

 <p>सीमा शुल्क एवं कल्पीन उत्तराधीन सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 GOVERNMENT OF INDIA देशसेवायां करसेवायां</p>	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS:</b> <b>CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421.</b> PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in</p>	 <p>Azadi Ka Amrit Mahotsav</p>
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<b>A</b>	<b>FILE NO.</b> फाइल संख्या	GEN/ADJ/ADC/439/2025-Adjn-O/o Pr Commr-Cus-Mundra
<b>B</b>	<b>OIO NO.</b> आदेश संख्या	MCH/ADC/ZDC/443/2025-26
<b>C</b>	<b>PASSED BY</b> जारीकर्ता	Dipak Zala, Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुन्द्रा।
<b>D</b>	<b>DATE OF ORDER</b> आदेश की तारीख	17.12.2025
<b>E</b>	<b>DATE OF ISSUE</b> जारी करने की तिथि	17.12.2025
<b>F</b>	<b>SCN No. &amp; Date</b> कारण बताओ नोटिस क्रमांक	GEN/ADJ/ADC/439/2025-Adjn-O/o Pr Commr-Cus-Mundra dated 19.02.2025
<b>G</b>	<b>NOTICEE/ PARTY/ IMPORTER</b> नोटिसकर्ता/पार्टी/आयातक	<ul style="list-style-type: none"> <li>i. M/s Omprakash Dinesh Kumar, (IEC: ACVPJ2589A)</li> <li>ii. M/s. Paramount Sealinks Pvt. Ltd.</li> <li>iii. Shri Bharat Himmatlal Parmar, Branch Manager of M/s. Paramount Sealink Pvt</li> <li>iv. Shri Dinesh Jayantilal Tanna</li> </ul>
<b>H</b>	<b>DIN/ दस्तावेज़ पहचान संख्या</b>	20251271MO000027882C

1. यहआदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमाशुल्कआयुक्त),  
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,  
नवरंगपुरा, अहमदाबाद 380 009”

**“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA  
HAVING HIS OFFICE AT 4<sup>TH</sup> FLOOR, HUDCO BUILDING, ISHWAR BHUVAN  
ROAD,**

**NAVRANGPURA, AHMEDABAD-380 009.”**

3. उक्तअपील यहआदेश भेजने की दिनांक से 60दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5 -/रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

- i. उक्त अपील की एक प्रति और A copy of the appeal, and
- ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क अधिनियम 1870-के मद सं° 6-में निर्धारित 5 -/रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ऊटी /ब्याज /दण्ड /जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।  
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमाशुल्क) अपील (नियम, 1982और सीमाशुल्क अधिनियम,1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5 %भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

**BRIEF FACTS OF THE CASE**

M/s Omprakash Dinesh Kumar, (IEC: ACVPJ2589A)(hereinafter referred to as the Importer”), having address as “29, Spice Park, Near Rampura, Mathania, Jodhpur, Rajasthan-342001”, is indulged into illegal import of Watermelon Seeds (also known as Melon Seeds) at Mundra Port by way of violation of Notification No. 05/2023 dated 5<sup>th</sup> April, 2024 issued by Directorate

General of Foreign Trade, Ministry of Commerce & Industry.

1.1 Intelligence gathered by the Directorate of Revenue Intelligence (DRI), (hereinafter referred to as 'DRI') indicated that M/s Omprakash Dinesh Kumar is indulged into illegal import of Watermelon Seeds (also known as Melon Seeds) by way of violation of Notification No. 05/2023 dated 5<sup>th</sup> April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry. As per said notification "Import Policy of Melon Seeds is 'Free' with effect from 0<sup>ft</sup> May 2024 up to 30<sup>th</sup> June 2024. Consignments with 'shipped on board' Bill of lading issued till 30<sup>th</sup> June 2024 shall be treated as 'Free' to import."

2. Acting upon the intelligence, an investigation in r/o the containers covered under the Bill of Entry No. 5802241 dated 25.09.2024 filed by the importer M/s Omprakash Dinesh Kumar at Mundra Custom House was carried out and found that there were major discrepancies between the details i.e. shipped on board date mentioned in Bill of Lading No. OSLSBL-971/24 for BE No. 5802241 dated 25.09.2024 and the original BL No. OSLPZUMUN3079224 resumed during the search conducted at the office of M/s Paramount Sealinks Pvt. Ltd. (General Agent working in India on behalf of M/s Ocean Star line) having office situated at 'Office No. 14, 2<sup>nd</sup> Floor, Aviskar Building, Plot No. 204, Ward 12-B, Gandhidham-370201 under Panchnama dated 12.09.2024. The shipped-on board date in the original BL No. OSLPZUMUN3079224 dated 07.08.2024 was 31.07.2024, which was changed to 26.06.2024 and switched B.L. No. OSLSBL-971/24 dated 26.06.2024 was issued to avail benefit of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry. Accordingly, the import consignment covered under Bill of Entry No. 5802241 dated 25.09.2024 filed by the importer M/s Omprakash Dinesh Kumar lying in the CFS of M/s Mundhra CFS Pvt. Ltd., Mundra was put on hold for examination by officers of DRI. The goods covered under Bill of Entry No. 5802241 dated 25.09.2024 were examined by officers of DRI on 08.10.2024 and accordingly a panchnama dated 08.10.2024 was drawn at the CFS of M/s Mundhra CFS Pvt. Ltd., Mundra in respect of the same.

3. During the investigation, a search was conducted at the office Premise of M/s Paramount Sealinks Pvt. Ltd. (General Agent working in India on behalf of M/s Ocean Star line) having office situated at 'Office No. 14, 2<sup>nd</sup> Floor, Aviskar Building, Plot No. 204, Ward 12-B, Gandhidham-370201 under Panchnama dated 12.09.2024. During the Panchnama proceedings carried out at the said address, some e-mail correspondences relating to present investigation were resumed by the visiting officers of DRI on a reasonable belief that the same were required for DRI investigation.

**3.1** Further, also a search was conducted at the office premise of M/s Unnati Cargo having office situated at Office no. 08, 1<sup>st</sup> Floor, Mundhra CFS, Mundra port, Mundra under Panchnama dated 14.09.2024. During the Panchnama proceedings carried out at the said address some documents relating to present investigation were resumed by the visiting officers of DRI for further investigation.

**4. During the course of investigation, statements of concerned persons were recorded under Section 108 of the Customs Act, 1962 and some documents were collected as given below:**

**4 . 1** Statement of Shri Bharat Himmatlal Parmar, Branch Manager of M/s Paramount Sealinks Pvt. Ltd., (Delivery Agent of Shipping Line i.e. M/s Ocean star line), having address as 'BOMGIM Building, 1<sup>st</sup> Floor, Plot No. 133, Sector-8, Gandhidham (Kutch) – 370201', was recorded under Section 108 of the Customs Act, 1962 on 10.09.2024 wherein he inter alia stated that he is working as Branch Manager of M/s Paramount Sealinks Pvt. Ltd. and M/s Ocean star line is their principle and M/s Paramount Sealinks Pvt. Ltd. has been handling all shipping related activities in India i.e. Export and Import at Mundra Port since long time on behalf of M/s Ocean star line. Further he stated that he generally received mail communication regarding consignments sent by M/s Oceanic Star Line, they sent him the details of arrival notice with containers details. Further, he stated that arrival of the consignment he looked after all clearance on behalf of Line to discharge the goods to his importers.

**4 . 2** Statement of Shri Chinmay Jhanwar, Authorized Signatory of M/s Omprakash Dinesh Kumar, was recorded under Section 108 of the Customs Act, 1962 on 30.11.2024 wherein he inter alia stated that in year 2012, his father had started the firm M/s. Omprakash Dinesh Kumar that they process the watermelon seeds at their factory premises and then they sell the processed seeds in domestic market only. Further, he stated that he looks after all the business-related work of M/s Omprakash Dinesh Kumar i.e. the work related to purchase and sales and import-export for M/s Omprakash Dinesh Kumar. He submitted copy of B.L. No. OSLSBL-971/24 dated 26.06.2024 alongwith copies of corresponding documents i.e. Invoice, Packing List, certificate of origin, phytosanitary certificate and fumigation certificate etc. related to 05 Containers covered under the Bill of Entry no. 5802241 dated 25.09.2024 which were supplied to him by his overseas supplier M/s Orga Industrade for Commerce Co. Ltd, Khartoum, Sudan on behalf of M/s. Signa General Trading LLC, Al Khaleej Road, Al Nukhitha Building G11, Dubai, UAE. He also stated that he is well aware about the Notification No. 05/2023 dated 05.04.2024 issued by DGFT that if watermelons seeds had loaded or shipped on board before 30th June 2024 then it will be under 'Free' category, however if goods loaded on ship

or shipped on board after 30th June 2024, then it will be under category of 'restricted'. On being shown Original B/L No. OSLPZUMUN3079224 dated 07.08.2024 (Shipped on board date 31.07.2024) & it's switch B/L No. OSLSBL-971/24 dated 26.06.2024 (Shipped on board date 26.06.2024) which pertain to the consignment of M/s Omprakash Dinesh Kumar, he stated that it appears that BL No. OSLPZUMUN3079224 dated 07.08.2024 is the original BL and someone has manipulated in shipped on board date and making another fake BL (which is called Switch BL) for the same consignments. He further stated that while making the deal with Shri Dinesh Tanna (Broker of Rajkot based M/s Tirupati Broker), he had clearly told him to send the goods i.e. watermelon seeds only if ship on board is before 30th June, otherwise don't send them.

On being shown, email communication between M/s. Paramount Sealinks Pvt. Ltd. through email ID impdocs@paramountsealink.com and M/s Eastern Shipping Co. Ltd. through email ID tagwa@easternship.com (which was resumed under the Panchnama dated 12.09.2024 drawn at the premises of M/s. Paramount Sealinks Pvt. Ltd.) dated 27.08.2024 with subject OSL pre alert IBN AL WALEED//24905 Port Sudan-Mundra//Nhava Sheva are mentioned in which it was mentioned that 'Dear Mohit/ Mundra Team (Paramount Sealinks Pvt. Ltd.), please find final attached of 7 Switch BL No.' which further contains text as 'BL No. OSLPZUMUN3079224 replaced by Switch BL No. OSLSBL-971/24', he accepted the fact that the shipped-on board date for the subject consignment was 31.07.2024 which is after permissible date i.e. 30.06.2024 as per the Notification No. 05/2023 dated 05.04.2024 issued by DGFT.

#### **4.3 Statement of Shri Vankar Bharatbhai Khengarbhai, senior executive (imports) of M/s Paramount Sealinks Pvt. Ltd, Gandhidham;**

During statement, Shri Vankar Bharatbhai were shown the email communication between M/s. Paramount Sealinks Pvt. Ltd. through email ID impdocs@paramountsealink.com and M/s Eastern Shipping Co. Ltd. through email ID tagwa@easternship.com (which was resumed under the Panchnama dated 12.09.2024 drawn at the premises of M/s. Paramount Sealinks Pvt. Ltd.) dated 27.08.2024 with subject OSL pre alert IBN AL WALEED//24905 Port Sudan-Mundra//Nhava Sheva are mentioned in which it was mentioned that 'Dear Mohit/ Mundra Team (Paramount Sealink Pvt. Ltd.), please find final attached of 7 Switch BL No.' which further contains text as 'BL No. OSLPZUMUN3079224 replaced by Switch BL No. OSLSBL-971/24', he stated that the original BL No. OSLPZUMUN3079224 was replaced by Switch BL No. OSLSBL-971/24, and he confirmed that M/s Paramount Sealinks Pvt. Ltd. has received the said BL from their principal M/s Ocean Star line through its agent.

During statement Shri Vankar Bharatbhai were shown Original B/L No.

OSLPZUMUN3079224 dated 07.08.2024 (Shipped on board date 31.07.2024) & it's switch B/L No. OSLSBL-971/24 dated 26.06.2024 (Shipped on board date 26.06.2024) which were resumed during the search conducted at the office of M/s Paramount Sealinks Pvt. Ltd. under Panchnama dated 12.09.2024, pertain to the consignment of M/s Omprakash Dinesh Kumar he confirmed that BL No. OSLPZUMUN3079224 dated 07.08.2024 having shipped on board date 31.07.2024 is the original BL and someone has manipulated the shipped on board date and made another fake/forged BL (which is called Switch BL) for the same consignment, the correct shipped-on-board date is 31.07.2024.

**4.4 Statement of Shri Dinesh Tanna, Authorized signatory of M/s Tirupati Broker has been recorded on 31.12.2024;**

During statement, Shri Dinesh Tanna stated that he looked after the work related to contracts with seller and buyers. M/s Tirupati Brokers, specializing in the brokerage of season-based agricultural products. They connect local buyers in India with overseas suppliers, primarily from African countries like Sudan, Somalia, and Nigeria, to fulfill demand for products like sesame seeds, watermelon seeds, pulses, and coriander.

Further, he stated that he negotiates product pricing, freight, and brokerage fees with Indian importers and charge the shipper for most products. For watermelon and coriander seeds, he charges brokerage from both the shipper and importer. He further stated that he had talked with overseas suppliers of watermelon seeds situated at Sudan.

On being shown Original B/L No. OSLPZUMUN3079224 dated 07.08.2024 (Shipped on board date 31.07.2024) & it's switch B/L No. OSLSBL-971/24 dated 26.06.2024 (Shipped on board date 26.06.2024) which were resumed during the search conducted at the office of M/s Paramount Sealinks Pvt. Ltd. under Panchnama dated 12.09.2024, pertain to the consignment of M/s Omprakash Dinesh Kumar, he stated that the shipped on board date has been manipulated by someone, he further stated that if he had known in advance that this shipment was loaded after 30.06.2024, he would never have imported it.

**4.5 Statement of Shri Chavda Dilipsinh, G-Card holder of M/s Unnati Cargo, recorded under Section 108 of the Customs Act, 1962, on 31.12.2024:**

wherein he inter alia stated that he has idea about the Notification No. 05/2023 dated 05.04.2024 issued by DGFT which stipulates that before 30.06.2024, the import of watermelon seeds is free and after 30.06.2024 the import of watermelon seeds is Restricted. On being shown Original B/L No.

OSLPZUMUN3079224 dated 07.08.2024 (Shipped on board date 31.07.2024) & it's switch B/L No. OSLSBL-971/24 dated 26.06.2024 (Shipped on board date 26.06.2024) which were resumed during the search conducted at the office of M/s Paramount Sealinks Pvt. Ltd. under Panchnama dated 12.09.2024, pertain to the consignment of M/s Omprakash Dinesh Kumar, he stated that someone has manipulated/forged the documents and try to show shipped on board date before 30th June. He further stated that no one had submitted to him the said type of documents in which shipped on board date is after 30th June 2024, if he had known in advance that this shipment was shipped on board date after 30th June 2024, he would never have filed the Bill of Entry in respect of the said consignment.

**5. Evidences available on record during investigation:**

**5.1** Original BL No. OSLPZUMUN3079224 dated 07.08.2024 having shipped on board date 31.07.2024 was resumed during the search conducted at the office of M/s Paramount Sealinks Pvt. Ltd. (General Agent working in India on behalf of M/s Ocean Star line) having office situated at 'Office No. 14, 2nd Floor, Aviskar Building, Plot No. 204, Ward 12-B, Gandhidham-370201 under Panchnama dated 12.09.2024. The shipped-on board date in the original BL No. OSLPZUMUN3079224 dated 07.08.2024 was 31.07.2024, which was changed to 26.06.2024 and switched B.L. No. OSLSBL-971/24 dated 26.06.2024 was issued to avail benefit of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry. It shows that Bill of Lading No. OSLSBL-971/24 dated 26.06.2024 showing 'Shipped on Board' date as 26.06.2024, which was submitted for filing IGM and Bill of Entry at Mundra Custom House were manipulated/forged to get the 'Restricted' goods cleared. The Notification No. 05/2023 dated 05.04.2024 issued by DGFT stipulates that if 'watermelons seeds' have been loaded or shipped on board before 30<sup>th</sup> June 2024 then only it will be under 'Free' category.

5.2 Two types of Bills of Lading were found-

(i) Bill of Lading available with Container Line- During search at the premises of M/s Paramount Sealink Pvt. Ltd. apart from the switched BL No. OSLSBL-971/24 dated 26.06.2024 having shipped on board date 26.06.2024, the original Bill of Lading No. OSLPZUMUN3079224 dated 07.08.2024 was found in r/o of the consignment covered under the Bill of Entry 5802241 dated 25.09.2024 imported by M/s Omprakash Dinesh Kumar. The said switched BL No. OSLSBL-971/24 dated 26.06.2024 having shipped on board date 26.06.2024 was received from TagwaBadri, Marketing executive of M/s Eastern shipping Co. Ltd. Khartoum, Sudan on 27.08.2024 vide email ID tagwa@eastership.com with subject of OSL PRE ALERT IBM AL

WALEED//24905 PORT SUDAN-MUNDRA//NAHAVA SHEVA 07.08.2024,in which Shipped on board date 26.06.2024 was mentioned.

