कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा,
सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS:
CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421.
PHONE : 02838-271426/271163 FAX :02838-271425
E-mail id- adj-mundra@gov.in

A	**FILE NO.** फ़ाइल संख्या	GEN/ADJ/ADC/478/2025-Adjn-O/o Pr Commr-Cus-Mundra
B	**OIO NO.** आदेश संख्या	MCH/ADC/ZDC/533/2025-26
C	**PASSED BY** जारीकर्ता	Dipak Zala, Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुंद्रा।
D	**DATE OF ORDER** आदेश की तारीख	09.01.2026
E	**DATE OF ISSUE** जारी करने की तिथि	09.01.2026
F	**SCN No. & Date** कारण बताओ नोटिस क्रमांक	GEN/ADJ/ADC/478/2025-Adjn-O/o Pr Commr-Cus-Mundra dated 19.02.2025
G	**NOTICEE/ PARTY/ IMPORTER** नोटिसकर्ता/पार्टी/आयातक	i. M/s. Pragati International (IEC: HVGPK9455R) ii. M/s Goodrich Logistics Pvt. Ltd.,
H	**DIN/**दस्तावेज़ पहचान संख्या	20260171MO000001010C

1. यहआदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस 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-

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 60दिन के भीतर दाखिल की जानी चाहिए।

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

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

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

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

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

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

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

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

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

BRIEF FACTS OF THE CASE

M/s. Pragati International (IEC: HVGPK9455R) (hereinafter referred to as the Importer"), having address as "G1-148, RIICO Industrial Area, Bassi, Jaipur, Rajasthan - 303301", is indulged into illegal import of Watermelon Seeds (also known as Melon Seeds) at Mundra Port by way of violation of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry.

1.1 Intelligence gathered by the Directorate of Revenue Intelligence (DRI), (hereinafter referred to as 'DRI') indicated that M/s. Pragati International 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. 5470688 dated 06.09.2024 filed by the importer M/s Pragati International at Mundra Custom House were tracked from the website of M/s Goodrich Logistics (***https://goodrichlogistics.com/tracking/***) and primarily it was noticed that there were major discrepancies between the details mentioned in Bill of Lading No. GLNPZUMUN0724063 dated 30.06.2024 for Bill of Entry No. 5470688 dated 06.09.2024 and the tracking details downloaded from aforementioned website. Accordingly, the containers lying in the CFS of M/s Saurashtra Freight Private Limited, APSEZ, Mundra were put on hold for examination by officers of DRI. The goods covered under Bill of Entry No. 5470688 dated 06.09.2024 were examined by officers of DRI on 08.10.2024 and accordingly a panchnama dated 08.10.2024 was drawn at the CFS of M/s Saurashtra Freight Private Limited, APSEZ, Mundra in respect of the same.

3. During the course of investigation, statements of concerned persons were recorded under Section 108 of the Customs Act, 1962 as given below:

3 . 1 Statement of Shri Shyam Awatar Methi, son of Shri Bhagwan Sahai Methi, Authorized Person of M/s. Pragati International, G1-148, RIICO Industrial Area, Bassi, Jaipur, Rajasthan - 303301, was recorded under Section 108 of the Customs Act, 1962 on 03.10.2024 and 18.11.2024 wherein he inter alia stated that M/s Pragati International was established in year 2020; that her daughter Ms. Rashi Khandelwal is the proprietor of M/s Pragati International and looking after imports. During the statement, he submitted copy of all import related documents i.e. copy of Bill of Entry No. 5470688 dated 06.09.2024, commercial invoice, packing list, COO Certificate, sales contract, etc. Shri Shyam Awatar Methi further stated that he was aware about DGFT Notification No. 05/2023 dated 05.04.2024. On being shown the tracking of BL No. GLNPZUMUN0724063 dated 30.06.2024 downloaded from the official website of M/s Goodrich Logistics (***https://goodrichlogistics.com/tracking/***) wherein the POL sailing date is 30th July, 2024, Shri Shyam Awatar Methi stated that he had no knowledge about the same and shipping line can tell more about the same. He further stated that while making deal with M/s Supreme Gulf DMCC, Dubai, he had clearly stated that to send the goods i.e. watermelon seeds only if Shipped-On-Board date is before 30th June, otherwise don't send them.

3 . 2 Statement of Shri Surya Prakash Mishra, Branch Manager of M/s Goodrich Logistics Private Limited, (Delivery Agent of Container Line M/s Dragon Maritimo), having address as 'Office No. 106, Golden Arcade, Plot No.

141, Sector-8, Gandhidham-370201', was recorded under Section 108 of the Customs Act, 1962 on 29.11.2024 wherein he inter alia stated that he is working as Branch Manager of M/s Goodrich Logistics Private Limited for Kandla and Mundra locations and M/s Dragon Maritimo is their principal and headquartered in Dubai. Shri Surya Prakash Mishra further stated that they generally receive e-mail communications regarding consignments sent by M/s Dragon Maritimo. On being shown the tracking of BL No. GLNPZUMUN0724063 dated 30.06.2024 downloaded from the official website of M/s Goodrich Logistics (https://goodrichlogistics.com/tracking/) wherein the POL sailing date is 30th July, 2024, Shri Surya Prakash Mishra confirmed that said tracking details are correct and stated that actual shipped on board date is 30.07.2024 and Bill of Lading has been wrongly issued with date 30.06.2024. He further stated that their POL agent i.e. Atlantic Shipping Co. Ltd., Sudan is responsible for the mistake due to which Shipped on Board has been wrongly mentioned on BL. Shri Surya Prakash Mishra stated that subject consignment was shipped from Sudan Port to Jedah Port from third party feeder.

4. Documents submission by M/s Goodrich Logistics Pvt. Ltd.:

4.1 M/s Goodrich Logistics Pvt. Ltd., (Delivery Agent of Container Line M/s Dragon Maritimo) vide letter dated 29.11.2024 provided copy of Bill of Lading, copy of Manual IGM, Bill of Lading tracking report as per POL (port of loading) agent and tracking e-mail copy of POL (port of loading) agent.

4.2 M/s Goodrich Logistics Pvt. Ltd. vide e-mail dated 03.12.2024 provided agency agreement between M/s Goodrich Logistics Pvt. Ltd. and M/s Dragon Maritimo (M/s Dragon Maritimo Sea Cargo Services LLC, Dubai) along with some e-mail correspondences between importer and M/s Goodrich Logistics Pvt. Ltd. and also provided 'Shipment Tracking' details for Bill of Lading No. GLNPZUMUN0724063 showing 'Shipped-On-Board' date as 30.07.2024.

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 Goodrich Logistics (***https://goodrichlogistics.com/tracking/***) which shows that all the eleven containers CRSU1257010, CRXU3031810, DFSU2114048, GESU2653293, GESU3998793, GESU4910641, GLDU3355387, GLDU3579561, GLMU1001502, TCKU1346600 and TLHU1764193 covered under Bill of Lading No. GLNPZUMUN0724063 were actually loaded on vessel on 30.07.2024. It shows that Bill of Lading No. GLNPZUMUN0724063 dated 29.06.2024 showing 'Shipped on Board' date as 30.06.2024, which was submitted for filing IGM and Bill of Entry at Mundra Custom House were manipulated/forged to get the 'Restricted' goods cleared. The Notification No. 05/2023 dated 05.04.2024

issued by DGFT stipulates that if 'watermelons seeds' have been loaded or shipped on board before 30th June 2024 then only it will be under 'Free' category.

5.2 Statements and submissions: Statement of Shri Surya Prakash Mishra, Branch Manager of M/s Goodrich Logistics Private Limited, (Delivery Agent of Shipping Line i.e. M/s Dragon Maritimo), having address as 'Office No. 106, Golden Arcade, Plot No. 141, Sector-8, Gandhidham-370201', which was recorded under Section 108 of the Customs Act, 1962 on 29.11.2024 and further submission of documents clearly indicates that Bill of Lading No. GLNPZUMUN0724063 was issued with wrong intention. The tracking details submitted by their Port of Loading agent M/s Atlantic Shipping Co. Ltd. shows that vessel Sailing was done on 30.07.2024 and despite knowing the same, Bill of Lading No. GLNPZUMUN0724063 was issued with showing wrong date as Shipped-On-Board.

The evidences mentioned above, while not exhaustive, provide sufficient evidence to demonstrate that all parties involved—namely representatives from M/s Atlantic Shipping Co. Ltd, Sudan, M/s Dragon Maritimo Sea Cargo Services LLC, Dubai, M/s Goodrich Logistics Private Limited, India and the consignee (importer)—were fully aware of the restrictions on the import of watermelon seeds. Despite being cognizant of the restrictions, these entities deliberately concealed the fact that the actual 'Shipped on Board' date was July 30, 2024 for BL No. GLNPZUMUN0724063. 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 Goodrich Logistics 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 30.07.2024 and hence are restricted goods as per Notification no. 05/2023 dated 05.04.2024 issued by the DGFT. Thus, it appears that the imported goods by M/s Pragati International, under Bill of Entry No. 5470688 dated 06.09.2024 filed at Mundra Custom House, appears to have been mis-declared in documents submitted to the Customs. Therefore, there being a reasonable belief that 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 21.10.2024.

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

7.1 Iinvestigation conducted by DRI has revealed that the containers covered under Bill of Entry No. 5470688 dated 06.09.2024, were shipped from Sudan port on 30.07.2024, after 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 Goodrich Logistics (***https://goodrichlogistics.com/tracking/***) and other documents received from M/s Goodrich Logistics Pvt. Ltd. confirm that the containers were shipped on board on vessel at Port of Loading i.e. Port Sudan on 30.07.2024, further corroborating the lapse in compliance with the notification's timeline. The evidences clearly demonstrate that a forged Bill of Lading No. GLNPZUMUN0724063 was created, falsely reflecting the 'shipped on board' date as 30.06.2024, instead of the actual date of 30.07.2024. This deliberate manipulation of shipping documents was aimed at unlawfully availing the benefits under the DGFT Notification No. 05/2023. The investigation indicates that the importer, in collusion with representatives of M/s Goodrich Logistics/M/s Goodrich Logistics Pvt. Ltd., M/s Atlantic Shipping Co. Ltd, Sudan and M/s Dragon Maritimo Sea Cargo Services LLC, Dubai 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. Pragati International, located at G1-148, RIICO Industrial Area, Bassi, Jaipur, Rajasthan - 303301, illegally imported Watermelon Seeds under Bill of Entry No. 5470688 dated 06.09.2024, in violation of Notification No. 05/2023. The investigation conclusively proved that the goods were shipped on board on 30th 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. 5470688 dated 06.09.2024 having total quantity **200** MTs and declared assessable value of **Rs. 3,85,42,783/-** imported by M/s. Pragati International are liable for confiscation under 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 Pragati International (IEC No. HVGPK9455R) (Proprietor: Ms. Rashi Khandelwal):

Ms. Rashi Khandelwal is Proprietor of M/s. Pragati International and being importer, she was well aware of the Import policy and Notification. M/s. Pragati International had imported watermelon seeds covered under Bill of Entry No. 5470688 dated 06.09.2024 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 200 MTs having declared Assessable value of Rs. 3,85,42,783/-. 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 actual and correct 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 Goodrich Logistics Pvt. Ltd. (Agent of M/s Goodrich Logistics and working in India on behalf of M/s Dragon Maritimo Sea Cargo Services LLC, Dubai):

The facts and evidence gathered during the investigation, including tracking of containers available on official website of M/s Goodrich Logistics (***https://goodrichlogistics.com/tracking/***) wherein the POL sailing date is 30th July, 2024 itself confirms that M/s Goodrich Logistics was aware of the forging the BL date. M/s Goodrich Logistics Private Limited (Delivery Agent mentioned

on forged Bill of Lading No. GLNPZUMUN0724063) working on behalf of M/s Goodrich Logistics group and M/s Dragon Maritimo Sea Cargo Services LLC, Dubai and was also having BL No. GLNPZUMUN0724063 with wrong date. It is evident that the 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 Goodrich Logistics Private Limited 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.

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, inlike 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.

10. Accordingly, Show Cause Notice F.no. GEN/ADJ/ADC/478/2025-Adjn-O/o Pr Commr-Cus-Mundra dated 19.02.2025 was issued to M/s. Pragati International (IEC: HVGPK9455R) (Proprietor: Ms. Rashi Khandelwal), wherein they were called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, Mundra as to why:

(a) The imported goods declared as 'Watermelon Seeds' under CTH 12077090

covered under Bill of Entry No. 5470688 dated 06.09.2024 having total quantity 200 MTs and declared assessable value of Rs. 3,85,42,783/- should not be confiscated under Section 111 (d),111(m) and 111(o) of Customs Act, 1962.

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

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

11. Written Submission

11.1 M/s. Pragati International (IEC: HVGPK9455R), submitted their reply dated 17.03.2025 wherein they have, *inter alia*, submitted that:

11.1.1 **THE ACTUAL DATE OF 'SHIPPED ON BOARD' IS 30.06.2024 OR PRIOR TO 30.06.2024:-**

a) At the onset, it is submitted that Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry permitted import of 'Melon Seed' under 'Free" category with effect from 01st May 2024 up to 30 June 2024 if the consignment 'shipped on board' and Bill of Lading issued till 30th June 2024. Accordingly, the noticee firm placed order to M/s Supreme Gulf DMCC, Dubai for import of the impugned consignment of 'watermelon seeds' under performa invoice dated 06.06.2024 on advance payment of 17% with a specific direction that the same must be loaded prior to 30.06.2024.

b) Thus, to import 'melon seed' under free category it is mandatory that the date of 'shipped on Board' and date of Bill of Lading must be on or before 30.06.2024.

c) The instant matter is heavily based on the tracking report downloaded from the website of M/s Goodrich Logistics, wherein there is no mention of date of shipped on board but having mention of POL sail date. On the basis of the same the department is trying to prove the date of vessel sailing as the date of 'shipped on Board'. Thus, it is imperative to know the term 'shipped on Board' and Bill of Lading.

Bill of Lading:- A Bill of Lading is a legal document that details the type, quantity, and destination of goods being transported. It is a contract between the shipper and the carrier, and a receipt for the goods shipped. A bill of lading is a document issued by a carrier (or their agent) to acknowledge receipt of cargo for shipment.

Shipped On Board:- The "Shipped On Board" is a notation added by the Bill of Lading issuer that confirms the cargo has been loaded on board. This notation is created at origin by the carrier or the carrier's agent, and it indicates the name of the vessel on which goods have been shipped. "Shipped On Board Bills of Lading give greater security to importers and importers' banks.

Shipped On Board date: Shipped on Board Date indicates the date goods are officially loaded onto a shipping vessel.

Bill of Lading date: "Bill of Lading Date" is the date on which the Bill of Lading was issued.

Difference between both the aforesaid dates: The "Shipped On Board Date" and "Bill of Lading Date" are two different dates, and may not be the same. The "Bill of Lading Date" is different from the "Shipped On Board Date" as the container may have been loaded on board the ship on a different date, while the Bill of Lading was issued to the customer at a later date.

