
	<p>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT& SPL ECONOMIC ZONE, MUNDRA-370421</p>		
A. File No.	:	GEN/ADJ/CRF/313/2021-Adjn-O/o Pr Commr-Cus-Mundra	
B. Order-in-Original No.	:	MUN-CUSTM-000-COM- 04-23-24	
C. Passed by	:	Shri T.V. Ravi Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
D. Date of order and Date of issue	:	25.05.2023 25.05.2023	
E. SCN No. & Date	:	F. No. DRI/AZU/GRU/Cig/INT-16/2016 dated 10.01.2017 (Denovo Case)	
F. Noticee(s)/Co-noticee(s)	:	1. Shri Majhar Muzaffar Hussain Sayed 2. Shri Nathalal Kanjibhai Rathod 3. Shri Jatin Kumar Nathalal Rathod	
G. DIN	:	20230571MO000022902F	

- यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए-3 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-
Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:
"केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमालीभवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004"
"Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."
- उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within three months from the date of communication of this order.
- उक्त अपील के साथ 1000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो -/5000 रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंच अहमदाबाद के सहायक रजिस्ट्रार के पक्ष में खण्ड पीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा। Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
- उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत -/5 रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मद सं० 6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए। The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
- अपील ज्ञापन के साथ ऊँटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए। While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.
- इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा। An appeal against this order shall lie before the Tribunal 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

An intelligence gathered by officers of Directorate of Revenue Intelligence indicated smuggling of huge quantity of cigarettes, in Container No. CRXU3199110 covered under Bill of Lading No. HGL/JEA/MUN/1625 dated 12.08.2016. The said container was discharged from vessel MV Northern Prelude; Voyage - 019 at AP&SEZ Mundra. The above mentioned container pertained to container line M/s. Harvard Global Logistics Limited. Import General Manifest No. 2144536 dated 15.08.2016 for the said vessel was filed with Customs at AP&SEZ, Mundra by vessel's agent M/s. Samsara Shipping, Gandhidham. As per the said Bill of Lading HGL/JEA/MUN/1625 dated 12.08.2016, the importer name was M/s Riya Import and Export. The name and details of the importer was shown in the Bill of Lading as M/s Riya Import and Export, D/5, Awadh Nagar Chawl, Jivdani Cross Road, Choudhari Wadi, Shankar Nagar, Virar East, Dist. Thane. The goods imported in container no. CRXU3199110 were declared in the IGM as "28/ Cartons of Garments Zone 3". It further showed that the said container was loaded from Jebel Ali, UAE and destined to Mundra.

2. Based on the above intelligence, officers of DRI visited M/s Saurashtra CFS on 17.08.2016 where the said container was brought from port. The manager operations submitted a copy of Bill of Lading No. HGL/JEA/MUN/1625 dated 12.08.2016. Weight of the goods stuffed in the container was found to be 4400 Kgs. Thereafter, the import goods were de-stuffed from container No. CRXU3199110 under Panchnama dated 17.08.2016 and 281 master PP bags, containing corrugated boxes were found. On detailed examination, it was found that 200 white woven PP bags were containing 'Readymade Garments' i.e. Kurtis (13842 Pieces) and Trousers (862 pieces) and 81 black and white PP bags were containing 2 corrugated boxes each and were containing total 16,20,000 cigarette sticks of 3 brands (with further smaller boxes/ packets). On counting and measuring the said cigarette sticks, following size and quantity were found:

Sr no.	Details of Cigarette Sticks found from the container No.-CRXU3199110	Size	Quantity (in number of sticks)
1.	Cigarettes Sticks of Djarum Black brand(Clove)	85 mm (tobacco Rod 60 mm and filter 25 mm)	7,60,000
2.	Cigarettes Sticks of Marso brand(Cherry, Strawberry, Green Apple)	100 mm (tobacco Rod 70 mm and filter 30 mm)	5,80,000
3.	Cigarettes Sticks of Richman brand} (Orange Mint, Gum, Mint Gum, Grapes)	100 mm (tobacco Rod 70 mm and filter 30 mm)	2,80,000
Total Sticks			16,20,000

3. Since the above mentioned 16,20,000 cigarette sticks were not declared in the IGM, there existed reasonable belief that the same were liable for confiscation, thus the same were placed under seizure under section 110(1) of the Customs Act, 1962 vide the said Panchnama. Representative samples of all the above mentioned brands of Cigarettes were obtained. The seized consignment was handed over to the custodian M/s. Saurashtra CFS under Suparatnama dated 17.08.2016.

4. Officers of DRI searched the premises of importer M/s Riya Import and Export under a Panchnama dated 18.08.2016. It was noticed that a board of M/s Riya Import and Export was affixed on the door of said premises. Further, the said premise was given on rent to Shri Shekhar Pal from Shri Ranjit Dhirendra Jha, proprietor of M/s Riya Import and Export. A report dated 19.08.2016 in respect of the above search was supplied by the Deputy Director, DRI, Zonal Unit, Mumbai.

5. During the course of investigation, statements of following persons were recorded:-

5.1 Statement of **Shri Ranjit Dhirendra Jha**, proprietor of M/s Riya Import and Export was recorded under Section 108 of the Customs Act, 1962 on 29.08.2016 wherein he stated, inter alia that he was working as a watchman in Diamond Polish Company and he was proprietor of M/s Riya Import and Export for which he obtained IEC No. 0316908231 in the month of May, 2016 from DGFT, Mumbai. He further stated that he was not aware of any export and import related works; that as per advice of one person named Pappu Jha

working at Air Cargo, Mumbai and resident of his village-Galma, Darbhanga, Bihar, he opened the proprietorship firm in the name of M/s Riya Import and Export; that Pappu Jha helped him in obtaining IEC for M/s Riya Import and Export. Shri Pappu Jha said that he will manage for imports in the allotted IEC and he denied his role in smuggling of cigarettes. Shri Ranjit Dhirendra Jha further stated that he had doubt on Pappu Jha regarding misuse of IEC.

5.2 Statement of **Shri Surya Mohan Jha alias Pappu Jha**, residing at Survoday Leela, Building No. 7, Flat No. 1002, Kanchan Gaon, Thakuli Kalyan Road, Thakuli (East), PO Dombivali, Dist-Thane, Pin-421201, was recorded under Section 108 of the Customs Act, 1962 on 15.09.2016 wherein he inter alia stated that he was working in M/s S.V. Shipping and he was a Customs 'G card' holder; that he helped Shri Ranjit Dhirendra Jha in obtaining IEC for M/s Riya Import and Export; that he had given IEC of M/s Riya Import and Export to Shri Pravin Kumar Jha and stated that Shri Pravin Kumar Jha also went to Dubai in the month of July, 2016.

5.3 Statements of **Shri Pravin Umakant Jha**, residing at Room No. 2, Shraddha Niwas, Tony Compound, Road No. 3, Sahar Village, Andheri (East) — 400099, were recorded under Section 108 of the Customs Act, 1962 on 21.09.2016 and 22.09.2016 wherein he inter alia stated that he did not know Ranjit Jha; that Shri Surya Mohan Jha alias Pappu Jha had not provided him any documents related to M/s Riya Imports & Exports, however, Pappu Jha had shown him once the documents related to M/s Riya Imports & Exports and told him that he had obtained one IEC in the name of his relative. On being asked about reasons for visiting Dubai in the month of July, he inter alia stated that he went to Dubai on 22.07.2016 and returned on 26 or 27" August, 2016 (exact date not remembered) and he visited Dubai for search of Job only. He also stated that he went to Dubai with Shrinivas Bejji also known as Shinu, who was earlier working at Baggage Section of Air Cargo Complex.-

5.4 Statement of **Shri Srinivas Marya Bejji alias Shinu**, residing at Room No. 4, Joseph Chawl, Sutar Pakhadi, Sahar Village, Ville Parle (East) - 400099, was recorded under Section 108 of the Customs Act, 1962 on 28.09.2016 wherein he inter alia stated that Ranjit Jha and M/s Riya Import and Export were not known to him; that Pappu Jha had not given him any documents related to M/s Riya Import and Export. He also stated that he went to Dubai with Shri Pravin Jha for job search.

5.5 Statement of **Shri S. Madhava Rao**, Operation Manager in M/s. Harvard Global Logistics Limited, Gandhidham Branch was recorded under Section 108 of the Customs Act, 1962 on 26.08.2016 wherein he inter alia stated that he received a copy of Bill of Lading No. HGL/JEA/MUN/1625 dated 12.08.2016 through e-mail on 13.08.2016 from Shri Rajesh Gorde, Deputy Manager, Mumbai Head Office for filing of IGM. Further, he stated that he sent the BL details to Vessel Agent Shri Prem Maheshwari of M/s Samasara Shipping who filed the IGM No. 2144536 dated 15.08.2016 on the basis of given details. He also sent a copy to Saurashtra CFS for internal shifting of container from Terminal to CFS yard. Further as per available e-mail details with him, Shri Jamilah of M/s Astrogulf Freight Services LLC, Dubai-UAE had sent the said Bill of Lading to Shri Rajesh Gorde through e-mail on 11.08.2016.

