OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE: MUNDRA, KUTCH
MUNDRA PORT& SPL ECONOMIC ZONE,
MUNDRA-370421
Phone No.02838-271165/66/67/68
FAX.No.02838-271169/62

A. File No.	:	GEN/ADJ/COMM/56/2024-Adjn-O/o Pr. Commr-Cus-Mundra.
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-38-24-25
C. Passed by	:	**K. Engineer** **Pr. Commissioner of Customs,** **Customs House, AP & SEZ, Mundra.**
D. Date of order and Date of issue:	:	21.01.2025 21.01.2025
E. SCN No. & Date	:	SCN No. GEN/ADJ/COMM/56/2024-Adjn-O/o Pr. Commr- Cus-Mundra dated 31.01.2024.
F. Noticee(s) / Party / Importer	:	1. M/s. Alang Auto General Engg Co (P) Ltd. (IEC-2405003112), CM-458, "Rukmanikunj", Near Virani School, Kalibid, Bhavnagar-364002 2. M/s. Hub & Link Logistics (I) Pvt Ltd, Suite No. 101, Rishabh Arcade, Near to GST Bhavan , Plot No. 83, Sector-8, Gandhidham-370201 3. M/s. Ravi Energie Pvt Ltd (HQ Asia Pacific & Africa) 15/15 B Indiabulls Mega Mall Jetalpur Road, Boroda- 390020.
G. DIN	:	**20250171MO0000555B5E**

1. यह अपील आदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सी ए 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, बहुमाली भवन, 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."**

3. 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.

4. उक्त अपील के साथ -/ 1000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज,दंड याशास्ति रूपये पाँच लाख या कम माँगा हो5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्तिया दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्डपीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ 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.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची-1, न्यायालय शुल्क अधिनियम, 1870 के मद सं°-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 paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटि/ 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.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (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.

8. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां 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.

FACTS OF THE CASE IN BRIEF

Whereas **M/s. Alang Auto General Engg Co (P) Ltd** (IEC-2405003112), CM-458, "Rukmanikunj", Near Virani School, Kalibid, Bhavnagar-364002, Gujarat, India (hereinafter referred to as 'the importer' for the sake of brevity), filed BE No. 9659743 dated 21.11.2020 (hereinafter referred to as 'BE' for the sake of brevity) for importation of goods, declared as 'Stainless Steel Melting Scrap Grade -2205' (hereinafter referred to as the 'imported goods' for the sake of brevity) falling under CTH 72042190.

2. Issue in Brief

2.1 An information was received informing that "the Pre Shipment Inspection Certificate in the said Bill of Entry is bogus, as the containers were not opened and goods were not examined. Further, the container tracking on PICT (Pakistan International Container Terminal Limited) divulged that the container had originated from Pakistan."

The details of the bill of entry are as under:

BE No & date	Description of Goods & CTH declared	Container No(s)	Qty(Kgs)	Declared Ass. Value (Rs.)	Declared Duty Payable (Rs.)
BE No. 9659743 dated 21.11.2020	Stainless Steel Melting Scrap Grade -2205 CTH – 72042190	PRSU2141199 PCLU2010527	22340 22735	62,70,834	13,32,239

3. Investigation

3.1. Whereas, vide Notification 5/2019-Customs dated 16.02.2019, In the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, tariff item 980600 00 has been inserted for All goods originating in or exported from the Islamic Republic of Pakistan, which attracts 200% BCD.

3.2. The Bill of Entry was filed on 21.11.2020 and was out of charged on 24.11.2020, whereas, the information was received on 18.01.2022; accordingly, acting on the above information, summons dated 04.02.2022 were issued to the delivery Agency M/s. Hub & Links Logistics (I) Pvt. Ltd., Gandhidham to submit load port documents pertaining to the imported goods transported under Bill of lading No. SASLMU20841 and to tender statement.

3.3. Statement of Shri Sajish Sivaraj, General Manager of M/s. Hub & Links Logistics (I) Pvt. Ltd., Gandhidham was recorded on 22.02.2022 wherein he *inter alia* stated that;

- they were the delivery agent of containers No. PRSU2141199 and

PCLU2010527 under Bill of Lading SASLMU20841 dated 12.11.2020.

- that both containers were loaded from Port of Karachi to Jebel Ali in the Vessel BOTANY BAY vide bill of lading number SASLMU20841 dated 05.11.2020 and thereafter both said containers were trans-shipped from Jebel Ali to Mundra in Vessel OEL JUMEIRAH.
- that he is producing copy of Bill of Lading no. SASLMU20841 dated 05.11.2020 and Bill of Lading No. SASLMU20841 dated 12.11.2020
- that the containers were not opened at Jebel Ali for any purpose and they were trans-shipped from Jebel Ali to Mundra as received from Karachi to Jebel Ali.

3.4. Whereas, a summons dated 23.03.2022 were issued to M/s. Alang Auto & General Engg. Co. (P) Ltd., CM-458, "Rukmanikunj", Near Virani School, Kalibid, Bhavnagar-364002(importer) to submit documents related to the goods imported vide bill of entry number 9659743 dated 21.11.2020 and to tender statement. In response, importer vide letter dated 08.04.2022 has submitted Authority Letter issued by Shri Udai Agarwal, Director of the importer, authorizing Shri Parth Labhshankar Jani to submit details in respect of the said bill of entry. Further, vide said letter dated 08.04.2022, the importer submitted printouts of e-mail conversation with their commission agent M/s. Rizmet International Pvt. Ltd., sale contract with the supplier and copy of PSIC(Pre-Shipment Inspection Certificate) issued by PSIA(Pre-Shipment Inspection Agency i.e. M/s. Ravi Energie Gulf FZC.

3.5. A statement of Shri Parth Labhshankar Jani, Authorized Representative of the importer was recorded on 11.04.2022), wherein he *inter alia* stated that;

- he is working as Manager at M/s. Alang Auto & General Engg Co (P) Ltd. and look after the import and export documentations in the company.
- they have imported 45.08 MTS "Stainless Steel Melting Scrap" Grade 2205 from UAE based supplier M/s. A L Julnar International (F.Z.E.).
- they have not appointed M/s. Ravi Energie Guld FZC (i.e. PSIA) for any inspection and also not made any payment for inspection of imported goods vide BE No. 9659743 dated 21.11.2020.
- they had no idea about the Bill of Lading no. SASLMU20841 dated 05.11.2020 (Karachi to Jebel Ali) and whatever stated by Shri Sajish Shivraj, GM of M/s. Hub Links & Logistics.
- the respective seal numbers and container numbers mentioned in both the Bill of Lading no. SASLMU20841 dated 05.11.2020 & Bill of Lading no. SASLMU20841 dated 12.11.2020 are same.
- on the website https://pict.com.pk/en the container nos.

PCLU2010527 and PRSU2141199 are tracked with seal number 095894 & 095898, and it appears that the goods and both containers are originated from Karachi, Pakistan; however as per COO certificate and our Bill of Lading goods are of UAE.

- they had placed order through their Indian Agent M/s. Rizmet International Pvt. Ltd., 1001, 10th floor, Royal Trade Centre, Opposite Star Bazar, Hazira-Adajan Road, Surat-395009.

3.6. Further from the details submitted by the importer, it is seen that M/s RIZMET International Pvt. Ltd is a dealing agent of UAE based supplier and the importer, hence this office issued a Summons dated 21.04.2022 to submit all correspondence made by them related to import with M/s Alang Auto & General Engg. Co. (P) Ltd. and M/s AL Junar International FZE and accordingly statement of Shri Aftab Kundan, Director of M/s. RIZMET International Pvt. Ltd. was recorded on 09.05.2022, wherein he *inter alia* stated that;

- they had executed one deal between the importer for import of "Stainless Steel Melting Scrap Grade 2205" vide two container PCLU2010527 and PRSU2141199.
- from the documents submitted by M/s. Hub Links & logistics (I) Pvt. Ltd., it appears that the goods are from Karachi, Pakistan.
- on the website https://pict.com.pk/en the container nos. PCLU2010527 and PRSU2141199 are tracked with seal number 095894 & 095898, and it appears that the goods and both containers are originated from Karachi, Pakistan;

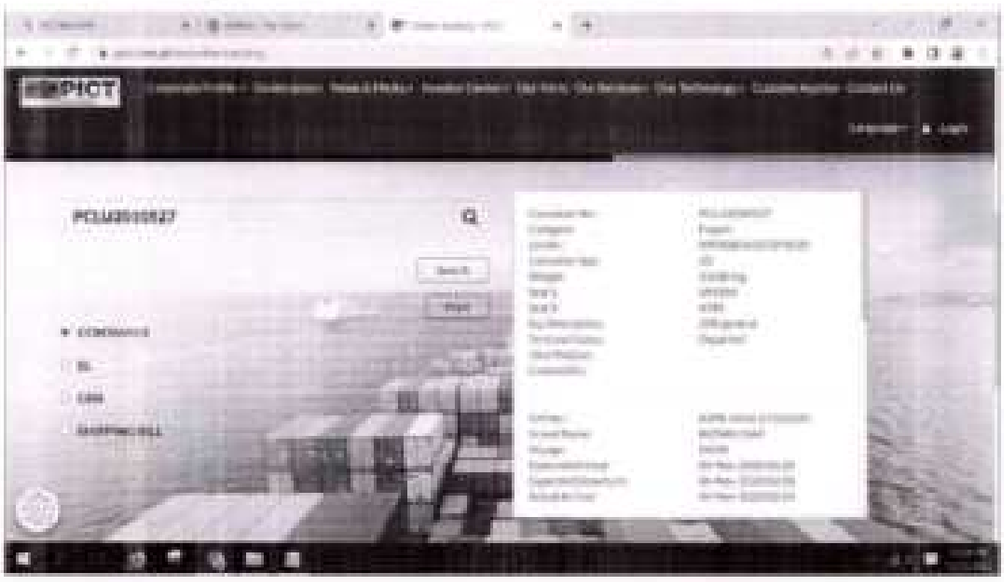
3.7. Further, as per the details provided by the importer vide letter dated 08.04.2023, it is observed that PRE-SHIPMENT INSPECTION CERTIFICATE (PSIC) was issued by M/s Ravi Energie Gulf FZC and as per the statement dated 11.04.2022(Please refer Para No. 3.5) importer did not appoint M/s. Ravi Energie Gulf FZC (i.e. PSIA) for any inspection and also not made any payment for inspection of imported goods vide BE No. 9659743 dated 21.11.2020. To confirm the authenticity of the PSIC, agency issued Summons dated 18.04.2022 and summons dtd. 10.01.2024 to M/s Ravi Energie Pvt. Ltd. (HQ Asia Pacific & Africa) 15/15B Indiabulls Mega Mall Jetalpur Road, Baroda 390020 to appear for statement and to confirm the authenticity of PSIC no. 052/AJUL-RN/NFAA1167/2020 dated 30.10.2020. In response, M/s Ravi Energie. neither appeared on the schedule date and time nor submitted any documents in the matter of PSIC.

4. Analysis of Enquiry

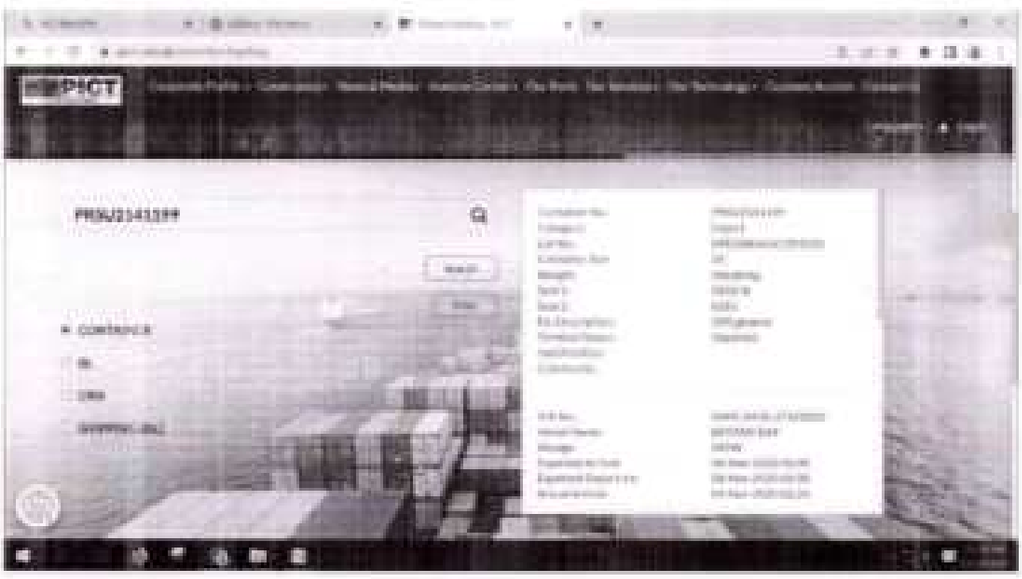
4.1. The tracking of the Container No(s). PCLU2010527 and PRSU2141199 on the official website of Pakistan International Container Terminal Limited i.e. https://pict.com.pk/en shows that the Container Seal No(s). of both the container

are same as it is in the import documents submitted by the importer at Mundra Port. Therefore, it appeared that the containers were nowhere opened in the route from Karachi, Pakistan to UAE and UAE to Mundra; therefore, it is clear that the goods imported to India at Mundra port originated from Pakistan. The Screen Shots of the tracking of the container nos. PCLU2010527 and PRSU2141199 on the website https://pict.com.pk/en are affixed hereunder;

Tracking of container no **PCLU2010527**



Tracking of container no **PRSU2141199**



4.2. The details of the Bill of Lading No. SASLMU20841 dated 05.11.2020 and Bill of Lading No. SASLMU20841 dated 12.11.2020, provided by the delivery agent i.e. M/s. Hub & Links Logistics (I) Pvt. Ltd., Gandhidham are as under;

Details Mentioned in the Bill of Lading	**Bill of Lading No. SASLMU20841 dated 05.11.2020**	**Bill of Lading No. SASLMU20841 dated 12.11.2020**

Vessel/Voyage	BOTANY BAY	OEL JUMEIRAH
Port of Loading	**Karachi, Pakistan**	Jebel Ali, UAE
Port of Discharge	Jebel Ali, UAE	Mundra, India
Name and Address of Shipper	M/s. Concrete Trader, D185/B.F.Q. Compound, Haroonabad, Sher Shah, Karachi, Pakistan	M/s. Al Julnar International FZE, Office No. 6WB 437 Dubai Airport, Free Zone, PO Box No. 371836, Dubai, UAE
Name and Address of Consignee	M/s. Al Julnar International FZE, Office No. 6WB 437 Dubai Airport, Free Zone, PO Box No. 371836, Dubai, UAE	M/s. Alang Auto & Gen. Engg. Co. (P) Ltd. CM-458, Rukmanikunj, Nr. Virani School, Kaliabid, Bhavnagar, Gujarat.
Container No(s).	PRSU2141199 PCLU2010527	PRSU2141199 PCLU2010527
Seal No(s).	095878 095894	095878 095894
Package	Stainless Steel Melting Scrap Grade 2205	Stainless Steel Melting Scrap Grade 2205
Weight	45075 Kgs	45075 Kgs

4.3. From the above details and documents i.e. Bill of Lading No. SASLMU20841 dated 05.11.2020 and Bill of Lading No. SASLMU20841 dated 12.11.2020, provided by the Delivery Agency M/s. Hub & Links Logistics (I) Pvt. Ltd., Gandhidham, it appears that the Goods were originated from Karachi, Pakistan, from where the goods were exported to Jebel Ali vide Bill of Lading No. SASLMU20841 dated 05.11.2020 in Container No(s). PCLU2010527 and PRSU2141199 sealed with Seal No(s). 095894 & 095878 respectively. Further, it appears that the same goods were exported as it is from Jebel Ali, UAE to Mundra vide Bill of Lading No. SASLMU20841 dated 12.11.2020 in same Container No(s). i.e. PCLU2010527 and PRSU2141199 sealed with same seal Seal No(s). i.e. 095894 & 095878 respectively. Therefore, it appears that the goods imported to Mundra port (India) were originated from Karachi Pakistan.

4.4. Further, it is observed from recordings of statement that neither the Importer nor the dealing agent i.e. M/s. RIZMET International Pvt. Ltd. have provided specific clarification in respect of the tracking of the containers on PICT website with same seal numbers. Further, they failed to give any justification in respect of Bill of Lading provided by the Delivery Agency for export of goods from Karachi Pakistan to Jebel Ali. Hence, it appears that the goods imported by the importer are originated from Pakistan.

4.5. In addition, as per the FTP, at the time of the clearance of metal scrap, Importer shall furnish to the Customs pre-shipment inspection certificate as per the format to Appendix 2H from any of the Inspection & Certification agencies given in Appendix-2G, to the effect that the consignment was checked for radiation level and scrap does not contain radiation level (gamma and neutron) in excess of natural background. The certificate shall also furnish copy of the contract with the exporter stipulated that the consignment does not contain any radioactive contaminated material in any form. As it is apparently clear that the container were never opened in the route from Karachi, Pakistan to Jebel Ali UAE and thereafter from Jebel Ali, UAE to Mundra, India; therefore, it appeared that the goods were not examined in UAE and hence, the pre-shipment certificate submitted by the importer in the instant case appeared bogus. Further, letter to DGFT has been issued for taking the required action against the importer i.e. M/s. Alang Auto & Gen. Engg. Co. (P) Ltd. for violating our trade regulations and causing significant economic repercussions.

4.6. Further, the PSIA also not responded to the correspondence and have not clarified the matter, whether the Pre-shipment Inspection Certificate has been issued by them or otherwise. Therefore, it appears that the PSIA is aware of the fact that the importer has furnished bogus PSIC said to have issued by their agency, which was issued from their company. Further, letter to DGFT has been issued for taking the required action against the PSIA i.e. M/s Ravi Energie Pvt. Ltd. for violating our trade regulations and causing significant economic repercussions.

5. Duties on import of Pakistan Originated Goods:

Vide Notification 5/2019-Customs dated 16.02.2019, In the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, tariff item 980600 00 has been inserted for All goods originating in or exported from the Islamic Republic of Pakistan, which attracts 200% BCD.

6. Calculation of Duty on Goods:

Accordingly, the imported goods i.e. Stainless Steel Melting Scrap Grade 2205 should be classifiable under CTH 98060000 and attracts duties as BCD @ 200% & SWS @ 10% with IGST @18%. The duty calculation on the said imported goods is as under;

Table-A

BE No & date	Description of Goods	Qty (Kgs)	Declared FOB Value (in Rs.)	Declared Duty Payable (in Rs.)	Revised Duty payable * (in Rs.)
9659743 dated 21.11.2020	Stainless Steel Melting Scrap Grade 2205	45075	62,70,834/-	13,32,239/-	1,74,07,835/-

* **[BCD @200%: 1,25,41,668/- + SWS@10%: 12,54,167/- + IGST@18%: 36,12,000/- = 1,74,07,835/-]**

7. Relevant Provisions of Law:

The relevant provisions of law pertaining to import of goods in general, the policy & rules relating to imports, the liability of the goods to confiscation and the persons concerned to penalty for illegal importation under provisions of Customs Act, 1962 and the other laws for the time being in force are summarized as under:

Notification No.05/2019-Customs dated 16.02.2019:

G.S.R. .....(E). – WHEREAS, the Central Government is satisfied that the import duty leviable on all goods originating in or exported from the Islamic Republic of Pakistan, falling under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), should be increased and that circumstances exist which render it necessary to take immediate action.

NOW, therefore, in exercise of the powers conferred by sub-section (1) of section 8A of the Customs Tariff Act, the Central Government, hereby directs that the First Schedule to the Customs Tariff Act, shall be amended in the following manner, namely:-

In the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, after tariff item 9805 90 00 and the entries relating thereto, the following tariff item and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
9806 00 00	All goods originating in or exported from the Islamic Republic of Pakistan	-	200 %	-

SECTION 17 Assessment of duty *— (1) An importer entering any imported goods undersection 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such*

goods.

