



कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा,
सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, मुजरात- 370421
OFFICE OF THE PRINCIPAL COMMISSIONER OF
CUSTOMS:
CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-
370421.
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|----------|---|---|
| A | फा./सं.FILE NO. | F. No. GEN/ADJ/ADC/456/2024-Adjn |
| B | मूल आदेश संख्या/ ORDER-IN-ORIGINAL NO. | MCH/ADC/AKM/353/2024-25 |
| C | द्वारा पारित किया गया/ PASSED BY | अमित कुमार मिश्र अपर आयुक्त सीमा शुल्क सीमा शुल्क भवन, मुन्द्रा |
| D | आदेश की तिथि/ DATE OF ORDER | 28.03.2025 |
| E | जारी करने की तिथि/ DATE OF ISSUE | 28.03.2025 |
| F | कारण बताओ नोटिस संख्या & तिथि/ SCN NUMBER & DATE | GEN/ADJ/ADC/456/2024-Adjn -O/o Pr Commr-Cus-Mundra dt. 14.03.2024 |
| G | आयातक / नोटिस प्राप्तकर्ता IMPORTER / NOTICEE | 1. M/s. Sapphire International 2. M/s. Box Park Terminal Co. 3. M/s Rekha Superfine Exporters |
| H | डिन संख्या /DIN NUMBER | 20250371MO0000888A57 |

1. यहआदेश संबंधित को निःशुल्क प्रदान किया जाता है।

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

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

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

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

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA

HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”

3. उक्तअपील यहआदेश 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.

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

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

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

5. अपील ज्ञापन के साथ 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.

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

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

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

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

BRIEF FACTS OF THE CASE

A letter F.No. CUS/DOCS/REX/4/2020-DP dtd. 16.03.2021 was issued to the Shipping Agent i.e. M/s. Box Park Terminal Co. for recalling the Container No. EISU9017895 falling under the Bill of lading no. SPRXJEAMUN20163 dtd. 10.03.2021 to Mundra port. Furthermore, it was noticed that Bill of Entry was not filed for the said container.

2. EXAMINATION OF THE GOODS:

2.1 The container no. EISU9017895 falling under the Bill of lading no. SPRXJEAMUN20163 dtd. 10.03.2021 was opened and examined vide examination report dtd. 01.04.2021 by the officers of DP Section, Custom House, Mundra in the presence of representative of M/s Box Park Terminal Co., Gandhidham in the Exim Yard, CFS, Mundra. The copy of Bill of lading was provided by the representative of M/s Box Park Terminal Co., Gandhidham, details of which are as under:-

| Sr No | Bill of Lading No & Date | Container No | Description of goods | Importer/Consignee | Shipper |
|-------|---------------------------------|--------------------------|---|--|--|
| 1 | SPRXJEAMUN20163 dtd. 10.03.2021 | EISU9017895 (40 feet) | Canned Tuna, Milk Powder, Cosmetics, Liquor, Cigarettes, Tissue paper, Nutritional Supplements | Sapphire International, House No. S10/133-57, Hukulganj, Varanasi, Uttar Pradesh, India. GSTIN No. 09GGHPK0176E1Z D | SGC SHIPPING SERVICE S LLC, P.O.BOX 41685, DUBAI, UAE |

2.2 Container No. EISU9017895 covered under BL No. SPRXJEAMUN20163 dated 10.03.2021 was examined vide examination report dtd. 01.04.2021 and detailed inventory of the goods found during the examination are as under:

| Sr. No. | Item Description | No. of Box/Carton | Total no. of Pieces |
|---------|---|-------------------|---------------------|
| 1 | Travos Canned Tuna | 100 Box | 48*100=4800 |
| 2 | Darshan Milk Powder | 140 Box | 6*140=840 |
| 3 | Elizabeth Always Red(Cosmetics) | 6 Box | 12*6=72 |
| 4 | Elizabeth Superstar Cream(Cosmetics) | 2 Box | 36*2=72 |
| 5 | Elizabeth Skin Cream(Cosmetics) | 3 Box | 24*3=72 |
| 6 | Elizabeth Finish Cream(Cosmetics) | 9 Box | 36*9=324 |
| 7 | Elizabeth Advance Cream(Cosmetics) | 13 Box | 36*13=468 |
| 8 | Elizabeth Around 8 Cream(Cosmetics) | 4 Box | 48*4=192 |
| 9 | Elizabeth Kiss Lip Dil(Cosmetics) | 80 Box | 72*80=6048 |
| 10 | Elizabeth Restorative Skin Cream(Cosmetics) | 20 Box | 12*20=240 |
| 11 | Elizabeth Lip Protection Stick(Cosmetics) | 20 Box | 12*20=240 |
| 12 | Elizabeth Prevage Cream(Cosmetics) | 16 Box | 12*16=192 |
| 13 | Goree Beauty Cream(Cosmetics) | 1 Box | 24*1=24 |
| 14 | Goree Beauty Day Night Cream(Cosmetics) | 2 Box | 24*2=48 |
| 15 | Natasha Denona Cream(Cosmetics) | 13 Box | 96*13=1248 |
| 16 | Alexander Mqueen Perfume(Cosmetics) | 2 Box | 8*2=16 |
| 17 | Prevage Foundation(Cosmetics) | 4 Box | 72*4=288 |
| 18 | Elizabeth Flawless(Cosmetics) | 12 Box | 54*12=594 |
| 19 | Elizabeth Bold Liquid(Cosmetics) | 3 Box | 35*3=105 |
| 20 | Elizabeth Ceramide Capsule(Cosmetics) | 1 Box | 36*1=36 |
| 21 | Elizabeth Visible White(Cosmetics) | 6 Box | 24*6=144 |
| 22 | Elizabeth Fragrance Sans(Cosmetics) | 1 Box | 32*1=32 |
| 23 | Elizabeth Face Skin Body Cream(Cosmetics) | 4 Box | 15*4=60 |
| 24 | Elizabeth 8 Hour | 18 Box | 12*18=216 |

| | | | |
|----|--|---------|-------------|
| | Cream(Cosmetics) | | |
| 25 | Elizabeth Ceramide Cream(Cosmetics) | 1 Box | 36*1=36 |
| 26 | Elizabeth Peel and Reveal Cream(Cosmetics) | 10 Box | 12*10=36 |
| 27 | Anastasia Stick Foundation(Cosmetics) | 17 Box | 100*17=1700 |
| 28 | Malimbo Cigarettes | 114 Box | 50*114=5700 |
| 29 | Gugang Garam Cigarettes | 96 Box | 60*96=5760 |
| 30 | Palomo Paan Cigarettes | 38 Box | 50*38=1900 |
| 31 | Paloma Night Cigarettes | 52 Box | 73*52=3796 |
| 32 | Black Label Liquor | 10 Box | 12*10=120 |
| 33 | Old Monk Liquor | 10 Box | 12*10=120 |
| 34 | Teacher's Liquor | 10 Box | 12*10=120 |
| 35 | Smirnoff Liquor | 10 Box | 12*10=120 |
| 36 | 8 PM Liquor | 10 Box | 12*10=120 |
| 37 | Red Label Liquor | 10 Box | 12*10=120 |
| 38 | King Robert Liquor | 100 Box | 12*100=1200 |
| 39 | Chivas Regal Liquor | 10 Box | 12*10=120 |
| 40 | Royal Stag Liquor | 10 Box | 12*10=120 |
| 41 | Mc Dowells Liquor | 10 Box | 12*10=120 |
| 42 | Royal Challenge Liquor | 10 Box | 12*10=120 |
| 43 | Canny Tissue Paper | 38 Box | 30*38=1140 |
| 44 | MHP Upyour Protein(Supplement) | 10 Box | 4*10=40 |
| 45 | MP Combat protein(Supplement) | 2 Box | 6*2=12 |
| 46 | Lipog Black(Supplement) | 10 Box | 12*10=120 |
| 47 | Rc Cla Ronnie(Supplement) | 10 Box | 12*10=120 |
| 48 | MP BCAA(Supplement) | 10 Box | 12*10=120 |
| 49 | CU Ripped(Supplement) | 13 Box | 12*13=156 |
| 50 | MUS Scletech(Supplement) | 1 Box | 12*1=12 |

Furthermore, DP section vide their letter F.No. CUS/Dock/47/2021-Docks/Mundra dtd. 05.04.2021 forwarded the examination report dtd. 01.04.2021 of goods under container no. ESIU9017895 to the SIIB Section for further necessary action alongwith the following documents:

- (i) Letter F.No. CUS/DOCS/REX/4/2020-DP dtd. 16.03.2021.
- (ii) Copy of Bill of lading no. SPRXJEMUN20163 dtd. 10.03.2021.
- (iii) Invoice cum Packing list issued by the Exporter i.e. M/s. SGC Shipping Services LLC, PO BOX 41685.