For example, if a container was shipped on board on April 2, 2018, its Bill of Lading date cannot be earlier than the "Shipped On Board Date" since a Bill of Lading can only be issued after a container has been physically shipped on board. The "Bill of Lading Date" has to be on, or after, the "Shipped On Board Date."

d) From the above, it is evidently clear that Bill of lading can be issued only after the container (consignment) has been loaded on vessel. It is further strengthened by the fact that the bill of lading contains the date of 'Shipped on Board', hence, if the date of shipped on board is later than the date of bill of lading, the same cannot be mentioned on Bill of lading as the same has already been issued on a prior date.

e) In this regard, the noticee submits the following chronology of events in the matter, which will establish beyond doubt that the date of 'shipped on Board' is 30.06.2024 as mentioned in Bill of Lading No. GLNPZUMUNOQ724063 dated 30.06.2024:

SL No.	Date	Chronology of Events in the matter	Remark
1	06.06.2024	Order placed by the noticee for the impugned consignments of 'watermelon seeds'	
2.	06.06.2024	17% advance payment of 370642.50 AED made by the noticee to M/s Supreme Gulf	
3.	25.06.2024	Empty container release to shipper in Sudan	As per Bill of Atlantic Lading Tracking Report sent by Shipping Co. Ltd..
4.	27.06.2024	Export declaration filed by shipper in Sudan	
5.	27.06.2024	Fumigation by Ministry of 6.Agriculture & Forest Deptt.	
6.	27.06.2024	Full Container in the port	
7.	30.06.2024	Bill of lading issued containing date of 'shipped on board'	
8.	30.06.2024	Fumigation Certificate issued by Ministry of Agriculture & Forest Deptt. containing BL no. & Vessel no.	
9.	30.07.2024	Vessel sailing	
10.	01.08.2024	Discharge date at Transhipment port at Jeddah in Saudia Arabia	

11.	18.08.2024	Load Date Transhipment Port at Jeddah in Saudia Arabia	
12.	07.09.2024	Discharge at Destination i.e. Mundra Port	

f) From the above chronology of events, it is very much clear that:

i. All the containers reached at the Fumigation of all the containers was done on 27.06.2024 as per the Fumigation Certificate No. 0076856/PQ dated 30.06.2024 issued by the Ministry of Agriculture & Forest, Republic of Sudan. Copy of the same is annexed herewith.

ii. Thus, the containers were stuffed on or before 27.06.2024 and all the loaded containers reached at the Port of Sudan on 27.06.2024

iii. Since the Fumigation Certificate dated 30.06.2024 issued by the Government of Sudan through its Ministry of Agriculture and Forest was having clear mention of Bill of Lading No. GLNPZUMUN0724063, the bill of lading was issued on 30.06.2024 prior to issuance of the said fumigation Certificate.

iv. Since the Bill of Lading was issued on 30.06.2024, it is quite obvious that the date of 'shipped on Board' could be at the most 30.06.2024 but not later than 30.06.2024.

g) Since the Fumigation Certificate No. 0076856/PQ dated 30.06.2024 has been issued by the Ministry of Agriculture & Forest, Republic of Sudan, its authenticity can be got verified from the Government of Sudan. It is therefore, requested to kindly get the authenticity of the said Fumigation Certificate verified from the Government of Sudan at the earliest before proceeding further in the matter.

h) In light of the facts above, it is established beyond doubt that the date of 'shipped on Board' and date of issuance of Bill of Lading mentioned in the BL is correct date i.e. 30.06.2024 and the department's allegation that the 'shipped on board date' as 30.07.2024 is unfunded and baseless. Thus, in the premise aforesaid, the impugned SCN deserves to be quashed.

11.1.2 **Date of vessel sailing from POL is not relevant for the purpose of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry:**

a) Without prejudice to submissions made above, it is submitted that the aforesaid Notification permits import of 'Melon seeds' under 'Free' Category subject to two following conditions:

i. The consignment must have been 'shipped on Board' on or before 30.06.2024.

ii. Bill of Lading must have been issued on or before 30.06.2024

b) However, the notification nowhere mandates that the vessel must have sailed on or before 30.06.2024.

c) In the present matter, the department is trying to prove that the date of shipped on board as 30.07.2024 solely based on the date of vessel sailing. Issuance of Fumigation Certificate on 30.06.2024 by the Govt. of Sudan having mention of the impugned Bill of Lading No. clearly indicate that the Bill of Lading was issued on 30.06.204 but prior to issuance of the said fumigation certificate, else the fumigation certificate does not have mention of Bill of Lading.

d) Since bill of lading was issued on 30.06.2024, the date of shipped on Board cannot be later than 30.06.2024 as the bill of lading is issued only after the consignment is shipped on Board.

e) In view of above, it is clear that date of vessel sailing is not relevant for availment of benefit of the aforesaid Notification No. 05/2023 dated 5th April, 2024.

f) Thus, the impugned SCN is liable to be quashed on this ground as well.

11.1.3 **ALLEGATIONS OF "COLLUSION" MADE IN THE SCN AGAINST THE NOTICEE ARE WRONG IN TOTALITY, NON-SUSTAINABLE IN THE EYES OF LAW AND DENIED:**

a) Without prejudice to submissions made above, the noticee denies and disputes the allegations of collusion made in the show cause notice in totality. It is further submitted that the investigation has proceeded on totally wrong premises and the present Show Cause Notice has been issued by wrongly apprehending the factual position and adopting a totally erroneous construction of the facts and provisions of law. Noticee's submission in this regard will explicitly establish that the allegations made in the Show Cause Notice against the noticee are not tenable in the eyes of law.

b) The basic allegation made in the Show Cause Notice is that the noticee was in collusion with the representative of M/s Goodrich Logistics, M/s Atlantic Shipping Co. Ltd., Sudan and M/s Dragon Maritimo Sea Cargo Services LLC, Dubai orchestrated th falsification of relevant dates on the Bill of Lading to facilitate the clearance of restricted cargo. In this regard, the noticee has mentioned in para supra the chronology of events which clearly establishes that the date of Bill of Lading and 'shipped on Board' is correct and not manipulated in any manner. It is further submitted that Shri Surya Prakash Mishra, Branch Manager of M/s Goodrich Logistics Pvt. Ltd. has nowhere stated any involvement of the noticee in preparation of Bill of lading. Rather, on being detention of the cargo by the DRI, CHA of the noticee emailed on 13.09.2024 to M/s Goodrich Logistics to provide Cargo Tracking Details along with transshipment details. Furthermore, none of the RUDs indicate any involvement of the noticee in the alleged manipulation, if any. Thus, the department totally failed to corroborate their allegations.

c) The noticee relies upon the following judgment in the matter: The Division Bench of Hon'ble High Court of Madras while dismissing the appeal filed by Revenue in the case of Commissioner of Cus. (Exports), Chennai Versus I. Sahaya Edin Prabhu [2015 (320) E.L.T. 264 (Mad.)] found that the Tribunal by taking note of the fact that there was no finding of a positive role of the first respondent, i.e., assessee therein or licensee therein, in attempting to smuggle out Red Sanders wooden logs, held that, imposition of penalty under Section 114(i) of the Customs Act was not sustainable. The relevant paragraphs of this judgment are reproduced below:

"2.5. The Tribunal, taking note of the fact that there is no finding of a positive role of the first respondent in the attempt to smuggle out red sander wooden logs, held that imposition of penalty under Section 114(i) of the Customs Act is not sustainable. The Tribunal allowed the appeal filed by the first respondent and set aside the penalty imposed, by observing that for failure to discharge functions as a Customs House Agent, penalties are provided in the Customs House Agents' Licensing Regulations.

7. The Tribunal has rendered a categorical finding that there is no finding of a positive role of the first respondent in the attempt to smuggle out red

sander wooden logs. Even in the order of the Original Authority, it is held that the custom house agent has not discharged his duty in the normal course of his service. As rightly observed by the Tribunal, for failure to discharge functions as a Custom House Agent, penalties are provided in the Customs House Agents Licensing Regulations. Therefore, imposition of penalty under Section 114(i) of the Customs Act is unwarranted. We, therefore, find no reason to differ with the finding of the Tribunal."

In the matter of COMMISSIONER OF CUSTOMS (IMPORT) Versus TRINETRA IMPEX PVT. LTD. [2020 (372) E.L.T. 332 (Del.)], the Hon'ble High Court of Delhi while dismissing the appeal filed by Revenue held that:

10. Now coming to the facts of the present case. The facts noted above are not disputed before us, however, the Customs Department is aggrieved by the deletion of the penalties imposed on the CHA. In respect of the show cause notice dated 6-3-2013, penalty has been imposed under Section 112(b) as well as 114AA of the Act. A perusal of the said provisions clearly reveals that the penalty under the said provisions can be imposed wherever there is an element of mens rea or conscious knowledge, which is a sine qua non for imposition of the penalty. This is evident from a plain reading of Sections 112 and 114AA of the Act, which uses the expressions "does or omits to do", "or abets the doing or omission of such act", "which he knows or has reason to believe are liable to confiscation under Section 111"- in Section 112 and "knowingly or intentionally in Section 114AA. The facts of the case in hand do not reveal any such element of mens rea or conscious knowledge qua the importer. There is no active role attributed to the respondent, which justifies the imposition of the penalty under Section 112(b) and Section 114AA of the Act. Nothing has emerged even in the criminal investigation.

11. In respect of the show cause notice dated 8-7-2011, the imposition of the penalty has been made under Section 112(a) of the Act in respect of the goods which have been held to be liable to be confiscated under Section 111 of the Act. Here, the imposition of the penalty on the CHA is founded on the ground that he has abetted the offence. Though, for imposition of penalty in respect of the cases falling under Section 112(a) of the Act, mens rea may not be required to be proved as condition precedent, however, when it comes to imposition of the penalty on an abettor, it is necessary to show that the said essential element/ingredient is present. (Ref.: Amritlakshmi Machine Works v. The Commissioner of Customs (Import), (2016 SCC OnLine Bom 66-2016 (335) E.L.T. 225 (Bom.)].

12. In the present case, there is no element of mens rea or conscious knowledge which can be attributed to the CHA. The investigation carried out by the CBI and other facts reveal that the CHA acted bona fide and merely facilitated the imports on the strength of the documents which were handed over to him by the importer. There is no sufficient material on record to show that the CHA was actively involved in the fraudulent availment of the exemption by the importer, warranting

levy of personal penalty.

Therefore, we do not find any ground to interfere with the findings of the Tribunal vis-à-vis the respondent.

13. Since, the present appeal does not raise any substantial question of law that requires any adjudication by this Court under Section 130 of the Customs Act, the appeal is dismissed in limine without any order as to costs.

ARIF I. PATEL Versus COMMISSIONER OF CUSTOMS (PREV), MUMBAI [2014 (308) E.L.T. 698 (Tri. Mumbai)]

7. We have gone through the impugned order and the argument advanced by all the parties. The role of Shri Kashyap J. Badekha is limited by introducing importer to Shri Arif Patel for clearance of the goods and to help the importer to get IEC. He has nothing to do with the import of contraband goods. We further find that the role of Shri Arif Patel was only for the clearance of the goods and for the clearance of the earlier consignment, nothing has been proved against the appellant, that he was having no knowledge of the modus operandi of the importation of the contraband goods by replacing aluminium scrap. Further, in this case the container was intercepted at Bombay port itself and it was opened and the appellant came to know about the container with contraband goods only after examination. In these circumstances, the appellant was not having any knowledge of importation of contraband goods by the importer.

8. As per Section 112A of the Customs Act, 1962, the penalty can be imposed on the person who act of aiding and abetting the importation of contraband goods. As discussed above, there was no role of the appellant in aiding and abetting the importation of contraband goods. Therefore, penalties under Section 112(a) of the Act are not imposable on the appellants.

RAVINDRA MARUTI MANSUKH Versus COMMISSIONER OF CUS. (IMPORT), MUMBAI [2013 (291) E.L.T. 363 (Tri. Mumbai)]

6. From the reading of the said section it is abundantly clear that there should be a statutory requirement on the person to commit an act or the person should have abetted the commission/omission of the act. In the case of import transaction, the statutory requirements relate to carrier of the goods, the importer, or the CHA. A person who has merely handed over the import documents to a CHA has no statutory obligation cast on him to attract any penal consequences for any violation. The second issue is whether the person aided or abetted. In the instant case the documents have been handed over to CHA and it is the CHA who is required to do the act under the law. If the CHA is not guilty of any commission or omission, the person who handed over the documents cannot be said to be responsible for commission or omission. Therefore, we do not find any legal basis for imposition of penalty on the appellant in the instant case. Accordingly, the appeal is allowed. Stay application is also disposed of.

HERA SHIPPING SOLUTIONS PVT. LTD. Versus COMMR. OF CUS., CHENNAI-IV [2022 (382) E.L.T. 552 (Tri. Chennai)]

12. The findings arrived by the adjudicating authority as to whether there is any involvement of the appellant who is a Customs Broker has already been reproduced above. The adjudicating authority has categorically held that the appellant has not done any act of omission or commission which has made the

goods liable for confiscation. Further, in the show cause notice, there is no allegation that the appellant had done any act facilitating the attempt to smuggle red sanders. The statement of Shri Mahimai David shows that he had collected the documents from the exporter and the same were submitted to the appellant to file the shipping bill.

13. Para 31 of the show cause notice shows the summary of allegations. The allegation against the appellant herein in clause (x) and (aa) of the said para reads as under :-

"(x) M/s. Hera Shipping Solutions Pvt. Ltd. Customs Broker by contravening the Regulations 11(a), 11(d) and 11(n) of Customs Brokers Licensing Regulations, 2013 had abetted this smuggling of Red Sanders logs by attending Customs. clearance work of M/s. Universal Concrete Technology on behalf of M/s. New Ideas Logistics Pvt. Ltd. and Shri Mahimai David had undertaken clearance for 8 shipments without obtaining authorization of M/s. Universal Concrete Technology and by not verifying the authenticity of M/s. Universal Concrete Technology and therefore liable for penalty under section 114 of the Customs Act, 1962 read with Section 50 of the Customs Act, 1962 and Shipping Bill (Electronic Integrated Declaration) Regulations, 2011.

xx

(aa) M/s. Hera Shipping Solutions Pvt. Ltd. Customs Broker by filing Shipping Bill in the name of M/s. Universal Concrete Technology without authorization from the exporter in contravention of Regulations 11(a), 11(d) and 11(n) of Customs Brokers Licensing Regulations, 2013, and Shipping Bill (Electronic Integrated Declaration) Regulations, 2011 read with Section 50 of the Customs Act, 1962 is liable for penalty under section 114AA of the Customs Act, 1962."

It can be seen that the allegations are that appellant has contravened the Regulations under 11(a), (d) and (n) of CBLR, 2013. For the above contraventions, the proposal is to impose penalty under Sections 114 and 114AA of the Customs Act, 1962 r/w Section 50 of the Act ibid.

14. In Para 14 of the reply to the show cause notice, the appellant has stated that though Shri Mahimai David was their ex-employee was not working for them anymore. The said person is presently working as a sales manager in M/s. New Idea Logistics Pvt. Ltd. The appellant had verified the IE Code and found that it was valid. Further, the appellant had submitted KYC form and necessary authorization obtained from the exporter. In fact, the appellant had obtained the authorization, KYC details before filing the shipping bill.

15. Shri Mahimai David has stated that the appellants had no knowledge about the incident. In order to attract Section 114 of the Act, the department has to establish some act or omission by which the appellant has abetted the offence. Section 107 of IPC defines 'abetment'. As per the third limb of this definition, if a person intentionally aids, by any act or illegal omission, the doing of that thing', it would be abetment of an offence. Mens rea is a main ingredient as the third limb uses the word 'intentionally. Nothing is brought out in the nature of evidence to establish that the e appellant contraventions come within the CBLR, 2013 only. any act intentionally. The alleged had done or omitted to do any

16. When there is no evidence to establish any overt act or mens rea to facilitate the commission of offence, the finding of the Commissioner (Appeals) that the

appellant has facilitated the attempt to smuggle red sanders is without any factual and legal basis and cannot sustain.

17. From the observations made above, we find that the order passed by the Commissioner (Appeals) is without correctly appreciating the facts or the provisions of the law. The impugned order is set aside. The appeal is allowed with consequential relief, if any.

A.V. GLOBAL CORPORATION PVT. LTD. Versus ADDITIONAL DIRECTOR GENERAL (ADJUDICATION), DIRECTORATE REVENUE INTELLIGENCE, MUMBAI [2022 (382) E.L.T. 65 (Tri. Mumbai)]

4.26 Since the issue in respect of the classification and admissibility of exemption notification has been determined in favour of the appellants hence the penalty imposed on them under Section 114A to cannot be sustained to the extent it relates to these aspects. Thus the penalty imposed under this section is set aside. In respect of the short payment of countervailing duty as we are remanding the matter back to the adjudicating authority for requantification of demand penalty if any is imposable on the appellant.

4.27 Section 114AA of the Customs Act, 1962 read as follows:

"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."

From plain reading of the said section it is quite evident that penalty under this section is imposable only in case where the 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. Thus for imposing penalties under this section, adjudicating authority is required to determine existence of such declaration, statement or document which is false or incorrect in material particulars. In the present case without making any determination to this penalties under this section have been mechanically imposed by the adjudicating authority. Such penalties imposed without determining existence of such documents and the connection of the such document with the person, penalties imposed under this section cannot be sustained. Thus we set aside the order imposing penalties under this section.

