara, Delhi-110032, GSTIN-07AWGPA6097F1ZJ, (hereinafter referred to as "the

supplier"). The exporter has declared their goods for export under export Scheme-00(Free Shipping Bill involving remittance of Foreign Exchange) but would be claiming of Input Tax Credit (I.T.C) of Goods & Services Tax and Compensation Cess, to avail undue refund of IGST & Compensation Cess with an intention to defraud the Govt. exchequer.

3. A specific input was received from National Customs Targeting Centre (NCTC) indicated that the export consignments were for risky/sensitive commodity and the exporter might be availing higher IGST refund by way of mis-declaration and/or overvaluation. In view of the above, the goods covered under Shipping bills Nos. 5156040 dtd 31.10.2022, 5156463 dtd 31.10.2022 & 5173635 dtd 01.11.2022 declared as 'assorted chewing tobacco' were examined 100% under Panchanama dated 04.11.2022 (R.U.D-3) in the presence of Authorised Representative of Exporter i.e. Custom broker Mr. Kalpesh Parmar. Detaining the goods on reasonable belief that the purchase invoices furnished by the exporter are bogus. The goods were detained vide hold letter dated 07.11.2022. No discrepancy was found with respect to quantity of the goods declared. However, the tobacco was unbranded and loosely packed in corrugated boxes and not appears to be chewing tobacco. Representative Sealed Samples (RSS) were drawn in triplicate under Panchnama dated 04.11.2022.

4. Further, the exporter had submitted Tobacco board certificate bearing registration no. TB/EXP/TOB.PR/20022/1556 dated 09.09.2022 along with the export documents. To verify the genuineness of the same, letter dated 23.11.2022 has been sent to The Secretary, Tobacco Board, Guntur(A.P.). Tobacco board via its mail dated 29.11.2022 replied that the registration certificate issued to m/s Kumar Corporation with registration number TB/Exp.Tob.Pr/2022/1556 valid from 09.09.2022 to 09.09.2023 with the signature of Mr. Addanki Sridhar Babu, Secretary, Tobacco Board is a FAKE CERTIFICATE (R.U.D-4). The registration number which was given in the certificate pertains to registration of M/s Anmol Enterprises, Ludhiana with Registration No. TB/Exp.Tob.Pr/2020/1556 under Exporter of Tobacco. The said company had not applied for registration in 2021 and 2022. Tobacco Board issues registration on calendar year basis.

5. Further, the goods were seized under section 110(1) of the Customs Act, 1962 vide Seizure Memo dated 30.11.2022 and handed over to the custodian vide Supratnama dated 01.12.2022 (R.U.D-5) for safe custody. NCTC vide e-mail dated 28.11.2022 informed that the exporter M/s Kumar Corporation found to be non-existent at IEC address i.e. GF, 180/1, Vijay Vihar, PH-II, North Delhi-110085.

6. Further, to ascertain the quality of the goods representative sealed samples were forwarded to National Tobacco Testing Laboratory vide letter dated 07.11.2022. NTTL, Mumbai vide its letter dated 14.12.2022 issued vide F.No. 7(1)/NTTL/CDTL-MUM/2022-23/5963 submitted the results (R.U.D-6) obtained from the representative sealed samples. The RSS were tested for determination of Nicotine, pH and moisture content. Results obtained from testing are hereunder:

Annexure

NATIONAL TOBACCO TESTING LABORATORY AT CENTRAL DRUG TESTING LABORATORY
Zonal FDA Bhawan, GMSD Compound, Bellasis Road, Mumbai Central, Mumbai - 400008

TEST RESULTS

Table I: Results of test parameters

Sr. No.	Name of the sample/Code number of sample	Sample Id	pH	Moisture (%)	Nicotine (as is basis) (mg/g)
1	NTTL/MUM/2022-23/521	SB No. 5156040/01/01/0	5.09	10.14	37.58
2	NTTL/MUM/2022-23/522	SB No. 5156040/01/02/0	5.10	11.20	37.71
3	NTTL/MUM/2022-23/523	SB No. 5156040/01/03/0	5.08	9.65	35.79
4	NTTL/MUM/2022-23/524	SB No. 5156040/01/04/0	5.07	9.67	38.59
5	NTTL/MUM/2022-23/525	SB No. 5156040/01/05/0	5.02	10.58	36.74
6	NTTL/MUM/2022-23/526	SB No. 5156040/01/06/0	4.97	10.69	37.92
7	NTTL/MUM/2022-23/527	SB No. 5156040/01/07/0	4.98	10	37.24
8	NTTL/MUM/2022-23/528	SB No. 5156463/01/01/03	5.01	9.62	38.85
9	NTTL/MUM/2022-23/529	SB No. 5156463/01/02/03	5.01	9.07	39.48
10	NTTL/MUM/2022-23/530	SB No. 5156463/01/03/03	5	11.40	39.65
11	NTTL/MUM/2022-23/531	SB No. 5156463/01/04/03	4.99	10.67	39.76
12	NTTL/MUM/2022-23/532	SB No. 5156463/01/05/03	5.01	13.37	39.82
13	NTTL/MUM/2022-23/533	SB No. 5156463/01/06/03	5.01	11.20	38.51
14	NTTL/MUM/2022-23/534	SB No. 5156463/01/07/03	5.03	10.74	39.47
15	NTTL/MUM/2022-23/535	SB No. 5173635/01/01/05	5.17	10.37	39.66
16	NTTL/MUM/2022-23/536	SB No. 5173635/01/02/05	5.19	10.51	40.10
17	NTTL/MUM/2022-23/537	SB No. 5173635/01/03/05	5.16	9.67	38.48
18	NTTL/MUM/2022-23/538	SB No. 5173635/01/04/05	5.18	10.37	39.48
19	NTTL/MUM/2022-23/539	SB No. 5173635/01/05/05	5.18	9.72	38.57
20	NTTL/MUM/2022-23/540	SB No. 5173635/01/06/05	5.13	9.48	40.29
21	NTTL/MUM/2022-23/541	SB No. 5173635/01/07/05	5.15	10.46	38.53

Result of test samples on parameters of Nicotine, pH and moisture content are in the range mentioned below:

Table-II

Sr. No.	Parameter	Range
1	pH	4.97 to 5.19
2	Moisture (%)	9.07 to 13.37
3	Nicotine(as is basis)(mg/g)	35.79 to 40.29

Further, to ascertain whether the declared goods are chewing tobacco or not, inference was taken from internet website <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4929854/> wherein a study of chewing tobacco brand Chaini khaini was undertaken to analysis

constituent levels in all samples as summarized in Table 3 below. The results are expressed per gram tobacco (wet weight). Nicotine levels in all samples ranged from 7.9 to 13.4 mg/g tobacco, pH ranged from 9.01 to 9.92 and moisture (%) ranged from 21.5 to 27.9.

Table III

Summary of chemical analyses performed on Chaini Khaini and comparison with published data on traditional Khaini and Swedish snus				
Vendor	Sample	Moisture content, %	pH	Total nicotine, mg/g wet weight
Analyzed in this study				
Mumbai, India (March 2013)				
M1	1	26.1	9.01	8.2
	2	26.1	9.2	7.9
M2	3	25	9.6	13.4
	4	21.5	9.39	12.9
M3	5	22.9	9.5	10
	6	25.1	9.92	9.1
M4	7	25.6	9.41	11
M5	8	26.9	9.35	9.6
M6	9	27.9	9.64	12
A1	10	25.2	9.24	8.3
A2	11	26.1	9.13	8.7
A3	12	26.4	9.36	8.3
Average for Chaini Khaini		25.4	9.4	10
Previously published data ¹⁷				
Traditional Khaini				
Super Raja Khaini		n/r*	9.65	4.79
Spitt Raja Chap Khaini		n/r	9.79	2.53
Swedish snus				
General Original Snus		n/r	7.01	8.34
General White Portion Snus		n/r	6.86	8.09

*N/r, not reported in the original publication (reference 17).

7. Whereas comparing the test results provided by NTTL, Mumbai with the data mentioned in Table 3, it is clearly conclusive that the goods are not chewing tobacco as declared by the exporter in subject shipping bills. The goods appears to be cut tobacco which need further processing to fit for oral consumption. Further, merit classification of the goods shall be 24039970;

Customs Tariff Heading 2403 reads as under:

OTHER MANUFACTURED TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES; "HOMOGENISED" OR "RECONSTITUTED" TOBACCO; TOBACCO EXTRACTS AND ESSENCES;

..
.. 24039930 – *Jarda scented Tobacco.*

..
.. 24039970 – *Cut Tobacco.*

GST Compensation cess @ 160% applicable on goods covered under CTH 24039930 and @20% on the goods covered under CTH 24039970. Further, the goods covered under the said shipping bills are correctly classifiable under CTH 24039970 with applicable GST compensation cess @20%. In view of the above, it appears that the exporter had intentionally mis-declared the goods as Assorted Chewing Tobacco and mis-classified them under CTH 24039930 to claim undue GST compensation cess at higher rate i.e. 160%.

8. Statement and Enquiry

8.1 Statement of Shri Kalpesh Parmar (R.U.D-7), Branch Manager of Customs Broker M/s. AFT Shipping was recorded under section 108 of the Custom Act, 1962 on 17.01.2023 wherein he inter-alia stated that:-

- i. He is branch manager at Ahmedabad office of M/s. AFT Shipping, which is having its office at C-405/406, Supath II Complex, Nr. Old Wadaj Bus Stop, Ashram Road, Ahmedabad- 380013. His CB firm is engaged in Customs clearance of Imported and export goods. His CB has been clearing Shipping Bills and bills of entry for various companies at Air Cargo Complex, Ahmedabad. He is the signatory authority for Customs clearance work in Ahmedabad. He has been appointed power of attorney on behalf of their CB vide agreement dated 23.02.2017 and he had submitted self-attested copy of the same. He further stated that his CB firm has been in existence since 2016 and from 2017 onwards he began the work of Customs Clearance of Import and export cargo at ACC, Ahmedabad.
- ii. On being asked about why he had been called, he stated that he had been called for inquiry by customs department in respect of shipping bills No. 5156040 dtd 31.10.2022, 5156463 dtd 31.10.2022 & 5173635 dtd 01.11.2022 filed by his firm for

clearance of the goods on behalf of exporter M/s Kumar Corporation. He further stated that goods declared in invoices and shipping bills are assorted chewing tobacco.