2.3 Whereas, from the examination reports as discussed above, it appears that there was an attempt to import of goods which were subjected to the conditions of Food Safety and Standards Act 2006, Drug and Cosmetic Act 1945, Tobacco Regulation Act, 2003 and license from the State Excise Department for the time being in force, as mentioned in the Bills of lading. And therefore, it appears that the importer attempted to import the items by way of violating the conditions of allied laws. The goods in container no. ESIU9017895 lying at EXIM Yard CFS, Mundra, are liable for confiscation under Sections 111(O) of the Customs Act, 1962 and therefore, were placed under seizure vide SEIZURE MEMO dated 16.02.2024 (DIN:20240271MO0000510103) and the seized goods were handed over to the EXIM Yard CFS, Mundra for safe custody.

3. INVESTIGATION AT THE IMPORTERS i.e. M/S. SAPPHIRE INTERNATIONAL END:

A letter dtd. 02.02.2022 was written to the Additional Commissioner of Customs (Prev.), Lucknow for conducting the search at the premises of M/s. Sapphire International, House No. S 10/133-57, Hukal Ganj, Varanasi, Uttar Pardesh-221001.

The Office of the Assistant Commissioner, Customs (preventive) Division, Varanasi vide their office letter F.No. GEN/INV/RPTS/10/2020-Prev Section-O/o DC/AC-Div-Varanasi-Cus-Preventive-Lucknow dtd. 29.04.2022 alongwith the copy of panchnama and relevant documents. Wherein, they informed that a search was carried out at the premises of M/s. Sapphire International, House No. S 10/133-57, Hukal Ganj, Varanasi, Uttar Pardesh-221001 on 28.04.2022 and found that the premises is a residential premise and no sign board of M/s. Sapphire International and Shri Amit Kumar, owner of the said premises stated that no such firm existed at the said address.

From the above, it appears that M/s. Sapphire International is non-existing firm created on the basis of fake documents and someone else using the entity of M/s. Sapphire International to import the goods.

4. INVESTIGATION AT THE SHIPPING AGENT i.e. M/S. BOX PARK TERMINAL CO. END:

4.1 From the documents available on record, it was noticed that M/s Prime Globe Shipping & Logistics LLP have issued Bill of landing in the present issue, therefore, Summons dated 27.04.2021 was issued to Indian agent of the shipping line, i.e. M/s. Box Park Terminal Co., having its registered address at office no. 07, 1st Floor, Om Corner, Plot No. 336,337 & 343, Ward No. 12B, Gandhidham, Gujarat-370201(The shipping agent for short) for recording of statement and to produce relevant documents. Shri Jatt Shankar Singh, Branch Manager of said shipping agent appeared and statement of the shipping agent was recorded on 28.04.2021, the relevant extract is reproduced hereunder: -

- He was the Branch manager of M/s. Box Park Terminal Co., Gandhidham.
- They are engaged in business with the M/s. Prime Globe Shipping & logistics LLC for Mundra and Kandla Port.
- He perused the Bill of lading no. SPRXJEAMUN20163 dtd. 10.03.2021 of M/s. Prime Globe and stated that BL is duly Surrendered and freight is prepaid which has been paid by the shipper i.e. SGC Shipping Service LLC.
- On being asked he stated that the container no. EISU9017895 covered under Bill of lading no. SPRXJEAMUN20163 dtd. 10.03.2021.

4.2 Further, search was conducted and panchnama was drawn on 06.07.2021 at the premises of M/s. Box Park Terminal Co., office no. 07, 1st floor, Om Corner, Plot No. 336, 337 & 338, Ward 12B, Gandhidham-370201 regarding the documents related to the importer M/s. Sapphire International, Varanasi.

During the search proceeding, panchnama was drawn and certain incriminating documents were recovered details are as following: -

- (i) On being asked about the documents related to Bill of Lading No. SPRXJEAMUN20163 dtd. 10.03.2021, Shri Pravin Kochath, Partner of M/s. Box Park Terminal Co., Gandhidham stated that all communication related to the importer i.e. M/s. Sapphire International were being held through M/s. Rekha Superfine Exporters, KASEZ. Also added that they have handled 4-5 import consignment and 4-5 export consignment on account of M/s. Sapphire International and the consignee in these consignment is M/s. Rekha Superfine Exports, KASEZ and they have received the clearing/handling charges of these from M/s. Rekha Superfine Exports.
- (ii) During search, officers found three Blank letter head of the M/s. Sapphire International, Varanasi. On being asked, Shri Pravin Kochath stated that they received them by courier.
- (iii) During search, officers also found the communication letters with Customs Department on behalf of M/s. Sapphire International, Varanasi.
- (iv) During search, officers also found HDFC Bank statement of M/s. Box Park Terminal Co. Gandhidham having Account no. 50200028048970, wherein some entries of credit from the M/s. Sapphire International, Varanasi. On being asked Shri Pravin Kochath informed that they have received this payment against the invoices issued to the M/s. Rekha Superfine Exporters, KASEZ.

4.3 Further, Summons dtd. 12.05.2023 were issued to M/s. Box Park Terminal Co., Gandhidham for statement. Shri Pravin Kochath, Partner of M/s. Box Park Terminal Co., Gandhidham appeared and statement of the shipping agent was recorded on 22.05.2023, the relevant extract is reproduced hereunder: -

- He is the partner of M/s. Box Park Terminal Co., Gandhidham and the other partner is Smt. Sajitha Kartha.
- They are the authorized Shipping Agent of M/s. Sparxx Meritime & Logistics Pvt Ltd., 602, 6th Floor, Mayuresh Cosmos, plot No. 37, Sector-11, Vihar Sarovar Lane, C.B.D. Belapur, Navi Mumbai-400614 and M/s. Prime Globe Shipping & Logistics LLC, Jabel Ali is agent M/s. Sparxx Meritime & Logistics Pvt. Ltd. They work on behalf of M/s. Sparxx Meritime & Logistics Pvt. Ltd. at Mundra/Kandla Port.
- He perused the panchnama dtd. 28.04.2022 drawn at the premises of M/s. Sapphire International, House No. S 10/133-57, Hukal Ganj, Varanasi, Uttar Pardesh-221001 and stated that they are not aware about the non-existent of M/s. Sapphire International and they have done all the work through M/s. Rekha Superfine Exports, KASEZ.
- On being asked about three Blank letter head of the M/s. Sapphire International, Varanasi found at their premises, he stated that they received them by courier and they do not have courier details.
- On being asked all the letters of M/s. Sapphire International, Varanasi have been submitted by M/s. Box Park Terminal Co., Gandhidham only by hand and M/s. Sapphire International, Varanasi is non-existent, he stated that

they have received all the letters of M/s. Sapphire International, Varanasi by courier and they submitted the same.

From the above, it appears that M/s. Rekha Superfine Exporters, KASEZ is handling the bank account of M/s. Sapphire international, Varanasi and the sole entity who is handling the export/import by M/s. Sapphire International and M/s. Box Park Terminal Co., Gandhidham is also involved in this malpractice.

5. INVESTIGATION AT THE END OF M/S. REKHA SUPERFINE EXPORTERS, KASEZ:

5.1 Whereas, the SIIB, Mundra Custom House (MCH) vide letter dated 02.02.2022 requested the jurisdictional Customs Commissionerate, Kandla Commissionerate to carry out search at the premises of M/s Rekha Superfine Exporters, Shed No. 395, Special Type, Sector-II, Kandla SEZ, Gandhidham, Kutch-370230. Further, Custom House, Kandla vide letter dated 06.04.2022 requested the Deputy Commissioner (Customs), Kandla Special Economic Zone, Gandhidham to carry out necessary inquiry and sent the outcome to Custom House, Mundra. Further, the SIIB, MCH vide letter dated 23.06.2023 again requested to the Specified Officer (Customs), Kandla Special Economic Zone, Gandhidham to provide the status of the search operation at M/s. Rekha Superfine Exporters, KASEZ.