5.6 Statement of **Shri Rajesh Narayan Gorde**, residing at Bhakti Avenue, Flat No.201, Plot No. 92, Sector-2A, Karanjade, Panvel, Raigarh, Maharashtra-4 10206, Deputy Manager (Documentation) in M/s. Harvard Global Logistics Limited, Mumbai Head Office, was recorded under Section 108 of the Customs Act, 1962 on 08.09.2016 wherein he inter alia stated that Mr. Jamilah of M/s Astrogulf Freight Services LLC, Dubai-UAE had sent the Bill Of Lading No. HGL/JEA/MUN/1625 dated 12.08.2016 to him through e-mail on 11.08.2016; that he had forwarded arrival notice to the consignee on 19.08.2016 through e-mail on e-mail id iaqqaj35@gmail.com. The said e-mail id was provided to him by Mr. Jamilah of M/s Astrogulf Freight Services LLC, Dubai-UAE; that he also tried to contact several times on Mobile No. 9409409290 as mentioned on said Bill of Lading but it was found switched off. He inter alia stated that one person having mobile no. 9909032902 introducing himself as Clearing Agent from Mundra contacted him on his mobile no.

9321154633 on 19.08.2016. He stated that clearing agent told him that he was from M/s S.K. Clearing, Mundra (Exact name was not remembered by Rajesh N. Gorde). The Clearing Agent asked him about the charges of Delivery Order. Further he stated that no more response on e-mail or telephonically was received from the clearing agent.

5.7 Statement of **Shri Dilipsinh Chavda**, Proprietor of M/s S.K. Shipping Agency was recorded under Section 108 of the Customs Act, 1962 on 14.09.2016 and 23.09.2016 wherein he inter alia stated that one friend of him, Shri Gambhir Singh Chauhan, (working in M/s Max Marine Services at Mundhra CFS for Survey Works) contacted him telephonically on approx. 12/13 August (exact date not remembered) that he wanted to meet him. Shri Gambhir came on the same date with one person at his office at Honeycomb CFS. Shri Gambhir Singh introduced him as Shri Yashwant Rathore (Exact name not remembered in first statement dated 14.09.2016), confirmed name as Jatin Rathore in second statement dated 23.09.2016). Further he stated that Shri Jatin Rathore said that one import consignment of Garments was arriving at Mundra and there will be some exports related works in future. Shri Jatin Rathore asked him about the documents required and he provided the details to him verbally for both Imports & Exports; that Shri Jatin Rathore sent him the copy of Bill of lading through Shri Gambhir Singh by hand next day. Shri Jatin Rathore (Mb No. 9099983791) contacted him telephonically on 16.08.2016 for required documents and he provided to Shri Jatin Rathore the said details on whatsapp message on the same day. Shri Jatin Rathore asked him about Shipping Line charges. Then after, Dilip Singh contacted the shipping line person through the mobile number available on said BL on 19.08.2016. Further, the Shipping line person sent him their e-mail id as asked by him. Shri Jatin Rathore enquired from him about one container of smuggled cigarettes that had been detected at Mundra and also enquired from him about the importer but he was not aware of it. He came to know through newspaper the same night about the container containing smuggled cigarettes detected in Saurashtra CFS was of M/s Riya Import & Exports. On 20.08.2016, Shri Jatin Rathore again contacted him with Invoice and he denied his request for clearance of said container. As regards, the consignment of Garments under Bill of Lading No. HGL/JEA/ MUN/1625 is concerned, he was not aware that Cigarettes were concealed behind Garments. Jatin provided him 3 copies of Bill of lading through Gambhir Singh Chauhan. He sent the copy of invoice through whatsapp message. No other documents were provided by him except Bill of Lading and Invoice as mentioned above. Shri Jatin had shown him the original Bill of Lading on 19.08.2016. On the same day, he contacted the shipping Line person as per the mobile no. provided on Bill of lading. On that day, Shri Jatin Rathore told him that he had lost import documents. On 19.08.2016, two other persons also came with Shri Jatin to meet him at the gate of Honeycomb CFS. On the same day i.e. 19.08.2016, he came to know about seizure of Cigarettes by DRI in the same consignment.

5.8 Statement of **Shri Chauhan Gambhirsinh R**, DOB 01.06.1979, S/o Shri R H Chauhan, residing at Surya Nagar Plot No. 19A, Baroi Road, Mundra was recorded under Section 108 of the Customs Act, 1962 on 16.09.2016 wherein he inter alia stated that Jatin Rathore contacted him for clearance of import consignment of M/s Riya Import & Export and was known to him since 2007. Shri Jatin Rathore came in contact with him when he was security in-charge at Mundra CFS. Shri Jatin Rathore contacted him telephonically in August, 2016 and met him at CWC CFS Gate on 12th August, 2016 and asked for clearing of import Consignment. He told Shri Jatin Rathore that he was not involved in any customs clearing related matters. He called Shri Dilip Singh, a customs clearing agent known to him and asked him if he was interested; that he was not aware of Customs procedures. He took Shri Jatin Rathore to office of Shri Dilip Singh at Honeycomb CFS. Shri Jatin asked Shri Dilip Singh about clearance of container of Garments; however, as stated by him, Shri Jatin was interested in clearance of Cigarettes to be imported in future concealed behind Waste Paper. Shri Jatin Rathore provided him the Xerox copies of documents (approx 6-7 pages) to give it to Shri Dilip Singh.

5.9 Statement of **Shri Jatin Nathalal Rathod**, DOB 15.12.1977, S/o Shri Nathalal Rathod, residing at 48 B, Survey No. 188, Nirmal Nagar, Meghpar Borichi, Taluka-Anjar, Kutch was recorded under Section 108 of the Customs Act, 1962 on 26.09.2016 wherein he inter alia stated that he contacted Shri Dilip Singh Chavda through the help of one known

person Shri Gambhirsingh Chauhan for custom clearance of container no. CRXU3199110. He said that he was not the owner of the said goods; that he did not know anything about M/s Riya Import and Export and the proprietor of said firm; that one known person of his father Shri Nathalal Kanjibhai Rathod, Shri Hasan Bhai Kureshi asked him for clearance of said container; that he had not cleared any import or export consignment in past; that Hasan Bhai told him that container contained Garments, i.e. Pants, Jackets and other clothes. Hasan Bhai gave him some documents on 12/13 August, 2016 and he alongwith Gambhirsinh went to office of Dilipsinh asking for clearance of container. He provided Shri Dilip Singh the copy of Bill of Lading No. HGL/JEA/MUN/1625 dated 12.08.2016. Another day, he received one more document from Faisal, son of Hasan Bhai and he forwarded the same to Dilipsinh Chavda.

5.10 Statements of **Shri Nathalal Kanjibhai Rathod**, DOB 08.06.1953, S/o Shri Kanjibhai Rathod, residing at 1823-1, Mansuri Chawl No. lto 3, Mariyambibi Char Rasta, Rajpur, Gomptipur, Ahmedabad City, Anmedabad-380021 was recorded under Section 108 of the Customs Act, 1962 on 26.09.2016 and on 04.10.2016 wherein he inter alia stated that the contact no. given on the said Bill of Lading No. HGL/JEA/MUN/1625 dated 12.08.2016 i.e. 9409409290 belonged to him; that he was not the owner of the said goods; that he had not provided his mobile no. to the overseas supplier. One known person of him Shri Hasan Kureshi had given his mobile no. to overseas supplier and the reasons for providing his mobile number was not known to him; that Hasan Kureshi was known to him from approx. last 4 months; that Hasan was involved in exports of Livestock; that his son Jatin Rathod was ill and admitted in hospital and Shri Hasan himself gave him One Lac and Fifty thousand rupees in Cash for medical expenses of Jatin. In the month of August, 2016, Hasan asked him for customs clearance of container about which he told him that he was bringing garments from abroad. Hasan told him that he will give some documents to Jatin and asked him to tell Jatin to get it submitted with Customs for clearance from Customs. He said that he was not much aware of the clearance of the said container and his son Jatin could tell more about it. Shri Nathalal Kanjibhai Rathod stated that out of One Lac and Fifty thousand rupees, he had returned Rs. 95,000/- to Hasan Kureshi while Rs. 55,000/- was pending with him to pay to Shri Hasan Kureshi. Shri Nathalal Kanjibhai Rathod also provided one video of 33 second duration which was showing Hasan Kureshi with container no. CRXU3199110. The said video was provided to him by Faisal, son of Hasan Kureshi.

