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|  | <p>OFFICE OF THE COMMISSIONER</p> <p>CUSTOM HOUSE, KANDLA</p> <p>NEAR BALAJI TEMPLE, NEW KANDLA</p> <p>Phone : 02836-271468/469 Fax: 02836-271467</p> |
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| DIN- 20250771ML000000A9AB | | |
| A | File No. | GEN/ADJ/COMM/270/2024-ADJN-O/o-Commr-Cus-Kandla |
| B | Order-in-Original No. | KND-CUSTM-000-COM-15-2025-26 |
| C | Passed by | M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla. |
| D | Date of Order | 09.07.2025 |
| E | Date of Issue | 14.07.2025 |
| F | SCN No. & Date | GEN/ADJ/COMM/270/2024-ADJN dated 17.07.2024 |
| G | Noticee / Party / Importer / Exporter | M/s. S F Express and others |

1. This Order-in-Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

Customs Excise & ServiceTax Appellate Tribunal, West Zonal Bench,
2ndFloor, Bahumali Bhavan Asarwa,
Nr.Girdhar Nagar Bridge, GirdharNagar, Ahmedabad-380004
3. Appeal shall be filed within three months from the date of communication of this order.
4. Appeal should be accompanied by a fee of Rs.1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/-in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh(Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs(Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
5. The appeal should bear Court Fee Stamp of Rs.5/-under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the CourtFees Act, 1870.
6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.
8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise if penalty alone is in dispute.

BRIEF FACTS OF THE CASE-

Intelligence was received that a SEZ entity operating in KASEZ, M/s. S.F. Express Private Limited, Shed No. 214, Spl. CIB Type, Ground Floor & First Floor, Phase-1, Kandla Special Economic Zone, Gandhidham-370230, Kutch (hereinafter referred to as “M/s SFEPL” for the sake of brevity), had diverted the imported duty-free goods i.e. areca nuts/Betelneuts into Domestic Tariff Area without payment of duty by way of clearance from SEZ under the guise of export to Bangladesh via land route and through Land Customs Station through LCS Mankachar. Intelligence further indicated that M/s. SFEPL had filed 26 Shipping Bill for export of duty-free goods i.e. areca nuts out of India to Bangladesh through LCS Mankachar, however the said areca nut/areca nut had not crossed through LCS Mankachar for Bangladesh and the same had been diverted into Domestic Tariff Area without payment of duty.

M/s SFEPL was issued a Letter of Approval by the Development Commissioner, KASEZ vide F.No. KASEZ/IA/15/2019-20/10980 DATED 23.12.2019 as amended/extended from time to time, to set up a trading activity and warehousing service activity in KASEZ subject to fulfillment of conditions imposed therein and all the rules and regulations related to SEZ/Customs/Foreign Trade are binding on them.

2. Search proceedings at the premises of M/s SFEPL

2.1 Based on the above said intelligence, simultaneous search operations were conducted at the following three different premises of SEZ entity M/s SFEPL in KASEZ, Gandhidham.

- i) M/s SFEPL, Unit No. 207, First Floor, Yamuna SDF Complex, Phase-II, KASEZ, Gandhidham.
- ii) M/s. SF Express Private Limited situated at Shade No.-214, Special C. I. B. Type, Ground & first floor, Phase-1, Kandla SEZ (KASEZ), Gandhidham,
- iii) M/s SFEPL, Room No. 3, Pol. No.3 , Near PP No. H 973,Vill & Post office Bharthal, New Delhi-110061.

Search at premises of M/s SFEPL, Unit No. 207, First Floor, Yamuna SDF Complex, Phase-II, KASEZ, Gandhidham on 29.7.2021

2.2 Search at M/s SFEPL , Unit No. 207, First Floor, Yamuna SDF Complex, Phase-II, KASEZ, Gandhidham was carried out on 29.7.2021 by the officers of DRI, Gandhidham, However, it was learnt that the unit did not exist at the above address and on inquiry with the Customs officers of Kandla, SEZ, Gandhidham, it was informed that M/s SFEPL had surrendered the same premises and their surrender request was approved by Joint Development Commissioner, KASEZ vide letter F.No. KASEZ/EM/I/S-143/877/19-20/5399 Dated 29.12.2020.The above proceedings were reported vide visit note dated.29.7.2021 **(RUD No.- 1).**

Search at the premises of M/s. S F Express Private Limited situated at Shade No.-214, Special C. I. B. Type, Ground & first floor, Phase-1, Kandla SEZ (KASEZ), Gandhidham on 29.7.2021

2.3 Search operation was conducted at the premises of M/s. SF Express Private Limited situated at Shade No.-214, Special C. I. B. Type, Ground & first floor, Phase-1, Kandla SEZ (KASEZ), Gandhidham under Panchnama dated 29.07.2021 **(RUD NO.-2 A).** During the said search operation security guard

namely Shri Loon Singh was found present. It was further found that the go-down on the ground and first floor were locked. On seeing through the window of go-down on ground floor, it was observed that some Jute bags appeared to be stuffed with areca nuts were laid down therein. Further on seeing through the window of go-down on the first floor, it was observed that white colored boxes were laid down therein.

2.3.1 During the said search proceedings a notebook (Dinky was written on cover on the said notebook) **(RUD NO.-2 B)** was recovered. The said notebook contained notings of some truck registration numbers that appeared to have been used for diversion of duty-free areca nuts into domestic tariff area in the past clearances. Further, security guard Shri Loon Singh informed the officers that person namely Shri Rajabhai alias Raja, used to come at the premise to supervise the un-loading and loading of goods from the premise of M/s SFEPL and Shri Rajabhai used to make relevant entries in the said notebook. Upon further scrutiny of the recovered notebook (dinky), it was observed that notebook was containing mobile numbers of the Truck Drivers who appeared to have transported duty-free areca nuts from KASEZ as well as entry with respect to details of some loading/ unloading. Accordingly, the said notebook was withdrawn during the panchnama proceedings.

2.3.2 The telephonic inquiry was done on the mobile numbers figuring in the said recovered Notebook, wherein it was learnt that transporter namely M/s. Vishal Freight Courier, Shop No. 70, Kutch Arcade, Gandhidham was engaged for the purpose of the transportation of betelnut from KASEZ, Gandhidham to Jaipur for M/s. SFEPL.

2.3.3 In absence of availability of any representative of M/s SFEPL and non-availability of keys to unlock the said premises, the said premises was sealed with Customs lacs Seal and the security guard was directed to ensure the intactness of the said sealed premises.

Search at premises of M/s SFEPL Room No. 3, Pol. No.3, Near PP No. H 973, Village & Post office Bharthal, New Delhi-110061 on 29.7.2021

2.4 Search proceeding at M/s SFEPL Room No. 3, Pol. No. 3, Near PP No. H 973, Village & Post office Bharthal, New Delhi-110061 were initiated. However, as reported vide letter F.No. DRI/AZU/GI-01/INT-09/2021 Date 30.7.2021 **(RUD No. 3)** by the Deputy Commissioner of Group-IV, Customs (Preventive), Delhi the address could not be found.

3. Scrutiny of documents received from Deputy Commissioner, KASEZ:

In response to the communication issued from DRI Ahmedbad office for want of documents related to the past trade activities of the SEZ entity M/s. SFEPL , Deputy Commissioner of Customs, KASEZ, Gandhidham forwarded the documents (Import/Export) filed by by M/s SFEPL , KASEZ, for the month of June-21 to July-21 (Vide letter F.No. KASEZ/Cus/P&I/03/2021-22 Dated 6.8.2021) **(RUD No.- 4)**. From the said document, it was revealed that for export of areca nuts to Bangladesh, M/s. SFEPL had filed 26 Shipping Bill for export of duty-free goods i.e. areca nuts out of India to Bangladesh through LCS Mankachar. The details of the said 26 Shipping Bills of Export as well as the details of Vehicle used for transporting the said areca/areca nuts from KASEZ to Bangladesh available on the said Shipping Bills are as under: -

Table-A

| Sr.No. | Bill of Export | Date | Vehicle No. |
|--------|----------------|-----------|-------------|
| 1 | 4009268 | 9.6.2021 | HR46B6220 |
| 2 | 4009286 | 9.6.2021 | HR47C7118 |
| 3 | 4009403 | 11.6.2021 | RJ09GB7934 |
| 4 | 4009404 | 11.6.2021 | GJ12BX4226 |
| 5 | 4009405 | 11.6.2021 | GJ12DX1589 |
| 6 | 4009422 | 11.6.2021 | RJ10GB1659 |
| 7 | 4009423 | 11.6.2021 | HR55P9734 |
| 8 | 4009470 | 12.6.2021 | RJ14GJ2245 |
| 9 | 4009478 | 12.6.2021 | RJ47GA4310 |
| 10 | 4009484 | 12.6.2021 | HR47B5502 |
| 11 | 4009501 | 12.6.2021 | NL02N8307 |
| 12 | 4009509 | 12.6.2021 | RJ52GA4653 |
| 13 | 4009538 | 14.6.2021 | RJ47GA4317 |
| 14 | 4009539 | 14.6.2021 | RJ47GA4428 |
| 15 | 4009568 | 14.6.2021 | RJ09GB7938 |
| 16 | 4009569 | 14.6.2021 | HR55S4476 |
| 17 | 4009971 | 21.6.2021 | RJ47GA4226 |
| 18 | 4009972 | 21.6.2021 | RJ47GA4425 |
| 19 | 4009973 | 21.6.2021 | RJ14GG6941 |
| 20 | 4009997 | 21.6.2021 | RJ47GA4315 |
| 21 | 4009998 | 21.6.2021 | RJ47GA4309 |
| 22 | 4011020 | 8.7.2021 | RJ47GA4315 |
| 23 | 4011040 | 8.7.2021 | HR58B9922 |
| 24 | 4011041 | 8.7.2021 | HR66A6571 |
| 25 | 4011044 | 8.7.2021 | RJ14GH2955 |
| 26 | 4011049 | 9.7.2021 | HR63C1038 |

4. Communication with LCS Mankachar Customs Authority:

4.1 A letter F. No. DRI/AZU/GI-01/INT-09/2021 dated 29.7.2021 (**RUD NO.-5**) was issued to the Additional Commissioner of Customs, Customs (Preventive), North Eastern Region, Shillong to confirm if the truck Numbers mentioned in the above referred Table-A of Para-3 had passed through Mankachar LCS or through any other LCS. Further, vide Letter F. No. DRI/AZU/GI-01/INT-09/2021 dated. 9.8.2021 (**RUD NO.-6**) the Assistant Commissioner, Customs, Division-Dhubri, Boro Bazar, Dhubri-Assam-783301 was requested to inform whether goods exported vide 26 bills of Export in question were crossed through LCS Mankachar or otherwise. Further, if not through Mankachar or any LCS under the jurisdiction of Shillong Customs

(Preventive), then put the said consignment on hold for further verification or examination in the presence of the officer of DRI.

4.2 A reminder letter F. No. DRI/AZU/GI-02/Enq-32(Int-09)/2021 Dated 6.9.2021 was sent to the Additional Commissioner, Customs (Preventive), North Eastern Region, Shillong to provide the information/details whether goods export/thoka number/shipping bill No. mentioned in this office letter dated. 29.7.2021 were crossed or not.

4.3 Deputy Commissioner, Customs (Preventive), Shillong vide letter dated 18.08.2021 **(RUD NO.-7)** informed that vehicles (Details given in Column No. 4 of Table-A given in above Para-3) did not cross through LCS Mankachar. Further vide letter dated 17.12.2021 **(RUD NO.-8)** Deputy Commissioner, Customs (Preventive), Shillong informed that there had been no export by M/s. SFEPL neither through Mankachar LCS nor through any other LCSs under jurisdiction of Shillong Customs (Prev) Commissionerate.

5. Investigation related to transporters involved in the transport for M/s SFEPL:

5.1 Investigation against M/s. Vishal Freight Courier:

5.1.1 Based on recovered notebook and further telephonic inquiry with one of the mobile numbers mentioned in the notebook, investigation was extended to M/s. Vishal Freight Courier, Shop No. 70, Kutch Arcade, Gandhidham to gather evidence regarding possible diversion of the SEZ goods to DTA area. A summons was issued to the Shri Krishan Kumar Sharma, Proprietor of M/s Vishal Freight Courier. Statement of Shri Krishan Kumar Sharma, Proprietor of M/s Vishal Freight Courier was recorded on 05.08.2021 **(RUD NO.-9)** under Section 108 of Customs Act, 1962, wherein he inter-alia stated that;

- M/s. Vishal Freight Carrier had transported 26 consignments of areca nuts of M/s. SFEPL from KASEZ to Jaipur,
- Shri Rupesh Natwarlal Jadwani, Proprietor of M/s Leading Logistics (Mob No.-9099588811), met him in month of June 2021 and asked for transportation of goods of M/s. SFEPL, KASEZ all over India; Shri Rupesh introduced him to Shri Ziyabhai (Mob. No.-9716664598 & 971588593017) & Shri Rajabhai (Mob. -9054323751), who introduced themselves as employees of M/s. SFEPL, KASEZ,
- Shri Ziyabhai had told him that they wanted to transport areca nuts of M/s. SFEPL from KASEZ to Bangladesh; M/s. Vishal Freight Carrier had to prepare Lorry receipt from KASEZ to Mongla (Bangladesh), however, they had to transport the said areca nuts from KASEZ to Jaipur only and from Jaipur they would transfer the said areca nuts into different trucks; accepted the proposal of Shri Ziyabhai in lure of getting more business from Shri Ziyabhai.
- M/s. Vishal Freight Carrier had transported 26 consignments of areca nut/areca nuts of M/s. SFEPL, KASEZ through 26 hired trucks to Jaipur, but destination was mentioned as Mongla (Bangladesh) in the Lorry Receipt.
- Shri Krishan Kumar Sharma gave the Lorry Receipt Book/Bilty Book to Shri Rupesh for preparing Lorry Receipt for the transportation of said areca nuts of M/s. SFEPL, KASEZ and as per their agreement with Shri Ziyabhai, Shri Rupesh or Shri Ziyabhai mentioned the

destination as Mongla (Bangladesh) in the Lorry Receipt; sometimes they used to prepare Lorry Receipt in their office situated at Shop No. 70, Kutch Arcade, NH-08, Gandhidham-370201 also.

- Shri Krishan Kumar Sharma also furnished the details of trucks hired for the said transportation of areca nuts for M/s SFEPL.
- Shri Krishan Kumar Sharma also shared the details of trucks he had hired for transportation of areca nuts for M/s SFEPL, KASEZ. Also voluntarily produced the 3 Lorry Receipt Books containing copies of Lorry Receipts No. 1458-1462, 2094-2095, 2152-2156, 2158-2166 in respect of transportation of areca nuts from KASEZ, Gandhidham to Jaipur in respect to 21 trucks.
- Shri Krishan Kumar Sharma didn't have the Lorry receipt w.r.t. 05 consignments/trucks as they might be prepared from one of the Lorry Receipt books which he had given to Shri Rupesh for preparing L.R.,
- Shri Krishan Kumar Sharma also produced a Register viz. Account Book bearing page no. 01 to 205 containing transportation details viz. date, truck no., loaded from, delivered at, driver mobile No. etc. for further inquiry.
- Transportation charges of Rs 62,000/- per truck were fixed with Shri Ziyabhai and out of 16 lakhs, till now he had received Rs. 5,00,000/- in cash, which was received as advance payment for fuel.
- On being asked about the place at where the betelnuts were transferred from his trucks to another trucks at Jaipur, he stated that Shri Rupesh had given him number of Shri Satish (Mob: 9958078505) who had to take the delivery of the aforesaid transported areca nuts in Jaipur and to transport them in other trucks and conveyed the address as Plot No. 68, Pratap Nagar Vishtar, VKIA Road no.-5, Jaipur,
- Shri Ziyabhai had given the details of the mobile number of Shri Satish and address@ Jaipur to Shri Rupesh,
- As confirmed by their drivers, the areca nuts were transferred at roadside areas.

5.1.2 From the recording of the statement of Shri Krishan Kumar Sharma, Proprietor of M/s Vishal Freight Courier, following evidence were gathered.

- Role of Shri Rupesh Natwarlals Jadwani, Proprietor of M/s Leading Logistics, Gandhidham for fixing a meeting of Shri Krishan Kumar Sharma, Proprietor of M/s Vishal Freight Courier with Shri Ziyabhai of M/s SFEPL.
- Role of Shri Satish, Shri Ziyabhai & Shri Rajabhai;
- Details about the address/place of transfer of betelnut from one truck to another at Jaipur i.e. Plot No. 68, Pratap Nagar Vishtar, VKIA Road no.-5, Jaipur, were revealed.
- Further, from the LR books produced by Shri Krishan Kumar Sharma, Proprietor of M/s Vishal Freight Courier, it is revealed that the consignee was shown as Tirupati Industries Limited, Mongla Export Processing Zone and goods i.e. Areca Nuts were shown transported from Gandhidham to Mongla.

5.2 Investigation against M/s Leading Logistics:

5.2.1 Statement of Shri Rupesh Natwarlal Jadwani, Proprietor of M/s Leading

Logistics, was recorded on 05.08.2021 (**RUD NO.-10**) under Section 108 of Customs Act, 1962, wherein he inter-alia stated that:

- He met Ziya Hussein Faisal, in the first week of June 2021, who introduced him as Manager of M/s. SF Express Pvt. Ltd. at Kandla Special Economic Zone.
- Shri Ziya Hussein informed to him that he required 5 trucks daily.
- As the finance needed to supply 5 trucks were beyond his capacity, Shri Rupesh introduced Shri Ziya H. Faisal to Shri Krishankumar Sharma, prop. of M/s. Vishal Freight Carrier and managed to fix a meeting between Shri Ziya and Shri Krishna kumar.
- During the said meeting, Shri Ziya Hussein Faisal informed to the Krishna kumar that for the first consignment he will require 5 trucks daily and almost 50 trucks will be needed within 15-20 days to transport 'Supari'.
- Shri Ziya H. Faisal further informed that documents i.e. Invoice, packing list of first consignment will be for Bangladesh and goods will be loaded from SF Express Pvt. Ltd., KASEZ, for transporting upto Jaipur and goods will be transferred to another vehicle at Jaipur.
- Shri Ziya Faisal informed Shri Krishankumar that he had to prepare Lorry receipt from KASEZ to Mongla, Bangladesh whereas transportation of imported would be done by Krishankumar till Jaipur only. Shri Krishnankumar accepted his proposal.
- Shri Ziya Faisal introduce to him (Shri Rupesh) and Shri Krishankumar with Shri Rajabhai;
- Shri Krishna kumar accepted the proposal of Shri Ziyabhai as Shri Ziyabhai informed Shri Krishnan Kumar that he would give more business to him.
- During the said meeting, his (Shri Rupesh) commission amount was fixed at Rs. 1000/- per truck and the same had to be given by Shri Krishna Kumar Sharma.
- He got a call from Shri Ziya Bhai that he needed LR book. Accordingly, He collected the LR book from Shri Krishnan Kumar Sharma and had further handed over the Lorry Book to Rajabhai at KASEZ gate and in this way LRs were prepared by Rajabhai at SF Express, KASEZ.
- His role was to communicate between Ziyabhai/Rajabhai and Shri Krishan Kumar Sharma for movement of trucks since pre-arrival of empty truck at SF Express to unloading of the goods from their transport truck to some other transport truck/vehicle at Jaipur,
- Total 26 trucks were used for the transportation of imported goods from KASEZ TO Jaipur in the name of M/s Vishal Freight Carrier; in all the 26 LRS w.r.t. to transportation done by M/s Vishal Freight Carrier from M/s SFEPL till Jaipur the destination was mentioned as Mongla, Bangladesh.
- Shri Ziyabhai gave him mobile number 9958078505 of Shri Satish, with an address as "Plot No. 68, Pratap nagar Vistar, Murlipura, Jaipur (near transport nagar)" which was given/intimated by him to the truck drivers for crossing of goods at Jaipur.
- He received Rs. 7000/- towards his commission.

5.3 Search proceedings at Pratap Nagar Vistar, VKIA, Road No. 05,

Jaipur-302013:

5.3.1 Search operation was conducted by officers of DRI, Jaipur at premises situated at Pratap Nagar Vistar, VKIA, Road No. 05, Jaipur-302013 under panchnama dated 09.08.2021(**RUD NO.-11-A**). It was revealed that the said premises was belonging to M/s Raipur Orissa Transport Company and proprietor was Shri Ranveer Singh Ramnath Jat. During said search proceeding some copies of LR and E-way Bill (**RUD NO.-11-B**) were recovered and withdrawn for further investigation.

Upon going throught the said E-Way bills and LR , it was observed that consignee name was shown as M/s Sai International, H. No. 288, W. No. 36, Crodak Road, Itwari, Nagpur-440002, where as in some E-way bill and LR, Consignor name and address was shown as M/s Blue gold International, Office No. RZ-D-60, syndicate Enclave, Raghu Nagar, South West Delhi-07 and other it was shown as M/s B & H Overseas, Plot No. 64, Ground Floor, Pole No. 75-A,Raghu Nagar, Dabari, South West Delhi-111045.Further the Goods movement were shown from Delhi to Nagpur.

5.3.2 During the recording of his Statement under Section 108 of the Customs Act, 1962 on dated. 9.8.2021(**RUD NO.-12**), Shri Ranveer Singh Ramnath Jat proprietor of M/s Raipur Orissa Transport Company inter-alia stated that:

- M/s. Jai Balaji Roadways (Regd.) (Mob: 9810116638), situated at BG-354, Sanjay Gandhi Transport Nagar, Delhi-42 informed him that one person namely Shri Satish had to transport areca nuts to Nagpur,
- Shri Satish/Sateesh (mobile number 9958078405) came to his transport company office and informed that he had to send supari to Nagpur and asked him for a truck; Satish ordered/called up 14 trucks of areca nut from Gandhidham and when those trucks reached Jaipur, all the goods (areca nut) from those trucks were shifted to the trucks given by him(Shri Ranveer Singh) in front of his office in presence of Shri Sateesh/Satish; all the areca nuts were delivered to Nagpur by the trucks given by him, and the person to whom he got the delivery of areca nut, that person's mobile number was 8080801986,
- His work was only to provide trucks and he used to get commission of Rs. 1000/-
- Also shared the details of 12 trucks in which betelnuts unloaded from the trucks came from Gandhidham were sent from Jaipur to Nagpur.

| Sr. No. | Details of Trucks by which areca nuts were transported from Jaipur to Nagpur |
|---------|--|
| 1. | RJ 32 GC 6081 |
| 2. | RJ 02 GB 2087 |
| 3. | RJ 18 GA8081 |
| 4. | RJ 18 GB 6546 |
| 5. | RJ 14 GB 0673 |
| 6. | RJ 17 GA 4496 |
| 7. | MH 40 AK 8547 |
| 8. | RJ 18 GA 4625 |
| 9. | RJ 14 GJ 9234 |

| | |
|-----|---------------|
| 10. | RJ 14 GK 7243 |
| 11. | RJ 14 GH 6253 |
| 12. | RJ 14 GH 5353 |

- Also submitted weighment slip of the trucks of the date on which the goods were sent to Nagpur;
- Shri Satish prepared the transport related documents such as tax invoice, e-Way bill, etc in Delhi and the same were sent to him by the owner of M/s Jai Balaji Roadways.
- The areca nuts were transported from Jaipur to Nagpur, however the LRs prepared by M/s Jai Balaji Roadways mentioned the transportation from Delhi to Nagpur.
- After deducting 15-20% of the amount fixed for said transportation, the amount was directly transferred to the respective truck owners from M/s Jai Balaji Roadway and the remaining amount was transferred from his bank account by M/s Jai Balaji Roadway.

5.3.3 From the search proceedings at premise of M/s Raipur Orissa Transport Company and statement recording of Shri Ranveer Singh Ramnath Jat proprietor of M/s Raipur Orissa Transport Company it was revealed that.

- Role of Shri Jai Balaji Roadways, Delhi in transport of diverted areca nuts of M/s SFEPL, KASEZ was revealed.
- It also led to recovery of the address details of the three related firms i.e.1.M/s Blue gold International, Office No. RA-D-60, syndicate Enclave, Raghu Nagar, South West Delhi-07, 2.M/s B & H Overseas, Plot No. 64, Ground Floor, Pole No. 75-A, Raghu Nagar, Dabari, Southwest Delhi-111045 & 3. M/s Sai International, H. No. 288, W. No. 36, Crodak Road, Itwari, Nagpur-440002.
- Accordingly, the investigation was further extended to gather evidence from these premises.

5.4: Investigation against M/s. Jai Balaji Roadways and 3 related firms:

5.4.1 Search operation was conducted at premises of M/s. Jai Balaji Roadways (Regd.), situated at BG-354, Sanjay Gandhi Transport Nagar, Delhi-42 under panchnama proceedings dated 17.08.2021 (**RUD NO.-13**), wherein Shri Ashish Goel, Manager of M/s Jai Balaji Roadways remained presence during the whole search proceedings and documents relevant to the investigation were resumed.

5.4.2 Statement of Shri Ashish Goel, Manager of M/s. Jai Balaji Roadways (Regd.), was recorded on 01.10.2021 (**RUD NO.-14**) under Section 108 of the Customs Act, 1962, he inter alia stated that:

- he was working as a manager in transport company namely M/s. Jai Balaji Roadways (Regd.), BG-354, Sanjay Gandhi Transport Nagar, New Delhi-110042
- M/s. Jai Balaji Roadways had provided transportation service for transport of Areca nuts from Jaipur to Nagpur wherein Consignor's name were M/s. B & H Overseas, Plot No.75-A, Raghu Nagar, Dadri, South West Delhi-110045 & M/s. Blue Gold International, RZ-D-60, Syndicate Raghu Nagar, South West Delhi-110045 and

consignee's name was M/s. Sai International, Crodak Road, Itawari, Nagpur-440002 in month of June 2021; one person namely Shri Ankur (Mob. No. 9354524221) called him on around 10 June 2021 and enquired about freight charges for transportation of their goods from Jaipur to Nagpur and

- Shri Ashish quoted Rs. 42,000/- or 44,000/- per truck for goods quantity of 16 MT and further informed that they were Delhi based transporter, hence freight charges would be as transportation from Delhi to Nagpur viz. Rs. 42,000/- or 44,000/- and the same would vary as per weight of the goods to be transported to Nagpur; Shri Ankur agreed on the said freight charges though the transportation was from Jaipur to Nagpur and asked to provide trucks for the transportation of Areca Nuts from Jaipur to Nagpur on 13.06.2021. Further, Shri Ankur also provided Shri Ashish a mobile number-9958078405 of one person namely Shri Satish/Sateesh and told that Shri Satish/Sateesh would be present during loading of areca nuts at Jaipur & asked to provide Lorry Receipt issued by M/s. Jai Balaji Roadways to Shri Satish on whatsapp; Shri Ankur also told him that e-way bills & Tax Invoices would be given by Shri Satish to truck drivers at Jaipur at the time of loading.
- For the said transportation from Jaipur to Nagpur he (Shri Ashish) contacted one person namely Shri Ranveer Choudhary (Mob. No. 9413340481) of one Jaipur based transporter namely M/s. Raipur Orissa Transport, Pratap Nagar Vistaar, Jaipur and asked him to provide one truck for aforesaid transportation from Jaipur to Nagpur; he agreed for the same.
- On 13.06.2021, as per request of Shri Ankur one truck bearing No. RJ02GB2087 was provided by Shri Ranveer Choudhary of M/s. Raipur Orissa Transport for loading of areca nuts from one another truck bearing no. HR47C7118 and the same had been done in morning of 13.06.2021; after loading Shri Ankur requested him to prepare Lorry Receipt by showing transportation of areca nuts from Delhi to Nagpur instead of Jaipur to Nagpur; as they were charging freight as transportation from Delhi to Nagpur, hence, he accepted Ankur's request and prepared Lorry Receipt showing transportation from Delhi to Nagpur instead of Jaipur to Nagpur, but actually transportation was done from Jaipur to Nagpur; for preparing Lorry Receipt, Shri Satish used to send E-Way bills & Tax Invoices to him on his Whatsapp number 9810116638 and accordingly he used to prepare Lorry Receipt; then he used to send the said Lorry Receipt to Shri Satish/Sateesh or Shri Ranveer Choudhary; Shri Satish/Sateesh asked him for one more truck for transportation of areca nuts from Jaipur to Nagpur on the same day i.e. 13.06.2021; accordingly, as per his direction, Shri Ranveer Choudhary of M/s. Raipur Orissa Transport provided one more truck bearing no. RJ32GC6081 to Shri Satish and areca nuts were transferred from one truck bearing no. HR46D6220 on 13.06.2021; transportation was shown as from Delhi to Nagpur; Further both trucks RJ02GB2087 & RJ32GC6081 left for Nagpur in night of 13.06.2021.
- the said transfer of areca nuts from one truck to another happened in front of premises of M/s. Raipur Orissa Transport, Plot No.- 66, Pratap Nagar Vistaar, VKI, Road No.-05, Jaipur-302013; till date on

behalf of M/s. Jai Balaji Roadways, Shri Ranveer Choudhary of M/s. Raipur Orissa Transport provided total 12 trucks to Shri Satish/Shri Ankur in the month of June 2021; he was mainly in contact with Shri Ankur for the aforesaid transportation of areca nuts from Jaipur to Nagpur till 13.06.2021; after that he was in contact mainly with Shri Satish for loading of aforesaid areca nuts at Jaipur and used to receive Tax Invoices & E-way bills from him and accordingly prepared Lorry Receipt and then sent the same to Shri Satish or Shri Ranveer Choudhary; sometimes he contacted Shri Ankur regarding payment of freight.

- Shri Satish/Sateesh used to get mobile numbers of truck drivers provided by M/s. Raipur Orissa Transport on behalf of M/s. Jai Balaji Roadways and accordingly Shri Satish/Sateesh was in touch with drivers for delivery at Nagpur;he came to know from Shri Satish/Sateesh that when the trucks were about to reach Nagpur, one person who would take delivery of aforesaid areca nuts at Nagpur would contact the drivers regarding place where the delivery would take place; he didn't have the mobile number of the said person at Nagpur; he was also in contact with drivers and used to ask regarding delivery at Nagpur; he didn't know the address where the aforesaid areca nuts were delivered, but as per direction of the person at Nagpur, drivers delivered at somewhere at Nagpur probably in market area;
- Also shared the details of 12 Trucks provided by M/s. Raipur Orissa Transport on behalf of M/s. Jai Balaji Roadways.
- In for the all the 12 Trucks, Lorry Receipt were issued by M/s. Jai Balaji Roadways; in all Lorry Receipts the transportation was shown as from Delhi to Nagpur, but transportation was done from Jaipur to Nagpur
- Also produced a consolidated sheet bearing page 01 to 01 containing Lorry Receipt Details viz. LR No. & date, Consignor & Consignee name, truck number, no. of bags of areca nuts, from-to etc.
- Payment of freight charges in respect of aforesaid transportation of areca nuts were received into bank account of M/s. Jai Balaji Roadways maintained with HDFC Bank, Rohini Sector 11 branch Account No. 50200022964862 by way of NEFT transfer; he gave below the details of the payment received.

| Sr. No. | Date | Narration/particulars | Amount deposited (Rs.) | Name of the bank from which NEFT transfer made |
|---------|----------|--|------------------------|--|
| 1 | 25.06.21 | UPI MR. RANJIT-RANJEETSINGH2005-3@OK.AXIS-BDBL0001779-117614393058-UPI | 20,000 | Bandhan Bank |
| 2 | 25.06.21 | NEFT CE-IBKL NEFT 01-S-JAI BALAJI ROADWAYS REGD-0625126878995501 | 4,00,000 | IDBI Bank |

| | | | | |
|---|----------|---|----------|-----------|
| 3 | 04.07.21 | NEFT-CR-UTIB0001789-SIVAMKARI INTERNATIONAL PVT LTD -JAI BALAJI ROADWAYS REGD-AX IC211843713327 | 2,90,000 | AXIS BANK |
| | | TOTAL | 7,10,000 | |

- They billed M/s. B&H Overseas and M/s. Blue Gold International for a total amount of Rs. 7,10,000/- towards transportation charges, labour charges etc. However, during panchnama dated 17.08.2021 the amount had been wrongly mentioned as Rs. 7,36,800/- as payment received; in the case of M/s. B& H Overseas they raised bills for the total amount of Rs. 3,36,800/- and in the case of M/s. Blue Gold International they had raised bills for a total amount of Rs.3,73,200/-; the payment received into their bank account on behalf of M/s. Blue Gold International was Rs. 4,00,000/- i.e. excess payment of Rs. 26,800/-; whereas, the payment received into their bank account on behalf of M/s. B & H Overseas was only Rs.3,10,000/- i.e. short payment of Rs.26,800/- ; So in their ledger account they had shown the excess payment received from M/s. Blue Gold International towards adjustment of the short payment received from M/s. B&H Overseas; during the course of panchnama dated 17.08.2021 the total of debit/credit of both the companies were added and shown as Rs. 7,36,800/-; he confirmed that they had billed and received only an amount of Rs. 7,10,000/- towards transportation charges; in respect of both companies, for payment he was in contact with Shri Ankur only; Shri Ankur informed him that the goods in the name of both the above firms belongs to them; they were not in contact with any other person of both the above firms viz. M/s. B& H Overseas and M/s. Blue Gold International, other than Shri Ankur and Shri Satish/Sateesh.
- for payment to M/s. Raipur Orissa Transport towards the aforesaid 12 trucks provided by them, Rs. 2,58,800/- out of total payable amount Rs. 6,87,300/- was transferred to M/s. Raipur Orissa Transport's account and the remaining amount of Rs. 4,28,500/- were transferred directly in bank account of truck's owner from aforesaid HDFC Bank Account No. 5020002296486 of M/s. Jai Balaji Roadways through NEFT; bank account statement of M/s. Jai Balaji Roadways and ledgers account details in respect of aforesaid payment received from M/s. Blue Gold International & M/s. B& H Overseas and payment made by M/s. Jai Balaji Roadways to M/s. Raipur Orissa Transport & owner's of trucks, had already been submitted by them under panchnama dated 17.08.2021 drawn at office premises of M/s. Jai Balaji Roadways (Regd.), situated at BG-354, Sanjay Gandhi Transport Nagar, New Delhi-110042; he produced a consolidated sheet bearing page 01 to 01 containing details of payment made by M/s. Jai Balaji Roadways to M/s. Raipur Orissa Transport & owner of trucks or account no. provided by truck owners with his dated signature;
- He produced a set of documents bearing page no. 01 to 30 relating to the aforesaid 12 trucks provided by M/s. Raipur Orissa Transport on behalf of M/s. Jai Balaji Roadways; the same were

received from Shri Ranveer Choudhary of M/s. Raipur Orissa Transport.

5.4.3 Search proceedings was conducted at M/s Blue gold International, Office No. RA-D-60, syndicate Enclave, Raghu Nagar, South West Delhi-07 by the officer of DRI, Delhi Zonal Unit and as reported by the Assistant Director, DRU, DZU vide letter F.No. DRI/DZU/25/37/2020/followup dated 18.8.2021 (**RUD No. 15**) , it was a residential premises where no such firm was existing and the residents were not connected with firm.

5.4.4 Search was conducted at M/s B & H Overseas, Plot No. 64, Ground Floor, Pole No. 75-A, Raghu Nagar, Dabari, Southwest Delhi-111045 by the officer of DRI, Delhi Zonal Unit, and as reported by the Assistant Director, DRU, DZU vide letter F.No. DRI/DZU/25/37/2020/followup dated 18.8.2021, address was found to be incomplete and incorrect as no Pole No. 75-A was found to be there in the area.

5.4.5 Vide letter dated. 12.8.2021, letter was sent to DD, DRI, Nagpur, to conduct Search at M/s Sai International, H.No. 288, W.No. 36, Crodak Road, Itwari, Nagpur, Maharashtra-440002. As reported vide letter F. No. DRI/MZU/NRU/Misc.Enq-01/2018/179 dated 13.8.2021 Deputy Director, Nagpur (**RUD No.-16**) the premise was not located as the address was not complete.

5.4.6 During the above said proceedings, it was revealed that

- firm namely M/s Blue gold International, Office No. RA-D-60, syndicate Enclave, Raghu Nagar, South West Delhi-07, M/s B & H Overseas, Plot No. 64, Ground Floor, Pole No. 75-A, Raghu Nagar, Dabari, South West Delhi-111045 & M/s Sai International, H.No. 288, W.No. 36, Crodak Road, Itwari, Nagpur, Maharashtra-440002 were not in existence and merely created upon paper to misled the investigation, if any undertaken.
- Further, it was revealed that M/s Jai Balaji Roadways had raised bill to M/s. B&H Overseas and M/s. Blue Gold International for a total amount of Rs. 7,10,000/- towards transportation charges, labour charges etc and received the payment in their HDFC Bank Account No. 50200022964862.
- Further, the role of one person named Shri Ankur was revealed. Accordingly, the investigation was further extended with the Bank Authority as well as evidence gathering from Shri Ankur.

5.5 Financial Investigation related M/s Jai Balaji Roadways, Delhi:

5.5.1 Vide Letter Dated. 7.10.2021 (**RUD No.-17**), HDFC Bank, Branch-Rohini Sector-11, New Delhi, was requested to provide the Details viz. Details of the Bank Accounts/Branch from which payment of Rs. 20,000/-, 4,00,000/- & Rs. 2,90,000/- were received in HDFC Bank Account No. 50200022964862 belonging to M/s Jai Balaji Roadways.

5.5.2 Vide letter dated. 7.10.2021(**RUD No.18**), Axis bank was requested to provide the details viz. Account Opening Form/Bank Account Statement, Name of the firm/person, Bank Account Number, Branch Address, IFSC code etc, in respect to transaction of Rs.2,90,000/- made in between Axis Bank account to HDFC Bank Account No. 50200022964862.

5.5.3 Vide letter dated. 7.10.2021/15.11.2021(**RUD No.19**), IDBI bank was

requested to provide the details viz. Account Opening Form/Bank Account Statement, Name of the firm/person, Bank Account Number, Branch Address, IFSC code etc, in respect to transaction of Rs. 4,00,000/- made in between IDBI bank account to HDFC Bank Account No. 50200022964862. Further, Details were requested in respect to Bank account bearing No. 0075102000030913 viz. Account Opening Form along with KYC, Bank Account statement from beginning to till 15.11.2021, Name of the firm/person, branch address, IFSC code etc.

5.5.4 Vide letter dated. 7.10.2021(**RUD No.20-A**), the bandhan bank was requested to provide the details viz. Account Opening Form/Bank Account Statement, Name of the firm/person, Bank Account Number, Branch Address, IFSC code etc, in respect to transaction of Rs. 20,000/- made in between Bandhan bank account to HDFC Bank Account No. 50200022964862. Further, vide letter dated. 15.11.2021(**RUD No.20-B**), details viz. Account Opening Form/Bank Account Statement from 1.6.2021 to 31.7.2021, Name of the firm/person, Bank Account Number, Branch Address, IFSC code etc, was sought in respect to transaction of Rs. 20,000/- made in between Bandhan bank account to HDFC Bank Account No. 50200022964862.