Accordingly, the Specified Officer (Customs), Kandla Special Economic Zone, Gandhidham has submitted a report vide their letter F.No. KASEZ-PnI/6/2022-SEZ-KANDLA dtd. 20.09.2023(RUD-10) that DRI, Ahmedabad Zonal Unit, Ahmedabad, DRI, Gandhidham Regional Unit, Gandhidham and DRI, Ludhiana Zonal Unit, Ludhiana has already initiated inquiry against M/s. Rekha Superfine Exporters, KASEZ in various issues. DRI, Ludhiana Zonal Unit vide their letter also requested office of the Development Commissioner to initiate the procedure for cancellation of the LOA granted to M/s. Rekha Superfine Exporters and KASEZ authorities have issued a Show Cause Notice KASEZ/IA/1909/2002-03/Vol I/1501 dtd. 22.05.2023 for cancellation of LOA. Further, they submitted that no search operation has been conducted by the KASEZ authorities at the premises of M/s. Rekha Superfine Exporters.

5.2 Whereas, Summons were issued to M/s Rekha Superfine Exporters, KASEZ on 12.05.2023, 15.06.2023 & 09.02.2024 but no response has been received from the importer. The Summons dtd. 09.02.2024 returned back with remark "left" from the Indian Postal Authorities. This clearly indicates that M/s Rekha Superfine Exporters, KASEZ is not cooperating with the investigation.

From the above, it appears that M/s. Rekha Superfine Exporters, KASEZ is a habitual offender under the Customs Act, 1962.

6. VALUATION OF THE IMPORTED GOODS:

As per the invoice cum packing list having Invoice No. SGC/104/20-21 dtd. 02.03.2021 issued by the Shipper i.e. SGC Shipping Service LLC it appears that value of the Cargo is USD 1,56,025/- Bill of lading no. SPRXJEAJUN20163 was filed on dtd. 10.03.2021 and From the Bill of Entries filed on 10.03.2021, it seems the exchange rate at that time was 1USD = 73.90 INR. Therefore, it appears that goods falling under Bill of lading no. SPRXJEAJUN20163 having estimated value of Rs. 1,15,30,248/- as per the invoice issued by the supplier.

7. LIABLE FOR CONFISCATION:

From the above discussion and goods as per the examination report dtd. 01.04.2021, it appears that there was an attempt to import of goods which were subjected to the conditions of Food Safety and Standards Act 2006, Drug and Cosmetic Act 1945, Tobacco Regulation Act, 2003 and license from the State Excise Department for the time being in force, as mentioned in the Bills of lading. And therefore, it appears that the goods attempted to import with violation of provisions of Customs Act, 1962 and allied act in as much as not complied with the statutory requirement. Therefore, it appears that the goods in container no. ESIU9017895 having estimated value of **Rs. 1,15,30,248/-**, are liable for confiscation under Sections 111(O) of the Customs Act, 1962.

8. ROLE AND CULPABILITY ON THE IMPORTER/PERSON/FIRM INVOLVED: -

8.1 ROLE OF M/S. SAPPHIRE INTERNATIONAL:

Whereas, M/s Sapphire International is shown as the consignee in the BL no. SPRXJEAMUN20163. During the search at the registered premises of M/s Sapphire International by the officers of Lucknow Customs, which appeared as residential premises and no firm named M/s. Sapphire International was found existing. Therefore, it appears that M/s Sapphire International was nothing but a dummy/fake firm whose IEC was used to import the prohibited items as discussed above. These, all the acts of omission and commission as discussed above on part of M/s Sapphire International are in contravention to the provisions of Customs Act, 1962 and rules made there under. Thus, it appears that M/s. Sapphire International done an act rendering these goods liable for confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a) and (b) of Customs Act 1962.

8.2 ROLE OF SHIPPING AGENT M/S. BOX PARK TERMINAL CO., GANDHIDHAM:

Whereas, M/s. Box Park Terminal Co., Gandhidham has submitted all the letters of M/s. Sapphire International, Varanasi only by hand and also during the search three Blank letter head of the M/s. Sapphire International, Varanasi found at their premises. On being asked, they had no satisfactory reply for the same. These, all the acts of omission and commission as discussed above on part of M/s Box Park Terminal Co., Gandhidham are in contravention to the provisions of Customs Act, 1962 and other allied laws. Thus, it appears that M/s Box Park Terminal Co., Gandhidham done an act rendering these goods liable for confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a)&(b) and Section 117 of Customs Act 1962.

8.3 ROLE OF M/S REKHA SUPERFINE EXPORTERS, KASEZ:

Whereas, as discussed in Para-5 above, it appears that M/s. Rekha Superfine Exporters, KASEZ is handling the bank account of M/s. Sapphire international, Varanasi and the sole entity who is handling the export/import by M/s. Sapphire International. Furthermore, as discussed in Para-6, M/s Rekha Superfine Exporters, KASEZ doesn't appear on summons dtd 12.05.2023, 15.06.2023 & 09.02.2024 and not cleared its position on the issue. Thus, it appears that M/s Rekha Superfine Exporters, KASEZ have done an act rendering these goods liable for confiscation under Section 111 of the Customs Act, 1962 and by doing so, has also rendered himself liable to penalty under Section 112 (a) &(b) and Section 117 of Customs Act 1962.

9.1 Therefore, M/s. Sapphire International, House No. S 10/133-57, Hukal Ganj, Varanasi, Uttar Pardesh-221001, was called upon to show cause to the

Additional Commissioner of Customs, Customs House, Mundra having office at 1st Floor, PUB Building, Adani Port, Mundra, as to why: -

- (i) the goods in container no. ESIU9017895 having estimated value of Rs. 1,15,30,248/- should not be confiscated under Section 111 (o) of the Customs Act, 1962.
- (ii) Penalty should not be imposed on the them separately for each under Section 112(a)&(b) and Section 117 of the Customs Act, 1962.

9.2 Therefore, M/s. Box Park Terminal Co., office no. 07, 1st floor, Om Corner, Plot No. 336, 337 & 338, Ward 12B, Gandhidham-370201 was called upon to show cause to the Additional Commissioner of Customs, Customs House, Mundra having office at 1st Floor, PUB Building, Adani Port, Mundra, as to why Penalty should not be imposed on the them separately for each under Section 112(a)&(b) and Section 117 of the Customs Act, 1962 for the reason and contraventions as discussed above.

9.3 Therefore, M/s Rekha Superfine Exporters, Shed No. 395, Special Type, Sector-II, Kandla SEZ, Gandhidham, Kutch-370230, was called upon to show cause to the Additional Commissioner of Customs, Customs House, Mundra having office at 1st Floor, PUB Building, Adani Port, Mundra, as to why Penalty should not be imposed on the them separately for each under Section 112(a)&(b) and Section 117 of the Customs Act, 1962 for the reason and contraventions as discussed above.

10. Personal Hearing

10.1 Personal hearing in this case was given on 03.12.2024, In response to which Smt. Ashly K. Prakash, advocate represented Noticee no. 03 M/s Box Park Terminal Co. and She reiterated that their role is only limited to the being shipping line agent and they had nothing to do with the import of the goods. She further stated to submit her submission by 31.12.2024. However, Noticee no. 1 & Noticee no. 02 did not attend the PH.

10.2 Another PH was given on 03.01.2025 in response to which Neither Noticee no. 1 nor Noticee no. 2 attended the PH.

10.3 In the last PH scheduled on 20.02.2025 Neither Noticee no. 1 nor Noticee no. 2 attended the PH.

11. Defence Submission

11.1 Smt. Ashly K. Prakash, advocate vide her e-mail dt. 02.01.2025 made following submissions.

1. We are inviting your kind attention to the above subject matter. The inconvenience with regard to filing the present written statement was brought to your kind attention vide our email dated 08.04.2024 and 21.05.2024. The delay is not intentional and hence may be condoned.
2. They have authorized and appointed Advocates of M/s. Lloyd & Johnson, 701, Raheja Arcade, Sector-11, CBD Belapur, Nav. Mumbai-400614 (Mr. Biju Joseph, Ms. Taranjeet Phull, Ms. Ashly K. Prakash, Ms. Bhoomika Markam, Ms. Ashwini Arakharao) to appear and represent M/s. Box Park Terminal Co. in the subject matter through the Authorisation letter dated 18.05.2024. They would like to file the following written statement, in reply to the subject Show Cause Notice (hereinafter referred to as 'SCN' on behalf of M/s. Box Park Terminal Co. (hereinafter referred to as Box Park').
3. Box Park is a partnership company incorporated under the I relevant provisions of the Indian Partnership Act 1932 and has been engaged in the business of shipping and related logistics services. Box Park acted as the Delivery Agent at the port of

discharge i.e., Mundra (MICT) for M/s. Prime Globe Shipping & Logistics LLC., who has issued the Bill of Lading in the concerned subject matter.