(ii) Importer produce Bill of Lading during statement and also submitted to Customs- During statement, Shri Chinmay Jhanwar had submitted the Bill of lading number OSLSBL-971/24 dated 26.06.2024. In which shipped on board date 26.06.2024 was mentioned. The same Bill of lading was submitted to Customs during filing of Bill of Entry by importer.

Further, the switched Bill of Lading number OSLSBL-971/24 was discussed above bear date that is before June 30<sup>th</sup>; however, upon further investigation, it is clear that the said shipped on board date was forged and accordingly prepared fabricate documents. It appears that in this case, M/s Ocean Star Line, M/s Paramount Sealinks Pvt. Ltd., Eastern Shipping Co. Ltd., Sudan, M/s Tirupati Brokers, Rajkot, and the importer were found to be complicit in the creation of these fraudulent documents. Further examination of the forged Bills of Lading, coupled with the Original BL No. OSLPZUMUN3079224 dated 07.08.2024 having shipped on board date 31.07.2024, reveals that the "Shipped on Board" date for the containers covered under Bill of Entry 5802241 dated 25.09.2024 is recorded as July 31, 2024. This discrepancy indicates that the involved parties likely fabricated these documents with the intent to exploit a specific notification. The manipulation of dates, coupled with the deliberate forging of shipping documents, suggests that the primary objective was to circumvent regulatory requirements and gain an unjust advantage of Notification no. 05/2023 dated 05.04.2024.

This coordinated effort to create and present fabricated documentation not only violates legal and procedural norms but also undermines the integrity of the shipping and import/export process. Such actions, could lead to severe legal repercussions for all involved parties. Through intentional misrepresentation and manipulation of dates, they sought to facilitate the clearance of restricted cargo in violation of the established regulations.

## **6. Seizure:**

During the investigation, it was observed as per Original BL No. OSLPZUMUN3079224 dated 07.08.2024 having shipped on board date 31.07.2024 was resumed during the search conducted at the office of M/s Paramount Sealinks Pvt. Ltd. (General Agent working in India on behalf of M/s Ocean Star line) and as per other evidences gathered during investigation that the imported goods i.e. Watermelon Seeds have been loaded on board after 30th June 2024 and hence are restricted goods as per Notification no. 05/2023 dated 05.04.2024 issued by the DGFT. Thus, it appears that the imported goods

by M/s Omprakash Dinesh Kumar, under Bill of Entry No. 5802241 dated 25.09.2024 filed at Mundra Custom House, appears to have been mis-declared in documents submitted to the Customs. Therefore, there being a reasonable belief that the said goods are liable for confiscation under the provisions of Section 111 of the Customs Act, the same was placed under seizure under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 18.10.2024.

**7. Brief of investigation conducted and liability of imported goods for confiscation:**

**7.1** Investigation conducted by DRI has revealed that the containers covered under Bill of Entry No. 5802241 dated 25.09.2024, were shipped from Sudan port on 31.07.2024, well beyond the cut-off date of 30.06.2024 specified in DGFT Notification No. 05/2023 dated 05.04.2024. The Original BL No. OSLPZUMUN3079224 dated 07.08.2024 having shipped on board date 31.07.2024 was resumed during the search conducted at the office of M/s Paramount Sealinks Pvt. Ltd. (General Agent working in India on behalf of M/s Ocean Star line) confirms that the containers were received at the port on 31.07.2024, further corroborating the lapse in compliance with the notification's timeline. Moreover, email correspondences and other evidence clearly demonstrate that a forged Bill of Lading No. OSLSBL-971/24 was created, falsely reflecting the 'shipped on board' date as 26.06.2024, instead of the actual date of 31.07.2024. This deliberate manipulation of shipping documents was aimed at unlawfully availing the benefits under the DGFT Notification No. 05/2023. The investigation indicates that the importer, in collusion with representatives of M/s Paramount Sealinks Pvt. Ltd., M/s Ocean star line, and TagwaBadri, Marketing executive of M/s Eastern shipping Co. Ltd. Sudan, orchestrated the falsification of relevant dates on the Bill of Lading to facilitate the clearance of restricted cargo. By doing so, the importer has failed to adhere to the conditions of DGFT Notification No. 05/2023, thereby violating the provisions of the Foreign Trade Policy 2023. During the investigation, it is evident that Shri Bharat Parmar, as the branch manager, was kept fully informed of all communications, as Shri Tagva Badri, the Marketing Executive at Eastern Shipping Co. Ltd., had sent him the forged documents via email. This constitutes a serious breach of regulatory compliance and evidences deliberate intent to mislead customs authorities.

**7.2** The facts and evidence discussed above indicate that the Directorate General of Foreign Trade (DGFT), through Notification No. 05/2023 dated 05.04.2024, amended the import policy for Melon Seeds under CTH 12077090. As per the notification, the import of Melon Seeds was classified as 'Free' from

1st May 2024 to 30th June 2024. Consignments with 'shipped on board' Bill of lading issued till 30th June 2024 shall be treated as 'Free' to import". It means that all consignments of Watermelon Seeds which have shipped on board before 01.07.2024 can be imported in India on 'Actual User' basis to processors of Melon Seeds having a valid FSSAI Manufacturing License in line FSSAI Order dated 15.03.2024. However, as established in the preceding paras, M/s Omprakash Dinesh Kumar, 29, Spice Park, Near Rampura, Mathania, Jodhpur, Rajasthan-342001, illegally imported Watermelon Seeds under Bill of Entry No. 5802241 dated 25.09.2024, in violation of Notification No. 05/2023. The investigation conclusively proved that the goods were shipped on board on 31<sup>st</sup> July 2024 i.e. beyond the permissible date of 30th June 2024 using a forged Bill of Lading. Furthermore, it was revealed during the investigation that the importer deliberately withheld critical information from Customs Authorities, failing to disclose that the goods were shipped on board after the specified date of 30<sup>th</sup> June 2024. This reflects intentional non-compliance with the DGFT Notification No. 05/2023. Hence, the goods declared as 'Watermelon Seeds' under CTH 12077090 covered under Bill of Entry No. 5802241 dated 25.09.2024 having total quantity **85MTs** and declared assessable value of **Rs. 1,40,94,360/-** imported by M/s Omprakash Dinesh Kumar are liable for confiscation under confiscation under Section 111(d), 111(m) and 111 (o) of the Customs Act, 1962 and the same were placed under seizure under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 18.10.2024.

#### **8. Roles of persons/firms involved:**

##### **8.1 Role of the importer M/s Omprakash Dinesh Kumar (IEC No. ACVPJ2589A) (Authorized Signatory: Shri Chinmay Jhanwar):**

Shri Chinmay Jhanwar is an Authorized Signatory of M/s Omprakash Dinesh Kumar and being importer, he was well aware of the Import policy and Notification. M/s Omprakash Dinesh Kumar had imported watermelon seeds covered under Bill of Entry No. 5802241 dated 25.09.2024 by way of violation of import policy mentioned in Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry.

During statement, Shri Chinmay Jhanwar admitted to overseeing all business operations of M/s Omprakash Dinesh Kumar, including purchase, sales, and import-export activities. Despite being fully aware of Notification No. 05/2023 dated 05.04.2024, issued by the DGFT, he failed to disclose the actual facts to the customs department. Instead, he attempted to facilitate the clearance of restricted cargo. Email correspondences further indicate that he sought to obtain forged dates from shipping line representatives in a manner

that would mislead customs and enable the clearance of restricted cargo.

The total quantity of the said goods covered under the subject Bill of entry is **85 MTs** having declared assessable value of **Rs. 1,40,94,360/-**. As per Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry, the import of said goods with shipped on board dated after 30th June is under restricted category. The importer must comply with the conditions outlined in the said Notification. Further, the notification was issued for a definite period and it is the obligation of the firm utilizing that authorization to ensure that no condition of the Notification has been violated. The acts of commission and omission on the part of the importer rendered the subject goods liable to confiscation under Section 111(d), 111(m) and 111 (o) of the Customs Act, 1962 and therefore is liable to penalty under **Section 112 (a) and 112 (b)** of the Customs Act, 1962. By not uploading the original documents as mandated during filing of Bill of Entry, the importer has attempted to mislead the department thereby rendering themselves liable to penalty under **Sec 114AA** of Customs Act, 1962.

#### **8.2 Role of M/s Paramount Sealinks Pvt. Ltd. - working in India on behalf of M/s Ocean Star Line:**

The facts and evidences gathered during the search, including Bill of Lading and email correspondences, provide clear and compelling proof that M/s Paramount Sealinks Pvt. Ltd., acting on behalf of M/s Ocean Star Line, engaged in deliberate collusion with representatives from M/s Ocean Star Line and Mr. TagwaBadri, Marketing Executive of Eastern Shipping Co. Ltd., Sudan, to manipulate the dates on the Bill of Lading (B/L). This deliberate manipulation was carried out to facilitate the clearance of restricted cargo in direct violation of established regulations, which govern the shipping and clearance of goods in India.

It is evident that, the manipulation of the B/L was done intentionally, altering the actual shipped-on-board dates and vessel details to mislead customs authorities and facilitate the release of cargo in direct violation of established regulations. These actions reflect a blatant disregard for regulatory compliance and an intent to mislead the authorities. The deliberate acts and omissions by M/s Paramount Sealinks Pvt. Ltd. make them liable for penalties under **Section 112(b)** of the Customs Act, 1962. Furthermore, their involvement in the creation of forged Bills of Lading constitutes a violation that renders them liable to penalties under **Section 114AA** of the Customs Act, 1962.

#### **8.3 Role of Shri Bharat Himmatlal Parmar, Branch Manager of M/s**

**Paramount Sealinks Pvt. Ltd. (working in India on behalf of M/s Ocean Star Line)**

Shri Bharat Himmatlal Parmar, as the Branch Manager of M/s Paramount Sealinks Pvt. Ltd., a container line agent, was well-versed in the Import policy and Notifications. In his statement, Shri Parmar admitted to overseeing all operations of M/s Paramount Sealinks Pvt. Ltd., including documentation related to import-export activities as a container line agent. The facts and evidence gathered during the investigation, including the Bill of Lading and email correspondences, provide clear and compelling proof that M/s Paramount Sealinks Pvt. Ltd., acting on behalf of M/s Ocean Star Line, deliberately colluded with representatives from M/s Ocean Star Line and Mr. Tagva Badri, Marketing Executive of Eastern Shipping Co. Ltd., Sudan, to manipulate the dates on the Bill of Lading (B/L). This deliberate manipulation aimed to facilitate the clearance of restricted cargo, in direct violation of established regulations governing the shipping and clearance of goods in India.

During the investigation, it is clear that Shri Bharat Parmar, as the branch manager, was kept fully informed of all communications, as Shri Tagva Badri, the Marketing Executive at Eastern Shipping Co. Ltd., sent him the forged documents via email. These actions demonstrate a blatant disregard for regulatory compliance and a clear intent to mislead the authorities. The deliberate acts and omissions by Shri Bharat Himmatlal Parmar, Branch Manager of M/s Paramount Sealinks Pvt. Ltd., make him liable for penalties under Section **112(b)** of the Customs Act, 1962.

**8.4 Shri Dinesh Tanna, Authorized representative of M/s Tirupati Broker, Rajkot:**

During investigation, Shri Dinesh Tanna accepted that they used to import goods i.e. Watermelon seeds from Sudan. It was noticed that although **Shri Dinesh Tanna, Authorized representative of M/s Tirupati Broker, Rajkot** was handling the import related work as a Broker and used to contact Sudanese suppliers in order to finalize the deal with the suppliers of the goods. He used to bargain with foreign suppliers and used to arrange the payment against the subject import goods to the Sudanese suppliers. It appears that Shri Dinesh Tanna had given instructions to the container line through the overseas supplier that even if the goods are shipped after 30th June 2024, the documents must be maintained before 30th June 2024, only then the goods will be cleared in India. The facts and evidence gathered during investigation, clearly establish that Shri Dinesh Tanna, acting as broker, deliberately colluded with representatives of container line to manipulate the actual dates on the Bill of Lading. This manipulation was intended to facilitate the clearance of

restricted cargo in direct violation of established regulations. It has also been established that Shri Dinesh Tanna was in direct contact with container line and arranged forged dates from in a manner that would mislead customs and enable the clearance of restricted cargo. These actions reflect a blatant disregard for regulatory compliance and an intent to mislead the authorities. The deliberate acts and omissions by **Shri Dinesh Tanna, Authorized representative of M/s Tirupati Broker, Rajkot** make him liable for penalties under **Section 112(b)** of the Customs Act, 1962. Furthermore, his involvement in the creation of forged Bills of Lading a violation that renders him liable to penalties under **Section 114AA** of the Customs Act, 1962.

### **9. Relevant Legal provisions:**

**9.1.** Import of Watermelon seeds falling under HS Code 12077090 was made from "Free" to "Restricted" for vide Notification No. 05/2023 dated 05.04.2024 issued by the Directorate General of Foreign Trade, Ministry of Commerce & Industry under Section 3 and Section 5 of the FT(D&R) Act, 1992 read with Paragraph 1.02 and 2.01 of the Foreign Trade Policy (FTP), 2023 as amended from time to time. The Import of watermelon seeds is subject to Policy condition No. 4 of Chapter 12 of the ITC (HS) Classification.

**9.2** Whereas vide Notification No. 05/2023 dated 05.04.2024 issued by the Directorate General of Foreign Trade, Ministry of Commerce & Industry, it has been envisaged that "Import Policy of Melon Seeds is 'Free' with effect from 0<sup>th</sup> May 2024 up to 30<sup>th</sup> June 2024. Consignments with 'shipped on board' Bill of lading issued till 30<sup>th</sup> June 2024 shall be treated as 'Free' to import." As a corollary, all consignments of Watermelon Seeds which have shipped on board before 01.07.2024 can be imported in India on 'Actual User' basis to processors of Melon Seeds having a valid FSSAI Manufacturing License in line FSSAI Order dated 15.03.2024.

**9.3** The other relevant policy provisions pertaining to the import of watermelon seeds along with relevant penalty provisions of the Customs Act, 1962 are as follows:

#### **FTDR Act, 1992:**

##### **Section 3 of the FTDR Act, 1992: Powers to make provisions relating to imports and exports—**

(1) The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods.

(3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

### **Section 5 of the FTDR Act, 1992: Foreign Trade Policy—**

The Central Government may, from time to time, formulate and announce, by notification in the Official Gazette, the foreign trade policy and may also, in like manner, amend that policy:

Provided that the Central Government may direct that, in respect of the Special Economic Zones, the foreign trade policy shall apply to the goods, services and technology with such exceptions, modifications and adaptations, as may be specified by it by notification in the Official Gazette.

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#### **9.3.2 Foreign Trade Policy, 2023:**

##### **Para 1.02: Amendment to FTP**

Central Government, in exercise of powers conferred by Section 3 and Section 5 of FT (D&R) Act, 1992, as amended from time to time, reserves the right to make any amendment to the FTP, by means of notification, in public interest.

##### **Para 2.01: Policy regarding import /Exports of goods**

(a) Exports and Imports shall be 'Free' except when regulated by way of 'Prohibition', 'Restriction' or 'Exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports. The list of 'Prohibited', 'Restricted', and STE items can be viewed under 'Regulatory Updates' at <https://dgft.gov.in>

(b) Further, there are some items which are 'Free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force.

**10.1** Accordingly, Show cause Notice GEN/ADJ/ADC/439/2025-Adjn-O/o Pr Commr-Cus-Mundra dated 19.02.2025 was issued to M/s Omprakash Dinesh Kumar, wherein they were called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, as to why:

**(a)** The imported goods declared as 'Watermelon Seeds' under CTH 12077090 covered under Bill of Entry No.5802241 dated 25.09.2024 having total quantity **8 5** MTs and declared assessable value of **1,40,94,360/-** should not be

confiscated under Section 111 (d), 111(m) and 111(o) of Customs Act, 1962.

**(b)** Penalty under Section **112(a), 112(b)** and Section **114AA** of the Customs Act, 1962 should not be imposed on M/s Omprakash Dinesh Kumar, 29, Spice Park, Near Rampura, Mathania, Jodhpur, Rajasthan-342001.

**10.2** Vide SCN dated 19.02.2025, M/s Paramount Sealinks Pvt.Ltd. were called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, Mundra as to why penalty should not be imposed on M/s Paramount Sealinks Pvt. Ltd. under Section **112(b) & 114AA** of the Customs Act, 1962.