- iii. On being asked about why they had filed 8 shipping bills for export of only three consignments, he stated that they had received only three consignments for that they had filed only three shipping bills however, due to system error multiple shipping bills were generated for single consignments. He further stated that sometimes due to mistakes in clerical or uploading documents, they had to file a new shipping bill for same invoice.
- iv. On being asked about previous export of the exporter, he stated that they had cleared three export consignments of tobacco vide shipping bills no. 4463855 & 4463155 both dated 27.09.2022, 4572031 dtd 01.10.2022.
- v. On being asked about how he had come in contact with the exporter, he stated that his office staff Mr. Manish Khanpara was contacted by Mr. Jignesh Chavada for clearance of export consignment of the exporter and they have provided us KYC documents i.e. Authority letter, IEC copy, AD code letter, Aadhar card copy, GSTIN Copy, Pan card Copy and Cheque copy etc.
- vi. On being asked whether he knows the exporter or forwarder personally, he stated that he did not have any acquaintance with the exporter or the forwarder. He further stated that he had telephonic conversation with Mr. Jignesh Chavada (MOB. 8156058366) sometimes regarding export consignments of M/s Kumar Corporation and documents required for customs clearance of the said consignments were mailed to our office mail id amdbrokerage@gmail.com from kumarcorporation22@gmail.com.
- vii. On being asked about agency charges for clearance of export consignment, he stated that they had charged Rs. 1200 + GST/- per Shipping bill as agency charge.
- viii. On being asked about how they had verified KYC documents and functioning of the exporter at their IEC address, he stated that all KYC documents were received through Mr. Jignesh Chavada and they had not verified IEC address physically as it was based in Delhi. He further stated that Mr. Jignesh assured them that he

had personally verified the IEC address of the exporter and they believed him.

- ix. He has seen e-mail correspondence dated 22.11.2022 from NCTC wherein it has been stated that on physical verification of the address of exporter M/s Kumar Corporation, the exporter was found to be non-existent and he agreed to it.
- x. He does not want any written Show Cause Notice and requested to take lenient view in the case as they are genuine CB firm.

8.2 Statement of Shri Jignesh Chavada (R.U.D-8), Branch Manager at M/s Young Knight Express Pvt. Ltd was recorded under section 108 of the Custom Act, 1962 on 03.02.2023 wherein he inter-alia stated that:-

- i. he is branch manager at M/s Young Knight Express Pvt. Ltd, which is having its office at 609, Loha Bhavan, Ashram Road, Navrangpura, Ahmedabad -380009. He has been working in the company since April, 2022.
- ii. On being asked about his role and salary, he stated that he do work like courier pickup from door to door from the address provided by Mumbai office and after collecting all the courier packages send them to Mumbai office for further delivery processing. He further stated that he draws salary Rs. 24,800/- per month from the company.
- iii. On being asked about company profile, he stated that his Company works in international courier consignments i.e door to door delivery of the courier consignments. His company does not work in freight forwarding for export consignments.
- iv. On being asked why he had been called for, he stated that he had been called for regarding export consignments of M/s Kumar Corporation which were put on hold by the department.
- v. On being asked about how did he come in contact with the exporter, he stated that a person namely Kultaj Singh came to meet me at Ahmedabad in a Hotel in July 2022 and he had shown me KYC documents i.e GSTN Copy, Aadhar copy, PAN copy, Bank AD Code etc. and he said that he had to export some Tobacco consignments to Dubai. He further stated that as

he is working as a freight forwarder in personal capacity, he had quoted him freight charges Rs. 125/- per Kg for export to Dubai. He had taken rates Rs. 110/- Per Kg to transport the goods to Dubai from IATA i.e. TICC Container Line (I) Pvt. Ltd, so he would get the commission of Rs. 15/- per Kg from TICC Container Line(I) Pvt. Ltd for the consignments to be exported. He had been working on commission basis and he did not have its own freight forwarding company.

- vi. On being asked about how many consignments he had received from the exporter, he stated that he did not receive any consignments, as they had sent their consignments directly to Airport and after completing customs clearance work by CHA the goods were handed over to the freight forwarder for onward submission to Airline. He further stated that he had received total 6 consignments of Tobacco from M/s Kumar Corporation. He further stated that he had received export documents i.e. invoice, PI & non Hazardous Declarations of 3 consignments in August 2022 and for 3 consignments in October, 2022.
- vii. On being asked whether he knows the exporter personally, he stated that he did not have any acquaintance with the exporter Mr. Arun proprietor of M/s Kumar Corporation. He had only met with Mr. Kultaj Singh regarding the consignments. He further stated that he had telephonic conversation with Mr. Arun regarding Export consignments and his mobile no. is 9560810199. Further, the documents such as invoice and Packing list etc. were sent to him by Mr. Kultaj Singh on my whatsapp for the consignments.
- viii. On being asked about Mr Kultaj Singh, he stated that He runs a company namely M/s Vigor Global Venture addresses at Shop No. 303, 3rd Floor, Agarwal Square, Plot No. 10, Sector -11, Dwarka, Delhi -110078.
- ix. On being asked about how he had come in contact with Customs Broker, he stated that he had a known person Mr. Bharat who does Customs Clearance work and he had given me reference of CB, M/s AFT Shipping. Further, he had informed the same to the exporter that Customs clearance work will be done by CHA M/s AFT Shipping and he said that he would pay the customs clearance charges directly to the CB.

- x. On being asked about whether he had received any payment from the exporter, he stated that he had not received any payments till date from the exporter or freight forwarder. However, he had to collect his commission from M/s TICC Container Line(I) Pvt. Ltd. for the three consignments which were already exported.
- xi. One being asked whether he had verified IEC address of the exporter, he had visited the premises of the exporter when he got know to about the case booked by the Customs. However, no such exporter was found at the IEC address i.e. GF, 180/1, Vijay Vihar, PH-II, Delhi.
- xii. He does not want any written Show Cause Notice in the case and requested to take lenient view as he had no role in this case.

8.3 During the course of investigation, statement of Shri Arun (R.U.D-9), Proprietor of M/s. Kumar Corporation was recorded under section 108 of the Custom Act, 1962 on 21.02.2023 wherein the inter-alia stated that:

- i. He is proprietor of M/s. Kumar Corporation. He has submitted copy of his Aadhar card No. 658662123022 and PAN No. BISPA4867L. he further stated that his firm exported total six consignments till date;
- ii. On being asked about business activity of his firm, he stated that his firm is not engaged in any type of local business activity and they are not doing local sale and purchase in any type of goods;
- iii. On being asked about employee details of his firm, he stated that he is the only employee in his firm;
- iv. On being asked about why he has been summoned, he stated that he has been summoned regarding inquiry by customs department in respect of shipping bills No. 5156040 dtd 31.10.2022, 5156463 dtd 31.10.2022 & 5173635 dtd 01.11.2022 filed by his firm for clearance of the goods.

- v. On being asked to whom he had sent the goods, he stated that he had sent three consignments along with invoice, tobacco board certificate, packing list and authority letter to Mr. Jignesh Chavda to further export them to Dubai;
- vi. On being asked about clearance of export consignments at Air Cargo Complex, he stated that all the shipping bills were filed by Custom Broker M/s AFT Shipping on behalf his firm;
- vii. On being asked about what kind of goods he is exporting, he stated that the goods were to be exported are assorted chewing tobacco and classification was decided by Mr. Jignesh Chavda and Custom Broker;
- viii. On being asked from whom he has purchased the goods, he stated that he had purchased all the goods from M/s Arihant Trading Co. and submitted purchase invoice. Further, he stated that he had made payment of Rs. 34 Lakh to M/s Arihant Trading Co. and remaining amount is yet to be paid.
- ix. On being asked about how he got contact of overseas buyer, he stated that he had made an enquiry on the internet and got contact number of overseas buyer namely Javed and contacted him that if he wishes to buy tobacco product from him. Further, he stated that Mr. Javed assured him that once the shipment is get delivered, the payment will be done immediately.
- x. On being asked about profiling of overseas buyer, he stated that he did not know much about the buyer M/s Royal Cargo LLC. Further, he stated that as per their conversation he had come to know that Mr. Javed deals in tobacco product.
- xi. On being asked about proof of any communication with the overseas buyer, he stated that he does not have any proof and also stated that he did not have his Mobile Phone with him.
- xii. He has seen the Panchanama dated 04.11.2022 and put his dated signature on the same.
- xiii. He has seen the Seizure Memo dated 30.11.2022 and put his dated signature on the same.

- xiv. On being asked about how he came in contact with Custom Broker, he stated that he do not have any direct contact with the Custom Broker. Further, he stated that his friend Mr Kultaj Singh met with forwarder Mr. Jignesh Chavada and Jignesh has arranged all remaining things.
- xv. On being asked about whether he had made any payment to Custom Broker or Forwarder, he stated that the Customs Broker charged them Rs 3500/- per consignment and he had paid Rs 1,49,867/- to forwarder M/s TICC container for three consignment which were already exported. He further stated that all the payment were made through bank only.
- xvi. On being asked about previous export, he stated that he had exported three consignments of tobacco vide shipping bills no. 4463855 & 4463155 both dated 27.09.2022, 4572031 dtd 01.10.2022 and all three shipping bills were filed by Customs broker M/s AFT Shipping. He further stated the goods were export vide these S/Bs were assorted chewing tobacco and the goods exported to the same consignee M/s Royal Cargo LLC, P.O Box 5260, Dubai, UAE and buyer of the goods was M/s City Express Cargo Ltd , Former KBC Garage, Eastleigh Godown No. 01, Nairobi Kenya.
- xvii. On being asked about whether he had received any remittance and/or advance, he stated that he have not received any remittance from overseas buyer till date for the goods which were already exported. He had submitted self-attested copy of statement of A/c No. 520810210000227 for the period 02.09.2022 to 21.02.2023.
- xviii. On being asked about the genuineness of Tobacco Board Certificate, he sated that he has seen the e mail correspondence dated 28& 29 Nov, 2022 from Tobacco board wherein it was mentioned that the tobacco board certificate submitted by M/s Kumar Corporation is fake and he agreed to it. He further stated that he had obtained the said certificate from a consultant.
- xix. On being asked about IEC address, he stated that he has seen e-mail correspondence dated 28.11.2022 wherein it has been mentioned that the exporter, M/s Kumar Corporation is found to be non-existent and he agreed to it. He further stated that he

run his business from home and no business activity was being carried out at IEC address GF, 180/1, Vijay Vihar, PH-II, Delhi.

xx. On being asked about unattended summons, he stated that he used to run hotel business before corona at the address 1663-64, Bachant Kaur, 2nd Floor, main bazar, Pahar ganj, Swami Ram Tirth Nagar, Central Delhi-110055. The said address was a rented place and I had vacated it due to heavy losses and shifted to another address 1680/82, Bachant Kaur, 2nd Floor, main bazar, Pahar ganj, Swami Ram Tirth Nagar, Central Delhi-110055.