5.11 Statement of **Shri Mazhar Muzaffar Hussain Sayed**, Age: 53 Years, S/o Shri Muzaffar Hussain Sayed, residing at Daulat Nagar, Flat 514, Green Garden Society, Relief Road, Santacruz (West), Mumbai-400054 was recorded under Section 108 of the Customs Act, 1962 on 10.10.2016 and on 18.10.2016 wherein he inter alia stated that he knew Shri Jatin Rathore and Nathalal Kanjibhai Rathod through Hasan Kureshi of Ahmedabad. He had met both 2-3 times with Hasan Kureshi; that he did not have any direct dealing with Shri Jatin Rathod and Shri Nathalal Kanjibhai Rathod. Mazhar Sayed said that he was not the owner of said goods covered under Bill of Lading No. HGL/JEA/MUN/1625 dated 12.08.2016 and he did not know the owner of said goods covered under said Bill of Lading; that Hasan Kureshi of Ahmedabad had taken the work of clearance of said container no. CRXU3199110 from Mundra and he was also involved in stuffing of goods in container no. CRXU3199110. He knew Hasan Kureshi from last six months only. He met Shri Hasan Kureshi in Ahmedabad in the month of March, 2016 through one of his friend, Shri Gullu from Ahmedabad who was Driver in Dubai who introduced Hasan as an exporter of Live Stock. Shri Hasan Kureshi took his mobile no. and contacted him telephonically after a week. He asked him for investment in exports of live stocks. He had given approx Rs. 33 Lacs to Hasan Kureshi for investment in Live Stock. When Mazhar asked his money back, Hasan told him that he will have to arrange money from Dubai from the business men who have bought livestock. Hasan asked him to go to Dubai and Hasan told him that he will also come after 2 days. During the stay at Dubai, no money was returned by Hasan Kureshi. Further during the stay, he took Hasan to meet one of his friends Shoaib. Shoaib asked about any link with Customs at Mundra and Hasan told him that he knew persons in Mundra Customs. Shoaib offered Hasan for Smuggling of Cigarettes and asked Hasan for clearance at Mundra port for which Hasan agreed. Hasan with Shoaib arranged the stuffing of goods in said container no. CRXU3199110. After that Hasan returned to India. He also went with Shri Hasan Kureshi to Mundra as his money was pending with him. Till date

Hasan Kureshi has to pay him 28 lac Rupees. He also provided some photographs and videos that showed that stuffing was being done in presence of Hasan Kureshi; that he did not know Ranjit Jha, proprietor of M/s Riya Import and Export. Majhar also provided some photographs and videos during the statement recorded on 10.10.2016 which showed that stuffing was done in presence of Hasan Kureshi. The said photos and videos were recorded in a CD-ROM.

5.12 Statement of **Shri Hasan Khanubhai Kureshi**, DOB: 24.04.1969, S/o Shri Khanubhai Noorbhai Kureshi, residing at Sabera Manzil, 1570, Chudi Ole, Patva Sheri, Kalupur, Ahmedabad was recorded under Section 108 of the Customs Act, 1962 on 18.10.2016 wherein he inter alia stated that he knew Majhar Muzaffar Hussain Sayed for approx. last 5 to 6 months through Shri Gullu Bhai, who was a driver in Dubai; that after introduction with Majhar Bhai, he took 33 Lacs rupees from him in small installments. From the said amount he had returned Rs. 5 lac to him and still 28 lac rupees were yet to re-pay to him; that in the last of month of June, Majhar Bhai called him and told him about smuggling of cigarettes through concealing the same behind garments and said that there was huge profit in the said business. Majhar Bhai asked him about any source available at Mundra Port through which Goods imported could be cleared and he stated that he contacted Shri Nathalal Kanjibhai Rathod of Ahmedabad whose son Jatin was working as security person at Mundra Port; that Nathalal Kanjibhai Rathod assured him regarding the clearance of cigarettes concealed behind garments; that Nathalal Kanjibhai Rathod asked for two lakhs rupees as advance for clearance of cigarettes. He talked with Majhar Bhai regarding two lakhs rupees and he fixed the meeting of Nathalal Kanjibhai Rathod with Majhar Bhai; that Jatin took twice Majhar Bhai and him to Mundra port. Jatin made them believe that he will get the cigarettes concealed behind garments cleared at Mundra Port. The consignor of the goods was Shoaib, a known person of Majhar Bhai in Dubai. Majhar Bhai talked to Shoaib in this regard; that, Shoaib also talked to Jatin Rathore from Dubai through his mobile number. After believing on Jatin words, Shoaib started preparation for stuffing of Container; that cigarettes were stuffed in presence of him and Majhar Bhai. Hasan Kureshi stated that Majhar Bhai also took his photos with the container and goods; that for the two lakhs Rupees demanded by Nathalal Kanjibhai Rathod and the expenses incurred by him, Majhar Bhai gave him total three lakhs rupees. In that amount, Hasan kept one and a half lakhs rupees with him and gave rest of one and half lakhs rupees to Nathalal Kanjibhai Rathod. He further stated that Nathalal Kanjibhai Rathod was to clear the goods, so he gave mobile number of Nathalal Kanjibhai Rathod to be mentioned on Bill of Lading.

6. As per the statements recorded as mentioned above, total 3 persons (i) Shri Hasan Khanubhai Kureshi (ii) Shri Mazhar Muzaffar Hussain Sayed and (iii) Shri Nathalal Kanjibhai Rathod were arrested on 18.10.2016 after taking approval from Additional Director General, Directorate of Revenue Intelligence, Ahmedabad Zonal Unit. All three accused were presented before Hon'ble Chief Judicial Magistrate, Bhuj on 19.10.2016 and they were sent to Palara Jail, Bhuj for judicial custody. Shri Jatin Rathod had been issued various summons but no response had been received from him.

7. The subject consignment of cigarettes was smuggled in the name of M/s Riya Import and Exports and was covered under Bill of Lading No. HGL/JEA/MUN/1625 dated 12.08.2016. During investigation, it was found that the above named importer IEC was mis-used by some other persons for smuggling of Cigarettes. It appeared that the subject cigarette sticks were smuggled into India by violating various provisions of the Customs Act, 1962 and other laws. While importing cigarettes into India provisions of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and the rules framed there under apply. Accordingly, packets of cigarettes imported into India have to bear the specified pictorial health warnings. However, in the instant case the packages of the seized Cigarettes were not having any pictorial health warnings.

8. At the time of seizure of the subject consignment, the market price of the 16,20,000 sticks of cigarettes was estimated to be Rs. 1,16,70,000/-. However, to ascertain fair market price of the subject seized cigarettes, opinion of Chartered Engineer and Government

approved Valuer Shri Anwar Kukad was obtained. Vide certificate Ref.:AYK:VAL:0438:2016 dated 16.09.2016 he informed whole sale market price of Djarum Black brand cigarette to be "Rs. 7.25 per stick", market price of Richman and Marso brands cigarettes as "Rs. 6.00 per stick". Thus wholesale market price of 7,60,000 sticks of seized Djarum Black brand cigarettes is estimated as Rs. 55,10,000/- and market price of total 8,60,000 sticks of the seized Richman and Marso brand cigarettes as Rs. 51,60,000/-. Therefore, the total whole sale market price of the seized consignment of 16,20,000 cigarette sticks comes to Rs.1,06,70,000 /-.

9. The goods imported in Container bearing No. CRXU3199110 was mentioned in the Bill of Lading and Import General Manifest No. 2144536 dated 15.08.2016 as '281 Cartons of Garments'. However, on examination 16,20,000 cigarette sticks of Djarum Black, Richman and Marso brand were found. These facts reveal that the Cigarettes were smuggled into India in the said Container without declaring the same in the IGM. It appeared that the above mentioned cigarettes were imported illegally into India in contraventions of various provisions of the Customs Act and had rendered them liable to confiscation and consequently within the ambit of smuggled goods in terms of Sec 2(39) of the Customs Act.

10. In terms of General Note 13 (regarding Import Policy) of the schedule to the Customs Tariff Act, 1975, the import of cigarettes or any other tobacco products are subject to the provisions contained in the Cigarettes and other Tobacco Products (Packaging and Labeling) Amendment Rules, 2009. As per Section 7(3) of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, as amended, read with Cigarettes and other Tobacco Products (Packaging and Labeling) Rules, 2008 and Cigarettes and other Tobacco Products (Packaging and Labeling) Amendment Rules, 2014, as amended. In the light of these provisions all Tobacco products manufactured / packaged/ imported for sale into India has to bear the specified pictorial health warnings. However, the packages of the subject Cigarettes were not having any pictorial health warnings. Since the lawful condition of pictorial warning was not complied, the subject 16,20,000 Cigarettes sticks appeared liable to confiscation under Section 111(d) of Customs Act, 1962. Further, as the subject cigarette sticks were not declared in Import General Manifest No. 2144536 dated 15.08.2016, the same were rendered liable to confiscation under Section 111(f) *ibid* also. The said goods were also rendered liable to confiscation u/s 111(i) of the Customs Act as they were brought concealed in the container along with cartons of garments.

11. Whereas, since the said seized cigarettes have been kept for disposal by e-auction under the provisions of Section 110(1B) of the Customs Act, 1962 hence the amount to be realized as sale proceeds, is liable to be adjusted/ appropriated upon confiscation of the said seized cigarettes in terms of Section 126 of Customs Act, 1962.

12. A Show Cause Notice bearing F.No. DRI/AZU/GRU/Cig/INT-16/2016 dated 10.01.2017 was issued to M/s. Riya Import and Export (IEC Code 0316908231) calling upon to show cause to the Principal Commissioner/ Commissioner of Customs, Custom House, Mundra, Dist. Kutch as to why:

(i) the seized 16,20,000 sticks of foreign origin cigarettes valued at Rs. 1,16,20,000/- should not be confiscated under the provisions of 111(d), 111(f) and 111(i) of the Customs Act, 1962.

(ii) Penalty should not be imposed on them under Section 112(a) and 114AA of the Customs Act, 1962;

12.2 Further, vide Show Cause Notice bearing F.No.DRI/AZU/GRU/Cig/INT-16/2016 dated 10.01.2017 Shri Majhar Muzaffar Hussain Sayed, Santacruz (West), Mumbai-400054, Shri Hasan Kureshi, Kalupur, Ahmedabad were called upon to show cause to the Principal Commissioner/ Commissioner of Customs, Custom House, Mundra, Dist. Kutch as to why penalty should not be imposed on him under Section 112(a) and 114 AA of Customs Act, 1962;

12.3 Also vide Show Cause Notice bearing F -No.DRI/AZU/GRU/Cig/INT-16/2016 dated

10.01.2017 Shri Nathalal Kanjibhai Rathod, Rajpur, Gomptipur, Ahmedabad-380021 and Shri Jatin Nathalal Rathod, Meghpar Borichi, Taluka-Anjar were called upon to show cause to the Principal Commissioner/ Commissioner of Customs, Custom House, Mundra, Dist. Kutch as to why penalty should not be imposed on him under Section 112(b) of Customs Act, 1962.