5.5.5 Vide E-mail dated. 19.10.2021(**RUD NO.- 21**), Axis bank provided the details of Saving Bank Account No. 918020052206834, Statement of Accounts and Scan copies Account Opening Form and KYC documents and it was observed from the same that the account in the name of M/s Sivamkari International Pvt. Ltd. and branch address was Nangloi Del DL Ground Floor and First Floor, Plot No. 9 Khasra No. 124/1,124/2, Naresh Park, Najafgarh Road, Nangloi, New Delhi-110041 and As per the KYC documents, the director was shown as Shri Dipak Sharma and Shri Arun Singh.

5.5.6 Accordingly, summons was issued to Shri Dipak Sharma & Shri Arun Singh, both the Director of M/s Sivamkari International Pvt. Ltd., at Shop No. 106(or Shop No. 6), Plot No. 4, LSC Market Main Road, Gazipur, New Delhi-110092 on dated. 16.5.2022 & 6.9.2023 (**RUD NO.- 22**). However, none of the aforesaid date, neither any person appeared, nor any representation was received.

5.6 Search proceedings at the known place of Shri Sateesh/Satish at H.No. A-86/Room No. 10, Gali No. 1, Near DESU office, Mahipalpur, South West Delhi-110037

5.6.1 During the said search on 29.02.2021 (**RUD No. 23**), it was revealed that Shri Sateesh did not stay in Room No. 10, but had taken some office space on rent at the ground floor of the same building, which was found locked. Shri Sateesh/Satish was not available at the said place. A message was passed on through the lady available during the panchnama for requirement of Shri Satish's presence during the investigation. However, he did not turn up. Further, summons was also issued to him on 16.05.2022, but he did not present himself and not any representation/communication was received from the other end.

5.7 Investigation against Shri Ziya Hussein Faisal, Shri Amir Hussin Alias Raja & Shri Ankur

5.7.1 Details of Shri Ziya Hussein Faisal were called from The Neemaya Hotel, Opp. S.T. Bus Station, Gandhidham. The duty manager of The Hotel Neemaya

vide their E-mail hm@theneemaya.com dated 06.08.2021 06.36 PM **(RUD No.24)** informed that Shri Ziya Hussein Faisal stayed at their Hotel from 04.06.2021 to 27.06.2021. Further, they also shared the details of documents submitted by Shri Ziya Faisal Hussain at the Hotel. Accordingly, Shri Ziya Hussein Faisal Alias Ziyabhai was issued summons on 09.08.2021, 18.08.2021, 10.09.2021, 22.10.2021 & 16.05.2022 **(RUD No.25)**, however, he did not present himself before the investigating agency nor any representation/communication was received from his end.

5.7.2 Shri Amir Hussin Alias Raja was issued summons on 09.08.2021, 18.08.2021, 10.09.2021, 22.10.2021 & 16.05.2022 **(RUD No.26)**, however, he did not present himself before the investigating agency nor any representation/communication was received from his end.

5.7.3 Inquiry was extended to Shri Ankur on the basis of his mobile number 9354524221. However, upon inquiry, Ms Neelam, Sister of Ankur Raj **(RUD No.-27)** vide letter dated 01.10.2021 informed that her husband had obtained the mobile number 9354524221 through her KYC documents and since last 3 to 4 months, the said mobile number was being used by her brother Shri Ankur Raj for business purpose. Shri Ankur had one another mobile number i.e. 8766241169 which was switched off. Shri Ankur had not come to her place since five to six months. Shri Ankur used to meet them at the interval of every 8 to 10 days. Ms Neelam undertook that as and when Shri Ankur would come, she would inform DRI about his arrival and would also ask Shri Ankur to present himself before DRI AZU. She did not have any idea about the business of Shri Ankur.

6. Communication received from KASEZ, Gandhidham regarding M/s SFEPL

6.1 The Deputy Commissioner, KASEZ Gandhidham vide letter No. KASEZ/CUS/P&I/03/2021-22 dated 10.09.2021 **(RUD No.-28)** informed that M/s SFEPL was issued Letter of Approval (LOA) No.15/2019-20 on 23.12.2019. At the time of issuance of the said LOA, the directors of the unit were M/s Renu Kataria and Ms Beermati. M/s SFEPL vide letter dated 27.07.2021 informed about the change in directorship/shareholding patter of the unit, wherein it was informed that Shri Suneer Nalagath and Shri Yogendra Pratap Varma had been appointed as the new Directors in the said company. Against the above said letter, M/s SFEPL was asked to submit the change in directorship/shareholding pattern of the unit. However, the unit did not inform anything about the addition of two Additional Directors i.e. Shri Naresh and Shri Tarun Dagar. As per Instruction No.89 dated 17.05.2018 issued by the Department of Commerce, M/s SFEPL was under obligation to inform about the change of directorship/share holding pattern, whereas M/s SFEPL failed to comply with the above said obligation.

7. Investigation related to the key persons of M/s SFEPL:

| S.No. | Name of the Person | Role |
|-------|--------------------|---|
| 1. | Smt. Renu Kataria | Directors of M/s SFEPL for the period from 2015 to 18.10.2019. |
| 2. | Smt. Beermati | |
| | | Smt. Renu Kataria and Smt. Beermati appointed Shri Praveen Kumar and Shri Tarun Dagar as the Directors of M/s |

| | | |
|-----|---|---|
| | | SFEPL on 16.10.2019. Further, on 18.10.2019 Smt. Renu Kataria and Smt. Beermati resigned from the directorship of M/s SFEPL. |
| 3. | Shri Praveen Kumar | Director of M/s SFEPL for the period from 16.10.2019 to 12.02.2020. |
| | | Shri Praveen Kumar resigned from the directorship of M/s SFEPL on 12.02.2020 & then Shri Naresh was appointed as one of the directors of M/s SFEPL. |
| 4. | Shri Tarun Dagar | Director of M/s SFEPL for the period from 16.10.2019 to 07.04.2021 |
| 4. | Shri Naresh | Director of M/s SFEPL for the period from 12.02.2020 to 07.04.2021 |
| | | Shri Suneer Nalagath & Shri Yogendra Pratap Varma were appointed as the Directors of M/s SFEPL on 26.03.2021. Then, Shri Tarun Dagar and Shri Naresh resigned from the directorship of M/s SFEPL on 07.04.2021. |
| 5. | Shri Suneer Nalagath | Appointed as Directors of M/s SFEPL from 26.03.2021 |
| 6. | Shri Yogendra Pratap Varma | |
| 7. | Shri Anand Mehta of M/s Mehta Consultancy Services | Consultant of M/s SFEPL at KASEZ |
| 8. | M/s Budget Couriers Pvt Ltd | Firm of Shri Satdev Kataria, who is uncle of Shri Naresh. |
| 9. | Shri Ashish of M/s A.K. Friends & Co., Delhi | Company Secretary appointed by Shri Naresh and Shri Tarun Dagar for their resignation and appointment of new directors of the company. |
| 10. | Shri V. Esaki of M/s V. Esaki & Associates | Company Secretary on behalf of Shri Suneer Nalagath & Shri Yogendra Pratap Varma for transfer of directorship of M/s SFEPL. |
| 11. | Shri Ganesh V. Naidu of M/s Cross Trade Link Pvt Ltd. | Consultant of Shri Suneer Nalagath at KASEZ |

7.1 Investigation against Directors of M/s SFEPL

7.1.1 Investigation against Shri Tarun Dagar & Shri Naresh

7.1.1.1 Statement of Shri Tarun Dagar, Director of M/s. SFEPL was recorded on 02.10.2021, **(RUD NO.- 29)** under Section 108 of the Customs Act, 1962, wherein he inter alia stated that

- He joined M/s. SFEPL in October 2019 as a Director; Shri Naresh also joined M/s. SFEPL as a Director in month of Feb, 2020; after himself and Shri Naresh joined as Directors of the firm, Smt. Renu Kataria and Smt. Beermati resigned from Directorship of M/s. SFEPL.
- After their joining the company as Directors, they were not able to start any import export activity in whole 2020 due to Corona pandemic; due to family pressure had not to go outside from Delhi

and further as they could not make any Import-export business; accordingly, they both decided to resign from the said company and approached one Company Secretary namely Shri Ashish (9212000759) who was known to him and Shri Naresh, for doing all the formalities regarding their resignation & appointment of new Directors as per Company Act; on 26.03.2021 two persons namely Shri Suneer Nalagath resident of Mannath Post Kurichiyil Thalassery Temple gate, Kannur, Kerala-670102 and Shri Yogendra Pratap Varma resident of 150 RTC Colony Road, L B Nagar, Chintalakunta, Rangareddi, Telangana-500074 were appointed as Directors of M/s. SFEPL ; further he himself and Shri Naresh resigned from the said company on 07.04.2021.

- Shri Suneer Nalagath and Shri Yogendra Pratap Varma, did not contact him; to the best of his memory, Shri Suneer Nalagath or his representative contacted Shri Naresh and showed their interest for to take over the management of M/s. SFEPL , along with KASEZ LOP; In that regard, Shri Naresh would be able to explain more elaborately as to how the above persons came into his contact; he was not aware of office address of Company Secretary namely Shri Ashish and only Shri Naresh could best explain;
- He didn't have any knowledge regarding share holding of M/s. SFEPL and Shri Naresh would be able to explain in detail.
- As per his knowledge till date of his resignation of Directorship, they did not do any import-export through M/s SFEPL; further, due to his personal pressures he was inactive in the said company M/s. SFEPL; Shri Naresh was the authorized signatory of the said company.
- All the formalities at the time of allotment of unit in KASEZ had been done by Shri Naresh, hence he did not know regarding the bond and bank guarantee, if any, submitted to KASEZ; payment towards rent for KASEZ unit had been made by Shri Naresh only; he had given Rs.2 Lakhs in cash to Shri Naresh for expenditure happened during acquiring entity at KASEZ; after resigning from the Directorship from M/s. S.F.Express Pvt. Ltd. and took over of the company by new Management, he received a sum of Rs. 1 lakh in cash against his investment of Rs. 2 lakhs in the company.
- He had never visited KASEZ; he had never met Shri Suneer Nalagath and Shri Yogendra Pratap Varma.

7.1.1.2 Further, statement of Shri Naresh, Director of M/s. SFEPL was recorded on 04.10.2021, **(RUD No.30)** under Section 108 of the Customs Act, 1962, wherein he inter alia stated that;

- M/s. SFEPL was established in 2015 for courier services; at that time his aunty (Mamiji) Smt. Renu Kataria and his mother Smt. Beermati were two directors in that company; but due to family problems, they could not start any work under that company; Shri Tarun Dagar was his brother in Law (sister's husband); Shri Tarun Dagar and Shri Praveen Kumar who were Son-in Law of Shri Satdev Kataria were appointed as directors of M/s. SFEPL on 16 October 2019 for Import-export work; after their joining Smt. Renu Kataria and Smt. Beermati resigned from Directorship of M/s. SFEPL on 18.10.2019.

- Due to some family disputes Shri Praveen Kumar resigned from directorship of M/s. SFEPL on 12.02.2020 and he was appointed as director of the M/s. SFEPL on 12 Feb, 2020; M/s. SFEPL got Letter of Approval No. 15/2019-20 dated 23.12.2019 for establishment of unit at KASEZ for Trading & Warehousing Activity
- Initially, premises address of M/s. SFEPL was First floor, Unit No.- 207, Yamuna SDF Complex, Phase-II, KASEZ, Kachchh, Gujarat-370230 after that new premises address was Shed. NO. 214, Spl CIB type, GF & FF, Phase-I, KASEZ.
- they had filed only 03 Bill of entry for import of Unaccompanied Baggage (UB); One Bill of Entry was filed in Oct. 2020 and 02 Bills of entry having No. 1011530 dated 17.11.2020 & 1011529 dated 17.11.2020 were filed for import of Unaccompanied Baggage (UB) in Nov 2020
- M/s. Mehta Consultancy Services (MCS) was their consultant at KASEZ, situated at 16, KASEZ IA Building, KASEZ to deal the said import of Unaccompanied Baggage (UB); he was in contact with Shri Anand Mehta (Mob. No.- 9727707686) of M/s. Mehta Consultancy Services; he produced copies of said 02 Bills of Entry filed in Nov. Month with his dated signature.
- He agreed with the facts recorded in the statement dated 02.10.2021 of Shri Tarun Dagar that only he himself had handled all work related to import in respect of said company.
- He was already engaged in his courier business with his uncle Shri Satdev Kataria under M/s. Budget Couriers Pvt. Ltd., hence, Shri Tarun and he decided to resign from the said company; he also contacted their Consultant Shri Anand Mehta of M/s. Mehta Consultancy Services and informed that they were willing for transfer of ownership of M/s. SFEPL alongwith it's KASEZ LOP.
- For the said purpose of resignation, they approached one Company Secretary namely Shri Ashish of M/s. A. K. Friends & Co., 211A triveni Complex, E-10-12, Behind Hira Sweets, Laxmi Nagar, Delhi-110092 (92120-00759) for doing all the formalities regarding their resignation & appointment of new Directors as per Company Act; new directors viz. (i) Shri Suneer Nalagath resident of Mannath Post Kurichiyil Thalassery Temple gate, Kannur, Kerala-670102 and (ii) Shri Yogendra Pratap Varma resident of 150 RTC Colony Road, L B Nagar, Chintalakunta, Rangareddi, Telangana-500074 were appointed as directors of M/s. SFEPL on 26.03.2021; further he and Shri Tarun Dagar resigned from the said company on 07.04.2021; in this regard, all the documents had been submitted by him vide letter dated 01.09.2021; Mr. V. Esaki of M/s. V. Esaki & Associates, 52/A, VOC Nagar Nehru Street, Anna Nagar (East), Chennai-600102 was the Company Secretary of Shri Suneer Nalagath and Shri Yogendra Pratap Varma regarding the said appointment of them as director and their resignation from directorship.
- In Feb 2021, one person called him and introduced himself as Shri Suneer Nalagath (Mob.- 9791300933) and showed their interest to take over the management of M/s. SFEPL , along with KASEZ LOP and shareholding of M/s. SFEPL ; as they were willing for the same he told him to contact their CS Shri Ashish; accordingly, one Company Secretary namely Mr. V. Esaki (Mob. 9789804692) of

M/s. V. Esaki & Associates, 52/A, VOC Nagar Nehru Street, Anna Nagar (East), Chennai-600102 contacted their C S Shri Ashish in month of Feb, 2021 regarding transfer of management & shareholding alongwith KASEZ LOP; accordingly, all the formalities were done by these two C. S. viz. Shri Ashish (from their side) & Shri V. Esaki (from Suneer Nalagath & Yogendra side) and both Shri Suneer Nalagath & Yogendra Pratap Varma were appointed as directors on 26.03.2021 and further he and Tarun Dagar resigned from M/s. SFEPL on 07.04.2021.

- M/s. SFEPL had 10000 share having value of Rs. 10 per share; initially, out of 10000 Smt. Renu Kataria and his mother Smt. Beermati both have 5000-5000 share; transfer of shareholding from Smt. Renu Kataria and Smt. Beermati to Shri Suneer Nalagath & Shri Yogendra Pratap Varma were happened in two steps. First, 50% shares (5000 shares) were transferred on 26.03.2021 from Smt. Renu Kataria and My mother Smt. Beermati to Shri Suneer Nalagath & Shri Yogendra Pratap Varma; at that time Smt. Renu Kataria, Smt. Beermati, Shri Suneer Nalagath & Shri Yogendra Pratap Varma, each one had 25% shares of the company. Remaining 50% shares (5000 shares) were transferred on 14.06.2021 from Smt. Renu Kataria and his mother Smt. Beermati to Shri Suneer Nalagath & Shri Yogendra Pratap Varma. As per which there were two Director in M/s. SFEPL namely Shri Suneer Nalagath & Shri Yogendra Pratap Varma and both had 50-50% shares of the said company; they had received Rs. 1,00,000/- from one person of Shri Suneer Nalagath & Shri Yogendra Pratap Varma at Delhi in cash and Smt. Renu Kataria and his mother Smt. Beermati gave receipt/acknowledgement to him in token of receiving the said amount of Rs. 1,00,000.
- he was the authorized signatory of M/s. SFEPL till his resignation on 07.04.2021; and except aforesaid import in month of Oct. & Nov. 2020, he didn't file any Bill of Entry and Bill of Export/ Shipping Bill at KASEZ in the name of M/s. SFEPL or in the name any other company/firm; further in respect of digital signature, he didn't know whose that signature was; he provided his digital signature to Shri Anand Mehta of M/s Mehta Consultancy Services and authorized him to use his (Naresh) digital signature for purpose of Custom clearance purpose and any administration purpose at KASEZ; the said digital signature was used at the time filing Bill of Entry in the month of Oct. & Nov. 2020; in month of April, after their resignation Shri Suneer Nalagath called him and told that Shri Ganesh Naidu of M/s. Cross Trade Link, Gandhidham was his consultant at KASEZ and asked Naresh to send his digital signature to Shri Ganesh Naidu of M/s. Cross Trade Link, Gandhidham for change/addition of New directors in SEZ online system or filing resignation of old Directors; accordingly he sent his digital signature to Shri Ganesh Naidu of M/s. Cross Trade Link, Gandhidham for the said purpose on 12.04.2021; if his digital signature had been used for filing aforesaid 09 Bills of Entry & 26 Bill of Export; it might be possible that his digital signature had been misused by M/s. Cross Trade Link, Gandhidham or Shri Suneer Nalagath for the same without his knowledge.

- After their resignation on 07.04.2021, he & Shri Tarun Dagar or old directors his aunty (Mamiji) Smt. Renu Kataria and his mother Smt. Beermati, were not associated to M/s. SFEPL by any means and ways; he produced copy of Indemnity Bond dated 07.04.2021 received from Shri Suneer nalagath & Shri Yogendra Pratap Varma, wherein specifically mentioned by them that “ they have accepted the resignation of Mr. Naresh & Mr. Tarun Dagar and will intimate to all Govt. department including ROC, Income tax or other related departments; that the retiring directors Mr. Naresh & Mr. Tarun Dagar shall not be liable for any act, deed of the company from the day of their retirement. Any liability arises after their retirement, from any of my acts, to them shall be indemnified by me and I shall be personally held liable; that the incoming director are liable to all act, deed of whatsoever nature done by me after the date of my appointment i.e. 26.03.2021 and the outgoing directors Mr. Naresh & Mr. Tarun Dagar shall no more be liable for my acts and deeds. I shall be liable to compensate for all loses as may arise to outgoing director on acts and deed as director of the company”.
- M/s. SFEPL Pvt. Ltd. had furnished Form-H Bond Cum Legal Undertaking for Special Economic Zone Units dated 30.12.2019.

7.1.1.3 Further, Shri Tarun Dagar, Director of M/s SFEPL vide email dated 28.10.2021 (**RUD No.31**) forwarded the reply received from Mr. Ganesh V. Naidu, Director of M/s Cross Trade Link Pvt. Ltd (Email id (crosstradelink@gmail.com)) on 27.10.2021, wherein Shri Ganesh V. Naidu conveyed to Shri Tarun Dagar regarding the misuse of digital signature. During December-January 2021, two people Shri Sumeer Nalagath (97913001933) and Shri Yogendra Pratap Varma visited his office and sought his professional help for their company related to KASEZ office formalities. In March, they approached his office again and told that they had already acquired a company M/s SFEPL and all the formalities related to ROC had already been completed by them. Later, they told him that they need his consultancy in preparing the paper work related to the change in management of company. Mr. Raja was appointed by Mr Suneer and Yogendra as their representative for handling their day to day work with his office, KASEZ and to complete the formalities. Shri Ganesh Naidu asked for one digital signature from new director. After that on his request, Shri Naresh had forward his Digital Signature alongwith the Authorisation letter dated 12.04.2021 at his office address M/s Cross Trade Link Pvt. Ltd. Shri Ganesh Naidu prepared some of the papers and gave them to the new directors to submit the same at KASEZ office. Further, he also helped them to complete all other online formalities related to KASEZ office for M/s SFEPL. Further, the new directors of M/s SFEPL asked him to use some of his office space for their office work, for which he allowed their representative to use some of his office space and internet facility for time being. During that time, they handed over the documents (which were received from Shri Tarun Dagar) related to Ms SFEPL to the representative of new directors after confirming the same from the new directors. The representative of M/s SFEPL took all the documents and box files from his office staff wherein, all the papers and other things of M/s SFEPL were kept.

7.1.1.4 In response to Summon dated.18.10.2021, Shri Tarun Dagar vide letter Dated. 01.9.2021 submitted that he was not in a position to travel because of some health issues. He forwarded the copy of reply submitted by the erstwhile Director Shri Naresh. He informed that he was not concerned/connected with the business of the company from 07.04.2021. He was not responsible for any activity of the company undertaken after 07.04.2021. He also furnished his IT returns for the A.Ys 2018-19 to 2020-21 and Bank statement from 01.04.2018 to August-2021.

7.1.1.5 As per the statement of Shri Tarun Dagar and Shri Naresh, it is revealed that Shri Anand Mehta (Mob. No. 9727707686) of M/s Mehta Consultancy Services had provided service to M/s SFEPL for obtaining the registration/LOA etc. Further, Shri Ashish Kumar Friends, Company Secretary of M/s A.K. Friends & Co and Shri Esaki V, Company Secretary of M/s. V. Esaki & Associates, had given their service to M/s SFEPL at the time of change in their directorship of M/s SFEPL. Further, Shri V.Naidu of M/s Cross Trade Link, Gandhidham had prepared some papers and given to the same to new directors to submit to the KASEZ also helped M/s SFEPL to complete all other online formalities related to KASEZ office for M/s SFEPL. Further, Shri Naresh had forwarded his digital signature to Shri V.Naidu. It is important to mention that the import/Export document in question showing digital signature of "NARESH". Accordingly, inquiry was further extended to check their role and involvement in the present matter.

7.1.2 Investigation against Smt Renu Kataria & Smt Beermati

7.1.2.1 With reference to summons No. CBIC-DIN-202205DDZ10000010710/327, Smt Renu Kataria vide letter dated 30.05.2022 informed that she had resigned from the directorship of the company on 18.10.2019 and also filed DIR-12 in this regard. She was not the director during the period of inquiry and did not have any details about the imports/exports undertaken by the company as well as the details of assets held by the company. She was a homemaker having no knowledge about the affairs of the business. She became the director of the company on the request of her nephew Mr. Naresh, as he was under a mental trauma. She was unaware of any transactions happened during the period 2020-21 and 2021-22. The actual business activities were undertaken by her son Mr. Naresh and Mr. Tarun Dagar (her relatives)

7.1.2.2 With reference to the summons No. CBIC-DIN-202205DDZ1000000F5A6/326, Smt Beermati vide letter dated 30.05.2022 informed that she had resigned from the directorship of the company on 18.10.2019 and also filed DIR-12 in this regard. She was a senior citizen and illiterate, having no knowledge about the affairs of the business. She became director on the request of her son Mr. Naresh as he was not in a position to become as he was under a mental trauma. She had not concerned herself with the business activities of M/s SFEPL. She was unaware of any transactions happened during the period 2020-21 and 2021-22. The actual business activities were undertaken by her son Mr. Naresh and Mr. Tarun Dagar (her relatives)

7.1.3 Investigation against Shri Yogendra Pratap Varma, Director, M/s SFEPL

Search was conducted at address details of Shri Yogendra Pratap Varma communicated by KASEZ vide their letter dated 10.09.2021. As reported vide letter F.No. DRI/HZU/MISC-A/2021 dated 08.11.2021 of the Deputy Director, Hyderabad Zonal Unit, search was conducted at the residential/office premises of Shri Yogendra Pratap Varma, Director of M/s SFEPL at 150, RTC Colony Road, L. B. Nagar, Chintalakunta, Rangareddy, Telanga -500074 under the panchnama dated 05.11.2021 **(RUD No.32)**. As reported under the said panchnama, Ms Deepa Varma introduced herself as the sister of Shri Yogendra Varma. Further, she informed that Shri Yogendra Pratap Varma was not in Hyderabad from August-2021. Further, Shri Yogendra Pratap Varma was issued/served summons dated 05.11.2021. However, he has not come forward.

7.1.4 Investigation against Shri Suneer Nalagath, Director, M/s SFEPL

Search was conducted at the address details of Shri Suneer Nalagath communicated by KASEZ vide their letter dated 10.9.2021. As reported vide letter F.No. DRI/CoZU/KRU/01/Misc/2021/Searches dated 10.11.2021 of Deputy Director, Kannur Regional Unit, search was conducted at the house of Shri Suneer Nalagath at H.No. 71, Ward No.1, New Mahe Panchayat, Mannath House, Near Kurichiyil Post Office, Thalassery Temple Gate, Kannur-670102 under panchnama proceedings dated 09.11.2021 **(RUD No.33)**. Shri Suneer Nalagath was not available at his house during the search. As reported by his available family members, Shri Suneer had not visited the said house since 2010 and they were unaware about his present whereabouts.

7.2 Investigation in respect to the change in directorship of M/s SFEPL

7.2.1 Statement of Shri Anand Mehta, Partner of M/s Mehta Consultancy was recorded on 18.11.2021, **(RUD No.34)** under Section 108 of the Customs Act, 1962, he inter alia stated that;

- He was partner in Mehta Consultancy Service operating from a rented office at 16, KASEZIA Bldg., Near Punjab National Bank, KASEZ, Gandhidham.
- They were carrying consulting work for SEZ units/100% EOU units and DGFT licensing Work mainly related to Advising /documentation/Filing work for setting up of SEZ unit and compliance of documents/correspondence on behalf of client on monthly basis as well as on shipment basis.
- They were filing documents viz Import/DTA Bills of Entry/Shipping Bill/Bills of Export in SEZ Online system on behalf of their clients.
- Mr. Manoj kumar had contacted him on his mobile No. 9727707686 and sought guidance for setting up a unit at Kandla SEZ in name of M/s S.F.Express Pvt. Ltd. and accordingly he advised about the requisite documentations.
- Vide email (a.kamal.d@budget1.net) dated 18.9.2019 the soft copy of PAN card, Certificate of incorporation, documents related to Ministry of Corporate Affairs-MCA services.pdf and ST-2 return of the firm were forwarded to him.
- The said mail was also sent to cmai.hq@gmail.com as well as marked CC to s.kataria@budget1.net, manoj.kumar@budget1.net

& cr.sharma@budget1.net.

- The application was submitted at KASEZ on 09.10.2019; UAC meeting was held on 10.10.2019 attended by him as per the authorisation letter issued in his favour by Ms Renu Kataria, one of the director of M/s S.F.Express. Pvt. Ltd.
- He voluntarily produced the copy of the related correspondence/ documents issued by the KASEZ authority to M/s S.F.Express Pvt. Ltd as detailed below:
 - (i) Principal letter for setting up of Trading and warehousing unit by S.F.Express Pvt. Ltd., issued by the O/o the Development Commissioner vide letter F. No. KASEZ/IA/SFE/32/2019-20/8069 dated. 15.10.2019.
 - (ii) After successfully bidding of MSTC by M/s S.F.Express Pvt. Ltd., offer letter for unit No. 207, Yamuna SDF Complex, Phase-II, KASEZ issued from F.No. KASEZ/EM/I/S-143-877/19-20 on dated. 13.12.2019.
 - (iii) Formal letter of Approval F. No. KASEZ/IA/15/2019-20 dated. 23.12.2019.
 - (iv) Eligibility certificate issued vide letter F. No. KASEZ/IA/15/2019-20 dated. 6.1.2020.
 - (v) Final Allotment order KASEZ/EM/I/S-143-877/19-20 dated. 3.1.2020.
 - (vi) Letter of acceptance of Bond Cum legal undertaking issued from F.No. KASEZ/IA/15/2019-20 dated. 17.11.2020.
 - (vii) Copy of GST Registration and Import Export Code was received through e-mail.
 - (viii) On request vide letter dated. 29.12.2020 by M/s S.F.Epress Pvt. Ltd., a letter for additional Space vide KASEZ/EM/I/S-143-877/19-20 of dated. 29.12.2020.
 - (ix) Offer letter for allotment of Premises Shed No. 214, Spl.CIB Type, Phase-I, KASEZ. Dated. 5.2.2021 issued from F.No. KASEZ/EM/I/S-143-877/19-20.
 - (x) Letter for approval for addition of activity under Rule 18(6) were issued to M/s S.F.Express Pvt. Ltd. vide letter F. No. KASEZ/IA/15/2019-20 dated. 1.1.2021 & permission of additional Ware Housing of goods on behalf of DTA/Foreign clients issued from F.No. KASEZ/IA/15/2019-20 dated. 1.1.2021.
 - (xi) Letter for addition of manufacturing activity issued from F.No. KASEZ/IA/15/2019-20 dated. 23.4.2021 along with the relevant pages of minutes of Unit approval Committee meeting.
- Also furnished the copy of visiting card of Mr. Manoj kumar showing as Chairman of Budget Courier Pvt. Ltd., Ph. 9999966742 E Mail: Manoj kumar@budget1.net.
- He met Shri Manoj Kumar twice or thrice when he had come to his office for documentation and seeking advice.
- He had a only business relations with Shri Manoj Kumar and he did not know much about any other business affairs of Shri Manoj Kumar.
- Initially M/s S.F.Express Pvt. Ltd., dealt with unaccompanied baggage and as he had no experience in the field, accordingly he did not undertake the documentation work in that regard.
- However for the sake of integrity, he stated that Shri Manoj Kumar

had filed three import bills of entry and DTA thereof from his system/office and initially on the first occasion one import bill of entry had been filed using his digital signature.

- He had never dealt with M/s S.F.Express thereafter.

7.2.2 Statement of Shri Ashish Kumar Friends (CS) of M/s A.K. Friends & Co was recorded on 29.11.2021 (**RUD No.35**) under Section 108 of the Customs Act, 1962, he inter alia stated that;

- He was a Company Secretary (CS) and got the membership of the Institute of company secretaries of India on 28/06/2001. He had been practicing for the last Twenty Years.
- As a Company secretary he dealt with all sort of work related to Companies Act, 2013, as amended, which included to advise/guide/Prepare and filing various forms/documentations etc., also made correspondence in respect to the change in Directorship and Capital of the company with the Registrar of Companies; he was providing services to the regular clients on yearly basis as well as their work basis; fees normally Charged from the Client was Rs. 1,000 (Only Filing) to Rs. 3,000 Per form (where there was Preparation of supporting documents as well as Certification).
- For any new clients he used to verify genuineness of their PAN and KYC through DIN forms, where they entered all the details of the Clients and PAN; also as regards Aadhar they satisfied while making their DSC they Received OTP on their Registered mobile and then only their Digital Signature was generated.
- He was already providing his Services to one Mr. Satdev Kataria of M/s Budget Courier Pvt. Ltd Maternal uncle of Mr. Naresh, one of the director of M/s S F Express, who at the time of transferred of management of M/s S F Express, asked him to provide his guidance/services to Mr. Naresh, in which he was asked for the checking of the forms and various papers to be received from Mr. Esaki, Company Secretary at Chennai; his role in relation to the change of management of the company was to received papers through mail from Esaki and forwarded it to Mr. kamal Deep, employee of M/s Budget Courier Pvt. Ltd. who would get them signed from either Mr. Naresh or Mr. Tarun Dagar, another Director of M/s S F Express, either Physically or digitally and after receiving them from Kamal deep, he forwarded the same to Mr. Esaki for filing/Uploading on the MCA Site. Mr. Esaki Mobile Number 9789804692 was given to him By Mr. Manoj, who was a brother of Mr. Naresh to coordinate in relation to the Change in management of M/s. S F Express Pvt. Ltd.
- He had not received any payment as he had neither prepared any papers, nor Uploaded any of them to ROC also not made any ROC Fees for uploading of the documents so as a courtesy of long term relationship he had not raised any invoice.
- He voluntarily produced the copy of following e-mail correspondence/ documents available with him for his reference.

1. Printout of screenshot containing Whats app message received from Mr. Manoj wherein Mobile Number of Esaki, Company Secretary from Chennai was forwarded on 26.3.2021 to him.
 2. Mail Dated 26/03/2021 wherein he received various documents sequentially from Esaki and Sending those in Reply mail to Him after getting it signed from the Other side (Naresh & Tarun).
- He had no idea further in respect to the business affair of M/s SFEPL.

7.2.4 Statement of Shri Esaki V (CS) of M/s. V. Esaki & Associates was recorded on 06.12.2021 (**RUD No.36**) under Section 108 of the Customs Act, 1962, he inter alia stated that;

- He is a Company Secretary (CS) and dealt with all sort of work related to Companies Act 2013, which included to advise/guide/Prepare and filing various forms/documentations etc., also make correspondence in respect to the change in Directorship and Capital of the company with the Registrar of Companies;
- In August 2020, he had provided his services to M/s. Spice Deccan Impex Private Limited, Survey No.-286, Reddy Gunta Road, Yellayapalem Village, Kodavalur mandal, SPSR Nellore, Andra Pradesh-524366 for obtaining FSSAI license from FSSAI regional office situated in Chennai. In that regard, one person namely Shri Mohameed Farooq Ali (Mob. No. 90304-73479), Director of M/s. Spice Deccan Impex Private Limited contacted him for FSSAI license. Further, Shri Mohameed Farooq Ali gave him mobile number of one of his employee namely Shri Yogendra Pratap Varma (Mob. No.-85550-90454) and asked him to get all the documents & details from him in respect of FSSAI license. After that he was in contact with Yogendra Pratap Varma for the said work of obtaining of FSSAI license.
- In mid of March-2021, Shri Mohameed Farooq Ali, Director of M/s. Spice Deccan Impex Private Limited, Andra Pradesh called him and requested him to provide their services for appointment of two new directors in one firm M/s. SFEPL. He (Farooq) informed him that out of two new directors, one was Shri Yogendra Pratap Varma who was the employee in his firm M/s. Spice Deccan Impex Private Limited and another one was Shri Suneer Nalagath, Kerala; Shri Yogendra Pratap Varma (Mob. No.-85550-90454) was in his contact for his & Suneer's appointment as new directors in M/s. SFEPL; Shri Yogendra Pratap Varma provided him the KYC documents i.e. mail id, Identity proof, mobile number & passport size photo etc. of him & Suneer Nalagath through whatsapp; Shri Yogendra Varma gave him digital signature of him & Suneer Nalagath through courier for generating DIN number for new appointed directors viz. Shri Yogendra Pratap Varma & Shri Suneer Nalagath;
- Shri Yogendra gave contact number of one Shri Ashish (Mob No. 9911000759) and told him that he was Company Secretary of old directors and requested him to contact him (Ashish) for

details/documents from old directors; accordingly, he contacted Ashish and asked him to provide digital signature of Shri Naresh, one of old director of M/s. SFEPL for appointment of new directors in MCA website; Further, he received digital signature of Shri Naresh through courier from old director.

- Appointment of new directors viz. Shri Yogendra Pratap Varma & Shri Suneer Nalagath and resignation of old directors viz. Shri Naresh and Shri Tarun Dagar on MCA website were done through his MCA login credentials; DIN number generation for new appointed directors viz. Shri Yogendra Pratap Varma & Shri Suneer Nalagath were also done through his MCA login credentials.
- KYC documents were not verified by him; as per section 168 of Companies Act, 2013 if professional certification of form was not applicable since M/s. SFEPL was a small company; hence, KYC documents were not needed to be verified; he never met Shri Yogendra Pratap Varma & Shri Suneer Nalagath. He used to talk Shri Suneer nalagath
- He had no idea further in respect to the business affair of M/s SFEPL.

7.3 Further investigation against Shri Suneer Nalagath

7.3.1 Search operation was conducted by DRI Nellore, Hyderabad and Vijaywada in respect to their case booked against M/s Spice Deccan Impex Pvt. Ltd. for diversion of Duty-free Goods, wherein role of Shri Suneer Nalagath was revealed and accordingly he was called up for recording of statement by DRI Nellore. During their proceedings, the officer found summons issued by DRI, Ahmedabad to Shri Suneer Nalagath in respect to the present inquiry. DRI Nellore communicated the same to DRI Ahmedabad. Hence, summons to Shri Suneer Nalagath was issued for his presence on 09.03.2022 at DRI Ahmedabad Zonal Unit.

7.3.2 Statement of Shri Suneer Nalagath, Director of M/s S.F.Express Pvt. Ltd. was recorded on 09.03.2022 (**RUD NO.37**) under Section 108 of the Customs Act, 1962, wherein he inter alia stated that;

- His permanent address was Mannath, Post-Kurichiyli, Thalassery, Tample Gate, Kannur, Kerala - 670102. But he did not live there. His current address was Ground Floor, kadeeja Quarters, Pilakool, Thalasherry, District-Kannur, Kerala-670101.
- In January 2020, he started working in one trading firm namely M/s. Roshan International, Pollachi, Coimbatore, Tamil Nadu, which was a proprietorship firm owned by Shri Firoz Ahamed of Tamil Nadu, engaged in trading of imported paper, cashew, etc.
- He and Firoz Ahamed had been friends and knowing each other since 1999; they had worked together in the paper trading company i.e. M/s. Unigraph International Trading during the period from 1999-2003.
- He joined M/s Southern Impex, Karppadi, Pollachi, Coimbatore, Tamil Nadu in February 2020 as per the direction of Shri Firoz Ahamed. The said firm was owned by Firoz Ahamed's brother

namely Fashid Ahamed, but was actually run/operated by Shri Firoz Ahamed only.

- M/s. Southern Impex had been a manufacturing unit and 100% EOU which was engaged in import of Areca Nuts and export of Areca Nut Powder.
- He looked after the Import-Export documentation related work along with correspondences with Bank regarding remittances and issuance of BRC/FIRCs of the said firm.
- Directorate of Revenue Intelligence, Coimbatore had booked a case against M/s. Southern Impex in the month of October 2020 for diversion of duty-free imported Areca Nuts in Domestic Tariff Area.
- Shri Firoz Ahamed had asked him to go to Nellore in November 2021 to operate one EOU firm namely M/s. Spice Deccan Impex Pvt. Ltd., Nellore whose director/owner was Shri Muhammad Farooq Ali; Muhammad Farooq Ali was business associate of Shri Firoz Ahamed.
- M/s. Spice Deccan, Nellore was engaged in import of Areca Nuts and export of Areca Nut Powder; since he had joined M/s Spice Deccan Impex Pvt Ltd, total 04 consignments of Areca nuts were imported and diverted in the domestic market by him as per the directions/instructions of Firoz Ahamed.
- DRI Nellore, Hyderabad and Vijaywada had conducted search operation against M/s Spice Deccan Impex Pvt. ltd. for diversion of duty-free goods.
- He was one of the Directors of M/s. SF Express Pvt. Ltd., KASEZ Gandhidham and another director was Shri Yogendra Pratap Varma. The management of M/s. SFEPL, KASEZ Gandhidham got changed in month of March 2021. The old directors of the said firm were Shri Naresh and Shri Tarun Dagar.
- In February 2021, Firoz Ahamed had told him that he wanted to establish a unit in Kandla SEZ, Gujarat and told him to go to Gandhidham with Shri Muhammad Farooq Ali, Sadiq and Yogendra Pratap Varma; he had not been knowing Sadiq and Yogendra Pratap Varma; Shri Farooq Ali introduced him with Mr.Sadiq and Yogendra Pratap Varma.
- Shri Firoz Ahamed had told him that he was going to operate one firm namely M/s. SF Express Pvt. Ltd, KASEZ and had told him that he and Shri Yogendra Pratap Varma would be the directors of the said firm, wherein they would carry out import export business.
- Shri Firoz Ahamed appointed Shri Esaki V. Company Secretary for documentation related work and had asked him to forward the documents viz. Aadhar Card, Photograph, Pan Card, Electoral ID etc. to Shri Esaki V. on his Whatsapp No. 9789804692.
- He and Shri Yogendra Pratap Varma visited Gandhidham for bank and customs related formalities on the direction of Shri Firoz Ahamed; one Mr. Rajesh met them in Gandhidham informed that he would help them to carry out all the work to be done as suggested by Mr.Firoz Ahamed.
- Mr. Rajesh had first brought both of them to the office of Shri Ganesh Naidu of M/s. Cross Trade Link Pvt. Ltd., Consultant at KASEZ and also accompanied them to the Bank.
- He did not know any thing regarding import-export made through

M/s. SF Express Pvt. Ltd, KASEZ but Firoz Ahamed or Shri Muhammad Farooq Ali would be the right person to answer the said question.