9. PAST EXPORTS

Data of past exports from Air Cargo Complex, Ahmedabad was retrieved from ICES system and it is found that the exporter has exported three consignments of the same goods in the past; All three shipping bill mentioned in table 4 below were filed by M/s AFT Shipping on behalf of the exporter. Details of the three consignments are tabulated as under (R.U.D-1):

Table IV

Shipping Bill no./date	Declared description of the goods	No. of Package	Declared Net weight	Declared FOB(INR)	Claimed IGST + compensation cess(INR)
4463855 dtd 27.09.2022	Assorted chewing tobacco	8	193.53 Kgs	8,66,937.95/-	16,29,842/-
4463155 dtd 27.09.2022	Assorted chewing tobacco	8	205.63 Kgs	9,21,141/-	2,57,918/-
4572031 dtd 01.10.2022	Assorted chewing tobacco	8	199.5Kgs	8,93,681/-	16,80,120/-
Total		24	598.63 Kgs	26,81,759.95/-	35,67,880/-

In respect of above Shipping Bills, the exporter had produced purchase invoices Nos. 22-23/1014 dated 29.09.2022 of Rs. 26,77,495/-, 22-23/1005 dated 19.09.2022 of Rs. 24,47,995/- & 22-23/1003 dated 19.09.2022 of Rs. 26,00,995/-,(R.U.D-2) issued by M/s Arihant Trading Co. Further, the goods exported vide shipping bills no. 4463855 & 4463155

both dtd. 27.09.2022 and 4572031 dtd. 01.10.2022 were not physically available for seizure under the Customs Act, 1962.

10. RELEVANT LEGAL PROVISIONS

A. Customs Act, 1962

Section 2(22): "goods" includes (a) vessels, aircrafts and vehicles; (b) stores; (c) baggage; (d) currency and negotiable instruments; and (e) any other kind of movable property;

Section 2(33): "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

Section 2(39): "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;

Section 11H (a) "illegal export" means the export of any goods in contravention of the provisions of this Act or any other law for the time being in force;

Section 50: Entry of goods for exportation. -

(1) The exporter of any goods shall make entry thereof by presenting [electronically] [on the customs automated system] to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export [in such form and manner as may be prescribed]:

Provided that the [Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically [on the customs automated system], allow an entry to be presented in any other manner.]

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

(3) The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:-

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

SECTION 113(d): any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, shall be liable to confiscation;

SECTION 113(i): any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act.

Section 113(ja): any goods entered for exportation under claim of remission or refund of any duty or tax or levy to make a wrongful claim in contravention of the provisions of this Act or any other law for the time being in force;

Section 114(i): Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable, in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;

Section 114AA: Penalty for use of false and incorrect material. -

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

Section 114AC: Penalty for fraudulent utilisation of input tax credit for claiming refund. -

Where any person has obtained any invoice by fraud, collusion, willful misstatement or suppression of facts to utilise input tax credit on the basis of such invoice for discharging any duty or tax on goods that are entered for exportation under claim of refund of such duty or tax, such person shall be liable for penalty not exceeding five times the refund claimed.

Section 12 of the Tobacco Board Act, 1975: [Registration of exporters, packers, auctioneers and dealers]

No person shall export tobacco or any tobacco products or function as a packer, auctioneer of, or dealer in, tobacco unless he registers himself with the Board in accordance with the rules made under this act.

FINDINGS OF INVESTIGATION

11. It is evident that goods i.e. Assorted Chewing Tobacco attempted to be exported to UAE (without having proper registration with Tobacco Board) vide Shipping Bills Nos. 5156040 dtd 31.10.2022, 5156463 dtd 31.10.2022 & 5173635 dtd 01.11.2022 by M/s. Kumar Corporation. The exporter had intentionally produced Fake Tobacco Board certificate to evade Rules and Provisions of Tobacco Board Act, 1975. Therefore, it appears that exporter has attempted to export the subject goods in violation of restriction imposed by Tobacco Board.

12. It is the responsibility of the exporter to ensure compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force, thus by exporting the restricted goods without certification of Tobacco Board and using fake tobacco board certificate, exporter has violated the provisions of section 50 (3) of the Customs Act, 1962 and provisions of Section 12 of the Tobacco Board Act, 1975.

13. The attempt to export the impugned goods is considered as violation of restriction imposed by Tobacco Board under Section 12 of the Tobacco Board Act, 1975, appears to fall under the ambit of 'smuggling' as defined under section 2(39) of the Customs Act, 1962. Further in terms of section 11H(a) of Customs Act, 1962, the act again amounts to 'illegal export' by them in as much as they attempted to or exported the goods in contravention to provisions of section 50(3) of Customs Act, 1962 read with Section 12 of the Tobacco Board Act, 1975. As discussed herein above, the subject goods covered under Shipping Bills Nos. 5156040 dtd 31.10.2022, 5156463 dtd 31.10.2022 & 5173635 dtd 01.11.2022 as well as goods cleared in past vide Shipping bills detailed at Table-IV are prohibited goods as defined under section 2(33) of Customs Act, 1962.

14. The goods covered under shipping bills mentioned at Table -IV were exported in contravention of the provisions of Customs Act, 1962 and provisions of Tobacco Board Act, 1975 and such export appear to be treated as illegal export in terms of Section 11H(a) of Customs Act, 1962. Further, Further, the goods covered under the said shipping bills are correctly

classifiable under CTI 24039970 with applicable GST compensation cess @20%. However, the exporter had intentionally mis-declared the goods as Assorted Chewing Tobacco and mis-classified them under CTI 24039930 to claim undue GST compensation cess at higher rate @160%. Further, It is observed that exporter had claimed illegal benefit of IGST and Compensation cess refund vide 03 Shipping Bills detailed at Table-IV amounting to **Rs. 35,67,880/- (Rs. Thirty Five Lakh Sixty Seven Thousand Eight Hundred Eighty only)**. Since the goods already exported vide 03 shipping bills in the past were not exportable without a valid certification from Tobacco Board, such export of restricted goods cannot be treated as legitimate and fall under category of illegal export and also therefore, it appears that exporter was not entitled for refund IGST and Compensation cess. Hence, the total amount of Rs. 35,67,880/- (so claimed by the exporter in form of refund (IGST & Compensation Cess) along with applicable interest is liable to be recovered from the exporter for the goods mentioned in the Table IV above.

15. A Summon dated 28.02.2023 (R.U.D -10) has been issued to the supplier Mr. Mohd Anjar Proprietor of M/s Arihant Trading Co. at the address Plot No.1/724, G/F, West Rohtash Nagar, Shahdara, Delhi-110032. However, the same was returned unattended with remarks "NO SUCH PERSON AT ADDRESS". Therefore, it appears that the supplier is also a fake firm. Further, it appears that the Exporter has created fake supply chain to claim undue benefit of IGST & Compensation Cess refund. Further, the exporter has not received any remittance from its overseas buyer for the goods which were exported in the past (mentioned in table IV). Further, the exporter himself admitted in his voluntary statement that he had to receive the remittance once the goods got delivered to the consignee. However, three consignments as mentioned in table IV were already delivered to the consignee in first week of October, 2022 and even after passing of six months of time period not a small amount of remittance has been received by the exporter.

16. Detailed account statement (R.U.D-11) of M/s Kumar Corporation is as under:-

GEN/ADJ/ADC/125/2024-ACC-AHMD-CUS-COMMRTE-AHMEDABAD

1/1848849/2024 DIN: 20240371MN0000111AD3

DIN: 20240371MN0000111AD3



Statement of Account No: 5208102100000227

Printed By: 5164375DB

DATE: Feb 21, 2023 2:31:04 PM

Customer Name: KUMAR CORPORATION AND ARUN

Customer Address: NR SHIV PALACE
GF 1801 BLOCK L DELHI
DELHI 110085Branch Address: ROHINI SEC 3, H-32/14,
NEAR VISHRAM CHOWK, DELHI
DELHI 110085

IFSC Code: PUNB0520810 MICR Code: 110024656

Acct Currency: INR

Statement for Period : 02-09-2022 to 21-02-2023

Date	Withdrawal	Deposit	Balance	Alpha	CHQ. NO.	Narration
02-09-2022		10000.00	10000.00 Cr.			Cash Deposit At : DELHI-ROHINI SECTOR 5
13-09-2022	236.00		8764.00 Cr.			CHQ BK CR:87311
05-10-2022		8000.00	89764.00 Cr.			Cash Deposit At : DELHI-ROHINI SECTOR 5
06-10-2022	5.51		89758.39 Cr.			NEFT CHRG:PUNBH02279927882:TICC CONTAINER :JCIC0000024
06-10-2022	87031.00		2727.39 Cr.	IEC	87311	NEFT OUT:PUNBH02279927882:TICC CONTAINER :JCIC0000024/002405004965
08-10-2022	118.00		2609.39 Cr.			INCIDENTAL CHARGES
15-10-2022		60000.00	62609.39 Cr.			Cash Deposit At : DELHI-ROHINI SECTOR 5
15-10-2022		300.00	62509.39 Cr.			Cash Deposit At : DELHI-ROHINI SECTOR 5
15-10-2022	5.61		62503.78 Cr.			NEFT CHRG:PUNBH02268763784:TICC CONTAINER :JCIC0000024
15-10-2022	62693.00		57.78 Cr.	IEC	87312	NEFT OUT:PUNBH02268763784:TICC CONTAINER :JCIC0000024/002405004965
21-10-2022		1629842.00	1629959.78 Cr.			RTGS From : 0221021109491204 PAO GST REFUNDS
21-10-2022		1680120.00	3310029.78 Cr.			RTGS From : 0221021109481216 PAO GST REFUNDS
21-10-2022		257918.00	3567947.78 Cr.			RTGS From : 0221021109481198 PAO GST REFUNDS
25-10-2022	58.41		3567889.37 Cr.			RTGS Charges
25-10-2022	1000000.00		2567889.37 Cr.	IEC	87315	RTGS To : PUNBRS202210251765815302517656153/SHREE KANSHAYA J. TRA
26-10-2022	28.91		2567860.46 Cr.			RTGS Charges
26-10-2022	✓ 500000.00		2067860.46 Cr.	IEC	87316	RTGS To : PUNBRS20221026176686202617666602/AFHANT TRADING CO
28-10-2022	58.41		2067802.05 Cr.			RTGS Charges
28-10-2022	✓ 1500000.00		567802.05 Cr.	IEC	87317	RTGS To : PUNBRS20221028177441216/S O OVERSEAS
31-10-2022	28.91		567773.14 Cr.			RTGS Charges
31-10-2022	✓ 600000.00		167773.14 Cr.	IEC	87318	RTGS To : PUNBRS202210311783854403117838544/S O OVERSEAS
03-11-2022	160020.00		7773.14 Cr.	IEC	87319	Cash Withdrawal At Br : DELHI-ROHINI SECTOR 5
04-11-2022	141.60		7631.54 Cr.			CASH HAND CHARGE3 - 03-11-2022

21/2/2023

Page 1 of 1

Disclaimer: This is an Electronically Generated Statement in System. No Signatures are Required.