13. The said Show Cause Notice dated 10.01.2017 was adjudicated by the Commissioner of Customs, Mundra vide Order-in-Original No. MUN-CUSTM-000-COM-26-17-18 dated 30.03.2018 wherein he passed the following order:

- (i) I order absolute confiscation of seized 16,20,000 sticks of foreign origin Cigarettes of different brands valued at Rs. 1,16,20,000/- under the provisions of 111(d), 111(f) and 111(i) of Customs Act, 1962. Since the said seized cigarettes have been disposed of and the amount of Rs.24,36,946/- realized as sale proceeds I order to appropriate the same against the confiscation of the goods in terms of Section 126 of the Customs Act, 1962.
- (ii) I impose a penalty of Rs.25,00,000/- (Rs. Twenty Five Lacs only) under Section 112(a) and Rs. 5,00,000/- (Rs. Five Lacs only) under Section 114AA of Customs Act, 1962 on Shri Majhar Muzaffar Hussain Sayed, S/o Shri Muzaffar Hussain Sayed, Flat 514, Green Garden Society, Relief Road, Santacruz (West), Mumbai-400054.
- (iii) I impose a penalty of Rs.25,00,000/- (Rs. Twenty Five Lacs only) under Section 112(a) and Rs. 5,00,000/- (Rs. Five Lacs only) under Section 114AA of Customs Act, 1962 on Shri Hasan Kureshi, S/o Shri Khanubhai Noorbhai Kureshi, Sabera Manzil, 1570, Chudi Ole, Patva Sheri, Kalupur, Ahmedabad.
- (iv) I impose a penalty of Rs. 1,00,000/- (Rs. One Lacs only) on Shri Nathalal Kanjibhai Rathod, S/o Shri Kanjibhai Rathod, 1823-1, Mansuri Chawl No. 1 to 3, Mariyambibi CharRasta, Rajpur, Gomptipur, Ahmedabad City, Ahmedabad-380021 under Section 112(b) of Customs Act, 1962.
- (v) I impose a penalty of Rs. 1,00,000/- (Rs. One Lacs only) on Shri Jatin Rathod, S/o Shri Nathalal Rathod, 48 B, Survey No. 188, Nirmal Nagar, Meghpar Borichi, Taluka-Anjar, Kutch under Section 112(b) of Customs Act, 1962.
- (vi) I drop the proceeding initiated vide Show cause Notice F.No.: DRI/AZU/GRU/Cig/INT-16/2016 dated 10/01/2017 against M/s. Riya Import and Export (IEC Code 0514040335), D/S, Awadh Nagar Chawl, Jivdani Cross Road, Choudhari Wadi, Shankar Nagar, Virar East, Dist. Thane.

14. Aggrieved with the said Order-in-Original No. MUN-CUSTM-000-COM-26-17-18 dated 30.03.2018, the noticee(s) i.e. Shri Majhar Muzaffar Hussain Sayed, Shri Nathalal Kanjibhai Rathod and Shri Jatin Kumar Nathalal Rathod preferred appeal vide Customs Appeal Nos. 11811 of 2018, 12279 of 2018 and 12280 of 2018 respectively before the Hon'ble CESTAT, West Zonal Bench at Ahmedabad.

15. The Hon'ble CESTAT, West Zonal Bench at Ahmedabad vide Final Order No. A/12184-12186/2021 dated 17.06.2021 set aside the impugned order and allowed the appeal by way of remand to the adjudicating authority for fresh decision after giving opportunity of cross examination. Para 5 & 6 of the said Final Order is reproduced herewith:

5. it is seen that all three noticee(s) have denied any knowledge of the transaction of presence cigarettes in the container. There is no specific evidence produced by revenue, except the statements, to establish that the noticees were aware of the presence of cigarettes in the container. It was argued by Learned Counsel for Majhar Bhai that they had demanded the cross-examination of witness however the same was not allowed. Learned counsel argued that no reliance can be placed on the statements if cross

examination has not been allowed. Since it is seen that there no major evidence other than the statements has been produced about the knowledge of the appellants about presence of the cigarettes in the container. It is on paramount importance that the statements are properly tested with cross-examination.

6. Since Cross-examination is not granted the impugned order is set aside and matters are remanded for fresh decision after giving opportunity of cross examination to the appellants. The appeals are allowed by way of remand by way of remand to original adjudicating authority.

PERSONAL HEARING AND WRITTEN SUBMISSIONS

16. An opportunity of personal hearing in this matter has been given to the noticee(s) i.e. Shri Majhar Muzaffar Hussain Sayed, Shri Nathalal Kanjibhai Rathod and Shri Jatin Kumar Nathalal Rathod in pursuant of captioned order of CESTAT.

16.2 Shri D.K. Singh, Advocate attended personal hearing on 30.12.2022 on behalf of Shri Nathalal Kanjibhai Rathod and Shri Jatin Kumar Nathalal Rathod. He reiterated reply already submitted. Further, he added that there is no conformity statement and no corroborative evidence about involvement of these person in SCN. He requested to drop the proceeding initiated in the SCN as penalty proposed under Section 112(b) is not applicable in this case.

Written submission made by Shri Nathalal Kanjibhai Rathod

17. Shri Nathalal Kanjibhai Rathod vide letter dated 30.12.2022 requested to cross examination of Shri Mohammad Hasan Khanubhai Kureshi and Shri Anwar Y. Kukuad, the Govt. Approved Valuer.

17.2 Shri Nathalal Kanjibhai Rathod submitted written submission vide letter dated 30.12.2022 wherein he submitted that the allegation is only imposed on the noticee based on the statement recorded of Co-noticee Mr. Hasan Kureshi in which he stated the noticee took Rs. 1.5 lacs for clearance of smuggled cigarettes. The noticee in his statement dated 26.09.2016 & 04.01.2016 already submitted that Sh. Hasan Kureshi had voluntarily provided Rs. 1.5 lacs as loan for the treatment of his son Mr. Jatin Rathod in the month of June, 2016. The fact can be substantiated from the statement dated 10.10.2016 of Sh. Majhar Muzaffar Hussain Sayad. He has returned the said loan voluntarily provided by Sh. Hasan Kureshi to him in full and there is no such amount is pending with noticee. Hence, it cannot be said the involvement of the noticee in the said case is for the consideration of money.

17.3 In the statement of Sh. Hassan Kureshi dated 18.10.2016, he stated that 1.5 lacs was given to the noticee by taking from Mr. Majhar which is also one of Co-noticee in the present case but in the statement of Co-noticee Mr. Majhar which was recorded on 10.10.2016 and on same date 18.10.2016 no such fact has been stated by Mr. Majhar which established that money has not for alleged customs clearance.

17.4 It is important to note that as per the statement of Mr. Majhar, the plan for import of cigarettes was first time discuss during his visit to Dubai in July, 2016 as the offer was given by one friend of Mr. Majhar in Dubai i.e. Mr. Shoaib and money was given to the noticee by Mr. Hussain in June itself during his treatment. Hence, how Mr. Hassan could given money to the noticee before the planning of the import of alleged cigarettes.

17.5 That involvement of noticee is also substantiated by investigating agency through a video of 33 second available and voluntarily provided by the noticee to the investigating authority. In this regard, the noticee submits that if noticee wanted they may easily hide the same and not informed to the investigating authority, however, he did not done so and give their true disclosure of the investigating authority. It is also important to note that from the said video it could not be ascertained that the container was loaded with Cigarette as in the video only closed container was shown. It is important to note that the video is provided to the noticee by Faisal, son of Sh. Hasan Kureshi on noticee's whatsapp. It is also important to note that in all the photographs and video recovered from the noticee, nothing could be

ascertained that the container shown in photographs were stuffed with cigarette. Hence, the concealment of cigarette was not in the knowledge of the noticee.

17.6 He is not aware with the word like import or Export. He further state that the person who is actually framed them under this case are i.e. Sh. Hassan Kureshi and Sh. Mazhar Muzaffar Hussain Sayed who approached to him with showing with their helping hands, provided a voluntarily loan of Rs. 1.5 lacs to the noticee for treatment his son Mr. Jatin. However, as the said person help the noticee by providing him loan during the treatment of his son, they want assistant from their son Mr. Jatin Rathod stated that they did not know any person over Mundra Port who would assist in their clearance of garment consignment. However, in the good faith, the he requested to his son to provide some contact of CHA over Mundra Port who might help in documentation and clearance of the garments as stated by Sh. Hassan Kureshi and Sh. Mazhar Muzaffar Hussain Sayed. However, he clearly stated in their statements that he was not in the knowledge about concealment of Cigarettes in the container and the mobile number of him was mentioned on the Bill of Lading without his permission and their knowledge.

17.7 Except the statement of Sh. Hassan Kureshi and Sh. Mazhar Muzaffar Hussain Sayed, there is no such evidence has been found by the investigating authority which proves that he knew about concealment. It is further stated that the investigating authority has secured various photographs and videos from the mobile of him and other noticees but there is no such mobile correspondence has been found under the mobile which proves that the he knew about concealment of Cigarette in the container and the mobile number of him was mentioned on the Bill of Lading with their permission and their knowledge.