SECTION 46 Entry of goods on importation *(4) The importer while presenting a bill of entry stall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.*

SECTION 28 Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -

(a) collusion; or
(b) any willful mis-statement; or
(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

Explanation- For the purposes of this section, "relevant date" means,-

(a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in n case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.

SECTION 28AA Interest on delayed payment of duty *— (1) Notwithstanding any thing contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to paid interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.*

(2) Interest at such rate not below ten per cent and not exceeding thirty -six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

SECTION 111 Confiscation of improperly imported goods, etc. *- The following goods brought from a place outside India shall be liable for confiscation:*

...

(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 section54.

...

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

(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, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;

(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 219 [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 220 [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 114A. Penalty for short-levy or non-levy of duty in certain cases. *- Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:*

Provided *that where such duty or interest, as the case may be, 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 the 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 duty or interest, as the case may be, so determined:*

Provided *further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :*

Provided *also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:*

Provided *also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case*

may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

***Provided** also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.*

***Explanation.** - For the removal of doubts, it is hereby declared that -*

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

***SECTION 114AA** Penalty for use of false and incorrect material. —If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]*

***SECTION 117 Penalties for contravention, etc., not expressly mentioned** - Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shrift be liable to a penalty not exceeding ten thousand rupees.*

8. Contravention of Provisions:

8.1. In terms of Section 46(4) of the Customs Act, 1962, the importer, while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry. Further, in terms of Section 46(4A), the importer who presents a bill of entry shall ensure the accuracy and completeness of the information given therein, the authenticity and validity of any document supporting it and compliance with restriction or prohibition, if any, relating to the goods under this act or under any other law for the time being in force.

8.2. The impugned bill of entry was self-assessed by the importer in terms of Section 17(1) of the Customs Act, 1962. If the goods are of UAE Origin the goods attracted BCD @2.5 %, however, the goods appeared to be Pakistan Origin; therefore, the imported goods shall attract BCD@ 200% with applicable SWS @ 10%

and IGST @ 18%.

8.3. From the above discussed facts and statutory provisions, it appeared that the imported goods i.e., "Stainless Steel Melting Scrap Grade 2205" classified by the importer under CTH 72042190 are originated from Pakistan and is classifiable under CTH 98060000 which attract higher rate of BCD@200%. Therefore, the imported goods appeared to be liable for confiscation under Section 111(m) of the Customs Act, 1962 and required to be seized under Section 110 of the Customs Act, 1962. However, as the goods are not available for seizure, the same could not be seized, but the importer appeared liable for penal action under Section 112 of the customs Act, 1962. Further, the total duty payable, as detailed in Table-A at para6, amounting to **Rs. 1,74,07,835/- (BCD@200%; SWS@10% & IGST@18%)** ***(Rupees One Crore Seventy Four Lakh Seven Thousand Eight Hundred and Thirty Five only)*** as per notification no. 05/2019-Customs dated 16.02.2019, seem required to be recovered from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. Further, the duty amounting to **Rs. 13,32,239/-** paid by the importer at the time of clearance of goods, may be appropriated against the duty demanded. The importer appeared well aware of the facts that the goods stuffed in said containers were originated from Pakistan and that the said containers were not opened on the route to Mundra Port, India. Hence, it appeared that the importer knowingly and intentionally made incorrect declaration for the COO of the goods with a wilful intension to evade payment of duty applicable on the goods Originated from Pakistan and Imported to India; therefore, the importer M/s. Alang Auto General Engg. Co. (P) Ltd. rendered themselves liable for penalty under Section 114A of the Customs Act, 1962 for short payment of duty on the importation of Pakistan originated goods.

8.4. Further, it appeared that the importer knowingly and intentionally made incorrect declaration for the COO and made mis-declaration of the goods in terms of classification and applicable duties on the with a willful intension to evade payment of appropriate customs duty leviable on the imported goods; Further, the importer has also submitted pre-shipment inspection certificate which appeared bogus as the containers were not opened and goods were not examined by the inspection certificate agency based in UAE. Hence, the importer rendered them liable for penalty under Section 114AA for submitting false and incorrect material.

8.5. Further, it appeared that it was in the knowledge of M/s Hub & Links Logistics (I) Pvt. Ltd., Gandhidham who did not use due diligence to find the correct fact that the goods were loaded at Karachi Port and filed Bill of lading provided by the Load Port Shipping line which shows goods loaded at Jebel Ali and therefore, it appeared that by their said act of omission and commission there led to evasion of duty and caused loss to Government revenue, M/s Hub & Links Logistics (I) Pvt. Ltd., Gandhidham has rendered themselves liable for imposition of penalty under Section 117 of Customs Act, 1962.

8.6. Further, the PSIA M/s. Ravi Energie Pvt. Ltd. also not responded to the summons/correspondence and have not clarified the matter, whether the Pre-shipment Inspection Certificate has been issued by them or otherwise. Moreover, the PSIA has also issued pre-shipment inspection certificate which appears bogus as the containers were not open and goods were not examined by them based in UAE. Hence, the PSIA rendered them liable for penalty under Section 114AA for submitting/issuing false and incorrect material and thereby involved themselves by helping in evasion of duty.

9.1. In view of the above, a Show Cause Notice bearing F.No. GEN/ADJ/COMM/56/2024-Adjn-O/o Pr Commr-Cus-Mundra was issued to importer **M/s. Alang Auto General Engg Co (P) Ltd.** (IEC-2405003112), CM-458, "Rukmanikunj", Near Virani School, Kalibid, Bhavnagar-364002, wherein the importer was called upon to show cause to **the Pr. Commissioner of Customs**, Customs House, Mundra having his office situated at 1st Floor, Custom House, PUB, Mundra, within thirty days from the receipt of this notice as to why:

i. 45075 Kgs of "Stainless Steel Melting Scrap Grade 2205" imported in Container No(s). PRSU2141199 and PCLU2010527covered under BL No. SASLMU20841 dated 12.11.2020, & BE No. 9659743 dated 21.11.2020 valued at **Rs.62,70,834/- *(Rupees Sixty Two Lakhs Seventy Thousand Eight Hundred and Thirty Four Only)*** should not be confiscated under Section 111 (m) of the Customs Act, 1962.

ii. Classification of 45075 Kgs of "Stainless Steel Melting Scrap Grade 2205" as detailed above at point no. (i) under Chapter Tariff Heading No. 72042190 should not be rejected & the same should not be classified under Chapter Tariff Heading No. 98060000 of the Customs Tariff Act, 1975.

iii. The Customs Duty of **Rs. 1,74,07,835/- (BCD@200%; SWS@10% & IGST@18%) *(Rupees One Crore Seventy Four Lakh Seven Thousand Eight Hundred and Thirty Five only)*** should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962. Further, the Customs Duty of **Rs. 13,32,239/- *(Rupees Thirteen Lakhs Thirty Two Thousand Two Hundred Thirty Nine only)*** already paid by the importer against the said Bill of Entry should not be appropriated.

iv. Interest at appropriate rate should not be charged and recovered from them under the provisions of Section 28AA of the Customs Act, 1962 at amount mentioned at sr. no. (iii) above.

v. Penalty should not be imposed upon them under the provisions of Section 112 and/or 114A of the Customs Act, 1962.

vi. Penalty should not be imposed upon them under the provisions of Section 114AA of the Customs Act, 1962.

9.2. Vide above Show Cause Notice dated 31.01.2024 **M/s Hub & Links Logistics (I) Pvt. Ltd.**, Suite No.101, Rishabh Arcade, Near to GST Bhawan, Plot No.83, Sector-8, Gandhidham- 370201, the Shipping Line Agent was also called upon to show cause to the Pr. Commissioner of Customs, Mundra having his office at 'Custom House', 1st Floor, Port User Building, Mundra, within 30 days of the receipt of this Notice as to why;

(i). Penalty should not be imposed upon them under the provisions of Section 117 of the Customs Act, 1962.

9.3. Vide above Show Cause Notice dated 31.01.2024, **M/s Ravi Energie Pvt. Ltd. (HQ Asia Pacific & Africa)**, the Pre-shipment Inspection Agency are was also called upon to show cause to the Commissioner of Customs, Mundra having his office at 'Custom House', 1st Floor, Port User Building, Mundra, within 30 days of the receipt of this Notice as to why;

(i) Penalty should not be imposed upon them under the provisions of Section 114AA of the Customs Act, 1962.

10. DEFENCE SUBMISSION

10.1 M/s. Alang Auto General Engg Co (P) Ltd vide letter dated 06.04.2024 submitted their written submission which is reproduced as below:

10.1.1 The Noticee references communications between the department and the shipping line agent, M/s Hub & Links Logistics (I) Pvt. Ltd., Gandhidham, as part of the investigation process. In pursuit of load port documents, the department issued a summons to the aforementioned agent on 4 February 2022.

Further to this, on 22 February 2022, a statement was recorded under Section 108 of the Customs Act, 1962, from Shri Sajish Sivaraj, General Manager of M/s Hub & Links Logistics. In his deposition, Shri Sivaraj confirmed their role as the delivery agent for the containers in question. He detailed the transportation route of the containers, specifying their loading from the Port of Karachi to Jebel Ali aboard the vessel BOTANY BAY, under Bill of Lading No. SASLMU20841 dated 05 November 2020, followed by their transshipment from Jebel Ali to Mundra on the vessel OEL JUMEIRAH. He also produced Bill of Lading documents dated 05 November 2020 and 12 November 2020, asserting that the containers remained sealed in Jebel Ali and were transshipped to Mundra as received from Karachi without being opened for any purpose. It is pertinent to note that there was a change in the shipping line., Karachi to Jabel Ali through CIM shipping Inc and Jabel Ali to Mundra by Shah Aziz Shipping lines LLC.

In light of Shri Sajish Sivaraj's statement, the Noticee expresses a desire to

cross-examine him to further clarify the circumstances surrounding the transportation and handling of the containers. This cross-examination is sought to scrutinize the consistency and accuracy of the information provided in his statement, which is critical to the Noticee's defense against the allegations made in the Show Cause Notice. A copy of Shri Sajish Sivaraj's statement has been appended as Exhibit-"B" to support the Noticee's submissions and facilitate the requested cross-examination.

10.1.2 In response to summons issued on 23 March 2022, the importers delegated Shri Parth Labhshankar Jani, Manager, with the authority to furnish details pertinent to the Bill of Entry under scrutiny to the department. Furthermore, in a proactive effort to substantiate their compliance and transparency, the importers submitted additional documentation to the department on 08 April 2022. This submission included:

1. Printed copies of email communications with their commission agent,of the supplier M/s Rizmet International Pvt. Ltd., which are expected to shed light on the negotiation and procurement process of the goods in question.

2. A copy of the sales contract with the supplier, which outlines the terms and conditions agreed upon for the transaction of the goods, thereby providing a contractual basis for the importation.

3. A copy of the Pre-shipment Inspection Certificate (PSIC) issued by M/s Ravi Energie Gulf FZC, referred to as "the said Inspection Agency." This document is critical in demonstrating compliance with quality and safety standards as required by regulatory authorities for the importation of goods.

These documents were provided with the intent to transparently demonstrate the legality and legitimacy of the importation process, and to address any concerns regarding the authenticity and procedural compliance of the import transaction. The inclusion of these documents in the response to the department's inquiries is a testament to the importer's commitment to maintaining a lawful and transparent import operation.

10.1.3 Statement of Shri Parth Labhshankar Jani, Manager of the said importer (Statement of Shri P.L. Jani is at Exhibit-"C") is said to have been recorded under Section 108 ibid on 11.04.2022, wherein, inter alia, he is said to have stated that they have not appointed M/s Ravi Energie as Inspection Agency and have not made any payment for inspection of the said goods ; that they had no idea about Bill of Lading No. SASLMU208841 dated 05.11.2020 (Karachi to Jebel Ali) or whatever has been stated by General Manager of M/s Hub & Links Logistics ; that it appears that the container numbers and respective seal number in both the bill of lading are same and it appears on the website of PICT the container numbers are tracked with seal numbers and it appears that the goods and both the containers originated from Karachi, Pakistan, however, Certificate of Origin. It is pertinent to point out some

depositions made by Shri P.L. Jani in his said statement which part is not reproduced in the show cause notice, but which is very relevant to know. The officer had asked Shri Jani that from his answer to Question No.5 it appears that he means to say that, statement of Shri Sajish Shivraj of M/s HUB Links & Logistics, and Bill of Lading No. SASLMU20841 dated 05.11.2020 for movement of goods in containers in question from Karachi to Jebel Ali UAE, is false and he was asked to tell the name of person from the importer who is having idea about the same. Shri Jani replied in affirmation that Yes, he had no idea whether the said statement and bill of lading for movement of goods from Karachi to UAE are correct or not. He also deposed that no one else in the importer company is having any idea about the movement of goods from Karachi to Jebel Ali. The next question of the officers was showing Shri Jani Bill of Lading dated 05.11.2020 and showing him container numbers and seal numbers and thereafter showing him Bill of Lading dated 12.11.2020 and again showing him container numbers and seal numbers in this Bill of lading. Then he was asked to state if both the Bills of Lading contain the same container numbers and same seal numbers how the PSIA has conducted inspection and why the said PSIC should not be considered as forged. Shri Jani replied that he did not have any idea how the pre shipment is done by M/s Ravi Energie Gulf FZC and as per his knowledge and that the certificate of pre inspection issued by the Agency is in the name of their company he believes it to be correct. Then on being shown the tracking of both the containers with seal numbers on the website of PICT, Karachi, Shri Jani deposed that on seeing the website and tracking of these containers, it appears that the goods and both the containers are from Karachi, Pakistan. The important point to make here is that there is no independent evidence with the department except that the containers and seal numbers mentioned in both the Bills of Lading are the same and this leads the department to believe that the goods were not loaded into the containers from Jebel Ali, UAE and that the goods are of Pakistan origin.

10.1.4 Similarly, statement of Shri Aftab Kundan, Director of M/s Rizmet International Pvt. Ltd., dealing agent on 09.05.2022 wherein he has inter alia said to have deposed that they had executed one deal between the importer for import of stainless steel melting scrap grade 2205 vide the said two containers ; that from the documents submitted by M/s Hub Links & Logistics (I) Pvt. Ltd., it appears that the goods are from Karachi, Pakistan ; that it appears on the website of PICT the container numbers are tracked with seal numbers and it appears that the goods and both the containers originated from Karachi, Pakistan . The importer would like to cross examine Shri Aftab Kundan, Director of the selling agent. (Statement of Shri Kundan is at Exhibit-"D").

10.1.5 In paragraph 3.7 of the Show Cause Notice, the department references the importers' letter dated 08 April 2023 and statements made on 11 April 2022,

wherein the importers unequivocally stated that they had not engaged M/s Ravi Energie FZE for the inspection of the imported goods, nor had they incurred any inspection charges. In pursuit of validating the importers' claim, the department issued summons on 18 April 2022 and again on 10 January 2024 (nearly two years later) to M/s Ravi Energie Gulf FZE, seeking their participation and testimony in the matter. Notably, M/s Ravi Energie Gulf FZE did not respond to either summons by appearing before the department to provide evidence.

This situation raises a significant concern, especially in light of the department's previous experiences. In a similar case, the department successfully located M/s Ravi Energie P. Ltd., based in Vadodara, and obtained a statement from Smt. Smita Mahender Kumar Joshi, a Director of the company, on 11 April 2022. The ability of the department to engage with M/s Ravi Energie P. Ltd. in one instance, yet face difficulties in procuring cooperation from M/s Ravi Energie Gulf FZE in the current case, underscores a puzzling inconsistency in the department's investigatory efforts regarding Pre-Shipment Inspection Agencies (PSIAs).

This discrepancy points to a potential gap in the investigatory process, raising questions about the thoroughness and reach of the department's efforts to substantiate claims and gather relevant evidence. It suggests a need for a more concerted and effective approach to investigating the roles and responses of PSIAs in importation processes, particularly when allegations of non-compliance and discrepancies in documentation and procedures arise.

The Show Cause Notice draws attention to the department's attempts to verify the inspection activities of the Pre-Shipment Inspection Agency (PSIA), as mandated by Para 2.56 of the Handbook of Procedures (2015-2020), which outlines the "Responsibility and Liability of PSIA, Importer, and Exporter." According to the notice, the department reached out to the said Inspection Agency via email on 18 April 2022 and again on 10 January 2024, requesting specific details of the inspection process undertaken by them, supported by photographs or videos as evidence. However, these inquiries did not elicit any response from the Inspection Agency.

The lack of response from the PSIA, especially in light of allegations of document fabrication, raises significant concerns about the effectiveness of the department's investigative efforts. By concluding the investigation with merely issuing emails to the agency implicated in the alleged discrepancies, the department may have inadvertently allowed the PSIA to avoid scrutiny. This situation underscores a potential oversight in the department's approach to investigating and holding accountable entities suspected of malpractice. While the department successfully interacted with M/s Ravi Energie P. Ltd. in Vadodara, including obtaining a statement from its director Smt. Smita Mahender Kumar Joshi on 11 April 2022, it has struggled to secure cooperation from M/s Ravi Energie FZE in a current investigation. There is no action initiated by the Customs department or

there is any recommendation by the Customs department to DGFT for cancellation of the authorization of M/s Ravi Energie Pvt. Ltd., and M/s Ravi Energie Gulf FZE for allegedly issuing fake PSIC and not responding to the summons issued by the Customs department. It is pertinent to mention that M/s Ravi Energie Inc has been approved as PSIA for UAE vide Public Notice No. 34/2015-2020 dated 03.11.2022 by the DGFT and it is none other than M/s Ravi Energie Gulf FZE. This inconsistency highlights issues in the department's approach to investigating PSIAs. It is pertinent to note that Customs department or the DGFT did not initiate action against the PSIA .Thus, in light of the above ,the Noticee would like to cross examine the investigating officer.

10.1.6 The importer would like to submit that the very basis of the investigation in the present case is required to be put to a scanner. The importer would like to refer to RUD at sr.no.2 of Annexure-A which is described as a document, it is basically a screenshot of tracking of container available at PICT website. The said screenshot is a part of communication which is labeled as "Confidential/Urgent Risky consignment from Pakistan at Mundra Port – 1 Message. The so called screenshots are unclear, vague and lack authenticity.

This is a copy of email correspondence made by the Additional Director General, NCTC with the top authorities posted in Customs department at Mundra Port and Ahmedabad office. The email states that based on detailed risk analysis (there is no specific intelligence received by the department), the NCTC has identified following risky consignments at Mundra Custom House in relation to mis-declaration of country of origin of goods. It would kindly be appreciated that this is just depending on the data analysis made by the computer software that the NCTC short listed certain consignments and alleging mis-declaration of Country of Origin as declared by the importers. The table annexed in the email describes the Country of Origin as declared by the importers which in all the cases is UAE. However, it is nowhere mentioned in the email as to what is the actual Country of Origin of the goods. The last column given in the table annexed to the email is "seal number on PICT". Therefore, it is very obvious that the department is trying to assume only on the basis of container seal number declared in ICES and the one seen on PICT being the same.

The importer would like to say and submit that the department has failed to prove that the subject goods were originating from Pakistan or were exported from Pakistan. Attention is drawn to Notification No.5/2019-Cus dated 16.02.2019 as per which import duty leviable on all goods originating in or exported from the Islamic Republic of Pakistan should be increased to 200%. The essential requirement to impose tax or duty @ 200% is to prove or the satisfaction about the fact that the goods have been originating in from Pakistan or exported from Pakistan. The department has nowhere shown that the goods on which duty @ 200% is being demanded from the importer were actually the goods originating from Pakistan or

exported from Pakistan. Merely establishing that the container number and seal number were same is not sufficient to establish pro nature of the goods itself to have been originating from Pakistan or imported from Pakistan. Therefore, the department is required to prove that the goods contained in these containers were originating from Pakistan or they were exported from Pakistan.