17. Further, on perusal of a/c statement of the exporter, it appears that he had initially deposited Rs 1,50,000/- and out of which Rs 1,49,867/- has been paid to the forwarder M/s TICC Container. Further, he had received **Rs. 35,67,880/- as refund** (IGST & Compensation Cess) from e PAO GST and transferred the refund amount to five different accounts and details of the same are tabulated as under:

Table V

Sr. No.	Date	Withdrawal Amount(Rs.)	CHQ. No.	Narration
1	25.10.2022	10,00,000/-	087315	RTGS To; Shree Kanhaiya Ji TRA
2	26.10.2022	5,00,000/-	87316	RTGS To; Arihant Trading Co.
3	28.10.2022	15,00,000/-	87317	RTGS To; S G Overseas
4	31.10.2022	4,00,000/-	87318	RTGS To; S G Overseas
5	03.11.2022	1,60,000/-	87319	Cash Withdrawal

From the account statement above it appears that the exporter had paid only Rs 5,00,000/- to the supplier M/s Arihant Trading Co. against the invoices raised for Total value of **Rs 1,52,52,414.6/-**. Further, it appears that the exporter in his voluntary statement falsely stated that he had paid Rs. 34,00,000/- to M/s Arihant Trading Co. The amount received as refund from e-PAO has been transferred to different entities accounts (as mentioned in table V above) to circumvent the scrutiny and therefore, it appears the exporter had intentionally created fake supply chain to claim illegal refund of IGST and GST Compensation Cess.

18. Any prohibition referred to in the section 113(d) of the Customs Act, 1962 apply to any type of prohibition i.e. complete or partial. It is well settled law that any restriction on import or export is to an extent a 'prohibition' and therefore, expression 'any prohibition' in section 113(d) of Customs Act, 1962 includes restrictions. Restriction is one type of prohibition if policy condition is not fulfilled or complied with. In the instant case, goods do not fulfil the condition for their export as they violate the provisions of Tobacco Board Act, 1975 and provisions of Customs Act, 1962 as discussed above, they are to be deemed prohibited. In view of the above, goods covered under Shipping Bills Nos. 5156040 dtd 31.10.2022, 5156463 dtd 31.10.2022 & 5173635 dtd 01.11.2022, are therefore liable to be

confiscated under section 113(d), 113(i) & 113(ja) of the Customs Act, 1962. The goods valued at Rs 26,81,759.95/- (Rupees Twenty Six Lakh Eighty One Thousand Seven Hundred Fifty Nine and Ninety Five Paisa Only) cleared in past detailed at Table-IV, though not available for confiscation, are also liable to be held confiscated under section 113(d), 113(i) & 113(ja) of the Customs Act, 1962.

19. The exporter has attempted to export the goods covered under S/B Nos. 5156040 dtd 31.10.2022, 5156463 dtd 31.10.2022 & 5173635 dtd 01.11.2022 and already exported the goods covered under shipping bills detailed at Table-IV in violation to restriction imposed under Section 12 of Tobacco Board Act, 1975. Further, the exporter deliberately and knowingly mis-declared and entered the goods for exportation with an intention to avail illegal benefit of I.G.S.T. and GST compensation cess refund. Further, any firm exporting tobacco products have to obtain Tobacco Board certificate. In instant case, the exporter had produced fake certificate of Tobacco Board and hence the exporter rendered the goods liable to confiscation under section 113(d), 113(i) & 113(ja), therefore exporter is liable to penalty under section 114(i), 114AA and 114AC of the Customs Act, 1962.

20. To summarize, as per the investigation it appears that: -

20.1 Present Goods

The goods covered under S/B Nos. 5156040 dtd 31.10.2022, 5156463 dtd 31.10.2022 & 5173635 dtd 01.11.2022 having FOB value of Rs. 27,93,632.75/- (Rupees: Twenty Seven Lakh Ninety Three Thousand Six Hundred Thirty Two and Seventy Five Paisa Only) are liable for confiscation under section 113(d), 113(i) & 113(ja) of the Customs Act, 1962. Redemption fine in lieu of confiscation is imposable under section 125 of the Customs Act, 1962 for back to town purpose only.

20.2 Past Exports

The goods covered under Shipping bills detailed at Table-IV having total FOB Value of Rs 26,81,759.95/- (Rupees Twenty Six Lakh Eighty One Thousand Seven Hundred Fifty Nine and Ninety Five Paisa Only) cleared in past and not available for confiscation are liable to be held confiscated under section 113(d), 113(i) & 113(ja) of the Customs Act, 1962.

21. As per para 10(n) of CBLR, 2018, it is the obligation on Customs Broker to verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable,

independent, authentic documents, data or information; But, the Customs Broker himself has not verified physically the IEC address and the functioning of his client. Thus, it also appears that Customs Broker did not discharge his duties as per CBLR, 2018, the said negligence of the part of Customs broker has caused revenue loss to the exchequer and hence, Customs Broker M/s. AFT Shipping appears liable to be penalized under section 114(i) of the Customs Act, 1962.

22. In view of the discussion in forgoing paras, it further appears that Sh. Arun, Proprietor of M/s Kumar Corporation was instrumental and consciously involved himself in the entire scheme as he was unable to put forth any cogent reason to substantiate the transaction with M/s Arihant Trading Co. and the consignee M/s Royal Cargo LLC, Dubai. Further, he had knowingly produced fake certificate to clear the export shipments and mis-declared the goods to claim undue refund of IGST and GST Compensation cess. This act of omissions by Sh. Arun has rendered his proprietorship firm M/s Kumar Corporation liable to penal action under section 114(i), 114AA and 114AC of the Customs Act, 1962.

23. On the basis of the investigation conducted in the matter SCN F. No. VIII/10-02/ACC/O&A/HQ/2023-24 dated 27.04.2023 came to be issued under Section 124 of Customs Act 1962 calling upon:-

(a) M/s. Kumar Corporation, Delhi to show cause as to why:-

(i) Goods having declared F.O.B. value of Rs. 27,93,632.75/-covered under Shipping Bills Nos. 5156040 dtd 31.10.2022, 5156463 dtd 31.10.2022 & 5173635 dtd 01.11.2022, involving illegal refund of IGST and GST Compensation cess amounting to Rs. 51,56,617/- should not be held liable for confiscation under Section 113(d), 113(i) and 113(ja) of the Customs Act, 1962;

(ii) Goods having declared F.O.B. value of Rs 26,81,759.95/- already exported vide Shipping Bills Nos. 4463855 & 4463155 both dtd. 27.09.2022 and 4572031 dtd. 01.10.2022, involving illegal refund of IGST and GST Compensation cess amounting to Rs. 35,67,880/- should not be held liable for confiscation under Section 113(d), 113(i) and 113(ja) of the Customs Act, 1962;

(iii) Penalty under Section 114(i) of the Customs Act, 1962 should not be imposed upon M/s. Kumar Corporation, Delhi as they involved themselves in illegal export of prohibited goods liable for confiscation;

(iv) Penalty under Section 114AA of the Customs Act, 1962 should not be imposed upon M/s. Kumar Corporation, Delhi as they have

knowingly or intentionally used declaration, statement or document, which is false or incorrect in any material particular, in the transaction of business.

(v) Penalty under Section 114AC of the Customs Act, 1962 should not be imposed upon M/s. Kumar Corporation, Delhi as they had obtained invoice by fraud, collusion, willful misstatement or suppression of facts to utilize I.T.C., on the basis of such invoice for discharging any duty or tax on goods meant for export under claim of refund of such duty or tax.

- (b) Customs Broker M/s AFT Shipping to show cause as to why:-
(a) Penalty under Section 114(i) of the Customs Act, 1962 should not be imposed upon them for not fulfilling their obligation as per Para 10(n) of CBLR, 2018.

DEFENCE REPLY AND PERSONAL HEARING:-

24. The Exporter i.e. M/s. Kumar Corporation, Delhi was called upon to attend personal hearing on 20.10.2023 vide letter dated 10.10.2023 and on 09.11.2023 vide letter dated 30.10.2023. Letters calling upon him to attend the hearing were sent by registered post AD on the registered address i.e. GF, 180/1, Vijay Vihar, PH-II, North Delhi-110085 and also at residential address of the Proprietor Shri Arun i.e. 1680/82, Bachant Kaur, 2nd Floor, Main bazar, Paharganj, Swami Ram Tirth Nagar, Central Delhi-110055 which was informed by him during recording of statement dated 21.02.2023. However, the letter from both the addresses, returned undelivered. None of the personal hearing was attended by the Exporter. Vide letter F. No. VIII//10-02//ACC/O&A/HQ/2022-23 dated 09.11.2023, Public Relations Officer, Custom House, Customs Commissionerate, Ahmedabad was requested to affix the copy of personal hearing letter dated 30.10.2023 on Notice Board of Customs House in terms of provisions of Section 153E of Customs Act 1962.

25. The Customs Broker M/s. AFT Shipping was called upon to attend personal hearing on 20.10.2023 vide letter dated 10.10.2023 and on 09.11.2023 vide letter dated 30.10.2023. Authorised Signatory. M/s. AFT Shipping wrote a letter dated 23.11.2023 addressed to Additional Commissioner, Customs Ahmedabad as follows:

“with reference to the above cited subject, it is to inform that I have received PH memo issued from F. No: VII/10-02/ACC/O &A/HQ/2023-24 dated

30.10.2023 under which I was granted PH on 09.11.2023 for the above SCN wherein in I am Co-noticee and propose me for penal action under Section 114(i) of Customs Act, 1962. On receipt of this PH memo I came to the notice that above subjected SCN was issued me which is not received by me till the receipt of said PH memo. Accordingly, I visited the O & A Section, Customs House and explained the officer about non-receipt of SCN and asked them to provide me copy of above SCN to enable me to defend my case. Accordingly O&A section has sent me copy of SCN through the mail.id cusoanda@gmail.com only on 22.11.2023. In view of the above, it is requested to grant me 15 days' time to submit my defence reply. Further PH given me on 28.11.2023 vide another PH memo dated 22.11.2023 may also be postponed and grant me another date of PH after submission of my defence reply."

26. Thereafter personal hearing granted to M/s. AFT Shipping was attended by Shri Kalpesh Parmar, Branch Manager, AFT Shipping, Ahmedabad on 29.11.2023 wherein he submitted that M/s AFT Shipping Ahmedabad (Customs Broker) only came to know about the Show Cause Notice No. VIII/10-02/ACC/O&A/HQ/2023-24 dated 24.04.2023 after letter of personal hearing was delivered to him and hence, he could not respond to the Show Cause Notice on time. Shri Kalpesh submitted that they did not know the identity of the exporter and handled the cargo only on the basis of documents provided to them by the exporter. That IEC address of the assessee was verified by them but they did not knew about the intension of the exporter. They are a law abiding firm that pleads innocence and prays that proceedings against them may please be dropped. Shri Kalpesh also requested that they may please be allowed a week's time to present a detailed submission.