17.8 It is important to note that his statement has been recorded on 26.09.2016 & 04.10.2016 under which he has denied that knowledge about concealment of Cigarette and Mobile Number appeared on B/L. However, after that statement of both the Co-noticee's i.e. Sh. Hassan Kureshi and Sh. Mazhar Muzaffar Hussain Sayed has been recorded on 10.10.2016 and 18.10.2016 under which both the noticee(s) has confirmed that he was in the knowledge of the concealment of Cigarette but the statement of both co-noticee's were never been produced before him during investigation for his comments. The noticee relying upon the judgement passed by Hon'ble Tribunal in the matter of Sh. Sadhan Chandra Mallick Vs. Commissioner of Customs (Preventive) reported in [1993(66)ELT 112(Tri.) vide which the Hon'ble Tribunal has held that statement of Co-noticee without any corroborative evidence cannot be taken up as an evidence to impose penalty.

17.9 Statement of Sh. Hassan kureshi and Sh. Mazhar Muzaffar Hussain Sayed are contradictory statement on basis of which the penalty can not be imposed on him. In this regard, the noticee inter-alia state as under:

- (i) In their second statement dt. 18.10.2016, Mr. Hasan Kureshi state that he has taken 2 lacs rupees from Mr. Mazhar for lending the noticee for clearance but on the other side, Mr. Mazhar did not confirm the said statement. However, in their statement dt. 18.10.2016 Mr. Mazhar stated that for smuggling of cigarettes, 5 lakhs was offered by Mr. Shoaib to Mr. Hassan and Mr. mazhar is only present with the Hassan at Mundra for recovery of his money not for the cigarette.
- (ii) Sh. Hasan kureshi in his second statement dt. 18.10.2016 state that he has talked with Jatin Rathod from Mumbai and in the same statement he has denied to provided mobile number of Jatin Rathod stating that he has not Jatin Mobile Number as he is not in direct contact with him.

17.10 He stated that for the valuation of import goods, Govt. has issued the provision of Customs Valuation Rules, 2007. However, the Govt. Approved Valuer has not decided the value as per the provisions of CVR, 2007 and they have fixed the value on the basis of cigarette domestic market price of different Brands/flavors, which is not acceptable in the present case.

17.11 On perusal of the provision of Section 112(b) of Customs Act, 1962, it may be find that the provision of Section 112(b) of Customs Act, 1962 is applicable in when following situations are proved and available on record:

- i. A person who acquires possession of;
- ii. A person who is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing;
- iii. Or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111.

However, in the present case all three situations provided in Section 112(b) of Customs Act, 1962 was not established against him i.e. there is no evidence of possession of goods as the goods were seized from CFS and there is no evidence of carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing by him. However, it is also no evidence on record which shows that he was dealing with the goods which he knew or has reason to believe that the goods are liable to confiscation under Section 111 of Customs Act, 1962. Hence, the penalty under Section 112(b) as proposed is not sustainable on him.

Written submissions made by Shri Jatin Rathore

18. Shri Jatin Rathod vide letter dated 30.12.2022 requested to cross examination of Shri Mohammad Hasan Khanubhai Kureshi and Shri Anwar Y. Kukuad, the Govt. Approved Valuer.

19. Shri Jatin Rathore in his written submission vide letter dated 30.12.2022 submitted that on the basis of investigation it is alleged that he contacted one clearing agent at Mundra for clearance of cigarette concealed behind garments in container. Being, very well aware about concealment of cigarette in said container, he actively got involved in smuggling activity. As per statement given by Hassan Kureshi, Jatin assured Shoaib, the consignor of goods, regarding clearance of cigarette. In response of the impugned SCN, he states and submits as under:

19.2 Penalty under Section 112(b) of Customs Act, 1962 was proposed merely on the basis of statement of Sh. DilipSinh recorded on 14.09.2016 and 23.09.2016. In this regard, he stated that Dilip Sinh who is proprietor of M/s. S.K. Shipping Agency who approach to the Container Line M/s. Harvard Global Logistics Limited stated in their statement dt. 14.09.2016 and 23.09.2016 stated that while personal meeting with him for clearance of goods in question, he had asked about the way of clearance Cigarette import consignment and auction of any cigarette import consignment on the basis of which it is concluded by the investigating authority that he was actively involved in clearance of the said smuggled goods and he knew about concealment of cigarette under Garment which were seized by the Investigation Agency. On perusal of the said statement of Sh. DilipSinh it can only be assumed that he is in knowledge of the concealment of Cigarette in the garment and on the basis of assumption presumption penalty cannot be imposed. There is no such material on record which proves that Jatin Rathore assisted in concealing any fact in this case while assisting the other co-noticee in this case.

19.3 Whatever he has done in this case is only done in good faith without any knowledge of the actual fact of imported goods and only a reaction against the voluntarily loan provided to his father for his treatment during his illness.

19.4 He submits that he has already suffered from Right Middle Cerebra Artery Stoke for which he has already admitted in the hospital for more than one month for his treatment and after that he has continuously followed their routine checkups and regular visit to the doctors.

19.5 It is important to note that his statement has been recorded on 26.09.2016 under which he has denied that knowledge about concealment of Cigarette and Mobile Number appeared on B/L. However, after that statement of both the Co-noticee's i.e. Sh. Hassan Kureshi and Sh. Mazhar Muzaffar Hussain Sayed has been recorded on 10.10.2016 and 18.10.2016 under which both the noticee(s) has confirmed that Noticee was in the knowledge of the concealment of Cigarette but the statement of both co-noticee's were never been produced before the noticee during investigation for their comments. The noticee relying upon the judgement passed by Hon'ble Tribunal in the matter of Sh. Sadhan Chandra Mallick Vs. Commissioner of Customs (Preventive) reported in [1993(66) ELT

112(Tri.) vide which the Hon'ble Tribunal has held that statement of Co-noticee without any corroborative evidence cannot be taken up as an evidence to impose penalty.

19.6 Statement of Sh. DilipSinh, Sh. Hassan kureshi and Sh. Mazhar Muzaffar Hussain Sayed are contradictory statement on basis of which the penalty cannot be imposed on the noticee. In this regard, the noticee inter-alia state as under:

- (i) In their second statement dt. 18.10.2016, Mr. Hasan Kureshi state that he has taken 2 lacs rupees from Mr. Mazhar for lending the noticee for clearance but on the other side, Mr. Mazhar did not confirm the said statement. However, in their statement dt. 18.10.2016 Mr. Mazhar stated that for smuggling of cigarettes, 5 lakhs was offered by Mr. Shoaib to Mr. Hassan and Mr. Mazhar is only present with the Hassan at Mundra for recovery of his money not for the cigarette.
- (ii) Sh. Hasan kureshi in his second statement dt. 18.10.2016 state that he has talked with Jatin Rathod from Mumbai and in the same statement he has denied to provided mobile number of Jatin Rathod stating that he has not Jatin Mobile Number as he is not in direct contact with him.
- (iii) That when Sh. DilipSinh had belief from the conversation of the noticee that there were in the business of alleged practice of illegal import of cigarette, DilipSinh should deny the clearance. However, he has accepted to the do the same job and enquired from the concerned Shipping Line. The aforesaid statement of Sh. DilipSinh is only a result of afterthought.

19.7 He submits that for the valuation of import goods, Govt. has issued the provision of Customs Valuation Rules, 2007. However, the Govt. Approved Valuer has not decided the value as per the provisions of CVR, 2007 and they have fixed the value on the basis of cigarette domestic market price of different Brands/flavors, which is not acceptable in the present case.

19.8 On perusal of the provision of Section 112(b) of Customs Act, 1962, it may be find that the provision of Section 112(b) of Customs Act, 1962 is applicable in when following situations are proved and available on record:

- i. A person who acquires possession of;
- ii. A person who is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing;
- iii. Or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111.

However, in the present case all three situations provided in Section 112(b) of Customs Act, 1962 was not established against the noticee i.e. there is no evidence of possession of goods as the goods were seized from CFS and there is no evidence of carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing by Noticee. However, it is also no evidence on record which shows that the noticee was dealing with the goods which he knew or has reason to believe are liable to confiscation under Section 111 of Customs Act, 1962. Hence, the penalty under Section 112(b) as proposed is not sustainable on the noticee.

20. Personal Hearing was given to noticee Shri Majhar Muzaffar Hussain Sayed on 26.12.2022, 30.12.2022, 02.01.2023 & 15.02.2023 but neither the noticee nor any representative on behalf of the noticee, appeared for personal hearing. They also not submitted any written submission to defend their case.

DISCUSSIONS AND FINDINGS

21. I have gone through the Show Cause Notice, Order-in-Original No. MUN-CUSTM-000-COM-26-17-18 dated 30.03.2018 passed by my predecessor, Final Order No. A/12184-12186/2021 dated 17.06.2021 issued by the Hon'ble CESTAT, West Zonal Bench at Ahmedabad, the submissions made during the personal hearing on 30.12.2022 and the written submissions dated 30.12.2022 filed by noticee(s) i.e. Shri Nathalal Kanjibhai Rathod and Shri Jatin Kumar Nathalal Rathod. From these, I find that the present proceedings is de novo proceedings in pursuant to the captioned order of the CESTAT in respect of noticee i.e. Shri Majhar Muzaffar Hussain Sayed, Shri Nathalal Kanjibhai Rathod and Shri Jatin Kumar Nathalal Rathod. The CESTAT vide its order dated 17.06.2021 directed to adjudicating

authority to give one more opportunity to defend their case and shall pass a fresh de novo order after giving sufficient opportunity of personal hearing and written submissions.

