
	<p align="center">OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS</p> <p align="center">CUSTOMS HOUSE, MUNDRA, KUTCH- GUJARAT -370421</p> <p align="center">PHONE: 02838-271426/271428</p> <p align="center">FAX :02838-271425</p> <p align="center">E-mail: adj-mundra@gov.in</p>	
---	--	---

A	FILE NO./फाइल संख्या	GEN/ADJ/ADC/491/2025-Adjn
B	OIO NO./आदेश संख्या	MCH/ADC/ZDC/452/2025-26
C	PASSED BY/जारीकर्ता	DIPAK ZALA, ADDITIONAL COMMISSIONER, CUSTOM HOUSE, MUNDRA.
D	DATE OF ORDER/आदेश की तारीख	20.12.2025
E	DATE OF ISSUE/जारी करने की तिथि	20.12.2025
F	SCN No. & Date/कारण बताओ नोटिस क्रमांक	SCN No.: GEN/ADJ/ADC/491/2025-Adjn dated 20.02.2025
G	NOTICEE/ PARTY/ IMPORTER नोटिसकर्ता/पार्टी/आयातक	(1) M/s. Rina Brothers (2) M/s. CMA CGM Agencies (I) Pvt. Ltd. (3) Shri Jayesh Ranchhoddas Doshi
H	DIN/दस्तावेज पहचान संख्या	20251271MO000000FF87

यहआदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

1. This Order - in - Original is granted to the concerned free of charge.
2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकताहै-
3. Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

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

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

NAVRANGPURA, AHMEDABAD-380 009.”

4. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.

5. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5 -/रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

- i. उक्त अपील की एक प्रति और
A copy of the appeal, and
- ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं० 6-में निर्धारित 5 -/रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

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

8. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

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

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

BRIEF FACTS OF THE CASE

Specific intelligence gathered by the Directorate of Revenue Intelligence (hereinafter referred to as 'DRI') indicated that **M/s. Rina Brothers (IEC: 0808014391)** (hereinafter also referred to as the "Importer") having address as '**Sardar Chowk, Station Road, Unjha, Mahesana, Gujarat - 384170**' is indulged into illegal import of Watermelon Seeds (also known as Melon Seeds) by way of violation of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry. As per said notification "Import Policy of Melon Seeds is 'Free' with effect from 01st May

2024 up to 30th June 2024. Consignments with 'shipped on board' Bill of lading issued till 30th June 2024 shall be treated as 'Free' to import".

2. Acting upon the intelligence, the containers covered under the Bill of Entry No. 5018840 dated 12.08.2024 filed by the importer M/s Rina Brothers at Mundra Custom House were tracked from the official website of M/s CMA CGM SA (<https://www.cma-cgm.com/ebusiness/tracking>) and primarily it was noticed that there were major discrepancies between the details mentioned in BL of Lading No. PSN0114930 for BE No. 5018840 dated 12.08.2024 and the tracking details downloaded from aforementioned website. Accordingly, the import consignment covered under Bill of Entry No. 5018840 dated 12.08.2024 filed by the importer M/s Rina Brothers lying in the CFS of M/s Ameya Logistics Pvt. Ltd. (Honeycomb CFS), Mundra was put on hold for examination by officers of DRI. The goods covered under Bill of Entry No. 5018840 dated 12.08.2024 were examined by officers of DRI on 07.11.2024 and accordingly a panchnama dated 07.11.2024 was drawn at the CFS of M/s Ameya Logistics Pvt. Ltd. (Honeycomb CFS), Mundra in respect of the same.

3. During the investigation, a search was conducted at the office premise of M/s CMA CGM Agencies (India) Pvt. Ltd. having office situated at 'Office No. 302, 2nd Floor, Plot No. 139, Rayson Arcade, Above Bank of Baroda/HDFC Bank, Oslo Road, Gandhidham, Gujarat-370201' under Panchnama dated 18.09.2024. During the Panchnama proceedings carried out at the said address, some e-mail correspondences relating to present investigation were resumed by the visiting officers of DRI on a reasonable belief that the same were required for DRI investigation.

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

4.1 Statement of Shri Shaifullah Jahangir Mayari, Branch Manager of M/s CMA CGM Agencies (India) Pvt. Ltd., having address as 'Office No. 302, 2nd Floor, Plot No. 139, Rayson Arcade, Above Bank of Baroda/HDFC Bank, Oslo Road, Gandhidham, Gujarat-370201', was recorded under Section 108 of the Customs Act, 1962 on 11.09.2024 wherein he inter alia stated that he is working as Branch Manager of M/s CMA CGM Agencies (India) Pvt. Ltd. On being asked about tracking of Container Nos. APHU7265733, CMAU3657673, CMAU7477941 and CMAU7591635 downloaded from website of CMA CGM Shipping Line (<https://www.cma-cgm.com/ebusiness/tracking>) wherein Shipped-on-Board date is 07.07.2024, he confirmed the same.

4.2 Statement of Shri Malav R. Shah, son of Shri Rajendrakumar Shah, General Manager and Authorized Representative of M/s. Rina Brothers, Sardar Chowk, Station Road, Unjha, Mahesana, Gujarat - 384170, was recorded under Section 108 of the Customs Act, 1962 on 17.10.2024 wherein he inter alia stated that his firm M/s Rina Brothers was incorporated in year 1985, his father Shri Rajendrakumar Shah is the proprietor M/s Rina Brothers; that they have imported these containers

through an agent Jayesh Doshi who was in contact with supplier from UAE and the supplier from UAE was in contact with supplier from Sudan. He also stated that he is aware know about Notification No. 05/2023 dated 05.04.2024 issued by DGFT that if watermelons seeds had loaded or shipped on board before 30th June 2024 then it will be under 'Free' category, however if goods loaded on ship or shipped on board after 30th June 2024, then it will be under category of restricted. On being shown the container tracking report in respect of all 04 container nos. APHU7265733, CMAU3657673, CMAU7477941 and CMAU7591635 covered under B/L No. PSN0114930 dated 29.06.2024 downloaded from the official website <https://www.cma-cgm.com/ebusiness/tracking> of M/s CMA CGM Shipping Line, he stated that that he was informed that all 4 loaded containers have been handed over to Shipping Line on 25th June, 2024 at Sudan Port and shown Bill of Lading showing as issued on 25th June, 2024. He further stated that further details of loading of containers on vessel were not provided to him.

4 . 3 Statement of Shri Jayesh Ranchhoddas Doshi, son of Shri Ranchhoddas Doshi, (Intermediate Broker for M/s Rina Brothers), having residence address at 55, Navrang Building, Pedder Road, Opp. HSBC Bank, Cumballa Hill, Mumbai, Maharashtra – 400026 was recorded under Section 108 of the Customs Act, 1962 on 20.11.2024 wherein he inter alia stated that he know Shri Malav R. Shah since very long being in business; that Shri Malav R. Shah agreed upon the rates quoted by him after adding his brokerage on the rates provided by his supplier and the subject import was the first import of Watermelon Seeds by M/s Rina Brothers through him; that he charge 10 dollars per MTS of the cargo from buyers. He stated that he has idea about the Notification No. 05/2023 dated 05.04.2024 issued by DGFT which stipulates that before 30.06.2024, the import of watermelon seeds is free and after 30.06.2024 the import of watermelon seeds is Restricted. On being shown container tracking in respect of all 04 containers nos. APHU7265733, CMAU3657673, CMAU7477941 and CMAU7591635 covered under Bill of Lading No. PSN0114930 and Bill of Entry No. 5018840 dated 12.08.2024 which are downloaded from the official website <https://www.cma-cgm.com/ebusiness/tracking> of M/s CMA CGM Shipping Line, he stated that the supplier was also aware that that all cargo of watermelon seeds needs to be shipped on or before 30th June, 2024; that his supplier had told him that they have handed over containers to Shipping Line on around 27th June, 2024; that he was not aware as why there is no shipped on board date on Bill of lading.

4 . 4 M/s CMA CGM Agencies (India) Private Limited vide letter dated 12.09.2024 provided copy of BL No. PSN0114930 and screen shots of container tracking details from CMA CGM website.