4.26 On the issue of penalty imposed on functionaries of the importers, and CHA, impugned order observes as follow:

"6.7 As the omissions and commissions of the noticees M/s. MEIPL and M/s. 'MEAPL, have been elaborately dealt by me, supra, I now proceed to go through the violations of the other co-noticees associated with the main noticee

6.7.1 I find that Shri Manoranjan Nayak, Senior Manager (Supply Chain Management), Shri Rajeev Sharma, General Manager (Supply Chain Management) both personnel of M/s. MEIPL, Shri Horoaki Ashizawa, Director & General Manager, Living Environment Division, and Shri Shine Yamabe, Managing Director, responsible at the helm of affairs at M/s. MEIPL and M/s. MEAPL, have each given false declarations in the bills of entry, submitted false information contrary to facts to the Department, induced the Customs Broker/Customs House Agent not to declare the retail sale price etc., are equally

and personally liable to penalty under Section 112(a) of the Customs Act, 1962. Similarly, the aforesaid discussions also reveal that the co-noticees resorted into deliberate misdeclaration by using false declarations in various documents, which covers the ingredients required to penalize them under Section 114AA of the Customs Act, 1962.

6.7.2 Role of Customs Broker Shri S.K. Jain.

6.7.3 Role of Customs Broker A.V. Global & Co.

6.7.3.1 I find that the Show Cause Notice has alleged that the Customs Broker (CB) aided and abetted the importer in misclassifying the goods and also proposed imposition of penalty under Section 112(a) and Section 114AA of the Customs Act, 1962.

6.7.3.2 I find that the CB had attended to the clearances of the following goods imported from different ports by the main noticee M/s. MEIPL. The role of the CB while handling the following Bills of Entries are as under:

Bill of Entry	*Role*
9424139, dated 26-2-2013 filed at ICD, Tughlakabad	Words "not for retail sale" were added at the behest of the importer. It has been proved during the investigation proceedings that the addition was with the prime knowledge of the importers.
B/E 2129403, dated 14-5-2013 filed at Chennai	the Words "not for retail sale" were added at the behest of the importer. It has been proved during investigation proceedings that the addition was with the prime knowledge of the importers. The said words were not there in the checklist and was added later on at the behest of the importers
9171839, dated 30-1-2013 filed by Chennai	The checklist was forwarded by the CB M/s. A.V. Global & Co. to the importers for approval. The importers through email, to remove MRP from last two items shown in the checklist bill of entry as the air-conditioners dated 30-1-2013 viz., PS5JAK+PU5YKD were above 3 ton

6.7.3.3 I find that with respect to the aforementioned Bills of Entries, the modus operandi or rather resorted misclassification and non-declaration of RSP, was at the behest of the importers. Though, it is an acceptable fact that the CBS have an important role in ensuring correctness and truthfulness of the declarations and is expected to act within the limitations of CBLR, the very fact that the prime noticee is an accredited client, enjoying all the privileges of a status quo importer, makes the CB tend to believe in the versions submitted by the importer. Further, the very fact that the RSP based assessment as well as the classification related issues/queries were tackled by the importer directly with the Customs officers, provides limited scope for the CB to rediscover an element of malpractices etc. However, before concluding the omissions and commissions of the CB, I would like to place reliance on the following.

6.7.3.4 It is on record that while assessing the bill of entry No. 821154, dated 15-10-2012 filed for import of CMVRF air-conditioners (within diversity ratio) from Thailand customs changed the classification of the air-conditioners from 8415 10 10 to 8415 81 10 and denied the benefit of notification and assessed the impugned goods under merit rate of duty. M/s. MEIPL has accepted the changed classification and has paid merit rate of duty without any protest. It is pertinent

to mention here that no appeal was also filed by M/s. MEIPL for the change in classification. Further, in the subsequent 2 bills of entry viz., 8537626 and 8537737, both dated 20-11-2012, filed at Nhava Sheva for import of CMVRF air-conditioners, they have classified them under CTH 8415 81 90 and cleared the air-conditioners imported from Thailand under merit rate of duty. However, during the same period, i.e. on 26-11-2012, M/s. MEIPL has filed bill of entry No. 8586807 at Chennai Seaport for clearance of CMVRF and have classified them under in 8415 10 10 and the subject B/E was RMS facilitated and no assessment and examination was prescribed for the said B/E. It is a matter of fact that all the said bills of entry were filed by M/s. A.V. Global Corporation Private Limited, their Customs House Agent. When Shri Ashok Mehta, the Director of M/s. A.V. Global was questioned, he stated that only on the instructions of M/s. MEIPL they have classified the goods under tariff item 8415 10 10 at Chennai Seaport and they had not informed the Customs at Tughlakabad and Chennai about the change/amendment in classification at Nhava Sheva for identical goods imported by M/s. MEIPL.

6.7.3.5 1 find that the CB, M/s. A.V. Global & Co. attended to the aforementioned Bills of Entry, filed at Nhava Sheva and Chennai ports. It is on record that the CB was well aware of the changed classification and the acceptance of the same by the party. It is also on record that the CB filed the Bill of Entry with the same description at Chennai by classifying the same under 8415 10 10, even though, the Nhava Sheva Customs reclassified the similar items under 8415 81 10, which was accepted by the importer. There is nothing on record which reveal that the CB did make an effort to inform the Customs Officers at Chennai that the item with the same description was cleared by Nhava Sheva Customs by reclassifying the same under Chapter sub-heading 8415 81 10. The CB acts as a link between the Customs and the importers and it was their duty or rather responsibility to bring into picture the true facts. Since, the said Bills of Entries, both at Nhava Sheva and Chennai, were handled by the CB. M/s. A.V. Global & Co. and that too, in a short lapse of time, it was very much easy force to co relate the facts and bring out whatsoever discrepancies. Though it is on admitted position that the CB filed the said Bill of Entry at Chennai as the advice of the importers, the CB also had a duty to bring to the notice Customs, any sort of noticed discrepancy. Therefore, in my considered opinion, the CB erred in bringing the fact of adopting different classifications at different ports to the notice of Customs and such act of omission and commission is in violation of the provisions of Regulation 11(d) of the CBLR, 2013, which renders the CB also liable for penal action under Section 112(a) of the Customs Act, 1962. Similarly, in view of the fact that the to and CB knowingly resorted misdeclaration, they are equally liable to be penalized under mis-classification Section 114AA of the Customs Act, 1962."

4.27 We do not find much merits and justification in the order for imposition of penalty. In such cases which are based on the interpretation of tariff entries and admissibility of exemption notification, we find that charges of deliberate misdeclaration to evade duty cannot be sustained, more so over when these issues have been determined in the favour of appellants. In our view the order imposing the penalties on functionaries of the importers and CHA cannot be sustained without assigning specific role to them. We therefore set aside the penalties under Sections 112(a) and 114AA imposed on the functionaries of importer and customs broker, following the decision in case of Anand Metal Industries (2005 (187) E.L.T. 119 (T))

"5. In respect of the penalties imposed on the firm as well as on the partner, as the dispute in question in respect of classification which is purely a legal issue,

therefore, the penalties imposed on the firm as well as on the partner are set aside"

4.28 Appeal No. C/88039/2018, has been filed by the appellant challenging the order of Commissioner (Appeals) remanding the matter back to original authority for passing a speaking order in terms of Section 17(5) of Customs Act, 1962. In Para 21, Commissioner (Appeals) has observed as follows:

"21. In view of above, the assessment orders in respect of the impugned 2 Bills of entry are set aside and the Asst./Deputy Commissioner Group V, NS-I, JNCH is directed to make the reassessment of the said Bills of Entry afresh and issue speaking order as required under Section 17(5) of the Customs Act, 1962. The appellant should also be given opportunity of making submissions and personal hearing in compliance of principles of natural justice."

In our view the aforesaid order of the Commissioner (Appeals) is unblemished and needs to be sustained. While upholding the said order, we notice that the issue of classification and admissibility of exemption notification which we have considered earlier in respect of the earlier imports made by the appellant is in dispute. Therefore while considering the matter in remand proceedings as per the order of the Commissioner (Appeals), adjudicating authority should take note of the observations made by us in this order on these issues and decide accordingly.

d) In light of the above facts and case law quoted, the impugned SCN deserves to be dropped.

11.1.4 **THE PERSON WHO WAS NOT PART OF THE OFFENCE 'KNOWINGLY CAN NOT BE PENALIZED UNDER CUSTOMS ACT UNDER SECTION 114AA:**

a) Without prejudice to the submissions made above, it is submitted that Section 114AA of the Customs Act, 1962 reads as under:

"114AA. 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."

Therefore, penalty under Section 114AA can only be imposed in the cases where the wrongful act is done with core elements given in the section knowingly or intentionally. Where a person does not possess knowledge underlying the wrong act and does not have any wrongful intent while doing it, he cannot be penalized under Section 114AA. It is submitted that the noticee was not part of any manipulation, if any, as elaborated in foregoing paras and did not perform any act and / or omission 'knowingly' that constitutes an offence under the Customs Act, 1962, in the matter, in any manner howsoever.

b) It is submitted that to further strengthen the above contention of the noticee, meaning of 'knowingly' as it appears in Black's Law Dictionary is reproduced below:

With knowledge; consciously; intelligently. The use of this word in an indictment is equivalent to an averment that the defendant knew what he was about to do, and, with such knowledge, proceeded to do the act charged. U. S. v. Claypool (D. C.) 14 Fed. 128.

Therefore, a person to do an act knowingly should have knowledge of the scheme of things covered in the act. He should be knowing the truth of wrongfulness and he must be having such knowledge and information. Here, in this case the noticee was not aware of any manipulation in date of 'shipped on Board' and his CHA on being detained the consignments by DRI, had mailed M/s Goodrich Logistics to provide consignment track report and resultantly M/s Goodrich Logistics requested M/s Atlantic Shipping Co. Ltd. to provide the same.

c) The noticee has sufficiently explained above that he was not aware of the matter. The noticee relies on following case laws, which affirms the stand of the noticee that the person, who was not knowingly part of the offence, cannot be held guilty-

i. Kalekhan versus State of Madhya Pradesh reported as 1990 Cri LJ 1119 by Hon'ble High Court of Madhya Pradesh.

37. The crux of the offence under Section 25 of the Act lies in knowingly permitting, use of any place or conveyance for commission of any offence under the Act. These terms 'knowingly permitting' raise the perennial problem of 'mens rea', in the form of guilty knowledge is an essential requirement of this particular offence. The difficulty sometimes in interpreting the phrase 'knowingly permit' is no doubt there, but a distinction, though subtle does exist between 'knowingly permitting' goes further and requires proof that the person permitting use of his house, room, enclosure, animal or conveyance, was aware of the fact that such place or conveyance was intended to be used for commission of an offence under the Act. The insertion of the extra word 'knowingly', it must be presumed, has been intentionally used by the legislature and is not redundant.

38. The insertion of the crucial word 'knowingly' permits' in a new enacted law (Narcotic Drugs and Psychotropic Substances Act, 1985) is evidently with a view to avoid construing nebulously worded statutory offences. The use of the word 'knowingly' in statutory offence is valuable in the sense that it reflects the legislative intent and insistance for 'mens rea' as an ingredient of the offence. It is a well established principle of interpretation that penal enactments must be construed strictly. The classic exposition as to mens rea in statutory offence, was made as back as 1895 in Sherras v. De Rutzen (1895) IQB 918 by Wright J.:

"There is a presumption that 'mens rea' an evil intention, or a knowledge of the wrong-fullness of the act is an essential ingredient in every offence, but that presumption is liable to be displayed either by the words of the statute creating the offence or by the subject matter with which it deals and both must be considered."

ii. Balbir Sing versus State of Orissa, 1995(2) Crimes 158: 1995(2) EFR 280: 1995 Cri LJ 1762, by Hon'ble High Court of Orissa.

6. For the aforesaid reasons, I am of the considered opinion that merely because the petitioner is the owner of the vehicle, that by itself is not sufficient to sustain the charge under section 25 of the Act. Something more is necessary to indicate that the petitioner knowingly permitted his vehicle to be used for commission of offence by others which is lacking

iii. Ramu versus State reported as 2000 Cri LJ 3412: 2001 Drugs Cases 239, by Hon'ble Supreme Court of India.

21. It is no doubt true that the boxes were placed in the van in a clandestine

manner and that the boxes were covered by blanket and other materials. The trial Court seems to have been influenced by the above fact for holding that the accused had knowledge that two other persons were travelling with contraband. As already stated, when two other persons are allowed to travel in the van with boxes the accused would not have had any knowledge that the other persons placed ganja inside the boxes. From the mere fact that P. W. 4 recovered the blankets and planks inserted with iron rods, it cannot be concluded that the accused had knowledge that the boxes contained ganja. For the above reasons, I hold that the prosecution failed to prove that the driver knowingly permitted the other two persons to carry the contraband in the van. Therefore, the accused cannot be convicted for the alleged offence under Section 8(c) read with Section 25 of the Act. The Trial Court fail to advert to the above aspects of the case, that is, the applicability of Section 25 of the Act.

iv. Balvinder Singh versus Asst. Commr. Customs and Central Excise, reported as 2005(4) SCC 146 by Hon'ble Supreme Court of India.

3. The present appellant has been found guilty on the ground that he was the registered owner of the vehicle PJA 8677. Counsel for the appellant contends that he purchased this lorry in 1982, along with one Kesar Singh but in 1986 he transferred the vehicle with a third party and the Investigating Officer - PW 13, who was examined, deposed that during the course of his investigation he came to know that though the present appellant was the original owner of vehicle bearing registration No. PJA 8677, he had sold the vehicle to one Sucha Singh in 1986, however the registration was not changed in his name. This appellant was convicted solely for the reason that he was the registered owner of the vehicle PJA 8677. There is no evidence to prove that he knowingly allowed any person to use the vehicle for any illegal purpose. There is also no evidence to prove the conspiracy set up by the prosecution. Therefore, it is clear that though the articles were recovered from the lorry, there is no evidence to show that the appellant had any control over the vehicle nor he was in possession of these drugs. In the result, we allow the appeal and acquit the appellant Balwinder Singh of all charges framed against him.

d) Thus, the impugned Show Cause Notice deserves to be set aside on this ground also.

11.1.5 **EVIDENCES WITHOUT CROSS-EXAMINATION/EXAMINATION IS NOT ADMISSIBLE AND CANNOT BE RELIED UPON:-**

a) Without prejudiced to submissions made above, it is submitted that the whole case is based either on the tracking report downloaded from website of M/s Goodrich Logistics or on the statements of Shri Surya Prakash Mishra, Branch Manager of M/s Goodrich Logistics P. Ltd. The Noticee asserts that in terms of the track report submitted by M/s Atlantic Shipping Co. Ltd., Sudan and as per the Fumigation Certificate dated 30.06.2024 issued by the Govt. of Sudan, the date of Bill of Lading and the date of shipped on Board is 30.06.2024 and not 30.07.2024 and thus denies averments of Shri Surya Prakash Mishra and challenge the veracity of the same. Thus, it becomes imperative for the department to provide opportunity of examination/cross-examination of Shri Surya Prakash Mishra.

b) Cross examination and examination is part and parcel of the fair play in adjudication proceedings. When proceedings are initiated by relying on someone's statement or averment, the noticee has right to cross examine such person on whose statement reliance is placed for issuance of SCN. Further, to

prove his bonafide, a noticee has right to examine persons who are involved in the alleged transaction such as transporters/ weighbridge owners, etc. In its submissions, noticee relies upon following jurisprudences.

Sales Tax Tribunal and Ors. Kalra Glue Factory vs. (02.03.1987-SC): MANU/SC/0585/1987

We allow this appeal solely on the ground that the statement of Banke Lal which was not tested by crossexamination was used in order to reach the conclusion that the transaction was an inter-State sale. We are told that Banke Lal has now died. Under the circumstances, we set aside the order of the High Court as also of the Sales Tax Tribunal and remit back the matter to the Sales Tax Tribunal at Meerut

Dr. U. S. Awasthi Vs. Adjudicating Authority PMLA

[2023/DHC/000265, Dt. 10.01.2023]

2. An application for cross-examination filed before the Adjudicating Authority would be an integral part of the process of adjudication and would not be alien to Section 8 proceedings, when considered in this above statutory scheme and context.