So far as the origin of the goods within these containers is concerned, the importer has provided the evidence in the form of photographs supplied by the supplier which exhibit empty containers, containers being loaded, etc., which prove that the scrap in question was loaded from Jebel Ali Port in UAE. Next condition required to attract provisions of the said notification is that the goods exported should have been exported from Pakistan. The department has not been able to prove that the goods within these containers were exported from Pakistan. It is an unrebuttable fact that the goods have been exported to Mundra Port from Jebel Ali Port of UAE. There is no evidence that we have made any payment for the goods to any supplier of Pakistan. There is documentary evidence about the payment made by the importer to the supplier against the documents through bank on 20.11.2020 vide Swift Ref No.017030002580120 dated 20.11.2020.

Therefore, it is submitted that the demand of duty @ 200% is not sustainable vide the present show cause notice.

Falling back to the email of Additional Director General, NCTC, we would submit that the entire exercise of the department is futile

It will kindly be seen that in the entries relating to Alang Auto & General Engg. Co. (P) Ltd., second last and third last rows, the seal number shown in last two columns which are showing Container seal number in ICES and seal number on PICT is the same for both the containers viz., 95878. For Container No. PCLU2010527 the seal number is 95878 and for Container No. PRSU2141199 also the seal number is 95878. There cannot be the same seal used on both the containers. This analysis is not done manually so there are no chances of any manual error. The email clearly states that this is based on detailed analysis, the NCTC has identified these containers. There cannot be a typographical error or a clerical error as the message has emanated from the top most authorities of the Customs department. This raises serious doubt on the genuineness of the data contained in the email. Since the data is itself suspicious, the entire exercise which has been carried out by the department for demanding duty @ 200% from the importer is also highly jeopardized and cannot be upheld.

The conclusion drawn by the department, as detailed in paragraph 4.3 of the Show Cause Notice that the goods imported to Mundra port originated from Pakistan stems from what appears to be a notably limited investigation. This observation is particularly concerning given the department's failure to extend its inquiry to the supplier, a party that, according to Para 2.56 of the Handbook of Procedures (HBP), shares responsibility and liability along with the PSIA, importer, and exporter. The

absence of any effort to issue summons to or otherwise engage with the supplier to ascertain the veracity of the facts concerning the exportation of the goods in question marks a significant oversight in the investigative process.

This lack of thoroughness in the investigation not only undermines the credibility of the department's conclusions but also fails to uphold the principles of due diligence and comprehensive scrutiny expected in such regulatory inquiries. By not seeking out all relevant parties and information, the department's efforts fall short of ensuring that all aspects of the case are adequately explored and that any conclusions drawn are firmly grounded in a full spectrum of evidence.

Such an approach highlights the necessity for a more exhaustive and diligent investigation that includes engagement with all stakeholders implicated in the importation process. Without such an effort, the reliability of findings and the fairness of any subsequent actions taken based on those findings may be called into question. Thus, in light of the above, the Noticee would like to cross examine the investigating officer.

10.1.7 Further, Noticee has produced Trade Notice No.03/2022-23 dated 26.04.2022 and procedure for verification of PSIC.

10.1.8 The crux of the issue lies in the importer's limited capacity to verify the authenticity of PSICs beyond the assurances provided by the issuing agencies and the supposed validation by regulatory bodies. Without access to a mechanism or tool that allows for independent verification of these documents' authenticity, importers are at a significant disadvantage and potentially exposed to regulatory penalties through no fault of their own.

This scenario underscores the necessity for a more robust, transparent, and accessible verification system that empowers all stakeholders, including importers, to confirm the genuineness of essential documents like PSICs. It also highlights the need for regulatory bodies to enhance their oversight and verification processes to prevent lapses that could lead to the acceptance of bogus documents, thereby protecting the integrity of the importation process and safeguarding the interests of compliant importers.

The undersigned respectfully submits that the Trade Notice explicitly mandates the online issuance of Pre-Shipment Inspection Certificates (PSIC) effective from 1st July 2022, a requirement similarly articulated in paragraph 2.52 of the Handbook of Procedures (HBP) 2015-2020. It is pertinent to note that the Pre-Shipment Inspection Agency (PSIA), being directly appointed by the exporter, holds primary accountability for any inaccuracies or misdeclaration contained within the PSIC. Consequently, the liability of the exporter arises secondary to that of the PSIA. Importantly, the importer bears no responsibility for discrepancies or the authenticity of the PSIC, as the importer relies solely on the documents furnished by the supplier for submission alongside the bill of entry. Therefore, it is submitted that the allegations levied in the subject show cause notice are unfounded and lack

a substantive basis.

In paragraph 4.4, the allegations suggest a failure on the part of the importer to provide explicit clarification regarding the tracking of the container with the same seal number on the PICT website. It is crucial to highlight that during his deposition, Shri Parth L. Jani, the Manager of the importing entity, unequivocally stated their unawareness of the goods being sourced from Pakistan. This testimony underscores the absence of any intent or knowledge on the part of the importer concerning the origin of the goods, thereby challenging the premise of the allegations made.

The show cause notice accuses the importer of submitting a Pre-Shipment Inspection Certificate (PSIC) that is purportedly fictitious and void, on the grounds that the containers were neither unsealed nor inspected at Jebel Ali, and the sealed containers were transshipped from Jebel Ali to Mundra without undergoing the requisite inspection as stipulated in the Foreign Trade Policy. This assertion fails to consider the importer's reliance on the integrity and authenticity of documents provided by the supplier, including the PSIC. The importer's role, fundamentally, is to ensure compliance with regulatory requirements through the submission of these documents at the time of entry. The allegation overlooks the procedural adherence by the importer to the stipulated norms and the inherent expectation of genuineness in the documents received from the supplier.

10.1.9 The importer wishes to assert that the motivations behind importing the specified goods from Pakistan have not been elucidated by the department. It is important to highlight that these goods are readily available globally, rendering the choice to import specifically from Pakistan as commercially unfeasible, particularly considering the significant customs duties applicable to such imports. Furthermore, the importer had no economic or logistical rationale to route the goods through the UAE if the intent was to evade customs duties, especially given that container movements could be readily monitored via the PICT website. The **department has not presented any allegations suggesting mens rea, or intent to commit wrongdoing**, on the part of the importer concerning.

The department's investigation lacks a comprehensive examination at both the supplier's and the Pre-Shipment Inspection Agency's (PSIA) levels. Despite the meticulous selection process for appointing a PSIA, the expectation remains that such agencies operate with integrity. If the agency in question issued fraudulent pre-shipment certificates, it is unreasonable to expect the importer to have knowledge of the goods being sourced from a country other than the UAE, especially when the sales order explicitly stated the goods would originate from the UAE. This situation underscores a significant gap in the oversight and accountability mechanisms expected of appointed agencies, absolving the importer of responsibility for the origins of the goods as described in the documents provided by the supplier.

The department's reliance on the statement of Shri P.L. Jani, the Manager of

the importer, is noteworthy, as he unequivocally stated unawareness of the goods' origin from Pakistan. Furthermore, Shri Jani's confusion regarding the explanations offered by Shri Sivaraj, General Manager of the dealing agent, about the containers' transshipment from Karachi to Jebel Ali and then to Mundra without any opening or loading at Jebel Ali, raises significant questions about the communication and procedures followed by the dealing agent. Given these circumstances, the importer requests the opportunity to cross-examine Shri Sivaraj. This request is rooted in the need to clarify the sequence of events and the handling of the containers, as well as to scrutinize the accuracy and completeness of the information provided by the dealing agent. This cross-examination is deemed crucial for establishing a transparent and thorough understanding of the situation, thereby allowing for an informed assessment of the allegations made. The importer would like to cross examine Shri Sivaraj, General Manager of dealing agent.

The importer wishes to submit into evidence an email dated October 28, 2020, sent by the sales agent, M/s Rizmet International Pvt. Ltd., which includes a sales confirmation (Reference No. RMI-ALJ-20102401) dated October 24, 2020, from the supplier, M/s Al Julnar. This sales confirmation explicitly states the United Arab Emirates (UAE) as the country of origin for the goods in question. Attached to this submission as Exhibit-E, collectively, are both the sales confirmation and the sales contract dated October 28, 2020. This documentation is critical, as it substantiates the importer's assertion that the goods were represented and believed to be originating from the UAE, thereby challenging any claims to the contrary regarding the goods' origin. The submission of these documents serves to clarify the importer's understanding and expectations based on the information provided by the sales agent and supplier at the time of the transaction. **Copy of Sales Confirmation and Sales Contract dated 28.10.2020 annexed as Exhibit-E colly.)**.

The draft Bill of Lading sent on email by the supplier to the importer shows Port of Loading Jebel Ali. **(Copy Bill of Lading attached as Exhibit-"F" colly)**.

The importer vide email dated 07.11.2020 to the agent requested to send other documents. The agent of supplier vide email dated 11.11.2020 send loading photographs. **(Copy attached as Exhibit-"G" colly.)**.

The agent of the supplier vide email dated 13.11.2020 sent various documents such as, Freight Certificate, certificate of chemical analysis, etc., to the importer and also requested the importer to provide courier address to dispatch PSIC. **(Copy attached as Exhibit-"H")**

The said supplier had issued Invoice No.786/CMTFZE-76/20-21 dated 12.11.2020 **(Copy of Invoice with Packing List and other documents collectively annexed as Exhibit-"I" colly.)**

In the column relating to description of goods it only mentions Stainless Steel Melting Scrap Grade 2205 and mentions the 2 container numbers. It is specifically mentioned Country of Origin as Jebel Ali, U.A.E in the invoice. The Port of Loading

is shown as Jebel Ali, UAE. This means that the said goods have been loaded at the port of Jebel Ali, UAE. If the fact was different, the supplier was the responsible person as the importer would not have known this fact from the said invoice. The invoice is supported by Packing list and Certificate of Origin. In the Certificate of Origin, the supplier has certified that this shipped materials are UAE origin. There is a Test Certificate issued by the supplier stating that the goods shipped in the below mentioned containers (2 containers in question) are as per the actual specification of the materials. Now in this certificate there is a reference to Purchase Order and the goods shipped in these containers are as per actual specification mentioned in the P.O. The Purchase Order clearly states that the goods to be supplied by the supplier should be of UAE origin. The Freight Certificate shows that supplier has paid freight from UAE to Mundra. The FORM-6 and FORM-9 which is a Transboundary Movement Document in the column no.2 "Waste Generator's Name and site of generation" the supplier has mentioned their name and address. This shows that waste was generated in UAE. Hence, there cannot be any thought about it being brought from Pakistan. In the document named "Steel Import Monitoring System" there is a column to mention Manufacturer Country, in which it is mentioned UAE.

Then there is Pre shipment Inspection Certificate which was supplied in original to the importer by the agent of the supplier on 17.11.2020 by Maruti Courier Tracking No. 20202200360618. Certificate No. 052/AJUL-RN/NFAA1167.2020 dated 30.10.2020. This certificate shows Country of inspection: UAE and place of inspection as Jebel Ali, UAE. **(Copy of PSIC is at Exhibit-"J")**

Be that as it may, assuming without admitting that the supplier had supplied the goods originating from Pakistan and these goods were liable for Customs duty @ 200%. The importer would again like to say and submit that the goods were examined by the Customs officers at Mundra before giving out of charge. The officers also did not find any evidence to believe that the goods were originating from Pakistan. So in the given facts and the documentary evidences, the importer could least be expected to know the country of origin of goods being of Pakistan.

Now, since the goods have been cleared from Customs on payment of proper duty and used in recycling, it is not feasible for the importer to pay the differential Customs duty as is being demanded qua the present show cause notice as it will cause huge financial loss to the importer.

10.1.10 The provisions of **Section 28(4) of the Customs Act, 1962 are not applicable to the facts and circumstances in the present case.** There is no collusion between the importer and supplier for sending the goods originating from Pakistan in the guise of goods originating from UAE. This fact is not proved from whatever little documentary evidence has been produced on record by the department. There is no allegation in the show cause notice that the importer had any extra benefit of using scrap of Pakistan origin instead of UAE origin. The

importer is giving in the subsequent paragraphs the quantum of scrap purchased every year from UAE and there has not been a single case booked by the department for evasion of Customs duty or the importer having imported scrap of Pakistan origin in the guise of UAE.

10.1.11 There is no wilful mis-statement on the part of the importer. The bill of entry has been filed on the basis of documents received from the supplier. The Pre-Shipment Agency Certificate has been furnished as received from the supplier. The importer has been provided all the documents by the supplier including the photographs showing goods being loaded on the containers which disprove the theory of the department that 2 containers in question were not unloaded and loaded at Jebel Ali port in UAE.

10.1.12 There is no suppression of facts by the importer or their employees, as the photographs clearly show that the containers are empty and then loaded at Jebel Ali Port. Even otherwise, based on the documentary evidences provided by the supplier, there was nothing which could have led the importer believe that the goods were originating from Pakistan and therefore there is no question of importer having suppressed any facts from the department.

In fact, the importer would like to allege that the departmental agencies have failed to perform their duties well. The containers tracking was not the responsibility of the importer, as the importer had no idea of these 3 containers being transhipped to India via UAE, if the story of the department is to be believed which is based only on the basis of the fact that the container numbers and seal numbers were the same.

The NCTC has tracked the containers and informed the department after more than a year of containers having been cleared out of charge by Customs, now if the NCTC could track the containers after the clearance of goods from Customs, why this could not have been done by NCTC before the containers reached Mundra Port.

On the above basis, the department issued first summons on 04.02.2022 and the Show Cause Notice is issued on 31.01.2024, almost 2 years after the department gained knowledge about short payment of Customs duty. It is a trite of law that the department has to issue show cause notice within one year of detection of offence. The period of five years is not available to the department for investigation and issuance of notice, but five years period is to cover the extended period for demanding duty short paid or not paid. We would like to place reliance on the decision of the Honorable Tribunal which is based on various judgments pronounced by the Honorable Apex Court, the decision is in the case of Advanced Spectra Tek Pvt. Ltd. Reported in 2019 (369) ELT 871 (Tri-Mumbai) wherein delayed demand notice issued has been set aside. Therefore, the demand notice is time barred in this case also.

The importer respectfully points out that the department's issuance of the

show cause notice on January 31, 2024, nearly two years subsequent to the first summons on February 4, 2022, raises significant legal questions regarding timeliness. As per established legal precedent, it is mandated that the department must issue a show cause notice within one year from the discovery of the alleged customs duty shortfall, highlighting a discrepancy in adherence to procedural timelines in this case.

This distinction is critical, as the statutory period of five years is intended to encompass the extended timeframe for the recovery of duties not paid or short-paid, and not for the protraction of investigative or notice issuance processes. In support of this argument, the Noticee wishes to draw attention to a pertinent decision by the Honorable Tribunal in the case of Advanced Spectra Tek Pvt. Ltd., reported in 2019 (369) ELT 871 (Tri-Mumbai). This ruling, reinforced by various judgments from the Honorable Apex Court, decisively set aside a delayed demand notice on the grounds of it being time-barred.

Given the precedence established by the aforementioned decision, the Noticee argues that the demand notice in the present case similarly falls outside the permissible statutory period and is, therefore, legally untenable. This assertion rests on the principle that procedural timelines are integral to ensuring fairness and certainty in legal processes, thereby safeguarding the rights of the parties involved against undue delay.

The Noticee wishes to highlight the substantial volume of imports undertaken in previous years to contextualize the current allegations. Specifically, the records indicate that the Noticee procured 3,154.124 metric tons (MT) of scrap across 136 containers in the fiscal year 2019-20, 1,856.819 MT in 84 containers during 2020-21 (inclusive of the 2 disputed containers totaling 45.075 MT), 1,463.189 MT in 66 containers for 2021-22, and a significantly larger quantity of 10,433.218 MT in 433 containers for the year 2022-23. It is pertinent to note that, throughout these transactions, there has been no prior instance of the department raising concerns regarding customs duty evasion by the Noticee.

The disputed consignment, consisting merely of 45.075 MT, represents a fraction of the importer's typical volume of trade, underscoring the lack of motive for duty evasion on such a negligible quantity, especially when considered against the backdrop of the importer's substantial and compliant import history. This argument is put forth to challenge the notion that the Noticee would engage in elaborate schemes to evade customs duties on a relatively minor shipment, thus calling into question the basis and rationale of the allegations pertaining to this specific consignment. The importer's consistent compliance history and the proportional insignificance of the disputed consignment strongly suggest that the motive attributed to the Noticee for duty evasion lacks both logic and evidentiary support.

Given the outlined facts, it becomes manifest that the allegations of collusion, fraud, or willful misstatement by the Noticee are unfounded. The crux of the

department's case hinges on the tracking of container seal numbers via the PICT website, from which an assumption was made that the containers did not originate from the port of Jebel Ali, UAE. This assumption led to the application of the extended period under Section 28(4) of the Customs Act for the demand of duty on goods cleared on November 24, 2020. However, this invocation of the extended period is questionable since the normal statute of limitations has already elapsed, rendering the demand for duty time-barred.

Furthermore, the department's reliance on the statement of the importer's Manager, recorded under Section 108 of the Customs Act, to issue the show cause notice inadvertently makes this statement binding on the department itself. According to this statement, the Noticee was unaware of any misconduct by the supplier regarding the origin of the goods. This unawareness negates any possibility of collusion with the supplier, willful misstatement, or suppression of facts by the Noticee. Consequently, the extended five-year period for demanding duties on unassessed goods does not apply in this case, as the normal two-year period from the relevant date had expired prior to the issuance of the show cause notice.

In support of these arguments, the Noticee intends to cite various legal precedents established by courts, including the Tribunal, asserting that the criteria for invoking the extended period are consistent across Customs, Central Excise, and Service Tax laws. Thus, judgments pertaining to any of these duties are applicable to the others. It is crucial to emphasize that the provisions for the extended period should only be applied in exceptional cases where there is a deliberate intent to evade tax, as per the landmark judgment by the Honorable Supreme Court in the case of Tamil Nadu Housing Board reported in 1994 (74) E.L.T. 9 (SC). The pertinent extract from this judgment, underscoring the necessity of a clear intent to evade duty for the application of the extended period, reads as follows:

"3.Section Excise Officer to initiate proceedings 11A of the Act empowers the Central where duty has not been levied or short-levied within six months from the relevant date. But this period to commence proceedings under proviso to the Section stands extended to five years if the duty could not be levied or it was short-levied due to fraud, collusion, wilful misstatement or suppression of facts etc. The proviso to Section 11A reads as under :

"Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder, with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the words" Central Excise Officer", the words "Collector of Central Excise" and for the words "six months", the words "five years" were substituted."

A bare reading of the proviso indicates that it is in nature of an exception to the principal clause. Therefore, its exercise is hedged on one hand with existence of such situations as have been visualized by the proviso by using such strong expression as fraud, collusion etc. and on the other hand it should have been with intention to evade payment of duty. Both must concur to enable the Excise Officer to proceed under this proviso and invoke the exceptional power. Since the proviso extends the period of limitation from six months to five years, it has to be construed strictly. The initial burden is on the Department to prove that the situations visualized by the proviso existed. But once the Department is able to bring on record material to show that the appellant was guilty of any of those situations which are visualized by the Section, the burden shifts and then applicability of the proviso has to be construed liberally. When the law requires an intention to evade payment of duty then it is not mere failure to pay duty. It must be something more. That is, the assessee must be aware that the duty was leviable and it must deliberately avoid paying it. The word 'evade' in the context means defeating the provision of law of paying duty. It is made more stringent by use of the word 'intent'. In other words the assessee must deliberately avoid payment of duty which is payable in accordance with law. In Padmini Products v. Collector of Central Excise 1989 (43) E.L.T. 195, it was held that where there was scope for doubt whether case for duty was made out or not, the proviso to Section 11A of the Act would not be attracted. The appellant is a statutory body. It had taken out licence for concrete as it was being sold to outsiders. No licence was taken out for wood products as according to it, it was advised so by the Excise Department itself. It would have been better if the appellant would have examined the officer who was advised not to take licence. But mere non-examination of officer could not give rise to an inference that the appellant was intentionally evading payment of duty. When the appellant was found not to have been making any profit and it had taken out licence for concrete unit then in absence of any other material to prove any deliberate act of the appellant the presumption of reasonable doubt of the appellant cannot be said to have been successfully rebutted. The finding of the Tribunal that there was an intention on the part of the appellant to evade payment of duty, is not based on any material. It was an inference drawn for which there was no basis."