27. M/s. AFT Shipping (Customs Broker) filed reply dated 05.12.2023 in respect of Show Cause Notice, wherein they have submitted:

"With reference to the above cited subject, it is to inform that we are engaged in clearing work and authorized by the Commissioner of Customs to act as Customs Broker in the name of M/s. AFT Shipping. We also worked at Ahmedabad and having office at C-405/406, Supath II Complex, Nr. Old Wadaj Bus Stop, Ashram Road, Ahmedabad-380013. Our CB firm is engaged in Customs clearance of Import and export goods and clearing Shipping Bills and bills of entry for various companies at Air Cargo Complex, Ahmedabad. Mr. Kalpesh Parmar is the signatory authority for Customs clearance work in Ahmedabad. He has been appointed power of attorney on behalf of their CB vide agreement dated 23.02.2017. It is to further inform that our CB firm has been in existence since 2016 and from

2017 onwards, began the work of Customs Clearance of Import and export cargo at ACC, Ahmedabad.

2. In the subject Show Cause Notice, it was alleged that as per para 10(n) of Customs 2. Brokers Licensing Regulations, 2018, it is the obligation on Customs Broker to verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. But, the Customs Broker himself has not verified physically the IEC address and the functioning of his client. Thus, it also appears that we as a Customs Broker did not discharge our duties as per CBLR, 2018, the said negligence on the part of Customs broker has caused revenue loss to the exchequer and hence, Customs Broker M/s, AFT Shipping appears liable to be penalized under Section 114(i) of the Customs Act, 1962,

3. First of all we denied all the above allegation made against us and submitted that;

3.1 In the Show Cause Notice, it was alleged that on specific input received from National Customs Targeting Centre (NCTC) indicated that the export consignments were for risky/ sensitive commodity and the exporter might be availing higher IGST were for risky/ sensitive commodity and the exporter might be availing higher IGST refund by way of mis declaration and/or overvaluation. In view of the above, the goods covered under Shipping bills Nos. 5156040 dtd 31.10.2022, 5156463 dtd 31.10.2022 5173635 dtd 01.11.2022 declared as 'assorted chewing tobacco' were examined 100% under Panchanama dated 04.11.2022 in the presence of Authorized Representative of Exporter i.e. Custom broker Mr. Kalpesh Parmar. Detaining the goods on reasonable belief that the purchase invoices furnished by the exporter are bogus. The goods were detained vide letter dated 07.11.2022. No discrepancy was found with respect to quantity of the goods declared. However, the tobacco was unbranded and loosely packed in corrugated boxes and not appears to be chewing tobacco. Representative Sealed Samples (RSS) were drawn in triplicate under Panchnama dated 04.11.2022.

3.2 In view of the above, it is submitted that the exporter had submitted Tobacco Board certificate bearing Registration No. TB/EXP/TOB.PR/20022/1556 dated 09.09.2022 along with the export documents. On verification of the genuineness of the same, the Tobacco Board via its mail dated 29.11.2022 replied that the registration certificate issued to M/s Kumar Corporation with registration number TB/Exp Tob Pr/ 2022/1556 valid from 09.09.2022 to 09.09.2023 with the signature of vir. Addanki Sridhar Babu, Secretary, Tobacco Board is a FAKE CERTIFICATE.

Hence so far as the fake certificate handed over by the exporter, I may not be penalized since the Custom broker is not in the capacity to verify the genuineness of Tobacco Board Certificate.

3.3 As a Customs Brokers we are engaged by the importer/exporter for clearance of the goods from customs folis Customs clearance which are given effect by CB includes, assessment, examination of export/import goods and clearance thereof as per extant provisions of law. For aforementioned act, they are duly authorized by the importer/exporter under the provisions of CBLR, 2018.

Penalty under Section 114(i) on CB (Customs Broker)

4.1 With regard to imposition of penalty on Customs Broker, his omission/commission will not attract penalty as he acts in the capacity of facilitator of the customs transaction and he is bound to facilitate the authorized clearance work of importer/exporter. Therefore, as the CB is only facilitating the customs transaction on behalf of principal, (importer/exporter) therefore in case of absence of mens-reas, penalty is not imposable. As can be seen that exporter has provided me all the documents on the basis of which I have facilitated the Customs clearance work. Further in my statement, I have already stated that I had charged Rs. 1200 + GST per shipping Bill as a agency charge. Over and above I have not received extra consideration from the exporter. Hence, I have not at all involved in the mis-declaration as discussed in the SCN. I have facilitated the transaction with the fake Tobacco certificate and other documents provided by the exporter, hence it can not be said that I have facilitated the transaction with knowledge, means as an agent and not abetted the act of principal. Further penalty should not be imposed on CB in the case of mere filing of documents without any knowledge of offence or violation by CB for clearance of export/import goods which subsequently resulted into detection of an offence. Mere facilitation without knowledge would not amount to abetting an offence. In such cases penal clause cannot be visited against CB.

4.2 In one recent case it was held that CHA is not require to investigate what is the correct classification or value of the goods. Customs officer is proper officer to classify the goods correctly. Though, we are in era of self assessment, but it is said that self assessment is also not absolute as customs officer is authorized to conduct enquiry, verification, re-assessment under the sub clauses of Section 17 of the Act.

Case Laws relating to Imposition of Penalty on Customs Broker

5. In following cases, Court/appellate tribunal has observed that in absence of existence of guilty mind, penalty is not imposable.

1. In Yogesh Kumar versus Commissioner of Customs, New Delhi (ACC, Export)- Final Order No. C/A/51905/2016-CU(DB), dated 30-5-2016 in Appeal No. C/53071/2014-CU(DB), the CESTAT, Delhi has held that in the case of inadvertent error in mis-declaration of quantity of export goods, penalty on CHA is not imposable in view of the finding that CHA has not abetted the exporter to intentionally declare excess garments so as to claim excess drawback, therefore penalty imposed under Section 117 of Customs Act, 1962 on CHA was set aside.
2. In case of Prakash Poonia v CC(2010) 252 ELT 442 (CESTAT), it was held that in absence of prior knowledge, CB cannot be penalized, if the bogus licenses have been produced by the importer.
3. In Union Clearing Service Versus Commissioner of Customs (Export). Nhava Sheva, it was held that penalty on Customs House Agent (CHA) for abetting the act of exporter to mis-classify exported goods so as to avail inadmissible drawback is not justified in absence of any evidence of omission or commission of the act on the part of CHA, hence penalty not imposable on him under Section 114 of Customs Act, 1962 merely for wrong classification of exported goods
6. For the proposal of imposition of penalty under Section 114 (i) of Customs Act, 1962, I submit that so far as the Co-noticee is concerned, allegation was made that the Customs Broker himself has not verified physically the IEC address and the functioning of his client. Thus, it also appears that we as a Customs Broker did not discharge our duties as per CBLR, 2018, the said negligence of the part of Customs broker has caused revenue loss to the exchequer and hence, Customs Broker M/s. AFT Shipping appears liable to be penalized under Section 114(1) of the Customs Act, 1962. For this allegation my below submission may kindly be considered and penal action may kindly be dropped.
 - (i) From the above, it can be seen that the only allegation against me that I have not complied with Regulation 10(n) of CBLR, 2018. The said Regulation requires that the Customs Broker has to obtain authorization as well as KYC documents from the importer for filing the Import/Export Documents to facilitate the Customs Clearance before the customs authorities. In the present case, it is to state that my office staff Mr. Manish Khanpara was contacted by Mr. Jignesh Chavada for clearance of export consignment of the exporter and they have provided them KYC documents ie. Authority letter, IEC copy, AD code letter, Aadhar card copy, GSTIN Copy, Pan card Copy and Cheque Copy etc. Mr. Jignesh Chavda regularly Mailed

regarding export consignments of Ms Kumar Corporation and documents required for customs clearance of the said consignments were mailed to my office mail id amdbrokerage@gmail.com from kumarcorporation22@gmail.com. In my statement I have stated that all KYC documents were received through Mr. Jignesh Chavada and they had not verified IEC address physically as it was based in Delhi. He further stated that Mr. Jignesh assured them that he had personally verified the IEC address of the exporter. Hence there is no any dispute regarding non-obtaining the KYC documents directly from the the exporter M/s Kumar Corporation.

(ii) On such circumstance, when there is no dispute with regard to the KYC documents submitted on behalf of the exporter, the penalty proposed under sec. 114(1) alleging that the Customs Broker has abetted export by misdeclaring the same is without any factual basis, I have also taken due precaution to verify the antecedent of the exporter so as to comply with the KYC norm. There are larger numbers of decisions which states that the appellant has Customs Broker is liable to verify the KYC of the appellant on the basis of documents supplied by them as a prudent person. The CHA is not supposed to verify the each and every aspect about the business of Exporter as a Inspector of Department or investigating agency. As stated above, it is apparent that I have taken due diligence while verifying the KYC of the exporter based on the record submitted by him."

(ii) In Poonia & Brothers (supra), the Tribunal observed that the Customs Broker is not supposed to verify each and every aspect about the business of the importer. If he has taken due diligence while verifying the KYC of the importer based on the records submitted to him, he cannot be found to be guilty for violation of Regulation 11(n) of CBLR 2013/CBLR 2018.

"6.....The appellant has also taken due precaution to verify the antecedent of the importer so as to comply with the KYC norm There are larger numbers of decisions which states that the appellant has Customs Broker is liable to verify the KYC of the appellant on the basis of documents supplied by them as a prudent person. The CHA is not supposed to verify the each and every aspect about the business of importer as the Inspector of Department or investigating agency. From the submission made by the Id. Advocate and fact on record, it is apparent that the appellant has taken due diligence while verifying the KYC of the appellant based on the record submitted by him."

(iii) I further relied upon the decision in the case of Friends Syndicate Clearing Pvt....vs Commissioner Of Customs-Mumbai- on 7 June, 2022 CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI REGIONAL BENCH (Customs Appeal No. 85460 of 2022) wherein it was held that I find that it was not disputed that KYC documents were not received

by the Customs Broker. I find that no physical verification of the importer's/ exporter's premises is mandated in the CBLR, 2018 in this regard, I rely upon the decision in the case of APS Freight & Travels Pvt. Ltd. Vs Commissioner of Customs (General) New Delhi, reported in 2018 (144) ELT 602 (Tr.Cel) wherein the Hon'ble Tribunal held that

"I find that it was not disputed that KYO documents were not received by the Customs Broker. I find that no physical verification of the importer's/ exporter's premises is mandated in the CBLR, 2018. In this regard, I rely upon the decision in the case of APS Freight & Travels Pvt. Ltd, Vs, Commissioner of Customs (General), New Delhi, reported in 2016 (344) ELT 602 (Tr. -Del) wherein the Hon'ble Tribunal held that

"4. We have heard both the sides and examined appeal records. The license of the appellant stands revoked only on the ground that they have failed in their obligation of verifying the identity of his client and their existence in the given address. The admitted facts of the case are that the importer's details as available in IEC, PAN Cards, Bank Account and electricity have been checked by the appellant. No physical verification of importer's premises is mandated in the regulations nor it is a general requirement as per business practice. No violations have been noticed in respect of transactions with Customs with reference to consignment cleared through the appellants. As such the order of revocation of license, only on the ground that on later verification the importer was not found in the indicated premises, is not justifiable."