28. the Petitioner is relegated to the Appellate Tribunal under PMLAfor agitating the challenge to the impugned order. Since the entire process of adjudication is to be concluded within 180 days, the present writ petition is directed to be transmitted by the Registry to the Appellate Tribunal, so that the same can be taken up in an expeditious manner. Considering that it is a short application seeking permission to cross examine, the Appellate Tribunal shall decide the challenge to the said order or the application for cross-examination, within a period of two weeks from the date of first listing.

Andaman Timber Industries Vs. CCE [(2015) 281 CTR 241 (SC)]

7. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the adjudicating authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/ witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the adjudicating authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dt. 17-3-2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.

8. In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the show-cause notice.

c) In light of above facts and jurisprudences it is clear that the noticee will be devoid of natural justice if he is not allowed cross examination/examination of the person whose statements were relied upon in issuance of impugned SCN.

11.1.6 **STATEMENT OF CO-NOTICEES CANNOT BE RELIED UPON TO PENALIZE NOTICEE:**

a) Without prejudice to submission made above, it is submitted that the statement of the co-noticee recorded under Section 108 of the Customs Act is subjective & prejudiced in nature and cannot be relied upon for the purpose of framing charges.

b) Reliance is placed on Mohtesham Mohd. Ismail Vs. Spl. Director, Enforcement Directorate &Anr. 2007 (11) SCALE 741. Relying on Ripen Kumar Vs. Department of Customs, 2001 Cr.LJ 1288 and Anand Kumar Vs. Naresh Arora, 2006 (3) JCC 1491 it is further contended that the testimony of Subhash Narain (PW1) recorded during the pre-trial stage cannot be relied upon as his testimony is not complete.

c) In Kashmira Singh v. State of Madhya Pradesh, Hon'ble High Court relied upon the decision of the Privy Council in BhuboniSahuv. The King and laid down as under:

"Gurubachan's confession has played an important part in implicating the appellant, and the question at once arises, how far and in what way the confession of an accused person can be used against a co-accused? It is evident that it is not evidence in the ordinary sense of the term because, as the Privy Council say in Bhuboni Sahu v. The King "It does not indeed come within the definition of 'evidence' contained in section 3 of the Evidence Act., It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross examination."

Their Lordships also point out that it is obviously evidence of a very weak type..... It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. "They stated in addition that such a confession cannot be made tile foundation of a conviction and can only be used in "support of other evidence."

d) Thus, in view of these remarks it would be pointless to cover the same ground. Such evidences cannot be used to corroborate an accomplice or, as in the present case, a witness who, though not an accomplice, is placed in the same category regarding credibility. Thus, the impugned Show Cause Notice based on wrong evidences and premise deserves to be dropped on this score as well.

11.1.7 **THE PENALTY IS NOT IMPOSABLE ON THE NOTICEE UNDER SECTION 112(a), 112 (b) and 114AA**:-

a) The Show Cause Notice also invoked penal provisions under Section 112(a), 112 (b) and 114AA of the Customs Act, 1962 against the noticee.

b) In the para supra it has been discussed in detail that the impugned consignment was shipped on Board on 30.06.2024 and accordingly the BL was issued on the very same date i.e. 30.06.2024, he is entitled to import 'melon seeds' under free category in terms of Notification No. 05/2023 dated 5th April, 2024. Since there is no violation of any of the conditions of the aforesaid notification, the noticee is not liable to any penalty.

11.1.8 **THE PENALTY IS NOT IMPOSABLE ON THE NOTICEE UNDER**

SECTION 114AA OF CUSTOMS ACT, 1962 AS THE SAME PERTAINS TO EXPORT MATTERS:-

a) Without prejudice the submission made above, it is submitted that the Show Cause Notice invoked penal provisions under Section 114AA of the Customs Act, 1962 against the noticee. Thus, it becomes imperative to understand the rationale behind the introduction of Section 114AA and to analyse the provisions of the section.

b) The need of introduction of Section 114AA

Taxation Laws (Amendment) Bill, 2005 whereby Section 114AA was proposed to be inserted in the Customs Act, 1962 was introduced in Lok Sabha on 12.05.2005. The proposed Section 114AA reads as under:

"114AA. 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."

The aforesaid Taxation Laws (Amendment) Bill proposed to carry out certain amendments in the Income Tax Act, 1961, the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944 and the Central Sales Tax Act, 1956 with the object of rationalizing and simplifying certain procedures, widening of tax base and plugging loopholes leading to leakage of revenue. Hence, the same was referred to the 'Standing Committee on Finance' on 13.05.2005 for examination and report thereon.

The rationale and purpose of introducing Section 114AA The Standing Committee submitted its report on the aforesaid Bill on 12.12.2005. The rationale and purpose of introducing the provisions of the Taxation Laws (Amendment) Bill, 2005, as seen from the Notes furnished by the Ministry and the Statement of Objects and Reasons of the Bill were detailed in para 6 to 66 of the report. Para no. 62 to 66 pertain to rationale and purpose of introducing Section 114AA, which read as under:

Clause 24 (Insertion of new section 114AA)

62. Clause 24 of the Bill reads as follows:

After section 114A of the Customs Act, the following section shall be inserted, namely:-

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

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

"Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension

because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A."

64. It was inter-alia expressed before the Committee by the representatives of trade that the proposed provisions were very harsh, which might lead to harassment of industries, by way of summoning an importer to give a 'false statement' etc. Questioned on these concerns, the Ministry in their reply stated as under: "The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefits under various export promotion schemes. The apprehension that an importer can be summoned under section 108 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because person summoned under Section 108 are required to state the truth upon any subject respecting which they are being examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an offence case."

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

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

From the above, it is evidently clear that the provisions of Section 114AA pertains to export and not to import cases.

The noticee in this regard places reliance on following case laws: i. The Hon'ble CESTAT in the matter of Commissioner of Customs, Sea, Chennai II Vs. M/s. Sri Krishna Sounds and Lightings held as under:

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 para 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 hat 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.

ii. The Hon'ble CESTAT in the matter of ACCESS WORLD WIDE CARGO Versus COMMISSIONER OF CUSTOMS, BANGALORE [2022 (379) E.L.T. 120 (Tri. *Bang.)]held as under:*

6. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant who is the Customs Broker has only filed the shipping bills pertaining to the exports made by the ADPL Customs Intelligence Unit conducted the investigation and prima facie found that the mobile phones exported were not manufactured in India and have been manufactured in China and the exporter ADPL was not entitled to drawback under Section 75 of the Act. A SCN was issued demanding drawback of Rs. 1,20,02,815/- along with interest but after following the due process, the Additional Commissioner only confirmed the demand of drawback to the tune of Rs. 50,48,749/- as per Rule 16 of Customs, Central Excise & Service Tax Drawback Rules, 1995. Further, the rejection of this amount is under challenge before the Revisionary Authority. This, itself, shows that the exporter ADPL is contesting the denial of drawback which is sub judice. Further, I find that in the present case, penalty has only been imposed on the CHA under Section 114AA of the Act and no penalty has been imposed on the exporter. Further, I find that the ingredients of Section 114AA of the Act is not applicable to the CHA and is meant against the fraudulent exporter as is made out from 27th Report of the Standing Committee on Finance (cited supra). I also find that in the present case, the Department has failed to prove that there was a mala fide and wilful mis-representation by the Customs Broker. It seems that the Commissioner (Appeals) has totally misunderstood the facts and has wrongly observed that the appellant (Customs Broker) and the exporter have been operating from the same premises and have an identical ICE Code which leads one to suspect the bona fides of the appellant. This finding of the Commissioner is factually incorrect and without any basis. Further, the Commissioner on the basis of these facts has wrongly come to the conclusion that the appellant is involved in the illegal export whereas the appellant is only a Customs Broker who has filed the shipping bills on the basis of the documents furnished by the exporter.

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

In view of above, it is requested that proposed penalty under section 114AA may kindly be dropped.

c) Analysis of Section 114AA of Customs Act, 1962:

Section 114AA in the Customs Act, 1962- 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".

Thus, the ingredients of the Section 114AA are:

i. The person must knowingly or intentionally make, sign or use or cause to be made, signed or used any declaration, statement or document which is false or incorrect in any material particular

ii. He shall be liable to a penalty upto five times of the value of goods.

As elaborated in foregoing paras, the noticee was not aware of any manipulation, if any, as alleged in the SCN but not proved. The noticee had merely filed the Bill of Entry on the basis of B/L provided by the principal Shipping Line deeming the same as true. There was neither any mens rea nor any previous knowledge about the any manipulation in date of shipped on board, if any. Thus, penalty under Section 114AA cannot be imposed on the noticee in the matter.

Further, the section 114AA provides penalty dependent upon the value of the goods and not duty levaible on the same. This further strengthen the legislative intent of imposing penalty under Section 114AA for fraudulent export cases only.

The noticee places reliance on following judgments:

1. NAAM EXPORTS Versus COMMISSIONER OF CUSTOMS, TUTICORIN [2022 (382) E.L.T. 251 (Tri. - Chennai)]:-

13. On perusal of the orders passed by the authorities below, nothing is brought out to prove and establish that the appellant has knowingly and intentionally made any false documents. It is explained by them that the excess quantity was loaded in order to compensate the loss on account of drying of the onion which are perishable goods. Taking these facts into consideration, the penalty imposed under Sec. 114AA is set aside.

ii. A.V. GLOBAL CORPORATION PVT. LTD. Versus ADDITIONAL DIRECTOR GENERAL (ADJUDICATION), DIRECTORATE OF REVENUE INTELLIGENCE, MUMBAI [2022 (382) E.L.T. 65 (Tri.-Mumbai)]

4.26 Since the issue in respect of the classification and admissibility of exemption notification has been determined in favour of the appellants hence the penalty imposed on them under Section 114A to cannot be sustained to the extent it relates to these aspects. Thus the penalty imposed under this section is set aside. In respect of the short payment of countervailing duty as we are remanding the matter back to the adjudicating authority for requantification of demand penalty

if any is imposable on the appellant.

4.27 Section 114AA of the Customs Act, 1962 read as follows:

"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."

From plain reading of the said section it is quite evident that penalty under this section is imposable only in case where the 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. Thus for imposing penalties under this section, adjudicating authority is required to determine existence of such declaration, statement or document which is false or incorrect in material particulars. In the present case without making any determination to this penalties under this section have been mechanically imposed by the adjudicating authority. Such penalties imposed without determining existence of such documents and the connection of the such document with the person, penalties imposed under this section cannot be sustained. Thus we set aside the order imposing penalties under this section.

4.26 On the issue of penalty imposed on functionaries of the importers, and CHA, impugned order observes as follow:

6.7 As the omissions and commissions of the noticees M/s. MEIPL and M/s. 'MEAPL, have been elaborately dealt by me, supra, I now proceed to go through the violations of the other co-noticees associated with the main noticee

6.7.1 1 find that Shri Manoranjan Nayak, Senior Manager (Supply Chain Management), Shri Rajeev Sharma, General Manager (Supply Chain Management) both personnel of M/s. MEIPL, Shri Horoaki Ashizawa, Director & General Manager, Living Environment Division, and Shri Shine Yamabe, Managing Director, responsible at the helm of affairs at M/s. MEIPL and M/s. MEAPL, have each given false declarations in the bills of entry, submitted false information contrary to facts to the Department, induced the Customs Broker/Customs House Agent not to declare the retail sale price etc., are equally and personally liable to penalty under Section 112(a) of the Customs Act, 1962. Similarly, the aforesaid discussions also reveal that the co-noticees resorted into deliberate misdeclaration by using false declarations in various documents, which covers the ingredients required to penalize them under Section 114AA of the Customs Act, 1962.

6.7.2 Role of Customs Broker Shri S.K. Jain.

6.7.3 Role of Customs Broker A. V. Global & Co.

6.7.3.1 I find that the Show Cause Notice has alleged that the Customs Broker (CB) aided and abetted the importer in misclassifying the goods and also proposed imposition of penalty under Section 112(a) and Section 114AA of the Customs Act, 1962.

6.7.3.2 I find that the CB had attended to the clearances of the following goods

imported from different ports by the main noticee M/s. MEIPL. The role of the CB while handling the following Bills of Entries are as under:

Bill of Entry	*Role*
9424139, dated 26-2-2013 filed at ICD, Tughlakabad	Words "not for retail sale" were added at the behest of the importer. It has been proved during the investigation proceedings that the addition was with the prime knowledge of the importers.
B/E 2129403, dated 14-5-2013 filed at Chennai	the Words "not for retail sale" were added at the behest of the importer. It has been proved during investigation proceedings that the addition was with the prime knowledge of the importers. The said words were not there in the checklist and was added later on at the behest of the importers
9171839, dated 30-1-2013 filed by Chennai	The checklist was forwarded by the CB M/s. A.V. Global & Co. to the importers for approval. The importers through email, to remove MRP from last two items shown in the checklist bill of entry as the air-conditioners dated 30-1-2013 viz., PS5JAK+PU5YKD were above 3 ton

6.7.3.*3 I find that with respect to the aforementioned Bills of Entries, the modus operandi or rather resorted misclassification and non-declaration of RSP, was at the behest of the importers. Though, it is an acceptable fact that the CBS have an important role in ensuring correctness and truthfulness of the declarations and is expected to act within the limitations of CBLR, the very fact that the prime noticee is an accredited client, enjoying all the privileges of a status quo importer, makes the CB tend to believe in the versions submitted by the importer. Further, the very fact that the RSP based assessment as well as the classification related issues/queries were tackled by the importer directly with the Customs officers, provides limited scope for the CB to rediscover an element of malpractices etc. However, before concluding the omissions and commissions of the CB, I would like to place reliance on the following.*

6.7.3.4 It is on record that while assessing the bill of entry No. 821154, dated 15-10-2012 filed for import of CMVRF air-conditioners (within diversity ratio) from Thailand customs changed the classification of the air-conditioners from 8415 10 10 to 8415 81 10 and denied the benefit of notification and assessed the impugned goods under merit rate of duty. M/s. MEIPL has accepted the changed classification and has paid merit rate of duty without any protest. It is pertinent to mention here that no appeal was also filed by M/s. MEIPL for the change in classification. Further, in the subsequent 2 bills of entry viz., 8537626 and 8537737, both dated 20-11-2012, filed at Nhava Sheva for import of CMVRF air-conditioners, they have classified them under CTH 8415 81 90 and cleared the air-conditioners imported from Thailand under merit rate of duty. However, during the same period, i.e. on 26-11-2012, M/s. MEIPL has filed bill of entry No. 8586807 at Chennai Seaport for clearance of CMVRF and have classified them under in 8415 10 10 and the subject B/E was RMS facilitated and no assessment and examination was prescribed for the said B/E. It is a matter of fact that all the said bills of entry were filed by M/s. A.V. Global Corporation Private Limited, their Customs House Agent. When Shri Ashok Mehta, the Director of M/s. A.V. Global was questioned, he stated that only on the instructions of M/s. MEIPL they have classified the goods under tariff item 8415 10 10 at Chennai Seaport and they had not informed the Customs at Tughlakabad and Chennai about the change/amendment in classification at Nhava Sheva for

identical goods imported by M/s. MEIPL.

6.7.3.5 I find that the CB, M/s. A.V. Global & Co. attended to the aforementioned Bills of Entry, filed at Nhava Sheva and Chennai ports. It is on record that the CB was well aware of the changed classification and the acceptance of the same by the party. It is also on record that the CB filed the Bill of Entry with the same description at Chennai by classifying the same under 8415 10 10, even though, the Nhava Sheva Customs reclassified the similar items under 8415 81 10, which was accepted by the importer. There is nothing on record which reveal that the CB did make an effort to inform the Customs Officers at Chennai that the item with the same description was cleared by Nhava Sheva Customs by reclassifying the same under Chapter sub-heading 8415 81 10. The CB acts as a link between the Customs and the importers and it was their duty or rather responsibility to bring into picture the true facts. Since, the said Bills of Entries, both at Nhava Sheva and Chennai, were handled by the CB. M/s. A.V. Global & Co. and that too, in a short lapse of time, it was very much easy force to co-relate the facts and bring out whatsoever discrepancies. Though it is on admitted position that the CB filed the said Bill of Entry at Chennai as the advice of the importers, the CB also had a duty to bring to the notice Customs, any sort of noticed discrepancy. Therefore, in my considered opinion, the CB erred in bringing the fact of adopting different classifications at different ports to the notice of Customs and such act of omission and commission is in violation of the provisions of Regulation 11(d) of the CBLR, 2013, which renders the CB also liable for penal action under Section 112(a) of the Customs Act, 1962.