**10.3** Further, vide SCN dated 19.02.2025, Shri Bharat Parmar, Branch Manager of M/s Paramount Sealinks Pvt. Ltd. was called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House as to why penalty should not be imposed on M/s Paramount Sealinks Pvt. Ltd. under Section **112(b)** of the Customs Act, 1962.

**10.4** Furthermore, vide SCN dated 19.02.2025, Shri Dinesh Tanna, Authorized Representative of M/s Tirupati Broker was called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, Mundra as to why penalty should not be imposed on him under Section **112(b) & 114AA** of the Customs Act, 1962.

## **11. Written Submission**

**11.1 M/s Omprakash Dinesh Kumar, (IEC: ACVPJ2589A) submitted their reply, wherein they have, *inter alia*, submitted that:**

11.1.1 The Noticee submitted that acting upon specific intelligence gathered by DRI regarding importer importing Watermelon Seeds in contravention to the DGFT Notification No. 05/2023 dated: 05.04.2024 an investigation was initiated. In due course of investigation, a search was conducted at the premises of Paramount Sealink Pvt Ltd located at Suit No 20, Second floor Avishkar complex, Ward 12 B, Plot No. 204, Gandhi Dham, Kutch, Gujarat. It is submitted that the foundation of the entire case is based upon the Panchnama drawn at the premises of M/s Paramount Sealink Pvt Ltd however the said Panchnama is totally unreliable and inadmissible along with the statements and contents mentioned or drawn during it as the Panchnama dated: 12.09.2024 has Pancha 1: Shri Vikash Pandit whose sign can be found at every page however the Pancha – 2: is mentioned to be Shri Rukhi Manubhai Chhagan at the beginning of the Panchnama however the signature on each page for P2 reveals name of one Shri Manoj Rathod. There is no record of Shri Manoj Rathod being called or being present during Panchnama much less him being pancha for the aforementioned Panchnama. This discrepancy questions the validity and legality of the document in its entirety. Therefore, the Panchnama in the said case has become non-est and hence cannot be relied or

used in the said proceedings.

11.1.2 The Panchnama records that one Shri Bharat was present during the Panchama at the premises and he admitted that he is the branch manager however the import related work including filing of IGM etc., is specifically handled by Shri Mohit Kumar. Thereafter during search, it was found that in this above-mentioned premises of Paramount Sealink Pvt Ltd there were total five computers which were installed and on being asked Shri Bharat informed the officers that they are using three email ids viz. [impdocs@paramountsealink.com](mailto:impdocs@paramountsealink.com), [billing@paramountsealink.com](mailto:billing@paramountsealink.com) and [mnr@paramountsealink.com](mailto:mnr@paramountsealink.com) for all the conversations relating to the import and export and other work being done at their premises . Shri Bharat provided the three email ids viz. [impdocs@paramountsealink.com](mailto:impdocs@paramountsealink.com), [billing@paramountsealink.com](mailto:billing@paramountsealink.com) and [mnr@paramountsealink.com](mailto:mnr@paramountsealink.com) to the officers and informed them that all of these three email ids were already opened at the computer system being used by Shri Mohit and Shri Mahesh at the time of Panchama. The officers then accessed those emails through the computer systems on which they were already logged in and made three files which were named as Made-up file-1 comprising of 488 Pgs., Made-up file-2 comprising of 472 Pgs. and Made-up file-3 comprising of 394Pgs., signatures of Sri Bharath were taken on every page of these made-up files and the signatures of Panchas were taken on the first and the last page of the files. The show Cause Notice brings out that during this search some emails were 'resumed'. However, it would be factually incorrect to state that these emails were resumed from the premises of Paramount Sealink as these emails were not available in printed format when the search was conducted. Instead, the printouts of these emails were taken during the Panchnama by the officers themselves and in gross violations of provisions laid down under section 138C of the Customs Act 1962. The section 138C of Customs Act mandates that when such copies of any digital form are being recovered from any electronic device which is then to be relied or admitted as evidence during any proceedings under Customs Act it has to be done under a certain procedure and a certificate or statement certifying as to what has been recovered and what does the recovered document means has to be obtained from the one who is in regular possession of the device.

11.1.3 In the instant case the devices from which the printouts of these emails were recovered were being continuously used and were in possession of Shri Mohit and Shri Mahesh of Paramount Sealink Private Limited but no statement of theirs in this regard as to what are the contents of email and what they mean have been recovered from them. It is also necessary to highlight a fact that when Sri Bharath had informed the officers very explicitly that the import related work is being handled by Shri Mohit in particular at first, even then the officers have neither questioned Shri Mohit during the Panchama nor was any statement of Shri Mohit has been recorded or bought on record or relied at any stage in the investigation or in the SCN.

11.1.4 The Noticee submitted that these printouts taken in the gross violation of section 138C cannot be relied as evidence as they are inadmissible because of non-following of the procedure laid down by the statute which is mandatory to bring out the legitimacy and truthfulness of the documents reliance in this case is placed in the following cases:

- i. In *Arjun Pandit Rao v. Kailash Kushanrao* 2020 (7) SCC 1 (Civil Appeal No. 20825-20826 of 2017). It was held by Supreme Court regarding the contents of the 'Certificate' as: "*The certificate submitted under this provision constitutes particulars of those*

*electronic records and identity inclusive of authorized signature of a person having official responsibility in relation to the management and operation of the relevant device.”*

- ii. The Supreme Court in the case of Anvar P.V. v. P.K. Basheer and Others (2014) 2017 (352) ELT 416 (SC) have held in the case of similarly worded provision of Section 65B Indian Evidence Act 1872 that such certification is an essential requirement for making any of such printouts admissible as evidence. *“Electronic Evidence - Admissibility of - Speeches, songs and announcements recorded using other instruments and by feeding them into a computer, CDs made therefrom and produced in court, without due certification - Such CDs produced by way of secondary evidence, not admissible in evidence, mandatory requirements of Section 65B of Indian Evidence Act, 1872 being not satisfied - Whole case set up regarding corrupt practice using songs, announcements and speeches fails.”* (Highlighting Supplied)
- iii. Further Reliance is placed on case of Jeen Bhavani International Versus Commissioner of Customs, Nhava Sheva-III (2023) 6 Centax 11 (Tri.-Bom) where in Para 12 it was held that: *“12.2.....No certificate whatsoever, as required under the provisions of Section 138C (2) was obtained. It is settled proposition of law that if a certain act is to be done by a certain authority, in a particular manner, the same should be done in the manner in which it is ordained. There are no short cuts in investigation. Without fulfilling the statutory requirements, subjecting the computer to forensic analysis is of no help and would not help the cause of Revenue. Therefore, we are of the considered opinion that the emails/documents etc retrieved in the instant case are not reliable evidence for the reasons cited above.*

*12.3 With regard to seizure of CPU and alleged data retrieved there from, the department has concluded that there was parallel set of invoices for the 21 Bills of Entry, wherein the actual invoice values have been shown, which were less than the declared invoice values. We find that the procedures laid down under section 138C have not been observed by the department, in addition to non mentioning of the details of the CPU, the place of installation in the premise, custodian of the CPU etc. Therefore, we find that as per the ratio laid down in the above referred judgments, the documents retrieved, lost their evidentiary value and cannot be relied upon for upholding the charges of undervaluation of goods and demand of the differential duty.”* (Highlighting Supplied)

This case was further upheld by Hon'ble Supreme Court in Commissioner of Customs, Nhava Sheva-III Versus Jeen Bhavani International (2023) 6 Centax 14 (S.C.)/2023 (385) E.L.T. 338 (S.C.) wherein the appeal of the revenue was dismissed on merits after condonation of delay.

- iv. Further reliance is placed on Junaid Kudia Versus Commissioner of Customs, Mumbai Import-II (2024) 16 Centax 503 (Tri.-Bom) wherein in Para 10 it was held: *“10. Upon perusal of the judgment of the Hon'ble Supreme Court in the case of Anvar P.V. (supra), we note that the Apex Court has categorically laid down the law that unless*

*the requirement of Section 65B of the Evidence Act is satisfied, such evidence cannot be admitted in any proceedings. We note that the Section 138C of the Customs Act is parimateria to Section 65B of the Evidence Act. Consequently, the evidence in the form of computer printouts, etc., recovered during the course of investigation can be admitted in the present proceedings, only subject to the satisfaction of the sub-section (2) of Section 138C ibid. This refers to the certificate from a responsible person in relation to the operation of the relevant laptop/computer. After perusing the record of the case, we note that in respect of the electronic documents in the form of computer printouts from the seized laptops and other electronic devices, have not been accompanied by a certificate as required by Section 138C(2) ibid as above. In the absence of such certificate, in view of the unambiguous language in the judgment of the Hon'ble Supreme Court (supra), the said electronic documents cannot be relied upon by the Revenue for confirmation of differential duty on the appellant. In the present case, the main evidence on which, Revenue has sought to establish the case of undervaluation and misdeclaration of the imported goods is in the form of the computer printouts taken out from the laptops and other electronic devices in respect of which the requirement of Section 138C(2) ibid has not been satisfied. On this ground, the impugned order suffers from incurable error and hence, is liable to be set aside”*

(Highlighting Supplied)

This case was further upheld by Hon'ble Supreme Court in case of Commissioner of Customs, Mumbai Import-II Versus Junaid Kudia (2024) 16 Centax 504 (S.C.)/2024 (388) E.L.T. 529 (S.C.) where in the Hon'ble Supreme Court after condoning the delay and hearing the Ld. ASG has dismissed the appeal of department and upheld the order of CESTAT, Mumbai.

11.1.5 A statement of Shri Chinmay Jhanwar Authorized Representative of M/s Omprakash Dinesh Kumar was recorded at Gandhidham wherein in Q5 he was asked to produce the import related documents called under summons in answer to which he had produced copy of B/L along with other documents pertaining to the said import i.e., Invoice, Packing List, COO, Phytosanitary Certificate, Fumigation Certificate, etc. These documents along with the tracking details submitted by him are neither relied in the SCN nor are brought on record as annexure to his statement.

11.1.6 Further at Q10 he was shown the panchnama drawn at premises of M/s Paramount Sealinks wherein two copies of B/L were found and asked regarding the same to which he answered that he had never told / instructed any person to make two Bs/L for same consignment. At Q11 he was again shown copies of two Bs/L to which he answered that it appears that shipped on board has been manipulated on B/L and someone has made another fake B/L (which is called switch B/L). However, he had neither instructed nor is aware of any such manipulation as his contract and instructions were clear that the goods are required only if can be shipped before 30.06.2024. It clearly emerges from his statement that Shri Chinmay believes 'Switch B/L' to be fake B/L which displays his unawareness related to import trade as 'Switch B/L' is not a fake / Bogus B/L but is a trade reality. Hence, statement of a person who is not even aware about the general trade practice in imports saying a document

appears to be fake is not tenable.

11.1.7 Further statement of Shri Vankar Senior Executive of Paramount Sealink was recorded wherein in answer to Q2 he has stated that the Bs/L he has been shown pertains to his firm M/s Gujrat peanuts products ltd. and not 'M/s Omprakash Dinesh Kumar' the importer in the present case. Therefore, this statement of his either appears to be a copy pasted version of someone else's statement or a typed version which got only signed by the officers. Further at Q3 he was shown copies of Bs/L again and he has stated that both the Bs/L were received by them through email from their Overseas Principal and during relevant time Shri Bharat Parmar was the Branch Manager and he does not know as to why he has suppressed the facts. He also affirmed that they have filed the IGM based on the final Original and Signed copies of documents received by them.

11.1.8 It appears that a deliberate attempt to get it admitted by Shri Vankar that the B/L has been manipulated / forged has been made by the investigators since Shri Bharat during the panchnama has revealed that he is the Manager and all import related work is looked after by Shri Mohit and not him whereas in the statement it appears as if Shri Bharat was himself handling all the work of import in person which is not the fact in present case. Hence, it appears that his statement is in contradiction to his own depositions made during panchnama and facts on record and thus is totally unreliable and inadmissible.

11.1.9 From perusal of the Original B/L submitted by the Importer and 'Verify Copy' of B/L recovered from the email of the it is evident that the name of the Vessel and Voyage No etc. are different in both the Bs/L for which no clarification has been brought on record either through statements or through evidences as to why the details are different and in which vessel the goods have sailed. The investigating officer / agency has not taken the efforts / pain to even write an email to the office of shipper at Port of Loading or to the exporter asking them about the details as to on which vessel the consignment has left and on what date the containers were handed over to the shipping line by the exporter to prove the case of department.

11.1.10 Further statement of Shri Dinesh Tanna was recorded wherein in answer to Q3 he has submitted Broker's Contract No 5386 dated: 25.05.2024 along with all other import related documents. The terms of contract produced by him clearly stipulate that the goods are to be loaded / shipped only if the goods can be loaded on or before 30.06.2024 and in Q10 he explained that he had received all the import related documents via WhatsApp and had also produced the screenshot of the chats.

11.1.11 The Noticee submitted that the entire case is built upon the assumptions and presumptions of Shri Vankar Bharat Bhai Khengarhai the executive of Paramount Sealink Pvt Ltd who have allegedly admitted that the original B/L submitted by the importer to the Customs Authorities 'seems/appear' to be manipulated by someone. Hence, it is of essence to cross-examine them so as to confirm if the said statements are the true and voluntary and if so who has carried out the manipulation of the B/L as the B/L were directly received by them through their principal company on e-mail and it is not the case that importer or CHA or Broker has supplied them the alleged manipulated copy of B/L. The reliance in this case is placed on:

- i. Andaman Timber 2015 (324) E.L.T. 641 (S.C.), where in the Hon'ble Apex Court has laid down the law in Para 6 held that:

**“6.** According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. **It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static.** It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.” (Highlighting Supplied)

ii. Mahek Glazes Pvt Ltd. 2014 (300) E.L.T. 25 (Guj.) Para 6

**“6.** Having heard learned counsel for the parties, we are inclined to interfere on the short ground of serious breach of principles of natural justice in the process of passing final order of adjudication. We say so because the adjudicating authority, though categorically informed by the representative of the petitioners that the petitioners are serious about exercise of their right to cross-examination and further that any meaningful participation in the adjudicating proceedings can take place only after such cross-examination is granted, the authority proceeded to decide such request only along with the final order of adjudication. Whether the petitioners had a right to seek cross-examination in the facts of the present case, is not our brief at the moment. We, therefore, refuse to comment on the petitioners' insistence for cross-examination or authority's reluctance to grant it. **What we, however, find is that the petitioners had at least a right to be told whether such application is being granted or refused before final order was passed. When the petitioners prayed for cross-examination and reasonably expected that the same would be granted, they cannot be expected to participate in the adjudicating proceedings up to the final stage. In other words, without dealing with and disposing of the petitioners' application for cross-examination, the adjudicating authority could not have finally adjudicated the issues. If he was of the opinion that the request for cross-examination was not tenable, by giving reasons, he could have rejected it. We wonder what would have happened, if he was inclined to accept such a request. In such a situation, he himself could not have finally**

***disposed of the show cause notice proceedings. In either case, the petitioners had a right to know the outcome of their application.***" (Highlighting Supplied)

It is a settled law that the cross-examination has to be granted to the noticee even in quasi-judicial adjudications and as ratio laid down by the Hon'ble Apex Court in Andaman Timer (supra) it is not for the quasi-judicial authority to have 'guess work' as to for what reasons the cross-examination is being sought. However, from the reasons cited above the need for cross-examination becomes evident as it is the only pathway to obtain the answers to the series of unknowns left in the investigation.

11.1.12 The Noticee submitted that although the statements to the extent of admission of saying that it 'appears' someone has manipulated the B/L have been recorded and brought out in the investigation no piece of evidence on record has been brought to establish as to who has manipulated the B/L and on whose instruction such act was performed. Therefore, solely based on some statements based on assumptions and presumptions which were got recorded no liability can be brought out on the noticee and thus the SCN is liable to be dropped.

11.1.13 The Noticee submitted that the noticee is called upon to Show cause as to why the goods should not be confiscated u/s 111(d), (m) and (o) and penalties should not be imported u/s 112(a), (b) and 114AA of the Customs Act, 1962.