This reference underscores the principle that the imposition of the extended period for duty demand requires a demonstrable intent to evade tax, a criterion not met in the present case according to the evidence and circumstances described.

The legal precedent set by the Hon'ble Supreme Court in Nestle India Ltd. vs. CCE [2009 (235) E.L.T. 577 (S.C.)] clearly articulates that the invocation of the extended period of limitation necessitates a conduct beyond mere inaction or failure on the part of the assessee. **There must be a deliberate or conscious act of withholding information by the assessee to meet the threshold of willful suppression. The essence of suppression implies a deliberate and conscious decision not to disclose a fact, with the intention of obtaining an unjust**

advantage. This interpretation underscores the principle that mere oversight or inaction does not equate to willful suppression or misstatement.

Furthermore, the judgment in CC vs. Tin Plate Co. of India Ltd. [1996 (87) E.L.T. 589 (S.C.)] reinforces this standpoint, establishing that suppression involves an intentional omission of facts aimed at wrongful gain. This precedent highlights the requirement for a positive act of deceit to constitute suppression.

Moreover, it is acknowledged within jurisprudence that matters involving interpretational discrepancies cannot be grounds for faulting the assessee. Interpretational issues, by their nature, suggest that there is room for legitimate disagreement on the application or understanding of the law, which cannot be construed as willful suppression or misstatement by the assessee. Therefore, in scenarios where the contention revolves around the interpretation of statutory provisions or policies, alleging suppression or misstatement against the assessee is unjustifiable.

These rulings emphasize that for the extended period of limitation to be applicable, there must be unequivocal evidence of an intentional act by the assessee to withhold information or misstate facts for the purpose of evading duty. In the absence of such evidence, the application of the extended period based on assumptions or interpretational disagreements is both legally unsound and contrary to the principles established by the highest court.

The Honorable Supreme Court, in the case of Jaiprakash Industries Ltd. Vs. Commissioner of Central Excise (2002) 146 ELT 481, has set a precedent that in instances of bona fide doubt regarding the non-excisability of goods, the extended period of limitation cannot be invoked. This is predicated on the absence of any evidence pointing to fraud, collusion, willful misstatement, or suppression of facts by the Department. Such a stance is crucial, underscoring that mere failure or negligence, such as not obtaining a license or not paying duty, does not suffice to justify the invocation of the extended period.

This principle is further supported by a series of judgments from the Honorable Supreme Court and various tribunals, demonstrating a consistent legal doctrine. For instance, the Supreme Court's decision in Padmini Products v. Collector of Central Excise (1989) 43 ELT 195 (S.C.), and similarly in M/s. Continental Foundation Joint Venture Vs. CCE (2007) 216 ELT 177, along with Pushpam Pharmaceuticals Company Vs Collector of C. Ex., Bombay (1995) 78 ELT 401, and several others, affirm that a bona fide misunderstanding regarding statutory obligations does not equate to willful or fraudulent conduct warranting the application of the extended period for duty assessment.

These rulings collectively highlight a judicial consensus that for the extended period to be applicable, there must be concrete evidence of an intent to deceive or evade on the part of the assessee. Absent such evidence, the default position leans towards the normal period of limitation, emphasizing the importance of

distinguishing between genuine errors or interpretative uncertainties and acts of deliberate evasion.

In essence, the jurisprudence surrounding the application of the extended period of limitation underlines a threshold for evidentiary requirements that necessitate more than mere oversight or interpretational errors to trigger the imposition of extended liability. This body of case law serves as a foundational element in arguing against the applicability of the extended period in situations where the conduct in question arises from a bona fide belief or understanding of the law, rather than from an intent to defraud the revenue.

The Noticee underscores that the principles of ignorance or misunderstanding applicable to them should similarly extend to the assessing officer in the context of the Customs Act. This argument draws upon the judgment of the Hon'ble Supreme Court in the case of CC v. N.M.K. Jewellers - 2008 (225) E.L.T. 3 (S.C.), which underscores the notion that both parties—the importer and the assessing officer—are subject to the same standards of knowledge and interpretation of the law. Further reliance is placed on the Tribunal's decision in CEV Engineering Pvt. Ltd. Jong Sung Kim v. CCE - 2014-TIOL-796-CESTAT-DEL = 2015 (38) S.T.R. 93 (Tri.), and the Supreme Court's decision in Jyanti Food Processing (P) Ltd. v. CCE - 2007 (215) E.L.T. 327 (S.C.), to reinforce this perspective.

The essence of these rulings is the recognition that, in cases where the law's complexity or ambiguity leads to genuine misunderstanding or ignorance on the part of the importer, the assessing officer, who is also navigating the same legal landscape, can similarly experience such challenges. This mutual vulnerability to the intricacies of the law suggests that penal actions, especially those predicated on the assertion of willful non-compliance or evasion, require careful consideration of the contexts within which decisions were made by both parties.

In light of these precedents, the Noticee submits that the impugned show cause notice is fundamentally flawed and should be dismissed on the grounds of limitation alone. This argument hinges on the assertion that the legal and factual matrix surrounding the case does not justify the invocation of the extended period of limitation, particularly when considering the established legal benchmarks regarding ignorance and the bona fide interpretation of the law's requirements. This standpoint advocates for a balanced and equitable approach to assessing alleged violations, especially in complex regulatory environments where the potential for genuine misunderstanding is significant.

The allegation in paragraph 8.3 of the show cause notice, asserting that the Noticee knowingly and intentionally misrepresented the Country of Origin of the goods to evade customs duties, is challenged by the Noticee on the grounds of lack of prior knowledge. The submission includes a chronology of events and photographs provided by the supplier, demonstrating the containers' loading process, which collectively aim to prove the importer's lack of foresight regarding the

goods' actual origin.

The assertion that the Noticee had prior knowledge and deliberately made false declarations to circumvent duty payments is a serious accusation that demands substantial evidence. The burden of proof rests with the department to present irrefutable evidence substantiating that the Noticee possessed prior knowledge of the goods' origin and that any misdeclaration was made with the intent of duty evasion.

Merely alleging prior knowledge without supporting evidence is insufficient for the imposition of penalties. The legal framework requires concrete proof of intent to evade duties for penalties under Sections 114A and 114AA of the Customs Act to be validly applied. In the absence of such evidence, proposing penalties based on assumptions or unfounded allegations is not justifiable.

The Noticee defense, supplemented by documentary evidence, seeks to establish that any discrepancies in the Country-of-Origin declaration were not the result of willful deceit but rather stemmed from information provided by the supplier, on which the Noticee relied in good faith. Without clear and convincing evidence to the contrary, the proposed penalties under Section 114A and 114AA are not tenable, emphasizing the principle that penalties for duty evasion require a demonstrable intent to defraud, which has not been established in this case.

The Noticee contends that the burden of proof improperly shifted to them to demonstrate the goods' trans-shipment route from Pakistan to Jebel Ali, then to India, contradicts established legal principles. The Noticee has dutifully submitted all requisite documentation, including the Certificate of Origin (COO), freight certificates, Pre-Shipment Inspection Agency (PSIA) documents, and photographs evidencing the loading of the containers at the Jebel Ali port. These documents, furnished by the supplier, corroborate the Noticee claim that the goods were loaded at Jebel Ali, challenging the department's skepticism regarding their authenticity.

In legal terms, the principle that the onus of proof lies with the party asserting a fact is fundamental. This principle is supported by precedents such as Pr Commissioner of Income Tax vs. Daksha Jain (2018 11 TMI 1182), Gokuldas Exports vs. Jain Exports Pvt Ltd (2003 (157) ELT 243 (SC)), and Phoenix Mills vs. Union of India (2004 (168) ELT 310), which collectively emphasize that it is the responsibility of the Revenue to substantiate its claims with evidence—a requirement not met in this case.

Moreover, the Noticee highlights the absence of any contractual relationship with parties in Pakistan, noting that their agreement was with a supplier in UAE as documented. The Show Cause Notice (SCN) does not allege any direct dealings between the Noticee and Pakistani exporters, nor does it assert the Noticee 's awareness of such connections. Consequently, the charge of knowingly submitting forged or bogus PSIC rests on unfounded assumptions rather than concrete evidence.

This position is further reinforced by legal precedents, such as the Hon'ble CESTAT's decision in Jupiter Dyechem Pvt Ltd vs. Commissioner of Customs (2023 (5) TMI 670) and Agarwal Industrial Corporation Ltd. Vs. Commr. of Cus. Manglore (2020 (373) ELT 280 (Tri-Bang)), where similar allegations regarding mis-declaration of the country of origin were overturned. These cases underscore the judiciary's stance that accusations must be substantiated by incontrovertible evidence, particularly when the Noticee has provided comprehensive documentation supporting their case.

Thus, the Noticee argues that the department's allegations, based on presumption and lacking in concrete evidence, cannot form the basis for demanding duty. The Noticee maintains that they have complied with all legal requirements and documentation procedures, and any allegations to the contrary should be dismissed for lack of substantiation.

The Noticee draws upon the precedent set by the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) in the case of Agarwal Industrial Corporation Ltd. vs. Commissioner of Customs, Mangalore reported in 2020 (373) ELT 280 (Tri-Bang), which presents a directly analogous situation. In this case, the Tribunal dropped the demands against the importer, recognizing several key factors that are pertinent to the current matter:

1. **Non-prohibited Goods**: The Tribunal noted that the goods in question, bitumen, were not prohibited under the Customs Act, the Foreign Trade Policy, or any other law in force at the time of importation. Similarly, in the current case, the Noticee emphasizes that the goods imported are not prohibited or restricted.

2. **No Prohibition on Country of Origin**: It was acknowledged that there was no prohibition on the goods originating from Iran, under any applicable legislation or policy. This aspect mirrors the current scenario where the allegations are centered not on the legality of the goods themselves but on their declared country of origin.

3. **Absence of Allegations or Evidence Against the Importer**: Crucially, the Tribunal found that no evidence or statements during the investigation implicated the appellant in manipulating or falsifying the country of origin documents. The appellant had declared the country of origin based on the documents provided by their UAE-based supplier, and no direct involvement in the misdeclaration was established.

4. **Lack of Incriminating Evidence**: The Revenue failed to produce any documents or evidence demonstrating the appellant's involvement in the alleged misdeclaration of the country of origin.

The Noticee relies on this decision to argue that, akin to the Agarwal Industrial

Corporation Ltd. case, they too have not been implicated by any evidence or statements as being involved in changing or manipulating the country-of-origin documents. The declaration regarding the country of origin was made based on documents received from the supplier, without any proven or alleged involvement in their creation or modification.

This precedent underscores the principle that mere discrepancies in documentation, absent clear evidence of the Noticee's direct involvement in deliberate misdeclaration or manipulation, should not be grounds for punitive action. The Noticee asserts that this case further strengthens their position that the allegations and proposed penalties are unfounded and should be dismissed in the absence of concrete evidence to the contrary.

The Noticee challenges the demand for the Integrated Goods and Services Tax (IGST) amounting to Rs. 36,12,000/- on the import of goods, citing a misapplication of legal provisions. Specifically, the contention arises from the invocation of Section 28 of the Customs Act, 1962, for the demand of IGST, which is argued to be beyond the scope of this section given the definition of "duty" within the Act.

Section 2(15) of the Customs Act, 1962, explicitly defines "duty" as a duty of customs leviable under the act itself, thereby limiting its purview to customs duties and excluding IGST, which is governed by the IGST Act, 2017. The IGST, representing a component of India's comprehensive Goods and Services Tax (GST) system, is distinct from customs duties and is levied under its own specific legislative framework.

The argument posits that Section 28 of the Customs Act, which pertains to the recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded, does not extend its reach to the IGST due to the statutory delineation of "duty" within the act. As such, the demand for IGST based on provisions within the Customs Act is characterized as legally unfounded.

Given this interpretation, the Noticee advocates for the quashing of the IGST demand, arguing that it has been improperly issued without the requisite legal foundation. This position underscores a critical examination of the legal bases for tax and duty demands, emphasizing the need for adherence to the specific legislative provisions governing different types of levies. The Noticee, therefore, seeks relief from the IGST demand on the grounds that it exceeds the statutory authority granted by the Customs Act, 1962.

The Noticee, while maintaining their stance on the previous submissions, seeks to present an additional, conditional argument. They highlight that had the department disclosed the issues regarding the origin of the goods at the time of the bill of entry assessment, the Noticee would have sought permission for the re-export of the containers, as per the provisions of Circular No. 100/2003-Cus dated November 28, 2003. This circular provides for the re-export of imported goods under

certain conditions, potentially averting the imposition of high duties that render the import economically unfeasible, especially in cases where the duty rate is as prohibitive as 200%.

The Noticee emphasizes that paying a duty rate of 200% on the said goods is not commercially sustainable for any entity involved in the recycling industry. This perspective is supported by previous instances where the department, upon identifying discrepancies or issues at the assessment stage, has allowed importers to re-export the goods upon request. The Noticee references a specific Order-in-Original (OIO No.1/Pr.Commr/NOIDA-CUS/2022-23 dated April 7, 2022) from the NOIDA Customs Commissionerate as Exhibit-"J", which illustrates a precedent for such allowances.

This argument underscores a missed opportunity for remediation that could have been facilitated by the department's timely communication of concerns regarding the goods' compliance. It suggests that a collaborative and transparent approach during the assessment process could enable Noticee to rectify situations that may otherwise lead to significant financial and operational burdens due to the imposition of elevated duty rates or penalties. The Noticee thus implies that the department's handling of the situation did not adequately consider potential remedies available within the existing regulatory framework, which could have mitigated the dispute's escalation.

The Noticee contends that the proposed confiscation of goods under Section 111(m) of the Customs Act is both arbitrary and unlawful, as highlighted in paragraph 8.3 of the notice, which acknowledges the unavailability of the goods for seizure. This acknowledgment implies that since the goods have already been cleared and are not physically available for confiscation, the legal basis for such action is untenable. Consequently, the Noticee argues for the dismissal of the proposal for confiscation on these grounds.

This argument is reinforced by various legal precedents established by courts, which stipulate that in instances where goods have been cleared from customs and are not available for physical confiscation, neither confiscation nor a subsequent redemption fine is justifiable. The legal principle underlying these rulings emphasizes the impracticality and illegality of confiscating goods that are no longer within the jurisdiction or control of customs authorities, essentially rendering any such action moot.

By citing these case laws, the Noticee seeks to underline the importance of adhering to established legal standards and procedures, arguing that any deviation represents a misapplication of the law. The Noticee 's submission, therefore, challenges the proposal for penal action under Section 112 in the absence of the goods for confiscation, advocating for a reconsideration of the legal basis for such penalties in light of the goods' status and relevant judicial precedents.

The Noticee contends that the imposition of a penalty under Section 112 of

the Customs Act, 1962, is contingent upon the lawful confiscation of goods under Section 111(m) of the same act. Given that the Noticee has previously argued against the confiscation of goods—primarily on the basis that the goods are no longer available for seizure—the logical extension of this argument is that penalties under Section 112 cannot be justified in this context. This stance is based on the principle that penalties related to the confiscation of goods should only be applicable when the confiscation itself is legally and procedurally valid.

Furthermore, the Noticee raises a procedural concern regarding the specificity of the show cause notice. Section 112 of the Customs Act comprises multiple sub-sections, each pertaining to different violations and circumstances under which penalties may be imposed. The Noticee points out that the show cause notice fails to identify the specific sub-section(s) under which the penalty is being proposed. This lack of specificity not only complicates the Noticee's ability to respond effectively to the allegations but also raises questions about the procedural fairness of imposing a penalty based on a vaguely worded or unspecified legal basis.

The Noticee's arguments underscore the importance of clarity and precision in legal proceedings, especially where penalties or punitive actions are concerned. The assertion is that, without a clear and direct invocation of the appropriate legal provisions, the imposition of a penalty lacks a solid legal foundation. This perspective appeals to the principles of legal clarity, due process, and the right of the accused to a fair and informed response to allegations made against them.

By challenging both the basis for confiscation under Section 111(m) and the specificity of the allegations under Section 112, the Noticee seeks to highlight procedural deficiencies and legal inconsistencies in the show cause notice, arguing for the dismissal of the proposed penalty on these grounds.

The Noticee argues against the imposition of penalties under Sections 114A and 114AA of the Customs Act, 1962, on grounds that the requisite legal conditions for such penalties have not been met.

10.1.13 The Noticee submits that Section 114A, which pertains to penalties for collusion, wilful misstatement, or suppression of facts leading to non-payment or part-payment of duty, is inapplicable in their case. They emphasize that their earlier submissions clearly demonstrate the absence of any such conduct. Specifically, the Noticee has consistently argued that there was no intent to deceive or withhold information from the customs authorities, and all actions taken were based on the documents and information provided by their suppliers. The lack of any willful misstatement or suppression of facts, as per their claim, negates the foundation upon which penalties under Section 114A could be imposed.

10.1.14 Regarding Section 114AA, which concerns penalties for knowingly producing false documents or making false statements, the importer contends that this proposal is baseless and erroneous due to the absence of concrete evidence indicating any knowing or intentional wrongdoing on their part. They highlight the

financial and reputational costs incurred in seeking legal redress against these allegations, further arguing that their actions have not constituted any offense warranting penal action under this section.

The Noticee references the judgment of the Honorable Supreme Court in the case of Shri Ram & Anr. vs. State of UP (AIR 1975 SC 175), where it was established that for abetment to be proven, there must be intentional aid given to the commission of a crime. Drawing a parallel, the Noticee asserts that the department has failed to produce any evidence that the Noticee had prior knowledge of the goods' origin or engaged in any attempt to evade customs duties through misdeclaration. This absence of evidence, according to the Noticee, further undermines the justification for imposing penalties under Section 114AA.

These arguments collectively aim to refute the basis for the proposed penalties, emphasizing the need for evidence of intentional wrongdoing for such penalties to be legally justified. The Noticee's defense underscores a principle of fairness and due process, asserting that penalties should only be levied when there is clear and convincing evidence of deliberate attempts to violate customs regulations.

The Noticee expresses a desire to conduct cross-examinations of key individuals involved in the investigation and handling of the consignment in question, aiming to clarify critical aspects of the case and strengthen their defense. Here's a breakdown of the request:

10.1.15 Cross-Examination of Investigating Officers

The Noticee seeks to question the investigating officers to understand the expectation placed on Noticees to monitor container movements on foreign websites, especially when no orders were placed for goods originating from the country in question (Pakistan in this case). This line of inquiry aims to probe the responsibilities for tracking such shipments and the mechanisms in place to alert the relevant authorities, including why the department was not informed about the containers' arrival at Mundra port at the time of bill of entry filing.

Cross-Examination of Shri Sajish Shivaraj and Shri Aftab Kundan

Further, the Noticee requests to cross-examine Shri Sajish Shivaraj, GM of the shipping line, and Shri Aftab Kundan, Director of M/s Rizmet International, the agent. These examinations aim to uncover details about the shipment's routing, documentation, and any possible discrepancies or miscommunications that may have led to the current situation.