Similarly, in view of the fact that the CB knowingly resorted to mis-classification and misdeclaration, they are equally liable to be penalized under Section 114AA of the Customs Act, 1962."

4.27 We do not find much merits and justification in the order for imposition of penalty. In such cases which are based on the interpretation of tariff entries and admissibility of exemption notification, we find that charges of deliberate misdeclaration to evade duty cannot be sustained, more so over when these issues have been determined in the favour of appellants. In our view the order imposing the penalties on functionaries of the importers and CHA cannot be sustained without assigning specific role to them. We therefore set aside the penalties under Sections 112(a) and 114AA imposed on the functionaries of importer and customs broker, following the decision in case of Anand Metal Industries (2005 (187) E.L.T. 119 (T)]

5. In respect of the penalties imposed on the firm as well as on the partner, as the dispute in question in respect of classification which is purely a legal issue, therefore, the penalties imposed on the firm as well as on the partner are set aside"

4.28 Appeal No. C/88039/2018, has been filed by the appellant challenging the order of Commissioner (Appeals) remanding the matter back to original authority for passing a speaking order in terms of Section 17(5) of Customs Act, 1962. In Para 21, Commissioner (Appeals) has observed as follows:

"21. In view of above, the assessment orders in respect of the impugned 2 Bills of entry are set aside and the Asst./Deputy Commissioner Group V, NS-I, JNCH is directed to make the reassessment of the said Bills of Entry afresh and issue speaking order as required under Section 17(5) of the Customs Act, 1962. The appellant should also be given opportunity of making submissions and personal hearing in compliance of principles of natural justice."

In our view the aforesaid order of the Commissioner (Appeals) is unblemished and needs to be sustained. While upholding the said order, we notice that the issue of classification and admissibility of exemption notification which we have considered earlier in respect of the earlier imports made by the appellant is in dispute. Therefore while considering the matter in remand proceedings as per the order of the Commissioner (Appeals), adjudicating authority should take note of the observations made by us in this order on these issues and decide accordingly.

iii. SUSHMA Versus COMMISSIONER OF CUSTOMS, NEW DELHI [2022 (379) E.L.T. 376 (Tri. Del.)]

10. Reverting back to the facts of the present case the allegation against the appellant is of conducting market inquiry in such a manner so as to aid the fraudulent exporters to draw heavy duty drawbacks. Apparently, this inquiry was conducted post the alleged fraudulent exports were already made. From the above discussion, it is abundantly clear that to constitute abetment the abettor has to come into action of abetting the offender prior later does or fails to do an act which amounts to committing mitting the crime/offence. The market inquiry was post the commission of crime of fraudulent export of handwoven carpets which were otherwise liable for confiscation to wrongly avail higher duty drawback by Mr. Sajjan Kumar. Hence, no question arises of abetting him at a stage later than the commission of said fraudulent exports. There is no evidence produced by the department which may prove that the appellant ever instigated or conspired or intentionally aided Shri Sajjan Kumar to fraudulently export the handwoven carpets to traders in different countries and to take as high as 12 Crores of drawback in DAPL and higher drawback in other companies as well. There is no evidence that appellant has been the beneficiary of these amounts or part thereof. From the documents and statements on records it is very much apparent that it was Sajjan Kumar who with the help of Mohammad Najib Sattar Menon the trader of fabric Alip Kumar Das, & Shamsher Singh, his employees was over-invoicing the value of carpets meant for export. Sajjan Kumar admitted same vide his statements dated 24-8-2011, 25-8-2011. There is no mention of any involvement of the appellant either in the form of instigation or conspiracy to aid the impugned fraudulent export. Though said statement got retracted vide his letter dated 26-8-2011 to Director General, DRI. But said retraction stands rebutted from Letter No. 50D/25/2011, dated 2-9-2011 (RUD-II) and also from his own subsequent letter dated 11-11-2011 (RUD-12) where he informed Director General, DRI, about him to be the authorized person of all the companies in Table-I. All the documents collected & statements recorded by the department are absolutely silent about any alleged role of the appellant.

11. No doubt, the penalties under Sections 114(iii) & 114AA having been confirmed by the Adjudicating Authority below, based on the facts that both the firms which were inquired by the appellant were not competent to give the rate of the sample of the carpets taken from alleged exports being found to be the companies of Shri Sajjan Kumar only and none of them being the exporter of carpets on the date of market inquiry. Their IEC for garment/carpet export is four months later than the date of inquiry. But these facts are, at the most sufficient to show that:

(i) the appellant, as inquiry officer, was not diligent enough to gather relevant details.

(ii) He failed to appreciate the relevant facts.

(iii) Appellant conducted enquiry in casual & improper manner. To my opinion

such negligence on part of appellant amounts to dereliction of his duties but not alleged abetment.

13. Hon'ble Supreme Court in the case of Shri Ram & Another v. State of Uttar Pradesh reported in 1975 (3) SCC 495 has specifically held that intentional aid and active complicity is the gist of the offence of the abetment. I observe from the Show Cause Notice as also from the order under challenge that there is no allegation against the appellant about intentional aiding and active complicity. All what alleged is that the appellant conducted the market inquiry into a casual and amateur improper manner. There has been catena of judgments to show that any lapse in performance of duty by Customs Officer can at the most be considered as inefficiency which cannot lead to any charge of abatement or connivance thus attracting the penalty under Section 114 of Customs Act. I rely upon the decision of this Tribunal in the case of Boria Ram v. Commissioner of Customs, New Delhi 2017 (354) E.L.T. 661 (Tri. - Del.) and also upon a decision of Tribunal Mumbai in the case of Ruchika International v. Commissioner of Customs, Pune 2015 (330) E.L.T. 660 (Tri. Mum.). It was held in this decision that the allegations of abetting the overvaluation after collusion with exporter need specific cogent evidence. In absence thereof it is merely dereliction of duties which can be proceeded in terms of Central Civil Services Rules, 1965. I observe that there is no evidence produced by the Department that appellant in any way has benefited himself due to the impugned exports Shri Sajjan Kumar. The entire burden was of the Department to prove knowledge on the part of the appellant but there is no such evidence nor even for the fact that some consideration has gone to the appellant for endorsing the market report. In the given circumstances, it is merely negligence or dereliction of duties which without intention cannot be called as collusion or abetment. Above all, Customs Officers are entitled to protection in view of Section 155 read with Section 106 of Customs Act as was held by Hon'ble Madras High Court in the case of Shri Vasudeva Bank v. Union of India reported in 1990 (48) E.LT. 214 where the Hon'ble Court has analyzed the phrase "good faith" and has given protection to Government servants discharging their statutory duties. Further, I find that the entire onus was of the Department to bring on record some cogent evidence to prove the positive act of alleged abetting on part of the appellant. But there is nothing produced on record about any nexus of the appellant with the allegations of collusion and connivance with Sujjan Kumar for abetting the over-valuation of goods exported. Commissioner, Central Excise, New Delhi v. M.1. Khan - 2000 (120) E.L.T. 542 of this Tribunal is another decision where it has already been held that unless ingredients for proving the charge of abetment have been brought out in the Show Cause Notice and when there is no admission by the Customs Officer for alleged abetting, penalty under Section 114 cannot be imposed. Though the Adjudicating Authority below has taken a plea that the appellant in his statement has admitted for the alleged offence but the perusal of the document on record shows that the admission of appellant is only to the fact that the inquiry conducted by him with his Co-Inspector Naresh Kumar is an improper inquiry that too after it was brought to his notice that both the firms inquired by them are found by DRI to have been controlled by same Sajjan Kumar who has been investigated in the impugned matter. The said statement, to my opinion, has wrongly been considered as an admission of appellant for abetting fraudulent exports made by Sajjan Kumar and for heavy amount of drawback being claimed by him.

iv. M.S. EXIM SERVICES Versus C.C., LUDHIANA [2021 (377) E.L.T. 615 (Tri. - Chan.)]

6. I find that in show cause notice, the allegation against the appellant is that the

appellant being customs broker had filed 4 bills of entry for clearance of consignment of cold rolled coil (non-alloy) and cold rolled sheets (non-alloy) of prime nature which were found on examination as secondary and defective nature and the appellant being an experienced customs broker was expected to understand the difference between prime material and secondary & defective material. Therefore, he has made a false declaration in respect of the said import consignment.

7. Admittedly, no where it has been placed on record that the appellant was having prior knowledge of defective/secondary material. In fact, in the invoices, high-seas agreements, test certificates, it is mentioned that the material is of prime nature. Moreover, whatever documents have been supplied to the appellant by the importer, the appellant has filed bills of entry for clearance. On the basis of those documents merely being the appellant an experienced person it cannot be alleged that the appellant was having mala fide intentions for clearance of the said goods by misdeclaring the same. The Revenue has failed to establish against the appellant that he has omitted to do any act which act or omission would render the such goods liable to confiscation. The Revenue has further failed to establish the fact that the appellant abats the doing omission of the act which would render the goods liable for confiscation.

8. A similar issue came in the knowledge of the Hon'ble Delhi High Court in the case of Trinetra Impex Pvt. Ltd. (supra) where the Hon'ble High Court has held as follows:In the present case, there is no element of mens rea or conscious knowledge which can be attributed to the CHA. The investigation carried out by the CBI and other facts reveal that the CHA acted bona fide and merely facilitated the imports on the strength of the documents which were handed over to him by the importer. There is no sufficient material on record to show that the CHA was actively involved in the fraudulent availment of the exemption by the importer, warranting levy of personal penalty. Therefore, we do not find any ground to interfere with the findings of the Tribunal vis-a-vis the respondent.

Therefore, the penalty is imposable on the appellant.

9. Further, in the case of P.S. Bedi & Company (supra) this Tribunal again has observed as under :-

5. Considering the submissions, I note that, before proceeding to impose a penalty on the CHA under Section 112(a) of the Customs Act, it is incumbent on the Departmental authorities to record a finding in the first instance that some commission or omission of the CHA had rendered the goods confiscable. Such a finding is not forthcoming in the order of the Deputy Commissioner or that of the Commissioner (Appeals). In the absence of such a finding, penalty cannot be imposed under Section 112(a) of the Act. The adjudicating authority has not even mentioned the provision of law under which the penalty was imposed. The order of the adjudicating authority has been upheld by the lower appellate authority. This is a clear case of non-application of mind on the part of the Commissioner (Appeals), to the findings of the adjudicating authority. I further observe that, apart from stating that the case law relied on by the appellant is not relevant the Commissioner (Appeals) has not stated as to why the case law was not relevant. The impugned order is, therefore, not a speaking order on the point.

10. Further, the case laws relied by the Ld. AR are not relevant to the facts of this case as in those case, it is in the knowledge of CHA regarding the description of goods before filing the shipping bills. There is no allegation in the show cause notice in respect of the test certificate produced by the appellant. The mere

allegation is that the appellant being an experienced person should know the difference between prime and secondary/defective material. The act of filing the test certificate shows that the appellant has no mens rea and filed the documents being a bona fide facilitator.

v. AGARWAL INDUSTRIAL CORPORATION LTD. Versus COMMR. OF CUS., MANGALORE [2020 (373) E.L.T. 280 (Tri. Bang.)]

6. *After considering the submissions of the both the parties and perusal of the material on record, I find that in the present case there is no dispute that the impugned goods i.e., bitumen is not prohibited goods either under the Customs Act or Foreign Trade Policy or any other law in force at the time of importation of goods and the Customs in the show cause notice has admitted this fact. It is also a fact that there is no prohibition of impugned goods from Iran either under the Customs Act or Foreign Trade Policy. Further, I find that the only allegation against the appellant in the present case is that in the bill of entry filed by them, have wrongly mentioned the country of origin' as "UAE" whereas in fact the 'country of origin is from Iran. After perusal of various statements made by the various persons during the course of investigation including that of the appellant, I find that nobody has in the manipulation of changing the 'country of origin' documents. The spoken against the appellant that the appellant is in any way involved appellant has filed the bill of entry and showed the country of origin' as on the basis of documents supplied to him by supplier based at UA JAE. Further no document has been produced by Revenue on record Abw the involvement of appellant in any way in the said declaration. Further, I find that in the present the appellant has not Section 111(d) 111(m), I find that both provisions mis claimed any preferential rate of duty. After examining the provisions applicable in the fact and circumstances of this case. Further, I find that ap mala fides has been brought on record on the part of appellant so as to impose penalties on the appellant under Section 112(a) and Section 114AA of Customs Act, Further, I find that in the case of Oriental Containers Limited v. Union of India (cited supraj, the Hon'ble High Court of Bombay in para 9 has observed as under:*

"9. Having heard the Counsel on both the sides, we are of the opinion that in the present case, it is admitted by the Customs authorities that the petitioners are not party to the fraud and there was no mala fide intention on the part of the petitioners in importing the Tin Plate/Waste instead of Tin Plate Prime. In fact, the petitioners have paid to the foreign supplier the price of tin plate prime and in return got tin plate waste. The petitioners have paid the customs duty payable on Tin Plate Prime. Under the circumstances, when the petitioners are innocent victims of the fraud played by the foreign supplier and the petitioners have suffered double jeopardy by paying the price and the duty payable on Tin Plate Prime, on account of the fraud committed by the foreign supplier, the petitioners coul held to be guilty of violating any of the provisions of the Act and could not be hence confiscation of the goods is not justified, It is pertinent to note that the rate of customs duty on Tin Plate Prime is higher than the customs duty payable on on Tin Plate/Waste. As soon as the petitioners came to know about the fraud, played by the foreign supplier, they have taken effective steps and have cleared the goods on furnishing licenses which permit clearance of Tin Plate waste. When the petitioners had placed an order for import of tin plate prime and have price for Plate Prime, fault could with the petitioners in furnishing Bill of Entry and licences for clearance of tin plate prime. In the present case, when the petitioner has been given a clean chit and there is no violation of the provisions of the Customs Act committed by the petitioners and rs and no revenue is caused by wrong supply of goods by the foreign supplier, the Collector of Customs was not justified in

confiscating the goods.

6.1 Further in the case of Shree Ganesh International (cited supra), the Tribunal in para 8 has held as under:

similar situations, the "8. We, however, agree with the Learned Advocate that that the impugned goods are not liable for confiscation. It has not been denied Revenue that the appellants have made the declaration on Bills of Entry on the basis of documents received by them from their foreign teentions that the goods non-texturised gn suppliers. The test report of the foreign supplier is dated 9-8 fabrics. They have also claimed that a similar consignment impo imported by them from the same supplier had earlier been as non-texturised polyester fabrics which gave them the bona fide belief that the present consignment would also be of non-texturised variety. In Northern Plastics Ltd. (supra) that the declaration is in the nature of a the Supreme Court has held in the case of claim made on the basis of belief entertained by the Appellants and therefore cannot be said to be misdeclaration under Section 111(m) of the Customs Act. It has also been held by the Tribunal in the case of thay Kay Exports and Industries (supra) that finalisation of Tariff Heading under which the goods will fall is the ultimate job of the Customs authorities and if the Appellants have claimed wrong classification according to his limited understanding of the Customs Law, mens rea cannot be attributed to him. Accordingly, we hold that in the present matters, it cannot be claimed by the Revenue that the Appellants have deliberately misdeclared clared the goods with a view to avail the benefit of lesser rate of duty. We, therefore, set aside the confiscation and consequently the redemption fine imposed on them in both the appeals as well as the penalty.