- i. The goods were imported with due compliance of law and in compliance of the DGFT policy stating that the melon seeds are freely importable if Shipped on Board Date is before 30.06.2024.
- ii. It is submitted that the goods so imported by the importer are neither in contravention to any Act within India nor are prohibited for import under Customs Act or any other Act. Hence, no provisions of 111(d) can be said to have been violated by the importer.
- iii. It is submitted that there is not even allegation of the goods imported to be mis-declared in any form i.e. quantity, description, quality, etc. brought out in entire proceedings or in the SCN. Hence, no confiscation liability can be arrived at u/s 111(m) of the Customs Act.
- iv. It is also submitted that the only condition of importing 'melon seeds' under free category was laid down in the DGFT Circular which stated that if the 'Ship on Board' date on the B/L is on or before 30.06.2024 then the import of 'Melon Seeds' is to be treated as free. The only documents including B/L found with the importer is the one which was submitted to the Customs Authorities and is dated as well as has 'Ship on Board' date prior to 30.06.2024. Hence there exists no reason to bring in confiscatory provision of Section 111(m) of Customs Act.
- v. Therefore, there being no violation of any of the provisions of the Customs Act, 1962 there arises no reason to arrive at confiscation under any of the provisions of Section 111 as proposed in the SCN and the imported goods placed under seizure are liable to be released and allowed to be cleared from the Customs.

11.1.14 The Noticee submits that penalty u/s 112(a) cannot be imposed on

the noticee as no act, omissions or commission on the part of the noticee has been brought out in the SCN which would render the goods liable for confiscation under Section 111 of the Customs Act, 1962. Also, Penal liability u/s 112 (b) cannot be brought on to the importer as the goods are still lying in the custody of the customs and hence there was no possession, carrying, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with imported goods by the importer or any other person. The noticee further submits that there can be no penalty imposed / mulcted on the noticee as proposed in the SCN since no confiscation can be arrived at in the view of the submissions (supra) and there is no violation of provisions of Section 112(a) and or 112(b) of the Customs Act, 1962

11.1.15 As regards proposition of penalty u/s 114AA of the Customs Act, 1962 it is submitted that the issue was well clarified under 27<sup>th</sup> report of the Parliamentary Committee whereby it was specified that Section 114AA is being specifically introduced to battle with the increased bogus exports to gain the incentives and benefits under various schemes by exporters and that this section is not being incorporated to deal with the cases of imports.

Reliance in this case is placed upon:

- i. SRI KRISHNA SOUNDS AND LIGHTINGS 2019 (370) E.L.T. 594 (Tri. - Chennai) where in the Hon'ble Tribunal has found and held:

**“6. The Ld. AR has submitted that the Commissioner (Appeals) has set aside the penalty under Section 114AA for the reason that penalty has been imposed by the adjudicating authority under Section 112(a) and therefore there is no necessity of further penalty under Section 114AA. I find that this submission is incorrect for the reason that in the impugned order in paras 7 and 8, the Commissioner (Appeals) has discussed in detail the provision with regard to Section 114AA. It is seen stated that as per the Taxation Laws (Amendment) Bill, 2005, introduced in Lok Sabha on 12-5-2005, the Standing Committee has examined the necessity for introducing a new Section 114AA. The said Section was proposed to be introduced consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border.**

The said Section envisages enhanced penalty of five times of the value of the goods. The Commissioner (Appeals) has analyzed the object and the purpose of this Section and has held that in view of the rationale behind the introduction of Section 114AA of the Customs Act and the fact that penalty has already been imposed under Section 112(a), the appellate authority has found that the penalty under Section 114AA is excessive and requires to be set aside. Thus, the penalty under Section 114AA is not set aside merely for the reason that penalty under Section 112(a) is imposed. After considering the ingredients of Section 114AA and the rationale behind the introduction of Section 114AA, the Commissioner (Appeals) has set aside the penalty under Section 114AA.

**7. On appreciating the evidence as well as the facts**  
 presented and after hearing the submissions made by both sides, I am of the view that the Commissioner (Appeals) has rightly set aside the penalty under Section 114AA since the present case involves importation of goods and is not a situation of paper transaction. I do not find any merit in the appeal filed by

*the department and the same is dismissed. The cross-objection filed by respondent also stands dismissed.” (Highlighting Supplied)*

ii. Arun Kumar Kuwar Versus Principal Commissioner of Customs, New Delhi (2024) 20 Centax 123 (Tri.-Del) (Principal Bench) where in it was held:

**“13 ..... The purpose behind introduction of Section 114 AA was to punish those people who availed export benefits without exporting anything which according to the learned Counsel for the appellant is not the case here.** The provisions of section 114 AA provides for imposition of penalty on a person who knowingly or intentionally make, sign, uses or causes to be made any declaration, statement or documents, which is false or incorrect in any material particular in the transaction of any business for the purpose of the Act. From the statement of Shri Ravinder Singh (as quoted above), we find that the manipulation in the documents were done by the Dubai Branch of the shipping line at the behest of the actual supplier. **There is no evidence to link the appellant with the said manipulation done at Dubai office.** The shipping line has not been roped in the present proceedings. The revenue has not substantiated the charge of connivance of the appellant with the illegal import rather he was instrumental in ascertaining the correct valuation of the impugned goods. **We, therefore, do not find any justification for imposition of penalty under section 114AA of the Act.**” (Highlighting Supplied)

iii. A.V. Global Corporation Pvt. Ltd. Versus Commissioner of Customs, (Import & General), New Delhi (2024) 25 Centax 37 (Tri.-Del) wherein it was held:

**“ 7. Coming to the penalty imposed under 114 AA the objective of section 114AA as was subsequently incorporated, is apparent from 27<sup>th</sup> report of the Standing Committee on Finance (2005) which proposed this new section consequent to the deduction of several cases of fraudulent export where the exports were shown only on paper and no goods crossed the Indian boarder. The Committee opined introducing provisions of levying penalty upon 5 times the value of goods as a right deterrent the Constitution Bench of Hon’ble Supreme Court in the case of Kalpana Mehta v. Union of India in Civil Writ Petition No.558 of 2012 has held that the Parliamentary Committee Report is to be considered to see the purpose for which a statutory provision has been brought in. Since provision 114 AA is against the fraudulent exporters we hold that the same is wrongly invoked for penalizing the Customs House Agent.** We draw our support from the decision of this Tribunal in the case of **World-Wide Cargo v. CCE, Bangalore reported in 2022 (379) E.L.T. 120 (Tri.-Bang).** In the light of the above discussion, **we hold that penalty even under 114AA has wrongly been imposed upon the appellant-CHA, same is liable to be set aside.**” (Highlighting Supplied)

Therefore, in view of the above no penalty u/s 114AA of Customs Act, 1962 can be imposed on the noticee.

**11.2 M/s. Paramount Sealinks Pvt. Ltd submitted their reply dated 21.04.2025, wherein he had, *inter alia*, submitted that:**

**11.2.1** The Noticee submitted that the allegation in the subject case that Noticee No.2 has orchestrated this transaction to conceal true Shipped on Board date in the Bills of Lading so as enable Omprakash Dinesh Kumar to import restricted goods (Watermelon Seeds) is incorrect on facts. Further, the levy of penalty under section 112(b) and 114AA of the Customs Act, 1962, on Noticee no.2 is also legally incorrect. We hereby submit our counter against each, and every allegation levelled against Noticee No.2 with respect to subject import transaction.

The Noticee submit that Noticee No.2 is not privy to the trade transactions between the Sudan exporter and the Indian importer and neither the Noticee No.2 is aware about the import Custom tariffs which is categorically looked upon by the importers of the respective goods. The Noticee No.2 is a liner agent who facilitate the movement of export/import for the exporters/ importers all over India. In the present case, the Noticee No.2 has acted as a facilitator to issue Delivery Orders pertaining to the import of the impugned goods. The Noticee No.2 principal sub-agent has provided their services to the exporters in Sudan and that Noticee No.2 does not have any role in the misdeclaration of the Shipped on Board dates in the Bills of Lading by the importer i.e. Noticee No.1. The Noticee No.1 denied their involvement in mis-declaration and submission of forged documents in the clearance of restricted goods, it is the Noticee No.1 who could only have benefited from the said mis-declaration.

In this regard, The Noticee would like to submit that demand of penalty under section 112(b) and 114AA under Customs Act, 1962 should not be raised from Noticee No.2, since the mis-declaration and submission of the alleged forged documents, if they are indeed forged, can conceivably only have been done by Omprakash Dinesh Kumar. Hence, the Noticee No. 2 has no role to play in this alleged clearance of restricted goods which has been actually committed by Omprakash Dinesh Kumar.

**11.2.2** Further, it is Omprakash Dinesh Kumar who has benefitted from this wrong. Omprakash Dinesh Kumar has done certain acts and abetted certain doings which has led to clearance of restricted goods. Hence, it is clear that Omprakash Dinesh Kumar has submitted incorrect and manipulated documents to the customs by mis-declaring the Shipped on Board date in the Bills of Lading for the benefit of clearance of restricted goods. The Noticee would like to submit that the request for issuance of switch bills of lading was made by the shipper at the port of loading. However, the Noticee No.2 could not have been conceivably aware that the shipper and importer together in collusion to clear restricted goods had requested for issuance of switch Bills of Lading subject to the Notification no. 05/2023 dated 05.04.2024. Therefore, the allegation related to mis-declaration of Shipped on Board date in the Bills of Lading must be raised on Omprakash Dinesh Kumar and further demand of penalty should be demanded from Noticee No.1 only. Without prejudice to the above, The Noticee would like to submit that, even though Omprakash Dinesh Kumar has denied the mistake, it is apparent that if any misconduct was indeed perpetrated, then only Omprakash Dinesh Kumar involvement in clearance of restricted goods can be established and therefore, the Noticee No.2 is not required to pay any penalty in this case.

There is no evidence against Noticee No.2 for orchestrating this transaction for enabling clearance of restricted goods at the end of M/s. Omprakash Dinesh Kumar.

11.2.3 The Noticee would like to submit that no evidence has been put on table related to conspiracy or orchestrating by Noticee No.2 for this alleged crime. The Noticee No.2 is not a party to the alleged scheme of misrepresentation which has resulted in clearance of restricted goods by Omprakash Dinesh Kumar.

The Section 1 of the Customs Act, 1962, was amended via Finance Act, 2018 and came into effect from 29<sup>th</sup> March, 2018, and by virtue of the amendment, the exporter based in Sudan and the importer in India are to be proceeded against the Act, and not the shipping companies who do not gain anything from the unlawful acts committed by the importer in India.

11.2.4 The Noticee No.2 principal sub-agent in Sudan is not conversant with the Custom laws of India, however it is the importer who has to be aware of such restrictions prior importing any material which is in contravention to the Indian Customs Act. As such the Noticee No.2 cannot be held liable to be penalized for the wrongful acts of the importer Omprakash Dinesh Kumar. The Noticee would like to submit that the statements given by the employees of Noticee No.2 are exculpatory. The Noticee No.2 does not have any ill intention to this non-compliance. It is a matter of fact that the original 1st leg Bills of Lading were surrendered in Sudan basis which the 2<sup>nd</sup> leg Bills of Lading were released. The 2<sup>nd</sup> leg B/Ls are the switched Bills of Lading which were shared with Noticee No.2 by their principal sub-agent along with the pre-alerts and freight manifest to file the IGM at the discharge port. The procedure of issuance of switch bills of lading is a standard practice in the Maritime Industry. Even major shipping lines such as Maersk, CMA CGM, COSCO, etc, issue switch B/Ls on a case-to-case basis as per the International Shipping Laws which is applicable to all shipping companies. It is a matter of fact that maritime law does not restrict shipping companies for issuance of switch Bill of Lading once the original Bill of Lading has been surrendered by the shipper at load port. Concerning the allegations levelled against Noticee No.2 by your office pertaining to the Switch Bills of Lading issued in the aforementioned shipments, a Switch Bill of Lading is simply the second set of Bill of Lading issued by the carrier or its agent to substitute the Original Bills of Lading issued at the time of the shipment, even though it technically deals with the same cargo. To emphasize in detail, switch Bills of Lading are issued for replacement of certain details specified as below:

(a) the original bill names a discharge port which is subsequently changed (e.g. because the receiver has an option or the good are resold) and new bills are required naming the new discharge port:

(b) a seller of the goods in a chain of contracts does not wish the name of the original shipper to appear on the bill of lading, and so a new set is issued, sometimes naming the seller as the shipper. A variation on this is where party does not wish the true port of loading to be named on the bill;

(c) the first set of bills may be held up in the country of shipment, or the ship may arrive at the discharge port in advance of the first set of bills. A second set may therefore be issued in order to expedite payment, or to ensure that delivery can take place against an original bill;

(d) shipment of goods may originally have been in small parcels, and the buyer of those goods may require one bill of lading covering all of the parcels to facilitate his on sale. The converse may also happen i.e. one bill is issued for a bulk shipment which is then to be split.

Where switch bills are issued, the first set should be surrendered to the carrier in exchange for the new set. There is usually no objection to this practice. However, the switch bills may contain misrepresentations e.g., as to the true port of loading.

The above inference has been taken from the International Transport Intermediaries Club, Issuance of Switch Bill of Lading 2013,1.

Furthermore, International book Carriage of Goods by Sea Sixth Edition, Pg. No. 171 specifically states that :

#### 5.7 Switch Bills

*In concluding the survey of the functions of bills of lading, brief mention must be made of the modern practice of issuing switch bills. Under this procedure, the original set of bills of lading under which the goods have been shipped is surrendered to the carrier, or his agents, in exchange for a new set of bills in which some of the details, such as those relating to the name and address of the shipper, the date of issue of the bills or the port of shipment, have been altered.*

Hereto annexed and marked as **Annexure - “C”** are the copies of the printed details of Switch Bills of Lading mentioned in the International book Carriage of Goods by Sea, Sixth Edition.

11.2.5 It is pertinent to note that the Noticee No.2 was not aware that the switch Bills of Lading were requested by the shipper for the purpose of clearance of restricted goods by Noticee No.1. The Noticee No.2 principal sub-agent in Sudan shared only the second leg Bills of Lading with Noticee No.2 for import manifestation purpose, as the 1st leg Bills of Lading were already surrendered by the shipper in Sudan and hence the 1<sup>st</sup> leg Bill of Lading was considered as null and void. For all consignments exported from Sudan, it is outside the scope and authority of Noticee No.2 to inspect if the customs clearance is being done by the respective importers in India as per the prevailing customs laws. Consequently, on this ground it is submitted that Noticee No.2 is not liable for any penalty under Section 112(b) and 114AA of the Customs Act, 1962. Also, Noticee No.2 was not aware about the customs notification regarding restriction on import of Watermelon Seeds after 30.06.2024. As such, we submit that Noticee No.2 is not party to this violation and hence they should not be penalized under the provisions of Customs Act. The shipping line or their agents are not required to look into the authenticity of import documents provided by the importer to the Indian customs. This is operationally not possible and legally also not required to be done as the customs clearance is not done by the shipping lines or their agents. This is the responsibility of exporter /importer to ensure the correctness of documents and declarations. The importer **Omprakash Dinesh Kumar** has intentionally attempted to import watermelon seeds despite of being aware about the DGFT notification

Legal Provisions of section 112 (a) and under section 114AA of the Customs Act, 1962.

11.2.6 The foremost legal provisions are reproduced here:

**[SECTION 112.]** *Penalty for improper importation of goods, etc.- Any person, -*

**(a)** *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 111, or abets the doing or omission of such an act, or]*

**[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.]**

In view of the above legal provisions, we would like to submit that section 112 (a) is not applicable to Noticee No.2 since they have not done anything which will render the goods of Omprakash Dinesh Kumarto be confiscated. The Noticee No.2 has acted in a bonafide manner in relation to port of discharge procedures for subject consignment. We have also provided detailed submission against the same in above paragraphs.

Further section 114AA is also not applicable as Noticee No. 2 has not contributed in any way relating to the clearance of subject consignment. The importer is solely responsible for attempting to clear restricted goods from the customs by filing the Bill of Entries.

In the present case, the department has failed to appreciate that the Noticee No.2 being an agent of a foreign principal cannot be held liable for misdeclaration of Shipped on Board date in the Bills of Lading which has been issued in Sudan. The onus shall, solely be attributed on the Importer only, in view of Section 147 of the Customs Act, 1962, Liability of Principal and agent:

*" (1) Where this Act requires anything to be done by the owner, importer or exporter of any goods, it may be done on his behalf by his agent.*

*(2) Any such thing done by an agent of the owner, importer or exporter of any goods shall, unless the contrary is proved, be deemed to have been done with the knowledge and consent of such owner, importer or exporter, so that in any proceedings under this Act, the owner, importer or exporter of the goods shall also be liable as if the thing had been done by himself.*

*(3) When any person is expressly or impliedly authorised by the owner, importer or exporter of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, such person shall, without prejudice to the liability of the owner, importer or exporter of such goods for such purposes:*

Provided that where any duty is not levied or is short-levied or erroneously refunded on account of any reason other than any willful act, negligence or default of the agent, such duty shall not be recovered from the agent unless in the opinion of 1[Assistant Commissioner of Customs or Deputy Commissioner of Customs] the same cannot be recovered from the owner, importer or exporter. "

11.2.7 On a bare reading of Section 147 of the Customs Act, 1962 it can be safely construed that any violation of provisions of the Customs Act, 1962 carried out by an agent does not absolve the importer and it is deemed that such violation has been done with the knowledge and consent of such owner, importer or exporter and in any proceedings initiated, the owner, importer or exporter of the goods shall also be liable as if the thing had been done by himself and presumed to have been done with the knowledge and consent of such owner, importer or exporter, unless the contrary is proved.