5. Evidences available on record during investigation :

5.1 Tracking details of containers: The container movement details were tracked from the website of M/s CMA CGM Shipping Line (<https://www.cma-cgm.com/ebusiness/tracking>) which shows that all the four containers APHU7265733, CMAU3657673, CMAU7477941 and

CMAU7591635 covered under Bill of Lading No. PSN0114930 actually loaded on vessel on 07.07.2024. It shows that Bill of Lading No. PSN0114930 dated 25 June, 2024 was issued intentionally without mentioning any 'Shipped on Board' date and the same was submitted for filing IGM and Bill of Entry at Mundra Custom House. It is evident that Bills of Lading were manipulated/forged to get the 'Restricted' goods cleared that even on 03rd July, 2024, the actual Bill of Lading was not finalized. The Notification No. 05/2023 dated 05.04.2024 issued by DGFT stipulates that if 'watermelons seeds' have been loaded or shipped on board before 30th June 2024 then only it will be under 'Free' category.

5.2 E-mail conversation: The e-mail conversation recovered during search conducted at the office Premise of M/s CMA CGM Agencies (India) Pvt. Ltd. under Panchnama dated 18.09.2024 indicated that various communications were made between officials of M/s CMA CGM, Sudan and Aldawlia Shipping- Port Sudan, which shows that Bill of Lading was in draft stage till 3rd July. A draft Bill of Lading was also recovered during search conducted at the office premise of M/s CMA CGM Agencies (India) Pvt. Ltd. under Panchnama dated 18.09.2024, which having same Bill of Lading No. PSN0114930 with date of issue as 03 July, 2024 and it evident that Bills of Lading were manipulated/forged to get the 'Restricted' goods cleared. It has come to notice that even on 3rd July, BL was RFS BL i.e. Ready for Shipment BL which was changed to BL PSN0114930 with RFS 25 Jun, 2024. Some of the relevant e-mail conversations are mentioned in given below Table:

E-mail Date	Sender Name, Designation, Firm Name	Receivers Name and E-mail IDs	Relevant portion of e-mail text
30.06.2024	Madani Suad, Commercial Manager, M/s Aldawlia Shipping, Sudan (suad@aldwaliashipping.com)	Psn.operations@cma-cg.com & various others of CMA CGM Shipping Line	Dear Sameh, Customer of PSN0114930 is asking if he can destuff his cntrs at this stage. Thanks to advise please. <i>(marked as page 54 of documents recovered during search at M/s CMA CGM Agencies (India) Pvt. Ltd.)</i>
02.07.2024	Madani Suad, Commercial Manager, M/s Aldawlia Shipping, Sudan	Psn.operations@cma-cg.com & various others of CMA CGM Shipping Line	Dear Sameh, Please note customer of BL No. PSN0114930, accepted

7. 2 0 2 4	a Shipping, Suda n (suad@aldwaliashipping.com)		RFS BL, but to change to Mundra instead Nhava Sheva and also change the CN EE to be as follows RINA BROTHER SARDAR CHOWK STATION ROAD, U NJHA, INDIA <i>(marked as page 30 of documents recovered during search at M/s CMA CGM Agencies (India) Pvt. Ltd.)</i>
0 2 0 7. 2 0 2 4	EL TANTAWY (cr o.seltantawy@cm a-cg.com	Madani Suad, Commerci al Manager, M/s Aldawali a Shipping, Sudan (suad@aldwaliashipping.com) & various others of CMA CGM Shipping Line	Dear Suad, For PSN0114930 1. POD changed to Mundra 2. Consignee & Notify upda ted to Rina Brothers Adding Karim & Thaer @C MA CGMEgypt Customer C are to update draft BL PSN 0114930 with RFS 25 Jun, 2024 Waiting your urgent outco me regarding the rest of BL s before vessel sailing to av oid any fines/charges <i>(marked as page 59 & 60 of documents recovered during search at M/s CMA CGM Agencies (India) Pvt. Lt d.)</i>

The email correspondences referenced above, while not exhaustive, provide sufficient evidence to demonstrate that all parties involved—namely representatives from M/s CMA CGM Shipping Line, Sudan, M/s Aldawalia Shipping, Sudan, and the consignee (importer) — were fully aware of the restrictions on the import of watermelon seeds. Despite being cognizant of the applicable penalties imposed by customs, these entities deliberately concealed the fact that the actual 'Shipped on Board' date was July 7, 2024 for BL No. PSN0114930. Through intentional misrepresentation and manipulation of dates, they sought to facilitate the clearance of restricted cargo in violation of the established regulations.

6. Seizure:

During the investigation, it was observed as per tracking details available at website of M/s CMA CGM Shipping Line and as per other evidences gathered during investigation that the imported goods i.e. Watermelon Seeds have been loaded on board after 30th June 2024 i.e. on 07th July, 2024 and hence are restricted goods as per Notification no. 05/2023 dated 05.04.2024 issued by the DGFT. Thus, it appears that the goods imported by M/s Rina Brothers, under Bill of Entry No. 5018840 dated 12.08.2024 filed at Mundra Custom House, appears to have been mis-declared in documents submitted to the Customs. Therefore, there being a reasonable belief that that the said goods are liable for confiscation under the provisions of Section 111 of the Customs Act, the same were placed under seizure under Section 110 of the Customs Act, 1962 vide Seizure Memo dated **11.11.2024**.

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

7.1 Investigation conducted by DRI has revealed that the containers covered under Bill of Entry No. 5018840, dated 12.08.2024, were shipped from Sudan port on 07.07.2024, well beyond the cut-off date of 30.06.2024 specified in DGFT Notification No. 05/2023 dated 05.04.2024. The tracking details on the official website of M/s CMA CGM Shipping Line (<https://www.cma-cgm.com/ebusiness/tracking>) confirm that the containers were loaded on vessel MV EA Blue Nile (Voyage 297DER) on 07.07.2024, further corroborating the lapse in compliance with the notification's timeline. Moreover, email correspondences and other evidence clearly demonstrate that forged Bill of Lading No. PSN0114930 dated 25.06.2024 was created without mentioning the Shipped-On-Board which was actually 07th July, 2024. This deliberate manipulation of shipping documents was aimed at unlawfully availing the benefits under the DGFT Notification No. 05/2023. The investigation indicates that the importer, in collusion with representatives of M/s CMA CGM Shipping Line, orchestrated the falsification of relevant dates on the Bill of Lading to facilitate the clearance of restricted cargo. By doing so, the importer has failed to adhere to the conditions of DGFT Notification No. 05/2023, thereby violating the provisions of the Foreign Trade Policy 2023. This constitutes a serious breach of regulatory compliance and evidences deliberate intent to mislead customs authorities.

7.2 The facts and evidence discussed above indicate that the Directorate General of Foreign Trade (DGFT), through Notification No. 05/2023 dated 05.04.2024, amended the import policy for Melon Seeds under CTH 12077090. As per the notification, the import of Melon Seeds was classified as 'Free' from 1st May 2024 to 30th June 2024. Consignments with 'shipped on board' Bill of lading issued till 30th June 2024 shall be treated as 'Free' to import". It means that all consignments of Watermelon Seeds which have shipped on board before 01.07.2024 can be imported in India on 'Actual User' basis to processors of Melon Seeds having a valid FSSAI Manufacturing License in line FSSAI Order. However, as established in the preceding paras, M/s. Rina Brothers, located at Sardar Chowk, Station

Road, Unjha, Mahesana, Gujarat - 384170, illegally imported Watermelon Seeds under Bill of Entry No. 5018840 dated 12.08.2024, in violation of Notification No. 05/2023. The investigation conclusively proved that the goods were shipped on board on 07th July 2024 i.e. beyond the permissible date of 30th June 2024 using a forged Bill of Lading. Furthermore, it was revealed during the investigation that the importer deliberately withheld critical information from Customs Authorities, failing to disclose that the goods were shipped on board after the specified date of 30th June 2024. This reflects intentional non-compliance with the DGFT Notification No. 05/2023. Hence, the goods declared as 'Watermelon Seeds' under CTH 12077090 covered under Bill of Entry No. 5018840 dated 12.08.2024 having total quantity **100 MTs** and declared assessable value of **Rs. 1,62,14,060/-** imported by M/s. Rina Brothers are liable for confiscation under Section 111(d), 111(m) and 111 (o) of the Customs Act, 1962.