4. By way of the present SCN, at para no. 9.2, the Additional Commissioner of Customs (Import) is required Box Park to show cause as to why:

"i. Penalty should not be imposed upon them under Sections 112 (a), 112 (b) and 117 of the Customs Act, 1962.

5. In view of the above referred SCN and consequent penalties sought to be imposed on Box Park, the following detailed reply is given below:

Brief Factual Background

6. Box Park desires to place on record a brief background of the subject matter of the SCN hereunder:

6.1. Box Park has acted as the non-exclusive agent for Sparxx Maritime & Logistics Pvt. Ltd. (hereinafter referred to as 'Sparxx Maritime') at Mundra in the present case to handle the consignment that was destined for Mundra MICT port initially. The duty of Box Park was limited to facilitating the clearance of goods when the container arrives at the destined port of discharge using the Port and Custom Code of Box Park on behalf of Sparxx Maritime in the capacity of a delivery agent and issuing the Delivery Order.

6.2. During the validity of the said agency, Container No. ESJ9017895 was loaded from Jebel Ali, UAE to Mundra Port onboard vessel GFS GISELLE/0017, Arrival on 06th March 2021 vide Bill of lading No. SPRXJEMUN20163. As per the said Bill of Lading, the shipper/exporter was named 'SGC Shipping Services LLC' (hereinafter referred to as 'SGC Shipping'), and the consignee 'Sapphire International' (hereinafter referred to as 'Sapphire') and the declared cargo was "Canned Tuna, Milk Powder, Cosmetics, Liquor, Cigarettes, Tissue Paper, Nutritional Supplements" from the port of Jebel Ali, UAE to the port of Mundra (MICT), India,

6.3. While the container was in transit from the port of Jebel Ali to Mundra, on the request of SGC Shipping, Prime Globe (CAE Agent of Sparxx Marine), for the alleged reason for wrong cargo stuffing, intimated the vessel operator and requested to retain the said container on board (ROB) and bring the container back to Jebel Ali, the load port, which was agreed upon and confirmed by Transworld.

6.4. Being the agent at the port of discharge, a letter dated 12.03.2021 was submitted by Box Park to the Deputy Commissioner of Customs seeking permission to retain container no. EISU9017895 on board the vessel due to the reported reason of wrong cargo stuffing by the shipper, along with the copy of the Bill of lading, Shipper's Request Letter, Consignee's No Objection Letter, and the Invoice & Packing List.

6.5. Upon perusal of the said letter and the documents, the Department granted permission to RO3 (Retain On Board) of the subject container to return back to the loading port, Jebel Ali, UAE. The permission was granted manually by handwritten, on the letter submitted by Box Park with the signature and seal of the Superintendent of Customs (Operations) and the Preventive Officer.

6.6. After receiving the requisite permission from the Customs Department, the same was conveyed to the Terminal and the vessel operator to retain on board the subject matter container. Upon receipt of the permission, the vessel operator proceeded to ROB the container back to Jebel Ali as originally requested by the shipper.

6.7. While the said vessel was about to reach the port of Jebel Ali on her return voyage, the Deputy Commissioner (DP), Custom House, Mundra has issued a letter dated 16.03.2021 to Box Park, demanding the recalling of the subject container back

to Mundra Port, without discharging at its origin port Jabel Ali. It was also mentioned that the ROB permission was granted manually due to a system/technical error.

6.8. On receipt of the said letter dated 16.03.2021, Box Park immediately informed Prime Globe regarding the recall of the subject matter container by Customs for examination and the same was conveyed to the shipper, SGC Shipping as well. The vessel was almost reaching the port of Jabel Ali on her return voyage. As it required payment of additional charges to the vessel operator, terminal, port authorities, and other stakeholders involved and considering the limited expiry dates of the cosmetic and milk products stuffed in the container, SGC Shipping (Shipper) understandably wrote to the Customs authorities requesting permission for clearing the container at Jebel Ali, UAE for reshipment of the same after necessary re-stuffing of the right cargo, which was denied. The container after paying all the said charges by S32, was brought back the container to the port of Mundra and was subjected to customs examination.

6.9. Subsequent to the arrival at Mundra, India, the customs department opened and examined the container no. EISU9017895 on 01.04.2021 (RUL-3 Examination Report). After three years of examination of the said container, the container goods and the container were seized at EXIM Yard, CFS, Mundra, the department has seized the goods vide Seizure memo dated 16.02.2024 under section 111 (0) of the Customs Act, 1962, for the reason that the importer attempted to import the subject goods which were subject to the conditions of Food Safety and Standards Act, 2006, Drug and Cosmetic Act 1945, Tobacco Regulation Act 2003, and license from the State Excise Department for the time being in force.

7. Submission on behalf of Box Park.

A. Box Park's limited role as delivery agent of the principal Prime Globe/Sparxx Maritime:

A.1. Box Park is the non-exclusive agent for Sparxx Maritime & Logistics Pvt. Ltd. at Mundra for handling the export- import containers originating/destined from/to Mundra. The scope of work of Box Park is limited to sending pre- advice to the receiving party, collecting the charges and other expenses, sending shipment arrival notice and collecting the freight if not collected at the load port, detention charges, and all other local charges before issuing the delivery order to the consignees. Box Park is given commission and charges as per the tariff agreed in the agreement. Prime Globe (Who has issued the B/L) is the appointed agent at Jabel Ali, UAE of Sparxx Maritime.

A.2. On arrival of the vessel at the declared port of discharge, Box Park compiles the data available on the Bill of Lading copies to give it operator/conveyance to enable them to file the to the GM, EGM. It is important to note that in the subject case, no such IGMA was filed by the conveyance and so no Bill of Entry was also filed by the consignee. The container was directed to be brought to India by the Department of Customs, following an earlier ROB.

A.3. As there was a request from the shipper not to unload the cargo at the port of discharge, Box Park, with Bonafede belief has submitted a letter dated 12.03.2021 to the customs department seeking permission for ROB. Apart from the documents and information provided by the principal, Box Park had no information: regarding the cargo, the genuineness of the consignee.

B. "SHIPPER'S LOAD, STOW, COUNT SEAL and WEIGHT".

B.1. Box Park being the delivery agent of the container operator, had no knowledge of the contents, quantity, quality, or classification of the goods that were stuffed by the shipper at the port of loading. The goods were carried out based on the declaration made by the skipper in the Bill of Lading. Box Park is not privy to such information and has no duty or obligation to verify the contents of the container. It is the

shipper's declared cargo which was carried by the conveyance and the freight was also prepaid.

C. The shipper's request for returning the container back to the load port.

C.1. SGC Shipping Services LLC vide their letter dated 11.03.2021 requested Prime Globe to return the container to the load port for the alleged reasons stated in such request. ROB incidents being not uncommon, Box Park has submitted a forward request letter dated 12.03.2021 to the Deputy Commissioner of Customs Mundra House, seeking permission for ROB request of the shipper and the same was granted by the department. Apart from being the agent of the carrier, Box Park had no personal interest or knowledge regarding the contents of the containers.

C.2. Also, the request for ROB was received and submitted before the IGM was filed by the vessel operator/conveyance and hence no BOE for home consumption was also filed by the named consignee.

D. Reply with respect to the invocation of provisions of Food Safety and Standards Act 2006, Drugs and Cosmetic Act 1945, Tobacco Regulation Act 2003, and license from the State Excise Department.

D.1. The goods covered under the Bill of Lading No. SPRXJEAMUN 20163 dated 10.03.2021 were seized vide Seizure Memo dated 16.02.2024 and confiscated under section 111(0) of the Customs Act, 1962. As per Section 25 of the Food Safety and Standards Act 2006, any person who imports any articles of food is required to take a license as per Section 31 of the said Act. Hence the person who is responsible for importation is the importer and not the agent of the transporter.