- He did not know Shri Zia Faisal, Shri Aamir Hussain, Shri Satish and Shri Loon Singh (Chokidar).

7.3.3 Statement of Shri Suneer Nalagath was recorded on 10.03.2022 **(RUD No.38)** under Section 108 of the Customs Act, 1962, wherein he inter alia stated that;

- The house of Shri Firoz Ahamed was Near Lakshmi Ammal School, Jyothi Nagar, Pollachi, Coimbatore, Tamil Nadu and his mobile number was 9790415598; he did not know the residential address & mobile number of Shri Mohammed Farooq Ali.
- On receipt of Summons by DRI, Shri Firoz Ahamed directed him and Yogendra Pratap Varma to go underground. Accordingly, he remained underground till October-2021. Then in the month of November-2021, he started working in M/s Spice Deccan Impex Pvt. Ltd. He did not come forward before the DRI, Ahmedabad for recording of statement on the directions of Shri Firoz Ahamed.
- On 15.08.2021, Shri Rajesh had presented one pre-prepared/backdated (Dated 01.04.2021) appointment letter in the name of Mr. Ankur. He and Yogendra Pratap Varma both signed that appointment letter in the name of Shri Ankur on the instruction of Shri Firoz Ahamed, however, he did not know or ever met Ankur.

7.3.4 Statement of Shri Suneer Nalagath was recorded on 11.03.2022 **(RUD No.39)** under Section 108 of the Customs Act, 1962, wherein he inter alia stated that;

- Shri Naresh & Shri Tarun Dagar were the previous directors of M/s. SFEPL.
- M/s. S F Express Pvt Ltd had imported duty-free goods i.e. Areca Nuts & Wall Nuts in the month of May, June & July 2021 for further export to Bangladesh.
- During his appointment proceedings as a Director of M/s S.F.Express Private Limited, he had obtained a Digital Signature through CS Esaki and it had also been received by Esaki. He stated that his digital signature would be either with Esaki or with Rajesh/Ganesh Naidu of M/s Cross Trade Link, Gandhidham. He had seen his digital signature with Shri Rajesh at last.
- The Areca Nuts imported by M/s. SFEPL, KASEZ during the month of May-2021 to July-2021 was diverted to Nagpur without payment of duty under the guise of clearing the same from SEZ, Kandla for export to Bangladesh.
- M/s. SFEPL had diverted around 414 MTs of Areca Nuts/Wall Nuts out of total 546 MTs of Areca Nuts/Wall Nuts in Domestic Tariff Area i.e. Nagpur under the guise of clearing the same from SEZ for export to Bangladesh and the proportionate duty forgone in this manner was around 3.18 Crores.
- Shri Firoz Ahamed had promised him a salary of Rs. 75,000/- and

a joining bonus of Rupees Five Lakh to cover the loss which he had incurred while closing his Sports Garments Business. Shri Firoz had assured him that he would give him share in the profit of the company.

- After appointment as a Director of M/s. S F Express, he had received 15000/- in the month of May-2021, Rs. 8750/- in the month of July-2021 and Rs. 1,00,000/- in the month of August-2021.
- Rs 40000/- out of Rs 1,00,000/- received by him from Shri Firoz Ahamed in month of August-2021, were given to Shri Yogendra Pratap Varma as per the instruction of Shri Firoz Ahamed.
- He agreed that M/s. S F Express Pvt. Ltd. was involved in diversion of duty-free imported goods which were actually meant for export to Bangladesh from Kandla SEZ and thus evaded Customs Duty.
- M/s S.F.Express Pvt. Ltd. had breached various provisions of SEZ Act, 2005, Foreign Trade (Development and Regulations) Act, 1992.
- The goods diverted by M/s. S F Express Pvt. Ltd. in domestic market are liable to confiscation as per the provisions of Section 111 & 113 of the Customs Act, 1962. As per Section 2 (39) of the Customs Act 1962, the said illegal activities performed by M/s. S.F. Express were smuggling activities.

7.3.5 As per the statements of Shri Suneer Nalagath and Shri Esaki V, the role of Shri A. Feroze Ahamed & Shri Muhammad Farooq Ali had emerged. Accordingly, investigation was further extended to Shri A. Feroze Ahamed & Shri Muhammad Farooq Ali for gathering evidences in the matter.

7.4 Investigation against key operators of Ms SFEPL

7.4.1 Investigation against Shri A. Feroze Ahamed

7.4.1.1 Statement of Shri A. Feroze Ahamed was recorded on 22.07.2023 **(RUD No.40)** under Section 108 of the Customs Act 1962 before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Coimbatore, wherein he inter-alia stated that;

- He was the Proprietor of M/s. Roshan International, No. 100-C, P.K. Kandasamy Pillai Street, D Colony, Jothi Nagar, Pollachi - 642001.
- His permanent address was No.100-C, P.K. Kandasamy Pillai Street, D Colony, Jothi Nagar, Pollachi - 642001 and Current address is St. Thomas Church Road, Apartment 1st Floor, 96/1, Fernhill, Ooty, Tamil Nadu – 643001.
- He owned the following four firms:
 - i) M/s Roshan International Establishment (Dealing in trading of Timber, Cashews, Coir, Plastic, Other Agri products etc.)
 - ii) M/s Hana Food Industry (Dealing in trading of Chocolates)
 - iii) M/s Samak Hatcheries (Dealing in fisheries – presently not active)
 - iv) M/s Ever Soil Private Limited (Not functioning – closed now)
- He agreed with the content therein the statement of Shri Suneer Nalagath recorded under section 108 of the Customs Act, 1962 on dated 09.03.2022, 10.03.2022 & 11.03.2022.

- He did not have any connection with M/s. SF Express Pvt. Ltd. Gandhidham and he had not done any business with M/s. SF Express Pvt. Ltd.
- He did not agree with facts that he offered directorship of M/s S.F.Express Private Limited, KASEZ Gandhidham to Shri Suneer Nalagath.
- He did not know anybody in the name of Shri Yogendra Pratap Varma and he did not offer directorship of M/s. SFEPL to anybody.
- He did not have any connection with M/s. SFEPL. He did not know who the previous director of M/s. SFEPL was. He did not take over the said firm.
- He denied all the facts and allegations made against him regarding his involvement in illegal diversion of duty-free goods in DTA by M/s. SFEPL, as stated by Shri Suneer Nalagath in his statements dated 09.03.2022, 10.03.2022 & 11.03.2022.
- He denied all the facts stated by Shri Suneer Nalagath in his statements dated 09/10/11.03.2022. He did not instruct Shri Suneer Nalagath to leave Gandhidham and come back to Chennai and also did not book any Air tickets to travel from Ahmedabad to Chennai for Shri Suneer & Shri Yogendra Pratap Varma. He did not give any instructions to Suneer to go back to Gandhidham to sign any appointment letter. He didn't give any i-phone to Shri Suneer Nalagath and also didn't give keypad mobile for Shri Yogendra Pratap Varma. He did not go to Bangalore on 17.08.2021 to meet Shri Suneer and did not ask Shri Suneer to remain underground and switch off his personal mobiles. He didn't ask Shri Suneer to start work in M/s. Spice Deccan Impex Pvt. Limited, Sy No. 286, Reddy Gunta Road, Kodavalluru, Yallaiyapalem Village, SPSR Nellore, Andhra Pradesh – 524366 Nellore (100% EOU unit).
- He denied all the facts stated by Shri Suneer Nalagath that Shri A. Feroze Ahamed told him that he was going to operate one firm namely M/s. SF Express Pvt. Ltd, KASEZ and Shri Suneer and Shri Yogendra Pratap Varma would be the Directors of the said firm. He denied to the fact that he informed about carrying out import export business through the said firm and also about the appointment of Shri Esaki V., Company Secretary for documentation related work. He also denied the fact that he asked Shri Suneer to forward the documents viz. Aadhar Card, Photograph, Pan Card, Electoral ID etc. to Shri Esaki V. on his Whatsapp No. 9789804692. He further stated that he did not told Shri Suneer to go to Gandhidham with Shri Muhammad Farooq Ali, Shri Sadiq and Shri Yogendra Pratap Varma.
- He denied all the facts stated by Shri Suneer Nalagath in his statement recorded on 09.03.2022, wherein Shri Suneer stated that during the month of March-2021, Shri A. Feroze Ahamed asked him to become the Managing Partner in a trading firm namely M/s SFEPL and that they would import dry fruits and sell the same in the domestic market. He denied that he promised Shri Suneer a salary of Rs. 75,000/- and a joining bonus of Rupees Five Lakh to cover the loss which Shri Suneer had incurred while closing his Sports Garments Business.
- He did not have any business transactions at KASEZ, Kandla and

also had never been to Kandla. He did not have any consultant at KASEZ, Kandla. He did not know any person namely Shri Rajesh. Upon perusal of the Bill of Entry/Bill of Export, wherein Digital signature of one person namely Shri Naresh was used and in reply to a question about the said person Shri Naresh, he stated that he did not know about details of any import or export made through M/s. SF Express Pvt. Ltd, KASEZ and also he did not know any person namely Shri Naresh.

- He perused the documents i.e. Import & Export documents of M/s S.F. Express Pvt Ltd, E-way bill data, Statement of transporters, panchanama drawn at Gandhidham, Jaipur & Delhi, Letter dated 18.08.2021 & 17.12.2021 received by DRI Ahmedabad from the Office of the Commissioner of Customs (Preventive), North Eastern Region, Shillong. As per the said documents, the goods i.e. Areca Nuts imported by M/s SFEPL, KASEZ during the month of May-2021 to July-2021, which were meant for export to Bangladesh, were diverted to Nagpur instead of export of the same to Bangladesh. Upon perusal of the said documents, he stated that he had no comments to offer on the above documents, as he was not involved in the above transactions of M/s. SFEPL.
- He had no comments to offer on the duty evasion/destination of the goods declared for export/mode of transport used for movement of the said goods by M/s SFEPL, as he was not involved in the above transactions of M/s SFEPL.
- He had no connection with M/s SFEPL and did not know about M/s Blue Gold International, Delhi, M/s B & H Overseas, Delhi & M/s Sai International, Crodak Road, Itwari, Nagpur.
- He did not know the persons namely Shri Zia Faisal, Shri Aamir Hussain, Shri Satish, Shri Loon Singh (Chokidar) & Shri Ankur of Delhi.
- On perusal of the Show Cause Notice F. No. KASEZ/IA/015/2015-16 dated 16.02.2022 issued by the Office of the Development Commissioner, KASEZ, he did not offer any comments on the above, as he stated that he was no way connected with the said firm viz. M/s SF Express Pvt. Ltd.
- He had carefully gone through the provisions of the Sections 111 & 113 of the Customs Act 1962 and agreed that the duty-free goods diverted in DTA were liable to confiscation as per Section 111 & 113 of Customs Act 1962.
- He agreed and was aware of the fact that DRI Coimbatore had booked a case against M/s Southern Impex for diversion of duty-free imported Areca Nuts in Domestic Tariff Area.
- He agreed and was aware of the fact that DRI Hyderabad had booked a case against M/s Spice Deccan for diversion of duty-free imported Areca Nuts in Domestic Tariff Area. However, he stated that though he was a noticee to the SCN issued in the case of M/s Spice Deccan, he was not involved in the said alleged diversion of imported goods.
- Shri Suneer Nalagath was lying and falsely implicating him. However, he failed to give reason for the same.
- He did not have any business rivalry with Shri Suneer Nalagath but Shri Suneer Nalagath had requested him to arrange for a personal loan of Rs 5 Lakhs, which he could not arrange and Shri

Suneer was not happy with that issue.

- Upon perusal of the statement of Shri V. Esaki. recorded on 06.12.2021, he stated that he had no comments to offer on the said statement, as he had no connection with M/s SFEPL.
- He did not have any rivalry with Shri V. Esaki. He had consulted him regarding FSSAI details in respect of M/s Roshan International. He had no issue with Shri V. Esaki.
- He was not involved in any illegal activities of M/s. Southern Impex, M/s Spice Deccan and M/s S.F.Express Pvt. Ltd.
- He had no comments to offer on the involvement of Shri Suneer Nalagath with the firms namely M/s Southern Impex, M/s Spice Deccan and M/s S.F. Express Pvt. Ltd.

7.4.2 Investigation against Shri Farooq Ali

7.4.2.1 Shri Farooq Ali was issued summons on 16.05.2022, 21.07.2023, 22.07.2023, 16.08.2023 & 06.09.2023 (**RUD No.41**), however he did not present himself before DRI on any of the occasions.

7.4.2.2 It is important to mention that the summons dated 21.07.2023 was issued for recording of his statement at DRI Hyderabad and further as reported by the Deputy Director, DRI HZU vide letter F. No. DRI/HZU/Misc./D/2022 dated 24.07.2023 (**RUD No.42**), the officers of DRI Hyderabad also visited his residence on 21.07.2023 to record his statement at his home, but at his home it was informed to the officers that he was not available.

7.4.2.3 Further, summons dated 22.07.2023 was served to him through his wife Ms Saira, however, he neither come forward nor contacted the officers on that day or afterwards. Further, in respect to the summons dated 06.09.2023 issued to appear on 11.09.2023, Shri Mohammed Farooq Ali vide his email dated 18.09.2023 submitted that he was not at the station and he had no knowledge of any information pertaining to M/s S.F. Express Private Limited. Therefore, he requested that the requirement of his deposition to any statement or furnishing of any of the documents pertaining to M/s S.F. Express does not and would not arise.

7.4.2.4 He referred the Judgement of Hon'ble High Court of Madras in W.P No. 24062/2021 dated 29.11.2021 and more particularly the paragraphs 78 to 90 which categorically stated that merely because the offices attached to the Directorate of Revenue Intelligence have all India jurisdiction, the same would not ipso facto mean that they can interfere with the functioning of identical officers of the Directorate of Revenue Intelligence, under whose jurisdiction, I am functioning and operating the business.

7.4.2.5 He had no knowledge of any export/import undertaken by M/s S.F. Express Private Limited and have nothing to state in the matter. He requested to take this communication as his deposition under section 108 of the Customs Act, 1962 and if any further statement had to be recorded, he may be permitted to appear before the Office of the Directorate of Revenue Intelligence, at Hyderabad.

8. Arrest of Shri Suneer Nalagath

On the basis of evidence gathered and after the due approval from the competent authority, Shri Suneer Nalagath was arrested on 11.03.2022 under the provision of Section 104 of the Customs Act 1962 for offence committed under the provisions of Section 132 & 135(1)(a) & (d) punishable under Section 135(1)(i)(A) & (B) of the Customs Act 1962 and was produced before the Additional Chief Metropolitan Magistrate, who sent him to Judicial custody.

9. Communication with KASEZ

Vide letter F. No. KASEZ/CUS/P&I/03/2021-22 dated 03.11.2021 **(RUD)**, Deputy Commissioner (Customs), KASEZ Gandhidham forwarded the Bank account details i.e. IDBI Bank Ltd, Prakash House, Mahipalpur, New Delhi (Account No. 0075102000030913) submitted by M/s SFEPL in their **Form F** i.e. Consolidated Application form for setting up a unit in SEZ and also forwarded one another relevant correspondence including copy of email dated 13.10.2021 received from the Assistant Commissioner, Customs Division-Dhubri in respect to their letter dated 29.07.2021 & 01.09.2021, wherein it was informed that no exports of the goods related to KASEZ unit had been done through any land port under Customs Division Dhubri.

10. Show Cause Notice issued by KASEZ

M/s SFEPL and their directors Ms Renu Kataria, Ms Beermati, Shri Suneer Nalagath & Shri Yogendra Pratap Varma were issued SCN bearing No. KASEZ/IA/015/2015-16 dated 16.02.2022 **(RUD No.43)** proposing penal action for contravention of the provisions of FT (D&R) Act, 1992 & SEZ Act 2005 by the Development Commissioner KASEZ.

11. Summary of Investigation

In view of the facts mentioned in the foregoing paras, documentary evidences on record, statements recorded during the investigation, legal provisions mentioned above, it appears that:

- (a) M/s. SFEPL, Shed No. 214, Spl. CIB Type, Ground Floor & First Floor, Phase-I, KASEZ, Gandhidham is a SEZ entity at KASEZ, Gandhidham.
- (b) The Development Commissioner, KASEZ Gandhidham granted Letter of Approval vide letter F. No. KASEZ/IA/15/2019-20/10980 dated 23.12.2019 **(RUD NO.-44)**, as amended/extended from time to time as approved under UAC (Unit Approval Committee) Meeting No.149/2019-20 Dated 10.10.2019, to set up a Trading Activity and Warehousing Service activity in Kandla SEZ for 12 specified items for – trading activity as per Annexure-A thereof & 16 other items for warehousing service activity under Annexure-B thereof subject to conditions imposed therein and all the rules and regulations related to SEZ/Customs/Foreign Trade were binding on them. In terms of condition of Letter of Approval and also in terms of condition of Bond Cum Legal Undertaking (BLUT) executed by the unit, M/s SFEPL are under legal obligation to comply with the terms and condition of the LOA as well as BLUT and to comply with the provisions of SEZ Rules, 2006.

- (c) Vide letter F.No. KASEZ/EM/I/S-143/877/19-20/11312 dtd 3/6.1.2020 **(RUD NO.-45)** the M/s SFEPL was allotted the unit at 207, First Floor, Yamuna SDF Complex, Phase-II, KASEZ by the Competent authority of KASEZ.
- (d) Vide letter F.No. KASEZ/EM/I/S-143/877/19-20 dated 05.02.2021 **(RUD NO.-46)** M/s SFEPL was offered/allotted premises located at Shed No. 214, Spl. CIB Type, Ground & First Floor, Phase-I, KASEZ by the Competent authority of KASEZ.
- (e) As per the letter F.No. KASEZ/IA/15/2019-20 dated. 05.01.2021 **(RUD NO.-47)**, permission for warehousing goods (total 56 types of goods with different description) on behalf of DTA/Foreign clients were granted to M/s SFEPL.
- (f) As per the request made vide letter dated 23.03.2021, competent authority of KASEZ issued a letter F. No. KASEZ/IA/15/2019-20 dated 23.04.2021 **(RUD NO.-48)**, informing about the letter for addition of manufacturing activity. Wherein List of Raw material was shown as Raw Dried Areca(betel) Nut (ITC HS code-08028010 to 08028090), In Shell Walnuts(ITC HS code-08023100), Pepper (ITC HS code-09041110 to 09041190), whereas List of Finished Goods were shown as Processed Supari(ITC HS code-21069030 to 080280), Walnut kernels(ITC HS code-08023200), Mixed Spices(ITC HS code-09109100).
- (g) As per the request made vide letter dated. 22.3.2021, competent authority of KASEZ issued a letter F. No. KASEZ/IA/15/2019-20 dated. 23.4.2021, informing about permission granted for warehousing goods on behalf of DTA/Foreign clients i.e Olives, Pasta, Whole Truffles & Truffles oil, Farina Flour, Waffle Flour, Waffle Baker, Canned Tomatoes, Sweet Corn, Sauces & Extra Virgin Olive Oil.
- (h) M/s SFEPL executed Bond Cum Legal Undertaking for SEZ unit (as per Rule 22) 18/2019-20 dated 07.01.2020 **(RUD NO.-49)** for Rs. 25,00,000/- (Rupees Twenty Five Lacs only) with DC, KASEZ and the same was accepted by the Competent Authority as informed vide letter F. No. KASEZ/IA/15/2019-20 dated 17.01.2020. The subject Bond Cum Legal Undertaking was signed by Ms Renu Kataria and Ms Beeramati.
- (i) M/s SFEPL was having IEC No. AAXCS6210J issued on 5.2.2020 **(RUD NO.50)** by DGFT, New Delhi.
- (j) M/s SFEPL was having GST Reg. No. 24AAXCS6210JIZO **(RUD NO.51)**, wherein Managing/whole Time Directors were shown as Shri Naresh and Shri Tarun Dagar.
- (k) M/s SFEPL imported 530.12 MTs. of Areca Nuts from Indonesia without payment of duty under Notification No.52/2003-Customs dated 31.03.2003 during the period May 2021 to June 2021 through Mundra Port **(Annexure-B)**.
- (l) Investigation revealed that M/s SFEPL had filed 26 Bills of Export to export of Areca Nuts (CTH 0828010), total Quantity- 414 MT, Declared FOB Value-2,60,31,508/- **(as per annexed Annexure- A)** at Bangladesh

through Land Customs Station-LCS Mankachar during the month of June 2021 & July 2021. However, on being inquired with Customs (Preventive), Shillong, Deputy Commissioner vide his letter F. No. VIII (10)02/Cus/HQRS. Prev/SH/2020-21 Dated. 17.12.2021, informed that there had been no export by M/s. SFEPL neither through Mankachar LCS nor through any other LCSs under the jurisdiction of Shillong Customs (Preventive) Commissionerate and the investigation conducted as detailed above revealed that the said duty-free imported Areca Nuts were diverted into domestic tariff area i.e. at Nagpur without payment of duty with the aid of bogus e-way bills. Though the areca nuts were destined to Bangladesh as per e-way bills, the toll plaza data gathered revealed that the same were transported till Jaipur only **(RUD No. 52)** and subsequently diverted to Nagpur. Further inquiry with the transporter/forwarder revealed that the subject trucks/goods had not crossed the Jaipur and loaded goods i.e. areca nuts were unloaded at Jaipur and shifted to another trucks and then diverted into Domestic Tariff Area i.e. at Nagpur. It was further revealed that the names of the consignor firms mentioned in the said the e-way bills/Lorry Receipts were not in existence.

(m) On verifications of the following E-Way bills from the Eway portal, it is observed that though the E-way bills were issued for goods to be traveled from Delhi to Nagpur but goods were moved from Jaipur to Nagpur.

| E way bill No. | Date | Tax Invoice No. and date(As given in the respective E-Way bill) | From | To |
|----------------|-----------|---|---------------------------------|---------------------------|
| 701193487116 | 13.6.2021 | 182/13.6.2021 | Blue Gold International , Delhi | Sai International, Nagpur |
| 701193486577 | 13.6.2021 | 160/13.6.2021 | -do- | -do- |
| 751193592390 | 14.6.2021 | 185/13.6.2021 | -do- | -do- |
| 711193598648 | 14.6.2021 | 184/14.6.2021 | -do- | -do- |
| 741193640386 | 14.6.2021 | 187/14.6.2021 | -do- | -do- |
| 761193785261 | 15.6.2021 | 190/15.6.2021 | -do- | -do- |
| 701193487116 | 13.6.2021 | 182/13.6.2021 | -do- | -do- |
| 761194009566 | 16.6.2021 | 186/16.6.2021 | B.H.Overseas | -do- |
| 741194133124 | 17.6.2021 | 190/17.6.2021 | -do- | -do- |
| 781194206387 | 17.6.2021 | 192/17.6.2021 | -do- | -do- |
| 741193640386 | 14.6.2021 | 187/14.6.2021 | Blue Gold International , Delhi | -do- |
| 781195409662 | 24.6.2021 | 250/24.6.2021 | -do- | -do- |
| 741195408498 | 24.6.2021 | 255/24.6.2021 | B.H.Overseas | -do- |

(n) Shri Suneer Nalagath, Director of M/s SFEPL in his voluntary statements admitted the violations committed by M/s SFEPL i.e. diversion of imported areca nuts and further deposed that Shri Feroze Ahamed of M/s Roshan International & Shri Mohammed Farooq Ali, Managing Director of M/s Spice Deccan Impex Private Limited (100% EOU) were the key persons in the illegal activities committed by M/s SFEPL; Shri

Mohammed Farooq Ali had engaged Shri Yogendra Varma. Shri Suneer and Shri Yogendra Pratap Varma, followed the instruction of Shri Feroze Ahamed from time to time and approached the Company Secretary; provided the required documents to Company Secretary and also signed many documents from time to time relevant to M/s SFEPL. After perusing the relevant documents shown to him during recording of his statement, Shri Suneer Nalagath also admitted that the duty-free imported goods were diverted into domestic market.

12. Extension of Time Limit for completion of Investigation in terms of the provision of Section 28BB of the Customs Act, 1962.

As informed vide Letter F.No. GEN/ADJ/COMM/494/2023-Adjn-O/o Commr-Cus-Kandla dated 26.07.2023 of Deputy Commissioner (Adj), Custom House, Kandla (**RUD NO.53**) and in exercise of powers conferred under the provision of Sub-section (1) of Section 28BB of the Customs Act 1962, the Commissioner of Customs, Customs House Kandla granted extension for completion of investigation for further one year from the relevant date i.e. 24.07.2023 in terms of the provisions of Section 28BB of the Customs Act, 1962.

22. RELEVANT LEGAL PROVISIONS OF SEZ Rules 2006

Provisions of the Special Economic Zones Act, 2005, and the Special Economic Zones Rules, 2006

22.1 As per section 20 of the SEZ Act, 2005, notwithstanding anything contained in any other law for the time being in force, the Central Government may, by notification, specify any officer or agency to carry out surveys or inspections for securing of compliance with the provisions of any Central Act by a Developer or an entrepreneur, as the case may be, and such officer or agency shall submit verification and compliance reports, in such manner and within such time as may be specified in the said notification.

22.2 As per Section 21(1) of the SEZ Act, 2005, the Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.

22.3 As per Section 21(2) of the SEZ Act, 2005, the Central Government may, by general or special order, authorize any officer or agency to be the enforcement officer or agency in respect of any notified offence or offences committed in a Special Economic Zone.

22.4 As per Section 21(3) of the SEZ Act, 2005, every officer or agency authorized under sub-section (2) shall have all the corresponding powers of investigation, inspection, search or seizure as is provided under the relevant Central Act in respect of the notified offences.

22.5 As per Section 22 of the SEZ Act, 2005, the agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation, inspection, search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone:

Provided that no investigation, inspection, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or sub-section (3) of section 21 without prior approval of the Development Commissioner concerned. Provided further that any officer or agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner.

22.6 Further, the Ministry of Commerce, vide its notification dated 05.08.2016 has notified the offences under the Customs Act, 1962, in exercise of the powers conferred by sub-section (1) of section 21 of the Special Economic Zones Act, 2005. The relevant portion is reproduced below-

“In exercise of the powers conferred by sub-section (1) of section 21 of the Special Economic Zones Act, 2005 (28 of 2005) (hereinafter referred as the Act), the Central Government hereby, notifies the offences contained in the under-mentioned sections of the Customs Act, 1962 (52 of 1962), the Central Excise Act, 1944 (1 of 1944) and the Finance Act, 1994 (32 of 1994) as offences under the Act:-

The Customs Act, 1962

1. Section 28, 28AA and 28AAA
2. Section 74 and 75
3. Section 111
4. Section 113
5. Section 115
6. Section 124
7. Section 135
8. Section 104”

22.7. Further, the Ministry of Commerce, in exercise of the powers conferred by sub-section (1) of section 22 of the Special Economic Zones Act, 2005, vide its notification dated 05.08.2016 has authorized the Jurisdictional Customs Commissioner to carry out investigation, inspection, search or seizure in SEZ in respect of the offences under the Customs Act, 1962. The relevant portion is reproduced below-

“In exercise of the powers conferred by section 22 of the Special Economic Zones Act, 2005 (28 of 2005) (hereinafter referred as the Act), the Central Government authorises the jurisdictional Customs Commissioner, in respect of offences under the Customs Act, 1962 (52 of 1962) and Commissioner of Central Excise in respect of offences under the Central Excise Act, 1944 (1 of 1944) and the Finance Act, 1994 (32 of 1994) and notified under the Act, for the reasons to be recorded in writing, to carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit with prior intimation to the Development Commissioner, concerned.”

22.8 As per Section 26 of the SEZ Act, 2005, the entrepreneur shall be entitled to exemption from any duty of Customs under the Customs Act, 1962 or the Customs Tariff Act, 1975, or any other law for the time being in force, on goods imported into a Unit to carry on the authorized operations by the entrepreneur.

22.9 As per Section 30 of the SEZ Act, 2005, subject to the conditions specified in the Rules made by the Central Government in this behalf, **any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of Customs** including Anti-Dumping Duty etc., where applicable, as leviable on such goods when imported.

22.10 Rule 27(1) of Special Economic Zone Rules, 2006 (herein after referred as SEZ Rules) allows the Developer of SEZ and Units in SEZ to import all types of goods, including capital goods (new or second hand), raw materials, semi-finished goods (including semi-finished Jewellery), component, consumables, spares goods and materials for making capital goods without payment of duty, taxes or cess, required for the purpose of authorised operations except the goods which are prohibited for import under Indian Tariff Classification (Harmonised System) for Import and Export. From the above it is evident that in order to import the goods duty-free, following two criteria should primarily be satisfied:

22.10.1 Goods imported or procured must be covered under the authorized operations of SEZ Developer/Unit and

22.10.2 Such goods should not be prohibited for import under Indian Tariff Classification (Harmonised System) for Import and Export. However, the said rule allows the Developer of SEZ and Units in SEZ to import the prohibited goods too subject to the prior approval of Board of Approval (BOA). The phrase 'Authorised operations' has been defined vide Section 2(c) of SEZ Act, 2005 to mean operations which are authorised by the Board in case of Developer under Section 4(2) and by Development Commissioner (DC) in case of Units in SEZ under Section 15(9) of SEZ Act, 2005.

22.11 Written Bond cum legal undertaking has to be furnished under [sub-rule (5) of rule 12 and sub-clause (ii) of sub-rule (1) of rule 22] to the DC with THE CONDITIONS OF THE WRITTEN BOND-CUM-LEGAL UNDERTAKING THAT:

1. We, the obligors shall observe all the provisions of the Special Economic Zones Act, 2005 and the rules and orders made thereunder in respect of the said goods.
2. We, the obligors shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed on account of the goods and services in terms of provisions of Rule 25 of Special Economic Zones Rules 2006.
3. We, the obligors, shall furnish to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, at port or air-port or inland container depot or land customs station or a warehouse evidence to his satisfaction within a period of forty-five days from the date of dispatch from any warehouse or unit that the said goods have duly arrived in the Special Economic Zone.

4. We, the obligors shall be wholly and solely responsible for ensuring that there shall be no pilferage during transit of the said goods when dispatched from the place of import or the factory of manufacture or from the warehouse to the Special Economic Zone and vice versa and we, the obligors, shall pay the duty on pilfered goods, if any.
5. We, the obligors shall maintain detailed accounts of all goods imported or procured from Domestic Tariff Area or consumed and utilized, in proper form, including of those remaining in stock and those sent temporarily outside the Special Economic Zone in the Domestic Tariff Area under our obligation, and shall produce such accounts for inspection of the Specific Officer or such other authorized officer.
6. We, the obligors shall, submit to the Development Commissioner and the Specified Officer, quarterly and half yearly returns within a period of thirty days following the close of quarter/half year, as prescribed under the Special Economic Zone Rules, 2006. In case of wrong submission of such information or failure to submit such information within the stipulated time, the permission granted to us for carrying out the authorized operations may be withdrawn and/or the permission for further imports/domestic procurement and sales in the Domestic Tariff Area may be stopped.
7. We, the obligors shall fulfill other conditions stipulated in the Special Economic Zone Act, 2005, Special Economic Zones Rules, 2006 and orders made thereunder, as amended from time-to-time.

If each and every one of the above conditions is duly complied with by us, the obligors, the above written bond-cum-legal undertaking shall be void and of no effect, otherwise the same shall remain in full force and effect and virtue.

22.12 Rules 34 to 37 of the SEZ Rules 2006, governing the safe custody of the bonded goods are reproduced as follows,

34. Utilization of goods — The goods admitted into a Special Economic Zone shall be used by the Unit or the Developer only for carrying out the authorized operations but if the goods admitted are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to account for the goods as provided under these rules, duty shall be chargeable on such goods as if these goods have been cleared for home consumption:

Provided that in case a Unit is unable to utilize the goods imported or procured from Domestic Tariff Area, it may export the goods or sell the same to other Unit or to an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit, without payment of duty, or dispose off the same in the Domestic Tariff Area on payment of applicable duties on the basis of an import license submitted by the Domestic Tariff Area buyer, wherever applicable.

35. Co-relation of import consignment with corresponding export consignment — The Unit shall account for the entire quantity of goods

imported or procured duty-free, by way of export, sales or supplies in Domestic Tariff Area or transfer to other Special Economic Zone Unit or Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit or bonded warehouses and the balance held in stock:

Provided that at no point of time the Unit shall be required to correlate every import consignment with its export or transfer to other Special Economic Zone Unit or Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit or sales in Domestic Tariff Area or supply to bonded warehouses except in case of goods covered under proviso to clause (d) of sub-rule (4) of rule 18 and goods held as stock and the Unit may adopt ‘First-in-First-Out’ method and a consignment which has been received first, shall be deemed to have been utilized first.

36. Filing of documents for admission and removal — All documents for admission of goods into and out of Special Economic Zone shall be filed before the Authorized Officer of Customs.

37. Duration of goods or services in a Special Economic Zone —

- (1) The goods admitted to a Special Economic Zone shall be utilized, exported or disposed off in accordance with the Act and rules within the validity period of the Letter of Approval issued to the Unit or in the case of a Developer within a period of one year or such extended period as may be allowed by the Specified Officer under sub-rule (5) of rule 12.
- (2) On failure to utilize or dispose off goods as provided such goods shall be liable for payment of duty as if the goods have been removed to Domestic Tariff Area on the date of expiry of the said validity period under sub-rule (1).

Rules 46 to 47 of the SEZ Rules 2006

Rules 46. Procedure for Export. -

- (1) The procedure for export from Special Economic Zone through seaports or airports or Inland Container Depot or Container Freight Station or Land Customs Station or by Post or by Courier or by Personal Carriage, as the case may be, shall be as under: -
 - (a) the Unit shall file Shipping Bill, in quadruplicate, with the Authorized Officer of Customs in the Special Economic Zone together with relevant documents, namely, invoice, packing list and Currency Declaration Form (GR) (in duplicate).....
 - (b) ...;
 - (c) ...;
 - (d) ...;
 - (e) ...;

Provided that in case of export of large quantities of cargo where it may not be possible to ship the cargo from the Special Economic Zone in one consignment, the Specified Officer may allow the export of such cargo on execution of a Bond for the duty involved subject to the condition that

the Unit shall submit the proof of export within ninety days of removal of such cargo under Bond, failing which applicable duty on the goods not exported shall be payable in terms of the Bond;

47. Sales in Domestic Tariff Area.-

- (1) A Unit may sell goods and services including rejects or wastes or scraps or remnants or broken diamonds or by- products arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area on payment of Customs duties under section 30.....
- (4) Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made there under.
- (5) Refund, Demand, Adjudication, Review and Appeal with regard to matters relating to authorised operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, the Central Excise Act, 1944, and the Finance Act, 1994 and the rules made there under or the notifications issued there under.

48. Procedure for Sale in Domestic Tariff Area.-

- (1) Domestic Tariff Area buyer shall file Bill of Entry for home consumption giving therein complete description of the goods and/or services namely, make and model number and serial number and specification along with invoice and packing list with the Authorised Officers:

Provided that the Bill of Entry for home consumption may also be filed by a Unit on the basis of authorization from a Domestic Tariff Area buyer.

.....

22.13 Special Economic Zones (Customs Procedures) Regulations, 2003 issued vide Notification No. 53/2003-Customs (N.T.) dated 22-07- 2003 governing the operations of SEZ units,

- (i) Regulation 2(d) definitions "custodian" means any person approved by the Commissioner of Customs under section 45 of the Act for the custody of imported goods unloaded in the customs area;
- (ii) Regulation 2(g) "Export and Import Policy " means the Export and Import Policy, notified from time to time, in the Official Gazette by the Government of India in the Ministry of Commerce and Industry under section 5 of the Foreign Trade (Development and Regulations) Act, 1992 (22 of 1992).

(iii) ...

(iv)

(v)

(vi)

- (vii) Regulation 13 Export of goods by SEZ unit,
- (1) Any goods manufactured, produced, reconditioned, re-engineered, imported or procured by the zone unit, as the case may be, as per the terms and condition of Letter of permission, may be exported out of India through airport or port or inland container depot, or land customs station or by post or courier or personal carriage, as the case may be, subject to the following conditions, namely:-
- (i) the zone unit shall file shipping bill in quadruplicate with customs officers in the zone, giving therein complete description of goods such as model, make, serial number, specification, alongwith relevant documents, namely, invoice, packing list, GR Form (in duplicate) for noting;
 - (ii) the shipping bill shall be assessed by the customs officers in the zone in the manner and procedure as is followed in case of normal exports;
 - (iii) the goods shall not be examined in routine and Let Export Order may be given on the basis of self-certification by the zone unit ;
 - (viii) Regulation 32 Co-relation of import consignment with corresponding export consignment. The zone unit using homogenous material may be allowed to adopt "First-in-First-Out" arrangement and a consignment which has been received first, may be deemed to have been utilised first for this purpose, and in such cases, co-relation of every import consignment with the corresponding export consignment may not be required.

Rules 74A. Transfer of Assets by Special Economic Zone Units upon their exit. –

The Unit may opt out of Special Economic Zone by transferring its assets and liabilities to 155 Inserted vide Notification No. G.S.R. 909(E) dated 19-09-2018 another person by way of transfer of ownership including sale of Special Economic Zone units subject to the following conditions: -

- (i) the Unit has held a valid Letter of Approval as well as lease of land or Standard Design Factory for not less than a period of five years on the date of transfer;
- (ii) the unit has been operational for a minimum period of two years after the commencement of production as on the date of transfer;
- (iii) such sale or transfer transactions shall be subject to the approval of the Approval Committee;
- (iv) the transferee fulfils all eligibility criteria applicable to a Unit; and
- (v) the applicable duties and liabilities, if any, as calculated under rule 74, as well as export obligations of the transferor Unit, if any, shall stand transferred to the transferee Unit which shall be under obligation to discharge the same on the same terms and conditions as the transferor Unit.]

Rule 75. Self-Declaration. - Unless otherwise specified in these rules all inward or outward movement of goods into or from the Zone by the Unit or

Developer shall be based on self-declaration made and no routine examination of these goods shall be made unless specific orders of the Development Commissioner or the Specified Officer are obtained.

Violations made by M/s SFEPL (SEZ unit), KASEZ:

23. Whereas, in terms of condition of Letter of Approval and also in terms of the condition of Bond Cum Legal Undertaking (BLUT) executed by M/s SFEPL , they were under legal obligations to comply with the terms and conditions of LOA as well as BLUT and to comply with the provisions of SEZ Rules, 2006.They have contravened the provision of Rule 45 of SEZ Rules in as much as they failed to abide by the terms and conditions of Letter of Approval issued and diverted the goods meant for export into DTA and also violated the Customs Act, 1962. Further, Rules 46 of SEZ Rules in as much as the goods intended for export and for which the Let Export order had been issued by KASEZ Custom for export of goods through LCS Mankachar under Dhubri Custom Division, Assam was diverted in the DTA. Further, breached the Provisions of the Rule 75 of SEZ Rules 2006, in as much as they breached the trust and reliance placed on them for self-certification and declaration regarding their import and export transactions and related documents. It appears that by their above act and omission and commission, M/s SFEPL has rendered liable for imposition of penalty under Rule 54(2) of SEZ Rules, 2006 and Section 11 of Foreign Trade (Development and Regulation)Act, 1992 as amended time to time.