7.1 I also rely upon the decision in the case of Poonla & Brothers Vs. Commissioner of Customs (Preventive), Jaipur, reported in 2019 (370) ELT 1074 (Tri. Del), wherein the Hon'ble Tribunal held that:

The CHA is not supposed to verify the each and every aspect about the business of importer as the Inspector of Department or Investigating agency. From the submission made by the Id. Advocate and fact on record, it is apparent that the appellant has taken due diligence while verifying the KYC of the appellant based on the record submitted by him. We also find that the KYC is required to be done on the basis of following guidelines prescribed by the Central Board of Excise & Customs which are as under:

C.B.E. & C. vide Customs Circular No. 9/2008, dated 8-2-2010 in order to avoid any ambiguity inter alia laid down the following requirements of verification and documents for the "individual" category to which the importer belonged being a proprietorship concern as claimed.

Sl. No.	Form of Organisation	Features to be verified	Documents to be obtained
(i)	Individual	(i) Legal name and any other names used (ii) Present and	(i) Passport (ii) PAN card

		<p>Permanent address, in full, complete and correct</p> <p>(iii) Voter's identity card (iv) Driving licence (v) Bank account statement (vi) Ration card</p> <p>Note: Any two of the documents listed above, which provides client /customer information to the satisfaction of the CHA will suffice.</p>
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7.2 These guidelines nowhere prescribe that CHA, before taking the job of Customs Clearance is required to be physically verify the existence of Importer. If the required documents as prescribed 14 C/85460/2022 above is made available to CHA job for KYC norms, is fulfilled. The appellant has fulfilled these requirements as is apparent from the case record". In the present case my office staff Mr. Manish Khanpara was contacted by Mr. Jignesh Chavada for clearance of export consignment of the exporter and they have provided them KYC documents ie. Authority letter, IEC copy, AD code letter, Aadhar card copy, GSTIN Copy, Pan card Copy and Cheque Copy etc. Mr. Jignesh Chavda regularaly Mailed regarding export consignments of M/s Kumar Corporation and documents required for customs clearance of the said consignments were mailed to my office mail id amdbrokerage@gmail.com from kumarcorporation22@gmail.com. In my statement I have stated that all KYC documents were received through Mr. Jignesh Chavada and they had not verified IEC address physically as it was based in Delhi. He further stated that Mr. Jignesh assured them that he had personally verified the IEC address of the exporter. Hence there is no any dispute regarding non-obtaining the KYC documents directly from the exporter M/s Kumar Corporation.

7.3 I also rely upon the decision in the case of HIM Logistics Pvt. Ltd. Vs. Commissioner of Customs, New Delhi, reported in 2016 (338) ELT 726 (Tr. Del). wherein the Hon'ble Tribunal held that

7. *There is no stipulation or legal requirement to physically verify the business premises or residential premises of the importer and also to have a personal meeting with the importer before taking up the work for any Importer.*

The aforesaid decision of the Hon'ble Tribunal was affirmed in the Hon'ble High Court of Delhi, reported in 2017 (348) ELT 625 (Del.) "I find that records do not allege that the IEC code has been obtained fraudulently or that the exporter on record did not exist. Further, reliance is placed upon the aforesaid case laws that there is no stipulation or legal requirement to physically verify the business premises or residential premises of the importer and also to have a personal meeting with the importer before taking up the

work for any importer. Accordingly, the charges under Regulation 10(n) thus stands 'not proved' against the Customs Brokers...."

7.4 In view of the above decisions the role of the CB in attempted illegal contraband export cannot be established. Neither any of the involved persons have attributed anything about the involvement of the CB. Thus, the we have not violated the Regulations of the CBLR, 2018 in this regard."

8. It is submitted that we have carried out the due diligence as required under Regulation 10(n) by obtaining the documents such as IE Code, GSTIN, Adhar Card copy, AD code letter, PAN card copy, copy of Cheque as prescribed in the Annexure to the Circular 9/2010 dated 08/04/2010. We have taken the documents such as IEC, GSTIN etc. These documents were issued by Government Agencies, which substantiate the existence of the exporters at the relevant time of issue of these documents.

9. The obligation under Regulation 10(n) requires the Customs Broker to verify the functioning of the client at the declared address using reliable, independent, authentic documents, data or information. This responsibility, again, can be fulfilled using documents or data or information so long as it is reliable, independent and authentic. Nothing in this clause requires the Customs Broker to physically go to the premises of the client to ensure that they are functioning at the premises. Customs formations are only in a few places while exporters or importers could be from any part of the country and they hire the services of the Customs Brokers. Besides the fact that no such obligation is in Regulation 10(n), it will be extremely difficult, if not, totally impossible, for the Customs Broker to physically visit the premises of each of its clients for verification. The Regulation, in fact, gives the option of verifying using documents, data or information. If there are authentic, independent and reliable documents or data or information to show that the client is functioning at the declared address, this part of the obligation of the Customs Broker is fulfilled. If there are documents issued by the Government Officers which show that the client is functioning at the address, it would be reasonable for the Customs Broker to presume that the officer is not wrong and that the client is indeed, functioning at that address. In the factual matrix of this case, we find that the GSTIN issued by the officers of CBIC itself shows the address of the client and the authenticity of the GSTIN is not in doubt. In fact, the entire verification report is based on the GSTIN. Further, IECs issued by the DGFT also show the address. There is nothing on record to show that either of these documents were fake or forged. Therefore, they are authentic and reliable. The responsibility of the Customs Broker under Regulation 10(n) does not include keeping a continuous surveillance on the client to ensure that he continues to operate from that address.

10. The Customs Broker is not omniscient and omnipotent. The responsibility of the Customs Broker under Regulation 10(n) does not extend to ensuring that all the documents issued by various officers of various departments are issued correctly. The Customs Broker is not an overseeing authority to ensure that the documents issued by Secretary, Tobacco Board were correctly issued by such authorities. If they were wrongly issued, the fault does not lie at the doorstep of the Customs Broker and it is not up to the Customs Broker to doubt the documents issued by the authorities and he cannot be faulted for believing them to be correct.

11. Thus the allegation against us in the Show Cause Notice that we have violated Regulation 10 (n) is not sustainable and SCN proposing penalty Under Section 114 (1) of Customs Act, 1962 on M/s AFT Shipping for not fulfilling the obligation as prescribed as per para 10(n) of CBLR, 2018 is not correct in natural justice and required to be dropped.

28. Subsequently an email dated 20.12.2023 was received from M/s. AFT Shipping (email ID amdbrokerage@gmail.com) submitting "As we are continuously following up with the Forwarder (Mr. Jignesh Chavda) & the agent (kultaz Singh) whose name are as already mentioned in SCN. and they already reach the address of the Exporter and they asked about the Summons also but the Exporter whose name Arun Kumar was not at the address his wife or any relative lady are telling us that he was out of town and the proof of the Visited at there house is attached in mail also. and we convey the message to them to appear against the PH and the agent Kultaz singh also wants to meet with your good office in favor of this matter. So he will come in next week about the justification of the matter of the Exporter. We request your good office if you need the statement of Jignesh Chavda who is the forwarder & one other guy also who wants to submit his statement on this matter. So kindly give us the advice to send them to you for further action."

29. Subsequently another personal hearing granted to M/s. AFT Shipping was attended by Shri Kalpesh Parmar, Branch Manager, AFT Shipping on 01.02.2024 wherein he requested to take their submission dated 05.12.2023 on record.

30. The Exporter i.e. M/s. Kumar Corporation, Delhi was called upon to attend personal hearing on 01.02.2024, 12.02.2024 and 21.02.2024. Letters calling upon him to attend the hearing were sent by registered post AD on the registered address i.e. GF, 180/1, Vijay Vihar, PH-II, North Delhi-110085 and also at residential address of the Proprietor Shri Arun i.e. 1680/82, Bachant Kaur, 2nd Floor, Main bazar, Pahar ganj, Swami Ram Tirth Nagar, Central Delhi-110055 which was informed by him during

recording of statement dated 21.02.2023. However, all three letters, from both the addresses, returned un-delivered. None of the personal hearing was attended by the Exporter.

DISCUSSION AND FINDINGS:

31. I have carefully studied all the case records and the defence submissions on record. The Exporter M/s. Kumar Corporation neither filed any defence reply nor appeared for any of the personal hearings given. The letters for personal hearing were sent to registered address of the Exporter as well as to the address informed by Proprietor Shri Arun during recording of his statement during the course of investigation. I note that vide letter F. No. VIII//10-02//ACC/O&A/HQ/2022-23 dated 09.11.2023, Public Relations Officer, Custom House, Customs Commissionerate, Ahmedabad was also requested to affix the copy of personal hearing letter dated 30.10.2023 on Notice Board of Customs House in terms of provisions of Section 153E of Customs Act 1962.

I find that the subject SCN alleges attempt to illegally export goods vide 03 Shipping Bills detailed under Table-1, and prior to this, past export of goods vide 03 Shipping Bills mentioned in Table-IV, in contravention of provisions of Section 113 (d), 113 (i) and 113 (ja) of Customs Act 1962 and proposes penalty under Section 114 (i), 114AA and 114 AC of Customs Act 1962 for the Exporter and penalty under Section 114 (i) of Customs Act, 1962 for the Customs Broker.

32. Whether export goods are liable for confiscation:

(a) Confiscation under Section 113 (d) of Customs Act 1962

The exporter filed 03 Shipping Bills (listed in Table-I above) for exporting goods, the description of which was declared as "assorted chewing tobacco" and customs tariff classification as 2403 9930. The documents produced in respect of these exports included Tobacco Board Registration Certificate of M/s. Kumar Corporation bearing No. TB/EXP/TOB.PR/20022/1556 dated 09.09.2022. I find that the Tobacco Board, vide email dated 29.11.2022, has confirmed that said Registration Certificate in the name of M/s. Kumar Corporation bearing Registration No. TB/Exp.Tob.Pr/2022/1556 was fake certificate and that said Registration No. belonged to M/s. Anmol Enterprises, Ludhiana. Further, I find that Shri. Arun in his statement has admitted the fact of Tobacco Board registration being fake, having been

obtained from a consultant. Therefore, it is a fact on record that tobacco products were attempted to be illegally exported vide 03 shipping bills listed in Table-1 and earlier illegally exported vide 03 shipping bills listed in Table-IV on the strength of fake certificate of registration of Tobacco Board in the name of M/s. Kumar Corporation. **Section 12 of Tobacco Board Act 1975 requires:** "*No person shall export tobacco or any tobacco products or function as a packer, auctioneer of, or dealer in, tobacco unless he registers himself with the Board in accordance with the rules made under this act.*" Therefore, I hold that the tobacco products both attempted to be illegally export and those already exported in past by M/s. Kumar Corporation vide 06 Shipping Bills (listed in Table-1 and IV, respectively) are liable to be confiscated under Section 113 (d) of Customs Act 1962 for illegally attempting to export and also for having improperly exported in the past in contravention of prohibition imposed under Section 12 of Tobacco Board Act 1975 read with Section 113(d) of Custom Act, 1962.