10.1.16 Following these cross-examinations, the Noticee intends to submit a final reply, incorporating insights and evidence gathered through the process. This approach indicates a thorough and proactive defense strategy, seeking to address all possible angles of the case.

10.1.17 Finally, the Noticee formally requests the learned Commissioner's approval for the cross-examinations and asks to be informed of the scheduled dates in a timely manner. This request underscores the Noticee's commitment to resolving

the dispute through due process and emphasizes the importance of transparency and fairness in the proceedings.

10.2 Noticee M/s HUB & Links Logistics (I) Pvt Ltd has submitted their defence submission vide letter dated 29.02.2024 which is reproduced as below:

1. They submit that the allegation in the subject case, that their client has orchestrated this transaction to conceal true origin of the goods so as enable **Alang Auto** to evade duty on the import is incorrect on facts. Further, the levy of penalty under section 117 of the Customs Act, 1962 on our client is also legally incorrect.

2. They hereby submit our counter against each, and every allegation levelled against our client with respect to subject import transaction.

3. It is pertinent to note that from the routing of the vessel as mentioned in the PICT website, the container was loaded first from Karachi port and discharged at Jebel Ali port. Thereafter, the said container was loaded on another vessel from Jebel Ali port and discharged at Mundra port. The shipper and consignee are both different in both the 1st leg and second leg B/L's and so is the port of loading and port of discharge. Our client received all the pre-alert documents from Dubai mentioning details of shipper in Dubai and port of loading as Jebel Ali since the container has actually loaded from Jebel Ali port.

Sr. No.	POL	POD	Vsl/Voy	Shipper	Consignee	B/L No.	B/L Date
1	Karachi	Jebel Ali	Botany Bay-045	Concrete Trader	Al Julnar International FZE	SASLMU20841	05.11.2020
2.	Jebel Ali	Mundra	OEL Jumeirah - 0130	Al Julnar International FZE	Alang Auto General Engg. Co. (P) Ltd.	SASLMU20841	12.11.2020

4. They submit that Noticee No.2 is not privy to the trade transactions taken place between the Karachi supplier – **Concrete Trader** and the Dubai buyer – **Al Junar International FZE** and neither the Indian buyer – **Alang Auto General Engg. Co.(P). Ltd.** It is beyond the control of Noticee No.2 to inspect and enquire the authenticity and the origin of the goods purchased by the Dubai supplier- **Al Julnar International FZE**, mentioned as the shipper in the said Bill of Lading issued from Jebel Ali dated 12.11.2020.

5. They further submit that it is the job of the Noticee No.2 to book containers for export, perform forwarding and logistics related work and file IGM of import containers loaded from various ports. In the instant case, the container was loaded from Jebel Ali port as per the receipt of B/L copy and manifest received from the Noticee No.2 Dubai principal i.e. M/s. Shah Aziz Shipping Line LLC. Following are the sequence of events in the current shipment.

   a. Pre-alert received from foreign shipping line / load port Dubai principal M/s. Shah Aziz Shipping lines LLC about arrival of cargo.
   b. Our client inquired about expected date of arrival of the cargo from foreign shipping line.
   c. Our client received tentative timelines regarding expected time of arrival (ETA)
   d. Then vessel arrives and all procedure related to filling of import general manifest (IGM) were done basis Bill of Lading copy provided to our client by the foreign shipping line.
   e. Our client issued invoices for the charges related to issuance of delivery order for import delivery.
   f. Upon receipt of import charges from the consignee, the Delivery Order was issued and Noticee No.2 liability in the said consignment ceased to exist.

   That their client has provided their services to their foreign shipping line and that they don't have any role in the misdeclaration of current shipment. Their client has neither worked nor dealt with the importer and exporter of these imports directly.

6. Though the Noticee No.1 denied their involvement in duty evasion, the said connivance of duty evasion is deliberately committed by the Noticee No.1 as they could have only benefited from the duty evasion which is amounting to **Rs. 1,74,07,835/- (Rupees One Crore Seventy Four Lakhs Seven Thousand Eight Hundred Thirty Five Only)** duty comprising of Basic customs duty (BCD) @ 200%, SWS@10% & IGST @18%.

7. As stated in paragraph no. 3.7 of the SCN, ***the details provided by the importer vide letter dated 08.04.2023 (as mentioned above RUD-4), it is observed that PRE-SHIPMENT INSPECTION CERTIFICATE (PSIC) was issued by M/s. Ravi Energie Gulf FZC and as per the statement dated 11.04.2022 (Please refer Para 3.5) importer not appoint to M/s. Ravi***

Energie Gulf FZC (i.e. PSIA) for any inspection and also not made any payment for inspection of imported goods vide BE No. 9659743 dated 21.11.2020. Thus, it is evident from the above that **Alang Auto** has deliberately forged/fabricated the PSIC and submitted the same to the customs authorities at Mundra port and thereby committed wrong as per the findings and so they are liable to pay the differential payments and penalties as per the law.

8. In this regard, they would like to submit that demand of penalty under section 117 under Customs Act, 1962 should not be raised from Hub & Links Logistics (I) Pvt. Ltd., since all manipulation of documentation and submission for forged documents have been done by **Alang Auto** itself in collusion with their foreign supplier M/s. Al Julnar International FZE, U.A.E. Therefore, any misdeclaration by the Noticee no.1 cannot be attributed to any fault and / or act and / or omission of Noticee No.2 as alleged or at all. Hence, Hub & Links Logistics (I) Pvt. Ltd., has no role to play in this alleged non-compliance of evasion of basic customs duty by the importer of the impugned goods.

9. Further, it is **Alang Auto** who has benefitted from this wrong. **Alang Auto** has done certain acts and abetted certain doings which has led to misdeclaration of origin of the goods. This has benefitted **Alang Auto** from **BCD** duty savings. Hence, it is clear that **Alang Auto** has collaborated with the foreign supplier for the benefit of duty savings.

10. They would like to submit that Noticee No.2 scope of work is to co-ordinate with vessel operator (agent of vessel) and to provide details of the cargo to the said vessel agents for filing IGM basis of the documents received from the load port and collect the charges and documents from consignee before releasing the Delivery Order. Bill of Lading of Karachi Port and Jebel Ali port are same as SASLMU20841 but dates are different since it is a case of switch Bill of Lading wherein the number remains same but the date of issue is changed. It is used when the traders do not want to disclose actual supplier to the consignee/buyer. All the details except shipper, consignee and /or notify party shall remain same in the switch Bill of Lading. This is a usual practice undertaken by the traders to conceal the details of actual supplier so as to secure their clientele/source/business operation details. It is pertinent to note that the request for issuance of switch bills of lading can be made either by the shipper or the consignee. The port of discharge agent has no role to play in issuance of switch bills of lading.

11. Generally, the Switch Bills of Lading altering the port of loading as Jebel Ali is requested by the supplier of the importer to enable smooth functioning of forex transactions between the supplier and importer and it is a standard practice in the Maritime Industry to issue Switch Bills of Lading.

a) The Noticee No.2 further submits that concerning the allegations levelled against the Noticee No.2, pertaining to the Switch Bills of Lading issued in the aforementioned shipment, a Switch Bill of Lading is simply the second set of Bill of Lading issued by the carrier or it's 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 :

(i) 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:

(ii) 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**;

(iii) 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;

(iv) 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,

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 - B** are the copies of the printed details of Switch Bills of Lading mentioned in the International book Carriage of Goods by Sea, Sixth Edition.

b) They 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 port of loading and the port of discharge can be altered as per the requirement of the suppliers. Hereto annexed and marked as **Annexure - C** is the judgement copy of the Singapore High Court ruling in the case of BNP Paribas v Bandung Shipping Pte Ltd., 2003

12.It is pertinent to note that in the above-mentioned import shipment, the first leg of Bill of Lading was issued in Karachi and second leg of Bill of Lading has been issued by the load port agent in Dubai. However, the Noticee No.2 initially received only the second leg bill of Lading and accordingly the Import General Manifest (**IGM**) was filed at destination port by the Noticee No.2 based on the information given in the second leg Bill of Lading. Also, the container loaded from Karachi was offloaded at Jebel Ali port and connected on another vessel for discharge at Mundra port. The Noticee No.2 is provided with only the final leg Bill of Lading to file IGM which enables the Noticee No.2 to issue the delivery order to the respective consignee at destination. For all import consignments, it is outside the jurisdiction and authority of the Noticee No.2 to inspect the contents of the goods stuffed inside the container and verify it's

origin. The Noticee No.2 can only rely upon the load port documents and Bills of Lading to ascertain the contents of the container and it's port of loading details mentioned in the Bill of Lading to file the Import General Manifest (**IGM**) at the destination port. In the light of the above facts specifically setout hereinabove, there cannot be any act and / negligence / or omission on the part of our client to make them liable for the alleged penalty under Section 117 of the Customs Act, 1962.

13. Without prejudice to the above, we would like to submit that, even though **Alang Auto** has denied the mistake, their involvement in duty evasion has been strongly established and therefore, our client is not required to pay any penalty in this case. Thus, all penalties in connection with the subject case stands dropped and all proceeding stands concluded under provisions of section 28(5) & 28(6) of the Customs At, 1962 on Hub and Links Logistics (I) Pvt. Ltd.

There is no evidence against Hub & Links Logistics (I) Pvt. Ltd for orchestrating this transaction for enabling duty evasion at the end of Alang Auto.

14. They would like to submit that no evidence has been put on table related to conspiracy or orchestrating by Hub & Links Logistics (I) Pvt Ltd for this alleged crime. Hub & Links Logistics (I) Pvt. Ltd. is not a party to the alleged scheme of misrepresentation which has resulted in non-payment of **BCD** on imports by Noticee No.1.

15. They would like to provide facts that our client is an agent of the shipping line in the subject case.

a. That, our client is a shipping and logistics company in the field of Container/NVOCC/Projects/Bulk/Special equipment's.
b. That, our client acts as an agent for different foreign container lines and other shipping lines such as EM KAY LINE etc.
c. That, as an agent, our client is responsible for handling of containers of particular lines for clearance from port.
d. That, in subject "**SS Scrap**" import case, our client has acted as an agent at the port of discharge (**POD**) for **Alang Auto**.
e. That, all communications related to "**SS Scrap**" cargo import were received from the Dubai principal M/s. Shah Aziz Shipping Lines LLC, Dubai.
f. Our client did not correspond with either the Consignee or the Shipper.

16.They would like to submit that our client had no ill intention to this non-compliance.

As such, we submit that our client is not a party to this violation and hence our client, the Noticee No.2 should not be penalized under the provisions of customs law.

Responsibility of Importer for correct self assessment and declaration of details at the time of import

17.They would like to submit that the actual importer is responsible for declaration of true & correct information at the time of import. Further, they are required to do the self-assessment under section 17(1) of the Customs Act, 1962.

18.There is mandated provision for verification of self-assessment under section 17 of the Customs Act, 1962 by proper officer. The change in declared valuation in Bill of Entries after due verification cannot be construed as undervaluation as verification of self-assessment is mandated under the Customs Act, 1962. In fact, section 17 (5) of the Customs Act, 1962 cast responsibility on proper officer to pass speaking order in case of change in valuation, which has not been done till date by the proper officer. Our Client cannot be laden with responsibility of undervaluation of imported goods in self-assessment regime, once such responsibility of verification of undervaluation is cast upon proper officer under Section 17 of the Customs Act, 1962.

19.As such, the importer was required to ascertain the correctness of import declaration and duty on the goods. The current importer i.e. Noticee No.1 **Alang Auto** was having full information related to the imports and the forged PSIC submitted by them to the customs.

20.The shipping line agents are not required to look into the authenticity of Certificate of origin and Pre-Shipment Inspection Certificate "PSIC" and they need to only declare information as it is received from foreign shipping line issued Bill of Lading for IGM filing purpose. Further, it is also not required at shipping agent's end to verify each and every container no. from Pakistan Customs Terminal website (PICT) or any other website to track the origin. This is operationally not possibly and legally also not required to be done. This is the responsibility of exporter /importer to ensure the correctness of documents and declarations. It is also the importer's responsibility to verify

the authenticity of origin of goods before deciding to pay or not to pay basic customs duty while filing the Bill of Entry. The importer **Alang Auto** has deliberately attempted to avoid payment of BCD by intentionally allowing incorrect documents for clearance from customs by mis-declaring the origin of goods. **Consequently, on this ground it is submitted that the the Noticee No.2 is not liable for any penalty under Section 117 of the Customs Act, 1962.**

21. In view of the above legal provisions under Section 117 of the Customs Act, 1962, they would like to submit that section 117 is also not applicable as our client has not abetted any contravention under the Act and is neither responsible for short levy of Basic Customs duty (**BCD**) in the clearance of subject consignment. The importer is solely responsible for payment of all applicable customs levies by declaring correct details of the consignment in the Bill of Entry. Further, our client has not used any false and incorrect material for filling of IGM intentionally. Their client was under bonafide belief that documents provided by the importer are correct. Therefore, the penalty under section 117 is not applicable on our client.

22. Their client is an agent of the foreign shipping line, thus, Article IV (2) of the Carriage of Goods by Sea Act, 1925 and more specifically Article IV (2) (g) & (i) , 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, his agent, or representative. On this ground alone, it is submitted that our client is not liable for any misdeclaration on the part of the shipper / consignee and neither have they attributed their support in import of "**SS Scrap**" and its duty evasion by mis-declaration of origin of the goods.

Judicial Pronunciations:

23. They submit that that during the IGM filing process of the subject consignment, the Noticee No.2 was not aware that this mis-declaration was done by the importer in order to evade **BCD** levy from customs. The department has also not provided any strong evidence suggesting connivance that Noticee No.2 actively and intentionally supported mis-declaration of the goods for the purpose of evasion of **BCD**. The Noticee No.2 is the agent at port of discharge of this consignment, and they have no active or passive role in this alleged violation of law. They also do not have any motive to do this transaction. Only **Alang Auto** has motive to do this mis-declaration intentionally. Hence, only **Alang Auto** should be penalized, and Noticee No.2 must be granted relief in the subject matter.

24. 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:

25. They would like to place our reliance 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."*

When there is no evidence to establish any overt act or *mens rea* to facilitate the commission of offence, the finding of the investigating officer that the Noticee no.2 has facilitated the attempt to enable **Alang Auto** to evade **BCD** in the subject transaction, is without any factual and legal basis and therefore penalty under section 117 of the Customs Act, 1962 is not sustainable on Noticee No.2.

26. 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:-

> **2.** *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.

3. *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 Sandep 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."

4. *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 Noticee No.2 relied upon the Bill of Lading issued at Jebel Ali for filing IGM and 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 them 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 117 of the Customs Act, 1962.

27. When there is no evidence to establish any overt act or *mens rea* to facilitate the commission of offence, the allegations that the Noticee No.2 has facilitated the attempt to enable **Alang Auto to** evade **BCD** in the subject transaction, is without any factual and legal basis and therefore penalty unde section 117 of the Customs Act, 1962 is not sustainable on the Noticee No.2.

28. In view of the above submission, there is no case of acting knowingly or intentionally on the part of the Noticee No.2. The Noticee No.2 was not aware that the importer **Alang Auto** intended to evade the BCD to avail the benefits in custom duty in the subject transaction and neither is there any evidence to show the existence of ***mens rea*** in the mis-declaration of the origin of goods by Noticee No.2. Thus, the penalties imposed under section 117 of the Customs Act, 1962 does not sustain in the eyes of law and accordingly the impugned show cause notice need to be set aside. Hence, the Noticee No.2 should be granted relief from penalties and prosecution.

10.3 Noticee M/s **Hub & Links Logistics (I) Pvt. Ltd** submitted their additional defence submission vide letter dated 15.11.2024 which has been reproduced as below:

1. They 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.

Hereto annexed and marked as **Annexure – "B"** is the judgement copy of the New South Wales Supreme Court.

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 for duty evasion cannot be attributed to any fault and / or act and / or omission and / or willful suppression by the Noticee No.2.

2. In the case of **Jeena and Company versus Commissioner of Customs, Bangalore {2021 (378) E.L.T. 528 (Tri. – Bang.)} Hon'ble CESTAT, South Zonal Bench, Bangalore** in para 6 held that –

6. After considering the submission of both the parties and perusal of the material

on record, I find that there is no material evidence with the Revenue to come to the conclusion that the Appellant had the knowledge of the wrong doing of the importer and has colluded with the importer to defraud the Revenue. I also find that the importer has also stated in his statement before the Original Authority in reply to Question No.10 that the CHA has filed the Bill of Entry based on the description on the invoice and there is no instruction by the importer to the CHA to do any wrong act. In the absence of any material evidence of knowledge and collusion between the Appellant and the importer, it is not appropriate to punish the CHA for filing the document in good faith and on the basis of documents supplied by the importer. Further, I find that all the decisions relied upon by the Appellant cited supra has consistently held that in order to impose penalty on the CHA under Section 112 of the Customs Act, there has to be a knowledge on the part of the CHA and there should be a collusion between the CHA and the importer in defrauding the Revenue. Further, I find that the Tribunal in the case of Ashok Jaiswar Vs Commissioner of Customs (cited supra), the Tribunal in Para 5 has held as under:

5. I have perused the records and considered the submissions made by both the sides. The finding against the Appellant is merely that he signed the shipping bill, upon the business being brought by Shri Md. Farooq. The finding is also that Shri Mohd. Farooq and other persons were the guilty parties in committing the drawback fraud. There is no mention of the Appellant being aware that the fraud was being committed. This Tribunal has held in the case of Syndicate Shipping Services Pvt. Ltd. v. CC, Chennai [2003 (154) E.L.T. 756 (Tribunal Chennai)] that, "a customs house agent is not liable to penalty merely for signing a shipping bill in relation to contraband goods. More positive evidence of participation is necessary".

7. In view of the various decisions cited supra and on the basis of material on record, I am of the considered opinion that the penalty imposed is not sustainable in the absence of any specific role performed by the Appellant in the wrongdoing done by the importer. Hence, I set aside the penalty by allowing the appeal of the Appellant.

3. The two-member justice bench of **Kolkata** Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in the case of ***M/s. JKG Infralogistics Pvt. Ltd vs Commissioner of Customs, Kolkata (2023 TAXSCAN (CESTAT) 1652)*** observed that there is no infringement of Regulation 10(q) as well in the matter as it is on record that ***the appellant has always co-operated in the enquiry***. Further held that "***to implicate the appellant with the commissioning of the fraud, the charge has to be led by positive and reliable evidence and vague hypothesis and presumptions cannot be the basis for any unilateral action initiated against the Broker.***" Since the department ***has failed to make out any sustainable case of violation of the provisions of the CBLR, 2018 by the Customs Broker. The order passed by the Commissioner was not legal and correct.*** The CESTAT quashed the order.

In the current case as well, the Noticee No.2 has fully co-operated in the investigation and further there are no positive and reliable evidence against Noticee No.2. It is pertinent to note that the Noticee No.2 relied upon the Bill of Lading issued in Jebel Ali for filing IGM and 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 them 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 117 of the Customs Act, 1962.