8. Roles of persons/firms involved:

8.1 Role of the importer M/s Rina Brothers(IEC No. 0808014391) (Proprietor: Shri Rajendrakumar Chhanalal Shah):

Shri Rajendrakumar Chhanalal Shah is Proprietor of M/s. Rina Brothers and being importer, he was well aware of the Import policy and Notification. M/s. Rina Brothers had imported watermelon seeds covered under Bill of Entry No. 5018840 dated 12.08.2024 in by way of violation of import policy mentioned in Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry. The total quantity of the said goods covered under the subject Bill of entry is **100 MTs** having declared Assessable value of **Rs. 1,62,14,060/-**. As per Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry, the import of said goods with shipped on board dated after 30th June is under restricted category. The importer must comply with the conditions outlined in the said Notification. Further, the notification was issued for a definite period and it is the obligation of the firm utilizing that authorization to ensure that no condition of the Notification has been violated. The acts of commission and omission on the part of the importer rendered the subject goods liable to confiscation under Section 111(d), 111(m) and 111 (o) of the Customs Act, 1962 and therefore is liable to penalty under **Section 112 (a) and 112 (b)** of the Customs Act, 1962. By not uploading the original documents as mandated during filing of Bill of Entry, the importer has attempted to mislead the department thereby rendering themselves liable to penalty under **Sec 114AA** of Customs Act, 1962.

8.2 Role of M/s CMA CGM Agencies (India) Pvt. Ltd. i.e. working in India on behalf of M/s CMA CGM Shipping Line:

The facts and evidence gathered during the search, including email correspondences, clearly establish that M/s CMA CGM Agencies (India) Pvt. Ltd. deliberately colluded with representatives of M/s CMA CGM Sudan and Madani Suad, Commercial Manager, M/s Aldawalia Shipping,

Sudan, to manipulate the actual dates of the Bill of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. These actions reflect a blatant disregard for regulatory compliance and an intent to mislead the authorities. The deliberate acts and omissions by M/s CMA CGM Agencies (India) Pvt. Ltd. make them liable for penalties under **Section 112(b)** of the Customs Act, 1962. Furthermore, their involvement in the creation of forged Bills of Lading constitutes a violation that renders them liable to penalties under **Section 114AA** of the Customs Act, 1962.

8.3 Role of Shri Jayesh Ranchhoddas Doshi, Intermediate Broker for M/s Rina Brothers:

During investigation, Shri Jayesh R. Doshi accepted that they used to import goods i.e. Watermelon seeds from Sudan. It was noticed that although Shri Jayesh R. Doshi was handling the import related work as a Broker and used to contact Dubai suppliers in order to finalize the deal with the suppliers of the goods. He used to bargain with foreign suppliers and used to arrange the payment against the subject import goods to the suppliers. It appears that Shri Jayesh R. Doshi had given instructions to the container line through the overseas supplier to change name of consignee in draft Bill of Lading after 30th June, 2024 and knowing that goods have been not been shipped on 30th June, 2024, he managed to change the details in Bill of Lading. The facts and evidence gathered during investigation, clearly establish that Shri Jayesh R. Doshi, acting as broker, deliberately colluded with representatives of container line and suppliers to manipulate the actual date of the Bill of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. It has also been established that Shri Jayesh R. Doshi was in direct contact with supplier and arranged forged dates from in a manner that would mislead customs and enable the clearance of restricted cargo. These actions reflect a blatant disregard for regulatory compliance and an intent to mislead the authorities. The deliberate acts and omissions by Shri Jayesh Ranchhoddas Doshi, Intermediate Broker for M/s Rina Brothers make him liable for penalties under **Section 112(b)** of the Customs Act, 1962. Furthermore, his involvement in the creation of forged Bills of Lading a violation that renders him liable to penalties under **Section 114AA** of the Customs Act, 1962.

9. Relevant Legal provisions :

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

9.2 Whereas vide Notification No. 05/2023 dated 05.04.2024 issued by the Directorate General of Foreign Trade, Ministry of Commerce & Industry, it has been envisaged that “Import Policy of Melon Seeds is ‘Free’

with effect from 01st May 2024 up to 30th June 2024. Consignments with 'shipped on board' Bill of lading issued till 30th June 2024 shall be treated as 'Free to import'. As a corollary, all consignments of Watermelon Seeds which have shipped on board before 01.07.2024 can be imported in India on 'Actual User' basis to processors of Melon Seeds having a valid FSSAI Manufacturing License in line FSSAI Order dated 15.03.2024.

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

9.3.1 FTDR Act, 1992 :

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

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

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

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

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

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

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

9.3.2 Foreign Trade Policy, 2023 :

Para 1.02: Amendment to FTP

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

Para 2.01: Policy regarding import /Exports of goods

(a) *Exports and Imports shall be 'Free' except when regulated by way of 'Prohibition', 'Restriction' or 'Exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized*

System) [ITC (HS)] of Exports and Imports. The list of 'Prohibited', 'Restricted', and STE items can be viewed under 'Regulatory Updates' at <https://dgft.gov.in>

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

9.3.3 Relevant Sections of the Customs Act, 1962 :

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

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

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

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

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

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

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

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

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

SECTION 114AA. Penalty for use of false and incorrect material. - If

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

10. Accordingly, Show Cause Notice dated 20.02.2025 was issued to **M/s. Rina Brothers, (IEC No. 0808014391)** having address 'Sardar Chowk, Station Road, Unjha, Mahesana, Gujarat – 384170 wherein they were called upon to show cause in writing to the Additional Commissioner of Customs, Custom House, Mundra as to why:-

(a) The imported goods declared as 'Watermelon Seeds' under CTH 12077090 covered under Bill of Entry No. **5018840** dated **12.08.2024** having total quantity **100 MTs** and declared assessable value of **Rs. 1,62,14,060/-** should not be confiscated under Section 111 (d), 111(m) and 111(o) of Customs Act, 1962;

(b) Penalty should not be imposed on **M/s. Rina Brothers**, under Section 112(a), 112(b) and Section 114AA of the Customs Act, 1962;

(c) Penalty should not be imposed on M/s. CMA CGM Agencies (India) Pvt. Ltd. under section 112(b) and 114AA of the Customs Act, 1962;

(d) Penalty should not be imposed on M/s. Shri Jayesh Ranchhoddas Doshi under Section 112(b) and Section 114AA of the Customs Act, 1962.

WRITTEN SUBMISSIONS OF NOTICEES

11. SUBMISSION OF 1ST NOTICEE i.e. M/s. Rina Brothers.:

11.1 Noticee-1 through their authorised representative submitted their written submission dated 11.04.2025 that the entire case is made upon specific intelligence gathered by DRI regarding importer importing Watermelon Seeds in contravention to the DGFT Notification No. 05/2023 dated: 05.04.2024 and some tracking of containers online on the official website of CMA CGM. In due course of investigation, a search was conducted at the premises of M/s CMA CGM Agencies (India) Pvt Ltd. located at Plot No 139, Rayson Arcade, Above Bank of Baroda / HDFC Bank, Oslo Road, Gandhidham, Gujarat - 370201. The Panchnama records that one Shri Saifullah Mayari was present during the Panchama at the premises and he admitted that he is the branch manager however the import related work is looked after by their Ahmedabad Office for the shipments meant for Mundra Port and their back office is situated at Thane, Maharashtra which looks after the work related to uploading of documents, BL Issuing and other documentation. Thereafter during search, it was found that in this above-mentioned premises of Paramount Sealink Pvt Ltd there were total six employees and on being asked Shri Saifullah informed the officers that they are using following email ids viz. kn.d.smayari@cma-cgm.com, kn.d.risingh@cma-cgm.com, kn.d.kshaji@cma-cgm.com, kn.d.lsharma@cma-cgm.com, kn.d.vavk@cma-cgm.com,