D.2. Section 10 (e) of the Drugs and Cosmetic Act 1945 requires the person who imports certain drugs or cosmetics to take a license as prescribed and Section 7 of the Cigarettes and Other Tobacco Products Act, 2003 imposes restrictions on the import of cigarettes or any other tobacco products for distribution or supply in India subject to compliance with certain conditions. All the above-specified laws impose restrictions are applicable to the importers.

D.3. None of the above laws regulates or imposes any penalty on a carrier or a delivery agent who has acted as the agent of the carrier, especially when the said containers were called back at the instances of the Department of Customs from overseas port. It is pertinent to mention that for all the pre-conditions for the said sections to be applied, the person has to be an importer. Here, Box Park is not the importer. Hence the provisions and the penalties invoked are not binding on Box Park. It is solely the responsibility of the importer to possess the required license and permits before importing any goods into India as per the prevailing laws. For any such breach of law, the importer solely shall be liable and Box Park has no role to play in the commercial transaction.

E. Regarding the relationship International & Rekha Superfine. between Sapphire

E.1. Box Park as mentioned in the 108 Statement has handled 4-5 import and export consignments of M/s. Sapphire International in the past. All the communication and a few payments were made by M/s. Rekha Superfine Exporters, KAZEZ, for and on behalf of M/s. Sapphire International, E.2. Hiding the actual shipper's name by way of switch BL or use of Master BL are normal and recognized trade practices. Box Park has no information and knowledge as to whether the parties (Sapphire & Rekha) are related and for what reasons their import comes in one name or another.

8. Offences alleged against Box Park:

8.1. As per para 8.2 of the SCN, the alleged violations against Box Park are; (a) that Box Park has submitted the letters of M/s. Sapphire International only by hand (b) The investigating officer has found three signed blank letterheads of M/s- Sapphire International at the office premises of Box Park. Thus, the customs department has concluded that Box Park has done an act which rendered the goods liable for

confiscation under Section 111 of the Customs Act, 1962, and has also rendered themselves liable to penalty under Section 112 (a) & 112 (b) and Section 117 of Customs Act 1962.

8.2. It is admitted that Box Park has submitted the letters of M/s. Sapphire International by courier. The fact that the said letterheads were all signed by the authorized signatories of Sapphire International proves the fact that Box Park has received the same from the party, signed and was to be used for shipping-related correspondence with stakeholders like customs, terminal, transporters, shipping companies, yards etc... It is natural and trade practice that the party (sapphire) being an entity from Varanasi, UP (As told to Box Park), send such signed blank letters to address unforeseen situations in the shipping transactions. It has also been stated by Box Park that the said customer, though another entity (Rekha International) has performed a few past export-import payments too. Hence, holding the signed letterheads of their customer at the office is not a ground for alleging violation of provisions of the Customs Act.

8.3. The Hon'ble Supreme Court of India in **Hindustan Steel Ltd. v. State of Orissa 1970 AIR 253** wherein it was held that the discretion to impose the penalty must be exercised judicially and penalty should ordinarily be imposed, where the party acts deliberately in defiance of law or is guilty of contumacious or dishonest conduct, or acts in conscious disregard of its obligation; but not in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

8.4. Without prejudice to the above contentions and notwithstanding the position taken by Box Park above, it is stated that the said container/goods cannot be treated as "imported goods" as the same was re-called by the department from a foreign territory. The statutory IGM or Bill of Entry has not been filed against the said goods and hence provisions of the customs Act governing the imported goods, the provisions of Food Safety and Standards Act 2006, Drugs and Cosmetic Act 1945, Tobacco Regulation Act 2003 etc. cannot be applied the subject matter as the same was compulsorily called into the territory of India for the purpose of examination. The truthfulness and veracity of the reasons stated in the letter for retaining ROP is crucial and veracity has to be investigated to determine any kind of violations or penalty, if at all applicable in the case at hand. Therefore, the penalty imposed as per the present SCN is imaginary or based on factually incorrect circumstances.

9. Penal provisions invoked against Box Park.

9.1. Section 112 (a) of the Customs Act, 1962:

Clause (a) of Section 112 of the Customs Act, provides for penalty against the person who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act. It is imperative to understand the interpretation and applicability of Section 112 (a) of the Customs Act, 1962 which governs the penalty for improper importation of goods, etc. First and foremost, Section 112 (a) has two parts and it is separated from the word "or". The interpretation of Section 112 (a) demonstrates the legislature's exact intention. Section 112 (a) specifically mentions 'to whom' this section shall be applicable i.e., "**any person who in relation to any goods**", indicating its scope. As per the intention of the Legislature, this part of clause (a) applies to the importer, exporter, and/or beneficial owner, as any omission/ commission of conditions of Section 111 by them, rendered the goods liable to confiscation.

9.2. The second part of clause 112 (a) which is separated by the word or has a mention of the word 'abet' implying the presence of knowledge. A perusal of this Section reveals that for abetting an offense, the existence of mens rea is an essential ingredient due to the mention of the word "abet". The second part is applied to other

persons such as Customs Brokers (CB), Shipping-line, Custodians, Delivery Agents, etc., or any other person, who facilitates or assists the principal offender (importer, exporter, and/or beneficial owner, in improper customs clearance work as stated above.

9.3. Therefore, for invocation of the second part of Section 112(a) on stakeholders, who assist importer/exporter/beneficial owner in customs clearance and render the goods liable for confiscation, mens rea is an absolute necessity. Without animus on the part of such stakeholders, it is impossible to invoke Section 112(a) or bring them under the four corners of this penal provisions.

9.4. In the case of M/s Rajeev Khatri vs. Commissioner of Customs (Export) CUSAA 3/2021 & CMAPPL. 5517/2021 dated July 4, 2023 (MANU/DE/4161/2023) while allowing the appeal challenging the penalty imposed under Section 112 of the Customs Act 1962, the Hon'ble High Court of Delhi held that at abetment necessarily requires knowledge of the offending act for imposing penalty. The Hon'ble Court observed that:

"Section 112(a) of the Customs Act includes two categories of persons, who may be liable for fine. The first category of persons is those who, in relation to any goods, do or omit to do any act which renders the goods liable for confiscation under Section 111 of the Customs Act. The second category of persons comprises of those who abet the doing or omission of such acts. In the present case, penalty has been imposed on the Appellant on the allegation that he had abetted the acts of misdeclaration, importation of prohibited goods, and not of committing those acts.

Thus, indisputably, persons who have committed the acts of omission or commission in relation to goods that rendered them liable for confiscation, are liable to pay the penalty as stipulated under Section 112(a) of the Customs Act, without any requirement to establish their mal intent. However, the same principle would not apply to persons who are alleged to have abetted such acts of omission or commission. This is because, abetment, necessarily requires, at the minimum, knowledge of the offending Act.

It is apparent that, the knowledge of a wrongful act of omission or commission, which rendered the goods liable for confiscation under Section 111 of the Customs Act, is a necessary element for the offense of abetting the doing of such an act."

9.5. In the case of M/s. Amrit Lakshmi Machine Works & Another v. The Commissioner of Customs [2016(335) E.L.T.225] wherein the Hon'ble Bombay High Court held that imposing penalty upon an abettor without any mens rea on his part would bring all business to a halt, as even innocent facilitation provided by a person which has made possible the act or omission to act possible could result in imposing of penalty. The Hon'ble Court observed as:

"16. Section 112(b) of the Act provides for imposition of penalty when any person acquires possession of the offending goods or is concerned with carrying, depositing, concealing, selling or dealing with goods which he knows or has reason to believe are liable to confiscation under Section 111 of the Act. Thus, the liability under Section 112(a) of the Act is a strict liability (save and except in case of abetment). While the liability under Section 112(b) of the Act requires knowledge before a person can be visited with penalty.