22. This case was initially adjudicated vide Order-in-Original No. MUN-CUSTOM-000-COM-26-17-18 dated 30.03.2018 wherein adjudicating authority has passed the following order:

- (i) *I order absolute confiscation of seized 16,20,000 sticks of foreign origin Cigarettes of different brands valued at Rs. 1,16,20,000/- under the provisions of 111(d), 111(f) and 111(i) of Customs Act, 1962. Since the said seized cigarettes have been disposed of and the amount of Rs.24,36,946/- realized as sale proceeds I order to appropriate the same against the confiscation of the goods in terms of Section 126 of the Customs Act, 1962.*
- (ii) *I impose a penalty of Rs.25,00,000/- (Rs. Twenty Five Lacs only) under Section 112(a) and Rs. 5,00,000/- (Rs. Five Lacs only) under Section 114AA of Customs Act, 1962 on Shri Majhar Muzaffar Hussain Sayed, S/o Shri Muzaffar Hussain Sayed, Flat 514, Green Garden Society, Relief Road, Santacruz (West), Mumbai-400054.*
- (iii) *I impose a penalty of Rs.25,00,000/- (Rs. Twenty Five Lacs only) under Section 112(a) and Rs. 5,00,000/- (Rs. Five Lacs only) under Section 114AA of Customs Act, 1962 on Shri Hasan Kureshi, S/o Shri Khanubhai Noorbhai Kureshi, Sabera Manzil, 1570, Chudi Ole, Patva Sheri, Kalupur, Ahmedabad.*
- (iv) *I impose a penalty of Rs. 1,00,000/- (Rs. One Lacs only) on Shri Nathalal Kanjibhai Rathod, S/o Shri Kanjibhai Rathod, 1823-1, Mansuri Chawl No. Ito 3, Mariyambibi CharRasta, Rajpur, Gomptipur, Ahmedabad City, Ahmedabad-380021 under Section 112(b) of Customs Act, 1962.*
- (v) *I impose a penalty of Rs. 1,00,000/- (Rs. One Lacs only) on Shri Jatin Rathod, S/o Shri Nathalal Rathod, 48 B, Survey No. 188, Nirmal Nagar, Meghpar Borichi, Taluka-Anjar, Kutch under Section 112(b) of Customs Act, 1962.*
- (vi) *I drop the proceeding initiated vide Show cause Notice F.No.: DRI/AZU/GRU/Cig/INT-16/2016 dated 10/01/2017 against M/s. Riya Import and Export (IEC Code 0514040335), D/S, Awadh Nagar Chawl, Jivdani Cross Road, Choudhari Wadi, Shankar Nagar, Virar East, Dist. Thane.*

23. The noticee i.e. Shri Majhar Muzaffar Hussain Sayed, Shri Nathalal Kanjibhai Rathod and Shri Jatin Kumar Nathalal Rathod filed an appeal against this order vide Appeal Nos. 11811 of 2018, 12279 of 2018 and 12280 of 2018 respectively in the Tribunal and Hon'ble CESTAT, West Zonal Bench at Ahmedabad vide its order No. A/12184-12186/2021 dated 17.06.2021 remanded the case to original authority for fresh decision after giving opportunity of cross examination.

24. In compliance with the above order of Hon'ble CESTAT, wherein the matter is remanded for the limited purpose of deciding the penalty on the noticee i.e. Shri Majhar Muzaffar Hussain Sayed, Shri Nathalal Kanjibhai Rathod and Shri Jatin Kumar Nathalal Rathod, I proceed to examine the issue. I find that the only issue need to be decided in this case is in respect of noticee i.e. Shri Majhar Muzaffar Hussain Sayed, Shri Nathalal Kanjibhai Rathod and Shri Jatin Kumar Nathalal Rathod. Shri D.K. Singh, Advocate on behalf of the noticee(s) i.e. Shri Nathalal Kanjibhai Rathod and Shri Jatin Kumar Nathalal Rathod attended personal hearing on 30.12.2022. Neither Shri Majhar Muzaffar Hussain Sayed nor any representative on behalf of him appeared for personal hearing given on 26.12.2022, 30.12.2022, 02.01.2023 & 15.02.2023. Thus, I find that principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to examine the issue on the basis of documentary evidences available on records and submissions made by the noticee(s).

25. The fact indicate that DRI authorities received an intelligence regarding smuggling of huge quantity of cigarettes, in container no. CRXU3199110 covered under Bill of Lading no. HGL/JEA/MUN/1625 dated 12.08.2016. The said container was discharged from vessel MV Northern Prelude; Voyage-019 at AP & SEZ Mundra. The above mentioned container pertained to container line M/s. Harvard Global Logistics Limited. The import General Manifest for the said vessel was filed with Customs at AP&SEZ, Mundra by vessel's agent M/s. Samsara Shipping, Gandhidham bearing IGM No. 2144536 dated 15.08.2016. As per details given in the said Bill of Lading the name of the consignee was mentioned as Riya Import and Export, D/5, Awadh Nagar Chawl, Jivdani Cross Road, Choudhary Wadi, Shankar Nagar, Virar East, Dist. Thane, IEC No. 0316908231 and the goods were declared as "281 Carton of Garments Zone 3". The said container was brought from port to M/s. Saurashtra CFS on 17.08.2016. The weight of the goods stuffed in the container no. CRXU3199110 was found to be 4400 Kgs. The imported goods were de-stuffed from the container. On detailed examination of the goods, it was found that 200 white woven PP Bags were containing 'Readyment Garments' and remaining 81 black and white PP bags were containing total 16,20,000 sticks of cigarettes of three different brands viz. Djarum Black Brand(Clove), Marso brand(Cherry, Strawberry, Green Apple) and Richman brand(Orange Mint, Gum, Mint Gum, Grapes). Thus, a total quantity of 16,20,000 Cigarettes sticks found not declared in the IGM No. 2144536 dated 15.08.2016 and hence, on the reasonable belief that the same were liable for confiscation, the said quantity of cigarettes were placed under seizure under Section 110(1) of Customs Act, 1962 and handed over to the custodian M/s. Saurashtra CFS. No Bill of Entry was filed for the said consignment. This fact established that the Cigarettes were imported by concealing them in the readymade garments and mis-declaring the description of the import item in the import documents viz. Bill of Lading and IGM.

26. The subject consignment of cigarettes was smuggled in the name of M/s. Riya Import and Exports and was covered under Bill of Lading no. HGL/JEA/MUN/1625 dated 12.08.2016. During investigation, it was found that the above named importer IEC was mis-used by some other persons for smuggling of Cigarettes. The subject cigarettes sticks were smuggled into India by violating various provisions of the Customs Act, 1962 and other laws. While importing cigarettes into India provisions of the Cigarettes and other Tobacco Products Act, 2003 and the rules framed there under apply. Accordingly, packets of cigarettes imported into India have to bear the specified pictorial health warnings. However, in the instant case the packages of the seized Cigarettes were not having any pictorial health warnings.

27. Further, the Show Cause Notice reveals that a very detailed investigation was done by DRI. Premises of Importer M/s. Riya Import and Export was searched, Statements of various persons viz. proprietor of M/s. Riya Import and Export, employees of Shipping Line, clearing agent etc. were recorded and evidences were collected including photographs and video of stuffing of container.

28. Shri Nathalal Kanjibhai Rathod and Shri Jatin Kumar Nathalal Rathod in their written submission stated that the investigation agency has made SCN on the basis of statements of the noticee and there is nothing on record to prove the involvement of them. Further, they relied upon the judgement passed by Hon'ble Tribunal in the matter of Sh. Sadhan Chandra Mallick Vs. Commissioner of Customs (Preventive) reported in [1993(66) ELT 112(Tri.)] vide which the Hon'ble Tribunal has held that statement of Co-noticee without any corroborative evidence cannot be taken up as an evidence to impose penalty.

In this regard, it has been held by various Hon'ble Courts that the statements under Section 108 of the act are in the nature of substantive evidence, and culpability of the concerned person can be based on the same. Statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs Officials. Hon'ble Supreme Court has held in the case of Surjeet Singh Chhabra Vs. Union of India 1997 (89) ELT 646 (SC) that the statement made before Customs Officers, though retracted within six days, is a admission and binding since Customs Officers are not police officers under Section 108 of the Customs Act, 1962. Similar views has been taken by the Apex court in Naresh J. Sukhwani Vs Union of India 1996(83) ELT 258(SC) holding that the statement before a

Customs Officer under Section 108 of the Customs Act, 1962 is a material piece of evidence. Further, same stand was taken by the Hon'ble High Court of Madras in the case of S. Faisal Khan Vs Joint Commissioner of Customs(Airport) Chennai 2010 (259) ELT 541(Mad.). So, the statement given before Customs is valid evidence and subsequent submission is only an afterthought. Therefore, I find that the confessional statements made by the various persons do not lose the evidentiary value even after retraction of the same and they can be relied upon for the purpose of present proceedings. However, in this case, none of the witness have retracted their statements.