The LOA issued under sub-rule (3) of rule 17 of SEZ rules was subject to observation of the following conditions by the unit listed as detailed below, are found to be breached,

Table

Conditions prescribed under As per LOA No.15/19-20 Dated 23.12.2019 (Unit Approval Committee (UAC) No. 149/2019-20 Dated 10.10.2019)

| Sr. No. | Condition No. | Details of Condition, which appears to be breached |
|---------|---------------|--|
| 1 | (i) | Shall export the goods manufactured/goods imported/procured for trading and services, including items of trading, as per the provisons of SEZ Act, 2005 and Rules made there-under for a period of five years from the date of commencement of authorized operation.abide by the provisions of SEZ Act, 2005 and rules framed thereunder ,FT(D &R) Act, 1992 and Notification , Public Notices, Circulars etc. issued by the DGFT in this regard from time to time , provisions of any applicable Act/Rules/Policy in force. |
| | (v) | May supply/sell goods or services in the Domestic Tariff Area in terms of the provisions of SEZ Act,2005 and Rules an orders made thereunder. |
| | (x) | Shall abide by the provisions of SEZ Act,2005 and the rules and orders made thereunder. |

| | | |
|--|-------|--|
| | (xvi) | Authorised operation for Warehousing Services is as per Rule 18(5) Rule and Rule 76 SEZ Rules,2006 |
|--|-------|--|

Condition prescribed under Letter F. No. KASEZ/IA/15/2019-20 Dated 23/26.4.2021 (Unit Approval Committee (UAC) No. 165/25.03.21)

| Sr. No. | Condi. No. | Details of Condition, which appears to be breached |
|---------|------------|--|
| 1 | (1) | Shall abide by the provisions of SEZ Act, 2005 and rules framed thereunder ,FT(D &R) Act, 1992 and Notification , Public Notices, Circulars etc. issued by the DGFT in this regard from time to time , provisions of any applicable Act/Rules/Policy in force. |
| | (3) | Shall execute a fresh Bond –Cum-LUTs in the prescribed format(Form-H) with the Development Commissioner, KASEZ within 7 days |

Relevant Condition of the BLUT Breached by M/s SFEPL

Condition No. 9

Shall pay the duties on the goods and services sold in Domestic Tariff Area in terms of SEZ Act, 2005 and the rules and orders made there under.

Condition No. 10

Shall not dispose of goods and services admitted into the SEZ or goods manufactured or services to the DTA except as provide under SEZ Act,2005 and rules and orders made thereunder.

Condition No. 14

We the obligors shall intimate any change in the Board of Directors/Partners, telephone No.s, E-mail address, Web-site, Passport No.,Bank Address and Factory Address, Forthwith , to the Development Commissioner and the Specified officer.

24. Section 28(4) of Customs Act, 1962 provide duties not levied or not paid or short-levied orshort- paid or erroneously refunded.
- (1) Where any duty has not been levied or not paid or has been short-levied or short-paid orerroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

i) collusion; or

ii) any wilful mis-statement; or

iii) suppression of facts,

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

;

24.1 Section 28AA of the Customs Act, 1962: “ Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provisions of this Act or the rules made there under, the person, who is liable to pay duty in accordance with provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that Section.....”

24.2 Section 111(d) of the Customs Act, 1962 - 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;

24.3 Section 111(j) of the Customs Act, 1962 – any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

24.4 Section 111(o) of the Customs Act, 1962 – any goods exempt, 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;

24.5 Section 112- Penalty for improper importation of goods, etc. – Any person,

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

24.6 Section 114A of the Customs Act, 1962: Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section(8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.

24.7 Section 143 of the Customs Act, 1962. Power to allow import or export on execution of bonds in certain cases. —

- (1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may, notwithstanding anything contained

in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.

- (2) If the thing is done within the time specified in the bond, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the casemay be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.
- (3) If the thing is not done within the time specified in the bond, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.

25 Contraventions and Charges:

25.1 M/s SFEPL filed 26 Shipping Bills for export of duty-free imported Areca Nuts from Kandla SEZ to Bangladesh through LCS Mankachar. The details of the said Shipping Bills along with the description and quantity of the goods under the said shipping bills are as under:

| Sr.No. | Bill of Export | Date | Description of Goods | Quantity (in MTS) |
|--------|----------------|-----------|----------------------|-------------------|
| 1 | 4009268 | 9.6.2021 | Areca Nut | 16 |
| 2 | 4009286 | 9.6.2021 | Areca Nut | 16 |
| 3 | 4009403 | 11.6.2021 | Areca Nut | 16 |
| 4 | 4009404 | 11.6.2021 | Areca Nut | 16 |
| 5 | 4009405 | 11.6.2021 | Areca Nut | 16 |
| 6 | 4009422 | 11.6.2021 | Areca Nut | 16 |
| 7 | 4009423 | 11.6.2021 | Areca Nut | 16 |
| 8 | 4009470 | 12.6.2021 | Areca Nut | 14 |
| 9 | 4009478 | 12.6.2021 | Areca Nut | 16 |
| 10 | 4009484 | 12.6.2021 | Areca Nut | 16 |
| 11 | 4009501 | 12.6.2021 | Areca Nut | 16 |
| 12 | 4009509 | 12.6.2021 | Areca Nut | 16 |
| 13 | 4009538 | 14.6.2021 | Areca Nut | 16 |
| 14 | 4009539 | 14.6.2021 | Areca Nut | 16 |
| 15 | 4009568 | 14.6.2021 | Areca Nut | 16 |
| 16 | 4009569 | 14.6.2021 | Areca Nut | 16 |
| 17 | 4009971 | 21.6.2021 | Areca Nut | 16 |

| | | | | |
|-------|---------|-----------|-----------|---------|
| 18 | 4009972 | 21.6.2021 | Areca Nut | 16 |
| 19 | 4009973 | 21.6.2021 | Areca Nut | 16 |
| 20 | 4009997 | 21.6.2021 | Areca Nut | 16 |
| 21 | 4009998 | 21.6.2021 | Areca Nut | 16 |
| 22 | 4011020 | 8.7.2021 | Areca Nut | 16 |
| 23 | 4011040 | 8.7.2021 | Areca Nut | 16 |
| 24 | 4011041 | 8.7.2021 | Areca Nut | 16 |
| 25 | 4011044 | 8.7.2021 | Areca Nut | 16 |
| 26 | 4011049 | 9.7.2021 | Areca Nut | 16 |
| Total | | | | 414 MTS |

25.2 The export of the goods declared under the above said 26 Shipping Bills to Bangladesh was confirmed with Customs (Preventive), Shillong, who vide letter dated 17.12.2021 informed that there had been no export by M/s. SFEPL neither through Mankachar LCS nor through any other LCSs under jurisdiction of Shillong Customs (Prev) Commissionerate. Investigation further revealed that the subject trucks/goods had not crossed the Jaipur and loaded goods i.e. areca nuts were unloaded at Jaipur and shifted to another trucks and then diverted into Domestic Tariff Area i.e. at Nagpur. Thus, it appears that M/s SFIPL in the guise of exporting areca nuts to Bangladesh, diverted 414.00 MTs of duty-free imported areca nuts into domestic tariff area/domestic market without payment of Customs Duty.

25.3 From all above narrated facts, it appears that M/s. SFEPL were liable to pay the Customs Duty applicable on the supply of goods (imported without payment of Duty) in DTA in terms of Section 30 of SEZ Act, 2005 read with Rule 47 of SEZ Rules, 2006, Section 12 of Customs Act, 1962 and Customs Tariff Act, 1975.

25.4 Section 14(2) of the Customs Act, 1962 empowers the Board to notify, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value. In exercise of the said powers under Section 14(2) of Customs Act, 1962. the Notification 36/2001 dated 3rd August, 2001, read with Notification 67/2013 Customs (NT) dated 25.06.2013 (as amended), fixes the tariff value for Areca nuts (CTH 0802 80) in USD per metric ton and the same is revised periodically by the Ministry of Finance. Hence, the Tariff value as fixed by the said notification is to be considered for the calculation of duty demand under Section 28(4) of the Customs Act, 1962.

25.5 Thus, M/s SF Express Pvt Ltd in the guise of exporting areca nuts to Bangladesh, diverted 414.00 MTs of duty-free imported areca nuts into domestic tariff area/domestic market without payment of Customs Duty, which were having a tariff value of Rs 146507163/- in terms of Customs Notification No. 49/2021-CUSTOMS(N.T.) dated 31.05.2021, 52/2021-CUSTOMS(N.T.) dated 15.06.2021, 55/2021-CUSTOMS(N.T.) dated 30.06.2021 and exchange rate Notification No. 51/2021-CUSTOMS(N.T.) dated 03.06.2021, 54/2021-Customs(N.T.) dated 17.06.2021, 57/2021-Customs(N.T.) dated 01.07.2021.

25.6 It appears that M/s SFEPL suppressed the fact from the department about any such clearance of the said goods into the local market, with an intent to evade the applicable Customs Duty leviable thereon. The diversion of duty-free imported Areca Nuts into domestic market without payment of Customs Duty by M/s SFEPL would not have come to light without the in-depth investigation carried out by the officers of DRI. From the facts given above, it appears that M/s. SFEPL have wilfully diverted the duty-free imported Areca Nuts into domestic market to evade the payment of Customs Duty in contravention to the provisions of Section 132 & Section 135 of Customs Act, 1962. Hence, the Customs duty not paid by M/s SFEPL in respect to the domestic sale of 414 MTs of duty-free imported Areca Nuts is recoverable in terms of Section 28(4) of the Customs Act, 1962 and the same is invocable for the recovery of the said customs duty evaded in this manner along with interest under Section 28AA of the Customs Act, 1962. Thus, it also appears that M/s SFEPL are liable for imposition of penalty under Section 114A of the Customs Act, 1962.

25.7 Therefore, M/s SFEPL appears liable to pay the Customs Duty & IGST amounting to Rs. 16,11,57,879/- (Rupees Sixteen Crores Eleven Lakhs Fifty Seven Thousand Eight Hundred Seventy Nine only) leviable on the diverted quantity of 414.00 MTs of Areca nuts, valued at Rs.14,65,07,163/- as detailed in Annexure C to this notice and as stated above pares and is recoverable under Section 28(4) of the Customs Act, 1962.

Confiscation

26.1 As discussed above in foregoing paras, it is clear that the impugned goods were cleared from the SEZ by M/s SFEPL for purported exportation to Bangladesh etc. The details of consignee and country of destination were mis-declared in the Shipping Bills of Exports filed by M/s. SFEPL with Customs Authorities at KASEZ. Enquiries with Shillong Customs Bangladesh border, had revealed that the subject goods were never exported from the any of the LCS. Further, during the course of investigation, all the concerned persons involved in the scandal including the Directors of M/s. SFEPL had also categorically admitted the fact that the impugned goods cleared for exportation under various Shipping Bills were in fact never exported out of India but were diverted to Domestic Market.

26.2 In view of the above facts, the impugned goods, as detailed in Annexure-A to this Investigation Report were removed from a customs area without the permission of the proper officer and/or contrary to the terms of such permission and thus the same were held to be liable for confiscation under section 111(j) of the Customs Act. The goods imported by them were unloaded from the conveyance without supervision of the proper officer in DTA which resulted in contravention of provisions of Section 34 of Customs Act, 1962 and thus the same are held to be liable for confiscation under Section 111(h) of the Customs Act, 1962. M/s. SFEPL or buyer of it's domestic tariff area did not file Bill of Entry while removing the goods from SEZ to DTA and thus the goods so cleared by them are held to be liable for confiscation under Section 111(1) of the Customs Act, 1962. The goods were cleared from Customs for export to Bangladesh violating the Special Economic Zones Act, 2005 and Rules and orders made there-under. Thus, the offending goods as mentioned in Annexure-A are also liable for confiscation under Section 111(d) and

Section 111(o) of the Customs Act, 1962

26.3. Further, the Shipping Bills and other related documents submitted by M/s. SFEPL were containing forged/manipulated details of consignee and country of destination for the goods cleared for export from SEZ. In view of the above facts, the impugned goods, as detailed in Annexure-A to this Investigation Report entered for exportation did not correspondence in respect of material particular (details of consignee and country of destination) with the Shipping Bills for Export under this Act and thereby the same are liable for confiscation under Section 113 (i) of the Customs Act, 1962. Also the subject goods were prohibited to be exported in terms of Section 2 (39) as discussed in foregoing paras. and thus the goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition Imposed by or under this Act or any other law for the time being in force, are liable to confiscation under Section 113(d) of Customs Act, 1962

26.4 The impugned goods covered under 26 Shipping Bills of Exports filed by M/s. SFEPL (as detailed in Annexure-A attached to this Investigation Report) cleared for exportation but not exported, deliberately with fraudulent intention of evasion of Customs Duty and the same wee unloaded without the permission of the proper officer. Accordingly, such goods are also liable for confiscation under Section 113 (k) of Customs Act, 1962.

26.5 In terms of Rule 25 of SEZ Rules, 2006, where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case may be, shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed without prejudice to any other action under the relevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Excise Tariff Act, 1985, the Central Sales Tax Act, 1956, the Foreign Trade (Development and Regulation) Act, 1992 and the Finance Act, 1994 (in respect of service tax) and the enactments specified in the First Schedule to the Act, as the case may be.

26.6 Further as per the conditions laid down under the legal provisions of Special Economic Zone Act and Rules made thereunder in respect of removal of goods in the Domestic Tariff Area, it is provided that a unit may sell goods and services in the Domestic Tariff area on payment of Customs duties under Section 30 of the SEZ Act, 2005 readwith Rule 47 of SEZ Rules, 2006, as applicable to the import of similar goods into India, underthe provisions of the Foreign Trade Policy. The DTA sale is subject to restrictions/prohibitions under ITC(HS) of any other law applicable in respect of import of like goods into India, unless exempted otherwise. The Section 30 of SEZ Act, 2005 provides for levy of Customs Duty equivalent to the import duty on the goods cleared from SEZ to DTA. Since the Customs Duty is leviable on import of goods under Section 12 of CustomsAct, 1962, it implies that the duty in case of DTA sale of goods from SEZ to DTA is chargeable under Section 12 of the Customs Act, 1962. As apparent from the facts discussed in foregoing paras, M/s. SFEPL have cleared the subject goods imported without payment of

duty, from SEZ to DTA and failed in making payment of appropriate Customs Duty, M/s. SFEPL have thus violated the provisions Customs Tariff Act, 1975, Section 12 and various other provisions of Customs Act, 1962 read with Section 30 of the SEZ Act, 2005 and Rule 47 of SEZ Rules, 2006.

26.7. It is evident that in the instant case the impugned goods were initially imported duty-free at KASEZ and subsequently diverted to DTA under the pretext of exportation to /Bangladesh etc. without discharging any Customs duty as required under Section 30 of SEZ Act, 2005 read with Rule 47 of SEZ Rules, 2006, Section 12 of Customs Act, 1962 and Customs Tariff Act, 1975. It was the DRI enquiries extended to the Land Customs Stations, which had unearthed the modus-operandi and revealed that the subject goods were never exported but were diverted to DTA. In their respective statements, the conspirators including the Directors of M/s. SFEPL have specifically admitted that the goods were being diverted to DTA, which is equivalent to import into India (DTA) from SEZ, without payment of duty. They were fully aware of diversion of goods in DTA but conspired, suppressed and colluded through fraud and mis-declaration and evaded huge amount of Customs Duty to the tune of Rs.16,11,57,879/- (as mentioned in Annexure-A to this notice).

26.8. Further, in terms of Condition prescribed under LOAs 15/19-20 Dated 23.12.2019 Letter F. No. KASEZ/IA/15/2019-20 Dated 23/26.4.2021 M/s.SFEPL were liable to pay Duty in case of sale/supply goods in the Domestic Tariff Area, in terms of Section 30 of Special Economic Zones Act, 2005 read with Rule 47 of SEZ Rules, 2006 and orders made there-under as well as Section 12 of Customs Act, 1962 and Customs Tariff Act, 1975. Their liability towards Customs duty for such diversion in guise of export was also admitted by the Directors and other involved persons. M/s. SFEPL being an importer and SEZ Unit, were liable to pay the entire Customs duty to be demanded under the provisions of Customs Act, 1962 and as discussed in this investigation report.

26.9 Had DRI not initiated investigation against M/s. SFEPL in the instant matter, this scandal of duty evasion by way of fraudulent export would have continued indefinitely. Considering the deliberate act of fraud, possible collusion, wilful mis-statements, suppression of material facts and diversion of goods meant for exportation out of India, the extended period of demand under Section 28 (4) of the Customs Act, 1962 is attracted in the instant case and the Customs duty and IGST amounting to Rs.16,11,57,879/- is liable to be demanded and recovered along with interest from M/s. SFEPL under Section 28(4) of the Customs Act, 1962 read with Section 28AA of the said Act.

26.10 Further, all these acts of omission and commission on the part of M/s SFEPL and other persons involved have knowingly concerned themselves in dealing with the said goods, which they knew or had reasons to believe were liable to confiscation under the Customs Act, 1962. Hence, they are liable for penal action under the provisions of Section 112(a), 112(b), 114, 114A, 114AA & 117 of the Customs Act, 1962.

Role of Shri Suneer Nalagath, Director of M/s SFEPL :

27.1 As evident from deposition during the recording of his statement

recorded on Dated 9,10 & 11.3.2022 under Section 108 of the Customs Act, 1962 that Shri Suneer Nalagath and Firoz Ahamed were friends and knowing each other since 1999 and they had worked together during the period from 1999-2003; Shri Suneer joined M/s. Southern Impex, Pollachi, Coimbatore, Tamil Nadu, 100% EOU and manufacturing unit engaged in import of Areca Nuts and export of Areca Nut Powder in February 2020 as per the direction of Shri Firoz Ahmed; the said unit were actually run/operated by Shri Firoz Ahamed; Shri Suneer looked after documentation related work for their Import-Export along with correspondences with Bank regarding remittances and issuance of BRC/FIRCs of the said firm; DRI, Coimbatore had booked a case against M/s. Southern Impex in the month of October 2020 for diversion of duty-free imported Areca Nuts in Domestic Tariff Area; he was one of the directors of M/s. SFEPL Pvt. Ltd., KASEZ, Gandhidham; Shri Firoz Ahamed had told him that he was going to operate one firm namely M/s. SFEPL Pvt. Ltd, KASEZ, wherein they would carry out import export business; on following the direction of Shri Suneer visited Gandhidham, forwarded the documents viz. Aadhar Card, Photograph, Pan card, Electoral ID etc. to Shri Esaki V. Company Secretary; he and Shri Yogendra Pratap Varma visited Gandhidham for bank and customs related formalities on the direction of Shri Firoz Ahamed; Shri Suneer visited the consultant office as well as to the bank; after receiving of Summons from DRI, Ahmedabad went underground on following the direction of Shri Firoz Ahamed and remained underground till October-2021; he did not come forward before the DRI, Ahmedabad for recording of statement on the directions of Firoz Ahamed; he signed pre-prepared/backdated (Dated 1.4.2021) appointment letter in the name of Mr. Ankur ;M/s. SFEPL had imported duty-free goods i.e. Areca Nuts & Wall Nuts in the month of May, June & July 2021 for further export to Bangladesh; agreed with the facts that Areca Nuts imported by M/s. SFEPL during the month of May, 2021 to July 2021 were further diverted to Nagpur without payment of duty under the guise of clearing the same from SEZ, Kandla for export to Bangladesh; he was to receive monthly salary of Rs. 75000/- and a joining bonus of Rupees Five Lakh ; he was assured to share from the profit also; upon appointment as director of M/s. SFEPL , he received 15000/- in month of May 2021, Rs. 8750/- in the month of July 2021 and Rs. 1,00,000/- in the month of August 2021; Further, as per the instruction of Shri Firoz Ahamed, he gave 40,000/- to Shri Yogendra Pratap Varma; As per the direction of Shri Firoz Ahamed, Shri Suneer joined M/s. Spice Deccan Impex Pvt. Ltd., Nellore, the unit engaged in import of Areca Nuts and export of Areca Nut Powder; since his joining at M/s Spice Deccan Impex Pvt Ltd, total 04 consignments of Areca nuts were imported and diverted in the domestic market by him as per the directions/instructions of Firoz Ahamed; DRI, Nellore/Hyderabad and Vijaywada had initiated inquiry against M/s Spice Deccan Impex Pvt. ltd. for diversion of duty-free goods. The above said facts are also corroborated with the statement of Shri V.Esaki and also of Shri Ashish of M/s A.K.Friends & Co.

27.2 It appears that Shri Suneer Nalagath was one of the masterminds behind the whole gamut of the fraudulent diversion of the duty-free Areca Nuts cleared from M/s SFEPL , KASEZ, Gandhidham to the DTA. He hatched the conspiracy along with Shri Yogendra Pratap Singh, Shri Firoz Ahamed, Shri Muhammad Farooq Ali & Shri Naresh. They purchased the SEZ unit M/s SFEPL with an clear intention to make it gate way for diversion of duty-free goods in the DTA in order to evade Customs Duty on import of various goods. M/s SFEPL imported Areca Nuts and the cleared the same to DTA under the

guise of purported Exports to Bangladesh. Shri Suneer Nalagath, had accepted the directorship of M/s SFEPL in lure of money and also provided the documents for change in directorship. Shri Suneer Nalagath deliberately did not appear before the investigating officers and dishonored repeated summons. Though he was one of the mastermind, did not reveal any facts of the case regarding the ultimate domestic buyers of goods, payment chain and documents relating to diversion of goods in DTA and other aspects. Though he has denied his involvement but looking to the facts and evidences of the case as narrated above, he can not deny his responsibility and accountability in non-fulfilling the required export obligation of the impugned goods. Similarly, he can not be discharged from the organized fraud and criminal conspiracy committed by him.

27.3 Further, Shri Suneer Nalagath, was served summons on dated. 13.8.2021, 18.8.2021, 10.09.2021 & 22.10.2021. However, he did not appear before the investigating agency on none of the aforesaid dated.

27.3 Call Data Record for Suneer's mobile number 9791300933 was called for from the carrier M/s Airtel (**RUD No.-54**). Further, during recording of his statement dated 11.3.2022, Shri Suneer voluntarily submitted his mobile phone (without Sim Card), which was having IME-I Number 864130043323294 IME-II 864130043323302. However, on comparing the said IME-1 number with the IME No. figuring in the said CDR, it is observed that IME numbers are different than each other. Hence, It transpires that Shri Suneer was using another mobile instrument at the relevant time and the said instrument may have contain the relevant digital evidences in the form of messages, images, chats etc. and same could have been retrieved by investigating agency. Accordingly, the correct instrument was not produced before the investigating agency. The above acts is nothing but efforts made by Shri Suneer so that no digital evidence could be to gather by the investigating agency against his involvement/or M/s SFEPL and appears to have been done to mis-lead/derail the investigation.

27.4 Thus by his acts of omission and commission, it appears that Shri Suneer Nalagath have actively participated in the illegal activities and indulged in diversion of duty-free Areca Nut by M/s SFEPL, KASEZ, Gandhidham under the guise of showing export to Bangladesh, which he knew or had reasons to believe were liable to confiscation under Section 111 and 113 of the Customs Act, 1962. Further, it also appears that by the acts of commission/omission of Shri Suneer Nalagath also concerned in removing and selling the duty-free imported Areca-nuts in the domestic market which he knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j), 111(l), 111(o), 113(d), 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a), 112(b), 114(i), 114(iii) of the Customs Act, 1962 in as much as he was knowingly concerned and dealing with the offending imported goods cleared from the KASEZ and then diverted into DTA without order of proper officer; violating provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975, the same were attempted to be exported improperly and got

unloaded and diverted into DTA without the permission of the proper officer. Further, Suneer Nalagath, also made him liable for penal action under Section 114A of the Customs Act, 1962 in much as his involvement in the said diversion of duty-free Areca Nuts into DTA, which resulted non-payment of duty and also made him liable for penal action under Section 114AA in as much as he knowingly or intentional makes, signs or uses or causes to be made signed or used, wrong declaration or documents by showing the clearance of the subject goods for export to Bangladesh, whereas goods were diverted to the domestic market. Shri Suneer Nalagath was issued summons on dated.13.8.2021, 18.8.2021 and 10.9.2021 (**RUD No.-55**), however none of the date he presented or represented himself. Further, at the time of recording of his statement, produced the wrong mobile instrument, which were not in use at the relevant time and thereby made an efforts to mis-lead/derail the investigations. Above act and omission on the part of Shri Suneer Nalagath also make him liable for penalty under section 117 of the Customs Act, 1962.

Role of Shri Yogendra Pratap Varma, Director of M/s SFEPL :

28.1 As evident from deposition during the recording of statement of Shri Suneer Nalagath, Director of M/s SFEPL recorded under Section 108 of the Customs Act, 1962 that; Shri Yogendra Pratap Varma was one of the directors of M/s. SFEPL Pvt. Ltd., KASEZ, Gandhidham; Shri Firoz Ahamed had told him that he was going to operate one firm namely M/s. SFEPL Pvt. Ltd, KASEZ, wherein they would carry out import export business; on following the direction of Shri Suneer visited Gandhidham and Shri Muhammad Farooq Ali, Sadiq and Yogendra Pratap Varma; he and Shri Yogendra Pratap Varma visited Gandhidham for bank and customs related formalities on the direction of Shri Firoz Ahamed; after receiving of Summons from DRI, Ahmedabad Shri Yogendra Pratap Varma and Shri Suneer went underground on following the direction of Shri Firoz Ahamed and he did not come forward before the DRI, Ahmedabad for recording of statement on the directions of Firoz Ahamed; Shri Yogendra Pratap Varma signed pre-prepared/backdated (Dated 1.4.2021) appointment letter in the name of Mr. Ankur ; as per the instruction of Shri Firoz Ahamed, Suneer gave Rs. 40,000/- to Shri Yogendra Pratap Varma. Further, as deposed by Shri Esaki V, CS of M/s. V. Esaki & Associates in his statement recorded on 06.12.2021, under Section 108 of the Customs Act, 1962 that in mid of march, 2021 Shri Mohameed Farooq Ali, director of M/s. Spice Deccan Impex Private Limited, Andra Pradesh requested him to provide their services for appointment of two new directors in one firm M/s. SFEPL , wherein one was Shri Yogendra Pratap Varma who was the employee in his firm M/s. Spice Deccan Impex Private Limited and another one was Shri Suneer Nalagath, Kerala; Shri Yogendra Pratap Varma (Mob. No.-85550-90454) was in his contact for his & Suneer's appointment as new directors in M/s. SFEPL ; Shri Yogendra Pratap Varma provided him the KYC documents i.e. mail id, Identity proof, mobile number & passport size photo etc. of him & Suneer Nalagath, through whatsapp; Shri Yogendra Varma gave him digital signature of him & Suneer Nalagath's through courier for generating DIN number for new appointed directors viz. Shri Yogendra Pratap Varma & Shri Suneer Nalagath; Shri Yogendra gave contact number of one Shri Ashish, Company Secretary of old directors and requested him to contact him.

28.2 Further, Shri Yogendra Pratap Varma, was served summons on dated. 10.9.2021, 22.10.2021 & 16.5.2022, however, till now, he had not come forward before the investigating agency on none of the dates.

28.3 It appears that Shri Yogendra Pratap Varma was one of the masterminds behind the whole gamut of the fraudulent diversion of the duty-free Areca Nuts cleared from M/s SFEPL , KASEZ, Gandhidham to the DTA. He hatched the conspiracy along with Shri Suneer Nalagath, Shri Firoz Ahamed, Shri Muhammad Farooq Ali & Shri Naresh. They purchased the SEZ unit M/s SFEPL with an clear intention to make it gate way for diversion of duty-free goods in the DTA in order to evade Customs Duty on import of various goods. M/s SFEPL imported Areca Nuts and cleared the same to DTA under the guise of purported Exports to Bangladesh. Shri Yogendra Pratap Varma deliberately did not appear before the investigating officers and dishonored repeated summons. His gestures of non-appearance before the investigating officers for tendering statement and the evidences & statements of various concerned persons available on record clearly indicate his deep involvement in the evasion of Customs Duty through M/s SFEPL by way of diversion of duty-free imported goods, in the guise of fraudulent export into DTA of India. Hence, looking to the facts and evidences of the case as narrated above, he can not deny his responsibility and accountability in non-fulfilling the required export obligation of the impugned goods, Similarly, he cannot be discharged from the organized fraud and criminal conspiracy committed by him.

28.4 Thus by his acts of omission and commission, it appears that Shri Yogendra Pratap Varma have actively participated in the illegal activities and indulged in diversion of duty-free Areca Nut by M/s SFEPL , KASEZ, Gandhidham under the guise of showing export to Bangladesh, which he knew or had reasons to believe were liable to confiscation under Section 111 and 113 of the Customs Act, 1962. Further, it also appears that by the acts of commission/omission of Shri Yogendra Pratap Varma also concerned in removing and selling the duty-free imported Areca-nuts in the domestic market which he knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j) ,111(l), 111(o), 113(d) 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a),112(b), 114(i) ,114(iii) of the Customs Act, 1962 in as much as he was knowingly concerned and dealing with the offending imported goods cleared from the KASEZ and then diverted into DTA without order of proper officer; violating provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES} issued by Spices Board), Import policy of ITC (HS} for CTH 080280/08029000 of Customs Tariff Act, 1975, the same were attempted to be exported improperly and got unloaded and diverted into DTA without the permission of the proper officer. Further, Shri Yogendra Pratap Varma, also made him liable for penal action under Section 114A of the Customs Act, 1962 in much as his involvement in the said diversion of duty-free Areca Nuts into DTA, which resulted non-payment of duty and also made him liable for penal action under Section 114AA in as much as he knowingly or intentional makes, signs or uses or causes to be made signed or used, wrong declaration or documents by showing the clearance of the subject goods for export to Bangladesh, whereas goods were diverted to the domestic market. Shri Yogendra Pratap Varma was issued summons on dated. 10.9.2021, 22.10.2021 & 16.5.2022 (**RUD No.-56**), however none of the date he presented or represented himself. Above act and omission on the part of Shri Yogendra

Pratap Varma also make him liable for penalty under section 117 of the Customs Act, 1962.

Role of Shri A.Feroze Ahmed & Shri Muhammad Farooq Ali

29.1 On carefully going through the evidences available on record in the form of Panchnamas of dated 24.07.2022 and statements of concerned persons recorded under Section 108 of the Customs Act, 1962 etc., it appears that Shri Feroze Ahmed & Shri Muhammad Farooq Ali appears to be the masterminds behind the whole gamut of the fraudulent diversion of the duty-free Areca Nuts cleared from M/s SFEPL , KASEZ, Gandhidham to the DTA. They both hatched the conspiracy along with Shri Suneer Nalagath, Shri Yogendra Pratap Varma & Shri Naresh for the said diversion of duty-free areca nuts from KASEZ as discussed as supra. They appears to be the main conspirator/ beneficiary owner and for the said illegal activity they have created a syndicated involved in the said illegal act.

29.2 As evident from the deposition of Shri Suneer Nalagath, during the recording of his statements on dated. 9,10 & 11.3.2022 under Section 108 of the Customs Act, 1962 that Shri Suneer Nalagath and Firoz Ahamed were friends and knowing each other since 1999 and they had worked together during the period from 1999-2003; Shri Suneer joined M/s. Southern Impex, Pollachi, Coimbatore, Tamil Nadu, 100% EOU and manufacturing unit engaged in import of Areca Nuts and export of Areca Nut Powder in February 2020 as per the direction of Shri Firoz Ahmed; the said unit were were actually run/operated by Shri Firoz Ahamed; DRI, Coimbatore had booked a case against M/s. Southern Impex in the month of October 2020 for diversion of duty-free imported Areca Nuts in Domestic Tariff Area; Shri Firoz Ahamed had told him that he was going to operate one firm namely M/s. SFEPL Pvt. Ltd, KASEZ, wherein they would carry out import export business and Shri Suneer Nalagath and Shri Yogendra Pratap Varma would be the directors of the M/s SFEPL ; on following the direction of Shri Feroze Ahmed, Shri Suneer visited Gandhidham, forwarded the documents viz. Aadhar Card, Photograph, Pan card, Electoral ID etc. to Shri Esaki V. Company Secretary; he and Shri Yogendra Pratap Varma visited Gandhidham for bank and customs related formalities on the direction of Shri Firoz Ahamed; Shri Suneer & Shri Yogendra Pratap Varma, visited the consultant office as well as to the bank; after receiving of Summons from DRI, Ahmedabad Shri Suneer Nalagath and Shri Yogendra Pratap Varma, went underground on following the direction of Shri Firoz Ahamed and remained underground till October-2021; Shri Suneer & Shri Yogendra Pratap Varma did not come forward before the DRI, Ahmedabad for recording of statement on the directions of Firoz Ahamed; Shri Suneer Nalagath and Shri Yogendra Pratap Varma signed pre-prepared/backdated (Dated 1.4.2021) appointment letter in the name of Mr. Ankur ; M/s. SFEPL had imported duty-free goods i.e. Areca Nuts & Wall Nuts in the month of May, June & July 2021 for further export to Bangladesh; agreed with the facts that Areca Nuts imported by M/s. SFEPL during the month of May, 2021 to July 2021 were further diverted to Nagpur without payment of duty under the guise of clearing the same from SEZ, Kandla for export to Bangladesh; He was informed by Shri Feroz that Ahmed he was to receive monthly salary of Rs. 75000/- and a joining bonus of Rupees Five Lakh ; he was assured by Shri Feroz Ahmed to share from the profit also; upon appointment as director of

M/s. SFEPL , Suneer was paid 15000/- in month of May 2021, Rs. 8750/- in the month of July 2021 and Rs. 1,00,000/- in the month of August 2021 by Shri Feroz Ahmed; Further, as per the instruction of Shri Firoz Ahamed, Suneer gave 40,000/- to Shri Yogendra Pratap Varma; As per the direction of Shri Firoz Ahamed, Shri Suneer joined M/s. Spice Deccan Impex Pvt. Ltd., Nellore, the unit engaged in import of Areca Nuts and export of Areca Nut Powder; since his joining at M/s Spice Deccan Impex Pvt Ltd, total 04 consignments of Areca nuts were imported and diverted in the domestic market by him as per the directions/instructions of Firoz Ahamed; DRI, Nellore/Hyderabad and Vijaywada had initiated inquiry against M/s Spice Deccan Impex Pvt. Ltd. for diversion of duty-free goods: on being asked regarding import export made through/s SFEPL , Firoz Ahamed or Shri Muhammad Farooq ali would be the right person to answer the said question; Muhammad Farooq Ali was business associate of Shri Firoz Ahamed: Shri Firoz Ahamed had asked him to go to Nellore in November 2021 to operate one EOU firm namely M/s. Spice Deccan Impex Pvt. Ltd., Nellore whose director/owner was Shri Muhammad Farooq Ali; Muhammad Farooq Ali was business associate of Shri Firoz Ahamed.

29.3 Shri Firoze Ahmedabad in his statement recording under Section 108 of the Customs Act, 1962 deposed that denied his relation with the business transaction with M/s SFEPL however, failed to give proper reply in respect to the question that then why Shri Suneer Nalagath and Shri V.Esaki implicated him.

29.4 As deposed by Shri V.Esaki in his statement recorded under Section 108 of the Customs Act, 1962, Shri Mohameed Farooq Ali, director of M/s. Spice Deccan Impex Private Limited, Andra Pradesh requested Shri V.Esaki, Company Secretary, to provide his services for appointment of two new directors in one firm M/s. SFEPL , wherein one was Shri Yogendra Pratap Varma who was the employee in his firm M/s. Spice Deccan Impex Private Limited and another one was Shri Suneer Nalagath, Kerala; Shri Yogendra Pratap Varma (Mob. No.-85550-90454) was in contact with Shri V.Esaki for his & Suneer's appointment as new directors in M/s. SFEPL ; Shri Yogendra Pratap Varma provided Shri V.Esaki the KYC documents i.e. mail id, Identity proof, mobile number & passport size photo etc. of him & Suneer Nalagath through whatsapp; Shri Yogendra Varma gave to Shri V.Esaki digital signature of him & Suneer Nalagath through courier for generating DIN number for new appointed directors viz. Shri Yogendra Pratap Varma & Shri Suneer Nalagath; Shri Yogendra gave contact number of one Shri Ashish, Company Secretary of old directors and requested him to contact him.

29.5 Further Shri Feroze Ahmed were issued summons of dated.16.5.2022 for appearance on 26.5.2022 & , 22.7.2023 for his appearance on 24.7.2023. In response to the summons dated.22.7.2023, vide email dated. 23.7.2023, Shri Feroze Ahamed stated that for the very same case he had received the similar notice and accordingly, he had complied and his statement was recorded on 22.07.2023; he is heart patient and hence unable to appear Ahmedabad office on 24.07.2023. Also forwarded the required bank statement and employee details by mail. It is important to mention that he failed to appreciate the fact that DRI, Ahmedabad was conducting investigation and after going through his statement dated. 22.7.2023 only, investigating agency had issued to him the another summons for his appearance on 24.7.2023 to record his further

statement. Further, if he was intended to co-operate in the investigation, he could have requested for another date but he did not do so. Further, his submission with respect to the submission of Bank statement is concerned, he failed to submit the statement for the period from 1.4.2021 to 31.3.2022 for HDFC Bank Account No. 50200026301114, which is very well relevant to the period of investigation. Further, he had submitted employee details as below, "M/S Roshan International : No staff, M/s Hana food industries Shafi Mohammed & Boobalan". However he did not forward the details with supporting documents. His non co-operational attitude clearly raise a doubt of his malafied intent.

29.6 Shri Farooq Ali was issued summons on dated. 16.5.2022, 16.8.2023, 21.7.2023(@ HZU), 22.7.2023 & 6.9.2023, however he failed to present himself before the DRI. In respect to the summons dated 06.09.2023 issued to appear on 11.09.2023 (received through email 18.9.2023), Shri Mohammed Farooq Ali submitted that he was not in station; he has no knowledge of any information pertaining to M/s. S.F. Express Private Limited and therefore the requirement of his deposing to any statement or furnishing of any documents, pertaining to M/s. S.F. Express, does not and would not arise ; by referring to the judgement of the Hon'ble High Court Madras in W.p.No.24062/2021 dated 29.11.2021, more particularly at paragraphs 78 to 90 that categorically stated that merely because the Offices attached to the Directorate of Revenue Intelligence, have all India jurisdiction, the same would not ipso facto mean that they can interfere with the functioning of identical officers of the Directorate of Revenue Intelligence, under whose jurisdiction, I am functioning and operating the business.; he had no knowledge of any export / import undertaken by M/s. S.F.Express Private Limited and have nothing to state in the matter; requested to take this communication as his deposition under section 108 of the Customs Act, 1962; if any further statement has to be recorded he may be permitted to appear before the Office of the Directorate of Revenue Intelligence, at Hyderabad. However, he failed to appreciate the facts that summons dated 21.7.2023 was issued for recording of his statement at DRI, Hyderabad and further as reported by Deputy Director, DRI, HZU vide letter F.No.DRI/HZU/Misc./D/2022 Dated 24.7.2023, officers of DRI, Hyderabad also visited his residence on 21.7.2023 to record his statement at his home, however, they were informed that he was not available. Further, summons dated 22.7.2023 was served to him through his wife Ms Saira, however, he neither come forward nor contacted the officers on that day or afterwards. Thus, if he intended to appear and co-operate in the investigation, then he could have approach to the officer at DRI, Hyderabad or Ahmedabad but he did not do so, which clearly shows his wrong intent.