7. In view of my discussion above, I am of the considered view that the impugned order is not sustainable in law and therefore I set aside the impugned order in totality and allow the appeal of the appellant with consequential relief, if any.

vi. WCI SHIPPING PVT. LTD. Versus COMMISSIONER OF CUSTOMS, CHENNAI [2020 (372) E.L.T. 369 (Tri. Chennai)]

5. From the facts narrated as above, it is seen that Mr. Santosh and Mr. Janaki Raman are employees of the appellant who is a Customs Broker. The case of the department is that "H" and "G" card was given facilitating the import of undeclared goods. The main allegation which and that they misused the same for from facts of the he case as well as the is that Mr. Santosh and Mr. Janaki Raman filed Bill of Entry without verifying undeclared goods. In para-3 of the O10 itself, it is noted that as per KYC/antecedents of the importer and thus abetted in the import of DGFT website, M/s. Greenway Communication is a proprietorship concern of which Mohamed Hanifa is the proprietor. The address of the registered premises is also exhibited in the website. The appellants have argued that KYC norms/IEC details were verified from the DGFT website. When the Ministry of Commerce who has granted IE licence has exhibited the details of IEC holders in their website which can be verified, the appellant cannot be found fault when the same has been accepted to be true and correct. The other ground is that Mr. Santosh and Mr. Janaki Raman had given statements that previous consignment of the same importer also non-declared goods and therefore they ought to have been more cautious. The goods were cleared and apart from statement there is no evidence to doubt the previous consignments. The statements were retracted. They were not subjected to cross-examination though a request was made. Apart from the allegation that appellant ought to have been cautions, there is no evidence to show that appellant had any knowledge of the import of undeclared goods. When the importer consciously conceals certain facts

from the Customs Broker, it cannot be presumed that the Customs Broker has abetted in such offence merely because he has not met the importer face to face.

6. From the evidence placed before me, I find nothing to hold that appellant had intentionally connived or abetted in the non-declaration/concealment of the goods.

7. The impugned order is set aside with respect to the penalties imposed on this appellant. Appeal is allowed with consequential benefits, if any, as per law.

vii. COMMISSIONER OF CUSTOMS (IMPORT) Versus TRINETRA IMPEX PVT. LTD. [2020 (372) E.L.T. 332 (Del.)]

10. Now coming to the facts of the present case. The facts noted above are not disputed before us, however, the Customs Department is aggrieved by the deletion of the penalties imposed on the CHA. In respect of the show cause notice dated 6-3-2013, penalty has been imposed under Section 112(b) as well as 114AA of the Act. A perusal of the said provisions clearly reveals that the penalty under the said provisions can be imposed wherever there is an element of mens rea or conscious knowledge, which is a sine qua non for imposition of the penalty. This is evident from a plain reading of Sections 112 and 114AA of the Act, which uses the expressions "does or omits to do", "or abets the doing or omission of such act", "which he knows or has reason to believe are liable to confiscation under Section 111"- in Section 112 and "knowingly or intentionally in Section 114AA. The facts of the case in hand do not reveal any such element of mens rea or conscious knowledge qua the importer. There is no active role attributed to the respondent, which justifies the imposition of the penalty under Section 112(b) and Section 114AA of the Act. Nothing has emerged even in the criminal investigation.

11. In respect of the show cause notice dated 8-7-2011, the imposition of the penalty has been made under Section 112(a) of the Act in respect of the goods which have been held to be liable to be confiscated under Section 111 of the Act. Here, the imposition of the penalty on the CHA is founded on the ground that he has abetted the offence. Though, for imposition of penalty in respect of the cases falling under Section 112(a) of the Act, mens rea may not be required to be proved as condition ecedent, however, when it comes to imposition of the penalty on an abettor, it is necessary to show that the said essential element/ingredient is present. [Ref. Amritlakshmi Machine Works The Commissioner of Customs (Import), (2016 SCC OnLine Bom 66 2016 (335) E.LT. 225 (Bom.)).

12. In the present case, there is no element of mens rea or conscious knowledge which can be attributed to the CHA. The investigation carried out by the CBI and other facts reveal that the CHA acted bona fide and merely facilitated the imports on the strength of the documents which were handed over to him by the importer. There is no sufficient material on record to show that the CHA was actively involved in the fraudulent availment of the exemption by the importer, warranting levy of personal penalty. Therefore, we do not find any ground to interfere with the findings of the Tribunal vis-à-vis the respondent.

13. Since, the present appeal does not raise any substantial question of law that requires any adjudication by this Court under Section 130 of the Customs Act, the appeal is dismissed in limine without any order as to costs.

viii. SREE AYYANAR SPINNING & WEAVING MILLS LTD. Versus C.C., TUTICORIN [2019 (370) E.L.T. 1681 (Tri. - Chennai)]:-

9.1 The issue can be looked at from different angles: First PSC which directed for deportation/destruction of the impo adjudicated vide Order-in-Original dated 27-6-2018. During the pendency of the appeal agains against this Order-in-Original, the appellant procured a a second report ie., PSC which is dated 24-9-2018, wherein the same issuing authority has remarked differently and cleared the consumption. Taking note of this development, the Ld. matter and the observations are already extracted elsewhere in this order and the gist of the First is to re-decide based on dated 24-9 i's direction, the opellate Authority's order is 2018. Following the First Appellate Authority's Adjudicating Authority acts upon the second PSC and grants substantial relief, but for penalty under Section 114AA. The question is, therefore, when admittedly no fault is found by the authority, can its report be still held to be available, if not for anything, but for levying penalty alone under Section 114AA ibid?

9.2 The impugned penalty is for an express default and when the report itself has a clean slate, there cannot be any penalty, at least with respect to that report. This is also for the reason that the Commissioner (Appeals) als) has, in her first order, set aside the entire issue for passing fresh adjudication order in the light of the second report. The natural corollary is that the first report becomes non est. Hence, I do not find any basis for imposition nor has the Revenue brought out any raison d'etre for imposition of the impugned penalty on record since the very basis te., the alleged fake report is itself not there on board anymore.

10. Viewed from any angle, it is but obvious that the Adjudicating Authority has been injudicious and peremptory in imposition of the 114AA ibid, since, unless it is proved impugned penalty under Section 11 that the person to be penalized has knowingly or intentionally implicated himself in use of false and incorrect materials, there can be no justification for penalty under this Section. This requirement of factual finding itself is not there and nor has it been answered satisfactorily either in the show cause notice or in the orders of the lower authorities and hence, I do not have any hesitation in setting aside the same.

d) Therefore, in light of the facts the penal provisions invoked against the noticee deserves to be dropped.

11.1.9 Till the authenticity of the Fumigation Certificate is established, the Bill of Entry No. 5470688 dated 06.09.2024 for Home Consumption may kindly be converted in Bill of Entry for Warehousing.

Without prejudice the submission made above, it is requested that since it has nowhere been proved that the aforesaid Fumigation Certificate has been manipulated at any stage and the noticee is nowhere involved in any such manipulation, if any, it is requested that till the authenticity of the same is established, the aforesaid Bill of Entry No. 5470688 dated 06.09.2024 for Home Consumption may kindly be converted in Bill of Entry for Warehousing in terms of Section 46(5) of the Customs Act, 1962, since.

11.1.10 The Noticee prayed that:-

i. The proceedings initiated by the impugned Show Cause Notice may please be dropped in light of submissions made above;

ii. Opportunity to cross examine Shri Surya Prakash Mishra may please be granted.

1 1 . 2 M/s Goodrich Logistics Pvt Ltd submitted their reply dated 10.04.2025 wherein they have, *inter alia*, submitted that:

11.2.1 The Noticee submitted that the role of Consignees & Exporters Trade practice followed by the Indian Consignee (Importers) and their overseas Seller (Shipper).

a) Pre-determination of the seller (exporter), country of origin, port of loading, negotiation of the price of goods, determining the INCOTERMS and foreign remittance against commercial invoice etc. between the exporter and the consignee.

b) Based on the agreed INCOTERMS, either the shipper or the consignee, directly or through their nominated freight forwarding ng agent, identify and emplay respective NVOCC for carriage of so agreed goods from the port of loading.

c) In the present case, as the shipment was under CIF terms, the exporter (Trader, through their freight forwarding agent identified the carrier at the port of loading (Port Sudan for containers to carry the goods to India.

d) Before the arrival of the goods in India, Goodrich, acting as the agent of the carrier (Dragon Maritimo) has received a pre-alert of the arrival of the containers on board the vessel along with the copy of the Bill of Lading (BL).

e) Based on the said pre-alert and the copy of BL, the details of the shipment were compiled and given to the agent of the vessel operator, for them to file the IGM as per Customs Act, 1962.

f) Following: the provisions of the Customs Act, of 1962, the consignee filed the Bill of Entry for the clearance of imported goods.

g) Thus, from the above narration, among other things, it was primarily evident that the consignee & supper only had prior information on the goods-related matters, including the port of loading, the date of remittance of the cargo value, the estimated time of departure, the carrier was appointed/ identified by the freight forwarder only after concluding the sale and INCOTERMS between the shipper && consignee. Goodrich came to know about the shipment in question only when they Issued by their principal.

11.2.2 Statutory Filing of Bill of Entry and Customs Clearance Process:-

a) While filing the Bill of Entry in accordance with Section 46 of the Customs Act, 1962, the consignee, through their appointed CHA or self, is supposed to produce the following document. To clarify, Goodrich has not filed the BOE in the present case.

i The commercial invoice;

ii. The packing list;

iii. The certificate of origin;

iv. Any other statutory documents as required under the applicable laws and regulations to prove the value and origin.

b) By filing the Bill of Entry, the consignee undertakes a self assessment of import duties, which are thereafter subject to reassessment or approval by the Customs Department based on on the applicable classification under the Customs Tariff Heading relevant notifications, and regulatory (CTH) provisions.

c) In the present case, upon receipt of SCN, Good was brought to the knowledge of Goodrich that there was a DGFT notification which had imposed some restrictions on the importers with respect to the free import of the declared goods of watermelon.

d) Prior to the ongoing investigation pertaining to the goods, Goodrich being the Indian agent of the carrier, had no information regarding Notification No. 05/2023 dated 05.04.2024, issued by DGFT, restricting the free import of watermelon seeds, the date of loading of the goods from port of loading etc.

11.2.3 Applicability of Notification No. 05/2023. 08.04.2024 of DGFT to Importers:-

a) The consignee & the shipper ought to have been well aware of the provisions of Notification No. 05/2023 dated 05.04.2024 and its implications for the duty-free, import of watermelon seeds.

b) The consignee must, have informed the shipper of the notification's requirements.

c) The consignee has never informed Goodrich in advance of such a notification prior to importing the goods.

Therefore, for the above-mentioned reasons, the importer in the present case, who has filed the BOE, assessed or paid customs duty, can only give a reply to the alleged violations of the provisions, of the Customs Act, 1962, in particular, Sections 112(b& 114AA of the Customs Act, 1962.

11.2.4 Regarding the role of Goodrich in the transaction under SCN.:-

a) Goodrich has acted only as the container delivery agent of the disclosed principal in India in the present.

b) The limited role and responsibility of Goodrich was to shame the necessary particulars to the vessel operator Agent (Authorised Carrier's Agent to the IGM import General Manifest, in the Delivery Order to the consignee and collect the empty containers from the consignee after cargo release.

c) Goodrich is supposed to collect the destination charges and issue the delivery order to the consignee in accordance with the agency contract with their principal.

d) Goodrich received a copy of the Bill of Lading of their principal ie., M/s. Dragon Maritimo. The details of BL have been compiled for the vessel operator/conveyance/ Agent to file the Import General Manifest (hereinafter referred to as 1GM) under the provisions of the Customs Act, 1962 and the IGM was accordingly filed by the vessel operator.

e) Goodrich, while acting as the Indian delivery agent of the carrier, was not involved in overseas activities, including container booking, freight collection and issuance of Bills of lading, which are solely initiated and managed by the principal offices.

f) On arrival of the vessel at Mundra, the consigner/importer tiled their Bill of Entry (BOE) declaring the essential, details, including the port of loading, in accordance with their sale-purchase contract, invoice/packing list, certificate of origin etc Thus, the importer assesses and pays duty on the imported goods in

accordance with the act and notifications.

g) Goodrich, having a very limited role as the delivery agent of the principle, has as not been involved in the issuance of a bill of lading or transfer of any documents between the shipper and consignee

h) The freight and documentation charges were paid at the port of loading Goodrich has collected only the destination (India) handling charges.

11.2.5 Regarding Tracking Report from Goodrich Website:-

a) It is admitted that the tracking of containers available on the official website of M/s Goodrich Logistics (https://goodrichlogistics.com/tracking/), the POL sailing date is 30th July 2024. But it is wherein incorrect to state in the SCN that the same confirms that M/s Goodrich Logistics Private Limited was aware of the forging the BL date, for the following reasons:-

i) That M/s Goodrich Logistics Private Limited is only the delivery agent in the Bill of Lading No. GUNPZUMUN0724063 in India.

ii) That M/s. Goodrich Logistics Private Limited Indian office has not uploaded the date in the tracking module of the website.

iii) That the port of loading agent of the carrier upload the specific date or move of movement next action in the website on Se release of the BL.

iv) In the present case, on the agent released the Bill of lading from the system physically on 30.06.2024, the tracking system captured the en board date as 30.06.2024.

v) The tracking system of Goodrich transparently declared (without any suppression) the actual date, for whatever stated reasons including port congestions or lack of cargo or political unrest or piracy threats) the said vessel sailed on a later date.

11.2.6 Regarding additional Information secured by Goodrich from the port of loading:-

a) The following information are given strictly without prejudice to the legal rights and contentions of Goodrich. The information given below is not to be considered as antithetical or contrary to the earlier statement role and responsibility of Goodrich in this case.

b) Upon further inquiries made with the overseas principal and their load port-agent, Goodrich has secured the following additional information:

i) Port Sudan shippers and companies, in particular, after the political-military-shipping agents unrest, civil commotion, and terrorist movements in Port Sudan, have a trade practice of issuing the "On Board Bills of ladings" after the confirmation of delivery of the fully customs-cleared goods at the dockside within the custom bonded (port/warehouse).

ii) Such agents and NVOCOs treat such "On-Board" bills of lading differently from the historical and the original "On-Board Bills of Ladings used to be issued by the vessel operators through its Masters after loading bulk or break-bulk cargo on bond such vessels.

iii) Though such On-Board BLs are und by such agents, boned on the

request from the shipper's request, the agents physically release such BLs to the shippers only after sailing the respective vessels from the port

iv) Such practices are followed by the NVOCCs and the trade/ shippers on account of the erratic nature of vessel departures, extended stay in the port etc. even after the loading of the goods.

v) According to the trade agents in Port Sudan, the reasons for such delayed departures or extended stays at Anchorage etc. of vessels are often security threats at the outer seas, fear of piracy attacks, vessel arrests, non-availability of cargo, and small-time vessel operators.

vi) It was on multiple occasions and subsequent events post the SCN, was informed by the POL to Goodrich, that in many cases, the vessels are not even available for live tracking because of the default-malfunction technics hampering of the OPS system be operators to avoid surveillance for reasons including privacy, US & BU Sanctions, and Terrorist attacks.

vii) In support of the foregoing information, the POL office has undertaken to provide the requisite documentation as land when available. However, due to the prolonged Ramadan, holidays, and that the POL/trade offices are yet to be resumed, we respectfully to submit the seek leave aforementioned documents as soon as they are made available to us by the POL.