29. Before coming to the issue whether penalty is imposable on Shri Majhar Muzaffar Hussain Sayed, Shri Nathalal Kanjibhai Rathod and Shri Jatin Kumar Nathalal Rathod, I am examining whether the request of cross examination of the persons i.e. Shri Mohammad Hasan Khanubhai Kureshi and Shri Anwar Y. Kukuad, the Govt. Approved Valuer should be granted or not in the facts and circumstances of present case. There are plethora of judgements stating that requirement for cross examination in quashi-judicial proceedings has to be examined in the facts of the case and it is not mandatory to allow all such requests. In this regard, I refer to CESTAT order in case of Shally Thapar Vs. Commissioner of Customs reported in 1993(64) ELT 31(Tribunal) wherein, the Hon'ble tribunal by citing the Supreme Court order in AIR 1997, SC 1627 has held that there is no hard and fast rule in quashi-judicial process is allowing cross examination and it is to be determined depending upon on the circumstances of the case and upheld denial of cross examination of co-accused. In case of Commissioner of Customs, Chennai Vs. D. Bhoorniul, reported in 1983 (13) ELT 1546 (SC), the Hon'ble Supreme Court has held that the provisions of the Evidence Act as well as Code of Criminal procedure, in terms, are not applicable to the adjudication proceedings. Further, Hon'ble Madras High Court, in the case of K. Balan Vs. Govt. of India, reported in 1982 ELT(386) Madras, had held that right to cross examination is not necessarily a part of reasonable opportunity and depends upon the facts and circumstances of each case. It largely depends upon the adjudicating authority, who is not guided by the rules of evidence as such but who must offer such opportunity to the party concerned as would assure him proper opportunity to defend himself. It would, however, be in the interest of justice and fairness to the parties, that the opportunity to cross-examination is given wherever it is relevant, justified and genuine and where it is not for protracting the proceedings, as held by the Hon'ble Tribunal in M.P.Jain Vs. CCE 1988 (37) ELT 577 (Trib.). Similarly, in the case of Shivom Ply-N-Wood Pvt. Ltd. Vs Commissioner of Customs & Central Excise, Aurangabad, reported at 2004 (177) ELT 1150(Tri. Mumbai), Hon'ble Tribunal, in their order, in para 6, has held as under:

".....Their contentions that principles of natural justice are violated inasmuch as cross examination of persons, whose statements are relied upon, has to be weighed in the light of the facts that all the statements relied upon were placed before them. They had all the opportunity to demolish these statements during the proceedings. Cross-examination cannot be claimed as a matter of right in departmental proceedings....."

Further, the Hon'ble Tribunal in the case of M/s. Sridhar Paints Co. Pvt. Ltd. Vs. Commissioner, Customs & Central Excise, Hyderabad-III, reported in 2006 (198) ELT 514 (Tri. Bang.), has held that "the denial of cross examination of witness is immaterial in case of confessional statements. In the said case, it was charged by the party that the adjudicating authority had denied the right of the appellant to cross-examine the witness and the investigating officers. In the said case the Tribunal, in light of following various case laws, cited by the Adjudicating Authority, has held that there was no violation of principle of natural justice by denying of cross-examination of witnesses/officers".

The Hon'ble Tribunal while passing the aforesaid order, has relied upon the decisions in case of (i) Suman Silk Mills Pvt. Ltd. V. CCE, Baroda reported in 2002 (142) ELT 640 (Tri.-Mumbai)-No infraction of principles of natural justice where witness not cross-examined when statements admitting evasions were confessional. (ii) Anil Das Vs. CC, New Delhi reported in 2002 (141) ELT 135 (Tri. Del)-Non allowance of cross examination of appellants when confessional statement made by themselves does not amount to violation of rule of natural justice and (iii) Beauty Dyers Vs. CCE, Chennai reported in 2001 (136) ELT 339(Tri.-Chennai-Non-availability of witness for cross examination not a fatal flaw when the findings are based on document about which there is no credible explanation and nothing

on record to show statements not voluntary or effectively retracted within close proximity of the time these were detained.

29.2 It is found in the subject case that all the statements were recorded under Section 108 of the Customs Act, 1962. As there is no dispute on bona fides of these statements, only on account of these statements being relied upon, I find no justification of cross-examination of the people, whose statements are being relied upon. At no stage during investigation, any doubt was raised by any person connected with said noticee on the facts stated by others in their statement. Therefore, merely because statements of these persons are being relied upon, these statements do not lose their validity. I find that detailed investigation into relevant aspects of the case has been carried out by investigating agency and the Show Cause Notice was not issued merely on the basis of confessional statements of the accused but on the findings of the investigation. There was no other reason cited by the noticee(s) for calling the persons for cross examination, therefore, I am inclined to deny to cross-examination of Shri Mohammad Hasan Khanubhai Kureshi, as sought by noticee i.e. Shri Majhar Muzaffar Hussain Sayed, Shri Nathalal Kanjibhai Rathod and Shri Jatin Kumar Nathalal Rathod.

29.3. I find that the noticee(s) in their written submission stated that value of imported seized cigarettes of 16,20,000 sticks has been shown as Rs. 1,06,70,000/- by the investigation authority for the purpose of booking the case and imposing penalty and they had fixed the value on the basis of domestic market price of different brand/flavors of cigarettes. Further, they requested to cross examination of govt. approved valuer Shri Anwar Kukkad.

In this regard, I find that the value of 16,20,000 sticks of cigarettes was estimated to Rs. 1,16,70,000/- by DRI, based on whole sale market price of different brand/flavors of cigarettes and this value is market value for the purpose to show to actual market value of the cigarettes. Further, to ascertain fair market price of the subject seized goods, opinion of Chartered Engineer and Govt. Approved valuer Shri Anwar Kukkad was obtained and he informed the whole sale market price of (Djarum Black/Richman/Marso) cigarettes. Thus, the value ascertained by the investigation agency and Govt. Approved valuer, is market value of cigarettes, not the assessable value for the purpose of duty calculation at the time of import of goods.

Therefore, the argument of noticee(s) challenging the valuation of Govt. Approved Valuer i.e. Shri Anwar Kukkad is without any legal basis, hence not sustainable. In view of above discussion, I am inclined to deny to cross-examination of Govt. Approved Valuer Shri Anwar Kukkad, as sought by noticee i.e. Shri Majhar Muzaffar Hussain Sayed, Shri Nathalal Kanjibhai Rathod and Shri Jatin Kumar Nathalal Rathod.

30. Having taken a quick view of the statements and facts which were unearthed during investigations, I now proceed to discuss the case.

Imposition of penalty on Shri Nathalal Kanjibhai Rathod under Section 112(b) of Customs Act, 1962

31. Shri Nathalal Kanjibhai Rathod who in his statements has accepted that the contact no. given on the Bill of Lading No. HGL/JEA/MUN/1625 dated 12.08.2016 i.e. 9409409290 belonged to him. Shri Hasan Kureshi had given his mobile no. to overseas supplier and Hasan Kureshi was known to him from approx. last 4 months who is involved in export of Livestock. In the month of August, 2016, Hasan asked him for customs clearance of container about which he told him that he was bringing garments from abroad. However, Hasan Kureshi had stated that Nathalal Kanjibhai Rathod assured him regarding the clearance of cigarettes concealed behind garments and asked for two lakhs rupees as advance and asked his son Jatin to provide necessary assistance. It was accepted by the Hasan Kureshi that Nathalal Kanjibhai Rathod was to clear the goods, so he gave mobile number of Nathalal Kanjibhai Rathod to be mentioned in Bill of Lading. From the statements of Shri Nathalal Kanjibhai Rathod and Hasan Kureshi it is evident that Hasan Kureshi has given Shri Nathalal Kanjibhai Rathod a sum of One Lac and Fifty Thousand Rupees for work for clearance of cigarettes concealed behind garments. Shri Nathalal Kanjibhai Rathod also provided one video of 33 seconds duration which was showing Hasan Kureshi with container no. CRXU3199110. The said video was provided to him by Faisal,

son of Hasan Kureshi and on detailed examination of the said container, cigarettes were found concealed behind readymade garments in the said container.

31.2 Shri Mazhar in his statement stated that the video was captured by Shoaib from Mazhar phone at the time of stuffing the cigarettes in the container in Dubai and Hasan asked Mazhar to send the photographs and videos through whatsapp to Faisal, son of Hasan Qureshi and said video was provided by the Faisal to Shri Nathalal Kanjibhai Rathod. It shows that it was in the knowledge of Shri Nathalal that the container was stuffed with cigarettes.

31.3 For this act in dealing with mis-declared, concealed and prohibited goods which were liable for confiscation under Section 111, DRI has arrested Shri Nathalal Kanjibhai Rathod on 18.10.2016 and presented him before the Hon'ble Chief Judicial Magistrate, Bhuj on 19.10.2016 who sent him to Palara jail for judicial custody.

31.4 Shri Nathalal Kanjibhai Rathod in his written submission stated that Hasan Kureshi had voluntarily provided Rs. 1.5 lacs as loan for the treatment of his son Mr. Jatin Rathod. I find that the contention of the said amount of Rs. 1.5 lacs was for the treatment of his son appeared to be fictitious and merely an afterthought.

31.5 Show Cause Notice proposes for penalty under Section 112(b) of the Customs Act, 1962 against Shri Nathalal Kanjibhai Rathod. In this connection, I have gone through the provisions of Section 112(b) of the Customs Act, 1962, which reads as under:

"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....."