In the present case nothing contrary has been adduced by the importer against the Noticee No.2 towards mis-declaration of Shipped on Board date in the bill of Lading as per Notification No. 05/2023 dated 05.04.2024. Therefore, no penalty is imposable on Noticee No.2.

a. Without prejudice to the above, the Noticee No.2 submits that considering the language of Section 114AA, the penalty under Section 114AA can be imposed on a natural person and not on a legal entity.

b. Without further prejudice to the above, the Noticee No.2 submits that the purpose of introduction of Section 114AA in the Customs Act, 1962 w.e.f. 13.07.2006 vide the Taxation Laws (Amendment) Act, 2006 was different i.e. to check frauds in export as evidenced by the observations of the Twenty Seventh Report of the Standing Committee on Finance (2005 – 06) in relation to the Taxation Laws (Amendment) Bill, 2005 as under:

*“Clause 24 (Insertion of new section 114AA)*

*62. Clause 24 of the Bill reads as follows: After section 114A of the Customs Act, the following section shall be inserted, namely:*

*“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.”*

c. The information furnished by the Ministry states as follows on the proposed provision:

*“Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A.”*

d. It was inter-alia expressed before the Committee by the representatives of trade that the proposed provisions were very harsh, which might lead to harassment of industries, by way of summoning an importer to give a ‘false statement’ etc. Questioned on these concerns, the Ministry in their reply stated as under:

*“The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefits under various export promotion schemes. The apprehension that an importer can be summoned under section 108 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because person summoned under Section 108 are required to state the truth upon any subject respecting which they are being examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an*

offence case.”

e. The Ministry also informed as under: “*The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes.*”

The Committee observe that owing to the increased instances of willful fraudulent usage of export promotion schemes, the provision for levying of penalty up to five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment.”

f. In this regard, we also rely upon the ratio of Hon’ble Order in the case of M/s Access World Wide Cargo reported as 2021 (8) TMI 640 - CESTAT BANGALORE wherein it was held, inter-alia, that the ingredients of Section 114AA of the Act is not applicable to the CHA and is meant against the fraudulent exporter as is made out from 27th Report of the Standing Committee on Finance (cited Supra). It was held, inter-alia, as under:

“6. .... *Further, I find that the ingredients of Section 114AA of the Act is not applicable to the CHA and is meant against the fraudulent exporter as is made out from 27th Report of the Standing Committee on Finance (cited Supra). I also find that in the present case, the Department has failed to prove that there was a mala fide and wilful misrepresentation by the Customs Broker. It seems that the Commissioner (Appeals) has totally misunderstood the facts and has wrongly observed that the appellant (Customs Broker) and the exporter have been operating from the same premises and have an identical ICE Code which leads one to suspect the bona fides of the appellant. This finding of the Commissioner is factually incorrect and without any basis. Further, the Commissioner on the basis of these facts has wrongly come to the conclusion that the appellant is involved in the illegal export whereas the appellant is only a Customs Broker who has filed the shipping bills on the basis of the documents furnished by the exporter.*

*Therefore, in view of these facts, the imposition of penalty itself is not sustainable in law and therefore I set aside the imposition of penalty on the appellant by allowing the appeal of the appellant.”*

g. We refer to the Hon’ble CESTAT order in the case of M/s Interglobe Aviation Ltd reported as 021 (7) TMI 1027 - CESTAT BANGALORE wherein it was held, inter-alia, as under:

“20. .... *The appellants also contended that the penalty under*

*the Section 114AA can be imposed when the goods have been exported by forging the documents knowingly or intentionally. The present case does not relate to export at all and even for imports, all the documents presented for imports were genuine and not forged and thus penalty is not imposable under Section 114AA of the Customs Act, 1962. We find that there is merit in the argument of the appellants. As the case is not of export, we find that no penalty under Section 114AA of the Customs Act, 1962 is imposable. ....”.*

- h. We also refer to the Hon'ble CESTAT order in the case of appeal filed by the department against M/s Sri Krishna Sounds & Lightings reported as 2018 (7) TMI 867 - CESTAT CHENNAI wherein it was held, inter-alia, as under:

*“7. On appreciating the evidence as well as the facts presented and after hearing the submissions made by both sides, I am of the view that the Commissioner (Appeals) has rightly set aside the penalty under Section 114AA since the present case involves importation of goods and is not a situation of paper transaction. I do not find any merit in the appeal filed by the department and the same is dismissed. The cross-objection filed by respondent also stands dismissed.”*

In view of the above, in the facts of the present case which relates to import of goods, penalty is not imposable on the Noticee No.2 under Section 114AA on the above ground as well.

- i. Without prejudice to the above, the Noticee No.2 submits that in the factual matrix of this case, there is no evidence that the Noticee No.2 had knowledge that the importer is trying to do the clearance of restricted goods. Penalty under Section 114AA of the Customs Act, 1962 can be levied only if the person has knowledge and intention in commission and omission of the act. There is no evidence to show that the Noticee No.2 had any prior knowledge or intention to mis-declare the Shipped on board date in the Bills of Lading of the said goods. Therefore, the penalty under section 114AA cannot be imposed on Noticee No.2.

11.2.8 The Noticee No.2 is an agent of a foreign principal **OSL**. The Article III (8) of the Indian Carriage of Goods by Sea Act, 1925 discharges the carrier from any and / or all liabilities and / or losses , arising due to any act or omission of the Shipper or the owner of the goods.

*Article III – Responsibilities and Liabilities.*

*(8). Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.*

11.2.9 On this ground alone, it is submitted that Noticee No.2 is not liable for any misdeclaration on the part of the shipper / consignee and neither have they attributed their support in import of **Watermelon Seeds** by intentionally mis-declaring the Shipped on Board date in the Bills of Lading.

No investigation has been conducted with the supplier in Sudan.

That Section 1 of the Customs Act, 1962 was amended vide Finance Act,

2018 and came into effect from 29<sup>th</sup> March, 2018 and by virtue of the amendment, the overseas suppliers (the exporter based abroad) can also be proceeded against the Act and it is essentially for the purpose of obtaining / gathering evidences of offences /contraventions by the overseas suppliers, the COIN officers (functioning under the administrative control of the department investigative agency DRI) have been posted. That despite armed with the personnel at its command, there is absolutely no evidence gathered and brought out to substantiate the allegations made in the impugned Notice. Concerning the allegations of misdeclaration of Shipped on Board date in the Bills of Lading, the department should have probed the matter with the overseas shipper in Sudan through the said COIN officers.

11.2.10 The Noticee No.2 is not under the obligation to examine the cargo and its loading date at any point of time. The Noticee No2 being an agent of a Foreign Liner, is not in a position to verify the declaration given by the importer to the Indian customs regarding the assessable value, customs duty or any other documents. The terms and conditions as set out in the Bill of Lading supports the Noticee No.2 contention that the Bill of Lading shall be *prima facie* receipt by the carrier in apparent good order and condition. The IGM was filed based on the details provided in the Switch Bills of Lading issued by the Noticee No.2 principal sub-agent in Sudan. The Noticee No.2 had no scope to know about the act of the importer and hence it cannot be held that the Noticee No.2 had conscious knowledge of the mis-declaration of Shipped on Board date in the Bills of Lading. Thus, there is no question of suppression of facts by Noticee No.2.

The Hon'ble Tribunal in the case of **M/s. Trans Asian Shipping Services P Ltd reported as 2018 (363) E.L.T. 635 (Tri. - All.)** has held that allegation of aiding and abetting cannot be upheld where IGM is filed on the basis of Bill of Lading. Relevant part of the order reads as under:- *As per facts on records, the appellant is a shipping line and was carrying the container on behalf of M/s. Ankit Metals. On the basis of a letter addressed by M/s. Ankit Metals, they applied for amendment in IGM stating that Aluminium Scrap "Tread" Weight 22.096 may be allowed to be amended to Aluminium Scrap "Tread" Weight 7.552 MT & Copper Berry/Clove Weight 14.544 MT. The said amendment was rejected by the Assistant Commissioner.*

*Subsequently, the importer, M/s. Ankit Metals also addressed a number of letters to the Revenue for change in IGM based upon the communication received from the exporter. All the facts are not being adhered to, inasmuch as the same relates to imports by M/s. Ankit Metals. The only reason for imposing penalty upon the present appellant as recorded by the Commissioner is as under:*

**“12.13** The shipping line had filed the IGM No. 2124032 dated 12-11-2015 on the basis of the bill of lading No. TALADS01912416 dated 10-11-2015. The bill of lading No. TALADS01912416 dated 10-11-2015 was produced before the Superintendent (SUB), ICD, Loni on 9-8-2016 wherein the description of the goods was mentioned as Aluminium scrap 'tread' 22.096 MT. The said B/L was issued on the strength of invoice no. Y15/ 141A dated 4-11-2015 of M/s. Ala International Metal Scrap TR LLC and NOC dated 4-11-2015 of M/s. Al Raha Trading Company and export declaration no. 201-02420065-15 dated 4-11-2015 all containing description of goods as Aluminium Scrap 'tread' 22.096 MT. As per statement dated 9- 8-2016 of Shri Sandeep Vishwanath A. of the shipping Line, the folio No. of the bill of lading was TAL1066058. The revised bill of lading having the same Sl. No. was issued from Dubai by Dubai Arobian Shipping Agency, LLC, the agent for the carrier. As per Shri Sandeep the revised bill of

*lading had reference no. TAL1157913 which was issued on 5-1-2016. It is pertinent to notice that request for amendment to the IGM was filed on 28-12-2015 by the shipping line. It thus shows that any B/L could be issued at free will at the behest of the importer/shipper. Having known that an application for amendment in the IGM was pending before the customs authorities since 28-12-2015, a final set of B/L was handed over to the shipper on 5-1-2016 without waiting for the outcome of their application for amendment. It has been contended by Shri Sandeep in his statement dated 9-8-2016 that B/L being a Line document, there was no need to seek approval from Customs for issue of the same. The argument is devoid of merit for the reason that statutory document viz. IGM is filed on the basis of bill of lading and therefore, it is imperative that sanctity of the documents i.e. bill of lading is maintained. Without checking the details of goods being carried and the supporting documents, the shipping line has issued the revised bill of lading without any check and balance and thus aided and abetted the importer in his nefarious design of importing the goods by misdeclaring the same with the intent to evade payment of Customs duty. The shipping line has knowingly made B/L which was false and incorrect in respect of material description of the goods with the view to use the same in the transaction of filing of IGM and clearance of goods for the purpose of Customs Act, 1962, and have thus rendered itself liable to penalty under Section 114AA of the Customs Act, 1962."*

*As is seen from the above, the penalty stands imposed upon the appellant on the ground that they have aided and abetted the importer in his nefarious design to import the goods by misdeclaration. However, I find that there is no evidence on record to show that the appellant was a party to such misdeclaration. They simplicitor filed IGM on the basis of bill of lading and on subsequently, after getting an communication from the importer, they applied for amendment of the same. In such a scenario, the allegation of the aiding and abetting cannot be upheld. Accordingly, the same is set aside and the appeal is allowed by setting aside the penalty imposed upon the appellant."*

In the present case, the 1<sup>st</sup> leg B/L issued to the shipper in Sudan and later surrendered and thereafter the 2<sup>nd</sup> Leg B/L was issued which was relied upon by the Noticee No.2 in India for filing the IGM. Thus, the Noticee No.2 cannot be held guilty for mis-declaration with regard to the correctness of the content of the IGM filed by Noticee No.2 as required under section 30(2) of the Customs Act, 1962 and hence no penalty should be imposed upon the Noticee No.2 under Section 114AA of the Customs Act, 1962.

11.2.11 The Noticee would like to place our reliance on the Singapore High Court ruling in the case of *BNP Paribas v Bandung Shipping Pte Ltd.*, 2003 wherein the switch 12 Bills of Lading were issued altering the port of loading for consignment loaded from Batam, Indonesia and to be discharged at Kandla port, India. The details mentioned under the Facts paragraph no.2 are as under : *12 bills of lading were switched bills issued by Bandung in exchange for the original set, pursuant to an arrangement provided for in the voyage charterparty. The switched bills were issued for the same cargo as the original set, with some alteration in the details like date and load port.*

The above evidence the fact that the issuance of switch Bills of Lading is a general practice in the maritime industry and in the Switch Bills of Lading, the date, port of loading and the port of discharge can be altered as per the requirement of the suppliers. Hereto annexed and marked as **Annexure - "D"** is the judgement copy of the Singapore High Court ruling in the case of *BNP Paribas v Bandung Shipping Pte Ltd.*, 2003.

11.2.12 The Noticee are relying upon the case of Wollongong Coal Limited vs. PCL (Shipping) Pte Ltd.,(2020) decided by the **New South Wales, Supreme Court.**

- a. In this case, the Plaintiff Wollongong Coal Ltd (WCL) is an Australian coal mining company and at that relevant time, it was a subsidiary of **Gujarat NRE Coke Limited (“Gujarat India”)**, an Indian metallurgical coke producing company.
- b. The defendant PCL (Shipping) Pte. Ltd. is a Singaporean Shipping Company who sub- chartered the vessel Illawar Fortune.
- c. WCL sold coal to its parent company Gujarat India.
- d. Gujarat India contracted with PCL to carry the cargo from Port Kembla, Australia to Mundra port, India.
- e. Gujarat India as voyage charterer was liable to pay the ocean freight to PCL (Shipping) Pte. Ltd.
- f. The cargo was shipped in August 2013 and Charterparty Bills of Lading (**Original Bills**) were signed by Shipowners, naming WCL as the Shipper. Therefore WCL was a party to the bill of lading contract with the Owners. PCL issued a freight invoice to Gujarat India for approximately US\$3.2 million under the Voyage Charter.
- g. On 24 September 2013, WCL asked for the Original Bills to be “switched” and Switch Bills to be issued, naming New Alloys Trading Pte Ltd (New Alloys) as Shipper in place of WCL.
- h. PCL agreed to facilitate the switch. On 2 October 2013, when a representative from New Alloys delivered the Original Bills to PCL’s office, PCL marked each of the Original Bills ‘Null and Void’ on the Shipowner’s instructions and sent these marked bills to the Shipowner.
- i. On 3 October 2013, PCL sought a letter of indemnity **LOI** from Gujarat India that indemnified PCL against any loss arising from the issue of the Switch Bills and on 4 October 2013 Gujarat India provided the requested LOI.
- j. On 4 October 2013, PCL provided a corresponding LOI to Owners who then released the new Switch Bills to New Alloys.
- k. As the above events unfolded, Sub-charterer Gujarat India failed to pay USD 3.2 Million freight to Disponent Owners PCL, time charterers of the Vessel Illawarra Fortune. After taking assignment of Owner’s rights under the Bills of Lading, PCL tried to recover those sums from Shippers WCL. The Bills of Lading provided for “Freight payable as per Charter Party”, i.e. the voyage charterer. However, following WCL’s failure to pay part of freight costs, the Bills of Lading were marked “Null and Void” and substituted by switch bills identifying New Alloys as shippers. The effect of “Switching Bills of Lading” is that the original Bills of Lading contract is replaced by a new contract evidenced by the “switch bills of lading.”
- l. The Court held that because of the novation WCL’s liability under the Switch Bills of Lading was extinguished therefore

neither the Owners nor PCL as their assignee could recover the freight and costs related to the voyage, given the prevalence of this practice in commercial shipping.

- m. The above judgement explicitly mentions the legitimacy of issuance of Switch Bills of Lading which is a common practice in the Shipping Industry and the same practice has also been adopted by Gujarat India to import coal from Australia to India which has been approved by the New South Wales Supreme Court to grant relief to Gujarat India and their subsidiary company WCL.

Based on the above judgement, the Noticee No.2 has not committed any wrong by filing the IGM basis the Switch Bill of Lading as per the standard maritime practice. Therefore, any mis-declaration by the exporter / importer to customs department cannot be attributed to any fault and / or act and / or omission and / or willful suppression by Noticee No.2. Hereto annexed and marked as **Annexure - "E"** is the judgement copy of the New South Wales Supreme Court.