25. Section 112(a) of the Act to the extent it covers a person who abets the doing or omitting the doing of any act as plainly read would also be an offence under Section 135(1)(a) of the Act also. This is so as the requirement of knowledge is found only in case of abetment and not in other cases listed in Section 112(a) of the Act. The word abetment is not defined in the Act, therefore the meaning assigned to it in Section 3(1) of the General Clauses Act, 1897 which is as given

under Section 107 of the Indian Penal Code. An abetment would include by definition intentional aiding when covered by Explanation 2 read with third category listed in Section 107 of the Indian Penal Code. (See Supreme Court decision in *Shree Ram v. State of U.P.*) Mere facilitation without knowledge would not amount to abetting an offence. Parliament has specifically included abetment in Section 112(a) of the Act, to include acts done with knowledge, otherwise the first portion thereof "Any person (a) who in relation to any goods does or omits to do any act www.** "would cover acts done or omitted to be done on account of instigation and/or encouragement without knowledge. However, the first portion of Section 112 (a) of the Act is only to make person of first degree in relation to the act or omission strictly liable. Persons who are not directly involved in the act or omission to act, which has led the goods becoming liable for confiscation cannot be made liable unless some knowledge is attributed to them. Therefore, it is to cover such cases that Section 112(a) of the Act also includes a person who abets the act or omission to act which has rendered the goods liable to confiscation. Imposing penalty upon an abettor without any mens rea on his part would bring all business to a halt as even innocent facilitation provided by a person which has made possible the act or omission to act possible could result in imposing of penalty."

9.6. Reliance in this regard is placed on *Tata Oil Mills Company Ltd. and Another versus Union of India and Another*, 1986 (26) E.L.T. 931 (Bom.) in para 6: -

"The expression "abetment" has been defined under the General Clauses Act as one known in the Indian Penal Code and under the Indian Penal Code, the person is said to abet when such person instigates or participates in the commission of the offence". Actual Therefore without instigation or participation in commission of crime there cannot be abetment."

9.7. Section 112 (b) of the Customs Act, 1962:

Any person 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. For imposing a penalty on a person under Section 112 (b), the following conditions must be satisfied:

(i) The person must have acquired possession of or must be in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which are liable for confiscation under Section 111 of Customs Act, 1962; or

(ii) The person must have knowledge or have reason to believe that the goods acquired by him or dealt with by him in the manner as mentioned above, are liable for confiscation under Section 111 i.e. he has knowledge or has reason to believe that any one or more of the contraventions mentioned in Clauses (a) to (p) of Section 111 have been committed in respect of the imported goods acquired or dealt with by him

9.8. Thus for imposing a penalty under Section 112 (b), it is necessary to prove that the person alleged to have committed the offence had knowledge or had reasons to believe that the goods acquired or dealt with by him are liable for confiscation under Section 111 of the Customs Act, 1962.

9.9. *In Mayeen Uddin versus Commissioner of Customs (Prev.) Shillong*, 2020 (371) E.L.T. 779 (Tri. Kolkata, Section 112 came for scrutiny and it was held that: "Section 112 deals with penalty of improper importation of goods etc. Section 112(b)(i) provides any person 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 of the Customs Act, 1962, shall be liable to penalty. The expressions "which he knows or has reason to believe are liable to confiscation" in Section 112(b) are very crucial. It has to be

ascertained as to whether such person knows or as reason to believe that the goods are liable for confiscation for imposition of penalty under Section 112(b, of the Act."

9.10. It was held in **Shankeshwar Metal Corporation versus Commr. Of Cus. (Imports), Mumbai, 2014 (312) E.LT. 344 (Tri. Mumbai)** - that mens rea is an important ingredient for imposing a penalty under Section 112(b) of the Customs Act, 1962. Goods may be liable to confiscation for contravention of provisions of the Customs Act, but the person who is in possession of goods need not necessarily have anything to do with either smuggling or dealing with them knowingly.

9.11. In Ajay Sarawagi vs Commissioner of Customs (Preventive), Shillong (CESTAT Kolkata), Customs Appeal No. 75626 of 2021 decided on 17.04.2023 while discharging the penalties imposed on the appellant it was held that:

"12. I find that Section 112(b) of the Customs Act, 1962 is not applicable to the facts of the present case because records show that the Appellant had never acquired possession or in any way was connected with the activities mentioned in the Section or in any manner dealing with any goods which the Appellant knew or had reason to believe are liable to confiscation. It is now well established that mens rea is an important ingredient for imposing penalty on the persons enumerated in Section 112(b) of the Customs Act, 1962. The evidence brought out by the department nowhere suggests that the Appellant was aware that the goods in question were smuggled into the country. The penalty imposed on the Appellant, therefore, cannot be sustained."

9.12. In **Joseph Itteyara versus Commissioner of Customs, Mumbai, 2004 (176) E.LT. 165 (Tri- Mumbai)** it was held that a penalty having been imposed on the basis of assumptions and presumptions lacking any cogent tangible or reliable evidence is not sustainable as per Section 112 of the Customs Act, 1962 (para 3).

9.13. In **Vipul Joshi Vs C.C. Ahmedabad (CESTAT Ahmedabad)** Custom Appeal No. 10053 of 2022 dated 04.10.2022 it was held that the penalty under Section 112 (b) of the Customs Act, 1962 is unsustainable in the absence of sufficient evidence.

9.14. Going by the ratio of judgments, it can be adduced that any omission/commission that renders the goods liable for confiscation under Section 111 has to be coupled with mens rea in relation to the goods, then only attracts a penalty under Section 112(b). It is well-settled law that no penalty under section 112(b)(ii) of the Customs Act, 1962, can be imposed without proving the nexus with the goods under seizure which are liable for confiscation. Box Park never came in contact with the goods nor came in possession of the cargo at all, as it was seized before Box Park came into the conspiracy if any, and therefore there was no contingent act of commission or omission by Box Park, which rendered the goods liable for confiscation.

9.15. Section 117 of the Customs Act, 1962.

Section 117 of the Customs Act, 1962 invites penalty for contravention, etc., of any provision of the Act or abets any such contravention or who fails to comply with any of the provisions of the Act, which was his duty to comply with. For the reasons pleaded in the previous paragraphs, Box Park has not committed or omitted any act which construes as an offense under the provisions of Customs Act, 1962 and hence is not liable for penalty under Section 117 of the Customs Act, 1962.

9.16. In **Shri P. Sinnamani vs Commissioner of Customs, 2023 TAXSCAN (CESTAT) 1477, the Chennai bench of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) quashed the penalty imposed under section 117 of the Customs Act, 1962 on the grounds of the absence of direct evidence of connivance.**

10. Though confiscation could be ordered irrespective of knowledge or involvement of the person in whose possession the goods are found, the imposition of personal penalty requires a deliberate action or knowledge or complicity or common act of abatement to the violation in question and in the absence of any such personal guilty

conduct or mens rea, the question of imposing a personal penalty under Section 112 (a) and (b) of the Customs Act, 1963 does not arise and the imposition of such personal penalty even in the absence of the required mens rea would be totally without the authority of law,

11. Allegations on Box Park being an abettor to smuggling, the subject matter goods are levelled only on the basis of three letterheads found at the office premises of Box Park which lack independent corroboration with any other evidence. Without much ado, it is dear from a bare reading of Section 112 (a) and (b) of the Customs Act, 1963 that a person cannot be prosecuted and punished merely because they were engaged as the delivery agent to facilitate the clearance of goods at the port of discharge. A mere apprehension is insufficient to impose penalties under the provisions of the Customs Act, of 1963.

In light of the above background of the SC, facts, laws, and precedents, it is requested to this authority the following;

I. That the Additional Commissioner of Customs (Import), Customs House, Mundra may be pleased to set aside the impugned Show Cause Notice issued on M/s. Box Park Terminal Co.; and

II. The charges framed against M/s. Box Park Terminal Co. in the impugned Show Cause Notice may be quashed; and

III. To not impose any penalty upon M/s. Box Park Terminal Co. in the alleged violations of any of the provisions of the Customs Act or any other Acts for that matter; and

IV. To give an opportunity for a personal hearing, if any further clarifications are required, before this authority during the adjudication of the subject SCN and pass orders accordingly;

and

V. To allow us to leave, alter, amend, or modify our submission till the time the matter is decided.

12. Discussion & Findings

12.1 I have carefully gone through the records of the case. The submission dated 02.01.2025, record of personal hearing held on 03.12.2024, 03.01.2025 and 02.02.2025 and other available records. I find that in the present case principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case on the basis of documentary evidences available on record.