31.6 Thus, the oral evidence in the forms of statements made by other persons clearly establish that it was in the knowledge of Shri Nathalal Kanjibhai Rathod that the cigarettes were being smuggled in the guise of readymade garments in the container no. CRXU3199110 and these act on the part of him, rendered the goods stuffed in said container, liable for confiscation under Section 111 of Customs Act, 1962. Accordingly, I hold that Shri Nathalal Kanjibhai Rathod is liable for penalty under section 112(b) of Customs Act, 1962.

Imposition of penalty on Shri Jatin Rathod under Section 112(b) of Customs Act, 1962

32. Shri Jatin Rathod, S/o Shri Nathalal Rathod stated that he contacted Shri Dilipsinh Chavda through the help of one known person Shri Gambhirsinh Chauhan for customs clearance for container no. CRXU3199110. He provided Shri Dilipsinh the import documents including the copy of Bill of Lading No. HGL/JEA/MUN/1625 dated 12.08.2016 for the clearance of said container through Shri Gambhirsinh which was received by him from Hussain Kureshi. Further, Shri Gambhirsinh in his statement had stated that Jatin was interested in clearance of Cigarettes to be imported in future. Shri Dilipsinh in his statement stated that Shri Jatin Rathod asked him that the consignment belongs to him. Further, during the talk he asked about possibility of clearances of cigarettes consignment coming from Dubai. Shri Jatin asked about any way of through cigarettes can be cleared. Shri Jatin also asked about auction of cigarettes that were seized in Transworld CFS which came concealed behind Waste Paper few months before. Shri Dilipsinh in his statement told that Shri Jatin Rathod had enquired about one container of smuggled cigarettes that had been detected at Mundra and also enquired about the importer. Further, on 20.08.2016 Shri Jatin Rathod again contacted him with invoice but he denied his request for clearance of said container. Also, Dilipsinh stated that Jatin came with two persons to meet him, on correlating the same with the statement of Shri Hasan Kureshi it transpires that Jatin took Majar and Hasan Kureshi to meet Dilipsinh at Mundra port. Shri Dilip Sinh in his statement stated that Shri Jatin visited Mundra on 26.08.2016 and on being asked about not intimating about the concealment to him, Shri Jatin told him that the cigarettes have arrived in the container by mistake.

32.2 Shri Mohammad Hasan Kureshi in his statement dated 18.10.2016 stated that he asked Nathalal Kanjibhai Rathod regarding clearance of cigarettes concealed behind garments and Nathalal Kanjibhai assured him regarding the clearance of cigarettes concealed behind garments. Mazhar, Hasan and Nathalal met in hotel at Gandhidham and Nathalal introduced both of them with his son Jatin. Mazhar and Hasan asked Jatin for arrangement of clearance of cigarettes concealed behind garments. Jatin made them believe that he will get the cigarettes concealed behind the garments and Shoaib (consignor) also talked with Jatin from Dubai through Hasan's mobile number and on confirmation, Shoaib started preparation for stuffing of cigarettes in the container. He, Jatin Rathod, his father Nathalal Rathod and Majhar, we four persons were aware that cigarettes concealed behind the garments.

32.3 I also find that various summons were issued to Jatin Rathod during investigation but he did not turn up before the DRI. It shows his clear intention to avoid investigation.

32.3 Show Cause Notice proposes for penalty under Section 112(b) of the Customs Act, 1962 against Shri Jatin Rathod. The relevant part of Section 112(b) is reproduced as below:

"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....."

32.4 I find that it is clearly evident that Jatin Rathod was well aware about concealment of cigarettes in said container and was actively involved in clearance of the said smuggled goods. For, this act in dealing with mis-declared, concealed and prohibited goods which were liable for confiscation under Section 111, Shri Jatin Rathod is liable to penalty under Section 112(b) of the Customs Act, 1962.

Imposition of penalty on Shri Majhar Muzaffar Hussain Sayed under Section 112(a) and 114AA of Customs Act, 1962

33. Shri Majhar Muzaffar Hussain Sayed, S/o Shri Muzaffar Hussain Sayed, was the key person who knew Shoaib "the consignor" of the goods. Shri Majhar Muzaffar Hussain Sayed went to Dubai with Hasan Kureshi and introduced the consignor of Cigarettes to Hasan Kureshi. Further, he was also present at the time of stuffing of cigarettes in container in Dubai and also funded for the expenses being incurred by Shri Hasan Kureshi and for the amount being given to Shri Nathalal Kanjibhai Rathod. It is evident from the statement given by Shri Hasan Kureshi that for gaining monetary benefits, Majhar actively got involved in smuggling of cigarettes. Majhar being very well aware that container contained cigarettes concealed behind garments, tried to get it cleared from Customs with the help of Jatin Rathore. Also, as admitted by Majhar that he went to Mundra with Husan Kureshi. As per the statements of Dilipsinh, Jatin Rathod came with two persons to meet him and Hasan Kureshi stated that Jatin took twice Majhar Bhai and him to Mundra Port. Thus, on correlating the statements of all these persons a clear picture is evident that Jatin took Majhar and Hasan Kureshi to meet Dilipsinh at Mundra Port.

33.2 It is evident from the records that he is the mastermind alongwith Hasan Kureshi in the case. He went to Dubai, introduced the consignor of cigarettes to Hasan Kureshi, present at the time of stuffing in container overseas and funded for the expenses and also went to Mundra Port with Jatin and Hasan Kureshi to meet clearing agent and further the photographs & video of stuffing shows his direct involvement in the matter. All these events are not just a coincidence, it is an act of sheer planning and thought. On account of this DRI has arrested Shri Majhar Muzaffar Hussain Sayed on 18.10.2016 and presented him before the Hon'ble Chief Judicial Magistrate, Bhuj on 19.10.2016 who sent him to Palara Jail for judicial custody.

33.3 In regard to proposal for imposition of penalty on Shri Majhar Muzaffar Hussain under section 112(a) of the Customs Act, 1962, I find that Shri Majhar Muzaffar Hussain had an active role in smuggling of cigarettes behind readymade garments. The relevant part of Section 112(a) is reproduced as below:

"Any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act"

I find that for all these act of omission and commission on part of Shri Majhar Muzaffar Hussain in smuggling of cigarettes which is also in violation to the provisions of the cigarettes and other Tobacco Products Act, 2003 have rendered the goods liable for confiscation under Section 111, therefore, I hold that Shri Majhar Muzaffar Hussain is liable for penalty under Section 112(a) of the customs Act, 1962.

33.4 In regard to proposal for imposition of penalty on Shri Majhar Muzaffar Hussain under Section 114AA of Customs Act, 1962, I find that Shri Majhar Muzaffar Hussain had produced false and fabricated documents for the import of prohibited goods. The relevant part of Section 114AA is reproduced as below:

"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."

I find that Shri Majhar Muzaffar Hussain knowingly and intentionally used false and incorrect material, in the transaction of business for purpose of this act, therefore, I hold that Shri Majhar Muzaffar Hussain is also liable for penalty under Section 114AA of the Customs Act, 1962.

34. I find that the remaining questions regarding confiscation of goods and imposition of penalty on other noticee(s) have already been decided vide Order-in-Original No. MUN-CUSTM-000-COM-26-17-18 dated 30.03.2018 and thus without going into the aspect of confiscation of goods and imposition of penalty on other noticee(s) and abiding by the order of Hon'ble CESTAT, I pass the following order:

ORDER

- i. I impose a penalty of **Rs. 25,00,000/- (Rupees Twenty Five Lacs Only)** under Section 112(a) and **Rs.5,00,000/- (Rupees Five Lacs Only)** under Section 114AA of Customs Act, 1962 on Shri Majhar Muzaffar Hussain Sayed, S/o Shri Muzaffar Hussain Sayed.
- ii. I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** on Shri Nathalal Kanjibhai Rathod, S/o Shri Kanjibhai Rathod under Section 112(b) of Customs Act, 1962.
- iii. I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** on Shri Jatin Rathod, S/o Shri Nathalal Rathod, under Section 112(b) of Customs Act, 1962.

35. The remaining portion of the Order-in-Original No. MUN-CUSTM-000-COM-26-17-18 dated 30.03.2018 will remain unchanged.

36. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

T.V. Ravi

(T.V. RAVI)

Commissioner of Customs
Custom House, Mundra

To,

1. Shri Majhar Muzaffar Hussain Sayed,
S/o Shri Muzaffar Hussain Sayed,
Flat 514, Green Garden Society, Relief Road,
Santacruz(West), Mumbai-400 054.
2. Shri Nathalal Kanjibhai Rathod,
S/o Shri Kanjibhai Rathod, 1823-1,
Mansuri Chawl No. 1 to 3, Mariyambibi Char Rasta,
Rajpur, Gomptipur, Ahmedabad-380021.
3. Shri Jatin Kumar Nathalal Rathod,
S/o Shri Nathalal Rathod, 48B,
Survey No. 188, Nirmal Nagar,
Meghpar Borichi, Taluka-Anjar, Kutch.

Shri Jatin Kumar Nathalal Rathod,
S/o Shri Nathalal Rathod, 1823-1,
Mansuri Chawl No. 1 to 3, Mariyambibi Char Rasta,
Rajpur, Gomptipur, Ahmedabad-380021.

Copy to:

1. The Chief Commissioner of Customs, CCO, Ahmedabad
2. The Dy. Commissioner of Customs, TRC Section, Mundra Customs.
3. The Dy. Commissioner of Customs, Legal Section, Mundra Customs.
4. Office Copy.