11.2.13 That further, Section 230 of the Indian Contract act, 1872 reads as below :

***"230...Agent cannot personally enforce, nor be bound by contract on behalf of principal-***

*In the absence of any contract to that effect an agent cannot personally enforce contract entered into by him on behalf of his principal, nor is he personally bound by them."*

That, if the principal personally initiates and concludes the contract with any party, acting in their own capacity without any representative, there is an assumption that the contract is made on behalf of someone else and no agent is involved. The Noticee No. 2 did not even negotiate the contract with the exporter/importer. The contract for shipment was entered into between Noticee No.2 principal sub-agent and the exporter as per the Bills of Lading. The Noticee No. 2 is an agent of a disclosed principal in a Foreign Country and hence in the absence of any contract to the contrary, the Noticee No.2 cannot be held liable on behalf of their principal sub-agent.

11.2.14 The Noticee would like to place our reliance on the Chennai CESTAT ruling in the case of M/s Chakiat Agencies vs Commissioner of Customs (Exports) 2023 TAXSCAN (CESTAT) 175 wherein the court observed as below:

*"Be that as it may the appellant as a CHA cannot be expected to examine and ensure the nature of the goods in the consignment. There is no allegation or evidence to establish that the appellant had indulged in any overt act or played any role in any manner so as to assist the exporter in his attempt to export the goods. After appreciating the evidence and following the decision of the Tribunal in the above case, we are of the view that the penalty imposed on the appellants under section 114 of the Customs Act is not warranted.*

In the current case as well, the Noticee No.2 being a Liner agent, is not expected to verify the details submitted to the Customs by the importer at the time of filing of the Bill of Entries. Thus, they have not played any role in the incorrect importation of the goods in the discussion.

- b. That the **Principal bench of Delhi CESTAT in the case of**

**PURUSHOTTAM KUMAR JAIN vs COMMISSIONER OF CUSTOMS (PREVENTIVE) JODHPUR 2022 TAXSCAN (CESTAT) 567** has observed that the agent deliberately and intentionally has not provided any such information which was false or incorrect. As such, the penalty under section 114AA of the Customs Act, 1962 is not imposable on the agent.

c. That the **Ludhiana CESTAT in the case of M/s M S Exim Services Vs Commissioner of Customs, Ludhiana 2021 (CESTAT) 14** has observed that the appellant had no mens rea and filed the documents being a bonafide facilitator and in view of the same no penalty was imposable upon the appellant Customs broker, therefore, the penalty imposed on the appellant under Section 112 along with 114AA of the Customs Act, 1962, was set aside.

Therefore, in the instant case, the Noticee No.2 being a Liner agent is not responsible for the wrong declaration given by the importer to the customs at the time of filing the Bill of Entries.

11.2.15 (i) In the case of **V. Lakshmipathy vs. Commissioner of Customs -2003(153) E.L.T. 640T** (Tri-Delhi) in respect of invocation of penalty under Section 112 had held the existence of mens rea as an essential ingredient to invoke the same. This presupposition is non-existing in the present matter as show cause notice leads no evidence to indicate a guilty mind on part of the appellant.

(ii). In the case of **Mohd. Iliyas vs. Commissioner- 2018 (362) ELT A 218 SC the Honourable Apex Court** had held the penalty under Section 114AA, as not leviable (among other reasons) for no discussion being made as to the type of false /incorrect material. Similar is however the position in the present case.

(iii). Moreover, in the case of **Parag Domestic Appliances vs. Commissioner of Customs, Cochin 2018(360) ELT 547 (Tri-Bang)**, it was held that for subjecting one to penalty under Section 114AA, the existence of knowledge or intention on the part of such person while carrying out any or all of the necessary actions stated therein is a must. Without demonstrating such an existence of knowledge no such penalty is leviable. Also, it is necessary to discuss the nature of false and incorrect material made use of as held in a slew of cases.

(iv). In the case of **Codognotto Logistics India Pvt. Ltd. vs. Commissioner of Customs (2022) (SB) (Tri-Delhi)**, had held that in the absence of mens rea and no deliberate connivance in evading customs duty, penalty under Section 112 and Section 114AA is not leviable upon the appellants and the appeal was allowed.

(v). In the case of **Jeena and Company Versus Commissioner Of Customs, Bangalore [2021 (378) E.L.T. 528 (Tri. - /Bang.)]** Penalty on Customs House Agent (CHA) - No evidence to show that Agent had knowledge of wrongdoing 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. 12006 (200) E.L.T. 12 (Tribunal) relied on]. [paras 6, 7].

(vi). In the case of **Indian Acrylics Ltd. Versus Commissioner Of Customs, Kandla [2015 (325) E.L.T. 753 (Tri. - Ahmd.)]** Penalty on CHA - Penalty not imposable when CHA not involved in any manner in respect of manipulation of export documents No material on record showing appellant abetted the exporter for their gain - Penalty under Section 112(a) of Customs Act, 1962 not imposable. [para 14]

11.2.16 It is a settled position in law that penalty is not imposable where the Noticee has not acted contumaciously or in deliberate defiance of law. In support of this contention, reliance is placed on the law declared by the **Hon'ble Supreme Court in the case of Hindustan Steel Ltd 1978 (2) ELT J159 (SC)** wherein it was held that penalty shall not be imposed unless the conduct of a defaulter is found to be dishonest or contumacious. Reliance in this regard is also placed on the following binding judicial pronouncements which echo the settled principle that a penalty is not imposable where there is no dishonest conduct:

i. In the case of **Akbar Badruddin Jiwani vs Collector of Customs, 1990 (047) ELT 0161 (S.C.)**, where the **Hon'ble Supreme Court** has held that –

**“57. Before we conclude it is relevant to mention in this connection that even if it is taken for arguments sake that the imported article is marble falling within Entry 62 of Appendix 2, the burden lies on the Customs Department to show that the Appellant has acted dishonestly or contumaciously or with the deliberate or distinct object of breaching the law.**

**58. In the present case, the Tribunal has itself specifically stated that the Appellant has acted on the basis of bona fide behalf that the goods were importable under OGL and that, therefore, the Appellant deserves lenient treatment. It is, therefore, to be considered whether in the light of this specific finding of the Customs, Excise & Gold (Control) Appellate Tribunal, the penalty and fine in lieu of confiscation require to be set aside and quashed. Moreover, the quantum of penalty and fine in lieu of confiscation are extremely harsh, excessive and unreasonable bearing in mind the bona fides of the Appellant, as specifically found by the Appellate Tribunal.”**

11.2.17 That, the law which has been laid by various authorities for purposes of levying penalty is that the penalty under section 114AA can be levied only when mens-rea is established and when it is established that a person knowingly makes the false declaration or signs any such document. Before levying penalty 114AA Revenue has to establish mala fides which is of quintessence. In the instant case no malafide has been attributed to Noticee No.2. That penalty cannot be levied unless it is established that Noticee No.2 knew or had reason to believe that the goods were liable for confiscation under Section 111 of the Customs Act, 1962, and without establishing that Noticee No.2 has any mala fide motive or any motive to make abnormal gain. There is no evidence against Noticee No.2 to establish any overt act or *mens rea* to facilitate the commission of the said offence. The allegation that the Noticee No.2 has facilitated the attempt to enable the importer to import restricted goods in the subject transaction is without any factual and legal basis and therefore penalties under section 112(b) and section 114AA of the Customs Act, 1962 are not sustainable on Noticee No.2.

In view of the above judgement and facts of the case, there is no case of acting knowingly or intentionally on the part of the Noticee No.2 and hence, the penalties imposed upon the Noticee No.2 under section 112(b) and 114AA of the Customs Act, 1962, does not sustain in the eyes of law and accordingly the impugned show cause notice should be set aside.

11.2.18 The Noticee prayed that the Hon'ble Additional Commissioner of Customs, Mundra may be pleased to set aside the Show Cause Notice issued against M/s. Paramount Sealinks Pvt. Ltd.

**11.3 Shri Dinesh Jayantilal Tanna, Authorized Signatory of M/s. Shree Tirupati Brokers submitted their reply, wherein he had, *inter alia*,**

**submitted that:**

11.3.1 We adopt and reiterate the final replies/written submissions filed by the importers in response to the above-mentioned Show Cause Notices (SCNs). The same are not reproduced herein for the sake of brevity.

11.3.2 The Noticee has been alleged to have abetted the illegal import of watermelon seeds despite the existence of Notification No. 5/2024 dated 5th April 2024 issued by the DGFT. The SCN attributes a role to the Noticee, stating that he received and forwarded the draft and final Bills of Lading (B/L) to the importer and the CHA. However, the alleged WhatsApp chats / emails forming the basis of this claim have neither been relied upon nor subjected to forensic examination in compliance with Section 138C of the Customs Act, 1962. No statements from any individual have been recorded to substantiate that such B/Ls were indeed sent to the Noticee through WhatsApp / emails.

11.3.3 The SCN seeks to impose liability under Sections 112(b) and 114AA of the Customs Act by relying on alleged WhatsApp chats and certain emails. However, these documents have not been annexed as Relied Upon Documents (RUDs) nor have they been specifically extracted in the SCN. The only role that emerges from the statements recorded during investigation, including the Noticee's own statement, is that he acted as an intermediary between the foreign supplier and the Indian buyer. It is submitted that such a role of a mere facilitator or middleman does not amount to any act or omission rendering the goods liable to confiscation under Section 111 of the Customs Act, nor does it attract any penal provisions under the Act.

11.3.4 In his statement recorded under Section 108 of the Customs Act, the Noticee has produced all relevant documents and clearly stated that the transaction between himself, the Indian buyer, and the foreign supplier was subject to the condition that the consignment would be shipped on or before 30.06.2024, in compliance with the DGFT Notification. When confronted with two different B/Ls, the Noticee stated that it appears someone may have manipulated the B/L but denied any knowledge or involvement in the same. He categorically denied having discussed or instructed anyone regarding such manipulation.

11.3.5 The Noticee has consistently maintained in his statements that he merely forwarded the documents received via WhatsApp / email from the overseas supplier to the CHA and the buyer. He has never instructed or authorized anyone to arrange, manipulate, forge, or fabricate any B/L to fit within the timeframe stipulated under the DGFT Notification.

11.3.6 It is submitted that the imports in the present case are squarely within the permissible window under Notification No. 05/2024 dated 05.04.2024 issued by the DGFT, which states:

"Import policy of Melon Seeds is 'Free' with effect from 1st May 2024 up to 30th June 2024. **Consignments with 'shipped on board' Bill of Lading issued till 30th June 2024 shall be treated as free to import.**"  
(Emphasis Supplied)

11.3.7 It is a settled legal position that, in the case of sea-borne imports, the "date of shipment" is determined from the "shipped on board" date as indicated on the original, duly signed, and stamped Bill of Lading. In this case,

the original B/L dated 27.06.2024, issued in the ordinary course of trade, serves as conclusive evidence of shipment within the permissible policy window. There is no provision under either the Customs Act, 1962 or the Foreign Trade Policy which grants evidentiary value to an unsigned, unstamped, "Verify Copy" of a Bill of Lading—particularly when such copy carries differing vessel and voyage details. Therefore, the alleged verify copy of the B/L, purportedly retrieved from email communications without compliance with Section 138C, is inadmissible and cannot be used to discredit the original B/L.

### **Personal Hearing**

12.1 Shri Aliakbar Devjani, Advocate appeared for personal hearing on 11.04.2025 in virtual mode on behalf of M/s. Omprakash Dinesh Kumar and Sh. Dinesh Tanna. During the course of hearing Shri Aliakbar Devjani requested for cross examination of the executives of M/s. Paramount Sea Links (shipping line).

Further, Shri Aliakbar Devjani, Advocate and Sh. Risabh Suman, Consultant also appeared for personal hearing on 02.06.2025 on behalf of M/s. Omprakash Dinesh Kumar and Sh. Dinesh Tanna. During the hearing, they contested the allegations made against the above noticees and reiterated the submission made earlier in respect of the above noticees. Furthermore, he requested to drop the proceedings against their clients on the basis of their written submissions.

12.2 Advocate Ms. Deepti Upadhyay and Advocate Mr. Santosh Upadhyay appeared for personal hearing on 09.09.2025 in virtual mode on behalf of M/s. Paramount Sealinks Pvt. Ltd and re-iterated their submission dated 21.04.2025. They have stated that, as delivery agents, their role is strictly limited to filing the Import General Manifest (IGM), collecting documents from the importer or their representative, and issuing the delivery order. Paramount Sealinks' scope is confined to verifying the details submitted by the importer when filing the Bill of Entry with customs. As agents of the shipping company, their responsibilities are restricted, and therefore, they cannot be held liable for any penalties. Paramount principal's sub-agent has provided their services to the exporters in Sudan and that Paramount does not have any role in the misdeclaration of the Shipped on Board dates in the Bill of Lading by the importer i.e. Noticee No. 1. They relied on certain case laws pertaining to switch bills of lading ruling by Singapore High Court and New south Wales Supreme Court, Australia which explicitly mentions that switch Bills of Lading are to be considered as legal document. Further they relied on section 230 of the Indian Contract Act which states that an agent cannot personally enforce, nor be bound by contract on behalf of the principal or principal's sub-agent. They are the shipping company agent in India and their scope is very limited and as such they can't be held liable for any penalties. They relied on the observations of the

Twenty Seventh Report of the Standing Committee on Finance (2005 - 06) in relation to the Taxation Laws (Amendment) Bill, 2005 pertaining to penalty imposed under section 114 of The Customs Act, 1962. They relied on various judicial precedents along with the detailed observations of the Twenty Seventh Report of the Standing Committee on Finance (2005-06) in relation to the Taxation Laws (Amendment) Bill, 2005 pertaining imposed under section 114 of the Customs Act, 1962. Further, they requested to drop the proceedings against Paramount Sealinks Pvt. Ltd considering the prayers outlined in their written submissions.

12.3 Personal Hearing in the subject matter was granted to Shri Bharat Himmatlal Parmar, Branch manager of M/s. Paramount Sealink Pvt Ltd for dated 30.04.2025, 09.09.2025 and 23.09.2025 however Shri Bharat Himmatlal Parmar neither appeared for personal hearing nor submitted any documents/submission in the subject matter in reference of the Show Cause Notice dated 19.02.2025.

### **Discussion and Findings**

13. I have carefully gone through the facts of the case, Show Cause Notice dated 19.02.2025 and the noticee's submissions both, in written and in person. I find that in the present case, principle of natural justice have been complied with and Now, I proceed to examine the issues involved in the present case in light of available records, statutory provisions, applicable laws/rules, and written submissions, documentary evidences available on record and judicial precedents.

14. I now proceed to decide the issues framed in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided at the stage of adjudication: -

(i) Whether the imported goods i.e. "Water Melon Seed" are liable for confiscation under section 111(d), 111(m) and 111(o) of the customs Act, 1962 or otherwise;

(ii) Whether the noticees are liable for penalty as proposed under the SCN or otherwise.

15. After having identified and framed the main issues to be decided, I now proceed to deal with each of the issues individually for analysis in light of facts, submissions, and circumstances of the case, provisions of the Customs Act, 1962 and nuances of various judicial pronouncements.

**1 5 . 1** I find that M/s. Omprakash Dinesh Kumar (Importer) imported

Watermelon seed in five containers vide Bill of Lading no. OSLSBL971/24 dated 26/06/2024 under Bill of Entry no. 5802241 dated 25.09.2024. Based on intelligence gathered by DRI, Gandhidham that importer is indulged into illegal import of Watermelon Seeds (Melon Seeds) by way of violation of Notification No. 05/2023 dated 5<sup>th</sup> April, 2024 issued by Directorate General of Foreign Trade. The proceedings of the examination were recorded under panchnama dated 08.10.2024 drawn at M/s. Mundhra CFS Pvt. Ltd., Mundra.

**15.2.1** I found that during the course of investigation, two types of bills of lading were found. The details are as under:-

**Table-A**

<b>Bill of lading No.</b>	<b>OSLSBL-971/24</b>	<b>OSLPZUMUN3079224</b>
Vessel Name	SUNSET X	IBN AL WALEED
Voyage No.	2423	24905
B/L issue date	26.06.2024	07.08.2024
Ship on board Date	26.06.2024	31.07.2024
Total no. of containers	05	05
B/L Issued by	Gulf Gate Shipping Company limited	Eastern Shipping Company

**15.2.2** I observed that during the search at the premises of M/s Paramount Sealinks Pvt. Ltd. (General Agent working in India on behalf of M/s Ocean Star line) having office situated at 'Office No. 14, 2nd Floor, Aviskar Building, Plot No. 204, Ward 12-B, Gandhidham-370201 under Panchnama dated 12.09.2024, the original BL No. OSLPZUMUN3079224 dated 07.08.2024 was found.