10.4 Vide letter dated 26.02.2024, M/s Ravi Energie Pvt Ltd has submitted their defence submission which is reproduced as below:

a) The noticee submits that the entire case is regarding the demand of customs duty from the importer mentioned above, for mis-declaring the country of origin as UAE, whereas the country of origin should be mentioned as Pakistan and the differential customs duty is demanded from the said importer.

b) The noticee submits that they are registered with the DGFT as PSIC Issuing agency in India, and Inspection Agency, within India, and are registered in the name of M/s. Ravi Energie Pvt Ltd at Baroda. The noticee further submits that they have not issued any PSIC certificate to the importer or the foreign exporter M/s. Al Julnar International (FZE), Dubai. On looking at the relied upon documents, one PSIC certificate is enclosed, which appears to have been issued by M/s. Ravi Energie Gulf FZC, Ras Al Khaimah, UAE.

c) In this regard, the noticee submits that M/s. Ravi Energie Gulf FZC, UAE, is a different entity altogether, and we do not have any business relations with them. We are neither agents nor representatives of M/s. Ravi Energie Gulf FZC in India, and the actions or activities, of the said company is not at all with our consent or any approvals. Therefore, we are not at all aware of the facts and circumstances in which the said certificate is issued and we are also not aware about the charges for issuing such certificate. As Ravi Energie Pvt Ltd, Baroda, we have neither issued any PSIC certificate nor new are aware of such certificate issued, which is quite beyond our knowledge and Information. Based onsuch document, not concerned to us, the penalty under section 114AA of the customs Act, 1962, cannot be imposed on us. The allegation made out in the Impugned SCN to that extent is liable to be dropped and the proposals of penalty is liable to be set aside as not at all sustainable, and oblige.

d. However, ongoing through the SCN, and the statement of Parth L Jani, authorised person of the importer has stated that they have not appointed M/s. Ravi Energie Gulf FZC for any pre- shipment inspection of the goods at Jebel Ali, and have also not paid any amount to them. (para 3.5 of the SCN). In the statement of Aftab Kundan, Director of Rizmet International Pvt Ltd, Surat, has also not made any reference to the PSIC certificate or M/s. Ravi Energie Gulf FZC, UAE.

e. The noticee submits that it appears from the PSIC that M/s. Ravi Energie Gulf FZC, Ras Al Khaimah, UAE, had conducted the inspection of the Container No. PRSU2141199 (Seal No. 095878), and PCLU2010527 (Seal No. 095894) by using the

relevant equipment required at Jebel Ali, UAE prior to on boarding the said containers abord the vessel MV OEL Jumeirah. The said inspection agency appears to have Issued the PSIC certificate no. 052/AJUL- RN/NFAA1167/2020 dated 10-3-2020 was issued to M/s. Al Julnar International FZE, Dubai.

f) The noticee submits in the said PSIC they had specifically mentioned the following:

(i) Country of Inspection : UAE

(ii) Place of Inspection : Jebel Ali

(iii) Date of Inspection : October, 29, 2020

(iv) Duration of Inspection (in hours): 04 hours

(h) Details of radiation survey meter used :Make: International Medcom Inc

Serial No. 50982

Model: RadAlert 100

Last Date of calibration: March-20

g) In this regard, It is submitted that it appears that the said the Inspection was properly carried out as per the International standards, and correctly certified regarding the radiation levels within the accepted range and fit to be exported to India.

h) The said PSIC agency, appears to have correctly Issued the PSIC certificate and there is no misdeclaration on their part. In the PSIC Certificate also, they have declared Place of Inspection and the Country of Inspection only. Even the SCN confirms that the container was unloaded from one vessel and loaded into another vessel at Jebel Ali, UAE. As regards, the Country of Origin, It is submitted that they have not at all said anything about the origin of the cargo, Since the inspection of the goods was carried out without opening the container, on board, using radiation survey meters, at Jebel Ali, the place of inspection is correctly shown as Jebel Ali. As the PSIC issuing agency, they are not at all concerned about the country of origin of the goods. In the present case, they had examined the radiation levels to be in accepted range and have correctly certified It. There is no dispute about it also. Therefore, the PSIC certificate issued by them cannot be faltered with.

i) The noticee submits that the main allegation in the Impugned SCN is about the mis-declaration of the Country of Origin. The noticee submits that their role, is only limited to Issuance of PSIC certificate only, and is not at all concerned with the Country of Origin of the goods, as it is the responsibility of the importer of goods, to

correctly declare before the Customs Authorities, and submit appropriate documents. It is alsoubmitted that the PSIC certificate cannot be used, in any manner other than it is meant for.

j) The noticee submits that in the SCN, there are two Bills of Lading, as below, through which the said two Containers, were transported from Karachi to Jebel All to Mundra, and from there to ICD Sanand.

(1) BL No. SASLMU20841 dated 5-11-2020 MV BOTANY BAY from Karachi to Jebel Ali, issued at Karachi by CIM Shipping Inc. (Exporter-M/s. Concrete Metal Trader, Karachi, Place of Delivery - Jebel Ali)

(2) BL No. SASLMU20841 dated 12-11-2020 MV OEL JUMEIRAH, from Jebel Ali to Mundra, issued at Jebel Ali by Shah Aziz Shipping Lines LLC, (Exporter - Al Julnar International FZE, Place of Delivery - ICD Sanand).

k) The noticee further reiterates that due to the similarity in the name i.e. Ravi Energie Pvt Ltd and Ravi Energie Gulf FZC, the Ld Commissioner has proceeded to Issue SCN to us proposing to impose penalty under Section 114AA of the Customs Act, 1962. As Ravi Energie Pvt Ltd, Baroda, we have not issued any PSIC as mentioned in the impugned SCN. Section 114AA reads as,

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.

l) In this regard, the noticee submits that the PSIC certificate do not speak about the Country of Origin of the goods at all, which is the only reason for confiscation of goods. Moreover, the noticee have not prepared any such document or than the PSIC certificate which mislead the assessment or in any fraudulent manner, and also have not at all prepared or Issued any document which is part of the imports made by the importer, Alang Auto General Engg Co (P) Ltd, Bhavnagar. Hence, the penalty under Section 114AA is not applicable to us and no penalty can be imposed on the noticee. It is requested to drop the proposal of imposing penalty under section 114AA and oblige.

m) In view of the above, the noticee submits that the proposal of imposing penalty under Section 114AA of the Customs Act, 1962, Is not at all sustainable and is liable to be set aside. It is therefore prayed that the proposal to impose such penalty may kindly be dropped, and oblige.

11. Record of Personal Hearing:

Opportunity of personal hearing in the case was given to the Noticee's on 14.11.2024, and 09.12.2024 under the provisions laid down in Customs Act, 1962 and following the principles of natural justice.

i) Ist PH on 14.11.2024

M/s Ravi Energie Pvt Ltd

Shri R Subramanya, Advocate and authorized representative of M/s Ravi Energie Pvt Ltd appeared before me on 14.11.2024 through virtual mode. During Personal Hearing, he stated that this is a case made out against Alang Auto General Engineering Company who had imported Ms. Scrap. At the time of import of MS Scrap, one of the document which is required is PSIC that is pre shipment inspection certificate checking that there is no radiation coming out of the scrap material etc and the certificate is issued so that the entire examination of the goods need not be carried out in the absence somebody does not provide the PSIC certificate. The importance of the PSIC certificate is only to the extent that if the certificate is given, detailed examination is not carried out, the certificate is not proper, incorrect or it is not submitted, 100% examination has to be carried out. There is no confiscation of the goods done. If the PSIC certificate is there or erroneous or something, the importance is only to that extent. Secondly, Ravi Energy Private Limited and Ravi Energy Gulf FZC both are two different entities, one is registered in Dubai and one is registered in Baroda in Gujarat. The certificate in this present case is issued by Ravi Energy Gulf FZC, Dubai but the notice is issued to the local person that is Ravi Energy Private Limited Baroda. He stated that his first submission is that the notice itself is issued to the wrong person only because there is a similarity in name and some family members are directors of that company in Dubai also. It is a related company but not entirely this thing. Secondly, the allegation even if it accepted that it is a related company, the penalty cannot be imposed under 114 AA. Just for the sake of clarification, that PSIC Shipment inspection certificate does not declare any country of origin it only says the place of inspection. The allegation against Alang Auto is that they have claimed that country of origin as UAE in place of Pakistan. Because when the goods are coming and country of origin is Pakistan, it is 200% duty is to be charged and if it is other than that normal duty is charged. So, they are not party to any such misdeclaration because the inspection is carried out at Dubai when the ship arrived there and PSIC issued by Ravi Energy Gulf FZC Dubai. The person who has issued the certificate there is no notice issued under the 114 AA for imposition penalty. RaviEnergy Pvt Ltd have no role to play at all. They are both separately registered at that relevant time. Both were registered with the DGFT as a pre inspection agency, separately registered. So they are treated as separate entities even by DGFT also at that time in Appendix 2G of the Foreign Trade Policy. So his submission is that both are different entities. There is no notice issued against the Ravi Energy Private Limited, Baroda. So there cannot be any penalty

under 114 AA and this also cannot be a document. Even if it is for Ravi Energie Gulf FZC Dubai, there cannot be penalty against them because it is not used for any import related transaction and it will not help in confiscation of the goods also because if there is no PSIC certificate, the entire goods has to be examined by the customs. That is the only effect. They are not party to any other import transaction. So penalty mechanically not applicable.

M/s HUB Links Logistics (I) Pvt Ltd

Shri Santosh Upadhyay, Advocate & Ms. Deepti Upadhyay, Advocate appeared before me in the personal hearing held today te. 14.11.2024 through virtual mode on behalf of Mis. Hub & Links Logistics (1) Pvt. Ltd. He stated that they are delivery agent and their role is very limited. They just filed IGM, collected the document issued the delivery order. Penalty under Section 117 has been wrongly imposed on them. Their scope is very limited to check the details filed by the importer at the time of filing the Bill of Entry. They can neither check the authenticity of certificate of origin as they have no authority. When the container comes in India they file the IGM, collect the original bill of lading and maybe surrender, and they issue the delivery order to the buyer, CHA or representative of CHA. They are not authorized and certified from the government department to do all these things.

They relied on certain case laws pertaining to Switch bills of lading. They have supported fully during the investigation. He referred to his submission at page-10. Switch bill- In concluding the survey of the function of bill of lading pre mentioned must be made of the modern practice of issuing switch bill. Under this procedure, the original set of bill of lading under which the goods have been shipped is surrendered to the carrier or his agent in exchange for new set of bill in which some of the details such as those relating to the name and address, addresses of the shipper, the date of issue of bill, bills are the port of shipment have been altered.

He relied on the exhibit, Annexure-B- it is the carriage of goods by Sea by John F Wilson. He relied on his book for International maritime bills of lading regulations. I or switch bill of lading there is Singapore high court judgment. He referred BNP Paribas VS Bandung Shipping Limited 2003 where there was 12 bill of lading and it was switched and they altered the port also and the order was in the favour of the Indian company. He relied on the Supreme Court of Australia, NSW which is not mentioned and he said he will provide in his additional submission which they will submit later on.

Further he stated that honourable Supreme Court in Hindustan Steel Limited held that penalties not to be imposed unless the conduct of defaulter is found to be dishonest or contumacious. He relied on Supreme Court judgement on Akbar Badruddin Jeevani versus Collector of Customs in 1990. In case of Trans Asia Shipping services Pvt ltd it was held that as per the facts on record the allegation of

aiding and abetting cannot be upheld where IGM is filed on the basis of bill of lading after getting the communication from the importer.

They are the shipping company, their scope is very limited and as such they can't be held liable for penalty.

He stated that they will be filling additional submission citation later on. They prayed that penalty under section 117 should not be imposed and they will submit further citation in this matter.

M/s Alang Auto & Gen. Engg. Co. Pvt Ltd didn't appear on 14.11.2024 and sought adjournment.

ii) 2nd PH on 09.12.2024

Shri Gunjan Shah, CA, authorised representative of M/s Alang Auto General Engg Co (P) Ltd (IEC-2405003112) appeared before me for scheduled Personal hearing on today, i.e. 09.12.2024 at 11.00 AM, through virtual mode in the matter of M/s. Alang Auto General Engg Co (P) Ltd. Shri Gunjan Shah (CA), during the personal hearing stated that in the case the issue involved that the containers were likely travelled from Karachi to Dubai and the Indian importer imported the goods from Dubai to India and the issue is on this line only is that is 200% of duty issue. Further, they added that there is a duplicate container seal number in two of the containers where the alleged import has taken place from the Pakistan. So that is not possible that both the containers have a same seal number in their case. Further, they added that M/s Along Auto is importing 4 to 5 hundred containers per year since last few years. So, importing One container, it cannot be the intention to have any benefit. Especially in the scrap, the margins are hardly 5% and in some of the material duty is 0%. So there should not be any point to import scrap from Pakistan instead of Dubai.

Further, they added that what is another thing that is transpired that this information had at the time of clearance it would have been notified to them, they would have re-exported. In another case at Mudra port itself, they have got a favourable order because it was a live consignment. Now here in this case, what has happened that information is culminated into Show Cause Notice after more than one year. So it is not possible for them to re-export because the goods are already melted and used. That is the issue in the brief.

Discussions and Findings:

12. After having carefully gone through the Show Cause Notice, relied upon documents, submissions made by the Noticees and the records available before me, I now proceed to decide the case. The main issues involved in the case which are required to be decided in the present adjudication are as below:

i. Classification of 45075 Kgs of "Stainless Steel Melting Scrap Grade 2205" imported in Container No(s). PRSU2141199 and PCLU2010527 covered under BL No. SASLMU20841 dated 12.11.2020, & BE No. 9659743 dated 21.11.2020 under Chapter Tariff Heading No. 72042190 is liable to be rejected and the same to be re-classified under Chapter Tariff Heading No. 98060000 of the Customs Tariff Act, 1975.

ii. 45075 Kgs of "Stainless Steel Melting Scrap Grade 2205" as detailed above at point no (i) valued at **Rs.62,70,834/- *(Rupees Sixty Two Lakhs Seventy Thousand Eight Hundred and Thirty Four Only)*** is liable for confiscation under Section 111 (m) of the Customs Act, 1962.

iii. The Customs Duty of **Rs. 1,74,07,835/- (BCD@200%; SWS@10% & IGST@18%) *(Rupees One Crore Seventy Four Lakh Seven Thousand Eight Hundred and Thirty Five only)*** is liable to be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962;

iv. The Customs Duty of **Rs. 13,32,239/- *(Rupees Thirteen Lakhs Thirty Two Thousand Two Hundred Thirty Nine only)*** already paid by the importer against the said Bill of Entry is liable to be appropriated.

v. Importer is liable to be penalised under the provisions of Section 112 and/or 114A, 114AA of the Customs Act, 1962.

vi. **M/s Hub & Links Logistics (I) Pvt. Ltd.**, Suite No.101, Rishabh Arcade, Near to GST Bhawan, Plot No.83, Sector-8, Gandhidham- 370201, the Shipping Line Agent, is liable to be penalized under the provisions of Section 117 of the Customs Act, 1962; and

vii. **M/s Ravi Energie Pvt. Ltd. (HQ Asia Pacific & Africa)**, the Pre-shipment Inspection Agency is liable to be penalized under the provisions of Section 114AA of the Customs Act, 1962.

13. After having framed the main issues to be decided, now I proceed to deal with each of the issues herein below. The foremost issue before me to decide in this case is as to whether the goods imported by M/s. Alang Auto General Engg Co (P) Ltd are mis-classified under customs Tariff Item 72042190 and the same is to be re-classified under Customs Tariff Item 98060000.

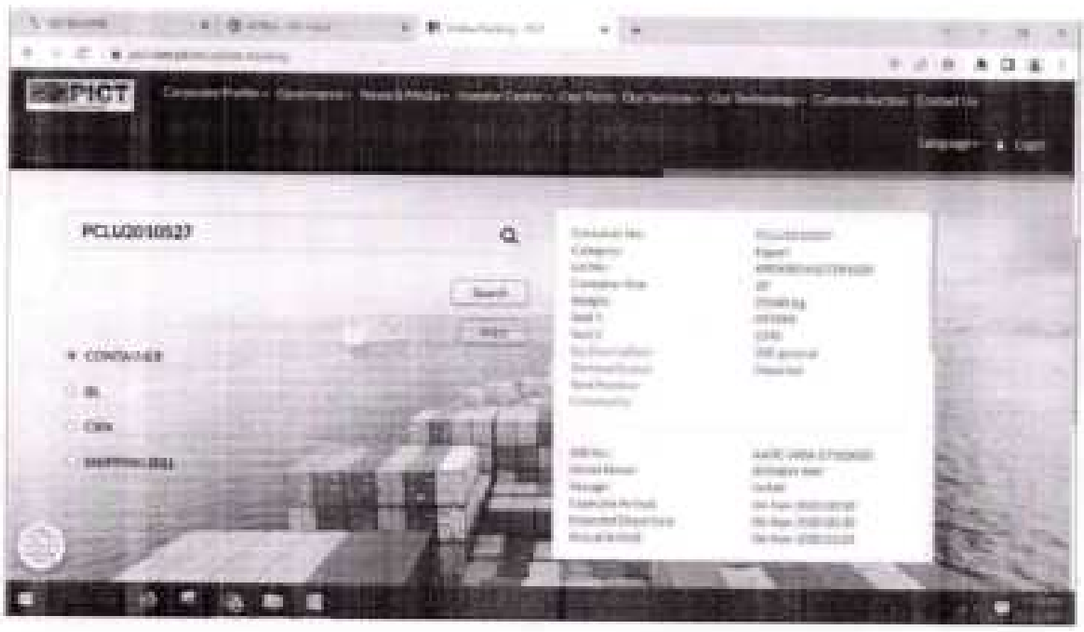
Rejection of classification and re-classification of Goods

13.1 I find that in present case the dispute of classification has arisen solely on the basis of origin of goods. The Government of India vide Notification No. 05/2019-Customs dated 16.02.2019 has inserted a specific entry "9806 00 00" in Customs Tariff Act, 1975 which stipulates that the all goods originating in or exported from the Islamic Republic of Pakistan shall be classifiable under Custom Tariff Item "9806

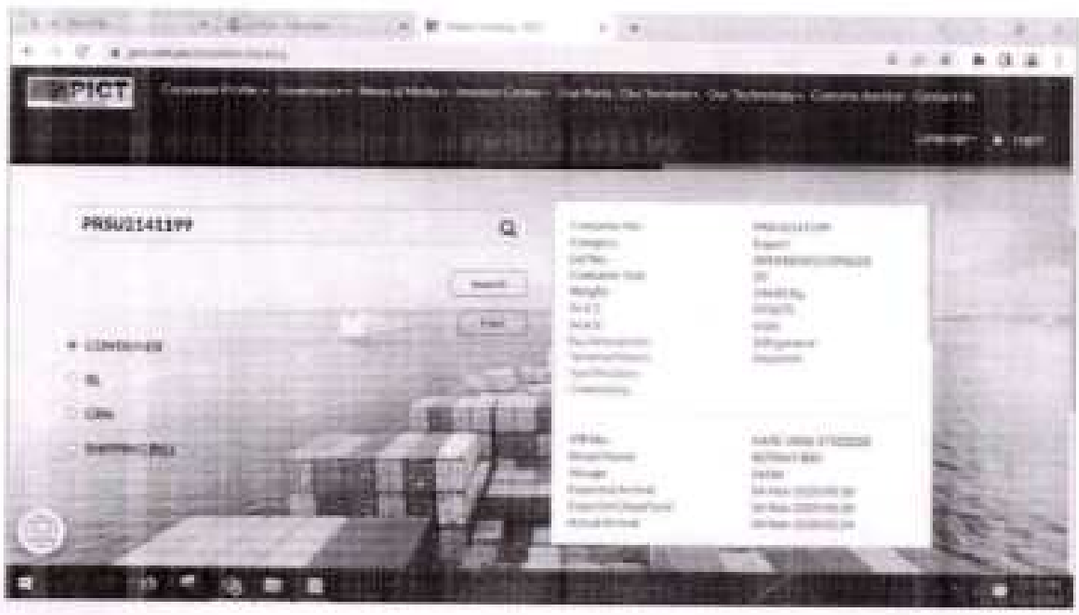
00 00" in Chapter 98 of Section XXI, in the First Schedule to the Customs Tariff Act, 1975. The show cause notice alleges that the goods originated in Pakistan, therefore, it is correctly classifiable under Customs Tariff Item-98060000.