29.7 It appears that Shri Feroze Ahmed & Shri Muhammad Farooq Ali were the masterminds behind the whole gamut of the fraudulent diversion of the duty-free Areca Nuts cleared from M/s SFEPL , KASEZ, Gandhidham to the DTA. They hatched the conspiracy along with Shri Suneer Nalagath, Shri Yogendra Pratap Varma & Shri Naresh. They purchased the SEZ unit M/s SFEPL with an clear intention to make it gate way for diversion of duty-free goods in the DTA in order to evade Customs Duty on import of various goods. M/s SFEPL imported Areca Nuts and cleared the same to DTA under the guise of purported Exports to Bangladesh. Shri Muhammad Farooq Ali deliberately did not appear before the investigating officers and dishonored repeated summons.

29.8 Though in his voluntarily statement of dated.22.7.2023, Shri Feroze Ahmed denied having any connection with M/s SFEPL /Persons involved in

the present case , his non-cooperative attitude and malafide intention to avoid his appearance before investigating officers for tendering statement and the evidences & statements of various concerned persons available on record clearly indicate his deep involvement in the evasion of Customs Duty through M/s SFEPL by way of diversion of duty-free imported goods, in the guise of fraudulent export into DTA of India. Hence, looking to the facts and evidences of the case as narrated above, he can not deny his responsibility and accountability in non-fulfilling the required export obligation of the impugned goods, Similarly, he cannot be discharged from the organized fraud and criminal conspiracy committed by him.

29.9 Further, Though Shri Muhammad Farooq Ali vide email dated 18.9.2023 has denied having any connection with the companies/persons involved in the present case and for having documents/details/information relating to the import/export in present case, available with him, his non-cooperative attitude and malafide intention to avoid his appearance before investigating officers for tendering statement and the evidences & statements of various concerned persons available on record clearly indicate his deep involvement in the evasion of Customs Duty through M/s. SFEPL by way of diversion of duty-free imported goods, in guise of fraudulent export into DTA of India. Though he was the mastermind of the case, he did not reveal any facts of the case regarding the ultimate domestic buyers of goods, payment chain and documents relating to diversion of the goods in DTA and other aspects. Hence, looking to the facts and evidences of the case as narrated above, he can not deny his responsibility and accountability in non-fulfilling the required export obligation of the impugned goods, Similarly, he cannot be discharged from the organized fraud and criminal conspiracy committed by him.

29.10 Thus by his acts of omission and commission, it appears that Shri Feroze Ahmed & Shri Muhammad Farooq Ali have actively participated in the illegal activities and indulged in diversion of duty-free Areca Nut by M/s SFEPL , KASEZ, Gandhidham under the guise of purported export to Bangladesh, which they knew or had reasons to believe were liable to confiscation under Section 111 and 113 of the Customs Act, 1962. Further, it also appears that by the acts of commission/omission of Shri Feroze Ahmed & Shri Muhammad Farooq Ali, also concerned in removing and selling the duty-free imported Areca-nuts in the domestic market which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j) ,111(l), 111(o), 113(d) 113(i) and 113(k) of the Customs Act, 1962, thereby rendering themselves liable for penal action under Section 112(a),112(b), 114(i) ,114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the KASEZ and then diverted into DTA without order of proper officer; violating provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES} issued by Spices Board), Import policy of ITC (HS} for CTH 080280/08029000 of Customs Tariff Act, 1975, the same were attempted to be exported improperly and got unloaded and diverted into DTA without the permission of the proper officer. Further, Shri Feroze Ahmed & Shri Muhammad Farooq Ali, also made them liable for penal action under Section 114A of the Customs Act, 1962 in much as their involvement in the said diversion of duty-free Areca Nuts into DTA,

which resulted non-payment of duty and also made them liable for penal action under Section 114AA in as much as they knowingly or intentional makes, signs or uses or causes to be made signed or used, wrong declaration or documents by showing the clearance of the subject goods for export to Bangladesh, whereas goods were diverted to the domestic market. They were issued summons, however Shri Feroze Ahmed & Shri Muhammad Farooq Ali always avoided their presence before the investigating agency, which make them both liable for penalty under section 117 of the Customs Act, 1962.

Role of Ms Beermati & Ms Renu Kataria, Director of M/s SFEPL

30.1 M/s SFEPL was granted Letter of Approval F. No. KASEZ/IA/15/2019-20/10980 dated 23.12.2019 by the Development Commissioner, KASEZ, Gandhidham as approved under UAC (Unit Approval Committee) Meeting No.149/2019-20 Dated 10.10.2019, to set up a Trading Activity and Warehousing Service activity in Kandla SEZ subject to conditions imposed therein and all the rules and regulations related to SEZ/Customs/Foreign Trade were binding on them. In terms of condition of Letter of Approval, M/s SFEPL executed Bond Cum Legal Undertaking for SEZ unit (as per Rule 22) 18/2019-20 Dated. 7.1.2020 for Rs. 25,00,000/-(Rupees Twenty Five Lacs only) with DC, KASEZ. The subject Bond Cum Legal Undertaking was signed by Ms Renu Kataria and Ms Beermati.

30.2 Further, Vide letter dated KASEZ/CUS/P&I/03/2021-22 Dated 10.9.2021, Deputy Commissioner, KASEZ, Gandhidham informed that at the time of issuance of the LOA two directors of the unit were M/s Renu Kataria and Ms Beermati. M/s SFEPL vide letter dated. 27.7.2021 had informed about the change in directorship/shareholding pattern of the unit, wherein it was informed that Shri Suneer Nalagath and Shri Yogendra Pratap had been appointed as the new Director in the said company. Further, the unit had not informed anything about the addition of two Additional Directors i.e. Shri Naresh and Shri Tarun Dagar and as per the instruction No.89 Dated 17.5.2018 issued by the Department of commerce, M/s SFEPL was under obligation to inform about the change of director/share holding pattern, whereas M/s SFEPL had failed to comply with the above said obligation.

30.3 As evident from the deposition of Shri Naresh during recording of his statement 4.10.2021 that M/s. SFEPL had 10000 share having value of Rs. 10 per share; initially, out of 10000 Smt. Renu Kataria and his mother Smt. Beermati both have 5000-5000 share; transfer of shareholding from Smt. Renu Kataria and Smt. Beermati to Shri Suneer Nalagath & Shri Yogendra Pratap Varma were happened in two steps. First, 50% shares (5000 shares) were transferred on 26.03.2021 and remaining 50% shares (5000 shares) were transferred on 14.06.2021. They received Rs. 1,00,000/- in cash and Smt. Renu Kataria and his mother Smt. Beermati gave receipt/acknowledgement in token of receiving the said amount of Rs. 1,00,000, shares of M/s SFEPL were fully transferred on 14.6.2021, whereas exports consignments in question (attributed to 16 Bills of Export out of the disputed 26 bills of Export) were took place in the till 14.6.2021 only.

30.4 It is evident from the facts that M/s SFEPL and their director Ms Renu Kataria & Ms Beermati were issued SCN bearing No. KASEZ/IA/015/2015-16 Dated 16.2.22 proposing penal action for contravention the provisions of FT (D&R) Act, 1992 & SEZ Act, 2005 by the Development Commissioner, KASEZ.

30.5 As evident from the facts that subject 26 Bills of Export were filed by M/s SFEPL and the digital signature of Shri NARESH was utilized for filing the subject bills of Exports. Accordingly, they both cannot deny their responsibility and accountability in non-fulfilling the required export obligation of the impugned goods M/s SFEPL, Similarly, they cannot be discharged from the organized fraud and criminal conspiracy committed by M/s SFEPL.

30.6 Thus by his acts of omission and commission, it appears that M/s Renu Kataria and Ms Beermati have actively participated in the illegal activities and indulged in diversion of duty-free Areca Nut by M/s SFEPL, KASEZ, Gandhidham under the guise of showing export to Bangladesh, which they knew or had reasons to believe were liable to confiscation under Section 111 and 113 of the Customs Act, 1962. Further, it also appears that by the acts of commission/omission of M/s Renu Kataria and Ms Beermati also concerned in removing and selling the duty-free imported Areca-nuts in the domestic market which he knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j), 111(l), 111(o), 113(d), 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a), 112(b), 114(i), 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the KASEZ and then diverted into DTA without order of proper officer; violating provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975, the same were attempted to be exported improperly and got unloaded and diverted into DTA without the permission of the proper officer. Further, Ms Renu Kataria and Ms Beermati, also made them liable for penal action under Section 114A of the Customs Act, 1962 in as much as their involvement in the said diversion of duty-free Areca Nuts into DTA, which resulted non-payment of duty and also made them liable for penal action under Section 114AA in as much as he knowingly or intentional makes, signs or uses or causes to be made signed or used, wrong declaration or documents by showing the clearance of the subject goods for export to Bangladesh, whereas goods were diverted to the domestic market. Ms Renu Kataria and Ms Beermati were issued summons, however none of the date they presented themselves. Above act and omission on the part of M/s Renu Kataria and Ms Beermati also make them liable for penalty under section 117 of the Customs Act, 1962.

Role of Shri Naresh and Tarun Dagar, Director of M/s SFEPL

31.1 It is evident from the deposition by Shri Naresh, Director of M/s. SFEPL, during recording of his statement on dated. 4.10.2021 that M/s. SFEPL was established in 2015 and at that time his aunty (Mamiji) Smt. Renu Kataria and his mother Smt. Beermati were two directors in that company; Shri Tarun Dagar was appointed as directors of M/s. SFEPL on 16 October 2019 for Import-export work; he was appointed as director of the M/s. SFEPL on 12 Feb, 2020; Shri Suneer Nalagath and Shri Yogendra Pratap Varma were appointed as directors of M/s. SFEPL on 26.03.2021; further he and Shri Tarun Dagar resigned from the said company on 07.04.202; Transfer of shareholding from Smt. Renu Kataria and Smt. Beermati to Shri Suneer

Nalagath & Shri Yogendra Pratap Varma were happened in two steps. i.e. First 50% shares on 26.03.2021 and remaining 50% shares on 14.06.2021. They received Rs.1,00,000/- in cash and Smt. Renu Kataria and his mother Smt. Beermati gave receipt/acknowledgement in token of receiving the said amount of said amount. He was the authorized signatory of M/s. SFEPL till his resignation. Further in respect of digital signature; he provided his digital signature to his consultant for purpose of Custom clearance purpose and any administration purpose at KASEZ; he sent his digital signature to Shri Ganesh Naidu of M/s. Cross Trade Link, Gandhidham on 12.04.2021; it might be possible that his digital signature had been misused for filing 09 Bills of Entry & 26 Bill of Export by M/s. Cross Trade Link, Gandhidham for the same without his knowledge.

31.2 Further, Vide letter dated KASEZ/CUS/P&I/03/2021-22 Dated 10.9.2021, Deputy Commissioner, KASEZ, Gandhidham informed that M/s SFEPL vide letter dated. 27.7.2021 had informed about the change in directorship/shareholding pattern of the unit, wherein it was informed that Shri Suneer Nalagath and Shri Yogendra Pratap had been appointed as the new Director in the said company. Further, the unit had not informed anything about the addition of two Additional Directors i.e. Shri Naresh and Shri Tarun Dagar and as per the instruction No.89 Dated 17.5.2018 issued by the Department of commerce, M/s SFEPL was under obligation to inform about the change of director/share holding pattern, whereas M/s SFEPL had failed to comply with the above said obligation.

31.3 It is evident from the deposition by Shri Tarun Dagar, Director of M/s. SFEPL, during recording of his statement on dated. 4.10.2021 he was inactive in M/s SFEPL; Shri Naresh was the authorized signatory in M/s SFEPL; he had given Rs.2 Lakhs in cash to Shri Naresh during acquiring entity at KASEZ; after resigning from the Directorship from M/s. S.F.Express Pvt. Ltd., he received a sum of Rs. 1 lakh in cash against his investment of Rs. 2 lakhs in the company.

31.4 It is evident from the facts mentioned in the above para that Shri Naresh and Shri Tarun Dagar were appointed as Director of M/s SFEPL, however, above change of directorship had been reported to the KASEZ authority. It is important to mention that shareholdings of M/s SFEPL were fully transferred on 14.6.2021, whereas export consignments in question (attributed to 16 Bills of Export out of the disputed 26 bills of Export) were took place in the till 14.6.2021 only. Further, the digital signature was given by Naresh to his consultant. As evident from the facts that subject 26 Bills of Export were filed by M/s SFEPL and the digital signature of Shri NARESH was utilized for filing the subject bills of Exports. Accordingly, they both cannot deny their responsibility and accountability in non-fulfilling the required export obligation of the impugned goods M/s SFEPL. Similarly, they cannot be discharged from the organized fraud and criminal conspiracy committed by M/s SFEPL.

31.5 Thus by his acts of omission and commission, it appears that Shri Naresh and Tarun Dagar have actively participated in the illegal activities and indulged in diversion of duty-free Areca Nut by M/s SFEPL, KASEZ, Gandhidham under the guise of showing export to Bangladesh, which they knew or had reasons to believe were liable to confiscation under Section 111 and 113 of the Customs Act, 1962. Further, it also appears that by the acts of

commission/omission of Shri Naresh and Tarun Dagar also concerned in removing and selling the duty-free imported Areca-nuts in the domestic market which he knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j) ,111(l), 111(o), 113(d) 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a),112(b), 114(i) ,114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the KASEZ and then diverted into DTA without order of proper officer; violating provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975, the same were attempted to be exported improperly and got unloaded and diverted into DTA without the permission of the proper officer. Further, Shri Naresh and Tarun Dagar, also made them liable for penal action under Section 114A of the Customs Act, 1962 in much as their involvement in the said diversion of duty-free Areca Nuts into DTA, which resulted non-payment of duty and also made them liable for penal action under Section 114AA in as much as he knowingly or intentional makes, signs or uses or causes to be made signed or used, wrong declaration or documents by showing the clearance of the subject goods for export to Bangladesh, whereas goods were diverted to the domestic market. Shri Naresh and Tarun Dagar were issued summons, however none of the date they presented themselves. Above act and omission on the part of Shri Naresh and Tarun Dagar also make them liable for penalty under section 117 of the Customs Act, 1962.

Role of Shri Krishan Kumar Sharma, Proprietor of M/s Vishal Freight Courier,Gandhidham

32.1 As deposed by Shri Krishan Kumar Sharma, Proprietor of M/s Vishal Freight Courier in his voluntarily statement of dated. 5.8.2021 that M/s Vishal Freight Carrier had transported 26 consignments of areca nut/areca nuts of M/s. SFEPL , KASEZ through 26 hired trucks to Jaipur, but destination was mentioned as Mongla (Bangladesh) in the Lorry Receipt; handed over the Lorry receipt book to Rupesh; M/s. Vishal Freight Carrier had to prepare Lorry receipt from KASEZ to Mongla (Bangladesh), however, they had to transport the said areca nuts from KASEZ to Jaipur only and from Jaipur said consignment of Areca nuts were to be transfer into different trucks; sometimes they used to prepare Lorry Receipt in their office situated at Shop No. 70,Kutch Arcade, NH-08,Gandhidham-370201 also;Shri Rupesh had given him number of Shri Satish (Mob: 99580-78505) and address Plot No. 68, Pratap Nagar Vishtar, VKIA Road no.-5, Jaipur, who had to take the delivery of the aforesaid transported areca nuts in Jaipur and to transport them in another trucks;transportation charges of Rs 62,000/- per truck was fixed with Shri Ziyabhai and out of 16 lakhs ,till now he had received Rs. 5,00,000/- in cash, which were received as advance payment for fuel; they had not raised any invoice to M/s SFEPL ;as confirmed by their drivers, the areca nuts were transferred at roadside areas.

32.2 Further, as evident from voluntarily statement of Shri Rupesh Natwarlal Jadwani of dated. 5.8.2021 recorded under Section 108 of Customs Act, 1962

that Shri Ziya Faisal informed Shri Krishankumar that he had to prepare Lorry receipt from KASEZ to Mongla, whereas transportation of imported would be done by Krishankumar till Jaipur only. Shri Krishnankumar accepted his proposal. Shri Ziya Faisal introduced to him and Shri Krishankumar with Shri Rajabhai; Ziyabhai would provide Shri Krishankumar more business; in all the 26 LRS w.r.t. to transportation done by M/s Vishal Freight Carrier from M/s S.F. Express till Jaipur. He received Rs. 7000/- towards his commission.

32.3 It appears that Shri Krishan Kumar Sharma had a completely idea about the whole conspiracy as evident from his own deposition corroborated with the statement of the other related persons that though areca nuts were to transport upto Jaipur, Lorry receipt was to be prepared from KASEZ to Mongla. Thus, it appears that he had connived with the masterminds in evasion of Customs Duty as they were deliberately preparing transportation documents /LRs/Bilties showing destination of goods as Bangladesh whereas the goods were actually sent up to Jaipur.

32.4 In view of the above, it appears that Shri Krishan Kumar Sharma, Proprietor M/s Vishal Freight Courier had an knowledge about the said illegal activities and knowingly abetted the fraudulent export/diversion of the duty-free imported areca nuts which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, it also appears that by the acts of commission/omission of Shri Krishan Kumar Sharma also concerned in removing which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j), 111(l), 111(o), 113(d), 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the Customs area/warehouse without order of proper officer; in violation of provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975, provisions relating to unloading of imported goods from conveyance under supervision of proper officer and finally diverted in Domestic Tariff Area which resulted in evasion of the substantial Customs duty. Since Shri Krishan Kumar Sharma, Proprietor M/s Vishal Freight Courier knowingly and intentionally made/signed/used or caused to be made/signed /used the Transport Documents and other related document which was false or incorrect, in material particular, for the purposes of evading the Customs Duty, therefore Shri Krishan Kumar Sharma, Proprietor M/s Vishal Freight Courier shall also be separately liable to penalty under Section 114AA of the Customs Act, 1962.

**Role of Shri Rupesh Natwarlal Jadwani (Mobile No.-9099588811)
(Transporter broker) Proprietor of M/s Leading Logistics, Gandhidham**

33.1 As deposed by Shri Krishan Kumar Sharma, Proprietor of M/s Vishal Freight Courier in his voluntarily statement of dated. 5.8.2021 recorded under Section 108 of Customs Act, 1962, Shri Rupesh approached him; participated in preparation of Lorry Receipt for KASEZ TO Mongla along with Shri Ziyabhai, wherein they mentioned the destination of subject consignment as Mongla

(Bangladesh); Shri Rupesh had given him number of Shri Satish (Mob: 99580-78505) and address Plot No. 68, Pratap Nagar Vishtar, VKIA Road no.-5, Jaipur, who had to take the delivery of the aforesaid transported areca nuts in Jaipur and to transport them in another trucks.

33.2 Further, as evident from his voluntarily statement of dated. 5.8.2021 recorded under Section 108 of Customs Act, 1962, he introduced Shri Ziya H. Faisal to Shri Krishankumar Sharma, Prop. of M/s. Vishal Freight Carrier; Ziya Hussein Faisal informed that for first consignment he would require 5 trucks daily and almost 50 trucks would be needed within 15-20 days to transport 'Supari'. Shri Ziya H. Faisal informed that documents i.e. Invoice, packing list of first consignment would be for Bangladesh and goods would be loaded from SF Express Pvt. Ltd., KASEZ, for transporting upto Jaipur and goods would be transferred to another vehicle at Jaipur; handed over the Lorry Book to Rajabhai at KASEZ gate and in this way LRs were prepared by Rajabhai at SF Express, KASEZ; his role was to communicate between Ziyabhai/Rajabhai and Shri Krishan Kumar Sharma for movement of trucks since pre-arrival of empty truck at SF Express to unloading of the goods from their transport truck to some other transport truck/vehicle at Jaipur; shri Ziyabhai gave him mobile number 99580-78505 of Shri Satish, with an address as "Plot No. 68, Pratap nagar Vistar, Murlipura, Jaipur (near transport nagar)" which was given/intimated by him to the truck drivers for crossing of goods at Jaipur; He received Rs. 7000/- towards his commission.

33.3 It appears that Shri Rupesh Natwarlal Jadwani , Transport Broker, had a completely idea about the whole conspiracy as evident from his own deposition and from deposition of the other related person that though areca nuts were to transport upto Jaipur, Lorry receipt was prepared from KASEZ to Mongla (Bangladesh). Thus, it appears that he had connived with the masterminds in evasion of Customs Duty as they were deliberately preparing transportation documents /LRs/Bilties showing destination of goods as Bangladesh whereas the goods were actually sent up to Jaipur.

33.4 In view of the above, it appears that Shri Rupesh Natwarlal Jadwani , Transport Broker, had an knowledge about the said illegal activities and knowingly abetted the fraudulent export/diversion of the duty-free imported areca nuts which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, it also appears that by the acts of commission/omission of Shri Krishan Kumar Sharma also concerned in removing which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j) ,111(l), 111(o), 113(d) 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the Customs area/warehouse without order of proper officer; in violation of provisions of Plant Quarantine (Regulation of Import into India} Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS} for CTH 080280/08029000 of Customs Tariff Act, 1975, provisions relating to unloading of imported goods from conveyance under

supervision of proper officer and finally diverted in Domestic Tariff Area which resulted in evasion of the substantial Customs duty. Since Shri Rupesh Natwarlal Jadwani , Transport Broker, knowingly and intentionally made/signed/used or caused to be made/signed /used the Transport Documents and other related document which was false or incorrect, in material particular, for the purposes of evading the Customs Duty, therefore Shri Rupesh Natwarlal Jadwani , Transport Broker, shall also be separately liable to penalty under Section 114AA of the Customs Act, 1962.

Role of Shri Ziya Hussein Faisal Alias Ziyabhai (Mobile No.-9716664598 & 971588593017)(Passport No. H7349734) Employee of M/s SFEPL.

34.1 As deposed by Shri Krishan Kumar Sharma, Proprietor of M/s Vishal Freight Courier in his voluntarily statement of dated. 5.8.2021 recorded under section 108 of the Customs Act, 1962, Shri Ziyabhai introduced himself as employees of M/s. SFEPL , KASEZ; wanted to transport areca nuts of M/s. SFEPL from KASEZ to Bangladesh; M/s. Vishal Freight Carrier had to prepare Lorry receipt from KASEZ to Mongla (Bangladesh), however, they had to transport the said areca nuts from KASEZ to Jaipur only and from Jaipur they would transfer the said areca nuts into different trucks; participated in preparation of Lorry Receipt for KASEZ TO Mongla, Bangladesh along with Shri Rupesh, wherein they mentioned the destination of subject consignment as Mongla (Bangladesh); the number of Shri Satish and his address was given to Rupesh by Shri Ziyabhai; Shri Ziyabhai offered him more business in future; transportation charges of Rs 62,000/- per truck was fixed with Shri Ziyabhai.

34.2 As deposed by Shri Rupesh Natwarlal Jadwani in his statement recorded on 05.08.2021 under Section 108 of Customs Act, 1962 that Shri Ziya H. Faisal introduced to him as manager of M/s SFEPL ; he introduced Shri Ziya H Faisal to Shri Krishankumar Sharma, prop. of M/s. Vishal Freight Carrier; Ziya Hussein Faisal informed that for first consignment he would require 5 trucks daily and almost 50 trucks will be needed within 15-20 days to transport 'Supari'; Shri Ziya H. Faisal informed to Shri Krishanan kumar that documents i.e. Invoice, packing list of first consignment will be for Bangladesh and goods will be loaded from SF Express Pvt. Ltd., KASEZ, for transporting upto Jaipur and goods will be transferred to another vehicle at Jaipur; Shri Ziya Faisal informed Shri Krishankumar that he had to prepare Lorry receipt from KASEZ to Mongla, whereas transportation of imported would be done by Krishankumar till Jaipur only; Shri Ziya Faisal introduce to him and Shri Krishankumar with Shri Rajabhai; he had handed over the Lorry Book to Rajabhai at KASEZ gate and in this way LRs were prepared by Rajabhai at SF Express, KASEZ; Shri Ziyabhai gave him mobile number 99580-78505 of Shri Satish, with an address as "Plot No. 68, Pratap nagar Vistar, Murlipura, Jaipur (near transport nagar)" which was given/intimated by him to the truck drivers for crossing of goods at Jaipur.

34.3 Shri Ziya Hussein Faisal was issued summons on dated 9.8.2021, 18.8.2021, 10.9.2021, 22.10.2021 & 16.5.2022, however, none of the occasion, he presented himself before the investigation agency or any representation/communication were received.

34.4 It appears that Shri Ziya Hussein Faisal Alias Ziyabhai, Employee of M/s SFEPL had a completely idea about the whole conspiracy as evident from the deposition of the other related person that though areca nuts were to transport upto Jaipur, Lorry receipt was prepared from KASEZ to Mongla (Bangladesh). Thus, it appears that he had connived with the masterminds in evasion of Customs Duty as they were deliberately preparing transportation documents /LRs/Bilties showing destination of goods as Bangladesh whereas the goods were actually sent up to Jaipur.

34.5 In view of the above, it appears that Shri Ziya Hussein Faisal Alias Ziyabhai, Employee of M/s SFEPL had an knowledge about the said illegal activities and knowingly abetted the fraudulent export/diversion of the duty-free imported areca nuts which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, it also appears that by the acts of commission/omission of Shri Krishan Kumar Sharma also concerned in removing which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j) ,111(l), 111(o), 113(d) 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the Customs area/warehouse without order of proper officer; in violation of provisions of Plant Quarantine (Regulation of Import into India} Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS} for CTH 080280/08029000 of Customs Tariff Act, 1975, provisions relating to unloading of imported goods from conveyance under supervision of proper officer and finally diverted in Domestic Tariff Area which resulted in evasion of the substantial Customs duty. Since Shri Ziya Hussein Faisal Alias Ziyabhai, knowingly and intentionally made/signed/used or caused to be made/signed /used the Transport Documents and other related document which was false or incorrect, in material particular, for the purposes of evading the Customs Duty, therefore Shri Ziya Hussein Faisal Alias Ziyabhai, shall also be separately liable to penalty under Section 114AA of the Customs Act, 1962. Shri Ziya Hussein Faisal Alias Ziyabhai, was issued summons, however none of the date he presented himself. Above act and omission on the part of Shri Ziya Hussein Faisal Alias Ziyabhai also make him liable for penalty under section 117 of the Customs Act, 1962.

Role of Shri Rajabhai Alias Amir Javed Hussain (Mobile No.-9054323751)

35.1 As evident from the voluntarily statement of Shri Rupesh Natwarlal Jadwani of dated. 5.8.2021 recorded under section 108 of the Customs Act, 1962, Shri Rupesh handed over the Lorry Book to Rajabhai at KASEZ gate and LR's were prepared by Rajabhai at SF Express, KASEZ; Shri Ziyabhai introduce Rupesh and Shri Krishnan kumar with Shri Rajabhai; His role was to communicate between Ziyabhai/Rajabhai and Shri Krishan Kumar Sharma for movement of trucks since pre-arrival of empty truck at SF Express to unloading of the goods from their transport truck to some other transport truck/vehicle at Jaipur,

35.2 It appears that Shri Rajabhai had a completely idea about the whole conspiracy that though areca nuts were to transport upto Jaipur, Lorry receipt was prepared from KASEZ to Mongla (Bangladesh). He is the person

who have prepared the Lorry Receipt. Thus, it appears that he had connived with the masterminds in evasion of Customs Duty as they were deliberately preparing transportation documents /LRs/Bilties showing destination of goods as Bangladesh whereas the goods were actually sent up to Jaipur.

35.3 Shri Rajabhai Alias Amir Javed Hussain was issued summons on dated 9.8.2021, 18.8.2021, 10.9.2021, 22.10.2021 & 16.5.2022, however, none of the occasion, he presented himself before the investigation agency or any representation/communication were received.

35.4 In view of the above, it appears that Shri Rajabhai had an knowledge about the said illegal activities and knowingly abetted the fraudulent export/diversion of the duty-free imported areca nuts which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, it also appears that by the acts of commission/omission of Shri Krishan Kumar Sharma also concerned in removing which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j), 111(l), 111(o), 113(d), 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the Customs area/warehouse without order of proper officer; in violation of provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975, provisions relating to unloading of imported goods from conveyance under supervision of proper officer and finally diverted in Domestic Tariff Area which resulted in evasion of the substantial Customs duty. Since Shri Rajabhai knowingly and intentionally made/signed/used or caused to be made/signed /used the Transport Documents and other related document which was false or incorrect, in material particular, for the purposes of evading the Customs Duty, therefore Shri Rajabhai, shall also be separately liable to penalty under Section 114AA of the Customs Act, 1962. Shri Rajabhai, was issued summons, however none of the date he presented himself. Above act and omission on the part of Shri Rajabhai also make him liable for penalty under section 117 of the Customs Act, 1962.

Role of Shri N Satheesh/Satish (Mobile No. 99580-78505)

36.1 As deposed by Shri Krishan Kumar Sharma, Proprietor of M/s Vishal Freight Courier in his voluntarily statement of dated. 5.8.2021 recorded under Section 108 of the Customs Act, 1962, Satish was the person who had to take delivery of the subject consignment at Jaipur and the number of Shri Satish and his address was given to Rupesh by Shri Ziyabhai;

36.2 As deposed by Shri Rupesh Natwarlal Jadwani in his statement recorded on 05.08.2021 under Section 108 of Customs Act, 1962 that Shri Ziyabhai gave him mobile number 99580-78505 of Shri Satish, with an address as "Plot No. 68, Pratap nagar Vistar, Murlipura, Jaipur (near transport nagar)" which was given/intimated by him to the truck drivers for crossing of goods at Jaipur.

36.3 Further, deposed by Shri Ranveer Singh in his voluntarily statement of dated.9.8.2021 recorded under Section 108 of the Customs Act, 1962 Shri Satish (mobile number 9958078405) came to his transport company office and informed that he had to send supari to Nagpur and asked him for a truck; Satish ordered 14 trucks of areca nut from Gandhidham and when those trucks reached Jaipur, all the goods (areca nut) from those trucks were shifted to the trucks given by him in front of his office; all the areca nuts were delivered to Nagpur by the trucks given by him, and the person to whom he got the delivery of areca nut, that person's mobile number was 8080801986; transport related documents such as tax invoice, e-Way bill, etc. in Delhi was got prepared/provided by Shri Satish and the same were sent to him by the owner of M/s Jai Balaji Roadways.

36.4 As evident from the voluntarily statement of Shri Ashish Goel, Manager of M/s. Jai Balaji Roadways (Regd.) recorded on 01.10.2021 under Section 108 of the Customs Act, 1962, was in touch with Shri Ankur; Managed unloading and loading and transportation of the subject betelnut consignment from Jaipur to Nagpur ;shri Satish used to get mobile number of truck drivers provided by M/s. Raipur Orissa Transport on behalf of M/s. Jai Balaji Roadways and accordingly he was in touch with drivers for delivery at Nagpur;

36.5 Shri Satheesh was issued summons on dated 16.5.2022 and message was conveyed through her sister available at the time of search conducted at a known place of Shri Satheesh, However till now he failed to present himself before the and not any representation/communication have been received so far.

36.6 It appears that Shri Satheesh had a completely idea about the whole conspiracy that though areca nuts were to transport upto Jaipur, Lorry receipt was prepared from KASEZ to Mongla (Bangladesh).He is the person who have to take delivery of the said goods at Jaipur and then to shift into another trucks for their transportation to Nagpur and also to be delivered at Nagpur. Thus, it appears that he had connived with the masterminds in evasion of Customs Duty as they were deliberately preparing transportation documents /LRs/Bilties/E-Way Bills showing destination of goods as Bangladesh whereas the goods were actually sent up to Jaipur. Further, through subject goods travelled from Jaipur to Nagpur but LR/E-way bills were prepared from Delhi to Nagpur and Further, consignor details was also fake in nature as it was in not in existence.

36.7 In view of the above, it appears that Shri Satheesh had an knowledge about the said illegal activities and knowingly abetted the fraudulent export/diversion of the duty-free imported areca nuts which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, it also appears that by the acts of commission/omission of Shri Krishan Kumar Sharma also concerned in removing which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j) ,111(l), 111(o), 113(d) 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the Customs area/warehouse without order of proper officer; in violation

of provisions of Plant Quarantine (Regulation of Import into India} Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS} for CTH 080280/08029000 of Customs Tariff Act, 1975, provisions relating to unloading of imported goods from conveyance under supervision of proper officer and finally diverted in Domestic Tariff Area which resulted in evasion of the substantial Customs duty. Since Shri Satheesh knowingly and intentionally made/signed/used or caused to be made/signed /used the Transport Documents and other related document which was false or incorrect, in material particular, for the purposes of evading the Customs Duty, therefore Shri Rajabhai, shall also be separately liable to penalty under Section 114AA of the Customs Act, 1962. Shri Satheesh, was issued summons, however none of the date he presented himself. Above act and omission on the part of Shri Satheesh also make him liable for penalty under section 117 of the Customs Act, 1962.

Role of Shri Ranveer Singh of M/s. Raipur Orissa Transport Company, Pratap Nagar Vistar, VKIA, Road No. 05, Jaipur-302013

37.1 As evident from his voluntarily statement of dated. 9.8.2021 recorded under Section 108 of the Customs Act, 1962 that M/s. Jai Balaji Roadways (Regd.) (Mob: 9810116638), situated at BG-354, Sanjay Gandhi Transport Nagar, Delhi-42 informed him that one person namely shri Satish (mobile number 9958078405) had to transport areca nuts to Nagpur; Shri Satish came to his transport company office and informed that he had to send Supari to Nagpur and asked him for a truck; Shri Satish ordered 14 trucks of areca nut from Gandhidham and when those trucks reached Jaipur, all the goods (areca nut) from those trucks were shifted to the trucks given by him in front of his office; all the areca nuts were delivered to Nagpur by the trucks given by him, and the person to whom he got the delivery of areca nut, that person's mobile number was 8080801986;his work was only to provide trucks and he used to get commission of Rs. 1000/-

37.2 It is clear that the transporter had completely connived with the masterminds in evasion of Customs Duty as they were deliberately preparing transportation documents /LRs/Bilties as per the say of the conspirator i.e. Delhi to Nagpur and did not bother to confirm the genuineness of the said documents; to confirm the genuineness of the goods also.

37.3 In view of the above, it appears that Shri Ranveer Singh of M/s. Raipur Orissa Transport Company had an knowledge about the said illegal activities and knowingly abetted the fraudulent export/diversion of the duty-free imported areca nuts which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, it also appears that by the acts of commission/omission of Shri Krishan Kumar Sharma also concerned in removing which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j) ,111(l), 111(o), 113(d) 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the Customs area/warehouse without order of proper officer; in violation of provisions of Plant Quarantine (Regulation of Import into India} Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of

Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975, provisions relating to unloading of imported goods from conveyance under supervision of proper officer and finally diverted in Domestic Tariff Area which resulted in evasion of the substantial Customs duty. Since Shri Ranveer Singh of M/s. Raipur Orissa Transport Company knowingly and intentionally made/signed/used or caused to be made/signed /used the Transport Documents and other related document which was false or incorrect, in material particular, for the purposes of evading the Customs Duty, therefore Shri Ranveer Singh of M/s. Raipur Orissa Transport Company, shall also be separately liable to penalty under Section 114AA of the Customs Act, 1962.

Role of M/s. Jai Balaji Roadways (Regd.)

38.1 As evident from the voluntarily statement of Shri Ranveer Singh of M/s. Raipur Orissa Transport Company, Pratap Nagar Vistar, VKIA, Road No. 05, Jaipur-302013 dated. 9.8.2021 recorded under Section 108 of the Customs Act, 1962; The areca nuts were transported from Jaipur to Nagpur, however the LRs prepared by M/s Jai Balaji Roadways mentioned the transportation from Delhi to Nagpur.

38.2 As evident from the voluntarily statement of Shri Ashish Goel, Manager of M/s. Jai Balaji Roadways (Regd.), was recorded on 01.10.2021 under Section 108 of the Customs Act, 1962; M/s. Jai Balaji Roadways had provided transportation service for transport of Areca nuts from Jaipur to Nagpur wherein Consignor's name were M/s. B & H Overseas, Plot No.75-A, Raghu Nagar, Dadri, South West Delhi-110045 & M/s. Blue Gold International, RZ-D-60, Syndicate Raghu Nagar, South West Delhi-110045 and consignee's name was M/s. Sai International, Crodak Road, Itawari, Nagpur-440002 in month of June 2021; on being asked about the freight charges for transportation of their goods from Jaipur to Nagpur by person namely Shri Ankur (Mob. No. 9354524221), he sent the quotation for Delhi to Nagpur; managed to provide the truck through Jaipur based transporter namely M/s. Raipur Orissa Transport; prepared Lorry Receipt showing transportation from Delhi to Nagpur instead of Jaipur to Nagpur, but actually transportation was done from Jaipur to Nagpur; on the basis of E-way bills & Tax invoices received from Shri Satish, prepared the Lorry Receipt and forwarded the same to Shri Satish or Shri Ranveer choudhary; provide total 12 trucks to Shri Satish/Ankur in the month of June 2021; in all Lorry Receipts the transportation was shown as from Delhi to Nagpur, but actually transportation was done from Jaipur to Nagpur; received total amount of Rs. 7,10,000/- towards transportation charges, labour charges etc.

38.3 It is clear that the transporter had completely connived with the masterminds in evasion of Customs Duty as they were deliberately preparing transportation documents /LRs/Bilties as per the say of the conspirator i.e. Delhi to Nagpur.

38.6 In view of the above, it appears that M/s Jai Balaji Roadways had an knowledge about the said illegal activities and knowingly abetted the fraudulent export/diversion of the duty-free imported areca nuts which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, it also appears that by the acts of

commission/omission of Shri Krishan Kumar Sharma also concerned in removing which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j), 111(l), 111(o), 113(d) 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the Customs area/warehouse without order of proper officer; in violation of provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975, provisions relating to unloading of imported goods from conveyance under supervision of proper officer and finally diverted in Domestic Tariff Area which resulted in evasion of the substantial Customs duty. Since M/s Jai Balaji Roadways knowingly and intentionally made/signed/used or caused to be made/signed /used the Transport Documents and other related document which was false or incorrect, in material particular, for the purposes of evading the Customs Duty, therefore M/s Jai Balaji Roadways , shall also be separately liable to penalty under Section 114AA of the Customs Act, 1962.