(b) Confiscation under Section 113 (i) and 113 (ja) of Customs Act 1962

The goods covered in 03 Shipping Bills (listed in Table-I above) were examined by the officers of Customs as per Panchnama dated 04.11.2022, and representative samples drawn therefrom, were got tested at National Tobacco Testing Laboratory, Mumbai. I find that the export goods were declared as "Assorted chewing tobacco" in the Shipping Bills. However, the range of relevant parameters viz Nicotine, pH and Moisture found in export goods as per test report of National Tobacco Testing Laboratory, Mumbai were at variance as compared with typical range of said parameters of chewing tobacco. A comparison of the two sets of parameters, i.e. the typical parameters of chewing tobacco (chaini Khaini) published on website of National Library of medicine, USA and that of export goods, as found in subject test report of National Tobacco Testing Laboratory, Mumbai, which are compared below in Table-VI, indicate that the export goods are different from Chewing Tobacco.

Table- VI

Sr. No.	Parameter	Range found in Export goods	Range found in chewing tobacco brand Chaini Khaini (as published on website of National Library of medicine, USA)
1	pH	4.97 to 5.19	9.01 to 9.92
2	Moisture (%)	9.07 to 13.37	21.5 to 27.9
3	Nicotine (as is basis) (mg/g)	35.79 to 40.29	7.9 to 13.4

(ii) Further, it is noticed that the export goods were classified under CTH 2403 9930 in subject Shipping Bills. For better appreciation of scheme of classification of tobacco products under CTH 2403, the details of goods covered under CTH 2403 and its sub headings are reproduced below. Rate of IGST and Compensation Cess applicable to different types of chewing tobacco and cut tobacco are also mentioned against respective product.

Customs Tariff Heading 2403 reads as under:

“OTHER MANUFACTURED TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES; “HOMOGENISED” OR “RECONSTITUTED” TOBACCO; TOBACCO EXTRACTS AND ESSENCES;”

CTH / CTSI / CTI GST Compensation Cess	Description of goods			Rate of
2403 10	-	Smoking tobacco, whether or not containing tobacco substitutes in any proportion		
..				
..				
2403 90	-	Other		
..				
..				
2403 91	--	Homogenised or —reconstituted tobacco		
2403 99	--	Other		
2403 99	--	Other		
2403 99 10	---	Chewing tobacco		
		(without lime tube)	160%	
		(with lime tube)	142%	
		(Filter khaini)	160%	
2403 99 20	---	Preparations containing chewing tobacco	72%	
2403 99 30	---	Jarda scented tobacco	160%	
2403 99 40	---	Snuff	72%	
2403 99 50	---	Preparations containing snuff	72%	
2403 99 60	---	Tobacco extracts and essence (bearing brand name)	72%	
		(not bearing a brand name)	65%	
2403 99 70	---	Cut-tobacco	20%	
2403 99 90	---	Other (Pan masala containing tobacco ‘Gutkha’)	204%	
		(Goods other than Gutkha-Branded)	96%	
		(Goods other than Gutkha-Un-Branded)	89%	

I find that Chewing tobacco is classified under CTI 2403 9910 and attracts rate of Compensation Cess either 142% or 160% depending upon whether it is presented with or without lime tube. However, in the subject Shipping Bills, the goods were classified under CTI 2403 9930 which is for Jarda scented tobacco. Both chewing tobacco and Jarda scented tobacco are sold in packaged form. However as per examination carried out during Panchnama dated 04.11.2022, the export goods were found in loose form packed in corrugated boxes, each box weighing around 30 Kgs.

(iii) Further, the subject goods in Table I are unbranded and loosely packed in corrugated boxes and in light of the chemical analysis as reflected at Tables II, III and VI, the subject goods[both at Table I and IV] merit to be classified as 'Cut Tobacco' meriting CTH 24039970 which carries the rate of compensation cess @ 20%. Thereby I hold that the details entered in subject shipping bills [table I, IV] regarding classification CTH 24039930 and description of goods as Assorted Chewing Tobacco is intentionally mis-declared and false particulars to claim undue GST compensation cess of refund at higher rate 160%.

(iv) Further, it is fact on record that only Rs. 5,00,000/- against the invoices value of Rs 1,52,52,415/- has been paid to supplier M/s. Arihant Trading Co., and that Summons dated 28.02.2023 to this supplier was returned unattended with remarks 'No such person at address' is on record. As per the investigation analysis in the subject SCN, the analysis that the supplier is a fake firm and that the said exporter has created fake supply chain to claim undue benefit of IGST and compensation cess refund, holds ground. The Same scheme of description and classification was adopted in goods exported vide earlier 03 Shipping Bills listed in Table-IV wherein also the goods were exported improperly without a valid Tobacco Board Certificate. Therefore, I hold that the goods entered for export vide 03 Shipping Bills, listed in Table-I, and that exported vide 03 Shipping Bills, listed in Table-IV, are liable to confiscation under Section 113 (i) being mis-declared with respect to description, classification and also liable to confiscation under Section 113 (ja) of Customs Act 1962 as subject Shipping Bills have been filed claiming wrongful refund claim at higher rate of compensation cess, which is not applicable for subject goods, in contravention of the Section 113(ja) Custom Act.

33. Whether M/s. Kumar Corporation is liable for penalty

(a) Penalty under Section 114 (i) and Section 114 AA of Customs Act 1962

(i) The improper attempt to export subject goods vide 03 Shipping Bills, listed in Table-I, and of those illegally exported vide 03 Shipping Bills listed,

in Table-IV, is on record and subject goods are held liable for confiscation under Section 113 (d), 113 (i) and 113(ja) of Customs Act 1962 for illegally exporting and also for attempting to improperly export tobacco products on the strength of fake Registration Certificate of Tobacco Board, with mis-declaration of description, tariff classification and along with wrongful claim of refund at higher rate of compensation cess. Shri. Arun, proprietor of M/s. Kumar Corporation confirmed in his statement that export consignments along with invoice, tobacco board certificate, packing list and authority letter were sent by him to Shri. Jignesh Chavda for filing shipping bills for exporting goods to Dubai. The subject improper exportation is fact on record. The principle that 'fraud nullifies everything' applies in subject matter and the invoice with wrong description of goods as "chewing tobacco" for levying of Compensation Cess at higher rate (160%); fake Tobacco Board Registration Certificate were used by M/s. Kumar Corporation for filing subject shipping bills thereby making false declarations in the shipping bills.

(ii) In view of above mentioned facts, I find that actions by M/s. Kumar Corporation by submitting fake Registration Certificate of Tobacco Board and false Invoices showing wrong description, wrong classification for filing subject shipping bills with the Customs Department, have led to, both, illegal attempt of export (Table I) and also illegal export (Table IV) in violation of provisions of Section 12 of Tobacco Board Act 1975 and with mis-declared description in contravention of provisions of Custom Act thereby rendering said goods liable for confiscation under Section 113 (d), 113(i) and 113 (ja) of Customs Act 1962. I, therefore, hold M/s. Kumar Corporation liable to penalty under **Section 114 (i)** for it was the actions of M/s Kumar Corporation that rendered subject goods entered for export vide 06 Shipping Bills (listed in Table-I and Table-IV) liable for confiscation under Section 113 (d), 113 (i) and 113 (ja) of Customs Act 1962.

(iii) In terms of Section 12 of Tobacco Board Act, 1975, a person needs to get registered with Tobacco Board to export tobacco or any tobacco product out of India. M/s Kumar Corporation used fake Tobacco Registration Certificate in the subject matter along with false invoices and thereby used false documents and wrong declarations in the subject shipping bills (reflected in Table I and IV); thus M/s Kumar Corporation used false and incorrect material in the transaction of business for the purposes of the Custom Act, and therefore, I hold that M/s Kumar Corporation is liable to penalty under provisions of **Section 114 AA** of Customs Act 1962.

(b) Penalty under Section 114 AC of Customs Act 1962.

As discussed at Para 32 (b) above, M/s. Kumar Corporation earlier illegally exported (Table IV) and further attempted to illegally export cut-tobacco as "chewing tobacco" (Table I). I find that all the 06 shipping bills (03 shipping bills listed at Table-I and 03 shipping bills listed at Table-IV) were filed under claim of refund by paying IGST and compensation cess. The shipping bills have been filed with export invoices mis-declaring export goods as Chewing Tobacco on which higher compensation cess @ 160% is leviable compared to 20% on cut tobacco. Therefore I find that the exporter M/s. Kumar Corporation has filed shipping bills under wrong refund claim of IGST & compensation cess, wherein description and customs tariff classification of goods were mis-declared and facts of actual goods and corresponding rate of compensation cess was wilfully suppressed. It is also a fact that was revealed during the investigation that only Rs. 5,00,000/- against the invoices value of Rs 1,52,52,415/- has been paid to M/s. Arihant Trading Co. and that Summons dated 28.02.2023 to this supplier was returned unattended with remarks 'No such person at address' is on record, which corroborates to the fraudulent modus operandi that the exporter has created fake supply chain to claim undue and wrong benefit of IGST and compensation cess refund and thereby defraud Government exchequer. Therefore, the act of M/s. Kumar Corporation of obtaining invoices with mis-declared description, wrong classification of goods having higher rate of compensation cess @ 160%; to fraudulently claim wrong and erroneous amount refund of IGST and compensation cess has made them liable to penalty under Section 114 AC of Customs Act 1962.

34. Whether M/s. AFT Shipping (Customs Broker, also referred as 'CB' for the sake of brevity) is liable for penalty under Section 114 (i) of Customs Act 1962.