knd.pnair@cma-cgm.com, knd.msanghar@cma-cgm.com for all the conversations relating to all the work being done at their premises. The officers asked Shri. Saifullah to produce all the documents and communications pertaining to import of watermelon seeds at Mundra Port. Shri Saifullah then again explained officers that since import related work is being handled by Ahmedabad Office he does not have those documents and communications and needed to enquire the same with Ahmedabad Office. Then Shri Saifullah requested their Ahmedabad office for the relevant documents which were received after a while. The printouts of the said emails were taken and were placed in made-up file marked as No.1 having pages 1 to 62. The show Cause Notice brings out that during this search some emails were 'resumed'. However, it would be factually incorrect to state that these emails were resumed from the premises of CMA-CGM as these emails were not available in printed format when the search was conducted. Instead, the printouts of these emails were taken during the Panchnama by the officers themselves and in gross violations of provisions laid down under section 138C of the Customs Act 1962. The section 138C of Customs Act mandates that when such copies of any digital form are being recovered from any electronic device which is then to be relied or admitted as evidence during any proceedings under Customs Act it has to be done under a certain procedure and a certificate or statement certifying as to what has been recovered and what does the recovered document means has to be obtained from the one who is in regular possession of the device.

11.2 In the instant case there is no record as to who was in the continuous use and possession of the devices from which the printouts of these emails were recovered. It is also necessary to highlight a fact that when Sri Saifullah had informed the officers very explicitly that the import related work especially for the consignments imported at Mundra Port is being handled at the Ahmedabad office, even then the officers have neither visited and searched the Ahmedabad Office nor was any statement of any employee looking after import related work at Ahmedabad Office was recorded or brought on record.

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

- i. In Arjun Pandit Rao v. Kailash Kushanrao 2020 (7) SCC 1 (Civil Appeal No. 20825-20826 of 2017). It was held by Supreme Court regarding the contents of the 'Certificate' as: *"The certificate submitted under this provision constitutes particulars of those electronic records and identity inclusive of authorized signature of a person having official responsibility in relation to the management and operation of the relevant device."*
- ii. The Supreme Court in the case of Anvar P.V. v. P.K. Basheer and Others (2014) 2017 (352) ELT 416 (SC) have held in the case of similarly worded provision of Section 65B Indian Evidence Act

1872 that such certification is an essential requirement for making any of such printouts admissible as evidence. *“Electronic Evidence - Admissibility of - Speeches, songs and announcements recorded using other instruments and by feeding them into a computer, CDs made therefrom and **produced in court, without due certification** - Such CDs produced by way of secondary evidence, **not admissible in evidence, mandatory requirements of Section 65B of Indian Evidence Act, 1872 being not satisfied** - Whole case set up regarding corrupt practice using songs, announcements and speeches **fails.**”*(Highlighting Supplied)

iii. Further Reliance is placed on case of Jeen Bhavani International Versus Commissioner of Customs, Nhava Sheva-III (2023) 6 Centax 11 (Tri.-Bom) where in Para 12 it was held that:

*“12.2.....**No certificate whatsoever, as required under the provisions of Section 138C (2) was obtained.** It is settled proposition of law that if a certain act is to be done by a certain authority, in a particular manner, the same should be done in the manner in which it is ordained. There are no short cuts in investigation. **Without fulfilling the statutory requirements, subjecting the computer to forensic analysis is of no help and would not help the cause of Revenue. Therefore, we are of the considered opinion that the emails/documents etc retrieved in the instant case are not reliable evidence for the reasons cited above.***

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

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

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

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

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

11.4 A statement of Shri Malav R Shah Authorized Representative of M/s Rina Brothers was recorded at Gandhidham wherein in Q5 he was asked to produce the import related documents called under summons in answer to which he had produced Invoice, Swift Copy, B/L, Copy of License, along with other import related documents for the present consignment. These documents submitted by him are neither relied in the SCN nor are brought on record as annexure to his statement.

11.5 Further in Q6 he was shown the tracking details of all 04 containers in the present consignment and the statement of Shri Saifullah. After going through the tracking details and the statement he stated that he has imported the goods through intermediate broker Shri Jayesh Doshi who was in contact with UAE based supplier and UAE based supplier was in contact with Sudan based Supplier i.e. exporter. He further stated that as per terms and conditions with broker it was clearly mentioned that the goods are to be loaded only if they can be loaded on or before 30.06.2024. He also submitted that according to information received by him the empty containers were received by exporter on 05th June and were stuffed and handed over to shipping line on 25th June 2024 and in conformation to

the same B/L dated 25th June 2024 was also received by us. He also stated that he has no information with regards to the containers shipping after 30.06.2024 and he has not instructed any person including CMA-CGM employees to amend the Bill of Lading.

11.6 Further statement of Shri Saifullah Branch Manager of CMA-CGM was recorded wherein in Q4 he was shown the tracking report downloaded from the official website of CMA-CGM in answer to which he stated that it appears from the tracking report, the said containers were ship on board on 07.07.2024. Further in Q6 he was asked to produce the B/L issuance details and details of Vessel from Sudan to Mundra to which e answered that he does not have the requisite information and documents and he will produce the same next day. Further from Q8 and Q9 it was abundantly clear that neither Shri Saifullah nor anyone from his office have ever contacted anyone from M/s Rina Brothers as he has himself reiterated time and again that all the import related work is taken care at Ahmedabad Office and he will procure and submit the desired information and documents. These essential documents submitted by Shri Saifullah like B/L details of Vessel from Sudan Port and Tracking of Vessel etc., have not been brought on record as relied upon documents. However, the Investigation is silent on this aspect as to what the tracking reports submitted by Shri Bharat Parmar reveals.

11.7 It appears that a deliberate attempt to get it admitted that the B/L has been manipulated / forged has been made by the investigators since Shri Saifullah during the panchnama has revealed that he is the Branch Manager and all import related work is looked after at Ahmedabad Office especially for import consignments at Mundra Port which is also brought out in the statement. However, it appears that no documents submitted by him after procuring from Ahmedabad Office is relied upon nor any summons were issued for statements to people at Ahmedabad Office looking after import or search was carried out the Ahmedabad Office.

11.8 It is not a case where two Bs/L for one consignment have been found / recovered. The investigating officer / agency has not taken the efforts / pain to even write an email to the office of shipper at Port of Loading or to the exporter asking them about the details as to on which vessel the consignment has left and on what date the containers were handed over to the shipping line by the exporter to prove the case of department.

11.9 Further statement of Shri Jayesh Doshi was recorded wherein in Q7 he was shown the B/L along with statement of Shri Saifullah of CMA-CGM and Shri Malav Shah of M/s Rina Brothers along with tracking details of the containers after perusing the same he has answered that the foreign supplier was very well made aware that the consignments are to be shipped on or before 30.06.2024 and that his foreign supplier had assured him that the consignments were handed over to shipping line around 27.06.2024. He further stated that all other details such as no mention of 'Ship on Board' date on B/L can be confirmed from Shipping Line only.