Role of Shri Ankur (Mob. No. 9354524221)

39.1 As deposed his voluntarily statement of Shri Ashish Goel, Manager of M/s. Jai Balaji Roadways (Regd.), was recorded on 01.10.2021 under Section 108 of the Customs Act, 1962; Shri Ankur (Mob. No. 9354524221) called him on around 10 June 2021 and enquired about freight charges for transportation of their goods from Jaipur to Nagpur and he quoted Rs. 42,000/- or 44,000/- per truck for goods quantity of 16 MT; they were Delhi based transporter, hence freight charges would be as transportation from Delhi to Nagpur viz. Rs. 42,000/- or 44,000/- and the same would vary as per weight of the goods to be transported to Nagpur; Shri Ankur agreed on the said freight charges though the transportation was from Jaipur to Nagpur and asked to provide trucks for the transportation of Areca Nuts from Jaipur to Nagpur on 13.06.2021 and Shri Ankur also provided him mobile number-9958078405 of one person namely Shri Satish and told that Shri Satish would be present during loading of areca nuts at Jaipur & asked to provide Lorry Receipt issued by M/s. Jai Balaji Roadways to Shri Satish on whatsapp; Shri Ankur also told him that e-way bills & Tax Invoices would be given by Shri Satish to truck drivers at Jaipur at the time of loading.

39.2 As evident from the voluntarily statement of Shri Ashish Goel, Manager of M/s. Jai Balaji Roadways (Regd.) recorded on 01.10.2021 under Section 108 of the Customs Act, 1962 that; Shri Ankur managed to get 12 trucks from M/s Jai Balaji Roadways, Delhi for transportation of the subject beetlenut consignments from Jaipur to Nagpur; prepared/forwarded E-way bills and invoice for the betelnut consignment transported from Jaipur to Nagpur to Shri Ashish Goel ; after loading requested Shri Ashish Goel of M/s Jai Balaji Roadways, to prepare Lorry Receipt by showing transportation of areca nuts from Delhi to Nagpur instead of Jaipur to Nagpur; shared the contact details of Shri Satish to Shri Ashish Goel; asked to provide Lorry Receipt issued by M/s. Jai Balaji Roadways to Shri Satish on whatsapp; he was informed that the goods in the name of both the above firms belongs to them; managed to

payment of freight charges to M/s Jai Balaji Roadways.

39.3 Shri Ankur was issued summons on dated 16.5.2022 and message was conveyed through her sister available at the time of search conducted at a known place of Shri Ankur. However till now he failed to present himself before the investigating officer and not any representation/communication have been received so far.

39.4 It appears that the Shri Ankur had completely connived with the masterminds in evasion of Customs Duty as he had managed the truck transporter for transport of areca nut from the Jaipur to Nagpur. He managed of preparation of transportation documents /LRs/Bilties/E-Ways bills as per the say of the conspirator i.e. Delhi to Nagpur.

39.5 In view of the above, it appears that **Shri Ankur** had an knowledge about the said illegal activities and knowingly abetted the fraudulent export/diversion of the duty-free imported areca nuts which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, it also appears that by the acts of commission/omission of Shri Krishan Kumar Sharma also concerned in removing which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j), 111(l), 111(o), 113(d) 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the Customs area/warehouse without order of proper officer; in violation of provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975, provisions relating to unloading of imported goods from conveyance under supervision of proper officer and finally diverted in Domestic Tariff Area which resulted in evasion of the substantial Customs duty. Since Shri Ankur knowingly and intentionally made/signed/used or caused to be made/signed /used the Transport Documents and other related document which was false or incorrect, in material particular, for the purposes of evading the Customs Duty, therefore Shri Ankur, shall also be separately liable to penalty under Section 114AA of the Customs Act, 1962. Shri Ankur, was issued summons, however none of the date he presented himself. Above act and omission on the part of Shri Ankur also make him liable for penalty under section 117 of the Customs Act, 1962.

Role of Shri Ganesh V Naidu of M/s Cross Tradelink Pvt. ltd.

40.1 As evident from the 26 bills of Export, it is evident that the DIGITAL signature of NARESH was utilised for filing the subject bills of Exports.

40.2 As deposed in his statement of dated. 4.10.2021 recorded under Section 108 of the Customs Act, 1962, Shri Naresh, Director of M/s. SFEPL deposed that in month of April, after his resignation Shri Suneer Nalagath called him and told that Shri Ganesh Naidu of M/s. Cross Trade Link, Gandhidham was his consultant at KASEZ and asked Naresh to send his digital signature to Shri Ganesh Naidu of M/s. Cross Trade Link, Gandhidham for change/addition of

New directors in SEZ online system or filing resignation of old Directors; accordingly he sent his digital signature to Shri Ganesh Naidu of M/s. Cross Trade Link, Gandhidham for the said purpose on 12.04.2021; if his digital signature had been used for filing aforesaid 09 Bills of Entry & 26 Bill of Export; it might be possible that his digital signature had been misused by M/s. Cross Trade Link, Gandhidham or Shri Suneer Nalagath for the same without his knowledge.

40.3 Further, Mr. Ganesh V. Naidu, Director of M/s Cross Trade Link Pvt. Ltd through email (crosstradelink@gmail.com) dated 27.10.2021 in reply to query regarding misuse of digital signature, he himself confirmed the receipt of Digital Signature of one of the old director of M/s SFEPL ; also stated documents/Box files and other things pertaining to M/s SFEPL , kept in his office was handed over to the representative of M/s SFEPL (after getting approval from New Director) and also allowed to use some space and internet to the representative of M/s SFEPL ; he helped the new director to complete all other online formalities related to KASEZ. However, as per the above, the online formalities related to KASEZ were done in the month of April-2021, whereas KASEZ authority had confirmed that change in Directorship/Shareholding Patter of the unit, had never been informed prior to 27.7.2021; Further, it appears that Shri Ganesh V Naidu did not clearly replied to the query of misuse of digital signature and simultaneously neither denied of giving the digital signature to the representative of M/s SFEPL.

40.4 Shri Ganesh V. Naidu was issued summons on dated.13.11.2021, 16.5.2022 & 6.9.2023. However, However, he did not present himself before the investigation authority.

40.5 In view of the above, it appears that Shri Ganesh V Naidu of M/s Cross Trade Link Pvt. Ltd. had an knowledge about the said illegal activities and knowingly indulged in attempting to diversion of the duty-free imported areca nus which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, it also appears that by the acts of commission/omission of Shri Ganesh V Naidu of M/s Cross Trade Link Pvt. Ltd. also concerned in removing which they knew or had reasons to believe were liable to confiscation under 111(d), 111(h), 111(j) ,111(l), 111(o), 113(d) 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 and also liable for penal action under Section 114AA of the Customs Act, 1962 in as much as they knowingly or intentional makes, signs or uses or causes to be made signed or used, wrong declaration or documents by showing the clearance of the subject goods for export to Bangladesh, whereas goods were diverted to the domestic market.

40.6 Further, Shri Ganesh V. Naidu, was did not present himself before the investigating agency in response to the summons issued to him, which made his liable penal action under Section 117 of the Customs Act, 1962.

Role of M/s Sivamkari International Pvt. Ltd.

41.1 Shri Ashish Goel, Manager of M/s. Jai Balaji Roadways (Regd.), in his voluntarily statement of dated 1.10.2021 deposed that payment of freight

charges in respect of transportation of areca nuts were received into bank account of M/s. Jai Balaji Roadways maintained with HDFC Bank, Rohini Sector 11 branch Account No. 50200022964862 by way of NEFT transfer and also shared the details of payment received.

41.2 On being inquiry with the bank, it was further revealed that the subject bank account was in the name of M/s Sivamkari International Pvt. Ltd. Accordingly, summons were issued to Shri Dipak Sharma & Shri Arun Singh, both the Director of M/s Sivamkari International Pvt. Ltd., at Shop No. 106(or Shop No. 6), Plot No. 4, LSC Market Main Road, Gazipur, New Delhi-110092 on dated. 16.5.2022 & 6.9.2023. However neither any person appeared nor any representation were received.

41.3 It appears that M/s Sivamkari International Pvt. Ltd. is also the part of the whole conspiracy.

41.4 In view of the above, it appears that M/s Sivamkari International Pvt. Ltd. had an knowledge about the said illegal activities and knowingly indulged in attempting to diversion of the duty-free imported areca nuts which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, it also appears that by the acts of commission/omission of M/s Sivamkari International Pvt. Ltd. also concerned in removing which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j), 111(l), 111(o), 113(d), 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 and also liable for penal action under Section 114AA of the Customs Act, 1962 in as much as they knowingly or intentional makes, signs or uses or causes to be made signed or used, wrong declaration or documents by showing the clearance of the subject goods for export to Bangladesh, whereas goods were diverted to the domestic market.

41.5 Further, none of the director of M/s Sivamkari International Pvt. Ltd. did not present himself before the investigating agency in response to the summons issued to him, which made him liable for penal action under Section 117 of the Customs Act, 1962.

42. In view of the above facts and evidence on records, it is proposed that M/s SFEPL & others were called upon to show cause to Commissioner, Customs, Kandla as to why:

- (i) the goods of quantity 414 MTs purportedly cleared for exportation out of India but illicitly diverted to DTA into India, during the period from June-2021 and July 2021 appears to be liable for confiscation under the provisions of Section 111(d), 111(h), 111(o), 111(l), 111(o), 113(d), 113(i) and 113(k) of the Customs Act, 1962.
- (ii) The declared value i.e. Rs. 2,60,31,508/- (Rupees Two Crore Sixty Lacs Thirty one thousand five hundred and eight only) **(as per annexed Annexure-A)** in terms of the provisions of the Notification No. 36/2001-Customs (NT) dated. 3.8.2021, as amended needs to be rejected.
- (iii) the duty-free imported areca nuts of 414.00 MTs. appears to have been diverted into domestic market valued to Rs.14,65,07,163/- **(as per annexed Annexure-A)** is liable for confiscation under 111(d), 111(h),

111(0), 111(/), 111(0), 113(d), 113(i) and 113(k) of the Customs Act, 1962. However, as the said goods are not available for confiscation, why redemption fine in lieu of confiscation should not be imposed;

- (iv) the applicable Customs duty & IGST amounting to Rs.16,11,57,879/- (Rupees Thirteen Crores Eighty Nine Lakhs Sixty Four Thousand Nine Hundred Thirty only) **(as per annexed Annexure-A)** in respect of 414 MTs of duty-free goods purportedly cleared for exportation out of India but illicitly diverted to DTA into India, during the period from June-2021 and July 2021appears to be demanded/recovered under the provisions of Section 28(4) of the Customs Act, 1962 read with Section 143(3) of the Customs Act, 1962 and FTP 2015-20;
- (v) interest at the applicable rate on the duty evaded appears to be recovered in terms of Section 28AA of the Customs Act, 1962;

- (vi) the Bond, if any furnished by them against the consignments imported duty-free under provisions of SEZ Act, 2005 and Rules framed thereunder but diverted as such to the domestic market, should not be enforced and security if any furnished with bond should not be uncashed and appropriated towards their duty liabilities, interest thereon, fine and penalties.

- (vii) Why penalty under Section 112(a)/112(b)/ 114(i) & (iii) /114A/114AA/117 of the Customs Act,1962 should not imposed on the respective firm/persons mentioned in Column No. 2 of the below given Table mentioned against their name.

| Sr.No. | Name | | Penal Provisions under Customs Act, 1962 | | | | |
|--------|--|--------|--|-----------------|------|-------|-----|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| 1 | M/s SFEPL | 112(a) | 112(b) | 114 (i) & (iii) | 114A | 114AA | 117 |
| 2 | Shri Suneer Nalagath, Director of M/s SFEPL | 112(a) | 112(b) | 114 (i) & (iii) | 114A | 114AA | 117 |
| 3 | Shri Yogendra Pratap Varma, Director of M/s SFEPL | 112(a) | 112(b) | 114 (i) & (iii) | 114A | 114AA | 117 |
| 4 | Shri A. Feroze Ahamed | 112(a) | 112(b) | 114 (i) & (iii) | 114A | 114AA | 117 |
| 5 | Shri Farooq Ali | 112(a) | 112(b) | 114 (i) & (iii) | 114A | 114AA | 117 |
| 6 | M/s Beermati. Director of M/s SFEPL | 112(a) | 112(b) | 114 (i) & (iii) | 114A | 114AA | 117 |
| 7 | M/s Renu Kataria , Director of M/s SFEPL | 112(a) | 112(b) | 114 (i) & (iii) | 114A | 114AA | 117 |
| 8 | Shri Naresh, Director/Authorised Signatory of M/s SFEPL | 112(a) | 112(b) | 114 (i) & (iii) | 114A | 114AA | 117 |
| 7 | Shri Tarun Dagar, Director of M/s SFEPL | 112(a) | 112(b) | 114 (i) & (iii) | 114A | 114AA | 117 |
| 8 | Shri Ganesh V. Naidu, Ganesh Trade Link/Consultant of M/s SFEPL | 112(a) | 112(b) | 114 (i) & (iii) | -- | 114AA | 117 |
| 9 | Shri Krishan Kumar Sharma, Proprietor of M/s Vishal Freight Courier, | 112(a) | 112(b) | 114 (i) & (iii) | -- | 114AA | -- |

| | | | | | | | |
|----|--|--------|--------|-----------------|----|-------|-----|
| 10 | Shri Rupesh Natwarlal Jadwani (Mobile No.- 9099588811) , Transporter broker | 112(a) | 112(b) | 114 (i) & (iii) | -- | 114AA | -- |
| 11 | Shri Ziya Hussein Faisal Alias Ziyabhai | 112(a) | 112(b) | 114 (i) & (iii) | -- | 114AA | 117 |
| 12 | Shri Rajabhai | 112(a) | 112(b) | 114 (i) & (iii) | -- | 114AA | 117 |
| 13 | Shri Satish | 112(a) | 112(b) | 114 (i) & (iii) | -- | 114AA | 117 |
| 14 | M/s. Raipur Orissa Transport Company, Pratap Nagar Vistar, VKIA, Road No. 05, Jaipur- 302013 | 112(a) | 112(b) | 114 (i) & (iii) | -- | 114AA | -- |
| 15 | M/s Jai Balaji Roadways | 112(a) | 112(b) | 114 (i) & (iii) | -- | 114AA | -- |
| 16 | Shri Ankur (Mob. No. 9354524221 | 112(a) | 112(b) | 114 (i) & (iii) | -- | 114AA | 117 |
| 17 | M/s Sivamkari International Pvt. Ltd. | 112(a) | 112(b) | 114 (i) & (iii) | -- | 114AA | 117 |

RECORD OF PERSONAL HEARINGS-

43. Shri Chiranjeev Tandon, Advocate appeared for personal hearing on 18.06.2025 on behalf of Shri Krishan Kumar Sharma, Proprietor, M/s. Vishal Freight Carrier. During the course of personal hearing, he submitted that they had no prior knowledge, there is no evidence from SCN or statements of co-noticees that inculcate them. In absence of mens rea, penal provisions can not be invoked against them. If any lapses are noted in Show cause notice, they are bona fide mistakes.

44. Shri Naresh, Director/Authorised signatory of M/s. SFEPL appeared for personal hearing on 18.06.2025 and requested to postpone the hearing. However, it is seen that sufficient opportunities of personal hearings i.e. on 13.05.2025, 05.06.2025 and 18.06.2025 have been provided to him and considering that the adjudication proceedings are time bound and no submission has been made by the noticee till date despite intimating the noticee, vide Para 42 of the Show cause notice, that submission to the SCN was required to be made within 30 days from the date of Show cause notice.

45. I find that opportunities of personal hearings were provided to the remaining noticees on 13.05.2025, 05.06.2025 and 18.06.2025. However, they neither appeared for personal hearing nor made any submission till date. Since the adjudication proceedings are time bound and can not be kept pending for a long time, I proceed to adjudicate the matter.

WRITTEN SUBMISSIONS-

46. M/s. Vishal Freight Carrier vide his submission dated 27.06.2025, interalia, submitted that-

No specific allegation in the Notice

- A.1. It is submitted that the Notice is vague and has been issued without application of mind, which is evident from the fact that the same is based on irrelevant and incorrect facts.
- A.2. In this regard, relevant extract of paragraph No. 32 of the Notice wherein role of the Noticee is mentioned is reproduced below:

“32.2 Further, as evident from voluntarily statement of Shri Rupesh Natwarlal Jadwani of dated 5/8/2021 recorded under Section 108 of the Customs Act, 1962 that Shri Ziya Faisal informed Shri Krishankumar that he had to prepare lorry receipt from KASEZ to Mongla, Assam whereas transportation of imported goods would be done by Krishankumar till Jaipur only. Shri Krishankumar accepted his proposal. Shri Ziya Faisal introduce to him and Shri Krishankumar with Shri Rajabhai; Ziyabhai would provide Shri Krishankumar more business; in all the 26 LRS w.r.t. to transportation done by M/s Vishal Freight Carrier from M/s. S.F. Express till Jaipur. He received Rs. 7,000/- towards his commission.

32.3. It appears that Shri Krishan Kumar Sharma had a completely idea about the whole conspiracy as evident from his own deposition corroborated with the statement of the other related persons that though areca nuts were to transport up to Jaipur, lorry receipt was to be prepared from KASEZ to Mongla. Thus, it appears that he had connived with the masterminds in evasion of Customs Duty as they were deliberately preparing transportation documents/LRs/bilties showing destination of goods as Bangladesh whereas the goods were actually sent up to Jaipur.

32.4. In view of the above, it appears that Shri Krishan Kumar Sharma, proprietor M/s Vishal Freight Carrier had knowledge about the said illegal activities and knowingly abetted the fraudulent export/diversion of the duty free imported areca nuts which they knew or had reasons to believe were liable for confiscation under Section 111 of the Customs Act, 1962. Further, it also appears that by the acts of commission/omission of Shri Krishan Kumar Sharma also concerned in removing which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j), 111(l), 111(o), 113(d), 113(i), and 113(k) of the Customs Act, 1962 thereby rendering himself liable for penal action under Section 112(a) and 112(b), 114(i) and 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the Customs area/warehouse without order of proper officer; in violation of provisions of the Plant Quarantine (Regulation of import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, para 2.56 of the [FTP 2015-20](#) (by not having certificate of registration as exporter of spiced (CRES) issued by the Spices Board), import policy of ITC (HS) for CTH 080280/ 08029000 of Customs Tariff Act, 1975 provisions relating to unloading of imported goods from conveyance under supervision of proper officer and finally diverted in Domestic Tariff Area which resulted in evasion of the substantial Customs Duty.....”

- A.3. It is submitted that the Notice not only suffers from vagueness but also from factual inaccuracy, thereby bringing out complete lack of application of mind on the part of the learned Authority while issuing the Notice. It is submitted that the learned authority has specifically in paragraph No. 32 of the Notice has alleged that the Noticee had complete idea about whole conspiracy but the learned authority failed to provide any details/material evidence on basis of which the learned authority has alleged in the Notice that the Noticee being a transporter was involved with other parties in the conspiracy. It is submitted that the Noticee in statement dated August 5, 2021 has specifically informed that the lorry receipts were prepared by Shri Rupesh himself and the Noticee was not even involved in the preparation of lorry receipts. The Noticee merely acted as transporter and delivered goods in Jaipur as per the instructions of SF Express, KASEZ. Further, merely because the lorry receipts were issued for transportation of goods from KASEZ to Mongla and in fact the goods were delivered at Jaipur by Noticee, does not infer and proves the allegation of the Department that the Noticee was involved in the conspiracy and had pre-knowledge about the diversion of goods as alleged in the notice.

A.4. It is submitted that the Notice does not specifically provides for any instance/ action or omission on part of the Noticee which reflects that the Noticee was aware and involved in the conspiracy as alleged in the Notice. Further, the learned authority in the Notice has failed to provide for any explanation/reasoning behind allegations which led the learned authority to allege that the Noticee was aware and was involved in fraudulent diversion of goods. It would not be out of place to mention here that allegations have been made in the Notice solely on basis of the statement dated August 5, 2021 of Shri Rupesh Natwarlal Jadwani. In absence of any material and corroborative evidence against the Noticee, allegations have been made against Noticee merely on basis of the said statement of Shri Rupesh Natwarlal Jadwani thereby proposing to impose penalty under Section 112(a)&(b), 114(i)&(iii) and 114AA of the Customs Act. Thus, such instances clearly depict vagueness in the Notice in absence of any specific allegation and evidence supporting thereof.

A.5. It has been held in large number of judicial pronouncements that each show cause notice should carry specific allegations on the basis of which action is proposed therein as each show cause notice is a separate proceeding. In this regard the Noticee places reliance on decision of the Hon'ble Customs Excise & Service Tax Appellate Tribunal ("CESTAT" or "Tribunal") in the case of **CCE Vs. Shyam Enterprises [2011 (23) STR 29 (Tri.)]**, wherein it was held as under: -

"3. To resolve the controversy, we examined the show cause notice itself. The show cause notice does not make any head or tail of the case of the revenue. The audit observations becoming basis of adjudication fails to bring out supply of manpower nor even brings out any element of contract between the parties for recruitment and supply of manpower. The entire show cause notice has only analysed various provisions of the Finance Act, 1994 as to levy of service tax without providing foundation for levy in respect of the activity carried out by the appellant. Show cause notice being foundation for making allegation that must clearly bring out the charge against the assessee depicting the gravity of the charge and basis. We are unable to notice the charge with a basis in the show cause notice for which the proceeding cannot be sustained. The reasoning given by authorities below does not appeal us. We dismiss the appeal of Revenue on the aforesaid reasoning."

(emphasis supplied)

A.6. The Noticee further places reliance on decision of the Hon'ble Supreme Court in the case of **CCE Vs. Brindavan Beverages (P) Ltd. [2007 (213) ELT 487 (SC)]**, wherein it has been held: -

"10.The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice....."

(emphasis supplied)

A.7. In the case of **Alleli & Co. Pvt. Ltd. Vs. CCE [2000 (124) ELT 1122 (Tri.)]**, the Hon'ble Tribunal has held as under: -

"The SCNs do not put the respondent on notice as to what is alleged against him. In such a notice the charges must be made clear. The logic and the reasoning behind the charges must be spelt out. The background material on which the charges and reasoning is based has also to be specified and the assessee has to be given copies of the documents, on which reliance is placed. A notice which fails to contain any one or more of these requirements cannot be a valid Show Cause Notice. Tested on these factors we find that the SCNs do not pass the test."

(emphasis supplied)

In view of the above submissions and judicial pronouncements, it is submitted that irrational and vague allegations have been made in the Notice merely on basis of assumption/presumption that the Noticee was aware and involved in the conspiracy without providing any details about the role and activity of the Noticee. Thus, present proceedings being illegal ought to be dropped on this ground alone.

The Notice has not adduced evidence in support of allegations

- A.8. It is submitted that the Notice has been issued without providing tangible evidences or corroborative evidences and analysis in relation to allegations made therein and is based on assumptions and presumptions only. The learned Authority has neither adduced any evidence nor discharged burden of proof cast on the Department as obligated under the statute while issuing the Notice as to how the Noticee is liable for penalty under Section 112(a), 112(b), 114(i), 114(iii) and 114AA of the Customs Act as proposed in the Notice.
- A.9. In the Notice, the learned authority has proposed to impose penalty under provisions of Section 112(a), 112(b), 114(i), 114(iii) and 114AA of the Customs Act on basis of the allegation that the Noticee was involved in the conspiracy as the Noticee transported goods till Jaipur however as per the lorry receipts the goods were destined for Mongla. In this regard, it is submitted that the learned authority has proposed to impose penalty merely on basis of assumption/presumption based on the fact that the Noticee has acted as transporter of goods from KASEZ to Jaipur. In the notice, the ld. authority has failed to provide any single instance and evidence showing that the Noticee was involved in the conspiracy with other co-noticees so as to substantiate the allegations made therein. The entire proceedings against the Noticee are solely based on the statement dated August 5, 2021 of Mr. Rupesh Natwarlal Jadwani. Thus, the Department vide the Notice has gone ahead and proposed to impose penalty on the Noticee on basis of allegations founded on assumptions and presumptions without any material evidence on record. Such callousness shows an arbitrary action and not a reasonable and fair way by creating unsubstantiated and unsustainable proposition to impose penalty under the Customs Act on the Noticee without any basis and corroborative evidence on record.
- A.10. It is submitted that Mr. Rupesh Natwarlal Jadwani acted as broker and arranged meeting between Ziyabhai of SF Express and Noticee. During the meeting, Mr. Ziyabhai of SF Express asked the Noticee for transportation of goods from KASEZ to Jaipur, however he requested that the lorry receipts were to be prepared for transportation till Mongla (Assam) as they will shift the goods to another vehicle in Jaipur. Mr. Ziyabhai of SF Express informed the Noticee that against said proposal he will also provide more business to noticee. The Noticee accepted the work and provided trucks for transportation of goods. The said facts have been verified by the Noticee and Mr. Rupesh Natwarlal Jadwani in their respective statements both dated August 5, 2021.
- A.11. It is pertinent to submit that all lorry receipts for 26 consignment trucks were prepared by Rajabhai of SF Express, KASEZ. The Noticee in his statement dated August 5, 2021 has stated that the lorry receipt book was taken by Shri Rupesh Natwarlal Jadwani and the same were prepared by SF Express in KASEZ. The said fact regarding preparation of lorry receipts by SF Express has been specifically stated by Mr. Rupesh Natwarlal Jadwani in his statement dated August 5, 2021. Therefore, it is clear on record that lorry receipts wherein destination of goods has been mentioned as 'Mongla, Assam' was prepared by the SF Express, KASEZ and not by the Noticee.
- A.12. It is submitted that penalty has been proposed to be imposed on the Noticee without assigning any reasoning and providing evidence against the Noticee, whatsoever in the Notice. Though the Noticee transported goods through 26 trucks from KASEZ to Jaipur, however the said fact does not substantiate the allegations made in the Notice that Noticee along with SF Express and other co-noticees was involved in conspiracy of diversion of duty-free imported goods into domestic market instead of exporting the same out of India. The fact that the lorry receipts mentioned destination of goods as

Mongla, Assam does not substantiate the allegation that the Noticee had pre-knowledge and was involved in the conspiracy with co-noticees.

- A.13. None of the statements by co-noticees recorded under Section 108 of Customs Act by proves that the noticee Mr. Krishan Kumar Sharma was informed by SF Express about the diversion of duty-free imported goods into domestic market instead of exporting the same to Bangladesh. The learned authority vide the Notice has failed to provide on record single instance and supporting evidence to substantiate the allegation that the Noticee was aware about diversion of goods into domestic market and was involved in conspiracy with SF Express and other co-noticees as alleged in the Notice. The Noticee being a transporter provided 26 trucks for transportation of goods from KASEZ to Jaipur as agreed with SF Express, KASEZ. As per instructions given by Mr. Rupesh Natwarlal Jadwani, the goods were delivered by Noticee in Jaipur to Mr. Satish. The information and address of Mr. Satish for delivery of goods were given by Mr. Ziyabhai of SF Express, KASEZ to Mr. Rupesh Natwarlal Jadwani. The said fact is also admitted by Mr. Rupesh in his statement dated August 5, 2021. The lorry receipts book was taken by Mr. Rupesh Natwarlal Jadwani and all the lorry receipts were prepared by SF Express in KASEZ only. The said fact has been stated by Mr. Rupesh Natwarlal Jadwani in his answer to question No. 3 of his statement dated August 5, 2021. Thus, Noticee merely performed his duty as transporter of goods as per the arrangement with SF Express, KASEZ.
- A.14. It would not be out of place to mention here that allegations made in the Notice are wholly based on assumptions and presumption that merely the Noticee acted as transporter of goods, he was aware and was involved in conspiracy with SF Express and other co-noticees. The proceedings are solely based on the statement dated August 5, 2021 of Mr. Rupesh Natwarlal Jadwani. However, the ld. authority vide the Notice has not placed on record any instance and corroborative evidence to substantiate the allegations and to prove that the Noticee was involved in conspiracy and had pre-knowledge about diversion of duty-free imported goods into domestic market instead of export to Bangladesh. The fact that lorry receipts provide for destination of goods as Mongla, Assam does not prove or infer that the Noticee had pre-knowledge and was involved in the conspiracy as alleged. The ld. authority has failed to discharge the burden of proof under law for imposition of penalty as proposed in the Notice. This clearly shows non-application of mind and clear prejudice on the mind of the learned Authority to somehow propose to impose penalty against the Noticee under the provisions of the Customs Act, whether sustainable or not.
- A.15. It is trite law that burden of proving liability is on the Department and in the present case the Notice merely makes allegation without any evidence thereto. In this regards reliance is placed on judicial pronouncement in the case of **CC Vs. Flemingo (DFS) Pvt. Ltd. [2010 (251) ELT 348 (Tri.)]**, wherein it has been held: -
- "13. It is well settled that when an allegation is made, the burden is on the person who alleges, to prove it beyond doubt and the burden can be discharged only on the basis of concrete evidence and admission statements from the persons concerned or opinion from a technical expert. When there are variations in the signatures, a technical expert could have certified whether both the signatures belonged to the same person or not, which is admittedly not done in this case.*
- 14. It is also a settled law that the show cause notice issued without any tangible evidences and based only on inferences involving unwarranted assumptions is vitiated by an error of law. In this case, the Department has presumed that the signatures on the bills were forged on the basis of a mere visual examination. Such a presumption, unless reinforced with specific and clear evidences, would vitiate the proceedings and result in miscarriage of justice. The respondent had also stated that they placed the goods on board the various ships under proper customs escort, for which they placed escort slips before the Commission. It has been mentioned in the show cause notice that the officers signed those escort reports periodically but actually they did not accompany the goods. The officers, who certified the escort reports, are the proper officers authorised to escort*

and place the goods on board the vessels. It is also seen that the said officers were posted on cost recovery basis at the duty free shop. In other words, they were exclusively in-charge of the duty free shops and their services were paid for by the respondent Noticee. Hence, they should have been entrusted with no other work but instead dedicated to ensure the smooth and proper functioning of the duty free shop in accordance with the guidelines issued by the Department. If there was any failure on the part of the Department, it cannot be held against the respondent Noticee.”

(emphasis supplied)

- A.16. Further reliance is also placed on the decision in the case of **Rajesh Gandhi Vs. CC [(2008) taxmann.com 391 (Mumbai CESTAT)]**, wherein the Hon’ble Tribunal has held as under: -

“13. There is no evidence on record to prove that any of the appellants knew that, by virtue of transactions entered into with the licence holder the goods with which they were dealing, had become liable to confiscation. The existence of such knowledge is sought to be inferred with reference to the circumstantial evidence in the form of cash deals and high sea sale transactions. These circumstances are not sufficient to discharge the burden upon the Revenue to establish the existence of knowledge on the part of the appellants. Since penal provisions are required to be construed strictly, it is necessary for the Revenue to prove its case beyond reasonable doubt. The position with regard to probative value of circumstantial evidence is that such evidence is wholly inconsistent with the persons' innocence and must lead to only one conclusion, namely, the guilt of the person, as held by the Tribunal in the case of Bachcha Prasad Vs. Collector of Customs, 1988 (37) ELT 269....

14. The adjudicating authority has proceeded on the premise that it was inconceivable that a person of the standing of the appellants would not have tried to find out whether the raw material purchased by them was tainted or not. Therefore, the imposition of penalty is based only upon presumption and conjecture, and not on the basis of any proof of knowledge or reasonable belief on their part that they were dealing with goods liable to confiscation....

(emphasis supplied)

- A.17. Further, in the case of **Union of India Vs. Garware Nylons Ltd. [1996 (87) ELT 12 (SC)]**, Hon’ble Apex Court has held:

“15. The burden of proof is on the taxing authorities to show that the particular case or item in question, is taxable in the manner claimed by them. Mere assertion in that regard is of no avail. It has been held by this Court that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority.

(emphasis supplied)

- A.18. In view of the above, it is submitted that failure on the part of the learned Authority to provide any material and corroborative evidence on record to substantiate the allegations made in the Notice on basis of which the penalty under Section 112(a)&(b), 114(i), 114(iii) and 114AA of the Customs Act is proposed to be imposed on the Noticee renders the Notice bad in law and further proceedings initiated thereunder are liable to be dropped on this ground alone.

A. MR. KRISHAN KUMAR SHARMA, PROPRIETOR OF VISHAL FREIGHT CARRIER MERELY ACTED AS TRANSPORTER OF GOODS

- B.1. That Noticee – Mr. Krishan Kumar Sharma, proprietor of M/s. Vishal Freight Carrier is a small entrepreneur engaged in business of transportation of goods since February 2020. The Noticee does not own any truck or carrier vehicle. As and when the Noticee gets work for transportation, the Noticee hires truck from other transporters and use them for transportation of goods.
- B.2. It is submitted that Noticee – Mr. Krishan Kumar Sharma got the work for transportation of goods through broker Mr. Rupesh Natwarlal Jadwani. The said broker Mr. Rupesh Natwarlal Jadwani fixed meeting of Noticee Mr. Krishan Kumar Sharma with Mr. Ziya Faisal and Mr. Rajabhai, employees of SF Express, KASEZ at Nimaya Hotel of Gandhidham on June 8/9, 2021. During the said meeting, Mr. Ziya Faisal and Mr. Rajabhai asked Mr. Krishan Kumar Sharma for transportation of 26 consignments of goods - areca nuts from KASEZ to Jaipur, however asked the Noticee to prepare lorry receipts for transportation from KASEZ to Mongla, Assam. Against the said proposal it was agreed that Mr. Ziya Faisal will pay Rs. 62,000/- per truck for transportation till Jaipur. Further, Mr. Ziya Faisal also assured Noticee that if he accepts this work then he will provide more business to the Noticee i.e. 50/60 consignments every month. In respect to the said work total consideration amount of Rs. 16,00,000/- was fixed and the Noticee received Rs. 5,00,000/- in cash as advance for fuel expenses out of said Rs. 16,00,000/-.
- B.3. That broker Mr. Rupesh Natwarlal Jadwani requested the Noticee to provide lorry receipt book to Mr. Ziyabhai and Mr. Rajabhai for preparation of lorry receipts. On request of Mr. Rupesh Natwarlal Jadwani, the Noticee handed over the lorry receipt book to Mr. Rupesh and consequentially Mr. Rupesh handed over the same to Mr. Ziyabhai at SF Express, KASEZ. The lorry receipts for transportation of 26 consignments from KASEZ to Mongla, Assam were prepared by Mr. Ziyabhai and Mr. Rajabhai employees of SF Express, KASEZ. Further, broker Mr. Rupesh Natwarlal Jadwani in his answer to Question No. 3 of statement dated August 5, 2021 has verified the fact that they took lorry receipts book from the noticee and handed over the same to Mr. Ziyabhai and Rajabhai for preparation of lorry receipts. Therefore, Noticee was not involved in the preparation of lorry receipts of 26 consignments of goods transported from KASEZ to Jaipur. The noticee merely provided 26 trucks for transportation of goods till Jaipur as per the arrangement agreed with SF Express, KASEZ.
- B.4. As per the arrangement, the Noticee hired 26 trucks from different transporters and transported 26 consignments of goods from KASEZ to Jaipur, Rajasthan. As per the instructions of Mr. Ziyabhai and Mr. Rajabhai of SF Express, KASEZ to broker Mr. Rupesh Natwarlal Jadwani, the goods were to be delivered to Mr. Satish in Jaipur. Mr. Ziyabhai of SF Express, KASEZ gave contact details and address of Mr. Satish to broker Mr. Rupesh for delivery of goods in Jaipur. The said details were later shared by Mr. Rupesh to respective drivers of all trucks for delivery of goods in Jaipur. The said fact has been verified by Mr. Rupesh in answer to Question No. 6 of statement dated August 5, 2021 of Mr. Rupesh Natwarlal Jadwani.
- B.5. It is submitted that as per the statements dated August 5, 2021 recorded by the Noticee Mr. Krishan Kumar Sharma and Mr. Rupesh Natwarlal Jadwani under Section 108 of the Customs Act, during the meeting on June 8/9, 2021 Mr. Ziyabhai and Mr. Rajabhai only proposed work for transportation of goods from KASEZ to Jaipur against consideration of Rs. 62,000/- per truck for which broker Mr. Rupesh will get commission of Rs. 1,000/- per truck and the lorry receipts will be prepared till Mongla, Assam. During the said meeting, Mr. Ziyabhai and Mr. Rajabhai of SF Express, KASEZ did not share or even informed to Noticee Mr. Krishan Kumar Sharma and broker Mr. Rupesh Natwarlal Jadwani about their planning, if any, regarding diversion of duty-free imported goods into domestic market instead of exports out of India. The statements of Noticee and broker Mr. Rupesh Natwarlal Jadwani are identical regarding the discussion occurred among the attendees of meeting and both the statements dated August 5, 2021 testifies the fact that only proposal for transportation of goods till Jaipur against specified consideration was agreed and nothing else was discussed. The Id. authority has not even countered about the said fact in the Notice. As per the material on record, no evidence has been placed on record by Id. authority to show about pre-knowledge and involvement of the Noticee in the conspiracy. The Id. authority has merely made allegations without any evidence in support thereof. Therefore, the

Noticee had no pre-knowledge about the diversion of duty-free imported goods areca nuts by SF Express into domestic market instead of export to Bangladesh.

- B.6. It is submitted that Mr. Ziyabhai of SF Express, KASEZ assured the Noticee that if Mr. Krishan Kumar Sharma accepts the proposal, then he will give more work of around 50/60 consignments every month. The Noticee accepted the proposal for transportation of 26 consignments from KASEZ to Jaipur against Rs. 62,000/- per truck with an expectation to get more work i.e. 50/60 consignments every month as promised by Mr. Ziyabhai of SF Express, KASEZ. The broker Mr. Rupesh Natwarlal Jadwani in his answer to Question No. 2 of statement dated August 5, 2021 also confirmed the said fact that noticee – Mr. Krishan Kumar Sharma accepted the work only because Mr. Ziyabhai told that if noticee accepts this work then he will give more work to Noticee – Mr. Krishan Kumar Sharma. Therefore, the said fact on record, itself substantiates that the Mr. Ziyabhai and Mr. Rajabhai of SF Express, KASEZ has lured the Noticee by giving false assurance/promise for future business and committed fraud with Noticee by not making payment of outstanding dues of Rs. 11,00,000/- towards transportation services till date.
- B.7. It is pertinent to submit that even if the lorry receipts mention about destination of goods as Mongla, Assam and the goods were actually delivered in Jaipur by the Noticee, the said fact does not substantiate or prove the allegation of the Id. authority regarding pre-knowledge and involvement of Noticee in the conspiracy with co-noticees for diversion of duty-free imported goods into domestic market instead of export to Bangladesh. In the Notice, the Id. authority has failed to provide any details and evidence showing pre-knowledge on part of the Noticee about diversion of duty-free imported goods into domestic market instead of export out of India. The Noticee merely acted as transporter of goods from KASEZ to Jaipur and delivered the goods to Mr. Satish in Jaipur as per the instructions of SF Express KASEZ and Mr. Rupesh Natwarlal Jadwani.
- B.8. That for transportation work of 26 consignments, consideration amount of Rs. 16,00,000/- was agreed between the SF Express, KASEZ and noticee Mr. Krishan Kumar Sharma. The Noticee received only Rs. 5,00,000/- in cash as advance for fuel expenses towards consideration and remaining amount of Rs. 11,00,000/- is still outstanding and payable by SF Express, KASEZ to Noticee. Accordingly, in fact the Noticee as transporter has suffered financial losses due to non-payment of dues of Rs. 11,00,000/- by SF Express, KASEZ. The Noticee as transporter of goods and performed its obligations by delivering the goods in Jaipur as per the arrangement. In fact, the SF Express, KASEZ through their employees has committed fraud with the Noticee by availing transportation services for their own benefits with a *malafide* intention to not make payment of outstanding dues of Rs. 11,00,000/- to the Noticee. The Id. authority has not countered or objected to the said facts on record in the Notice. Therefore, the said fact on record itself proves that the Noticee was not involved with SF Express, KASEZ in the conspiracy of diversion of duty-free imported goods into domestic market instead of exports to Bangladesh as alleged in the Notice, however, in fact the SF Express, KASEZ has committed fraud with Noticee by availing transportation services and failed to make payment of outstanding dues to the Noticee till date.
- B.9. It is pertinent to submit that in the Notice, the Id. authority has alleged that the Noticee had complete idea and was involved in the conspiracy with other co-noticees without providing any iota of evidence in support of such allegation. The Id. authority has not provided any details about the money or any other consideration, if any, received by the Noticee as transporter for taking part in the conspiracy with SF Express, KASEZ as alleged. The Id. authority was duty bound to provide details in the Notice regarding the money or any other benefit/ consideration received by the Noticee for taking part in the conspiracy with SF Express, KASEZ, however, the Notice nowhere provide any such details in support of allegations. In fact, the Noticee as transporter has not even received complete payment of consideration for transportation services from SF Express, KASEZ. As on date, outstanding dues of Rs. 11,00,000/- is still payable and outstanding by SF Express, KASEZ to the Noticee for transportation of 26 consignments. In fact, the Noticee is a victim of fraud committed by SF Express, KASEZ due to non-payment of outstanding dues of Rs. 11,00,000/- as agreed. The Id. authority has merely made allegations in the Notice about the active involvement of Noticee in conspiracy without providing any details about his role, benefits/consideration received

for such participation in conspiracy and corroborative evidence in support thereof. The absence of any material evidence in support of allegations made against noticee itself speaks about the gravity of allegations made in the Notice.