The shipped-on board date in the original BL No. OSLPZUMUN3079224 dated 07.08.2024 was 31.07.2024 and Shipped on Board date in BL No. OSLSBL-971/24 dated 26.06.2024 which was used for filing of Bill of Entry no. 5802241 dated 25.09.2024 was declared as 26.06.2024.

I observed that B.L. No. OSLSBL 971/24 dated 26.06.2024 submitted for filing of Bill of Entry by M/s. Omprakash Dinesh Kumar for goods namely Watermelon Seeds is used to avail benefit of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry.

**15.2.3** From the above, I find that original BL No. OSLPZUMUN3079224 dated 07.08.2024 was found at the premises of M/s. Paramount Sealinks Pvt.

Ltd, wherein Shipped on Board dated is 31.07.2024 was switched with the BL No. OSLSBL-971/24 dated 26.06.2024 submitted for filing of Bill of Entry and shipped on board date was mentioned as 26.06.2024.

It shows that Bill of Lading No. OSLSBL-971/24 dated 26.06.2024 showing 'Shipped on Board' date as 26.06.2024 used for filing IGM and Bill of Entry at Mundra Custom House was manipulated/forged to get the 'Restricted' goods cleared.

It indicate that said BLs were manipulated/forged by falsely indicating a 'Shipped On Board' date prior to June 30, 2024 in order to facilitate the clearance of 'Restricted' goods. This action contravenes the provisions of notification no. 05/2023 dated 05.04.2024 issued by DGFT stipulates that if 'watermelons seeds' have been loaded or shipped on board before 30th June 2024 then only it will be under 'Free' category.

### **15.3 E-mail conversation:-**

**15.3.1** The e-mail conversation recovered during search conducted at the office Premise of M/s. Paramount Sealink Pvt. Ltd. under Panchnama dated 12.09.2024 indicated that various communications were made between officials of M/s Eastern Shipping Co. Ltd. and M/s. Paramount Sealink Pvt. Ltd. (Delivery Agent working in India on behalf of M/s Oceanic Star Line) to manipulate the Bill of Lading for clearance of subject goods covered under Bill of Entry no. 5802241 dated 25.09.2024.

**15.3.2** Upon careful examination of email correspondence specifically the messages sent by Mr. Tagwa Badri (Marketing executive, Eastern Shipping Co. Ltd. Sudan) to M/s. Paramount Shipping Pvt. Ltd. The relevant emails are as follows:-

- 27.08.2024: Subject OSL pre alert IBN AL WALEED //24905 Port Sudan-Mundra//Nhava Sheva are mentioned in which it was mentioned that:-

—  
"Dear Mohit/ Mundra Team (Paramount Sealinks Pvt. Ltd.), please find final attached 7 Switch BL No.' which further contains text as..... 'BL No. OSLPZUMUN3079224 replaced by Switch BL No. OSLSBL-971/24',

On perusal of the email communication dated 27.08.2024 sent by M/s Eastern Shipping Co. Ltd., Sudan through email ID tagwa@easternship.com to M/s Paramount Sealink Pvt. Ltd. on email ID impdocs@paramountsealink.com under the subject "OSL pre alert IBN AL WALEED //24905 Port Sudan-Mundra//Nhava Sheva, please find attached 7 Switch BL No.' which further contains text as 'BL No. OSLPZUMUN3079224 (**original BL in subject Case**)

replaced with Switch BL No. OSLSBL-971/24'.

This establishes that the original BL no. OSLPZUMUN3079224 actually related to the consignment was forwarded first and vide email dated 27.08.2024 the earlier BL no. OSLPZUMUN3079224 Switched by BL No. OSLSBL 971/24.

I observe that the switch BL was generated and shared on 27.08.2024 and the SOB date on the switch bill was mentioned as 26.06.24, The switched BL was shared almost 02 months after the SOB date, it is impossible for the SOB date of 26.06.2024 to be genuine. Accordingly, I hold that goods covered under BL No. OSLSBL 971/24 was actually shipped by BL no. OSLPZUMUN3079224 and loaded only on 31.07.2024.

Ongoing through the entire documentary trail—including email correspondences and statements, I find that the BLs were manufactured subsequently to misrepresent the original shipping date and acted in concert to suppress the actual shipping details and present manipulated documents before Customs.

Accordingly, It is evident that details in Bills of lading have been manipulated/forged to facilitate the clearance of restricted goods by falsely claiming eligibility period as stipulated in Notification No. 05/2023 dated 05.04.2024 issued by DGFT and the goods covered under Bill of Entry no. 5802241 dated 25.09.2024 were shipped beyond the time limit prescribed under DGFT Notification No. 05/2023. Accordingly, the goods of B/E no. 5802241 dated 25.09.2024 was placed under seizure under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 18.10.2024.

**15.4** I also find that during statement were recorded by DRI, the bills of lading Nos. OSLPZUMUN3079224, OSLSBL-971/24 and email conversation obtained from the site of Oceanic group (as discussed above) were presented to (i) Shri Chinmay Jhanwar, Authorized Signatory of M/s. Omprakash Dinesh Kumar (ii) Shri Vankar bharatbhai (executive-Paramount) (iii) Shri Dinesh Jayantilal Tanna, authorized person of M/s Shree Tirupati Brokers, (iv) Shri Chavda Dilipsinh, G-Card holder of M/s Unnati Cargo, after analyzing they admitted in their statements that shipped on board date and Vessel details have been manipulated in BL in order to satisfy the conditions prescribed under Notification No. 05/2023 dated 05.04.2024 issued by DGFT.

**15.5** I consider statements of noticees as material evidence in this case. It is relevant here to refer to some landmark judicial pronouncements on the issue of acceptability and evidentiary value of statements recorded under provisions of section 108 of the Act.

i. The Hon'ble Supreme Court in the case of **Romesh Chandra Mehta**<sup>[1]</sup>

and in the case of **Percy Rustomji Basta**<sup>[2]</sup> has held “*that the provisions of Section 108 are judicial provisions within which a statement has been read, correctly recorded and has been made without force or coercion. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence*”.

**ii.** The Hon’ble Supreme Court in the case of **Badaku Jyoti Svant**<sup>[3]</sup> has decided that “*statement to a customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct*”.

**iii.** Hon’ble Punjab and Haryana High Court in the case of **Jagjit Singh**<sup>[4]</sup> has decided that “*It is settled law that Customs Officers were not police officers and the statements recorded under Section 108 of the Customs Act were not hit by Section 25 of the Evidence Act. The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon’ble Supreme Court in the matter of Ram Singh*<sup>[5]</sup>, in which it is held that recovery of opium was from accused by officers of Narcotic Bureau. Accused made confession before said officers. Officers of Central Bureau of Narcotics were not police officers within the meaning of Section 25 and 26 of the Evidence Act and hence, confessions made before them were admissible in evidence”.

**15.6** In view of the foregoing discussion, I find that the statements recorded by DRI under the provisions of Section 108 of the Act form reliable evidence in the case supporting the charge of mis-declaration of import documents and submission of forged/manipulated Bills of lading.

**15.7** I find M/s. Omprakash Dinesh Kumar (Noticee no. 1) through their advocate, in their written submission alleged that the panchnama dated 12.09.2024 drawn at the premises of M/s Paramount Sealink Pvt Ltd is totally unreliable and inadmissible. They contend that the Pancha – 2: is mentioned as Shri Rukhi Manubhai Chhagan at the beginning of the Panchnama however the signature on each page for P2 reveals name of one Shri Manoj Rathod. This discrepancy questions the validity and legality of the document in its entirety. Therefore, the Panchnama in the said case has become non-est and hence cannot be relied or used in the said proceedings.

The above said panchnama proceedings dated 12.09.2024 was performed by the officers of DRI, Gandhidham. Therefore, a letter was addressed to Additional Commissioner, DRI Gandhidham, on 13.10.2025, requesting for clarification in the said matter. A reply in this matter was received from the DRI

vide letter dated 12.11.2025. The gist of the same is re-produced below:-

"In this regard, it is to clarify that "Pancha 2: who is mentioned to be Shri Rukhi Manubhai Chhagan at the beginning of the Panchnama has made signature on each page of Panchnama as "Shri Manoj Rathod". Further, it is to submit that the name mentioned at the beginning of Panchnama dated 12.09.2025, which is Shri Rukhi Manubhai Chhagan S/o Shri Manubhai Chhagan, is as per his document (Adhar Card), however his nick name is "Manoj" and therefore, he used to sign as "Manoj Rathod". "Manoj Rathod" is the signature of Shri Rukhi Manubhai Chhagan. A statement of Panch-2 (Shri Rukhi Manubhai Chhagan) clarifying the same has been enclosed alongwith copy of his Adhar Card).

In view of the above, it is to submit that the facts of the Panchnama dated 12.09.2024 drawn at the office premise of M/s. Paramount Sealink Pvt. Ltd. having address at Suit No. 2, 2 Floor, Avishkar Complex, Ward-12B, Plot no. 204, Gandhidham are true and correct".

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(Statement of Panch-2)

मैं रुक्षी नानू राज छान यह सत्यापिता भारत द्वारा द्युति  
 12 सितंबर 2024 की पंचनामा का द्वारा मैं अधिकृत  
 था उन्होंने मैंने इसी पंच-2 को इस्ताहर  
 किये हैं। यह पंचनामा पंचनामाकृत नामान्वयी आधिकारी  
 ही बनाया गया था उन्होंने मैं कुछ समय पंच  
 को इस तो अधिकृत था सारी जारीवाली तो भारत  
 हुई मेरा आधिकार पांडि मेरा नाम इसकी मानूषी भावी  
 छान है उन्होंने भारत का नाम गणिता है।  
 मनोज राठोड (Manoj Rathod.) मेरा इस्ताहर है।  
 मैं (Manoj Rathod.) नाम से इस्ताहर  
 भारत के उन्होंने इस पंचनामा मेरे किये द्युति  
 इस्ताहर मेरे द्वारा है।

Manoj Rathod.

03/11/2025

(Rukhi Mano Bhai Chhagan)

Based upon a thorough review of the record and the evidence presented herein, I conclude that the allegation raised by the importer (Notice No. 1) lacks merit.

This claim is not supported by any factual data or verifiable documentation, rendering it baseless.

### **15.8 Cross Examination sought by the Noticees:**

**(i)** I find that M/s. Omprakash Dinesh Kumar (Noticee no. 1) through their advocate, have requested for cross-examination of Shri Vankar Bharatbhai, Executive-M/s. Paramount Sealink.

**(ii)** I find that each noticee was given ample opportunity to present their defense, access all relied-upon documents (RUDs), and participate in personal hearings. The noticees were afforded full opportunity to defend themselves during hearings, this satisfied principles of audi alteram partem. I find that their request for cross-examination is baseless and an attempt to delay the adjudication proceedings.

**(iii)** Further, it is a settled position that as to which request of cross examination to be allowed in the interest of natural justice. I also rely on following case-laws in reaching the above opinion:-

- a. **Poddar Tyres (Pvt) Ltd. v. Commissioner - 2000 (126) E.L.T. 737**:- wherein it has been observed that cross-examination not a part of natural justice but only that of procedural justice and not 4 'sine qua non'.
- b. **Kamar Jagdish Ch. Sinha Vs. Collector - 2000 (124) E.L.T. 118 (Cal H.C.):-** wherein it has been observed that the right to confront witnesses is not an essential requirement of natural justice where the statute is silent and the assessee has been offered an opportunity to explain allegations made against him.
- c. **Shivom Ply-N-Wood Pvt. Ltd. Vs Commissioner of Customs & Central Excise Aurangabad- 2004(177) E.L.T 1150(Tri.-Mumbai):-** wherein it has been observed that cross-examination not to be claimed as a matter of right.
- d. Hon'ble Andhra Pradesh High Court in its decision in **Sridhar Paints v/s Commissioner of Central Excise Hyderabad** reported as 2006(198) ELT 514 (Tri-Bang) held that: ..... denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, We find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized (Para 9)
- e. Similarly in **A.L Jalauddin v/s Enforcement Director reported as 2010(261)ELT 84 (mad) HC** the Hon High court held that; ".....Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons: We may refer to the following paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kanungo & Co. v.

Collector, Customs, Calcutta)".

- f. **In the case of Patel Engg. Ltd. vs UOI reported in 2014 (307) ELT 862 (Bom.) Hon'ble Bombay High Court has held that;**
- g. "Adjudication — Cross-examination — Denial of—held does not amount to violation of principles of natural justice in every case, instead it depends on the particular facts and circumstances — Thus, right of cross-examination cannot be asserted in all inquiries and which rule or principle of natural justice must be followed depends upon several factors — Further, even if cross-examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated." [para 23]
- h. **In the case of Suman Silk Mills Pvt. Ltd. Vs. Commissioner of Customs & C.Ex., Baroda [2002 (142) E.L.T. 640 (Tri.-Mumbai)], Tribunal observed at Para 17 that—**

"Natural Justice — Cross-examination — Confessional statements — No infraction of principles of natural justice where witnesses not cross-examined when statements admitting evasion were confessional."

- i. **In the case of Commissioner of Customs, Hyderabad v. Tallaja Impex reported in 2012 (279) ELT 433 (Tri.), it was held that—**

"In a quasi-judicial proceeding, strict rules of evidence need not to be followed. Cross-examination cannot be claimed as a matter of right."

- j. **Hon'ble Tribunal in the case of P. Pratap Rao Sait v/s Commissioner of Customs reported as 1988 (33) ELT (Tri) has held in Para 5 that:**

"The plea of the learned counsel that the appellant was not permitted to cross-examine the officer and that would vitiate the impugned order on grounds of natural justice is not legally tenable."

Upon comprehensive review of the record, including the established facts, the corroborated documentary evidence presented, I find that request for cross-examination is devoid of legal or procedural merit. Accordingly, the application requesting to conduct of cross-examination is hereby denied.

**15.9.1** I find that in the written submissions, the Noticee contended that the printouts of emails were obtained during panchnama is "gross violation" of Section 138C of the Customs Act, 1962.

In this context, relevant section 138C(4) of the Customs Act, 1962 is reproduced below:

*(4)In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,-*

*(a)identifying the document containing the statement and describing the manner*

*in which it was produced;*

*(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;*

*(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.*

**15.9.2** I further relied upon a landmark ruling of the Supreme Court in case of "**Additional Director General Adjudication, Directorate of Revenue Intelligence v. Suresh Kumar and Co. Impex Pvt. Ltd. & Ors.** (2025 INSC 1050) dated 20.08.2025":

*"Keeping the aforesaid in mind, we are of the view and, more particularly, considering the Record of Proceedings duly signed by the respondents, including the various statements of the respondents recorded under Section 108 of the Act, 1962, that there was due compliance of Section 138C(4) of the Act, 1962.*

*When we say due compliance, the same should not mean that a particular certificate *stricto sensu* in accordance with Section 138C(4) must necessarily be on record. The various documents on record in the form of record of proceedings and the statements recorded under Section 108 of the Act, 1962 could be said to be due compliance of Section 138C (4) of the Act, 1962".*

**15.9.3** In this context, I find that printouts of email communications were taken on-site printing and under panchnama dated 12.09.2024 wherein Sh. Bharat Parmar, Branch Manager of M/s. Paramount Sealink Pvt. Ltd. was present during the entire process of panchnama. He acknowledged and affixed his signature on every single page of three made-up files before investigating officers and independent panchas. In view of the above, in this case, the mandatory requirement of authentication under section 138C (4) has been substantially complied with.

**15.10.1** I find that the Noticee, in their written submission, alleged that the entire case is built upon the assumptions and presumptions of Shri Vankar Bharat Bhai Khengarbhai, the executives of Paramount Sealink Pvt Ltd. Further, I find that the Noticee has relied upon various case laws in their detailed written submissions, however, I find that the **Hon'ble Supreme Court of India in case of Ambica Quarry Works vs. State of Gujarat & Others**

**[1987(I) S.C. C. 213]** observed that "the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it."

**15.10.2** Further in the case of **Bhavnagar University vs. Palitana Sugar Mills (P) Ltd. 2003 (2) SCC 111**, the Hon'ble Apex Court observed "It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

**15.10.3** I rely upon following judgments from various courts:-

The Hon'ble Supreme Court in **CC Madras V/s D Bhuramal – [1983 (13) ELT 1546 (SC)]** has held that "The department is not required to prove the case with mathematical precision but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of the facts in issue." Further in the case of **K.I. International Vs Commissioner of Customs, Chennai reported in 2012 (282) E.L.T. 67 (Tri. - Chennai)** the Hon'ble CESTAT, South Zonal Bench, Chennai has held as under:

"Enactments like Customs Act, 1962, and Customs Tariff Act, 1975, are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellants was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained un-discharged by appellants. They failed to lead their evidence to rule out their role in the offence committed and prove their case with clean hands. No evidence gathered by Revenue were demolished by appellants by any means".