1 1 . 1 0 It is submitted that the entire case is built upon the assumptions and presumptions of Shri Saifullah the Branch Manager of

CMA-CGM who have allegedly admitted that the Shipped-on-Board date is 07.07.2024. Hence, it is of essence to cross-examine them so as to confirm if the said statements are the true and voluntary and if so why is there no Shipped on Board date on B/L and how can B/L dated 25.06.2024 be issued for goods which were loaded on 07.07.2024 as the said B/L was received by CMA-CGM Ahmedabad Branch on e-mail and it is not the case that importer or CHA or Broker has supplied them the alleged manipulated copy of B/L. The reliance in this case is placed on:

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

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

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

“6. Having heard learned counsel for the parties, we are inclined to interfere on the short ground of serious breach of principles of natural justice in the process of passing final order of adjudication. We say so because the adjudicating authority, though categorically informed by the representative of the petitioners that the petitioners are serious about exercise of their right to cross-examination and further that any meaningful participation in the adjudicating proceedings can take place only after such cross-examination is granted, the authority proceeded to decide such request only along with the final order of adjudication. Whether the petitioners had a right to seek cross-examination in the facts of the present case, is not our brief at the moment. We, therefore, refuse

*to comment on the petitioners' insistence for cross-examination or authority's reluctance to grant it. **What we, however, find is that the petitioners had at least a right to be told whether such application is being granted or refused before final order was passed. When the petitioners prayed for cross-examination and reasonably expected that the same would be granted, they cannot be expected to participate in the adjudicating proceedings up to the final stage. In other words, without dealing with and disposing of the petitioners' application for cross-examination, the adjudicating authority could not have finally adjudicated the issues. If he was of the opinion that the request for cross-examination was not tenable, by giving reasons, he could have rejected it. We wonder what would have happened, if he was inclined to accept such a request. In such a situation, he himself could not have finally disposed of the show cause notice proceedings. In either case, the petitioners had a right to know the outcome of their application.***" (Highlighting Supplied)

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

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

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

- i. The goods were imported with due compliance of law and in compliance of the DGFT policy stating that the melon seeds are freely importable if Shipped on Board Date is before 30.06.2024.
- ii. It is submitted that the goods so imported by the importer are neither in contravention to any Act within India nor are prohibited for import under Customs Act or any other Act. Hence, no provisions of 111(d) can be said to have been violated by the importer.
- iii. It is submitted that there is not even allegation of the goods imported to be mis-declared in any form i.e. quantity,

description, quality, etc. brought out in entire proceedings or in the SCN. Hence, no confiscation liability can be arrived at u/s 111(m) of the Customs Act.

- iv. It is also submitted that the only condition of importing 'melon seeds' under free category was laid down in the DGFT Circular which stated that if the 'Ship on Board' date on the B/L is on or before 30.06.2024 then the import of 'Melon Seeds' is to be treated as free. The only documents including B/L found with the importer is the one which was submitted to the Customs Authorities and is dated as well as has 'Ship on Board' date prior to 30.06.2024. Hence there exists no reason to bring in confiscatory provision of Section 111(m) of Customs Act.
- v. Therefore, there being no violation of any of the provisions of the Customs Act, 1962 there arises no reason to arrive at confiscation under any of the provisions of Section 111 as proposed in the SCN and the imported goods placed under seizure are liable to be released and allowed to be cleared from the Customs.

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

The noticee further submits that there can be no penalty imposed / mulcted on the noticee as proposed in the SCN since no confiscation can be arrived at in the view of the submissions (supra) and there is no violation of provisions of Section 112(a) and or 112(b) of the Customs Act, 1962.

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

Reliance in this case is placed upon:

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

"6. *The Ld. AR has submitted that the Commissioner (Appeals) has*

set aside the penalty under Section 114AA for the reason that penalty has been imposed by the adjudicating authority under Section 112(a) and therefore there is no necessity of further penalty under Section 114AA. I find that this submission is incorrect for the reason that in the impugned order in paras 7 and 8, the Commissioner (Appeals) has discussed in detail the provision with regard to Section 114AA. It is seen stated that **as per the Taxation Laws (Amendment) Bill, 2005, introduced in Lok Sabha on 12-5-2005, the Standing Committee has examined the necessity for introducing a new Section 114AA. The said Section was proposed to be introduced consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border.** The said Section envisages enhanced penalty of five times of the value of the goods. The Commissioner (Appeals) has analyzed the object and the purpose of this Section and has held that in view of the rationale behind the introduction of Section 114AA of the Customs Act and the fact that penalty has already been imposed under Section 112(a), the appellate authority has found that the penalty under Section 114AA is excessive and requires to be set aside. Thus, the penalty under Section 114AA is not set aside merely for the reason that penalty under Section 112(a) is imposed. After considering the ingredients of Section 114AA and the rationale behind the introduction of Section 114AA, the Commissioner (Appeals) has set aside the penalty under Section 114AA.

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

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

“13 **The purpose behind introduction of Section 114 AA was to punish those people who availed export benefits without exporting anything which according to the learned Counsel for the appellant is not the case here.** The provisions of section 114 AA provides for imposition of penalty on a person who knowingly or intentionally make, sign, uses or causes to be made any declaration, statement or documents, which is false or incorrect in any material particular in the transaction of any business for the purpose of the Act. From the statement of Shri Ravinder Singh (as quoted above), we find that the manipulation in the documents were done by the Dubai Branch of the shipping line at the behest of the actual supplier. **There is no evidence to link the appellant with the said manipulation done at Dubai office.** The shipping line has not

*been roped in the present proceedings. The revenue has not substantiated the charge of connivance of the appellant with the illegal import rather he was instrumental in ascertaining the correct valuation of the impugned goods. **We, therefore, do not find any justification for imposition of penalty under section 114AA of the Act.***" (Highlighting Supplied)

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

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

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

12. Written submission of noticee no. 2 i.e. M/s. CMA CGM Agencies (India) Pvt. Ltd.:-

Adil Patel & Associates on behalf of the Noticees No. 2 i.e. M/s. CMA CGM Agencies (India) Pvt. Ltd. submitted their written reply on 29.04.2025 and 08.09.2025 on the following points:-

12.1 That their client states that the statement made on 11/09/2024 with respect to the "Shipped on Board" date is based on facts.

12.2 That their client is not directly privy to Notification No. 05/2023 dated 05/04/2024. The obligation to comply with the notification lies with the Shipper and Consignee. The Bill of Lading No. PSN0114930 dated 25/06/2024 was issued based on trade practices, after receipt of the shipment from the Shipper. It is standard industry practice to issue a "Received for Shipment" Bill of Lading upon request from the shipper. The

subject shipment was received at Port Sudan on 25/06/2024 and as per Shipper's request a received for shipment Bill of Lading was issued. The said original bill of lading dated 25/06/2024 issued by our client clearly bears the remark "Received for Shipment". Our client therefore denies the allegation that the Bill of Lading were manipulated or forged by them to get the restricted goods cleared.

12.3 That their client denies the allegation that the Bill of Lading was manipulated or forged. Draft bill of lading versions may be prepared for the purpose of internal reference only. The fact of the matter is that our client finally issued the original Bill of Lading as per the actual date of receipt of the shipment (i.e. 25/06/2024) and with the remark "Received for Shipment". Our client either issues a 'Shipped on Board' or a 'Received for shipment' bill of lading and it is up to the shipper to request the carrier either for a 'shipped on board' bill of lading or a received for shipment bill of lading. Email exchanges quoted in the tabular column under para 5.2 are routine and do not reflect any fraudulent intent or collusion.

12.4 That their client maintains that all factual shipment details were disclosed as per available records. A "Received for Shipment" Bill of Lading was issued when subject containers were received at the load port and upon shipper's request. The Carrier acted in good faith and in accordance with standard practices.

12.5 That their client firmly denies any manipulation or collusion as alleged. Issuance of a "Received for Shipment" Bill of Lading was in line with standard practice in place. Further, their client categorically denies all further allegations made against them, particularly those related to fraud and violation of DGFT notification. Specifically, in response to Clause 10.2, their clients requests that the above submissions be considered a satisfactory explanation for why no penalty should be imposed on M/s. CMA CGM Agencies (India) Pvt. Ltd. under Section 112(b) and Section 114AA of the Customs Act, 1962.

12.6 That their client respectfully submits that the documents referred in the Annexure-R have not been received along with the Show Cause Notice. Hence, their client humbly requests that the documents referred in Annexure-R kindly be furnished to respond to the allegations based on such materials.

12.7 Further, they submitted their additional submission vide letter dated 08.09.2025 on the following points:

12.8 A Received for Shipment (RFS) Bill of lading is issued when the carrier or its agent receives the shipment / duly sealed containerized goods into custody after custom clearance, but the goods have not yet been loaded on board the vessel. In the present case, CMA CGM, received the shipment / duly sealed containerized goods on 25/06/2024 and accordingly issued a "Received for Shipment" Bill of Lading.