13. I find that M/s. Box Park Terminal Co. were written a letter F.No. CUS/DOCS/REX/4/2020-DP dtd. 16.03.2021 for recalling the Container No. EISU9017895 falling under the Bill of lading no. SPRXJEAMUN20163 dtd. 10.03.2021 to Mundra port for goods *Canned Tuna, Milk Powder, Cosmetics, Liquor, Cigarettes, Tissue paper, Nutritional Supplements* with respect to the importer M/s Sapphire International.

13.1 Furthermore, I find that it has been noticed that Bill of Entry was not filed for the said container. The container no. EISU9017895 falling under the Bill of lading no. SPRXJEAMUN20163 dtd. 10.03.2021 was opened and examined vide examination report dtd. 01.04.2021 by the officers of DP Section, Custom House, Mundra in the presence of representative of M/s Box Park Terminal Co., Gandhidham in the Exim Yard, CFS, Mundra. The copy of Bill of lading was provided by the representative of M/s Box Park Terminal Co., Gandhidham. Wherein 50 items were found.

14. Confiscation of the goods under section 111(o) of the Customs Act, 1962.

14.1 The Customs Act, 1962 provides for the following

Section 111: The following goods brought from a place outside India shall be liable to confiscation: -

Section 111(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;

14.2 From the examination report, it is evident that there was an attempt to import of goods which were subjected to the conditions of Food Safety and Standards Act 2006, Drug and Cosmetic Act 1945, Tobacco Regulation Act, 2003 and license from the State Excise Department for the time being in force, as mentioned in the Bills of lading and therefore, it is evident that the importer attempted to import the items by way of violating the conditions of allied laws. The goods in container no. ESIU9017895 lying at EXIM Yard CFS, Mundra, having estimated value of Rs. 1,15,30,248/-, are liable for absolute confiscation under Sections 111(o) of the Customs Act, 1962.

15. Imposition of Redemption fine in lieu of confiscation of the goods under section 111(o) of the Customs Act, 1962.

15.1 On plain reading of the provisions of the Section 111(o) of the Customs Act, 1962 (mentioned at Point no. 14.1) it is clear that the impugned goods were imported which were subjected to the conditions of Food Safety and Standards Act 2006, Drug and Cosmetic Act 1945, Tobacco Regulation Act, 2003 and license from the State Excise Department for the time being in force and import of the same without fulfilling the conditions has rendered the imported goods prohibited. The importer did not appear in the PH and neither has he produced any written request for re-export of the impugned goods. As discussed in the foregoing paras, it is evident that the importer attempted to import the items by way of violating the conditions of allied laws Therefore, I hold that the impugned imported goods are liable for absolute confiscation as per the provisions of Section 111(o) of Customs Act, 1962.

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

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

15.3 A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods by paying redemption fine where there is no restriction on policy provision for domestic clearance. I find that since the Importer is involved in violation of customs Act, 1962 and allied Acts thus rendering the goods as prohibited and attempting transit of the goods in violation of the customs Act, 1962 and allied Acts there is no scope left for leniency in the instant case.

16. Role and culpability of M/s Sapphire International

16.1 I find that the SCN has proposed penalty under section 112(a), 112(b) and section 117 of the Customs Act, 1962 against M/s Sapphire International Now I will discuss liability of them under the proposed sections of the customs act, 1962 for levying penalty against M/s Sapphire International.

16.2 I find that Container No. EISU9017895 falling under the Bill of lading no. SPRXJEA MUN20163 dtd. 10.03.2021 to Mundra port for goods *Canned Tuna, Milk Powder, Cosmetics, Liquor, Cigarettes, Tissue paper, Nutritional Supplements* with respect to the importer M/s Sapphire International was examined vide examination report dtd. 01.04.2021 by the officers of DP Section, Custom House, Mundra at the exim yard, mundra and it was noticed that the goods attempted to be imported were subject to the conditions of Food Safety and Standards Act 2006, Drug and Cosmetic Act 1945, Tobacco Regulation Act, 2003 and license from the State Excise Department for the time being in force.

16.3. Further, I find that during the search at the registered premises of M/s Sapphire International by the officers of Lucknow Customs, which appeared as residential premises and no firm named M/s. Sapphire International was found existing. Therefore, it appears that M/s Sapphire International was nothing but a dummy/fake firm whose IEC was used to import the prohibited items as discussed above. These, all the acts of omission and commission as discussed above on part of M/s Sapphire International are in contravention to the provisions of Customs Act, 1962 and rules made there under. Thus, it appears that M/s. Sapphire International done an act rendering these goods liable for confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112(a), the same is confirmed under section 112(a)(i) if the Customs Act, 1962.

16.4 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 Sapphire International under Section 112(b) of the Act wherever, penalty under Section 112(a) of the Customs Act, 1962, is to be imposed.

16.5. As regards the penalty under Section 117 on M/s Sapphire International, I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that penalty against M/s Sapphire International is already confirmed under the provisions of Section 112(a) of the Customs Act, 1962, hence, penal action under section 117 does not appear to be warranted in the subject case against the importer.

17. Role and culpability of M/S. BOX PARK TERMINAL CO.

17.1 I find that the SCN has proposed penalty under section 112(a), 112(b) and section 117 of the Customs Act, 1962 against M/s BOX PARK TERMINAL CO Now I

will discuss liability of them under the proposed sections of the customs act, 1962 for levying penalty against M/s BOX PARK TEMINAL CO.

17.2 I find that with regard to the documents related to Bill of Lading No. SPRXJEAMUN20163 dtd. 10.03.2021, Shri Pravin Kochath, Partner of M/s. Box Park Terminal Co., Gandhidham stated and also in their submission dt. 02.01.2025 M/s Box Park Terminal Co. has accepted that all communication related to the importer i.e. M/s. Sapphire International were being held through M/s. Rekha Superfine Exporters, KASEZ. Also added that they have handled 4-5 import consignment and 4-5 export consignment on account of M/s. Sapphire International and the consignee in these consignment is M/s. Rekha Superfine Exports, KASEZ and they have received the clearing/handling charges of these from M/s. Rekha Superfine Exports.

17.3 I also find that during search, officers found three Blank letter head of the M/s. Sapphire International, Varanasi about which Shri Pravin Kochath stated that they received them by courier. During search, officers also found the communication letters with Customs Department on behalf of M/s. Sapphire International, Varanasi. Further, the officers also found HDFC Bank statement of M/s. Box Park Terminal Co. Gandhidham having Account no. 50200028048970, wherein some entries of credit from the M/s. Sapphire International, Varanasi. On being asked Shri Pravin Kochath informed that they have received this payment against the invoices issued to the M/s. Rekha Superfine Exporters, KASEZ.

17.4 I further find that M/s Box Park Terminal stated they received the three blank letter head of M/s Sapphire international, Varanasi by courier. However, they failed to produce the details of courier viz. Envelope, Courier Company's Name, Number, Booking/sender details etc. before the investigating agency. It cannot be denied that they were using the letter heads of M/s Sapphire International, since communication letters with Customs Department on behalf of M/s Sapphire International, Varanasi were also recovered from the office-premises of M/s Box Terminal during search at the office-premises of M/s Box Terminal vide Panchnama dated. 06.07.2021. Therefore, it can be understood that M/s Box Terminal were actively involved in the mal-practice of sending/forwarding these letters to Customs Authorities.

Hence, M/s Box Terminal with mala-fide intention in connivance with M/s Rekha Superfine were involved in the illegal activity of using M/s Sapphire International's letter head for importation/facilitation of import of contraband/prohibited goods.

17.5 It is evident from the above discussions that M/s BOX PARK TEMINAL CO. and M/s. Sapphire International have worked together in the import and export and are known to each other and also M/s BOX PARK TEMINAL CO. has provided shipping services in the import of the which were subject to the conditions of Food Safety and Standards Act 2006, Drug and Cosmetic Act 1945, Tobacco Regulation Act, 2003 and license from the State Excise Department for the time being in force. Thus, rendering the same as prohibited and liable for confiscation under section 111(o) of the Customs Act, 1962. For this omission and commission at the end of M/s Box Park Terminal Co. is liable for penalty under section 112(b) of the Customs Act, 1962 and the same is confirmed under section 112(b)(i) of the Customs Act, 1962.

17.6 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 BOX PARK TERMINAL CO. under Section 112(a) of the Act wherever, penalty under Section 112(b) of the Customs Act, 1962, is to be imposed.