13.2 I find that that information was received stating that the container tracking on PICT (Pakistan International Container Terminal Limited) divulged that the container had originated from Pakistan; that though the declared Country of Origin and Port of Shipment is UAE, the goods imported into India originated/exported from Pakistan and hence the Country of Origin declared by the Importer seems incorrect; that the screen-shot of tracking of container at PICT website was also forwarded, which is reproduced below for reference : -

Tracking of container no **PCLU2010527**



Tracking of container no **PRSU2141199**



13.3 The details and comparative chart of Bill of Ladings provided by the delivery agent M/s. Hub & Links Logistics (I) Pvt. Ltd., Gandhidham has been shown in para 4.2.

13.4 I find that documentary evidence in the form of Bill of Lading no. SASLMU20841 dated 05.11.2020 issued by CIM Shipping Inc. for transport of "SS Melting Scrap Grade 2205" in Container no. PRSU 2141199 and PCLU 2010527 from Karachi Port to Jebel Ali revealed that the said Container was loaded from PKKHI (Port of Karachi, Pakistan) and destined to Jebel Ali, UAE. The above said Bill of Lading shows that the Container Nos. PRSU 2141199 and PCLU 2010527 bearing seal no. 095878 and 095894 respectively have left from PKKHI (Port of Karachi) for AEJEA (Port of Jebel Ali) on 05.11.2020 on board the vessel "Botany Bay. The Container numbers and seal numbers shown in Bill of Lading matches with that declared in import documents filed at Mundra Port wherein Country of Origin is declared to be United Arab Emirates.

13.5 I find that Sh Parth Labhshankar Jani, manager of M/s Alang Auto & General Engg Co (P) Ltd in this statement dated 11.04.2022 recorded under section 108 of the Customs Act, 1962 has stated that on seeing the tracking website https://pict.com.pk/en it appears that both containers originated from Karachi Pakistan. Further, Shri Sajish Sivaraj, General Manager of M/s. Hub & Links Logistics (I) Pvt. Ltd., in his statement dated 22.02.2022 recorded under Section 108 of the Customs Act, 1962 stated that both containers were loaded from Port of Karachi to Jebel Ali in the Vessel BOTANY BAY vide bill of lading number SASLMU20841 dated 05.11.2020 and thereafter both said containers were trans-shipped from Jebel Ali to Mundra in Vessel OEL JUMEIRAH and the containers were not opened at Jebel Ali for any purpose and they were trans-shipped from Jebel Ali to Mundra as received from Karachi to Jebel Ali. I find that on the same containers, the same seals were found intact, when the container left Karachi Port and landed at Mundra Port, via Jebel Ali. This sufficiently makes it clear that the goods "SS melting Scrap 2205" was loaded on Karachi port, on the containers PRSU 2141199 and PCLU 2010527 with seal Nos. 095878 and 095894, and the same were unloaded directly at Mundra Port. The fact that documentation was so created to camouflage the origin Port again is confirmatory that goods were of Pakistan origin.

13.6 From the documents submitted by M/s HUB & Links Logistics (I) Pvt Ltd, it is amply clear that impugned goods loaded in Container no. PRSU 2141199 and PCLU 2010527 with seal Nos. 095878 and 095894 respectively were dispatched from Karachi to Jebel Ali and reached at Mundra Port with the same seal nos. 095878 and 095894. The chronology of dates also indicates clearly that the goods were loaded at Karachi for onward movement to Mundra via Jebel Ali.

13.7 I find that Importer has submitted PSIC ref: 052/AJUL-

RN/NFAA1167/2020 dated 30.10.2020 wherein it has been mentioned that the issuing agency visually inspected the consignment in Jebel Ali for four hours and certified that the goods are metallic scrap and does not contain any symbol related to ionizing radiation or nay marking related to transport of dangerous goods classified as class 7. Further, they also declared that goods didn't contain any arms, ammunition and radiations were well within range. As evident from the documents, the containers were never opened in the route from Karachi, Pakistan to Jebel Ali, UAE and thereafter from Jebel Ali, UAE to Mundra, it can be concluded that the goods were never inspected by PSIA and the PSIC produced is fake/forged/bogus in nature. The same was just created to camouflage the country of origin/port of export.

13.8 I find that Noticee in his submission dated 06.04.2024 has contended that there is no independent evidence with the department except that the containers and seal numbers mentioned in both the Bills of Lading are the same and department has not been able to prove that exports were from Pakistan. Here, Noticee has failed to appreciate the fact that beside documentary evidences in the form of Bills of Lading, the container tracking details which are relied upon in Notice also suggests that goods were loaded from Karachi, Pakistan. Further, Sh Parth Labhshankar Jani, manager of M/s Alang Auto & General Engg Co (P) Ltd in this statement dated 11.04.2022 recorded under section 108 of the Customs Act, 1962 has stated that on seeing the tracking website https://pict.com.pk/en it appears that goods of both containers are originated from Karachi Pakistan. The forged/bogus PSIC (discussed in above para) submitted by Noticee also substantiates the same stories. There is not even an iota of doubt that the goods were exported from Pakistan. Hence, the contention made by Noticee is not sustainable here.

13.9 Further, Noticee has contended that in the email communication made by NCTC, there is no mention of actual Country of Origin. Here, again Noticee has failed to appreciate that in the last paragraph of email communication, it is clearly written that the consignment is of Pakistan Origin. Further, Noticee has contended that in the same email communication, seal no. has been repeated for two containers pertaining to Bill of Entry No. 9659743 dated 21.11.2020 which is not possible. I find the same to be a clerical mistake. I have the copy of Bill of Lading wherein the seal no has been categorically mentioned i.e. for Container Nos. PRSU 2141199 seal No. is 095878 and for PCLU 2010527 seal no is 095894. Further, in the electronic record of Bill of Entry the seal no has been found as per Bill of Lading. Hence, the contention made by Noticee here has no force and is just to deviate and mis-lead the adjudicating process.

13.10 Noticee contended that there is no action initiated by the Customs department or there is any recommendation by the Customs department to DGFT for cancellation of the authorization of M/s Ravi Energie Pvt. Ltd., and M/s Ravi Energie

Gulf FZE for allegedly issuing fake PSIC and not responding to the summons issued by the Customs department. Here again Noticee has failed to appreciate that in the Show Cause Notice itself it is mentioned that letter to DGFT has already been forwarded to initiate action against the PSIA. Further, Noticee has contended that they have limited capacity to verify the PSIC and their role is to ensure compliance with regulatory requirements through the submission of these documents at the time of entry. The allegation overlooks the procedural adherence by the importer to the stipulated norms and the inherent expectation of genuineness in the documents received from the supplier. I find that in the statement dated 11.04.2022 representative of Noticee stated that they have even not appointed PSIC and just relied on the documents given by supplier. From this, it is clear that Noticee was reckless from the time of filing of Bill of Entry and has even no intent to verify the genuineness of the PSIC. I find that as per Handbook of procedures para 2.53 responsibility of PSIA, Importer and exporter has been fixed. The same is reproduced as below:

2.53 Responsibility and Liability of PSIA and Importer

(a) In case of any mis-declaration in PSIC or mis-declaration in the online application form for recognition as PSIA, the PSIA would be liable for penal action under Foreign Trade (Development & Regulation) Act, 1992, as amended, in addition to suspension/ cancellation of recognition.

(b)The importer and exporter would be jointly and severally responsible for ensuring that the material imported is in accordance with the declaration given in PSIC. In case of any mis-declaration, they shall be liable for penal action under Foreign Trade (Development & Regulation) Act, 1992, as amended.

Further, as per Section 46 (4A) of the Customs Act, 1962, Importer has to verify the authenticity of documents submitted by them.

In view of the above, I find no force in the contention that they are not responsible for genuineness of the documents submitted by them.

13.11 Noticee has contended that the screenshots of tracking details of Containers attached in RUD's are unclear and vague. Ongoing through the facts of the case, I find that the same screenshot is also shown clearly in para 4.1 of Show Cause Notice. The same was produced before Shri Parth Labhshankar Jani, representative of M/s Alang Auto & General Engg Co (P) Ltd during his statement dated 11.04.2022 recorded under Section 108 of the Customs Act, 1962 and he confirmed the same. Hence, the contention made by Noticee is not sustainable.

13.12 Noticee in his written submission has sought cross examination of the following person:

a) Investigation Officer- Noticee has sought the cross examination of

investigation officer to question the expectation placed on Noticee to Monitor container movements on foreign websites. The Noticee has also sought cross examination on the ground that no action was initiated against PSIA. In this regard, I observe that it was not only the container tracking details, which was relied upon in the investigation. The forged PSIC and Bills of lading were also the key factors in determining the fact that goods were exported from Pakistan. I find that as per the provisions of Section 46 (4A), the Importer has to verify the authenticity of documents submitted to customs authority. If they are declaring the country of origin as Jebel Ali, then they have to be responsible for genuineness of Country of Origin Certificate. By just saying that documents were provided by overseas supplier, and they relied on them, can't save them from the penal consequences as per Customs Act, 1962. Further as per section 46 (4) they have to submit a declaration about the truth and content of the Bills and documents supporting the same. In the statement dated 11.04.2022, Shri Parth Labhshankar Jani, manager of M/s Alang Auto & General Engg CO (P) Ltd, stated that they have not even appointed the PSIA for issuance of PSIC. Hence despite knowing the fact that they have not verified the authenticity of documents, they have given declaration under section 46(4) as to truth of the contents of Bill of Entry. It is evident that provisions of section 46 of Customs Act, 1962 itself imparts responsibility to Importer for verification of authenticity and genuineness of documents/ declaration/any information provided by them. Accordingly, I find that the officer has worked within the ambit of provisions of Customs Act, 1962. Further, the second allegation that Officer has not initiated the action against PSIA is also not sustainable as the Show Cause Notice para 4.6 explicitly mentions that the letter has been sent to DGFT for taking the required action against PSIA. Hence, I find that the ground mentioned by Noticee for cross examining the Investigation Officer is devoid of merit and appears insufficient.

b) Shri Sajish Shivaraj and Shri Aftab Kundan- Noticee has requested to cross examine the above persons on the ground to uncover the details about shipment's routing, documentation, and any possible discrepancies or miscommunication. I find that the documents i.e. Bills of lading provided by Shri Sajish Shivaraj, General Manager of M/s HUB & Links Logistics (I) Pvt Ltd during statement recorded under Section 108 of the Customs Act, 1962 has been already relied upon in the Show Cause Notice and their authenticity and legality have not been challenged by the Noticee in their written submission. Further, Shri Aftab Kundan has not submitted any documents. So there is nothing to uncover the details about shipment routing which is already well established through Bill of Lading and Container Tracking details. Therefore, I find that the grounds for cross examination is vague and unclear and based on assumptions. It appears rather with a motive to delay and mis-lead the adjudication process.

c) I observe that when there is no lis regarding the facts but certain explanation of

the circumstances, there is no requirement of cross examination. Reliance is placed on Judgement of **Hon'ble Supreme Court in case of K.L. Tripathi vs. State Bank of India & Ors [Air 1984 SC 273]**, as follows:

> *"The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action."*

Therefore, I find that cross examination in the instant case is not necessary. The same has not been sought citing valid reasons and appears to be sought with a motive to mislead and deviate the adjudication process.

d) I observe that the principles of proving beyond doubt and cross examination cannot be applied to a quasi-judicial proceeding where principle remains that as per the preponderance of probability the charges should be established. The cross examination of persons can be allowed during a quasi-judicial proceeding. It is true that as per 138B(2) the provision regarding cross examination shall so far as may be apply in relation to any other proceedings under the customs act. The usage of phrase 'so far as may be' in section 138B (2) shows that cross examination is not mandatory in all cases but the same may be allowed as per circumstances of the case.

e) I find that in the instant case there remains no scope of ambiguity for a man of prudence. Therefore, I observe that no purpose would be served to allow cross examination of such person as same has been sought only with the motive to protract the proceedings. I find that denial of Cross-examination does not amount to violation of principles of natural justice in every case. Further, it is a settled position that proceedings before the quasi-judicial authority is not at the same footing as proceedings before a court of law and it is the discretion of the authority 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:-

i) **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'.

ii) **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.

iii) 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.

iv) 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).

v) 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)".

13.13 From the facts and evidences on the records as discussed above, I find that the container no. PCLU2010527 and PRSU2141199 having Seal No. 095894 and 095878 respectively, were not opened at Jebel Ali as the seal affixed at Karachi Port is found intact at Mundra Port and that all the documents viz. Pre-shipment Inspection Certificate, country of origin etc. were forged. The Containers were actually loaded from Karachi Port and it has reached Mundra via Jebel Ali and the importer has mis-declared the Country of Origin of the goods as United Arab Emirates instead of actual Country of Origin as Pakistan as also evident from the container tracking details. Thus, it is beyond doubt that 45075 Kgs of Stainless Steel Melting Scrap Grade 2205, loaded in the containers no. PCLU2010527 and PRSU2141199 was exported/originated from Islamic Republic of Pakistan.

13.14 In the above para, I have held on the basis of available documents and evidences that the impugned goods imported under the Bills of Entry bearing no. BE No. 9659743 dated 21.11.2020 were of Pakistan origin/exported from Pakistan, now I proceed to classify the said goods:

I find that Government of India vide Notification No. 05/2019-Customs dated 16.02.2019 has inserted tariff item 98060000 in Ch. 98 of the First Schedule to Customs Tariff Act, 1975. The relevant portion of the Notification 05/2019-Customs dated 16.02.2019 is produced hereunder for sake of clarity: -

"In the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, after tariff item 9805 90 00 and the entries relating thereto, the following tariff item and entries shall be inserted, namely: -

1	2	3	4	5
*"9806 00 00	*All goods originating in or exported from the Islamic Republic of Pakistan*	-	*200 %	-*

I find that the classification adopted by the importer of the impugned goods under Customs Tariff Item 72042190 is not correct and the same is correctly classifiable under Customs Tariff Item 98060000 of Customs Tariff Act, 1975 in terms of Notification No. 05/2019-Customs dated 16.02.2019 as the goods imported by them has originated/exported from Islamic Republic of Pakistan.

14 Confiscation of the impugned Goods

14.1 Now, I proceed further to discuss the second issue to be decided. As far as confiscation of goods are concerned, I find that Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(m) of the Customs Act, 1962 are reproduced below: -

(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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;"

14.2 As discussed in above para, the goods were mis-declared in terms of classification and Country of Origin, hence the goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

14.3 The Noticee in his submission dated 06.04.2024 has contended that since the goods have already been cleared and are not physically available for confiscation, the legal basis for such action is untenable. I find that this position has already been settled in many cases. In case of ***Dadha Pharma Private Limited vs Secretary to Govt of India 2000 (126) E.L.T. 535 (Mad),*** the Hon'ble High Court categorically held that:

*"A careful reading of the sections would clearly show that it is the liability to confiscation that is spoken to and not the actual confiscation. Therefore, it would mean that the power to adjudicate upon for the imposition of penalty for improper importation, springs from the liability to confiscate, and not actual confiscation. This is because not only Section 110 occurs under a different chapter, but the purpose of that section relates only to seizure about which I have already noted. There again the words are "any goods are liable to confiscation under this Act." **Merely because the department by reason of its inaction is not in a position to seize the goods, does not and cannot disable it adjudicating upon the liability for action under Section 111 read with Section 112 of the Act.** In other words, the language of both the sections above referred to does not warrant the actual confiscation, but merely speaks of the liability of the goods being confiscated. This is the plain and most unambiguous meaning of the phraseology 'liable to confiscation' spoken to in these two sections."*

I am fortified in my conclusion by referring to Collector of Customs and Central Excise v.

Amrutalakshmi, AIR 1975 Mad., 43 and Munilal v. Collector, Central Excise, Chandigarh, AIR 1975 Punj. and Haryana 130. In both these cases, though this line of interpretation has not been adopted, it has been categorically found that having regard to the scope of these two sections viz. Section 110 on the one hand and Section 111 read with Section 112 on the other, being independent of each other, seizure is not necessary for confiscation. This will be an added reasoning to any conclusion. Therefore, the second point raised by the petitioner also has to be rejected."

Hence, from above decision of Hon'ble High Court and plain reading of Section 111, it is clear that liability of confiscation of a goods and actual confiscation of goods are different things. Once, the goods are found violating the relevant provisions of Customs Act, 1962, the liability of confiscation arises as per Section 111 of the Customs Act, 1962 and the physical availability of goods or seizure doesn't alter this position.

In view of the above discussions, I find that the impugned goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

Applicability of Redemption fine-

As the impugned goods are found to be liable for confiscation under Section 111(m) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCN. The Section 125 ibid reads as under:-

*"**Section 125**. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit."*

***Provided** that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [3] [no such fine shall be imposed];*

***Provided** further that[4] , without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

[4] [(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

[5] [(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

***Explanation** .-For removal of doubts, it is hereby declared that in cases where an*

*order under sub-section (1) has been passed before the date** on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]*

first proviso which was introduced vide Finance Act, 2018 which says that *where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply.* Behind the proviso, there is an assumption that goods become liable for confiscation when there is demand under Section 28. Interestingly, the liability to confiscation is assumed to arise even in cases that do not involve an extended period of limitation not being cases of collusion or willful mis-statement or suppression of facts.

At this point, one has to understand that there cannot be a demand of duty, where the goods are seized and are in the possession of the government. It is a basic principle that goods and duty travel together. Thus, when the goods are in the possession of the government having been seized, there cannot be a demand for duty. Duty payment, even differential duty payment arises when the goods are confiscated and ordered for release to the importer. Section 125(2) which provides that *where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods*, makes this above position clear.

Thus, the proviso which is inserted in Section 125 referring to cases under Section 28 which are essentially in respect of demand of duty where the goods are not seized/ detained by the department, gives room for interpretation that Redemption fine is imposable even if the goods are not seized and are not available for confiscation.

Further, these points were already settled in case of Judgment dated 11.08.2017 of Hon'ble High Court of Madras in ***C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]***. Para 23 of the said Judgment is as follows:

"The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularized, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act ....", brings out the point clearly. The power to impose

redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

Further, In the case of ***M/s Venus Enterprises vs CC, Chennai 2006(199) E.L.T. 661(Tri-Chennai)*** it has been held that:

"We cannot accept the contention of the appellants that no fine can be imposed in respect of goods which are already cleared. Once the goods are held liable for confiscation, fine can be imposed even if the goods are not available. We uphold the finding of the misdeclaration in respect of the parallel invoices issued prior to the date of filing of the Bills of Entry. Hence, there is misdeclaration and suppression of value and the offending goods are liable for confiscation under Section 111(m) of the Customs Act. Hence the imposition of fine even after the clearance of the goods is not against the law."

In case of ***Synergy Fertichem Ltd vs Union of India, reported in 2020 (33) G.S.T.L 513 (Guj.)*** has relied on the judgment in case of C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.) and *"held that we would like to follow the dictum as laid down by the Madras High Court"*

Hence, from the above discussion and relying on the above judgments, I find that goods are liable for confiscation and fine can be imposed in view of judgment in case of ***C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)] .***

15. Duty Demand under Section 28(4) with applicable interest under Section 28AA of the Customs Act, 1962.

15.1 The present Show Cause Notice has been issued under the provisions of Section 28(4), therefore it is imperative to examine whether the section 28(4) of Customs Act, 1962 has been rightly invoked or not. The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

> *"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—*
>
> *(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—*
>
> *(a) collusion; or*
>
> *(b) any willful mis-statement; or*
>
> *(c) suppression of facts."*
>
> *by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date,*

serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

The term "relevant date" For the purpose of Section 28 ibid, has been defined in Explanation 1, as under:

Explanation 1 *. - For the purposes of this section, "relevant date" means,-*

(a) in a case where duty is 21[not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.