12.9 A Received for Shipment Bill of Lading serves as an acknowledgement that the carrier has physically received the cargo for shipment. Since CMA CGM S.A. had physically received the goods before the arrival of vessel, it is both necessary in practice and recognized in applicable statutory law to

acknowledge receipt of goods by way of issuing a "Received for Shipment" Bill of Lading.

12.10 The Carrier may issue either a Received for Shipment (RFS) or a Shipped on Board (SOB) Original Bill of Lading, as per the Shipper's request. The choice rests with the Shipper, the Carrier has no role in the decision. Once the goods are physically loaded on board the vessel, at the shipper's request or demand, the carrier issues a "Shipped-on Board" Bill of Lading or endorses the existing Bill of Lading with a "Shipped on Board" notation, but only if the Shipper so requests. In the instant case, no such request for endorsement was received from the Shipper.

12.11 Relevant provision under Article III Rule 7 of Hague Rule (Indian COGSA, 1925) and Hague Visby Rules expressly recognises this distinction:

"After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a "shipped" bill of lading."

Thus, the duty to demand a "Shipped on Board" Bill of Lading lies with the Shipper.

12.12 The Carriage of Goods by Sea Act, 1925 which gives effect in India to the Hague Rules, 1924, expressly recognises the issuance of a "Received for Shipment" Bills of Lading.

12.13 It is therefore a well-recognized international and domestic statutory practice that a Bill of Lading may be issued as "Received for Shipment" and only upon actual loading, and upon demand by the shipper, changed into a "Shipped on Board" Bill of Lading.

12.14 The description of the goods, including the HS Code 220770 as reflected on the body of the Bill of Lading issued by CMA CGM S.A., was based on a "Shipper's Load, Stow and Count" declaration. Accordingly, CMA CGM S.A., as the carrier, is neither responsible nor under any obligation to verify the accuracy of such particulars or to assess their conformity with any trade or import policy. Considering the above, it is respectfully submitted that, Customs alleging manipulation, fraud or violation by CMA CGM S.A. merely because a "Received for Shipment" Bill of Lading was issued has no legal basis. The existing of a draft Bill of lading which is a strictly for internal workings / use whilst working on finalizing a proper documents is a normal practice. This draft is only

existing in system but was not issued and hence taking action on an unissued rough draft and levelling serious allegation on carrier is unfounded. Consequently, M/s. CMA CGM Agencies (India) Pvt. Ltd is not liable for any penalty under Section 112(b) or under Section 114AA of the Customs Act 1962.

12.15 We trust that the above explanation will be found satisfactory and therefore request that all further proceedings against CMA CGM Agencies (India) Pvt. Ltd be dropped without imposing any penalty whatsoever.

13. Written submission of noticee no. 3 i.e. Shri Jayesh Doshi:-

13.1 Advocate Aliakbar Devjani on behalf of the Noticees No. 3 i.e. Shri Jayesh Doshi submitted their written reply on 11.04.2025 on the following points:-

13.2 The Noticee no. 3 has been alleged to have abetted the illegal import of watermelon seeds despite being aware of Notification No. 5/2024 dated 5th April 2024 issued by the DGFT. The SCN attributes the role of the Noticee to that of a negotiator between the foreign supplier and the Indian importer through his known contacts, for which he was to receive commission from the foreign exporters. However, there is neither any evidence nor even an allegation in the SCN of the Noticee receiving or forwarding the Bill of Lading (B/L) to the importer or any other person.

13.3 The only role that can be established from the Noticee's own statement and those of other individuals recorded during the investigation is that he was in contact with foreign suppliers and merely acted as a middleman between the foreign seller and the Indian importer. It is submitted that merely acting as a broker between a domestic purchaser and an overseas supplier does not contravene any provisions of the Customs Act, 1962. It does not amount to any omission or commission that would render goods liable to confiscation under Section 111 of the Act, nor does it attract penal provisions.

13.4 In his statement recorded under Section 108 of the Customs Act, 1962, the Noticee produced all relevant documents and affirmed that the agreement among the Noticee, the Indian buyer, and the foreign supplier clearly stipulated that the consignment was to be shipped only if it could be shipped on or before 30.06.2024, thereby falling within the permissible period under the DGFT Notification. When confronted with the container tracking data obtained by the DRI, the Noticee reiterated that the supplier had been clearly informed that shipment was to occur only if it could be executed within the permissible window. The supplier had further informed the Noticee that the consignment was handed over to the shipping line on 27.06.2024.

13.5 The Noticee has repeatedly stated during his examination that he

acted only as a broker due to his good relations with the foreign suppliers. He has categorically denied issuing any instructions to anyone for arranging, manipulating, forging, or fabricating the Bill of Lading to fit within the window prescribed under the DGFT Notification.

13.6 Furthermore, the import in the present case falls squarely within the permissible time window under Notification No. 05/2024 dated 05.04.2024 issued by the DGFT, which explicitly allows for the free import of melon seeds up to 30.06.2024:

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

13.7 It is a settled legal position that, in the case of sea-borne imports, the “Date of Shipment” is determined based on the on-board date mentioned in the original, duly signed and stamped Bill of Lading. In the present case, the original B/L dated 25.06.2024, issued in the ordinary course of trade, is conclusive proof that the shipment took place within the permitted policy window. There is no provision under the Customs Act, 1962 or the Foreign Trade Policy which accords any evidentiary value to container tracking reports retrieved from websites. Since the DGFT Notification clearly stipulates that a “shipped on board” B/L dated up to 30.06.2024 qualifies the consignment for free import, the alleged container tracking data is not only inadmissible but also insufficient to negate the validity of the original B/L.

13.8 All original and unaltered documents pertaining to the consignment were submitted to Customs authorities. There has been no suppression, misdeclaration, or presence of mens rea, nor has any such allegation been substantiated in the SCN. The contractual terms, as admitted by all parties in their statements, clearly stipulated that shipment was to be effected only if the consignment could be shipped before 30.06.2024.

13.9 All requisite compliance measures, including Plant Quarantine, FSSAI, and DGFT conditions, were duly met, thereby eliminating any scope for policy violations by the importer. The alleged tracking report downloaded from a shipping line website—suggesting that the container left Sudan post 30.06.2024—cannot be accepted as conclusive proof that the original B/L submitted by the importer was fake, forged, or fabricated for the purpose of availing the benefit of ‘Free’ import.

13.10 In light of the above, the allegations that the Noticee was involved in the creation of a forged Bill of Lading or that he colluded with foreign brokers, shippers, or shipping line representatives are misconceived, contrary to the record, and devoid of legal basis. As admitted even in the SCN, the only role of the Noticee was that of a broker facilitating communication between the foreign supplier and the domestic buyer. He has neither committed any act nor omitted any duty that would render the imported goods liable to confiscation under Section 111 or attract penal consequences under the Customs Act, 1962.

RECORD OF PERSONAL HEARING

14.1 Advocate Aliakbar Devjani, Advocate appeared for personal hearing on 11.04.2025; Advocate Aliakbar Devjani, and Shri Risabh Suman, Consultant appeared for personal hearing on 02.06.2025 through virtual mode on behalf of M/s. Rina Brothers (Noticee No.-1) and Shri Jayesh Doshi (Noticee No.-3). During the hearing, they contested the allegations made against the above noticees and reiterated the submission made earlier in respect of the above noticees. Furthermore, he requested to drop the proceedings against their clients on the basis of their written submissions.

14.2 Advocate Joji Joseph, appeared for personal hearing on 23.09.2025 through virtual mode on behalf of M/s. CMA CGM Agencies (India) Pvt. Ltd. (Noticee No.-2) and re-iterated their submission dated 08.09.2025. He further requested to drop all proceedings against CMA CGM Agencies (India) Pvt. Ltd. without imposing any penalty.