17.7 As regards the penalty under Section 117 on M/s BOX PARK TERMINAL CO., I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that penalty against M/s BOX PARK TERMINAL CO. is already confirmed under the provisions of Section 112(b) of the Customs Act, 1962, hence, penal action under section 117 does not appear to be warranted in the subject case against the importer.

18. Role and culpability of M/S REKHA SUPERFINE EXPORTERS, KASEZ

18.1 I find that the SCN has proposed penalty under section 112(a), 112(b) and section 117 of the Customs Act, 1962 against M/s Rekha Superfine Exporters, KASEZ. Now I will discuss liability of them under the proposed sections of the customs act, 1962 for levying penalty against M/s M/S Rekha Superfine Exporters, KASEZ.

18.2 I also find that DRI, Ahmedabad Zonal Unit, Ahmedabad, DRI, Gandhidham Regional Unit, Gandhidham and DRI, Ludhiana Zonal Unit, Ludhiana has already initiated inquiry against M/s. Rekha Superfine Exporters, KASEZ in various issues. DRI, Ludhiana Zonal Unit vide their letter also requested office of the Development Commissioner to initiate the procedure for cancellation of the LOA granted to M/s. Rekha Superfine Exporters and KASEZ authorities have issued a Show Cause Notice KASEZ/IA/1909/2002-03/Vol I/1501 dtd. 22.05.2023 for cancellation of LOA. Further, they submitted that no search operation has been conducted by the KASEZ authorities at the premises of M/s. Rekha Superfine Exporters.

18.3 "It is also evident that the summons were issued to M/s Rekha Superfine Exporters, KASEZ on 12.05.2023, 15.06.2023, and 09.02.2024; however, no response has been received from them. The summons dated 09.02.2024 was returned by the Indian Postal Authorities with the remark 'left,' indicating that M/s Rekha Superfine Exporters, KASEZ is not cooperating with the investigation."

18.4 From the statements of Shri Pravin Kochath of M/s Box Park Terminal Co. it has come to notice that M/s. Rekha Superfine Exporters, KASEZ has operated with the imports made by the import firm M/s Sapphire International regularly. Therefore, from the above, it appears that M/s. Rekha Superfine Exporters, KASEZ is a habitual offender under the Customs Act, 1962. Further, it is observed that M/s Rekha Superfine Exporters, KASEZ appears to be beneficial owner in the instant case.

Further, it is also observed that M/s Rekha Superfine Exporters had made payment of clearing/handling charges of 4-5 past consignments of imports/exports made by M/s Sapphire International. These payments were received by M/s Box Park Terminal from the account of M/s Rekha Superfine Exporters. Further, it cannot be denied that all communication related to the Importer M/s Sapphire International were being held through M/s Rekha Superfine Exports, KASEZ to M/s Box Park Terminal Co. It is evident from the above facts that M/s Rekha Superfine Exporters were using the documents/name of a firm i.e M/s Sapphire International which was non-existent. M/s Rekha

Superfine Exporters was very well aware of the fact that M/s Sapphire International is non-existent.

It cannot be denied that they hatched a conspiracy of using fake documents of non-existent firm to illegally import the contraband/prohibited goods. Payment proof by M/s Rekha Superfine Exporters to M/s Box Park Terminal Co. with regard to past imports/exports consignments cleared in the name of M/s Sapphire International indicates that M/s Rekha Superfine Exporters, KASEZ was a financier of the illegal activity.

18.5 I find that M/s. Rekha Superfine Exporters, KASEZ is handling the bank account of M/s. Sapphire international, Varanasi and the sole entity who is handling the export/import by M/s. Sapphire International in the import of the goods which were subject to the conditions of Food Safety and Standards Act 2006, Drug and Cosmetic Act 1945, Tobacco Regulation Act, 2003 and license from the State Excise Department for the time being in force. Thus, rendering the same as prohibited and liable for confiscation under section 111(o) of the Customs Act, 1962. For this omission and commission at the end of M/s. Rekha Superfine Exporters, KASEZ is liable for penalty under section 112(b) of the Customs Act, 1962 and the same is confirmed under section 112(b)(i) of the Customs Act, 1962.

18.6 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. Rekha Superfine Exporters, KASEZ under Section 112(a) of the Act wherever, penalty under Section 112(b) of the Customs Act, 1962, is to be imposed.

18.7 As regards the penalty under Section 117 on M/s. Rekha Superfine Exporters, KASEZ, I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that penalty against M/s. Rekha Superfine Exporters, KASEZ is already confirmed under the provisions of Section 112(b) of the Customs Act, 1962, hence, penal action under section 117 does not appears to be warranted in the subject case against the importer.

19. I find that there was an attempt to import of goods which were subjected to the conditions of Food Safety and Standards Act 2006, Drug and Cosmetic Act 1945, Tobacco Regulation Act, 2003 and license from the State Excise Department and an attempt to import with violation of provisions of Customs Act, 1962 and allied act in as much as not complied with the statutory requirement. Hence the goods in container no. ESIU9017895 having estimated value of Rs. 1,15,30,248/-, are liable for absolute confiscation under Sections 111(O) of the Customs Act, 1962 as the conditions under the said acts have not been complied with.

20. In view of the above discussion and findings I pass following order:

- (i) I order for absolute confiscation of the goods, for reasons as discussed in **Para 14.2 and Para 19 above**, in container no. ESIU9017895 having estimated value of Rs. 1,15,30,248/- under Section 111 (o) of the Customs Act, 1962. Unless an appeal against such order is pending, the said impugned goods would be liable for Disposal as per instructions and guidelines in CBIC disposal manual, 2019.
- (ii) I impose penalty of **Rs. 15,00,000/- (Rupees Fifteen Lakhs Only)** on M/s Sapphire International under Section 112(a)(i) of the Customs Act, 1962.

(iii) I refrain from imposing any penalty on M/s Sapphire International under Section 112(b) of the Customs Act, 1962.

(iv) I refrain from imposing any penalty on M/s Sapphire International under Section 117 of the Customs Act, 1962.

(v) I impose penalty of **Rs. 10,00,000/- (Rupees Ten Lakhs Only)** on M/s. Box Park Terminal Co. under Section 112(b)(i) of the Customs Act, 1962.

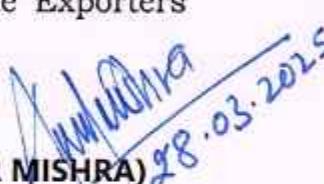
(vi) I refrain from imposing any penalty on M/s. Box Park Terminal Co. under Section 112(a) of the Customs Act, 1962.

(vii) I refrain from imposing any penalty on M/s. Box Park Terminal Co. under Section 117 of the Customs Act, 1962.

(viii) I impose penalty of **Rs. 10,00,000 (Rupees Ten Lakhs Only)** on M/s Rekha Superfine Exporters under Section 112(b)(i) of the Customs Act, 1962.

(ix) I refrain from imposing any penalty on M/s Rekha Superfine Exporters under Section 112(a) of the Customs Act, 1962.

(x) I refrain from imposing any penalty on M/s Rekha Superfine Exporters under Section 117 of the Customs Act, 1962.



(AMIT KUMAR MISHRA)

**ADDITIONAL COMMISSIONER
OF CUSTOMS**

सेवा में/To,

(i) M/s. Sapphire International, House No. S 10/133-57, Hukal Ganj, Varanasi, Uttar Pardesh-221001.

(ii) M/s. Box Park Terminal Co., office no. 07, 1st floor, Om Corner, Plot No. 336, 337 & 338, Ward 12B, Gandhidham-370201.

(iii) M/s Rekha Superfine Exporters, Shed No. 395, Special Type, Sector-II, Kandla SEZ, Gandhidham, Kutch-370230.

प्रति/Copy to,

- (1) The Dy./Asstt. Commissioner (SIIB), Custom House, Mundra.
- (2) The Dy./Asstt. Commissioner (Legal/Prosecution), Custom House, Mundra.
- (3) The Dy./Asstt. Commissioner (RRA), Customs House, Mundra.
- (4) The Dy./Asstt. Commissioner (TRC), Customs House, Mundra.
- (5) The Dy./Asstt. Commissioner (EDI), Custom House, Mundra.
- (6) The Dy./Asstt. Commissioner (Disposal), Custom House, Mundra.
- (7) Notice Board (to display on Notice Board for all Noticees).
- (8) Guard File.