**15.11** As per my detailed findings in para 15.2, 15.3 and 15.4 above, the impugned goods did not fulfill the condition outlined as per the provisions of notification no. 05/2023 dated 05.04.2024 issued by DGFT stipulates that if 'watermelons seeds' have been loaded or shipped on board before 30th June 2024 then only it will be under 'Free' category. However, evidence established that the importer intentionally submitted manipulated/forged Bills of Lading in a deliberate attempt to facilitate the customs clearance of restricted goods unlawfully.

**15.12** I also find that it is a fact that consequent upon amendment to the

Section 17 of the Customs Act, 1962 vide Finance Act, 2011; 'Self-Assessment' has been introduced in Customs. Section 17 of the Customs Act, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. Provisions of the Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make proper & correct entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962) the Bill of Entry shall be deemed to have been filed and after self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

**15.13** From the above, I find that the Noticee has violated Sub-Section (4) and 4(A) of Section 46 of the Customs Act as they have mis-declared and mis-classified the goods and evaded the payment of applicable duty. I find that the Noticee was required to comply with Section 46 which mandates that the importer filing the Bill of Entry must make true and correct declarations and ensure the following:

- (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.

**15.14** I find that the Show Cause Notices propose confiscation of goods under the provisions of Section 111 (d), 111(m) and 111(o) of the Customs Act, 1962. Provisions of Sections are re-produced herein below:

**111. Confiscation of improperly imported goods, etc.-** goods are liable for

confiscation:-

*(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

*(m) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54]*

*(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer.*

As per the notification, the import of Melon Seeds was classified as 'Free' from 1st May 2024 to 30th June 2024. Consignments with 'shipped on board' Bill of lading issued till 30th June 2024 shall be treated as 'Free' to import". All consignments of Watermelon Seeds which have shipped on board before 01.07.2024 can be imported in India on 'Actual User' basis to processors of Melon Seeds having a valid FSSAI Manufacturing License in line FSSAI Order dated 15.03.2024. However, as established in the preceding paras, M/s Omprakash Dinesh Kumar, illegally imported Watermelon Seeds under Bill of Entry No. 5802241 dated 25.09.2024, in violation of Notification No. 05/2023. The investigation conclusively proved that the goods were shipped on board on 31<sup>st</sup> July 2024 i.e. beyond the permissible date of 30th June 2024 and forged Bill of lading was used to file the B/E. Furthermore, it was revealed during the investigation that the importer deliberately withheld critical information from Customs Authorities, failing to disclose that the goods were shipped on board after the specified date of 30<sup>th</sup> June 2024. The importer failed to comply with the condition of DGFT notification no. 05/2023-Cus dated 05.04.2024, which rendered the subject goods prohibited, hence, contravened the provisions of Section 46 of the Customs Act, 1962. I find that Bills of lading provided were forged /manipulated to meet the requirement of notification no. 05/2023-Cus dated 05.04.2024. This deliberate manipulation confirms malafide intention of noticee's. These acts of omission and commission on the part of the importer rendered total quantity **85MTs** having assessable value of **Rs. 1,40,94,360/-** imported by M/s Omprakash Dinesh Kumar are liable for confiscation under the provisions of Section 111 (d), 111(m) and 111(o) of the Customs Act, 1962.

**16.** I find that the Show Cause Notices propose penalty on noticees under the provisions of Section 112(a), 112(b) and 114AA of the Customs Act, 1962. Provisions of Sections are re-produced herein below:

**SECTION 112 of the Customs Acts. Penalty for improper importation of goods, etc.** - Any person, -

(a) 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 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) 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 the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

**Provided** that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

**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.*

**Roles and culpability of persons/firms involved:**

**16.1 Role and culpability of M/s. OmPrakash Dinesh Kumar:**

Shri Chinmay Jhanwar is an Authorized Signatory of M/s Omprakash Dinesh Kumar and being importer was well aware of the Import policy and Notification No. 05/2023 dated 5th April, 2024 issued by the DGFT. M/s. Omprakash Dinesh Kumar had imported watermelon seeds covered under BL No. OSLSBL-971/24 dated 26.06.2024 in Bill of Entry no. 5802241 dated 25.09.2025, by way of violation of import policy mentioned in Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry. The total quantity of the said goods covered under the subject Bill of Entry is 85 MTs having Assessable value of Rs. 1,40,94,360/- As per Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry, the import of said goods with shipped on board dated after 30th June is under restricted category. The importer must comply with the conditions outlined in the said Notification. Further, the notification was issued for a definite period and it is the obligation of the firm utilizing that authorization to ensure that no condition of the Notification has been violated.

Further during the statement **Shri Chinmay Jhanwar** admitted to overseeing all business operations of M/s Omprakash Dinesh Kumar, including purchase, sales, and import-export activities. Despite being fully aware of Notification No. 05/2023 dated 05.04.2024, issued by the DGFT, he failed to disclose the actual facts to the customs department. Instead, he attempted to facilitate the clearance of restricted cargo. Email correspondences further indicate that he sought to obtain forged dates from shipping line representatives in a manner that would mislead customs and enable the clearance of restricted cargo.

The acts of commission and omission on the part of the importer rendered the subject goods liable to confiscation under Section 111(d), 111(m) and 111 (o) of the Customs Act, 1962 and therefore importer is liable to penalty under Section 112 (a) and 112 (b) of the Customs Act, 1962. I find that the evidences clearly indicating malafide intention on their part in respect of the imported goods warranting imposition of penalty under Section 112 (a) (i) as the fact of non-compliance of conditioned outlined in the Notification No. 05/2023-Cus dated 05.04.2024 issued by DGFT. Result is that proposal to impose

penalty under Section 112 (a)(i) is correct and sustainable in law.

I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty; therefore, I refrain from imposition of penalty on M/s. Omprakash Dinesh Kumar under Section 112(b) of the Customs Act, 1962.

I find that the SCN proposed imposition of penalty on the Importer under Section 114AA of the Customs Act, 1962. I find that importer is well aware of import policy and conditioned outlined in the notification no. 05/2023-Cus dated 05.04.2024 issued by DGFT. Accordingly, I find that the importer M/s. Omprakash Dinesh Kumar has knowingly and wilfully filed the bill of entry with forged Bills of Lading with the clear intention to import the restricted cargo in direct violation of established regulations. As it is the obligation of the firm to ensure that proper and correct documents are maintained and as forged Bill of Lading was created which constitutes the violation. By manipulating and forging Bills of Lading in collusion with their supplier and shipping line and filing import documents which were false and incorrect in material particulars. Further during the statement **Shri Chinmay Jhanwar** admitted that despite being fully aware of Notification No. 05/2023 dated 05.04.2024, issued by the DGFT, he failed to disclose the actual facts to the customs department and attempted to facilitate the clearance of restricted cargo. Importer By not uploading the original documents as mandated during filing of Bill of Entry attempted to mislead the department. Accordingly, it is evident that M/s. Omprakash Dinesh Kumar **knowingly and intentionally made, signed, used and/or caused to be made, signed or used** import documents and related papers that were **false or incorrect in material particulars** for the purpose of illegally importing the subject goods. Therefore, I find that importer is also liable for **penal action under Section 114AA** of the Customs Act, 1962.

## **16.2 Role and culpability of M/s. Paramount Sealink Pvt. Ltd.:**

The facts and evidence gathered during the search, including email correspondences, clearly establish that M/s Paramount Sealink Pvt. Ltd, acting on behalf of M/s Oceanic Star Line, deliberately colluded with representatives of M/s Oceanic Star Line and Shri. Tagwa Badri of Eastern Shipping Co. Ltd., Sudan, to manipulate the actual dates on the Bill of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. These actions reflect a blatant disregard for regulatory compliance and intent to mislead the authorities.

I find that Shri Vankar Bharatbhai Khengarbhai, Senior Executive, M/s.

Paramount Sealinks Pvt Ltd admitted in statement under section 108 of the Customs Act, 1962 that the BLs were "**manipulated**" to alter the shipped-on-board date and vessel details to satisfy the DGFT conditions. The deliberate acts and omissions by M/s Paramount Sealink Pvt. Ltd. make them liable for penalties under **Section 112(b)** of the Customs Act, 1962.

It has also been revealed during the investigation that M/s. Paramount Sealink Pvt. Ltd knowingly and intentionally, made, signed, used and/or caused to be made, signed, or used import documents and related records that were false or incorrect in material particulars, with the clear intention to import the restricted cargo in direct violation of established regulations. By manipulating and forging Bills of Lading in collusion with their overseas part and forwarding the forged BLs which were false and incorrect in material particulars. Accordingly, it is evident that M/s. Paramount Sealink Pvt. Ltd **knowingly and intentionally made, signed, used and/or caused to be made, signed or used** import documents i.e. creation of forged Bills of Lading and related papers that were **false or incorrect in material particulars** for the purpose of illegally importing the subject goods. Therefore, I find that M/s. Paramount Sealink Pvt. Ltd is also liable for **penal action under Section 114AA** of the Customs Act, 1962.

### **16.3 Role and culpability of Shri Bharat Himmatlal Parmar, Branch Manager of M/s. Paramount Sealink Pvt. Ltd.:**

Statement of Shri Bharat Himmatlal Parmar, Branch Manager of M/s Paramount Sealink Pvt. Ltd., recorded u/s 108 of the Customs Act, 1962. In his statement, Shri Bharat Himmatlal Parmar admitted to overseeing all operations of M/s Paramount Sealinks Pvt. Ltd., including documentation related to import-export activities as a container line agent. Shri Bharat Himmatlal Parmar was well-versed in the Import policy and Notifications. The facts and evidences gathered during the search, including email correspondences, clearly establish that Shri Bharat Himmatlal Parmar, being the Branch Manager was aware about each and every mail conversations between their Principal Shipping Line (M/s. Oceanic Star Line) and overseas agents of their Principal Shipping Line (i.e. M/s. Eastern Shipping Co. Ltd., Sudan and Shri Tagva Badri, the Marketing Executive at Eastern Shipping Co. Ltd., sent him the forged documents via email. During investigation, it was revealed that he was fully aware about the manipulation of actual dates on Bill of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. Despite being fully aware, he failed to disclose the actual facts to the customs department and in connivance with their principal shipping line and its overseas agents. Shri Bharat Parmar attempted to facilitate the clearance of restricted cargo. By engaging in the

creation of forged Bills of Lading in collusion with shipper, broker and shipping line representatives, Shri Bharat Himmatlal Parmar not only mislead the customs department but also rendered himself liable to penalties under Section 112(b) of the Customs Act, 1962. In view of the above, I hold so.

#### **16.4 Role and culpability of Shri Dinesh Jayantilal Tanna:**

I find that Shri Dinesh Jayantilal Tanna authorized person of M/s Shree Tirupati Brokers, in his statement recorded u/s 108 of the Customs Act, 1962 admitted that he is looking after the work related to contracts with seller and buyers under the firm M/s. Shree Tirupati Brokers and handling the import related work as a Broker and used to contact Sudanese suppliers in order to finalize the deal with the suppliers of the goods. He used to bargain with foreign suppliers and used to arrange the payment against the subject import goods to the Sudanese suppliers. From the investigation carried out, I find that Shri Dinesh Tanna had given instructions to the container line through the overseas supplier that even if the goods are shipped after 30th June 2024, the documents must be maintained before 30th June 2024, only then the goods will be cleared in India. The facts and evidence gathered during investigation, clearly establish that Shri Dinesh Tanna, acting as broker, deliberately colluded with representatives of container line to manipulate the actual dates on the Bill of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. It has also been established that Shri Dinesh Tanna was in direct contact with container line and arranged forged BL dates in a manner that would mislead customs and enable the clearance of restricted cargo. These actions reflect a blatant disregard for regulatory compliance and an intent to mislead the authorities. I find that Shri Dinesh Jayantilal Tanna is fully aware of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry, and failed to disclose the actual facts to the customs department. Shri Dinesh Jayantilal Tanna attempted to facilitate the clearance of restricted cargo.

Accordingly, by engaging in the creation of forged Bills of Lading in collusion with overseas broker, shipper and shipping line representatives, Shri Dinesh Jayantilal Tanna mislead the customs department and liable to penalties under Section 112(b) of the Customs Act, 1962.

I find that Shri Dinesh Jayantilal Tanna, knowingly and intentionally, made, signed, used and/or caused to be made, signed, or used import documents and related records that were false or incorrect in material particulars, with the intention of facilitating the clearance of restricted cargo in direct violation of established regulations. Thereby violating the provisions of the Customs Act. Accordingly, by wilfully submitting or causing the submission

of falsified documents i.e. forged Bills of Lading in connection with the import of goods, I hold that Shri Dinesh Jayantilal Tanna is also liable for penalty under section 114AA of the Customs Act, 1962.

**17.** In view of the above facts of the case and findings on record, I pass the following order:-

### **ORDER**

- i. I order to absolute confiscation of impugned goods i.e. **85 MTS** "**Watermelon Seed**" imported vide Bill of Entry no. 5802241 dated 25.09.2024 having value Rs. **1,40,94,360/- (One Crore Forty Lakh Ninety Four Thousand Three Hundred and Sixty only)** under Section 111 (d), 111(m) & 111(o) of the Customs Act, 1962.
- ii. I impose penalty of Rs. 7,00,000/- (Rupees Seven Lakh only) on the importer M/s. Omprakash Dinesh Kumar under Section 112 (a)(i) of the Customs Act, 1962.
- iii. I refrain from imposing penalty on the importer M/s. Omprakash Dinesh Kumar under Section 112(b) of the Customs Act, 1962.
- iv. I impose penalty of Rs. 2,00,000/- (Rupees Two Lakh only) on the importer M/s. Omprakash Dinesh Kumar under Section 114AA of the Customs Act, 1962.
- v. I impose penalty of Rs. 2,00,000/- (Rupees Two Lakh only) on M/s Paramount Sealink Pvt. Ltd. under Section 112 (b) of the Customs Act, 1962.
- vi. I impose penalty of Rs. 1,00,000/- (Rupees One Lakh only) on the M/s. Paramount Sealink Pvt. Ltd. under Section 114AA of the Customs Act, 1962.
- vii. I impose penalty of Rs. 25,000/- (Rupees Twenty Five Thousand only) on Sh. Bharat Parmar, Branch Manager of M/s Paramount Sealink Pvt. Ltd. Under section 112(b) of the Customs Act, 1962.
- viii. I impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on the importer Shri Dinesh Jayantilal Tanna, under Section 112 (b) of the Customs Act, 1962.
- ix. I impose penalty of Rs. 25,000/- (Rupees Twenty Five Thousand only) on the importer Shri Dinesh Jayantilal Tanna, under Section 114AA of the Customs Act, 1962.

**18.** This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

**19.** The Show Cause Notice bearing no. GEN/ADJ/ADC/439/2025-Adjn dated 19.02.2025 stands disposed in above terms.

Zala Dipakbhai Chimanbhai  
ADDITIONAL COMMISSIONER  
ADC/JC-III-O/o Pr Commissioner-customs-mundra

**By Speed Post/Regd. Post/E-mail/Hand Delivery**

**List of Noticees**

1. M/s Omprakash Dinesh Kumar, 29, Spice Park, Near Rampura, Mathania, Jodhpur, Rajasthan-342001 (IEC No. ACVPJ2589A).  
(email-nishilakhotia16@gmail.com)
2. M/s Paramount Sealinks Pvt. Ltd., Office No. 14, 2<sup>nd</sup> Floor, Aviskar Building, Plot No. 204, Ward 12-B, Gandhidham-370201.  
(email-specialequipments@paramountsealink.com and  
brmgr@paramountsealink.com)
3. **Shri Bharat Parmar, Branch Manager of M/s Paramount Sealinks Pvt. Ltd.** situated at Office No. 14, 2<sup>nd</sup> Floor, Aviskar Building, Plot No. 204, Ward 12-B, Gandhidham-370201  
(email-brmgr@paramountsealink.com)
4. Shri Dinesh Tanna, Authorized Representative of M/s Tirupati Broker, 603, Kings Plaza, Astrone Chowk, Rajkot.  
(email-trade@tirupatibrokers.com)

**Copy to:**

1. The Additional Director General, DRI, Ahmedabad
2. The Additional Director, Directorate of Revenue Intelligence, Regional Unit, Gandhidham (Kutch).
3. The Deputy Commissioner of Customs(RRA/TRC), Mundra Customs House.
4. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra...  
*(with the direction to upload on the official website immediately).*
5. Guard File.

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