15.2 Noticee has contended that there was no collusion, mis-statement and suppression on their part as they have provided the PSIC as received from supplier and they have also provided the photographs showing the goods being loaded. The matter is discussed in length in above paras. I observe that by just saying that they have provided the PSIC as received from supplier, they can't wash away the responsibility assigned to them through provisions of Customs Act, 1962. Even DGFT have also fixed the responsibility on importer for any mis-declaration in PSIC as per para 2.53 of Handbook of Procedures. They have to verify the authenticity of the every documents submitted to customs authority as per the provisions of section 46(4A) of the Customs Act, 1962. By producing fake/forged PSIC, an element of wilful suppression of facts has been well established in this case. The photographs submitted by them doesn't enlighten on the fact that goods are being loaded in Jebel Ali. On seeing photographs, nothing can be substantiated that goods were loaded in Jebel Ali. Hence, I find no force in the contention of the Noticee.

15.3 Further Noticee has contended that extended period can't be invoked except in cases of deliberate intent to evade duty or wilful suppression in view of judgments pronounced by several courts. They have relied on *CC vs. Tin Plate Co. of India Ltd. [1996 (87) E.L.T. 589 (S.C.)], Nestle India Ltd. vs. CCE [2009 (235) E.L.T. 577 (S.C.)], Advanced Spectra Tek Pvt. Ltd., reported in 2019 (369) ELT 871 (Tri-Mumbai),CC vs. Tin Plate Co. of India Ltd. [1996 (87) E.L.T. 589 (S.C.)], Jaiprakash Industries Ltd. Vs. Commissioner of Central Excise [2002] 146 ELT 481,Padmini Products v. Collector of Central Excise (1989) 43 ELT 195 (S.C.), M/s. Continental Foundation Joint Venture Vs. CCE (2007) 216 ELT 177, Pushpam Pharmaceuticals Company Vs Collector of C. Ex., Bombay (1995) 78 ELT 401* and other related orders.

I have gone through all these case wherein it has been stressed that extended period can't be invoked in absence of wilful misstatement, suppression etc. which is also evident from the Customs Act, 1962 itself. I find that the contention of importer that they have not suppressed the material facts is not sustainable. The importer not only misdeclared the Country of origin but also submitted forged PSIC as a supporting document, to effect clearance of their goods. They never approached the PSIC agency before submitting Bill of Entry or even during the course of investigation, when the fact of misdeclaration was brought to their knowledge along with doubtful PSIC and the first leg Bill of lading, which shows the origin of the containers containing the goods to be Pakistan. Further, after introduction of self-assessment and consequent upon amendments to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it is the obligatory on the part of the importer to declare the correct country of country of origin of impugned goods and correct classification of the goods imported by them and pay the duty applicable in respect of the said goods. It is unreasonable to expect that an officer assessing the Bill of Entry will presume that the imported goods would have originated from any other country than declared and will start tracking of the containers on website of Ports of suspected country. The importer, therefore, by not disclosing the true and correct facts to the proper officer at the time of clearance of imported goods, have indulged in mis-declaration and mis-classification by way of suppression of facts and willfully mis-declared and mis-classified the imported goods with intent to evade the payment of applicable Custom duties. Sub-section(4A) to Section 46 of the Customs Act, 1962, requires him to ensure completeness, correctness and authenticity of the information. Thus, the importer has contravened the provisions of Section 46(4) & 46(4A) of the Customs Act, 1962, in as much as they have mis-classified and mis-declared the goods imported by them, by suppressing the true and actual origin of the goods, while filing the declaration seeking clearance at the time of importation of impugned goods. **Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011- Customs dated 08.04.2011,** cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self assessment, is required to ensure that he declared the correct classification, country of origin, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. In **EVERSHINE CUSTOMS (C & F) PVT LTD., New Delhi Vs. COMMISSIONER OF CUSTOMS, New Delhi, the CESTAT**, Principal Bench observed as under -

"19. The responsibility therefore, rests entirely on the importer and without such a provision, the Customs law cannot function. Sub-section (1) of section 46 requires the importer to make an entry of the goods imported. Sub-section (4) requires him to make a declaration confirming the truth of the contents of the Bill of Entry."

By the self assessment scheme, a trust is placed in the hands of Trade, for speedy

clearance by way of facilitation. Therefore, in light of doctrine *"No man can take advantage of his own wrong"*, trade is not liberally allowed to advance their plea, justifying every act or omission as bonafide error in order to escape from the clutches of penal liabilities.

15.4 Noticee has further relied on various cases which are different in terms of facts and scenario of this case. I observe that decisions from Higher Courts cannot straight away be used as precedents for other cases, and must be decided based after comparison of facts. Further, cases with different facts and circumstances cannot be relied upon. This is because the facts and circumstances of each case are unique, and the principles of natural justice must be applied to the specific context of the case. A single additional or different fact can make a significant difference in the conclusions of two cases. Hence, I find that it is not proper to blindly rely on a decision when disposing of cases. Further, I observe that the following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

15.5 Noticee has contended that it is the responsibility of revenue to substantiate its claim with evidence that is the requirement not made in this case. Noticee has placed reliance on *Pr Commissioner of Income Tax vs. Daksha Jain (2018 11 TMI 1182), Gokuldas Exports vs. Jain Exports Pvt Ltd (2003 (157) ELT 243 (SC)), and Phoenix Mills vs. Union of India (2004 (168) ELT 310).* Here Noticee has failed to appreciate the fact that enough documentary evidences like Bills of lading, Container tracking details and forged PSIC have been provided to substantiate the fact that goods were exported/originated from Pakistan and element of suppression has been proved beyond doubt. Further, in case of ***Chennai Port (import) vs Sree Nakoda Enterprises Customs Appeal No. 40261/2023 decided on 31.05.2023*** Hon'ble Tribunal has meticulously explained the burden of proof and held that Section 123 of the Customs Act requires burden of proof in certain cases and in the light of our above discussion, the 'burden of proof' which has not been defined under the Customs Act, therefore, has to be looked into from the point of the Indian Evidence Act. When a statutory authority entertains a doubt, a Show Cause Notice will be naturally issued based on certain observations and it is for the **noticee to satisfy and to prove that the observations / allegations of the statutory authority issuing such Show Cause Notice is wrong. The burden of proof, therefore, is always there on the noticee initially, which has to be discharged in the first place**. So by just stating that they have filed Bill of Entry as per documents supplied by overseas supplier without giving any evidences in

support, they can't escape from the duty liability and penal provisions. If this stand of the Importer is given credence, no case of duty evasion as can be booked and all tax evaders on getting caught would just blame the foreign supplier with impunity and seek escape from penal proceedings under the law. Hence, in view of the above discussions, I find that the contention of Noticee is not sustainable.

15.6 The facts and evidences placed before me clearly states that the Importer has willfully indulged in mis-stating and suppressing the fact that the goods were of Pakistan Origin. The importer had mis-declared the Country of Origin of such goods covered under the said Bills of Entry, as UAE. The importer had submitted all the documents viz. Pre-shipment Inspection Certificate, country of origin etc. which were fake and created only with the intention to hide the fact about country of origin and to evade payment of appropriate duty. Their act of suppression of facts was unearthed only after intelligence was received and investigation conducted by SIIB. The importer knowingly and deliberately has suppressed the material facts of Country of Origin from the Department and mis-declared the same in the Bills of Entry with a clear intention to evade the differential Customs Duty. Had the SIIB not initiated investigation into the matter, the importer would have succeeded in his manipulations and the evasion of duty could not have been unearthed. The Importer cannot take a stand that he had no idea of the fraud perpetrated by his supplier and seek relief from the charges made in the notice, in the face of the evidence available in the instant case, including especially submission of false PSIC certificate. If such leniency is extended in financial crimes, no case can be booked against erring Importers. The preponderance of probability in the instant case clearly points to culpability on the part of the Importer.

15.7 In view of above, I hold that there is no flaw in invoking Section 28(4) of Customs Act, 1962, to demand differential duty in the present case along with applicable interest as per Section 28AA of the Customs Act, 1962. I also hold that the customs duty already paid is liable to be appropriated against the said demand.

16. Imposition of Penalty on M/s Alang Auto General Engg Co (P) Ltd under Section 112A/114A and 114AA of the Customs Act, 1962.

16.1 I find that section 114A stipulates that the person, who is liable to pay duty by reason of collusion or any willful mis-statement or suppression of facts as determined under section 28(8) ibid, is also be liable to pay penalty under section 114A.

16.2 In above paras, I have held that the Importer has resorted to suppression of fact at the time of filing of Bills of Entry of imported goods by mentioning wrong Customs Tariff Items with an intent to evade the Customs duty. They have deliberately misled the Department, by submitting forged PSIC and other documents fraudulently to evade payment of higher rate of duty imposed on Pakistan Origin

goods. Had the investigating agency i.e. SIIB Section, Mundra Customs not initiated investigation against the Importer, the evasion of Customs Duty would not have come to the knowledge of the department. In the present case, the importer has been found liable to pay duty determined under section 28(8) of the customs act, 1962, therefore, for these acts and omissions, the Importer is liable for penal action under Section 114A of the Customs Act, 1962.

16.3 However, I find that as per 5th proviso of section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under section 112 is not imposable. I find that there is a mandatory provision of penalty under section 114A of customs act, 1962 where duty is determined under Section 28 of customs act, 1962. Therefore, I refrain from imposing penalty under section 112 of Customs act, 1962.

16.4 As regards imposition of penalty under Section 114AA of Customs Act, 1962 on M/s. Alang Auto General Engg Co (P) Ltd, the Section 114AA envisages penalty on a person who 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. Noticee has provided the forged/fake documents to the customs authority with an intent to evade duty. In the statement dated 11.04.2022 recorded under section 108 of the Customs Act, 1962 Shri Parth Labhshankar Jani, manager of M/s Alang Auto & General Engg CO (P) Ltd, stated that they have not even appointed the PSIA for issuance of PSIC. Hence despite knowing the fact that they have not verified the authenticity of documents, they have given wrong declaration under section 46(4) as to truth of the contents of Bill of Entry. From the discussions held, it is beyond doubt that they have intentionally produced the fake documents and declaration to evade customs duty and hence rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962. Hence, I hold that M/s. Alang Auto General Engg Co (P) Ltd has mis-declared the country of origin to evade the duty by way of producing forged or fake document/declaration and for their act of omission and commission they have rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962.

17. Imposition of Penalty on M/s HUB & Links (I) Logistics Pvt Ltd under Section 117 of the Customs Act, 1962.

17.1 In the written submission dated 29.02.2024 they have stated that Switch bills of lading are valid. They have not got the first leg of Bill of Lading initially. They have filed IGM on the basis of 2nd leg of Bill of Lading. Noticee has stated that it is the Importer that has committed fraud and by relying certain provisions of customs act, they are not liable for penalty. Further they have stated that they have not done anything which has led the goods to be liable for confiscation. They have stated that they have not abetted any contravention under the act, hence section 117 are not

applicable on them. They have relied on certain judgments to state that they are not liable for penalized under section 117. Further they have stated that they can't be held guilty for mis-declaration with regard to the correctness of the content of the IGM filed by them as required under section 30(2) of the Customs act and hence no penalty should be imposed under section 117 of the customs act. Further they have stated that as mens-rea has not been found, penalty under section 117 of the Customs Act, 1962 can't be imposed on them.

17.2 Ongoing through judgments relied by the notice to support their contention that they are not liable to be penalized under Section 112(b) and 117 of the Customs Act, 1962, I find that cited case of ***Hindustan Steel Ltd 1978 (2) ELT J159 (SC), Akbar Badruddin Jiwani vs Collector of Customs 1990 (047) ELT 0161 (SC), M/s Trans Asian Shipping Services P Ltd 2018 (363) E.L.T. 635 (Tri. ALL)*** are different from this case in terms of fact and penalty provision of Customs Act, 1962. Further vide additional submission dated 15.11.2024 they reiterated the submission dated 09.02.2024 and in support of their contention of legitimacy of issuance of Switch Bill of Lading, they have placed reliance on the judgment in Wollongong Coal Limited vs PCL (Shipping) Pte Ltd (2020) decided by the New South Wales, Supreme Court. I find that legitimacy of Switch Bill of Lading has not been challenged in Show Cause Notice. Further, they have placed reliance on ***Jeena and Company versus Commissioner of Customs, Bangalore (2021 (378) E.L.T. 528 (Tri. Bang) and JKG Infralogistics Pvt Ltd vs Commissioner of Customs, Kolkata (2023 Taxscan (CESTAT) 1652)***. In these two judgments the facts of the cases are different and they are related to CB violation, hence can't be relied upon.

17.3 As regards imposition of penalty under Section 117 of the Customs Act, 1962, I find that during investigation, they have submitted some documents. During statement recorded on 22.02.2022, **Shri Sajish Sivaraj Puthenchira, General Manager of M/s. Hub & Links Logistics (I) Pvt. Ltd.** stated that both containers were loaded from Port of Karachi to Jebel Ali in the vessel Botany Bay vide bill of lading number SASLMU20841 dated 05.11.2020 and thereafter both containers were transshipped from Jebel Ali to Mundra. As agents of their principal, they cannot fully wash away the deliberate actions undertaken by their principal which have played an important role in perpetrating the fraud of evasion of duty. They remain culpable to a certain extent to face penal action for the omissions and commissions committed by their principal. I find that **M/s. Hub & Links Logistics (I) Pvt. Ltd** had not scrutinized the papers/documents available with them and have failed to exercise the due diligence required from them, hence they are liable to be penalized under Section 117 of the Customs Act, 1962.

18. Imposition of Penalty on M/s Ravi Energies Pvt Ltd (HQ Asia Pacific & Africa) under Section 114AA of the Customs Act, 1962.

18.1 Noticee has contended that M/s Ravi Energie Gulf FZC, UAE, is a different entity altogether. As Ravi Energie Pvt Ltd, Baroda, they have neither issued any PSIC certificate nor they are aware of such certificate issued, which is quite beyond their knowledge and Information. Based on such document, which are not concerned to them, the penalty under section 114AA of the customs Act, 1962, cannot be imposed on them. In this regard, I find that vide Public Notice No. 20 (RE: 2012)/2009-2014 dated 01.10.2012 DGFT has notified various PSIA in which it has been clearly mentioned that Ravi Energie Pvt Ltd is registered as Head Office and Ravi Energie Gulf FZC, UAE is registered as branch office. **As per Company Act, 2013**, a branch office is an establishment carrying on either the same or substantially the same activity as that carried on by the head office. Such branch offices are not independent legal entity and controlled by head office. Hence the contention made by them that they have no relation with their branch office appears not sustainable in eyes of laws.

18.2 Further, Noticee has also contended that the inspection of the goods was **carried out without opening the container**, on board, using radiation survey meters, at Jebel Ali, the place of inspection is correctly shown as Jebel Ali. As the PSIC issuing agency, they are not at all concerned about the country of origin of the goods. In the present case, they had examined the radiation levels to be in accepted range and have correctly certified it. However, Noticee failed to appreciate the fact that the physical inspection of the goods by PSIA is needed while loading of the container as stated in DGFT Public Notice 12/2015-20 dated 18.05.2015. In the certificate they have clearly mentioned that they have visually inspected the consignment and the same is metallic scrap which is found contrary to the contention made by importer here. They have certified without physical inspection that the consignment doesn't contain any arms or ammunition that is beyond imagination and wrong. Accordingly, I find no force in the contention made by Noticee that they have correctly certified the consignment.

18.3 From above discussion, it is evident and clear that bogus and fake pre-shipment inspection certificate was issued by the branch office of M/s Ravi Energie Pvt Ltd. Their branch office has issued certificate without inspecting the goods physically. DGFT vide Public Notice 12/2015-20 dated 18.05.2015 has categorically mentioned that physical inspection of the goods is needed while stuffing of container. Hence, they have also violated the provisions of DGFT. Further, they knew that the goods were not available for physical inspection, yet they issued the fake PSIC. From discussions held, it is proved beyond doubt that their branch office has intentionally signed the false documents which was used by importer to camouflage the Country of origin. Accordingly, for this act of commission, they as the head office of M/s Ravi Energie Gulf FZC, UAE are liable to be penalized under Section 114AA of the Customs Act, 1962.

19. In view of the above, I pass the following order:

ORDER

19.1 I reject the classification of 45075 Kgs. of "Stainless Steel Melting Scrap Grade 2205" imported in Container No.(s) PRSU2141199 and PCLU2010527 covered under BL NO. SASLMU20841 dated 12.11.2020 & BE No. 9659743 dated 21.11.2020 under CTH 72042190 and order to re-classify the same under Chapter Tariff Heading No.98060000 of the Customs Tariff Act, 1975;

19.2 I hold that 45075 Kgs. of "Stainless Steel Melting Scrap Grade 2205" as detailed above in point no (i) valued at **Rs 62,70,834/-** *(Rupees Sixty Two Lakh Seventy Thousand Eight Hundred and Thirty Four Only)* are liable for confiscation under Section 111 (m) of the Customs Act, 1962. Further, I impose redemption fine of **Rs. 6,00,000/-** *(Rupees Six Lakh Only)* under Section 125 of the Customs Act, 1962.

19.3 I confirm the demand of differential duty of **Rs. 1,74,07,835/-** *(Rupees One Crore Seventy Four Lakh Seven Thousand Eight Hundred and Thirty Five Only)* determined in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962 with applicable interest under section 28AA of the Customs Act, 1962 which is recoverable from Noticee M/s Alang Auto General Engg Co (P) Ltd. Further I order to appropriate and adjust the customs duty of **Rs. 13,32,239/-** *(Rupees Thirteen Lakh Thirty Two Thousand Two Hundred Thirty Nine only)* already paid by them, against the confirmed demand.

19.4 I impose penalty of **Rs. 1,74,07,835/-** *(Rupees One Crore Seventy Four Lakh Seven Thousand Eight Hundred and Thirty Five Only) on M/s* Alang Auto General Engg Co (P) Ltd under Section 114A of the Customs Act, 1962. I refrain from imposing penalty under section 112 of the Customs Act, 1962, since as per 5th proviso of Section 114A, penalty under Section 112 and 114A are mutually exclusive.

19.5 I impose penalty of **Rs. 5,00,000/-** *(Rupees Five Lakh Only)* on M/s Alang Auto General Engg Co (P) Ltd under Section 114AA of the Customs Act, 1962.

19.6 I impose penalty of **Rs. 10,00,000/-** *(Rupees Ten Lakh Only)* on M/s Ravi Energie Pvt Ltd (HQ Asia Pacific & Africa) under Section 114AA of the Customs Act, 1962.

19.7 I impose penalty of **Rs. 3,00,000/-** *(Rupees Three Lakh Only)* on M/s HUB & Links Logistics (I) Pvt Ltd under Section 117 of the Customs Act, 1962.

20. This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

(K. Engineer)
Pr. Commissioner of Customs,
Custom House, Mundra.

BY Speed Post A.D / E-mail

To, (The Noticee):-

(i) M/s. Alang Auto General Engg Co (P) Ltd. (IEC-2405003112), CM-458, "Rukmanikunj", Near Virani School, Kalibid, Bhavnagar-364002

(ii) M/s. Hub & Link Logistics (I) Pvt Ltd, Suite No. 101, Rishabh Arcade, Near to GST Bhavan , Plot No. 83, Sector-8, Gandhidham-370201

(iii) M/s. Ravi Energie Pvt Ltd (HQ Asia Pacific & Africa) 15/15 B Indiabulls Mega Mall Jetalpur Road, Boroda- 390020.

Copy to:

1. The Addl. Commissioner (SIIB), Customs House, Mundra.
2. The Deputy/Assistant Commissiner, TRC Mundra
3. The Deputy Commissioner (Gr-IV-A) Customs House, Mundra.
4. The Deputy/ Assistant Commissioner (EDI), Custom House, Mundra.
5. Notice Board.
6. Guard File