11.2.7 The operational and procedural formalities followed at the Port of Loading (Port Sudan) by the Exporters and Shipping Agents:

a) Entry of the goods to be exported inside the port/customs warehouse by the exporter.

b) Conducting fumigation and phytosanitary certification inside the port.

c) Customs clearance of the goods inside the port by the exporter.

d) Release of empty containers by the shipping agent to the exporter/freight forwarder on booking

e) Pick up of empty containers from the empty container yard by the exporters, to stuff the goods which are custom cleared and lying inside the port customs bonded area).

f) In the present case, as per the agent of the carrier, all the mandatory pre shipment formalities and customs clearing were duly completed prior to 30.06.2004, and the goods were stuffed inside the containers and sealed before 30.06.2004.

g) The relevant dates so secured from the port of the loading agent of the carrier, along with some documents, are given in the table below for easy comprehension:

Activity	Date	port	Supporting Documents	Annexure
EMIT CONTAINER RELEASE TO SHIPPER	25.06.2024	Port SUDAN	Container release order	A
FUMIGATION CERTIFICATE BY MINISTRY OF AGRICULTURE &FOREST DEPARTMENT	27.06.2024	Port SUDAN	Fumigation certificate	B
PHYTOSANITARY CERTIFICATION	27.06.2024	Port SUDAN	Phytosanitary certificate	C
Foreign Remittance received by Shipper	Advance(as per export decl)	Port SUDAN	Export decl dated	D

			27.06.2024	
Export Declaration filed by shipper	27.06.2024	Port SUDAN	Export decl dated 27.06.2024	E

h) With the above date and documents, the agent of the carrier is trying to establish the fact that the goods were actually inside the port, in sealed containers, after customs clearing. The agent further says that, therefore, the sailing date of the vessel can be different from the "on-board" date as the vessel sails very late and erratically for stated reasons in the letter. The agent further says that they will try and get actual vessel information, from the vessel operator. Goodrich undertakes and seeks leave to provide them, if and when received.

11.2.8 Conclusion and reply to the alleged violation of provisions of Customs Act, 1962, charges & penalties imposed by Goodrich:

a) Given the stated limited role of Goodrich and on the grounds of information gathered from the overseas agent of the carrier, it is evident that Goodrich has merely acted in the capacity of an agent in India and was not aware of any of the activities at the port of loading.

b) It is further clear that the consignee only can provide more accurate information regarding accuracy and clarity on the date of planning the shipments, the effecting of foreign remittance etc.

c) Goodrich as the agent in India has no reason and source of knowing the actual date of sailing or on board date of BL issuance date at the port of loading, poor to the initiation of the present proceedings

d) For the above reasons, the SCN, under reply, fails to establish any grounds for imposing penalty on Goodrich for the alleged violation of Section 112(b) of the Customs Act, 1962.

As Goodrich has acted only as the delivery agent of an NVOCC/ container operator in India and is not "a person who is in relation to any goods", as stated in the penal provision. As this provision applies only to "any person who about any goods", naturally, the person in relation to the goods which is the subject the subject matter of SCN is M/s. Pragati International, not Goodrich.

Goodrich was never in receipt of the goods in their possession, nor regulated the movement of the goods. Their involvement involvement was limited to the container, Goodrich was engaged to collect the destination charges and issue the delivery order.

Section 112 has to be harmoniously read with Section 111 and Section 2 (23) of the Customs Act 1962, which respectively govern be provisions for confiscation of improperly imported goods and the definition of the term "import".

Thus, the penal provision, Section 112 of the Customs Act, 1962 is to be imposed on the "importer" whose goods were confiscated due improper importation on per Section 111 of the Customs Act, 1962. Both the Sections have to be read and interpreted holistically and not narrowly to contradict each other.

Therefore, M/s. Pragati International being the importer of the said goods is to be treated as the "person in relation to the goods and not Goodrich. Hence the imposition of penalty if any under 8.112 (b) of the Customs Act, 1962 against Goodrich who is "not a person in relation to the goods" is against the provisions of law and hence not sustainable.

Section 114AA of the Customs Act.

"Section 114AA Penalty for use of false and Incorrect material:-

- a person, knowingly or intentionally make, 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

As already submitted, Goodrich has not made any false statement document or declaration before the Customs authorities. Therefore, no penalty can be imposed, under this Section on Goodrich. In other words, a penalty under Section 114AA is imposable only in those situations where claimed without exporting the goods and by presenting forged documents.

In support of this argument, enhance is placed the Twenty-Seventh Report of the Standing Committee on Finance wherein insertion of Section 114AA was discussed at Para No. 62 to 66. The aforesaid relevant portions of the report of the standing committee explain the purpose for which section 114AA has been inserted in the Customs Act, 1962. The purpose is to punish those people who avail export benefits without exporting anything. Such cases involve serious criminal intent, and it cannot be equated with the cases of duty evasion. The perusal of the aforesaid extract makes it clear that section 114AA was inserted to penalize in circumstances where export benefits are availed without exporting any goods. According to the legislatures, Section 114AA of the Customs Act provided a penalty for improper exportation of goods and it was not covering situations of import of goods. Therefore, a penalty under section 114AA "is imposable only in the circumstances where export benefits are availed without exporting any goods.

Even if, by any stretch of the imagination, Section 124AA is held to cover imports as well, this Section would only apply to those who make such mis-declaration for "the purpose of Customs Act". The purpose of the Customs Act is revenue augmentation send trade regulations or prohibitions among others, it is clear that only the consignee (in the form of filing statutory Bills of Entry U/s. 46 of the Act), has to be held responsible for making, signing or using, or caused to be made, signed, any declaration, statement or document which was false or incorrect in any material particular, in the transaction of any business for the purpose of this Act. The importer ought to have been aware of the DGFT Notification and hence should have acted in accordance with the notifications.

The present reply, statement given under section 108 of the Act and other submissions, etc., wore made in good faith and representing by Goodrich. Goodrich acted as the authorized agent of the disclosed principal within the territorial jurisdiction of India. Goodrich has no role in the overseas operations, documentation, or any related activities of the principal.

No evidence has been presented to establish that Goodrich possessed awareness of the SOB date at M the relevant point of time. In the absence of

such knowledge, Goodrich cannot be attributed with men's ver. Therefore, the assertion of such a finding lacks a factual basis, lacks evidential support, and thus warrants overturning.

11.2.9 Hence, Goodrich is not involved in any mis declaration about the consignment in question and the penalties cannot be imposed on them.

11.2.10 In the above circumstances, we humbly consider this as the reply to the subject SCN and Set aside the show cause notice against M/s Goodrich Logistics Private Limited, and Drop the allegations and charges framed against M/s. Goodrich Logistics Private Limited under the subject Show Cause Notice, and not to impose any penalty upon M/s. Goodrich Logistics Private Limited, as the agent for the alleged violations of any of the provisions of the Customs Act 1962 or any other applicable law, and to permit cross examination of necessary witnesses representatives of the importer and vessel operator or their agent.

Personal Hearing

12.1 Shri Shyam Awatar Methi appeared for personal hearing on 09.09.2025 on behalf of M/s. Pragati International and re-iterated their submission dated 17.03.2025. Shri Shyam Awatar Methi submitted that they had filed bill of entry on the basis of documents provided by the foreign supplier and shipping lines only.

Further Shri Shyam Awatar Methi also informed that they had submitted all the documents issued by Govt. of Sudan i.e. COO, Fumigation certificate, Phytosanitary certificate. They had also submitted the proof to DRI that documents received from foreign supplier and confirmation of loading of their goods in container was before 30.06.2025. Details regarding confirmation from shipping lines that the goods were received before 30.06.2025 had already been submitted in their submissions. Shri Shyam Awatar Methi had requested to release their goods at the earliest as they are suffering from heavy financial loses.

12.2 Ms. Taranjeet Phull (Advocate), Authorized Representative of M/s Goodrich Logistics Pvt Ltd attended the virtual hearing on 11.04.2025 and 02.06.2025 in connection with the subject SCN. Ms. Phull re-iterated their written submission dated 10.04.2025 and stated as follows:

a) Goodrich acted solely as Indian delivery agent for M/s. Dragon Maritimo, with no role in the issuance or preparation of the Bills of Lading.

b) Bill of Entry was filed by importer, Goodrich did not file or assist in filing the BOE nor in the clearance process.

c) Shipment details were received via pre-alert from the principal; no independent role was played in BL issuance or container stuffing or any other

activity.

d) Goodrich had no knowledge or intent to misrepresent shipment dates; no mens rea attributable to Goodrich under Section 112(b) or 114AA of the Customs Act.

e) Request to drop all proceedings and allegations against Goodrich.

Further, Ms. Phull requested to set aside the subject SCN against their client M/s. Goodrich Logistics Private Limited and proceedings be dropped against M/s Goodrich Logistics Private Limited based on their written submission dated 10.04.2025.

Discussion and Findings

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

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

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

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

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

15.1 I find that M/s. Pragati International (Importer) imported Watermelon seed in eleven containers under Bill of Entry no. 5470688 dated 06.09.2024 having Bill of Lading no. GLNPZUMUN0724063 dated 30.06.2024. Based on intelligence gathered by DRI, Gandhidham that importer is indulged into illegal import of Watermelon Seeds (Melon Seeds) by way of violation of Notification No.

05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade and major discrepancies has been noticed in the details mentioned in Bill of Lading No. GLNPZUMUN0724063 dated 30.06.2024 for Bill of Entry No. 5470688 dated 06.09.2024 and the tracking details downloaded from aforementioned website, the investigation has been initiated by DRI. Accordingly, the proceedings of the examination were recorded under panchnama dated 08.10.2024 drawn at M/s. Saurashtra Freight Private Limited, APSEZ, Mundra.

15.2.1 I observed that shipped on board date in the Bill of Lading GLNPZUMUN0724063 dated 30.06.2024 submitted during filing of subject Bill of Entry no. 5470688 dated 06.09.2024 was declared as 30.06.2024.

15.2.2 Further, I also observed that the tracking of BL No. GLNPZUMUN0724063 dated 30.06.2024 downloaded from the official website of M/s Goodrich Logistics (https://goodrichlogistics.com/tracking/) shows the POL sailing date as 30th July, 2024.

15.2.3 I find that the tracking details of the BL No. GLNPZUMUN0724063 obtained from the official site of M/s Goodrich Logistics (https://goodrichlogistics.com/tracking/), shows that it shipped from Port Sudan on 30.07.2024. The tracking details is reproduced as below:-

info@goodrichlogistics.com(mailto:info@goodrichlogistics.com) +65 6812 5927(tel:+65%206812%205927)

+971 4458 0633(tel:+971%204%20458%200633) +91 22 6286 2900 (tel:+91%2022%206286%202900)

GOODRICH

(https://goodrichlogistics.com/about-us/)

Tracking Details

B/L No: GLNPZUMUN0724063
PLR: PORT SUDAN
POL: PORT SUDAN
POD: MUNDRA
FPD: MUNDRA
Transhipment Port 1: JEDDAH
Transhipment Port 2:
POL Sail Date: 30/07/2024
POD Arrival Date: 07/09/2024
Transhipment 1 Sail Date: 18/08/2024

Go Back
(https://goodrichlogistics.com/tracking/)

M/s Goodrich Logistics Pvt. Ltd., (Delivery Agent of Container Line M/s Dragon Maritimo) vide letter dated 29.11.2024 provided copy of Bill of Lading, copy of Manual IGM, Bill of Lading tracking report in reference of BL No. GLNPZUMUN0724063 submitted by their Port of Loading agent M/s Atlantic Shipping Co. Ltd., shows that for BL No. GLNPZUMUN0724063, vessel sailed from port Sudan on 30.07.2024. The tracking is reproduced as below:

Atlantic

Atlantic Shipping Co. Ltd.

Ship Agents, Stevedores & Freight Forwarder

Port Sudan
Tel: +249 311 826461 / +249 311 834199
Fax:+249 311 820660

بورتسودان
ت: +249 311 826461 / +249 311 834199
ف: +249 311 820660

BL: GLNPZUMUN0724063

ACTIVITY	DATE	PORT
SALE / PURCHASE CONTRACT B/W SHIPPER & CONSIGNEE	KNOWN TO CONSIGNEE	PORT SUDAN
EMPTY CONTAINER RELEASE TO SHIPPER	25.06.24	PORT SUDAN
EXPORT DECLARATION FILED BY SHIPPER	27.06.24	PORT SUDAN
FOREIGN REMITTANCE RECEIVED BY SHIPPER	KNOWN TO CONSIGNEE	PORT SUDAN
FUMIGATION CERTIFICATE BY MINISTRY OF AGRICULTURE & FOREST DEPT	27.06.24	PORT SUDAN
FULL CONTAINER IN THE PORT	27.06.24	PORT SUDAN
VESSEL SAILING	30.07.24	PORT SUDAN
DISCHARGE DATE - TRANSIHPMENT PORT	01.08.24	JEDDAH
LOAD DATE - TRANSHIPMENT PORT	18.08.24	JEDDAH
DISCHARGE AT DESTINATION	07.09.24	MUNDRA

Yours Faithfully,

Atlantic Shipping Co. LTD.

Atlantic
ATLANTIC SHIPPING CO. LTD.

29/11/24

Further, M/s. Goodrich Logistics Pvt. Ltd. vide e-mail dated 03.12.2024 provided 'Shipment Tracking' details for Bill of Lading No. GLNPZUMUN0724063 showing vessel SIDRA AHLAM/2406 sailed on 30.07.2024. The shipment tracking is reproduced as below:-

SHIPMENT TRACKING

BL NO.	DATE	STATUS	VESSEL	PORT
GLNPZUMUN0624045/GLNPZUMUN0724063		EMPTY TO SHIPPER		
		FULL RECEIVE FROM SHIPPER		
	30 Jul 2024	LOADED ON VESSEL	M/V SIDRA AHLAM / 2406	PORT SUDAN
	30 Jul 2024	VESSEL SAILED	M/V SIDRA AHLAM / 2406	PORT SUDAN
		DISCHARGED FULL TRANSHIP	SSF DYNAMIC 0074	Jeddah
	18 Aug 2024	LOADED ON VESSEL	SSF DYNAMIC 0074	Jeddah
		VESSEL SAILED	SSF DYNAMIC - 075W	
	7 Sep 2024	VESSEL ETA	SSF DYNAMIC - 075W	MUNDRA

Whereas on perusal of BL no. GLNPZUMUN0724063 dated 30.06.2024 submitted during filing of subject Bill of Entry no. 5470688 dated 06.09.2024 shows goods shipped from port Sudan via vessel SIDRA AHLAM/2406 on 30.06.2024.

Accordingly, the contradictory facts demonstrate that the Bill of Lading (BL) was manipulated/forged to clear the restricted goods.

15.2.4 In view of above, as per tracking details downloaded from official site of M/s Goodrich Logistics and tracking details provided by M/s. Goodrich Logistics vide letter dated 29.11.2024 and email dated 03.12.2024, it is established that the goods of the subject Bill of Entry no. 5470688 dated 06.09.2024 having BL No. GLNPZUMUN0724063 was shipped from port Sudan on 30.07.2024. Thus, it is evident that the shipment in question, imported by M/s. Pragati International was shipped after the prescribed cut-off of 30.06.2024.

It established that BL no. GLNPZUMUN0724063 dated 30.06.2024 was manipulated/forged by falsely indicating a 'Shipped On Board' date prior to June 30, 2024 in order to facilitate the clearance of 'Restricted' goods.

15.3 I also find that during investigation, statement were recorded by DRI and the bill of lading No. GLNPZUMUN0724063 dated 30.06.2024 and tracking details of BL no. GLNPZUMUN0724063 dated 30.06.2024 downloaded from the official website of M/s Goodrich Logistics and tracking details submitted by M/s Goodrich Logistics (as discussed above) were presented to (i) Shri Surya Prakash Mishra, Branch Manager of M/s Goodrich Logistics Private Limited, after analyzing he admitted in his statement that shipped on board date has been manipulated in BL in order to satisfy the conditions prescribed under Notification No. 05/2023 dated 05.04.2024 issued by DGFT.

Ongoing through the entire documentary trail—including email

correspondences, tracking details and statements, I find that the BL was manufactured subsequently to misrepresent the original shipping date and acted in concert to suppress the actual shipping details and submitted manipulated documents before Customs.

Accordingly, I find that the goods covered under Bill of Entry no. 5470688 dated 06.09.2024 were shipped on 30.07.2024, after the time limit prescribed under DGFT Notification No. 05/2023 i.e. 30.06.2024.

In view of above, it is established that details in Bill of lading no. GLNPZUMUN0724063 dated 30.06.2024 has been manipulated/forged in order to facilitate the clearance of restricted goods by falsely claiming eligibility period as stipulated in Notification No. 05/2023 dated 05.04.2024 issued by DGFT.