I note that the subject SCN has invoked the provisions of penalty under Section 114(i) Custom Act on the Custom broker for failing to fulfil their obligation stipulated under Regulation 10 (n) of CBLR, 2018. Vide defence submission, the Custom broker submitted that it handled the cargo on the basis of documents provided to them by the exporter and they did not know about the intention of the exporter. The CB submitted that it may not be penalized for exporter's mistake of submitting fake Tobacco Board Certificate since the Custom broker was not in the capacity to verify the genuineness of Tobacco Board Certificate and that the Custom broker had no mens-rea. The Custom broker submitted that they had charged Rs. 1200 + GST per shipping Bill as agency charge and that over and above they have not received extra consideration from the exporter. The Custom broker submitted that penalty should not be imposed on them in this case of mere

filling of documents without any knowledge of offence or violation by CB for clearance of export goods. Vide the defence submission, the Custom broker submitted that its office staff Shri Manish Khanpara was contacted by Shri Jignesh Chavada for clearance of export consignment of the exporter and they have provided them KYC documents ie. Authority letter, IEC copy, AD code letter, Aadhar card copy, GSTIN Copy, Pan card Copy and Cheque Copy and that Shri Jignesh Chavda regularly mailed regarding export consignments of Ms Kumar Corporation and documents required for customs clearance of the said consignments were mailed to office mail id amdbrokerage@gmail.com from kumarcorporation22@gmail.com. The Custom broker submitted that they had not verified IEC address physically as it was based in Delhi and that Shri Jignesh assured them that he had personally verified the IEC address of the exporter. The CB submitted that they have taken due precaution to verify the antecedent of the exporter so as to comply with the KYC norm. Vide its defence submission, the CB submits that it was nowhere prescribed that CHA, before taking the job of Customs Clearance is required to be physically verify the existence of Importer and that they had procured prescribed documents. CB submitted that Shri Jignesh assured CB that he (Shri Jignesh) had personally verified the IEC address of the exporter. The CB relied on the case of HIM Logistics Pvt. Ltd. Vs. Commissioner of Customs, New Delhi, reported in 2016 (338) ELT 726 (Tr. Del) wherein the Hon'ble Tribunal held that *there is no stipulation or legal requirement to physically verify the business premises or residential premises of the importer and also to have a personal meeting with the importer before taking up the work for any Importer.*

The CB submitted that they had carried out the due diligence as required under Regulation 10(n) by obtaining the documents such as IE Code, GSTIN, Adhar Card copy, AD code letter, PAN card copy, copy of Cheque as prescribed in the Annexure to the Circular 9/2010 dated 08/04/2010 and that the documents such as IEC, GSTIN were issued by Government Agencies, which substantiated the existence of the exporter at the relevant time of issue of these documents. The CB submits that GSTIN was issued by CBIC officers and IEC was issued by DGFT and these documents reflect the address. I have studied the case laws submitted by the Custom broker vide its defence submission. I find that the CB submits that it had not received any extra consideration by the exporter in respect of subject shipments and that it is not the beneficiary of the extra consideration in subject goods. I note that there is no material evidence on record, either showing that the CB has manipulated the export documents or that CB abetted the subject export so as to receive extra consideration with regard to subject shipments. Thereby, in subject matter, I find no evidence on record of abetment by the

custom broker with the said exporter with respect to subject shipments and in subject circumstances, I refrain from imposition of penalty on the custom broker under Section 114(i) Custom Act. I find my views of non imposition of penalty on the custom broker in compliance to the judicial discipline, as follows:

i. 2021(378)ELT528(Tri-Bang):

Penalty on Customs House Agent (CHA) - No evidence to show that Agent had knowledge of wrong doing of importer and colluded with importer to defraud Revenue - Not appropriate to punish CHA for filing document in good faith and on basis of documents supplied by importer - Penalty imposed set aside - Section 112 of Customs Act, 1962. [2006 (200) E.L.T. 122 (Tribunal) relied on]. [paras 6, 7]

ii. 2021 (377) E.L.T. 615 (Tri. - Chan.)

Penalty on Customs Broker - Misdeclaration in import consignment - Mens rea, non-establishment of - Allegation that appellant customs broker filed 4 bills of entry for clearance of consignment of cold rolled coil (non-alloy) and cold rolled sheets (non-alloy) of prime nature - Undisputedly on examination of import consignment, coil and sheets were found to be of defective nature instead of prime quality declared - Alleging that appellant being an experienced customs broker, expected to understand difference between prime material and secondary & defective material, penalty imposed misdeclaration - However, nothing on record indicates that said Broker had prior knowledge of actual goods - All documents given by importer to broker viz. invoices, high-seas agreements, test certificates etc. mentioned goods to be of prime nature - Whatever documents supplied to appellant by importer, appellant filed same for clearance - Merely being appellant an experienced person it could not be alleged that appellant was having mala fide intentions for clearance of said goods by misdeclaring same - Act of filing test certificate shows that appellant had no mens rea and filed documents being a bona fide facilitator - Penalty could not be imposed - Impugned order set aside - Sections 112 and 114AA of Customs Act, 1962. [paras 6, 7, 8, 9, 10].

iii. 2020 (374) ELT 775 (Tri- Bang).

iv. 2021 (377) ELT 456 (Tri- Chan).

v. 2020 (371) ELT 742 (Tri- Del).

vi. 2019(370) ELT 1138 (Tri- Mumbai).

vii. 2019(370) ELT 832 (Tri-Chennai).

viii. 2019(370) ELT 608(Tri-Mumbai).

ix. 2018(364) ELT 637 (Tri-Del).

35. Quantum of penalty on M/s Kumar Corporaion:

- i. I hold that the quantum of penalty shall be commensurate with the severity and degree of the fraud and wilful suppression on record. In subject matter, with the fake Tobacco Board Certificate submitted to effect the illegal export coupled with misdeclaration of goods and misclassification, I find this case fit for imposition of penalty under Section **114(i)** Custom Act equal to three times the value of the goods as declared by the exporter. I note that the value of subject goods is: Rs. 54,75,393/- (Rupees Fifty Four Lakh Seventy Five Thousand Three Hundred & Ninety Three Only) [value of goods in Table I is Rs. 27,93,633/- and the value of goods in Table IV is Rs. 26,81,760/-].
- ii. The exporter knowingly and intentionally used fake Tobacco Registration certificate and caused to be made shipping bills with false declarations with incorrect classification, incorrect description of goods and has used false material in the transaction of business for the purposes of the Custom Act, and with respect to the fraud established on record, I find this a fit case to impose penalty under Section **114AA** Custom Act equal to five times the value of the subject goods.
- iii. The intention of the exporter to defraud the Government exchequer by claiming illegal refund by fraudulent modus operandi as established in subject matter, by using fake Tobacco Board Registration certificate, with the fact that the supplier of subject goods is a fake firm and that no export remittances was received from the exporter's overseas buyer for goods exported in the past mentioned in Table IV; and that the amount received as refund from e-PAO has been transferred to different entities (Table V) to circumvent the scrutiny; and thereby I hold that the exporter had intentionally created fake supply chain coupled with the fact that the exporter obtained false documents and entered the subject goods (both covered in Table I and IV) for exportation vide subject 6 shipping bills under claim of illegal refund of IGST & compensation cess, renders the exporter liable to penalty under Section **114AC** and I find this a fit case for imposition of penalty equal to five times the refund claimed for the subject goods entered for exportation. The total refund claimed for the subject goods is Rs. 87,24,497/- (Rupees Eighty Seven Lakh Twenty Four Thousand Four Hundred and Ninety Seven Only) [Rs. 51,56,617/- is the refund claimed for goods at Table I and Rs. 35,67,880/- is the refund claimed for the goods at Table IV].

36. I find this a fit case for absolute confiscation of subject goods reflected at Table I.

37. For the exported goods reflected at Table IV, as the goods are not physically available, I proceed to pass an order of confiscation and as goods at Table IV are not physically available, I pass an order imposing redemption fine in lieu of the confiscation under Section 125 Custom Act. My view is in compliance to judicial discipline laid down by H'ble Gujarat High Court in the case of Synergy Fertichem ltd vs UoI reported in 2020(33) GSTL 513 (Guj).

38. In conspectus of aforementioned Discussion and Findings, I pass the Order:

Order

- (i) I order **absolute confiscation** of subject seized goods [reflected at Table I] i.e. "cut tobacco in loose form" having declared F.O.B. value Rs. 27,93,633/- (Rupees twenty-seven lakh ninety-three thousand six hundred thirty three only) entered for export under Shipping Bills Nos. 5156040 dated 31.10.2022, 5156463 dated 31.10.2022 and 5173635 dated 01.11.2022 under Section 113(d), 113(i) and 113(ja) of the Customs Act, 1962.
- (ii) I hold the subject goods [reflected at Table IV] having declared F.O.B. Rs 26,81,760/- (Rupees twenty six lakh eighty one thousand seven hundred sixty only) exported vide Shipping Bills Nos. 4463855 & 4463155 both dated 27.09.2022 and 4572031 dated 01.10.2022 liable for confiscation under Section 113(d), 113(i) and 113(ja) of the Customs Act, 1962 and I order to confiscate the subject goods. The said goods [Table IV] are exported and not being available to confiscation, I order to impose **Redemption fine of Rs 2,68,176/- (Rupees Two Lakh Sixty Eight Thousand One Hundred and Seventy Six Only)** under Section 125 Custom Act, in lieu of confiscation for reasons recorded in para 37.
- (iii) I impose of penalty of **Rs. 1,64,26,179/-** (Rupees One Crore Sixty Four Lakh Twenty Six Thousand One Hundred and Seventy Nine Only) on M/s. Kumar Corporation under Section 114(i) of the Customs Act, 1962.
- (iv) I impose penalty of **Rs. 2,73,76,965/-** (Rupees Two Crore Seventy Three Lakh Seventy Six Thousand Nine Hundred and Sixty Five Only) on M/s. Kumar Corporation under Section 114AA of the Customs Act, 1962.
- (v) I impose penalty of **Rs. 4,36,22,485/-** (Rupees Four Crore Thirty Six Lakh Twenty Two Thousand Four Hundred and Eighty Five Only) on M/s. Kumar Corporation under Section 114AC of the Customs Act, 1962.

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- (vi) I refrain from the imposition of penalty on Customs Brokers M/s. AFT Shipping under Section 114 (i) of the Customs Act, 1962 for reasons discussed in para 34.

Signed by
Arun Richard Elisha

Date: 21-03-2024 18:35:08 (Arun Richard)

Additional Commissioner
Ahmedabad Customs

F. No. GEN/ADJ/ADC/125/2024-ACC-AHMD-CUS-COMMRTE-AHMEDABAD

21.03.2024

DIN : 20240371MN0000111AD3

By Speed Post/ By E-mail/ By Hand/ As Prescribed. *ar*

To,

(1) M/s. Kumar Corporation, /1796

GF, 180/1, Vijay Vihar, PH-II,
North Delhi-110085

&

Present Address: /1797

1680/82, Bachant Kaur, 2nd Floor,
Main bazar, Pahar ganj,
Swami Ram Tirth Nagar,
Central Delhi-110055

(2) M/s. AFT Shipping /1798

C-405/406, Supath II Complex,
Nr. Old Wadaj Bus Stop, Ashram Road,
Ahmedabad- 380013.

Copy to:

1. The Principal Commissioner of Customs, Ahmedabad. /1799
2. The Deputy Commissioner, Air Cargo Complex, Customs Ahmedabad.
3. The Assistant Commissioner, Tax Recovery Cell, Customs Ahmedabad. /1800
4. The Superintendent (Systems), Customs Ahmedabad: for uploading the said OIO on the official website.
5. Guard file.

GEN/ADJ/ADC/125/2024-ACC-AHMD-CUS-COMMRTE-AHMEDABAD

1/1848849/2024 DIN: 20240371MN0000111AD3