DISCUSSION AND FINDINGS

15. I have carefully gone through the facts of the case, SCN, records of the case, written submission of the noticees. The principles of natural justice have been complied with by granting adequate opportunities to the noticee to present their defence. Now, I proceed to examine the issues involved in the present case in light of available records, statutory provisions and judicial precedents. On careful perusal of the Show Cause Notice and case records, I find that the following issues arise for determination in this adjudication:

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

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

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

16.1 I find that M/s. Rina Brothers (Importer) imported Watermelon seed in four containers under Bill of entry no. 5018840 dated 12.08.2024, Bill of Lading no. PSN0114930. Based on intelligence gathered by DRI, Gandhidham that importer is indulged into illegal import of Watermelon Seeds (Melon Seeds) by way of violation of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, hold the subject consignment. The proceedings of the examination were recorded under panchnama dated 07.11.2024 drawn at M/s. Ameya Logistics Pvt. Ltd. (Honeycomb CFS), Mundra.

16.2 I observed that the tracking details of the vessel EA BLUE NILE

with Voyage No. 295DER, obtained from the official website of CMA CGM SA (<https://www.cma-cgm.com/ebusiness/tracking>), shows that it shipped from Port Sudan on 07.07.2024 whereas upon perusing Bill of Lading no. PSN0114930 for the vessel "EA BLUE NILE" (Voyage no. 295DER), It was noted that issue date mentioned as 25.06.2024; no 'shipped on board' date was mentioned on the bill of lading. These contradictory facts demonstrate that the Bill of Lading (BL) was manipulated or forged to obtain undue benefit under Notification No. 05/2023, dated 05.04.2024, issued by the DGFT in order to clear the restricted goods.

16.3 I also find upon perusing of e-mail conversation which recovered during search conducted at the office Premise of M/s CMA CGM Agencies (India) Pvt. Ltd. under Panchnama dated 18.09.2024 indicated that that the Bill of Lading remained in the draft stage till July 3rd. Further, a draft Bill of Lading was recovered during a search of the office premises of M/s CMA CGM Agencies (India) Pvt. Ltd., conducted on 18.09.2024 which bearing the same Bill of Lading No. PSN0114930 (Voyage No. 24010) with date of issue as 03 July, 2024. It has come to notice that even on 3rd July; BL was RFS BL i.e. Ready for Shipment BL which was changed to BL PSN0114930 with RFS 25 Jun, 2024. In view of the same, it is evident that the Bills of Lading were manipulated/forged to facilitate the clearance of 'Restricted' goods.

16.4 I find that Shaifullah Jahangir Mayari, Branch Manager of M/s CMA CGM Agencies (India) Pvt. Ltd in his voluntary statement dated 11.09.2024 before DRI, admitted to the Shipped on Board date 07.07.2024 after being shown tracking of Container Nos. APHU7265733, CMAU3657673, CMAU7477941 and CMAU7591635 downloaded from website of CMA CGM Shipping Line (<https://www.cma-cgm.com/ebusiness/tracking>).

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

i. The Hon'ble Supreme Court in the case of **Romesh Chandra Mehta**^[1] and in the case of **Percy Rustomji Basta**^[2] has held "*that the provisions of Section 108 are judicial provisions within which a statement has been read, correctly recorded and has been made without force or coercion. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence*".

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

iii. Hon'ble Punjab and Haryana High Court in the case of **Jagjit Singh**^[4] has decided that "*It is settled law that Customs Officers were not*

police officers and the statements recorded under Section 108 of the Customs Act were not hit by Section 25 of the Evidence Act. The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in the matter of Ram Singh^[5], in which it is held that recovery of opium was from accused by officers of Narcotic Bureau. Accused made confession before said officers. Officers of Central Bureau of Narcotics were not police officers within the meaning of Section 25 and 26 of the Evidence Act and hence, confessions made before them were admissible in evidence”.

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

16.7 Cross Examination sought by the Noticees:

(i) I find that M/s. Rina Brothers (Noticee no. 1) through their advocate have requested for cross-examination of Shri Saifullah, Branch Manager of CMA-CGM.

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

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

- a. **Poddar Tyres (Pvt) Ltd. v. Commissioner - 2000 (126) E.L.T. 737:-** wherein it has been observed that cross-examination not a part of natural justice but only that of procedural justice and not 4 'sine qua non'.
- b. **Kamar Jagdish Ch. Sinha Vs. Collector - 2000 (124) E.L.T. 118 (Cal H.C.):**- wherein it has been observed that the right to confront witnesses is not an essential requirement of natural justice where the statute is silent and the assessee has been offered an opportunity to explain allegations made against him.
- c. **Shivom Ply-N-Wood Pvt. Ltd. Vs Commissioner of Customs & Central Excise Aurangabad- 2004(177) E.L.T 1150(Tri.-Mumbai):**- wherein it has been observed that cross-examination not to be claimed as a matter of right.
- d. Hon'ble Andhra Pradesh High Court in its decision in **Sridhar Paints v/s Commissioner of Central Excise Hyderabad** reported as 2006(198) ELT 514 (Tri-Bang) held that: denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, We find that the Adjudicating Authority has

reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized (Para 9)

- e. Similarly in **A.L Jalauddin v/s Enforcement Director reported as 2010(261)ELT 84 (mad) HC** the Hon High court held that; ".....Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons: We may refer to the following paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kanungo & Co. v. Collector, Customs, Calcutta)".
- f. **In the case of Patel Engg. Ltd. vs UOI reported in 2014 (307) ELT 862 (Bom.) Hon'ble Bombay High Court has held that;**
- g. "Adjudication — Cross-examination — Denial of—held does not amount to violation of principles of natural justice in every case, instead it depends on the particular facts and circumstances — Thus, right of cross-examination cannot be asserted in all inquiries and which rule or principle of natural justice must be followed depends upon several factors — Further, even if cross-examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated." [para 23]
- h. **In the case of Suman Silk Mills Pvt. Ltd. Vs. Commissioner of Customs & C.Ex., Baroda [2002 (142) E.L.T. 640 (Tri.-Mumbai)], Tribunal observed at Para 17 that—**

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

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

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

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

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

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

hereby denied.

16.8.1 I find that in the written submissions, the Noticee -1 contended that the printouts of emails were obtained during panchnama is "gross violation" of Section 138C of the Customs Act, 1962.

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

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

(a)identifying the document containing the statement and describing the manner in which it was produced;

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

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

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

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

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

16.8.3 In this context, I find that printouts of email communications were taken on-site printing and under panchnama dated 18.09.2024 wherein Shri Shaifullah Mayari, Branch Manager of M/s. CMA CGM (India) Pvt. Ltd. was present during the entire process of panchnama. He acknowledged and affixed his signature on every single page of one made-up file (62 pages) before investigating officers and independent panchas. In view of the above, in this case, the mandatory requirement of authentication under section 138C (4) has been substantially complied

with.

16.9.1 I find that the Noticee, in their written submission, alleged that the entire case is built upon the assumptions and presumptions of Shri Shaifullah Mayari, Branch Manager of M/s. CMA CGM (India) Pvt. Ltd. Further, I find that the Noticee has relied upon various case laws in their detailed written submissions, however, I find that the **Hon'ble Supreme Court of India in case of Ambica Quarry Works vs. State of Gujarat & Others [1987(1) S.C. C. 213]** observed that "*the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it.*"

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

16.9.3 I rely upon following judgments from various courts:-

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

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

16.10 As per my findings in Para 16.2, 16.3 and 16.4 above, the impugned goods did not fulfill the condition outlined as per the provisions of notification no. 05/2023 dated 05.04.2024 issued by DGFT stipulates that if 'watermelons seeds' have been loaded or shipped on board before 30th June 2024 then only it will be under 'Free' category. However, evidence suggests that the importer intentionally submitted manipulated/forged Bills of Lading in a deliberate attempt to facilitate the customs clearance of restricted goods unlawfully.

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

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

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

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

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

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

being in force;

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

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

In the present case, the importer failed to comply with the condition of DGFT notification no. 05/2023-Cus dated 05.04.2024, which rendered the subject goods prohibited, hence, contravened the provisions of Section 46 of the Customs Act, 1962. I find that Bills of lading provided were forged /manipulated to meet the requirement of notification no. 05/2023-Cus dated 05.04.2024. This deliberate manipulation confirms mala fide intention of noticees. These acts of omission and commission on the part of the importer rendered the goods liable for confiscation under the provisions of Section 111 (d), 111(m) and 111(o) of the Customs Act, 1962.