- B.10. That in paragraph No. 32.3 of the Notice, it has been alleged that the Noticee had complete idea about whole conspiracy as evident from his own deposition corroborated with statement of other related persons that goods were to be transported till Jaipur however the lorry receipts were to be prepared till Mongla, Assam. In this regard, it is submitted that the neither the noticee and co-noticees including Mr. Rupesh Natwarlal Jadwani in their respective statements stated that Mr. Krishan Kumar Sharma was aware about diversion of duty-free imported goods into domestic market instead of export to Bangladesh. None of the statements on record shows that the Noticee – Krishan Kumar Sharma had pre-knowledge about the conspiracy as alleged. In fact, in the statements dated August 5, 2021 of Noticee and broker Mr. Rupesh both have stated that during meeting with employees of SF Express Mr. Ziyabhai and Rajabhai in June 2021, the discussion among them was about the proposal for transportation of 26 consignments till Jaipur against agreed consideration amount. During the said meeting, Mr. Ziyabhai and Mr. Rajabhai of SF Express, KASEZ did not share or even informed to Noticee Mr. Krishan Kumar Sharma and broker Mr. Rupesh Natwarlal Jadwani about their planning, if any, regarding diversion of duty-free imported goods into domestic market instead of exports out of India. The statements of Noticee and broker Mr. Rupesh Natwarlal Jadwani are identical regarding the discussion occurred among the attendees of meeting and both the statements dated August 5, 2021 testifies the fact that only discussion during the meeting was regarding the proposal for transportation of goods till Jaipur against specified consideration and nothing else was discussed. Therefore, baseless allegations have been made against the Noticee to fasten the liability without any material evidence in support of the allegations.
- B.11. In paragraph No. 32.4 of the Notice, it has been alleged that the Noticee had knowledge about illegal activities and knowingly abetted fraudulent diversion of goods into domestic market. The ld. authority has failed to provide any instance or act or omission on part of the Noticee to show that the Noticee had pre-knowledge about the diversion of duty-free imported goods into domestic market as alleged. Further, the ld. authority has not even provided any details as to how the Noticee as transporter of goods has abetted in fraudulent diversion of goods into domestic market. Merely because the Noticee transported 26 consignments of goods till Jaipur does not prove or substantiate the allegations against the Noticee. The Ld. authority was duty bound to provide corroborative evidence on record to substantiate the allegation of pre-knowledge and abetment in fraudulent diversion of goods into domestic market instead of export to Bangladesh.
- B.12. It is pertinent to submit that the entire proceedings initiated by the Notice against the Noticee is entirely based on the statement dated August 5, 2021 of Noticee and statement dated August 5, 2021 of Mr. Rupesh Natwarlal Jadwani. The ld. authority has not even provided on record any material evidence in support of the allegations. In absence of any evidence against the Noticee showing pre-knowledge on part of the Noticee and role as abettor in fraudulent diversion of goods as alleged, the entire proceedings being frivolous and unlawful, is unsustainable in eyes of law, accordingly, deserves to be dropped in the interest of justice.
- B.13. It is an established principle of law that legal proceedings initiated solely on basis of the statement of co-noticees recorded under Section 108 of the Customs Act without any corroborative evidence is unsustainable under law. In the instant matter, vide the Notice, proceedings are initiated against the Noticee on basis of allegations solely based on the statement of co-noticee broker Mr. Rupesh Natwarlal Jadwani recorded under Section 108 of Customs Act, however, no material evidence has been placed on record against the Noticee in support of allegations made in the Notice. Thus, entire proceedings solely based on uncorroborated statement of co-noticee is unlawful and deserves to be dropped.
- B.14. In view of the above submissions, it is clear on record that the Noticee was not aware and had no knowledge about the alleged conspiracy and fraudulent diversion of goods. The Noticee as transporter performed his obligations with *bonafide* belief and

transported goods from KASEZ to Jaipur. Thus, proceedings against the Noticee initiated vide the Notice deserves to be dropped on this ground alone.

B. STATEMENT OF MR. RUPESH NATWARLAL JADWANI AND CO-NOTICEES UNDER SECTION 108 OF THE CUSTOMS ACT CANNOT BE RELIED UPON WITHOUT ANY CORROBORATIVE EVIDENCE FOR IMPOSITION OF PENALY ON THE NOTICEE

- C.1. It is submitted that the ld. authority vide the Notice by relying upon the statement of broker Mr. Rupesh Natwarlal Jadwani recorded under Section 108 of the Customs Act has alleged that Noticee – Krishan Kumar Sharma had complete idea about the conspiracy and knowingly abetted the fraudulent export/diversion of duty-free imported goods areca nuts into domestic market instead of export to Bangladesh.
- C.2. In this regard, it is submitted that the statement dated August 5, 2021 as reproduced in paragraph No. 33.2 and 33.3 of the Notice, broker Mr. Rupesh Natwarlal Jadwani has nowhere stated that noticee was aware and was involved in the conspiracy with SF Express and its employees namely Mr. Rajabhai and Mr. Ziyabhai. None of the statements of co-noticees on record shows that the Noticee – Krishan Kumar Sharma had pre-knowledge about the conspiracy as alleged. In fact, in the statement dated August 5, 2021 of broker Mr. Rupesh he has stated that during meeting of noticee and Rupesh with employees of SF Express Mr. Ziyabhai and Rajabhai in June 2021, the discussion among them was about the proposal for transportation of 26 consignments till Jaipur against agreed consideration. As per the said statement of broker Mr. Rupesh Natwarlal Jadwani, it is inferred that during the said meeting, Mr. Ziyabhai and Mr. Rajabhai of SF Express, KASEZ did not share or even informed to Noticee Mr. Krishan Kumar Sharma and broker Mr. Rupesh Natwarlal Jadwani about their planning, if any, regarding diversion of duty-free imported goods into domestic market instead of exports out of India. The statements of broker Mr. Rupesh Natwarlal Jadwani is identical and matches with the statement dated August 5, 2021 of Noticee Mr. Krishan Kumar Sharma and the contents of both statements testifies the fact that only discussion during the meeting was regarding the proposal for transportation of goods till Jaipur against specified consideration and nothing else was discussed. The said fact itself substantiates and supports the contention that the Noticee Mr. Krishan Kumar Sharma was not aware about any illegal activity or conspiracy as alleged in the Notice.
- C.3. It would not be out of place to submit that ld. authority has relied upon statement dated August 5, 2021 of Mr. Rupesh Natwarlal Jadwani for making allegations against the Noticee -Mr. Krishan Kumar Sharma without any basis because the said statement of broker Mr. Rupesh does not prove that the noticee Mr. Krishan Kumar Sharma had pre-knowledge about the conspiracy as alleged. In fact, the statement dated August 5, 2021 of Mr. Rupesh Natwarlal Jadwani does not even support the allegations of the ld. authority because statement of Mr. Rupesh does not even mention or state that Noticee had pre-knowledge about conspiracy. Therefore, sole reliance on the statement of broker Mr. Rupesh Natwarlal Jadwani by ld. authority is highly erroneous and illogical.
- C.4. It is pertinent to submit that the ld. authority vide the Notice has not placed on record any corroborative evidence in support of the allegations made in the Notice. By merely relying upon the statement of co-noticees including Mr. Rupesh Natwarlal Jadwani, the ld. authority cannot impose the penalty on the Noticee under provisions of the Customs Act. The ld. authority is duty bound to provide on record material evidence in support of the allegations made in the Notice. In absence of corroborative evidence in support of allegations against the Noticee, the ld. authority cannot solely rely on statement of co-noticees including Mr. Rupesh Natwarlal Jadwani and impose penalty under Section 112, 114 and 114AA of the Customs Act without any corroborative evidence substantiating the allegations made in the Notice.
- C.5. For the ease of reference, relevant extract of Section 108 of the Customs Act is reproduced as under: -

Section 108. Power to summon persons to give evidence and produce documents.

(1) Any gazetted officer of customs shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making in connection with the smuggling of any goods.

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(3) All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required."

C.6. In view of the above, person who has been summoned has been called upon by the Department to give evidence or documentary proof along with statements/facts on which he relies upon. It is submitted that in the instant matter allegation proposed in the Notice on the Noticee is solely on basis of statement of broker Mr. Rupesh Natwarlal Jadwani without any documentary proof or evidence in support thereof. Further Mr. Rupesh Natwarlal Jadwani in his statement dated August 5, 2021 has nowhere stated that Noticee – Mr. Krishan Kumar Sharma was involved in the conspiracy, accordingly, said statement of broker Mr. Rupesh does not even support the allegations made by Id. authority against the Noticee. Even otherwise, the Id. authority cannot solely rely upon the statement of broker Mr. Rupesh Natwarlal Jadwani for imposing penalty on the Noticee without any corroborative evidence in support of the allegations. Thus, entire proceedings against the Noticee solely based on statement of broker Mr. Rupesh Natwarlal Jadwani without any evidence in support thereof, being unlawful deserves to be dropped.

C.7. In this regard reliance is placed on the decision in the case of **Sushil Kumar Kanodia Vs. CC [2007-TIOL-1814-CESTAT-MAD]** wherein the Tribunal held as under: -

"7. We have carefully considered the case records and the submissions made by both sides. From the impugned order, we find that offending transactions had taken place in the year 1995. There is no evidence of serving Show Cause Notice on Shri S.K. Kanodia. It is however evident that he was not heard before the adjudication of the case. The Commissioner found the allegation against the appellants to have been established solely on the basis of incriminating statements given by Shri Chandravadan Natwarlal Shah and Shri Madhusudan Jhanwar. Both of them gave statements claiming themselves to be innocent and incriminating Shri S.K. Kanodia. We find that such incriminating statements cannot be relied upon to conclude the culpable conduct of a co-accused. In this connection the case laws cited by the appellant fully support the ground taken by him against the penalty imposed. We find that in Prasanta Sarkar case (supra), the Tribunal had observed as follows:-

"6. In view of the above, we do not find sufficient material evidence on record to impose penalties upon the appellants. It is well settled law that uncorroborated statements of the co-accused cannot be made the basis for penalizing the noticees. Admittedly, there are no recoveries of any contraband goods from the present appellants. The Tribunal in the case of Orient Enterprises Vs. Collector of Customs (1986 (23) ELT 507 (Tri.) has held that exculpatory statement of co-accused or co-conspirator is always tainted with falsehood because he twists the story or colours the version in a way so as to show himself innocent and paints his companion as the perpetrator of the crime. The statement of such a person loses its evidentiary value and is unworthy of credence against the co-

accused. The said decision was subsequently upheld by the Hon'ble Supreme Court as reported in 1997 (92) E.L.T. A69 (S.C.)."

In view also of the aforesaid case law, we find that the penalty imposed on Shri S.K. Kanodia is not sustainable and that the appeal filed by him deserves to be allowed."

(emphasis supplied)

- C.8. Reliance is also placed on the decision in the case of **Agarwal Metals & Alloys Vs. Commissioner of Customs, Kandla [2021 (378) E.L.T. 155 (Tri. - Ahmd.)]** wherein the Hon'ble CESTAT, Ahmedabad held as under: -

"11.5.Be that as it may we note that statements cannot be the sole reason to confirm the charge of undervaluation and the same has to be corroborated with documentary evidence. In the present case the documentary evidence in the form of contemporaneous import data, produced by the AMA, is contrary to the oral statements. It is settled law that in case of difference between documentary evidence and oral evidence the former should be given precedence and later should be ignored. In view of the settled law, we are of the view that the statements of co-appellants and other witnesses cannot be relied upon or the same cannot be the sole basis to confirm the charge of undervaluation as the same is contrary to documentary evidence which is in the form of contemporaneous import price. Our views that documentary evidence will prevail over oral evidence is case of contradiction between them are based upon the judgment of Tribunal in the cases of Philip Fernandes v/s Commissioner MANU/CM/0224/2002 : 2002 (146) E.L.T 180, R.P Industries v/s Collector MANU/CM/0051/1995 : 1996 (82) E.L.T 129 and Commissioner v/s Latex Chemicals MANU/CE/1056/2004 : 2005 (181) E.L.T. 138 (Tri. - Del.)....."

(emphasis supplied)

- C.9. In view of the above submissions and judicial pronouncements it is submitted that penalty under Section 112(a) and (b), 114(i) & (iii) and 114AA of the Customs Act cannot be imposed on the Noticee merely on basis of statement of co-noticees including broker Mr. Rupesh Natwarlal Jadwani in absence of any corroborative evidence in support thereof. Therefore, further proceedings against the Noticee deserves to be dropped on this ground alone.

C. THE CUSTOMS DEPARTMENT HAS FAILED TO DISCHARGE BURDEN OF PROOF TO ESTABLISH LIABILITY OF THE NOTICEE FOR IMPOSITION OF PENALTY

- D.1. It is submitted that the Department has failed to discharge burden of proof to establish liability on part of the Noticee that it had pre-knowledge about conspiracy and diversion of duty-free imported goods into domestic market instead of export to Bangladesh. The Id. authority vide the Notice nowhere provides for any instance or action on part of the Noticee which establishes and substantiates the allegations made in the Notice that Noticee – Mr. Krishan Kumar Sharma had pre-knowledge about conspiracy and knowingly abetted in fraudulent diversion of goods.
- D.2. It is worth to mention here that no instance/act on part of the Noticee with supporting evidence and documentary proof has been placed on record to substantiate the allegations made in the Notice. In absence of any material/corroborative evidence against the Noticee, the allegations made without any basis are not legally sustainable. By merely making an allegation, the Department cannot shift burden of proving liability on the Noticee when there is not even a shred of evidence to support such allegations. The learned Authority vide the Notice has simply proposed for imposition of penalty under Section 112, 114 and 114AA of Customs Act without specifying how the Noticee as transporter of goods had knowledge about conspiracy and abetted in fraudulent diversion of goods as alleged in the Notice. It is trite law that the department is duty bound to prove liability of the Noticee and till such time onus to prove is not discharged, demand of tax/ imposition of penalty is not sustainable.

- D.3. In this regard reliance is placed on decision of the Hon'ble Supreme Court in the case of **HPL Chemicals Ltd. Vs. CCE [2006-TIOL-37-SC-CX]**, wherein it has been held:

"This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof."
(emphasis supplied)

- D.4. Further reliance is also placed on the decision in the case of **Anita Prints Vs. CCE [MANU/CM/0527/2014]**, the Hon'ble Tribunal has held: -

*"8.The said show cause notice blindly states that transport charges and octroi are to be included in the assessable value of the goods without evidencing that the said transport charges and octroi are paid by the appellant and the amount which is indicated in the show cause notice is the amount which has been deduced from the records maintained in the appellant's premises. It is a settled law that when the department raises demands on the assessee, the onus has to be discharged by the department by submitting tangible evidences. In the absence of any such evidence which indicates the specific amounts as have been paid by the appellant, the entire fulcrum of the show cause notice is displaced and any order confirming the demand raised on such show cause notice has to go. We find that this is the ratio that can be derived from the judgments of this Tribunal in the case of *Jalan Dyeing & Bleaching Mills (supra)*, *Radha Madhav Corporation (supra)* and other cases."*

(emphasis supplied)

- D.5. In the case of **Nanya Imports & Exports Enterprises Vs. CC [2006-TIOL-36-SC-CUS]**, the Hon'ble Apex Court of India has held as under:

"The burden was on the revenue to prove that the subject goods were not "sheets" for which no evidence whatsoever was led by the revenue. The burden of proof as to whether the item in question is taxable in the manner claimed by the revenue is on the revenue. Mere assertion in that regard is of no use. It has repeatedly been held by this Court that it is for the taxing authority to lay evidence in that behalf. The burden was on the revenue to prove that the said goods were not "sheets" for which no evidence whatsoever was led by the Tribunal."

(emphasis supplied)

- D.6. Further in the case of **Manoj Metal Industries Vs. Collector of Customs (Preventive), Calcutta [1996 (86) E.L.T. 236 (Tribunal)]**, the Hon'ble Tribunal held as under: -

"14. As far as Appeal C-73/93 is concerned, it is seen that the Appellants Inland Road Service was also carrying one of the consignments in their truck. They are only transporters. In order to impose penalty on them under Section 112 of the Customs Act, 1962, it must be proved by the Department that they carried these goods with the knowledge that these are liable for confiscation. But there is nothing in the impugned order to show that this Appellant carried these goods with the knowledge that these are liable for confiscation. Moreover, they are only transport companies who received the goods in the usual course of their transport business. There was no duty cast on them to find out whether these goods are smuggled goods or not. Unless there is something positive to show that they had the knowledge that these are the goods liable for confiscation, no penalty can be imposed on them. There is no such evidence produced by the Department in this case.

Hence, the imposition of penalty of Rs. 25,000/- on them is hereby set aside. Appeal C-73/93 is thus allowed.”
(emphasis supplied)

- D.7. In view of the above submissions, the Noticee submits that the learned authority vide the Notice has grossly erred by making allegations against the Noticee without any material and corroborative evidence to substantiate the allegations made in the Notice. Therefore, the learned authority has merely made allegations without discharging onus to prove liability of the Noticee for imposition of penalty under the Customs Act. Thus, proceedings initiated against the Noticee under the Notice ought to be dropped on this ground alone.

D. EXTENDED PERIOD OF LIMITATION UNDER SECTION 28(4) OF THE CUSTOMS ACT CANNOT BE INVOKED

- E.1. The Noticee submits that extended period of limitation sought to be invoked by the Id. authority vide the Notice in terms of Section 28(4) of the Customs Act. In terms of Section 28 of the Customs Act demand of customs duty can be proposed for a period of two year from the 'relevant date' in normal circumstances. However, in case of collusion or willful mis-statement or suppression of facts, demand can be raised up to a period of five years.
- E.2. Before making detailed submissions in this regard, it is important to reproduce below Section 28 of the Customs Act for ease of reference: -

“Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.

28. (1) Where any duty has not been levied or not paid or has been short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,-

(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied 5[or paid] or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

.....

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

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

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

- E.3. From perusal of sub-Section (4) Section 28 of the Customs Act it can be inferred that only in case of collusion or willful mis-statement or suppression of facts, demand of duty can be made within a period of five years. Hence, first there has to be an allegation, duly supported by evidence, of collusion or willful mis-statement or suppression of facts in show cause notice and a positive finding thereof has to be recorded by the learned authority in the Notice before any liability for extended period of limitation can be fastened on the Noticee. Thus, extended period of limitation can be

invoked only when ingredients specified in Section 28(4) of the Customs Act are present and established in any case.

- E.4. In the instant matter, as submitted in forgoing grounds that the learned authority vide the Notice has not provided any instance on part of the Noticee to substantiate that there was suppression/collusion/willful misstatement on part of Noticee – Mr. Krishan Kumar Sharma. The allegations are made in the Notice only on basis of assumption/presumption that the Noticee having acted as transporter of goods was involved in the conspiracy without providing any material evidence in support of such allegations. The Id. authority vide the Notice has nowhere provided reasons and on basis of which ground under Section 28(4), extended period of limitation has been invoked. In absence of any allegation and material on record to satisfy provision of Section 28(4) of the Customs Act as invoked in the Notice, the present proceedings initiated under the Notice being beyond the limitation period of two years under Section 28(1) of the Customs Act, is not legally sustainable. Therefore, extended period of limitation cannot be invoked in the Notice. Accordingly, proceedings initiated vide the Notice thereby proposing imposition of penalty under Section 112, 114 and 114AA of the Customs Act deserves to be dropped.
- E.5. It is further submitted that it is a settled legal principle that for invoking extended period of limitation mere inaction or omission is not sufficient but something positive indicating deliberate withholding of information is required to be shown in the notice of demand. In this regard reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Uniworth Textiles Ltd. Vs. CCE [2013 (288) E.L.T. 161 (S.C.)]** wherein the Hon'ble Supreme Court held as under: -

“24. Further, we are not convinced with the finding of the Tribunal which placed the onus of providing evidence in support of bona fide conduct, by observing that “the appellants had not brought anything on record” to prove their claim of bona fide conduct, on the appellant. It is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it. This Court observed in Union of India v. Ashok Kumar & Ors. - (2005) 8 SCC 760 that “it cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility.”

25. Moreover, this Court, through a catena of decisions, has held that the proviso to Section 28 of the Act finds application only when specific and explicit averments challenging the fides of the conduct of the assessee are made in the show cause notice, a requirement that the show cause notice in the present case fails to meet. In Aban Loyd Chiles Offshore Limited and Ors. (supra), this Court made the following observations :

“21. This Court while interpreting Section 11-A of the Central Excise Act in Collector of Central Excise v. H.M.M. Ltd. (supra) has observed that in order to attract the proviso to Section 11-A(1) it must be shown that the excise duty escaped by reason of fraud, collusion or willful misstatement of suppression of fact with intent to evade the payment of duty. It has been observed :

‘...Therefore, in order to attract the proviso to Section 11-A(1) it must be alleged in the show-cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or willful misstatement or suppression of fact on the part of the assessee or by reason of contravention of any of the provisions of the Act or of the Rules made thereunder with intent to evade payment of duties by such person or his agent. There is no such averment to be found in the show cause notice. There is no averment that the duty of excise had been intentionally evaded

or that fraud or collusion had been practiced or that the assessee was guilty of wilful misstatement or suppression of fact. In the absence of any such averments in the show-cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11-A(1) of the Act.'

It was held that the show cause notice must put the assessee to notice which of the various omissions or commissions stated in the proviso is committed to extend the period from six months to five years. That unless the assessee is put to notice the assessee would have no opportunity to meet the case of the Department. It was held :

...There is considerable force in this contention. If the department proposes to invoke the proviso to Section 11-A(1), the show-cause notice must put the assessee to notice which of the various commissions or omissions stated in the proviso is committed to extend the period from six months to 5 years. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the department. The defaults enumerated in the proviso to the said sub-section are more than one and if the Excise Department places reliance on the proviso it must be specifically stated in the show-cause notice which is the allegation against the assessee falling within the four corners of the said proviso...."

26. Hence, on account of the fact that the burden of proof of proving mala fide conduct under the proviso to Section 28 of the Act lies with the Revenue; that in furtherance of the same, no specific averments find a mention in the show cause notice which is a mandatory requirement for commencement of action under the said proviso; and that nothing on record displays a willful default on the part of the appellant, we hold that the extended period of limitation under the said provision could not be invoked against the appellant."

(emphasis supplied)

E.6. Further, in the case of **Collector Vs. Chemphar Drug [1989 (40) ELT 276 (SC)]**, the Hon'ble Supreme Court of India held as under: -

"In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or willful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or willful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case."

E.7. The Noticee also places reliance on the decision of the Hon'ble Supreme Court in the case of **Cosmic Dye Chemical Vs CCE [(1995) 75 ELT 721 (SC)]**, relevant extracts of which are reproduced below: -

"Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words "mis-statement or suppression of facts" which

means with intent to evade duty. The next set of words “contravention of any of the provisions of this Act or Rules” are again qualified by the immediately following words “with intent to evade payment of duty”. It is, therefore, not correct to say that there can be a suppression or mis-statement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11A. Mis-statement or suppression of fact must be wilful.”

- E.8. In view of above, it is submitted that the ld. authority without discharging burden of proof to establish suppression on part of the Noticee with an intent to evade payment of customs duty as alleged in the Notice, extended period of limitation cannot be invoked under Section 28(4) of the Customs Act, accordingly, proceedings vide the Notice for imposition of penalty is not sustainable. Thus, further proceedings against the Noticee deserves to be dropped on this ground alone.

E. PENALTY NOT IMPOSABLE UNDER SECTION 112 OF THE CUSTOMS ACT

- F.1. The Noticee submits that in the Notice it has been proposed to impose penalty on the Noticee under Section 112(a) and (b) of the Customs Act for alleged involvement in conspiracy and knowingly abetted fraudulent diversion of goods into domestic market instead of export to Bangladesh. It is submitted that the Noticee merely acted as transporter of goods from KASEZ to Jaipur and had no knowledge about alleged fraudulent diversion of goods as alleged in the Notice. The Noticee merely performed his obligation as transporter of goods and delivered the goods as per the instructions of the SF Express, KASEZ in Jaipur. The ld. authority vide the Notice has not placed on record any material evidence showing that there was pre-knowledge and the Notice knowingly abetted as alleged in Notice. In absence of any evidence on record against Notice showing abetment as alleged, the penalty is not imposable under Section 112 of Customs Act.

- F.2. In this regard, for the ease of reference it is necessary to reproduce Section 112 of the Customs Act as applicable during the relevant period as under:

Penalty for improper importation of goods, etc.

“112 . 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.....”

- F.3. In view of the above provision, Section 112 of Customs Act provide that penalty can be imposed on any person (a) who does or omits to do any act which act or omission would render such goods liable for confiscation under section 111 of Customs Act or who abets in doing or omission of such act (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.

- F.4. For imposition of penalty under Section 112 of the Customs Act there must be an act or omission or abetment in doing or omission of such act on part of the person which would render goods liable for confiscation. In the instant matter, as submitted in forgoing grounds, Noticee – Mr. Krishan Kumar Sharma got the work for transportation of goods through broker Mr. Rupesh Natwarlal Jadwani. During the meeting on June 8/9, 2021, employees of SF Express, KASEZ i.e. Mr. Ziya Faisal and Mr. Rajabhai asked Noticee - Mr. Krishan Kumar Sharma for transportation of 26 consignments of goods - areca nuts from KASEZ to Jaipur, however asked the noticee to prepare lorry receipts for transportation from KASEZ to Mongla, Assam. Against the said proposal it was agreed that Mr. Ziya Faisal will pay Rs. 62,000/- per truck, accordingly, total consideration amount of Rs. 16,00,000/- was fixed. Further, Mr. Ziya Faisal also

assured noticee that if he accepts this work then he will provide more business to the noticee i.e. 50/60 consignments every month.

- F.5. The Noticee accepted the proposal for transportation of 26 consignments from KASEZ to Jaipur for consideration of Rs. 62,000/- per truck with an expectation to get more work i.e. 50/60 consignments every month as promised by Mr. Ziyabhai of SF Express, KASEZ. The broker Mr. Rupesh Natwarlal Jadwani in his answer to Question No. 2 of statement dated August 5, 2021 also confirmed the said fact that Noticee – Mr. Krishan Kumar Sharma accepted the work only because Mr. Ziyabhai told that if Noticee accepts this work then he will give more work to Noticee – Mr. Krishan Kumar Sharma. Therefore, the Noticee accepted the proposal for transportation of 26 consignments with a *bonafide* belief with an expectation of getting more business in future from Mr. Ziyabhai and Mr. Rajabhai of SF Express, KASEZ.
- F.6. That on request of broker Mr. Rupesh Natwarlal Jadwani, the Noticee handed over the lorry receipt book to Mr. Rupesh and consequentially Mr. Rupesh handed over the same to Mr. Ziyabhai at SF Express, KASEZ for preparation of lorry receipts for 26 consignments of trucks. The lorry receipts for transportation of 26 consignments from KASEZ to Mongla, Assam were prepared by Mr. Ziyabhai and Mr. Rajabhai employees of SF Express, KASEZ. The broker Mr. Rupesh Natwarlal Jadwani in his answer to Question No. 3 of statement dated August 5, 2021 has verified the fact that all lorry receipts were prepared by employees of SF Express, KASEZ. Therefore, the Noticee – Mr. Krishan Kumar Sharma was not involved in the preparation of lorry receipts of 26 consignments and merely transported the goods from KASEZ to Jaipur.
- F.7. With a *bonafide* belief, the Noticee hired 26 trucks from different transporters and transported 26 consignments of goods from KASEZ to Jaipur, Rajasthan. Mr. Ziyabhai and Mr. Rajabhai of SF Express, KASEZ instructed broker Mr. Rupesh Natwarlal Jadwani to deliver the goods to Mr. Satish in Jaipur. The contact details and address of Mr. Satish was shared by Mr. Rupesh to respective drivers of all trucks for delivery of goods in Jaipur. The broker Mr. Rupesh in his statement dated August 5, 2021 has been verified the said fact that the goods were delivered as per the instructions and address given by Mr. Rajabhai and Mr. Ziyabhai of SF Express, KASEZ. Thus, the Noticee as transporter of goods during the entire engagement of work has acted with a *bonafide* belief and delivered the goods as per the arrangement.
- F.8. It is pertinent to submit that as per the statements dated August 5, 2021 recorded by the Noticee Mr. Krishan Kumar Sharma and Mr. Rupesh Natwarlal Jadwani under Section 108 of the Customs Act, it is inferred that during the meeting on June 8/9, 2021 Mr. Ziyabhai and Mr. Rajabhai only proposed work for transportation of goods from KASEZ to Jaipur against consideration of Rs. 62,000/- per truck for which broker Mr. Rupesh will get commission of Rs. 1,000/- per truck and the lorry receipts will be prepared till Mongla, Assam. During the said meeting, Mr. Ziyabhai and Mr. Rajabhai of SF Express, KASEZ did not share or even informed to Noticee Mr. Krishan Kumar Sharma and broker Mr. Rupesh Natwarlal Jadwani about their planning, if any, regarding diversion of duty-free imported goods into domestic market instead of exports out of India. The statements dated August 5, 2021 of Noticee and broker Mr. Rupesh Natwarlal Jadwani proves that only proposal for transportation of goods till Jaipur against specified consideration was agreed among the attendees. The Id. authority has not even countered about the said fact in the Notice. In fact, statement dated August 5, 2021 of Mr. Rupesh Natwarlal Jadwani does not even support the case of the Department against the Noticee as the statement does not imply or infer that Noticee had pre-knowledge about alleged fraudulent diversion and knowingly abetted the same.
- F.9. It is pertinent to submit that even if the lorry receipts mention about destination of goods as Mongla, Assam and the goods were delivered in Jaipur by the Noticee, however, the said fact does not substantiate or prove the allegation of the Id. authority regarding pre-knowledge and involvement of Noticee in the conspiracy with co-noticees for diversion of duty-free imported goods into domestic market instead of export to Bangladesh. In the Notice, the Id. authority has failed to provide any details and evidence showing pre-knowledge on part of the Noticee about diversion of duty-free imported goods into domestic market instead of export out of India. The Noticee merely acted as transporter of goods from KASEZ to Jaipur and delivered the goods to Mr. Satish in Jaipur as per the instructions of Mr. Rajabhai and Mr. Ziyabhai Faisal,

employees of SF Express KASEZ and Mr. Rupesh Natwarlal Jadwani. No evidence has been placed on record by Id. authority to show about pre-knowledge and involvement of the Noticee in the conspiracy. The Id. authority has merely made allegations without any evidence in support thereof. Therefore, the Noticee had no pre-knowledge about the diversion of duty-free imported goods areca nuts by SF Express into domestic market instead of export to Bangladesh as alleged.

- F.10. It is noteworthy to submit that for transportation work of 26 consignments, out of total consideration of Rs. 16,00,000/- the Noticee has received only Rs. 5,00,000/- in cash as advance for fuel expenses towards consideration and remaining amount of Rs. 11,00,000/- is still outstanding and payable by SF Express, KASEZ to Noticee. Accordingly, in fact the Noticee as transporter has suffered financial loss due to non-payment of dues of Rs. 11,00,000/- by SF Express, KASEZ. The SF Express, KASEZ through their employees has committed fraud with the Noticee by availing transportation services for their own benefits with a *malafide* intention to not make payment of outstanding dues of Rs. 11,00,000/- to the Noticee. The Id. authority has not countered or objected to the said facts on record in the Notice. In fact, Mr. Ziyabhai and Mr. Rajabhai of SF Express, KASEZ has lured the Noticee by giving false assurance/promise for future business and committed fraud with Noticee by not making payment of outstanding dues of Rs. 11,00,000/- towards transportation services till date. Therefore, the said fact on record itself proves that the Noticee was not involved with SF Express, KASEZ in conspiracy of diversion of duty-free imported goods into domestic market instead of exports to Bangladesh as alleged in the Notice.
- F.11. It is submitted that the Id. authority vide the Notice has alleged that the Noticee had complete idea and was involved in the conspiracy with other co-noticees without providing any iota of evidence in support of such allegation. However, the Id. authority has not provided any details about the money or any other consideration or benefit, if any, received by the Noticee as transporter for taking part in the conspiracy with SF Express, KASEZ as alleged. The Id. authority was duty bound to provide details in the Notice regarding the money or any other benefit/ consideration received by the Noticee for taking part in the conspiracy with SF Express, KASEZ, however, the Notice nowhere provide any such details in support of allegations. In fact, the Noticee as transporter has not even received outstanding dues for transportation services from SF Express, KASEZ. In fact, the Noticee is a victim of fraud committed by SF Express, KASEZ due to non-payment of outstanding dues of Rs. 11,00,000/- for transportation work. The Id. authority has merely made allegations in the Notice about the active involvement of Noticee in conspiracy without providing any details about his role, benefits/consideration received for such participation in conspiracy and corroborative evidence in support thereof. The Noticee as transporter of goods acted with *bonafide* belief and performed his obligation by delivering the goods at Jaipur. Thus, the Noticee had no pre-knowledge about the conspiracy and diversion of goods as alleged.
- F.12. In view of the above, it is evident that no case can be made out against the Noticee in absence of tangible, independent and corroborative evidence. Thus, Noticee has not rendered the goods liable for confiscation, hence no penalty can be imposed under Section 112(a) of the Customs Act.

Penalty under Section 112(b) is not imposable

- F.13. Analysis of Section 112(b) shows that penalty under Section 112(b) can be levied on a person who in any manner deals with (including possession) any goods which he knows or has reason to believe are liable to confiscation under Section 111 of the Customs Act. Thus, knowledge regarding the liability of the goods to be confiscated or having reasons to believe so, on the part of the person dealing with such goods is necessary before any penalty can be imposed under Section 112(b) of Customs Act. In other words, if a person deals with any goods which are liable to confiscation, but he is not aware about the same and also, he does not have any reason to believe so, then penalty under Section 112(b) cannot be imposed.
- F.14. In the present case, the Noticee had no idea or knowledge about the conspiracy and diversion of goods. The Noticee with *bonafide* belief accepted the proposal of transportation work and performed its obligation and transported goods from KASEZ to Jaipur. It is pertinent to submit that Id. authority vide the Notice has failed to provide

any instance or act or omission on part of the Noticee to show that the Noticee had pre-knowledge about the diversion of duty-free imported goods into domestic market as alleged. Further, the Id. authority has not even provided any details as to how the Noticee as transporter of goods has abetted in fraudulent diversion of goods into domestic market. Merely because the Noticee transported 26 consignments of goods till Jaipur does not prove or substantiate the allegations against the Noticee. The Id. authority was duty bound to provide corroborative evidence on record to substantiate the allegation of pre-knowledge and abetment in fraudulent diversion of goods into domestic market instead of export to Bangladesh. In absence of any evidence against the Noticee showing pre-knowledge on part of the Noticee, the penalty cannot be imposed under Section 112(b) of Customs Act.

- F.15. The entire proceedings against the Noticee are based on statements of co-noticees recorded under Section 108 of Customs Act. It is submitted that co-noticees including Mr. Rupesh Natwarlal Jadwani in their respective statements recorded under Section 108 of Customs Act has nowhere stated that Mr. Krishan Kumar Sharma was aware about diversion of duty-free imported goods into domestic market instead of export to Bangladesh. None of the statements on record proves that Noticee – Krishan Kumar Sharma had pre-knowledge about the conspiracy as alleged in Notice. Further, the Id. authority cannot rely upon statement of co-noticees without any corroborative evidence in support of allegations. In fact, in statements dated August 5, 2021 of Noticee and broker Mr. Rupesh both have stated that during meeting with employees of SF Express Mr. Ziyabhai and Rajabhai, the discussion among them was regarding the proposal for transportation of 26 consignments till Jaipur against agreed consideration amount. On basis of the content of statements dated August 5, 2021 it is inferred that during the said meeting, Mr. Ziyabhai and Mr. Rajabhai of SF Express, KASEZ did not share or even informed to Noticee Mr. Krishan Kumar Sharma and broker Mr. Rupesh Natwarlal Jadwani about their planning, if any, regarding diversion of duty-free imported goods into domestic market instead of export out of India. The statements of Noticee and broker Mr. Rupesh Natwarlal Jadwani proves that during the meeting only discussion was regarding the proposal for transportation of goods till Jaipur against specified consideration and nothing else was discussed. The said fact on record proves the contention of the Noticee that Mr. Krishan Kumar Sharma was unaware and had no pre-knowledge about the conspiracy and he merely performed its obligation with *bonafide* belief and transported goods from KASEZ to Jaipur.
- F.16. That in absence of any pre-knowledge and *malafide* intention on part of the Noticee, penalty under Section 112(a) and 112(b) of the Customs Act is not imposable. The Notice nowhere provides for any single instance and corroborative evidence to substantiate the allegation that the Noticee being transporter was involved in conspiracy. It is worth to mention here that the allegations made in the Notice are merely based on assumptions and presumptions in view of the fact that Noticee has acted as transporter of goods and knowingly abetted fraudulent diversion of goods. The learned authority vide the Notice has failed to provide on record any specific instance and material evidence on record to establish the fact that the Noticee was aware and involved in conspiracy and fraudulent diversion of goods as alleged. Accordingly, in absence of material evidence on record against the Noticee, penalty under Section 112(b) of the Customs Act cannot be imposed.
- F.17. In this regard, reliance is placed on the case of **Rajdoot Road Carrier Vs. Commissioner of Customs, Lucknow [2000 (118) E.L.T. 146 (Tribunal)]** wherein the Hon'ble CESTAT, New Delhi held as under: -

“5. I have gone through the submissions of both the sides. The Commissioner has imposed penalty and ordered confiscation of Indian goods as driver of the truck fled away from the spot of deduction of smuggled goods and according to him, it was the responsibility of the Transporter to properly examine the actual contents of the packets brought to them for the purpose of transportation. The reasoning adopted by the Commissioner is not correct in law. A carrier of goods is not required to check and verify the contents of the packages and to ensure that the goods are not of smuggled nature. The Appellate Tribunal in Harbans Singh Narula v. Commissioner of Customs - 1998 (100) E.L.T. 282 held that persons running a transport company “could not be expected to know or be aware of, the contents of each of the hundreds of packages which must have

passed through their office; that there is no specific evidence to show that the appellants knew or had reason to believe that the packages in question contained contraband; there is no legal requirement for names and addresses of consignees and consignors to be mentioned and insistence of this requirement, in practice would mean refusing to accept large number of packages for carriage.” No evidence has been adduced by the Department to prove that the Transporter was aware of the smuggled nature of the goods. The penalty under Section 112(b) of the Customs Act can be imposed only if a person is concerned in carrying any goods which he knows or has reason to believe are liable to confiscation under Section 111 of the Act. The Revenue has not been able to prove such knowledge of the Transporter. Accordingly I set aside the penalty imposed on M/s. Rajdoot Road Carrier Pvt. Ltd.”