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

i. The Hon'ble Supreme Court in the case of **Romesh Chandra Mehta**[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".*

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

15.6 <u>Cross Examination sought by the Noticees:</u>

(i) I also find that:-

(a) M/s. Pragati International (Noticee no. 1) in their submission, have requested for cross-examination of Shri Surya Prakash Mishra, Branch Manager of M/s Goodrich Logistics Pvt. Ltd and

(b) M/s. Goodrich Logistics (Noticee no. 2) in their submission, have requested for cross-examination of witnesses/ representatives of the importer and the vessel operator or their agent.

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

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

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

records seized (Para 9)

e. Similarly in **A.L Jalauddin v/s Enforcement Director reported as 2010(261)ELT 84 (mad) HC** the Hon High court held that; ".....Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons: We may refer to the following paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kanungo & Co. v. Collector, Customs, Calcutta)".

f. **In the case of *Patel Engg. Ltd. vs UOI* reported in 2014 (307) ELT 862 (Bom.) Hon'ble Bombay High Court has held that;**

g. "Adjudication — Cross-examination — Denial of—held does not amount to violation of principles of natural justice in every case, instead it depends on the particular facts and circumstances — Thus, right of cross-examination cannot be asserted in all inquiries and which rule or principle of natural justice must be followed depends upon several factors — Further, even if cross-examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated." [para 23]

h. **In the case of *Suman Silk Mills Pvt. Ltd. Vs. Commissioner of Customs & C.Ex., Baroda* [2002 (142) E.L.T. 640 (Tri.-Mumbai)], Tribunal observed at Para 17 that—**

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

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

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

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

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

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

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

a deliberate attempt to facilitate the customs clearance of restricted goods unlawfully.

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

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

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

15.10 I find that the Show Cause Notices propose confiscation of goods under

the provisions of Section 111 (d), 111(m) and 111(o) of the Customs Act, 1962. Provisions of Sections are re-produced herein below:

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

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

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

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

In view of the facts and evidence discussed above, I find 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". All consignments of Watermelon Seeds which have shipped on board before 01.07.2024 can be imported in India on 'Actual User' basis to processors of Melon Seeds having a valid FSSAI Manufacturing License in line FSSAI Order dated 15.03.2024. However, as established in the preceding paras, M/s. Pragati International, illegally imported Watermelon Seeds under Bill of Entry No. 5470688 dated 06.09.2024, in violation of Notification No. 05/2023. The investigation conclusively proved that the goods were shipped on board on 30th July 2024 i.e. beyond the permissible date of 30th June 2024 using a forged Bill of Lading. Furthermore, from the investigation carried out, I also find 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 dated 05.04.2024, which rendered the subject goods prohibited, hence, contravened the provisions of Section 46 of the Customs Act, 1962. I find that Bills of lading provided were forged /manipulated to meet the requirement of notification no. 05/2023-Cus dated

05.04.2024. This deliberate manipulation confirms malafide intention of noticee's. Hence, the goods declared as 'Watermelon Seeds' under CTH 12077090 covered under Bill of Entry No. 5470688 dated 06.09.2024 having total quantity 200 MTs and declared assessable value of Rs. 3,85,42,783/- imported by M/s. Pragati International are liable for confiscation. 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.

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

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

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

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

shall be liable, -

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

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

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

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

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

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

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

Roles and culpability of persons/firms involved:

16.1 Role and culpability of M/s. Pragati International:

M/s. Pragati International was well aware of the Import policy and Notification No. 05/2023 dated 5th April, 2024 issued by the DGFT. M/s. Pragati International had imported watermelon seeds under BL No. GLNPZUMUN0724063 in Bill of Entry no. 5470688 dated 06.09.2024, by way of violation of import policy mentioned in Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry. The total quantity of the said goods covered under the subject Bill of Entry is 200 MTs having Assessable value of Rs. 3,85,42,783/-. 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. Pragati International 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. Accordingly, I find that the importer M/s. Pragati International has knowingly and wilfully filed the bill of entry with forged Bill of Lading with the clear intention to import the restricted cargo in direct violation of established regulations. As it is the obligation of the firm to ensure that proper and correct documents are maintained and as forged Bill of Lading was created which constitutes the violation. By manipulating and forging Bills of Lading in collusion with their supplier and shipping line and filing import documents which were false and incorrect in material particulars. Accordingly, it is evident that M/s. Pragati International **knowingly and intentionally made, signed, used and/or caused to be made, signed or used** import documents and related papers that were **false or incorrect in material particulars** for the purpose of illegally importing the subject goods. Therefore, I find that importer is also liable for **penal action under Section 114AA** of the Customs Act, 1962.

16.2 Role and culpability of M/s. Goodrich Logistics Pvt. Ltd.:

The facts and evidence gathered during the investigation, including tracking details of BL No. GLNPZUMUN0724063 available on official website of M/s Goodrich Logistics (https://goodrichlogistics.com/tracking/) shows the POL sailing date is 30th July, 2024. Further, the tracking details submitted by M/s. Goodrich Logistics vide letter dated 29.11.2024 and email dated 03.12.2024 also shows that vessel Sailed on 30.07.2024, however despite knowing the same, Bill of Lading No. GLNPZUMUN0724063 dated 30.06.2024 was issued with wrong Shipped-On-Board date i.e. 30.06.2024. M/s Goodrich Logistics was very well aware of the forging the BL date and submitted forged/manipulated BL for filing of Bill of Entry with intention 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. Despite being cognizant of the restrictions, M/s. Goodrich Logistics Private Limited deliberately concealed the fact that the actual 'Shipped on Board' date was July 30, 2024 for BL No. GLNPZUMUN0724063. M/s. Goodrich Logistics Private Limited through intentional misrepresentation and manipulation of dates, tried to facilitate the clearance of restricted cargo in violation of the established regulations.

I also find that Shri Surya Prakash Mishra, Branch Manager of M/s

Goodrich Logistics Private Limited, admitted in statement under section 108 of the Customs Act, 1962 that the tracking details are correct and actual shipped on board date is 30.07.2024 and Bill of Lading has been wrongly issued with date 30.06.2024 to satisfy the DGFT conditions. The deliberate acts and omissions by M/s Goodrich Logistics Pvt. Ltd. makes them liable for penalties under **Section 112(b)** of the Customs Act, 1962.

It has also been revealed during the investigation that M/s. Goodrich Logistics Pvt. Ltd knowingly and intentionally, made, signed, used and/or caused to be made, signed, or used import documents and related records that were false or incorrect in material particulars, with the clear intention to import the restricted cargo in direct violation of established regulations. The tracking details submitted by M/s. Goodrich Logistics Pvt. Ltd. shows that vessel sailed on 30.07.2024 and despite knowing the same, Bill of Lading No. GLNPZUMUN0724063 dated 30.06.2024 was issued with showing wrong Shipped-On-Board date as 30.06.2024. By manipulating and forging Bills of Lading in collusion with their overseas part and forwarding the forged BLs which were false and incorrect in material particulars. Accordingly, it is evident that M/s. Goodrich Logistics Pvt. Ltd **knowingly and intentionally made, signed, used and/or caused to be made, signed or used** import documents i.e. creation of forged Bills of Lading and related papers that were **false or incorrect in material particulars** for the purpose of illegally importing the subject goods. Therefore, I find that M/s. Goodrich Logistics Pvt. Ltd is also liable for **penal action under Section 114AA** of the Customs Act, 1962.

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

ORDER

i. I order to absolute confiscation of impugned goods i.e.**200 MTS "Watermelon Seeds"** imported vide Bill of Entry no. 5470688 dated 06.09.2024 having value Rs. **3,85,42,783/- (Three Crore Eighty Five Lakh Forty Two Thousand Seven Hundred and Eighty Three only)** under Section 111(d), 111(m) & 111(o) of the Customs Act, 1962.

ii. I impose penalty of Rs. 19,00,000/- (Rupees Nineteen Lakh only) on the importer M/s. Pragati International under Section 112(a)(i) of the Customs Act, 1962.

iii. I refrain from imposing penalty on the importer M/s. Pragati International 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. Pragati International under Section 114AA of the Customs Act, 1962.

v. I impose penalty of Rs. 2,00,000/- (Rupees Two Lakh only) onM/s. Goodrich Logistics Pvt. Ltd. under Section 112 (b) of the Customs Act, 1962.

vi. I impose penalty of Rs. 1,00,000/- (Rupees One Lakh only) on M/s.

Goodrich Logistics Pvt. Ltd. under Section 114AA of the Customs Act, 1962.

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

19. The Show Cause Notice bearing no. GEN/ADJ/ADC/478/2025-Adjn dated 19.02.2025 stands disposed in above terms.

Digitally signed by Dipakbhai Zala
Date: 09-01-2026 17:24:31

Zala Dipakbhai Chimanbhai
ADDITIONAL COMMISSIONER

ADC/JC-III-O/o Pr Commissioner-customs-mundra

-

-

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

List of Noticees

1. M/s. Pragati International (IEC: HVGPK9455R) (Proprietor: Ms. Rashi Khandelwal), G1-148, RIICO Industrial Area, Bassi, Jaipur, Rajasthan - 303301 (e-mail: ***pragatiinternational2020@gmail.com***, ***samethi007@gmail.com***)
2. M/s Goodrich Logistics Pvt. Ltd., Office No. 106, Golden Arcade, Plot No. 141, Sector-8, Gandhidham-370201(e-mail: ***info@goodrichlogistics.com, importigm@goodrichlogistics.com, imports.gandhidham@goodrichlogistics.com***)

Copy to:

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

कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा,
सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS:
CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421.
PHONE : 02838-271426/271163 FAX :02838-271425
E-mail id- adj-mundra@gov.in

DIN: 20260471MO000044104B Date: 16-04-2026

ADDENDUM TO ORDER IN ORIGINAL NO. MCH/ADC/ZDC/533/2025-26 dated 09.01.2026

Subject: Adjudication of Show Cause Notice no. GEN/ADJ/ADC/478/2025-Adjn-O/o Pr Commr-Cus Mundra dated 19.02.2025 issued to M/s. Pragati International (IEC:HVGPK9455R), in the matter of illegal import of Watermelon Seeds by way of violation of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade.

This is in reference to the Order-in-Original no. MCH/ADC/ZDC/533/2025-26 dated 09.01.2026 in the subject matter, wherein the impugned goods i.e. Watermelon Seeds imported by the noticee were ordered to be confiscated absolutely.

2 . Being aggrieved by the above OIO dated 09.01.2026, the noticee filed special civil application no. **3759 of 2026** in the High Court of Gujarat, Ahmedabad. The Hon'ble High Court, vide oral order dated 02.04.2026, directed the respondent, i.e. the undersigned, to pass an appropriate order after considering the judgment passed by the Hon'ble Punjab and Haryana High Court in the case of *Shree Balaji Industries Vs. Additional / Joint Commissioner of Customs, 2024 (387) ELT 294 (P&H) in Civil Writ Petition No. 4108 of 2023 decided on 06.06.2023*, within a period of two weeks. The relevant portion of the order dated 02.04.2026 is re-produced below for reference:

> *"1. At the outset, learned advocates appearing for the respective parties have submitted that the issue is squarely covered in light of the judgment passed by the Punjab and Haryana High Court in the case of Shree Balaji Industries Vs. Additional / Joint Commissioner of*

Customs, 2024 (387) ELT 294 (P&H) in Civil Writ Petition No.4108 of 2023, decided on 06.06.2023.

2. Learned Senior Standing Counsel Mr.Utkarsh Sharma, on instructions, has submitted that an appropriate decision will be taken by the authority after considering the judgment rendered in the case of Shree Balaji Industries (supra) by the Punjab and Haryana High Court.

3. Under the circumstances, we direct the respondents to pass an appropriate order after considering the aforesaid judgment in the case of Shree Balaji Industries (supra), rendered by the Punjab and Haryana High Court, within a period of two weeks.

...”

3. Further, I also note that the Hon’ble Punjab & Haryana High Court, *in the case of* ***Shree Balaji Industries [2024 (387) E.L.T. 294 (P&H.)]*** vide order dated 06.06.2023, has directed to release the watermelon seeds. The relevant portion of that order is reproduced below for reference:

“…

23. In the present case, the Watermelon seeds are restricted goods but they cannot be treated as prohibited goods and in the absence of any permission/authorization for DGFT, provisional release can be done as per the judgment of the Hon'ble Supreme Court passed in Commissioner of Customs's case (supra). Moreover, during the pendency of this writ petition, report from Plant and Quarantine Department has come in favour of the petitioner as regards Watermelon Seeds and in the case of Red Kidney Beans, they have been ordered to be released provisionally subject to conditions as per order dated 23.02.2023 (Annexure P-1). The order with the same conditions can be passed in this case as well as the Watermelon Seeds do not fall under the “prohibited” category and they fall under the “restricted” category as per notifications dated 26.04.2021 and 21.06.2022. The provisional release can be ordered subject to final decision taken by the Adjudicating Authority under Section 105 of the Customs Act, 1962.

24. Keeping in view the above observations, writ petition is allowed and order dated 23.02.2023 (Annexure P-1) is set aside qua Watermelon Seeds with direction to the respondent to pass provisional release order of Watermelon Seeds as per conditions imposed in the

case of "Red Kidney Beans" under order dated 23.02.2023, within a period of one week."

4. **Imposition of Redemption Fine**: Considering the above facts and in compliance of order dated 02.04.2026 of the Hon'ble High Court Gujarat, Ahmedabad, an option is hereby extended to the importer to redeem the goods on payment of redemption fine under the provisions of Section 125(1) of the Customs Act, 1962. Section 125 of the Customs Act, 1962 is reproduced below:

"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."

(2).....

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

4 . 1 Without prejudice, I note that in the case of M/s. Shree Balaji Industries (supra), the adjudicating authority had imposed a redemption fine of approximately 20% of the value of the goods while passing Order No. LDH-CUS-JC-RT-14-2024-25 dated 10.05.2024, that case involved watermelon seeds smuggled under the false declaration of beans. The issue here is related to the violation of the DGFT Notification governing the import of watermelon seeds by producing a forged Bill of Lading but goods were declared correctly as Watermelon seed only. In view of these considerations, I am of the opinion that imposing a 20% redemption fine would be disproportionate in nature. Accordingly, I restrict the redemption fine to approximately 10% of the value of the impugned goods.

5. Thus, I pass the following order:-

ORDER

(i) I order to confiscate the impugned goods i.e. 200 MTS "Watermelon Seed" imported vide Bill of Entry no. 5470688 dated 06.09.2024 having value Rs. 3,85,42,783/- (Rupees Three Crore Eighty Five Lakhs Forty Two Thousand and Seven Hundred Eighty Three Only) under Section 111(d), 111(m) & 111(o) of the Customs Act, 1962. However, in suppression of para 17(i) of the OIO dated 09.01.2026, which ordered for absolute confiscation, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of **Rs. 38,50,000/- (Rupees Thirty Eight Lakh Fifty Thousand Only)** under Section 125 (1) of Customs Act, 1962. Further, in terms of Section 125(3) of the Customs Act, 1962, the option for redemption of the subject goods shall be exercised within a period of one hundred and twenty days from the date of receipt of this order, failing which the said option shall become void, unless an appeal against this order is pending.

Digitally signed by Dipakbhai Zala
Date: 16-04-2026 13:30:43

(Dipak Zala)
Additional Commissioner of Customs,
Custom House, Mundra

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

To,

1. M/s. Pragati International (IEC: HVGPK9455R) (Proprietor: Ms. Rashi Khandelwal), G1-148, RIICO Industrial Area, Bassi, Jaipur, Rajasthan 303301 (e-mail: pragatiinternational2020@gmail.com, samethi007@gmail.com)

2. M/s Goodrich Logistics Pvt. Ltd., Office No. 106, Golden Arcade, Plot No. 141, Sector-8, Gandhidham-370201 (e-mail: info@goodrichlogistics.com, importigm@goodrichlogistics.com, imports.gandhidham@goodrichlogistics.com)

Copy to:

1. The Additional Director General, DRI, Ahmedabad

2. The Additional Director, Directorate of Revenue Intelligence, Regional Unit, Gandhidham (Kutch).

3. The Deputy Commissioner of Customs (RRA/TRC), Mundra Customs House.

4. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra... (with the direction to upload on the official website immediately).

5. Guard File.