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

“SECTION 112. 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

(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 5[not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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

exceeding five times the value of goods.]

Roles and culpability of persons/firms involved:

17.1 Role and culpability of M/s. Rina Brothers.:

I observed that M/s. Rina Brothers was well aware of the Import policy and Notification No. 05/2023 dated 5th April, 2024 issued by the DGFT. M/s. Rina Brothers had imported watermelon seeds under Bill of Entry No. 5018840 dated 12.08.2024 by way of violation of import policy mentioned in Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry.

The total quantity of the said goods covered under the subject Bill of Entry is **100MTs** having Assessable value of **Rs. 1,62,14,060/-**. As per Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry, the import of said goods with shipped on board dated after 30th June is under restricted category. The importer must comply with the conditions outlined in the said Notification. Further, the notification was issued for a definite period and it is the obligation of the firm utilizing that authorization to ensure that no condition of the Notification has been violated. The acts of commission and omission on the part of the importer rendered the subject goods liable to confiscation under Section 111(d), 111(m) and 111 (o) of the Customs Act, 1962 and therefore is liable to penalty under Section 112 (a) and 112 (b) of the Customs Act, 1962. I find that the evidences clearly indicating malafide intention on their part in respect of the imported goods warranting imposition of penalty under Section 112 (a) (i) as the fact of non-compliance of conditioned outlined in the Notification No. 05/2023-Cus dated 05.04.2024 issued by DGFT. Result is that proposal to impose penalty under Section 112 (a) (i) is correct and sustainable in law.

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

I find that the SCN proposed imposition of penalty on the Importer under Section 114AA of the Customs Act, 1962. I find that in spite of well aware of import policy and conditioned outlined in the notification no. 05/2023-Cus dated 05.04.2024 issued by DGFT. As it is the obligation of the firm to ensure that proper and correct documents are maintained and as forged Bill of Lading was created which constitutes the violation, thus renders themselves liable to penalty under Sec 114AA of Customs Act, 1962. These acts of omission and commission on the part of importer made the provisions of Section 114AA invokable. Therefore, I agree with the proposal of imposition of penalty on the Importer under Section 114AA *ibid*.

17.2 Role and culpability of M/s. CMA CGM (India) Pvt. Ltd.:

I noticed that the facts and evidence gathered during the search, including email correspondences, clearly establish that M/s CMA CGM Agencies (India) Pvt.Ltd. deliberately colluded with representatives of M/s CMA CGM Sudan and Madani Suad, Commercial Manager, M/s Aldawalia Shipping, Sudan, to manipulate the actual dates of the Bill of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. These actions reflect a blatant disregard for regulatory compliance and intent to mislead the authorities.

I find that Shri Shaifullah Mayari, Branch Manager of M/s. CMA CGM (I) Pvt. Ltd. in his voluntary statement tendered before DRI under Section 108 of the Customs Act, 1962 admitted that Shipped on Board for consignment covered under 04 containers was 07.07.2024. Consequently, M/s. CMA CGM manipulated the Bill of Lading dates to meet the requirements of DGFT Notification No. 05/2023.

This deliberate acts and omissions by M/s CMA CGM Agencies (India) Pvt. Ltd. make them liable for penalties under Section 112(b) of the Customs Act, 1962. Furthermore, their involvement in the creation of forged Bills of Lading constitutes a violation that renders them liable to penalties under Section 114AA of the Customs Act, 1962. Therefore, I agree with the proposal of imposition of penalty on M/s. CMA CGM under Section 112 (b) and 114AA *ibid*

17.3 Role and culpability of Shri Jayesh Ranchhoddas Doshi, Inetmediate Broker for M/s. Rina Brothers.:

I noticed that Shri Jayesh Doshi in his voluntary statement before DRI under Section 108 of the Customs Act, 1962 stated that he was handling the import related work as a Broker and used to contact Dubai suppliers in order to finalize the deal with the suppliers of the goods. He used to bargain with foreign suppliers and used to arrange the payment against the subject import goods to the suppliers. It, therefore, evident that Shri Jayesh R. Doshi had given instructions to the container line through the overseas supplier to change name of consignee in draft Bill of Lading after 30th June, 2024 and knowing that goods have been not been shipped on 30th June, 2024, he managed to change the details in Bill of Lading. The facts and evidence gathered during investigation, clearly establish that Shri Jayesh R. Doshi, acting as broker, deliberately colluded with representatives of container line and suppliers to manipulate the actual date of the Bill of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. It has also been established that Shri Jayesh R. Doshi was in direct contact with supplier and arranged forged dates from in a manner that would mislead customs and enable the clearance of restricted cargo. These actions reflect a blatant disregard for regulatory compliance and intent to mislead the authorities. The deliberate acts and omissions by Shri Jayesh Ranchhoddas Doshi, Intermediate Broker for M/s Rina Brothers make him liable for penalties under **Section 112(b)** of the Customs Act, 1962. Furthermore, his involvement in the creation of forged Bills of Lading a

violation that renders him liable to penalties under **Section 114AA** of the Customs Act, 1962. In view of the above, I hold so.

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

ORDER

i. I order to absolute confiscation of impugned goods i.e. **100 MTS "Watermelon Seed"** imported vide Bill of entry no. 5018840 dated 12.08.2024 having value Rs. **1,62,14,060/- (One Crore Sixty-Two Lakh Fourteen Thousand and Sixty only)** under Section 111 (d), 111(m) & 111(o) of the Customs Act, 1962.

ii. I impose penalty of **Rs. 8,00,000/- (Rupees Eight Lakh only)** on the importer M/s Rina Brothers under Section 112 (a)(i) of the Customs Act, 1962.

iii. I refrain from imposing penalty on the importer M/s Rina Brothers under Section 112(b) of the Customs Act, 1962.

iv. I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakh only)** on the importer M/s. Rina Brothers under Section 114AA of the Customs Act, 1962.

v. I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakh only)** on M/s. CMA CGM (India) Pvt. Ltd. under Section 112 (b)(i) of the Customs Act, 1962.

vi. I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** on the M/s. M/s. CMA CGM (India) Pvt. Ltd. under Section 114AA of the Customs Act, 1962.

vii. I impose penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand only)** on Shri Jayesh Doshi, Intermediate Broker for M/s. Rina Brothers under section 112(b) of the Customs Act, 1962.

viii. I impose penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand only)** on Shri Jayesh Doshi, Intermediate Broker for M/s. Rina Brothers under section 114AA of the Customs Act, 1962.

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

20. The Show Cause Notice bearing no. GEN/ADJ/ADC/491/2025-Adjn dated 20.02.2025 stands disposed in above terms.

Dipak Zala,
Additional Commissioner,
Custom House, Mundra.

F.No.: GEN/ADJ/ADC/491/2025-Adjn-O/o Pr. Commr- Cus-Mundra

To,

1. **M/s. Rina Brothers,**
Sardar Chowk, Station Road, Unjha, Mahesana,
Gujarat - 384170 (IEC No. 0808014391)
(Proprietor: Shri Rajendrakumar Chhanalal Shah)
(e-mail: ***rinabrothers@gmail.com***)

2. **M/s CMA CGM Agencies (India) Pvt. Ltd.,**
Office No. 302, 2nd Floor,
Plot No. 139, Rayson Arcade,
Above Bank of Baroda/HDFC Bank,
Oslo Road, Gandhidham, Gujarat-370201
(e-mail: ***knd.smayari@cma-cgm.com, mby.genmbox@cma-cgm.com***)

3. **Shri Jayesh Ranchhoddas Doshi,**
'55, Navrang Building, Pedder Road,
Opp. HSBC Bank, Cumballa Hill,
Mumbai, Maharashtra – 400026'
(e-mail: ***jaydoshi1960@gmail.com***)

Copy to:

1. The Additional Director, Directorate of Revenue Intelligence,
Ghandidham.
 2. The DC/AC, (RRA/TRC/EDI), Mundra Customs.
 3. Guard File
-