(emphasis supplied)

- F.18. In the case of **Globe Transport Corporation Vs. Commissioner of Customs, Jaipur [2002 (148) E.L.T. 909 (Tri. - Del.)]**, The Hon’ble CESTAT held as under:

“9. We find that there is no evidence on record to show that M/s. Globe Transport Corpn. or its driver had any knowledge that the contraband goods were being transported in the truck. Sub-section (2) of Section 115 of Customs Act provides that any conveyance is used as a means of transport in smuggling of any goods or any carriage of any smuggled goods, shall be liable for confiscation, unless the owner of the conveyance proves that it was so used without the knowledge or connivance of owner himself or his agent. In the present case, in absence of any evidence in respect of knowledge of the appellants or the driver that the goods were contraband, the impugned order in respect of personal penalty is set aside and the appeal is allowed.”

(emphasis supplied)

- F.19. In the case of **Manoj Metal Industries Vs. Collector of Customs (Preventive), Calcutta [1996 (86) E.L.T. 236 (Tribunal)]**, the Hon’ble Tribunal observed as under: -

“14. As far as Appeal C-73/93 is concerned, it is seen that the Appellants Inland Road Service was also carrying one of the consignments in their truck. They are only transporters. In order to impose penalty on them under Section 112 of the Customs Act, 1962, it must be proved by the Department that they carried these goods with the knowledge that these are liable for confiscation. But there is nothing in the impugned order to show that this Appellant carried these goods with the knowledge that these are liable for confiscation. Moreover, they are only transport companies who received the goods in the usual course of their transport business. There was no duty cast on them to find out whether these goods are smuggled goods or not. Unless there is something positive to show that they had the knowledge that these are the goods liable for confiscation, no penalty can be imposed on them. There is no such evidence produced by the Department in this case. Hence, the imposition of penalty of Rs. 25,000/- on them is hereby set aside. Appeal C-73/93 is thus allowed.”

(emphasis supplied)

- F.20. Further, reliance is also placed on the decision of Supreme Court in the case of **Akbar Baddrudin Jiwani Vs. Collector of Customs [2002-TIOL-267-SC-CUS]** wherein it was held as under: -

“58. In the present case, the Tribunal has itself specifically stated that the appellant has acted on the basis of bona fide belief that the goods were importable under OGL and that, therefore, the Appellant deserves lenient treatment. It is, therefore, to be considered whether in the light of this specific finding of the Customs, Excise & Gold (Control) Appellate Tribunal, the penalty and fine in lieu of confiscation required to be set aside and

quashed. Moreover, the quantum of penalty and fine in lieu of confiscation are extremely harsh, excessive and unreasonable bearing in mind the bona fides of the Appellant, as specifically found by the Appellate Tribunal.

59. We refer in this connection the decision in *Merck Spares v. Collector of Central Excise & Customs, New Delhi* - 1983 E.L.T. 1261, *Shama Engine Valves Ltd. Bombay v. Collector of Customs, Bombay* - 1984 (18) E.L.T. 533 and *Madhusudan Gordhandas & Co. v. Collector of Customs, Bombay* - 1987 (29) E.L.T. 904 wherein it has been held that in imposing penalty the requisite mens rea has to be established. It has also been observed in *Hindustan Steel Ltd. v. State of Orissa* - 1978 (2) E.L.T. (J 159) (S.C.) = 1970 (1) SCR 753 = **2002-TIOL-148-SC-CT** - by this Court that:

“The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard of its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.”

60. In the instant case, even if it is assumed for arguments sake that the stone slabs imported for home consumption are marble still in view of the finding arrived at by the Appellate Tribunal that the said product was imported on a bona fide belief that it was not marble, the imposition of such a heavy fine is not at all warranted and justifiable.”

(emphasis supplied)

F.21. Further reliance is also placed on the decision of Hon’ble Tribunal in the case of **Himesh Arvindbhai Thakar Vs. CC [2007 taxmann.com 1068 (Mumbai CESTAT)]**, wherein it was held as under:

“3. After going through the above reasoning, I find that there is no evidence discussed by the adjudicating authority to impose penalty upon the appellants under Section 112 (a). The ingredients of the said section are not satisfied so as to arrive at a finding that the appellants has abetted in rendering the goods liable for confiscation. The observation of the adjudicating authority are too general in nature. As such, I find no justification to impose penalty upon the appellants, the same is accordingly set aside and appeal allowed with consequential relief.”

F.22. Further, the Noticee also rely upon the decision in the case of **M. Dutta Agency Vs. Commissioner of Customs (Preventive), Calcutta [2001 (128) E.L.T. 531 (Tri. - Cal.)]** wherein the Hon’ble Tribunal held as under: -

“10. As regards the imposition of penalties on M/s. Raipur Calcutta Road Carrier and the owner of the truck we do not find any evidence on record to show that the said transporter was aware of the tainted character of the goods imported by M/s. RSI which has been transported through them. Accordingly we hold that the imposition of penalties upon them were not justified.”

(emphasis supplied)

F.23. In the case of **R.P. Singh Vs. Commissioner of Customs, Kandla [2010 (262) E.L.T. 1021 (Tri. - Ahmd.)]**, the Hon’ble Tribunal held as under: -

“6. The whole case has been made out only on the basis of the statements of the co-noticees. Accordingly, the reliance on the case of Surjit

Singh Chhabra (supra) is not relevant in this case. The reliance placed on Naresh J. Sukhawani v. Union of India - [1996 \(83\) E.L.T. 258 \(S.C.\)](#). In that case also, the foreign currency was recovered from the custody of the accused. Hence, this reliance is also not relevant. Further, we find that the importer has admitted that they have imported the goods against the advance licence under DEEC Scheme and diverted the same into the local market. On the basis of the statements of the co-noticees, the penalty on the appellant is not sustainable. The reliance placed by the learned advocate in the case of GTC Industries Ltd. (supra) is relevant to this case as the ratio in that case is that the denial of cross-examination of witnesses and right to lead overall and documentary evidence in support of their contention amounts to breach of natural justice. The decision in the case of Hindustan Polyester Lines (supra) is also relevant to this case. In that case the Hon'ble High Court of P&H upheld the decision of the Tribunal that denial of cross examination of witnesses whose statements were recorded at the back of the assessee amounts to violation of principles of natural justice. We find in this case no documents were recovered from any of the persons and the statements recorded are also retracted. No cross examination of the witness co-noticees were allowed. Hence, we do not find any merit in the impugned order qua appellant namely Shri Ravindra Rastogi and penalty imposed on him is set aside and the appeal is allowed."

F.24. In the case of **A.N. Waghbakriwala Vs. Commissioner of Customs, Ahmedabad [2009 (236) E.L.T. 147 (Tri. - Ahmd.)]**, the Hon'ble Tribunal Ahmedabad Bench held as under: -

"6. As regards imposition of penalty of Rs. 25,000/- on Shri N.Y. Thakkar, I find that he was engaged as an agent in the business of carting and octroi commission. The goods were transported by him from the factory premises of M/s Shabnam Synthetics to the godown. The goods were admittedly covered by the invoice and bill of entry (though not correct) and as such, was sufficient to give a reason to Shri Thakkar to presume that the same were legally acquired by the owner. There is nothing on record to show that he was a party to the illegal acquisition of the goods by Shri Waghbakriwala. As a transporter, he could not have verified the correctness of the documents handed over to him for the purposes of transportation and search. As such, by extending the benefit of doubt to him, I set aside the personal penalty of Rs. 25,000/- imposed upon him and allow his appeal."

(emphasis supplied)

F.25. In the case of **Dasmesh Road Service Vs. Commissioner of Customs (Preventive), West Bengal, Calcutta [2001 (138) E.L.T. 393 (Tri. - Kolkata)]** the Hon'ble Tribunal held as under: -

"12. We have considered the submissions made from both the sides. Though the appellants have not claimed release of the ball bearings they have referred to the fact that such bearings are freely available in India being an OGL item and as such there was no reason for them to doubt the legality or otherwise of the same. Merely because M/s. Dasmesh Road Services undertook the transportation of the ball bearings they cannot be held liable for the same. Reference has been made to the Tribunal's decision in the case of Pradip Kr. v. CC, Lucknow - [2000 \(117\) E.L.T. 383 \(T\)](#) wherein penalties upon the appellants on the finding of being connected with the smuggling activities were set aside by extending the benefit of doubt to him. Similarly the Tribunal in the case of Seikh Usman Khan & Mehdi Hossain v. Addl. Collector of Customs - [1991 \(53\) E.L.T. 443](#) has held that it is not sufficient to hold a person guilty of offence unless knowledge of smuggled character of goods and liability to confiscation, is proved. As such benefit of doubt was extended to the appellants in that case and

penalties were set aside. In the present case also, without deciding as to whether the ball bearings in question were legally imported into India or the same were deflected, being Nepal bound cargo we find that the Commissioner in his impugned order has not brought on record affirmative and positive evidence to show the involvement of the appellants in the transportation of the same with knowledge that the goods in question were liable to confiscation. Similarly we find force in the appellants' submission that a separate penalty on Inderpreet Singh being sole Prop. of M/s. Dasmesh Road Service was not warranted. Similarly Jagpal Singh Sahauli is father of Shri Inderpreet Singh and a separate penalty of Rs. 5 lakhs upon him was not justified. Shri R.N. Sharma is only Manager of M/s. Dasmesh Road Service and the other persons are either the godown owners or the drivers of the truck etc., against whom no evidence is available on record. In any case having held that the main appellant M/s. Dasmesh Road Service who is a transporter not being involved in the smuggling activities with knowledge of the goods being a smuggled character, not being liable to penalty we extend the benefit of doubt to all the appellants and set aside the penalties imposed upon them."

F.26. Similarly, the following case laws are also relied upon: -

- (a) Hi-Speed Carriers Vs. Commissioner of Customs (Preventive), Kolkata [2009 (241) E.L.T. 466 (Tri. - Kolkata)]
- (b) Kamal Jain Vs. Commissioner of Customs, Calcutta [2001 (138) E.L.T. 614 (Tri. - Kolkata)]
- (c) Narendra Nath Chopra Vs. Commissioner of Customs, Lucknow [2005 (188) E.L.T. 464 (Tri. - Del.)]
- (d) Abdul Majid Ansari Vs. Commissioner of Customs, Patna [2002 (149) E.L.T. 168 (Tri. - Kolkata)]
- (e) Naresh Kumar Goel Vs. Commissioner of Customs, Patna [2006 (193) E.L.T. 255 (Tri. - Kolkata)]

In absence of *mens rea*, penalty is not imposable under Section 112 of Customs Act

F.27. Throughout the engagement of Noticee as transporter, at no point of time did the Noticee had *mens rea* to defraud the Customs Department. As submitted in forgoing paragraphs, the Noticee had no role in conspiracy and diversion of goods as alleged. In fact, the Noticee as transporter merely performed its obligation with *bonafide* belief and transported goods from KASEZ to Jaipur.

F.28. It has been held in various judicial pronouncements that *mens rea* is necessary for imposing penalty under Section 112 of Customs Act. Reliance is placed on the decision of Hon'ble Tribunal Mumbai Bench in the case of **Nazir-ur-Rehman Vs. Commissioner of Customs, Mumbai [2004 (174) E.L.T. 493 (Tri. - Mumbai)]** wherein it was held: -

"13. In regard to penalty imposed on the appellants, we observe that no evidence has been brought out by the dept. to establish that the two appellants-committed any one of the acts enumerated u/s 112(b) of the customs act knowingly. Mensrea is a necessary ingredient for imposing a penalty. While the goods are liable to confiscation no penalties can be imposed on the appellants u/s 112(b) as no evidence was adduced by the dept. to show that the appellants were knowingly transporting smuggled goods."

F.29. In view of the above submissions and judicial pronouncements, it is submitted that the Noticee as transporter acted with *bonafide* belief and transported goods from KASEZ to Jaipur without having any knowledge about the diversion of goods. The Noticee was not aware about the conspiracy and had no pre-knowledge as alleged. Mere fact that the Noticee as transporter delivered the goods does not substantiate the allegation that there was knowledge on part of the Noticee about diversion of goods. No evidence has been placed on record in support of allegations. Thus, penalty under Section 112(a) and 112(b) of the Customs Act cannot be imposed on Noticee, accordingly further proceedings under the Notice deserves to be dropped on this ground alone.

F. PENALTY NOT IMPOSABLE UNDER SECTION 114(i) & 114(iii) OF THE CUSTOMS ACT

- G.1. The learned Authority vide the Notice has proposed to impose penalty under Section 114(i) and 114(iii) of the Customs Act. It is submitted that the Noticee Mr. Krishan Kumar Sharma as transporter has acted with a *bonafide* intention and transported 26 consignments of good from KASEZ to Jaipur. The Noticee had no knowledge about the diversion of goods as alleged in the Notice. As per statement of Noticee and other co-noticees including broker Mr. Rupesh Natwarlal Jadwani, it is inferred that during meeting in June 2021, the only discussion among attendees were regarding the transportation of 26 consignments from KASEZ to Jaipur. Therefore, the statement of co-noticees in fact nowhere provides and prove that there was knowledge on part of Noticee about the diversion of goods as alleged. The Id. authority vide the Notice has not placed on record any material evidence in support of allegations to prove that the Noticee was involved in the conspiracy and fraudulent diversion of duty-free imported goods into domestic market instead of export out of India. Hence, penalty under Section 114(i) and (iii) of the Customs Act cannot be imposed on the Noticee.
- G.2. In this regard, for the ease of reference it is necessary to reproduce Section 114 of the Customs Act as applicable during the relevant period as under: -
- “SECTION 114. Penalty for attempt to export goods improperly, etc. - Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, 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 three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;*
-
- (iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.”*
- G.3. In view of the above, it is inferred that Section 114 of Customs Act provides that penalty can be imposed on any person who does or omits to do any act which act or omission would render such goods liable for confiscation under section 113 of Customs Act or who abets in doing or omission of such act. As per Section 114(i), in case there is prohibition in force then penalty shall be up to three times of the value of goods or value as determined under the Customs Act. In terms of Section 114(iii), in case of any other goods, then penalty shall be up to value of goods as declared or value determined under the Customs Act. Accordingly, for an imposition of penalty under Section 114 of the Customs Act there must be an act or omission or abetment in doing or omission of such act on part of the person which would render goods liable for confiscation under Section 113 of Customs Act.
- G.4. The Noticee has already made detailed contentions in forgoing paragraphs and the same are not repeated herein to avoid repetition. The contentions made in forgoing grounds shall be considered as part and parcel for purpose of submission against imposition of penalty under Section 114 of Customs Act.
- G.5. It is important to submit here that penalty under Section 114 can be imposed only if there is an act or omission on part of person which renders the goods liable for confiscation. The learned authority vide Notice has not provided an instance of act or omission on part of the Noticee which rendered the goods liable for confiscation. The Id. Authority cannot impose penalty under Section 114 of Customs Act merely on basis of uncorroborated statements of co-noticees in absence of independent evidence in support of allegations. The Id. Authority was duty bound to provide material evidence on record and prove beyond doubt with corroborative evidence in support of allegations. In absence of any material evidence on record in support of allegations made against Noticee, penalty cannot be imposed under Section 114 of Customs Act.
- G.6. The Noticee with *bonafide* belief accepted the proposal for transportation of 26 consignments of goods from KASEZ to Jaipur against agreed consideration with an expectation to get more business as assured by Mr. Ziyabhai and Mr. Rajabhai of SF Express, KASEZ. None of the statements of co-noticees including broker Mr. Rupesh Natwarlal Jadwani proves that the Noticee was aware and had knowledge about the

conspiracy and alleged diversion. In fact, as per the statement dated August 5, 2021 of Noticee and broker Mr. Rupesh Natwarlal Jadwani it is inferred that during meeting held in June 2021, the only discussion was regarding the transportation work and Mr. Ziyabhai and Rajabhai of SF Express did not inform about their planning regarding diversion of goods to the Noticee. The Noticee had no idea and was not aware about the conspiracy and diversion as alleged in the Notice. In fact, Mr. Ziyabhai and Mr. Rajabhai lured the Noticee for the transportation work by assuring future business to the Noticee. Till date the Noticee has not even received the outstanding dues for transportation work from SF Express, KASEZ. The said fact on record clearly proves that the Noticee had no knowledge about the alleged conspiracy and diversion of goods as alleged in the Notice. The Noticee has been a law-abiding transporter and has acted with a *bonafide* belief and transported goods from KASEZ to Jaipur against agreed consideration. Thus, in absence of any knowledge and *malafide* intention on part of the Noticee, the penalty is not imposable under Section 114 of the Customs Act.

G.7. It is submitted that for imposition of penalty under Section 114 the Department is duty bound to prove beyond doubt that the Noticee had pre-knowledge about the conspiracy and intentionally abetted in fraudulent diversion of goods as alleged. The Id. Authority was duty bound to provide material evidence in support of allegations. However, the Id. Authority in the Notice nowhere provides for any instance on part of the Noticee along with supporting/corroborative evidence to show that Noticee had pre-knowledge about the conspiracy and fraudulent diversion of duty-free imported goods into domestic market instead of export out of India. In absence of any material and corroborative evidence on record against Noticee, penalty under Section 114 of the Customs Act cannot be imposed.

G.8. In this regard, reliance is placed on the case of **Freightwings & Travels Ltd. Vs. Commissioner of Customs (Export), ACC, Mumbai [2017 (358) E.L.T. 669 (Tri. - Mumbai)]** wherein the Hon'ble Tribunal held as under: -

“8. Doubtlessly, the goods can be subject to confiscation if value is found to have been misdeclared. Penalty is imposed only if it is established that, in relation to the offending goods, some act is committed or is omitted to be done that leads to confiscation. Such act or omission has not been brought on record. Mere filing of bills or presentation of goods that were found to be liable to confiscation does not constitute act or omission referred to in Section 114 because these are procedural requirements. None of the statements establish that the appellants were aware or participated in the procurement, packing or transportation of the goods.”

(emphasis supplied)

G.9. Further, reliance is placed on the case of **Fast Cargo Movers Vs. Commissioner of Customs, Jodhpur [2018 (362) E.L.T. 184 (Tri. - Del.)]** wherein the Hon'ble Tribunal held as under: -

“7. In the present appeals, it is seen that the allegations against the appellants are mainly concerned with failure to discharge their duties and responsibilities mandated under various Regulations for dealing with goods in legalized manner. Apparently, there is no material evidence available in records to prove that the appellants were either involved in smuggling of the goods, or encouraged and supported the wrong doer in doing the wrongful act in attempting to export the goods. These penal provisions call for prior knowledge of wrong doing or existence of deliberate intend (mala fide). Section 114AA of the Act also provides for imposition of penalty for furnishing incorrect or false declarations. Here also such declaration should be intentional with prior knowledge. Thus, as per the settled principles, penal provisions cannot be invoked for imposition of penalties under Sections 114 and 114AA of the Act.”

G.10. Reliance is also placed on the decision in the case of **Commissioner of Customs (II), Airport Special Cargo, Mumbai Vs. Sameer Arora [2015 (330) E.L.T. 609 (Tri. - Mumbai)]** wherein the Hon'ble Tribunal held as under: -

23.1.without ascribing acts of omission or commission under the Act to levy penalty on them. Section 114 of the Act does not create vicarious

liability. It is an action in personam. It is therefore necessary to show how each of these individuals acted in a manner which resulted in misdeclaration of FOB value to render the goods liable to confiscation under Section 113(i). We find no justification has been provided by the Commissioner in the order. The statement of these individuals are exculpatory, besides not being adversely implicated by others. In any case, we have set aside penalties on all concerned as aforesaid."

- G.11. In the case of **Hem Chand Gupta & Sons Vs. Commissioner of Customs (ICD), New Delhi [2015 (330) ELT 161 (Tri. Del.)]** the Hon'ble Tribunal held as under:

"41. So far as imposition of penalty is concerned mens rea plays a vital role to determine quantum thereof. That aspect was not looked into in the adjudication. Mechanically penalties have been imposed in page 77 of the adjudication order without stating any reason as to imposition and determination of quantum thereof, which appears to be disproportionate, in existence of conflicting evidence on record."

- G.12. In view of the above submissions and judicial pronouncements, penalty is not imposable on Noticee under Section 114(i) and (iii) of the Customs Act. Thus, further proceedings under the Notice deserves to be dropped on this ground alone.

G. PENALTY NOT IMPOSABLE UNDER SECTION 114AA OF THE CUSTOMS ACT

- H.1. The learned Authority vide the Notice has proposed to impose penalty under Section 114AA of the Customs Act. The Noticee submits that Mr. Krishan Kumar Sharma as transporter has acted with a *bonafide* intention and transported 26 consignments of good from KASEZ to Jaipur. The Noticee had no knowledge about the diversion of goods as alleged in the Notice. As per statement of Noticee and other co-noticees including broker Mr. Rupesh Natwarlal Jadwani, during meeting in June 2021, the only discussion among attendees were regarding the transportation of 26 consignments from KASEZ to Jaipur. Therefore, the statement of co-noticees in fact nowhere provides and prove that there was knowledge on part of Noticee about the diversion of goods as alleged. The Id. authority vide the Notice has not placed on record any material evidence in support of allegations to prove that the Noticee was involved in the conspiracy and fraudulent diversion of duty-free imported goods into domestic market instead of export out of India. Hence, penalty under Section 114AA of the Customs Act cannot be imposed on the Noticee.

- H.2. For ease of reference, relevant text of which is reproduced below: -

"Penalty for use of false and incorrect material.

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."

- H.3. In view of the above provision, it is apparent that pre-condition for imposing penalty under Section 114AA of the Customs Act is that **there has to be a knowledge and intention to sign or use or to make any declaration/statement/document which is false or incorrect.** The learned authority in para. 32.4. of the Notice has alleged as under: -

"....Since Krishan Kumar Sharma, proprietor of M/s Vishal Freight Carrier knowingly and intentionally made/signed/used or caused to be made/signed/used the Transport Documents and other related document which was false or incorrect, in material particular, for the purposes of evading the Customs Duty, therefore Shri Krishan Kumar Sharma,

proprietor M/s Vishal Freight Carrier shall also be separately liable to penalty under Section 114AA of the Customs Act, 1962.”

- H.4. In this regard, it is submitted that the Notice nowhere provides for any instance or act on part of the Noticee to show that there has knowledge and *malafide* intention on part of the Noticee for fraudulent diversion of goods. The Noticee has always been a law-abiding transporter and has acted with a bonafide belief and transported goods from KASEZ to Jaipur against agreed consideration. The Id. authority has failed to provide any evidence on record to prove pre-knowledge on part of the Noticee regarding diversion of goods as alleged. In absence of any evidence on record against Noticee, penalty cannot be imposed. In fact, the Noticee was not aware and had no knowledge regarding conspiracy and fraudulent diversion of duty-free imported goods into domestic market instead of export out of India. The pre-knowledge on part of the person is essential for imposition of penalty under Section 114AA of the Customs Act. Since there was no pre-knowledge on part of the Noticee, the penalty cannot be imposed under Section 114AA of Customs Act.
- H.5. The Noticee has already made detailed contentions in forgoing paragraphs and the same are not repeated herein to avoid repetition. The contentions made in forgoing grounds shall be considered as part and parcel for purpose of submission against imposition of penalty under Section 114AA of Customs Act.
- H.6. In this regard, reliance is placed on the case of **Fast Cargo Movers Vs. Commissioner of Customs, Jodhpur [2018 (362) E.L.T. 184 (Tri. - Del.)]** wherein the Hon’ble Tribunal held as under: -

“7. In the present appeals, it is seen that the allegations against the appellants are mainly concerned with failure to discharge their duties and responsibilities mandated under various Regulations for dealing with goods in legalized manner. Apparently, there is no material evidence available in records to prove that the appellants were either involved in smuggling of the goods, or encouraged and supported the wrong doer in doing the wrongful act in attempting to export the goods. These penal provisions call for prior knowledge of wrong doing or existence of deliberate intend (mala fide). Section 114AA of the Act also provides for imposition of penalty for furnishing incorrect or false declarations. Here also such declaration should be intentional with prior knowledge. Thus, as per the settled principles, penal provisions cannot be invoked for imposition of penalties under Sections 114 and 114AA of the Act.”

DISCUSSION AND FINDINGS-

- 47.** I find that an intelligence was received that M/s. S.F Express Pvt. Ltd (SFEPL), KASEZ unit had diverted the duty free imported goods i.e. Areca nuts into DTA without payment of duty by way of clearance of from SEZ under the guise of export to Bangladesh via land route and through Land Customs station through LCS Mankachar.
- 48.** It was observed that M/s. SFEPL had filed 26 Shipping Bills for export of duty-free goods i.e. areca nuts out of India to Bangladesh through LCS Mankachar, however the said areca nut/areca nut had not crossed through LCS Mankachar for Bangladesh and the same had been diverted into Domestic Tariff Area without payment of duty.

EVIDENCES REFERRED IN SHOW CAUSE NOTICE-

- 49.** During the search proceedings at the premises of M/s. S F Express Private Limited situated at Shade No.-214, Special C. I. B. Type, Ground & first floor, Phase-1, Kandla SEZ (KASEZ), Gandhidham on 29.7.2021, a notebook (Dinky written over it) was recovered. The said notebook contained mobile numbers of the Truck Drivers who had transported duty free Areca nuts from KASEZ. On making telephonic inquiry on the mobile numbers

figuring in the said Notebook, it was found that M/s. Vishal Freight Carrier was engaged in transporting the betelnuts from KASEZ to Jaipur for M/s. SFEPL.

50. The Deputy Commissioner, Customs, KASEZ vide letter F.No. KASEZ/Cus/P&I/03/2021-22 Dated 6.8.2021 informed that for export of areca nuts to Bangladesh, M/s. SFEPL had filed 26 Shipping Bill for export of duty-free goods i.e. areca nuts out of India to Bangladesh through LCS Mankachar.
51. Deputy Commissioner, Customs (Preventive), Shillong vide letter dated 18.08.2021 **(RUD NO.-7)** informed that vehicles (used for transporting the goods from KASEZ) did not cross through LCS Mankachar. Further vide letter dated 17.12.2021 **(RUD NO.-8)** Deputy Commissioner, Customs (Preventive), Shillong informed that there had been no export by M/s. SFEPL either through Mankachar LCS or through any other LCSs under jurisdiction of Shillong Customs (Prev) Commissionerate.

STATEMENTS-

52. Statement of Shri Krishan Kumar Sharma, Proprietor of M/s Vishal Freight Courier was recorded on 05.08.2021 **(RUD NO.-9)** under Section 108 of Customs Act, 1962, wherein he inter-alia stated that-
 - a. M/s. Vishal Freight Carrier had transported 26 consignments of areca nuts of M/s. SFEPL from KASEZ to Jaipur.
 - b. He was approached by Shri Rupesh Natwarlal Jadwani, Proprietor of M/s. Leading Logistics for transportation of goods of M/s. SFEPL all over India.
 - c. Shri Rupesh introduced him to Shri Ziyabhai who told him that they wanted to transport areca nuts of M/s. SFEPL from KASEZ to Bangladesh.
 - d. M/s. Vishal Freight Carrier had to prepare Lorry Receipt from KASEZ to Mongla (Bangladesh), however, they had to transport the said areca nuts from KASEZ to Jaipur only and from Jaipur they would transfer the said areca nuts into different trucks.
 - e. M/s. Vishal Freight Carrier had transported 26 consignments of areca nut/areca nuts of M/s. SFEPL, KASEZ through 26 hired trucks to Jaipur, but destination was mentioned as Mongla (Bangladesh) in the Lorry Receipt.
 - f. Shri Krishan Kumar Sharma gave the Lorry Receipt Book/Bilty Book to Shri Rupesh for preparing Lorry Receipt for the transportation of said areca nuts of M/s. SFEPL, KASEZ and as per their agreement with Shri Ziyabhai, Shri Rupesh or Shri Ziyabhai mentioned the destination as Mongla (Bangladesh) in the Lorry Receipt; sometimes they used to prepare Lorry Receipt in their office situated at Shop No. 70, Kutch Arcade, NH-08, Gandhidham-370201.
 - g. Shri Krishan Kumar Sharma didn't have the Lorry receipt w.r.t. 05 consignments/trucks as they might be prepared from one of the Lorry Receipt books which he had given to Shri Rupesh for preparing L.R.,
 - h. Shri Krishan Kumar Sharma also produced a Register viz. Account Book bearing page no. 01 to 205 containing transportation details viz. date, truck no., loaded from, delivered at, driver mobile No. etc. for further inquiry.
 - i. Transportation charges of Rs 62,000/- per truck were fixed with Shri Ziyabhai and out of 16 lakhs, till now he had received Rs. 5,00,000/- in cash, which was received as advance payment for fuel.

- j. On being asked about the place at where the betel nuts were transferred from his trucks to another trucks at Jaipur, he stated that Shri Rupesh had given him number of Shri Satish (Mob: 9958078505) who had to take the delivery of the aforesaid transported areca nuts in Jaipur and to transport them in other trucks and conveyed the address as Plot No. 68, Pratap Nagar Vishtar, VKIA Road no.-5, Jaipur,

53. Statement of Shri Rupesh Natwarlal Jadwani, Proprietor of M/s Leading Logistics, was recorded on 05.08.2021 (RUD NO.-10) wherein he inter-alia stated that-

- a. He met Ziya Hussein Faisal, in the first week of June 2021, who introduced him as Manager of M/s. SF Express Pvt. Ltd. at Kandla Special Economic Zone.
- b. Shri Ziya Hussein informed to him that he required 5 trucks daily.
- c. As the finance needed to supply 5 trucks were beyond his capacity, Shri Rupesh introduced Shri Ziya H. Faisal to Shri Krishankumar Sharma, prop. of M/s. Vishal Freight Carrier and managed to fix a meeting between Shri Ziya and Shri Krishna kumar.
- d. During the said meeting, Shri Ziya Hussein Faisal informed to the Krishna kumar that for the for the first consignment he will require 5 trucks daily and almost 50 trucks will be needed within 15-20 days to transport 'Supari'.
- e. Shri Ziya H. Faisal further informed that documents i.e. Invoice, packing list of first consignment will be for Bangladesh and goods will be loaded from SF Express Pvt. Ltd., KASEZ, for transporting upto Jaipur and goods will be transferred to another vehicle at Jaipur.
- f. Shri Ziya Faisal informed Shri Krishankumar that he had to prepare Lorry receipt from KASEZ to Mongla, Bangladesh whereas transportation of imported would be done by Krishankumar till Jaipur only. Shri Krishnankumar accepted his proposal.
- g. Shri Krishna kumar accepted the proposal of Shri Ziyabhai as Shri Ziyabhai informed Shri Krishnan Kumar that he would give more business to him.
- h. During the said meeting, his (Shri Rupesh) commission amount was fixed at Rs. 1000/- per truck and the same had to be given by Shri Krishna Kumar Sharma.
- i. He got a call from Shri Ziya Bhai that he needed LR book. Accordingly, He collected the LR book from Shri Krishnan Kumar Sharma and had further handed over the Lorry Book to Rajabhai at KASEZ gate and in this way LRs were prepared by Rajabhai at SF Express, KASEZ.
- j. His role was to communicate between Ziyabhai/Rajabhai and Shri Krishan Kumar Sharma for movement of trucks since pre-arrival of empty truck at SF Express to unloading of the goods from their transport truck to some other transport truck/vehicle at Jaipur.
- k. Total 26 trucks were used for the transporation of imported goods from KASEZ TO Jaipur in the name of M/s Vishal Freight Carrier; in all the 26 LRS w.r.t. to transportation done by M/s Vishal Freight Carrier from M/s SFEPL till Jaipur the destination was mentioned as Mongla, Bangladesh.
- l. Shri Ziyabhai gave him mobile number 9958078505 of Shri Satish, with an address as "Plot No. 68, Pratap nagar Vistar, Murlipura,

Jaipur (near transport nagar)" which was given/intimated by him to the truck drivers for crossing of goods at Jaipur.
m. He received Rs. 7000/- towards his commission.

54. Shri Ranveer Singh Ramnath Jat proprietor of M/s Raipur Orissa Transport Company during his statement dated 09.08.2021, inter-alia, stated that-

- a. M/s. Jai Balaji Roadways (Regd.) (Mob: 9810116638), situated at BG-354, Sanjay Gandhi Transport Nagar, Delhi-42 informed him that one person namely Shri Satish had to transport areca nuts to Nagpur,
- b. Shri Satish/Sateesh (mobile number 9958078405) came to his transport company office and informed that he had to send supari to Nagpur and asked him for a truck; Satish ordered/called up 14 trucks of areca nut from Gandhidham and when those trucks reached Jaipur, all the goods (areca nut) from those trucks were shifted to the trucks given by him(Shri Ranveer Singh) in front of his office in presence of Shri Sateesh/Satish; all the areca nuts were delivered to Nagpur by the trucks given by him, and the person to whom he got the delivery of areca nut, that person's mobile number was 8080801986,
- c. His work was only to provide trucks and he used to get commission of Rs. 1000/-
- d. Also shared the details of 12 trucks in which betelnuts unloaded from the trucks came from Gandhidham were sent from Jaipur to Nagpur.

e. Sr. No. Details of Trucks by which areca nuts were transported from Jaipur to Nagpur

| Sr. No. | Details of Trucks by which areca nuts were transported from Jaipur to Nagpur |
|---------|--|
| 1. | RJ 32 GC 6081 |
| 2. | RJ 02 GB 2087 |
| 3. | RJ 18 GA8081 |
| 4. | RJ 18 GB 6546 |
| 5. | RJ 14 GB 0673 |
| 6. | RJ 17 GA 4496 |
| 7. | MH 40 AK 8547 |
| 8. | RJ 18 GA 4625 |
| 9. | RJ 14 GJ 9234 |
| 10. | RJ 14 GK 7243 |
| 11. | RJ 14 GH 6253 |
| 12. | RJ 14 GH 5353 |

- f. Also submitted weighment slip of the trucks of the date on which the goods were sent to Nagpur;
- g. Shri Satish prepared the transport related documents such as tax invoice, e-Way bill, etc in Delhi and the same were sent to him by the owner of M/s Jai Balaji Roadways.
- h. The areca nuts were transported from Jaipur to Nagpur, however the LR's prepared by M/s Jai Balaji Roadways mentioned the transportation from Delhi to Nagpur.
- i. After deducting 15-20% of the amount fixed for said transportation, the amount was directly transferred to the respective truck owners

from M/s Jai Balaji Roadway and the remaining amount was transferred from his bank account by M/s Jai Balaji Roadway.

55. Statement of Shri Ashish Goel, Manager of M/s. Jai Balaji Roadways (Regd.), recorded on 01.10.2021, wherein, he inter alia stated that:

- he was working as a manager in transport company namely M/s. Jai Balaji Roadways (Regd.), BG-354, Sanjay Gandhi Transport Nagar, New Delhi-110042
- M/s. Jai Balaji Roadways had provided transportation service for transport of Areca nuts from Jaipur to Nagpur wherein Consignor's name were **M/s. B & H Overseas**, Plot No.75-A, Raghu Nagar, Dadri, South West Delhi-110045 & **M/s. Blue Gold International**, RZ-D-60, Syndicate Raghu Nagar, South West Delhi-110045 and consignee's name was **M/s. Sai International**, Crodak Road, Itawari, Nagpur-440002 in month of June 2021; one person namely Shri Ankur (Mob. No. 9354524221) called him on around 10 June 2021 and enquired about freight charges for transportation of their goods from Jaipur to Nagpur and
- Shri Ashish quoted Rs. 42,000/- or 44,000/- per truck for goods quantity of 16 MT and further informed that they were Delhi based transporter, hence freight charges would be as transportation from Delhi to Nagpur viz. Rs. 42,000/- or 44,000/- and the same would vary as per weight of the goods to be transported to Nagpur; Shri Ankur agreed on the said freight charges though the transportation was from Jaipur to Nagpur and asked to provide trucks for the transportation of Areca Nuts from Jaipur to Nagpur on 13.06.2021. Further, Shri Ankur also provided Shri Ashish a mobile number-9958078405 of one person namely Shri Satish/Sateesh and told that Shri Satish/Sateesh would be present during loading of areca nuts at Jaipur & asked to provide Lorry Receipt issued by M/s. Jai Balaji Roadways to Shri Satish on whatsapp; Shri Ankur also told him that e-way bills & Tax Invoices would be given by Shri Satish to truck drivers at Jaipur at the time of loading.
- For the said transportation from Jaipur to Nagpur he (Shri Ashish) contacted one person namely Shri Ranveer Choudhary (Mob. No. 9413340481) of one Jaipur based transporter namely M/s. Raipur Orissa Transport, Pratap Nagar Vistaar, Jaipur and asked him to provide one truck for aforesaid transportation from Jaipur to Nagpur; he agreed for the same.
- On 13.06.2021, as per request of Shri Ankur one truck bearing No. RJ02GB2087 was provided by Shri Ranveer Choudhary of M/s. Raipur Orissa Transport for loading of areca nuts from one another truck bearing no. HR47C7118 and the same had been done in morning of 13.06.2021; after loading Shri Ankur requested him to prepare Lorry Receipt by showing transportation of areca nuts from Delhi to Nagpur instead of Jaipur to Nagpur; as they were charging freight as transportation from Delhi to Nagpur, hence, he accepted Ankur's request and prepared Lorry Receipt showing transportation from Delhi to Nagpur instead of Jaipur to Nagpur, but actually transportation was done from Jaipur to Nagpur; for preparing Lorry Receipt, Shri Satish used to send E-Way bills & Tax Invoices to him on his Whatsapp number 9810116638 and accordingly he used to prepare Lorry Receipt; then he used to send the said Lorry Receipt to Shri Satish/Sateesh or Shri Ranveer Choudhary; Shri

Satish/Sateesh asked him for one more truck for transportation of areca nuts from Jaipur to Nagpur on the same day i.e. 13.06.2021; accordingly, as per his direction, Shri Ranveer Choudhary of M/s. Raipur Orissa Transport provided one more truck bearing no. RJ32GC6081 to Shri Satish and areca nuts were transferred from one truck bearing no. HR46D6220 on 13.06.2021; transportation was shown as from Delhi to Nagpur; Further both trucks RJ02GB2087 & RJ32GC6081 left for Nagpur in night of 13.06.2021.

- the said transfer of areca nuts from one truck to another happened in front of premises of M/s. Raipur Orissa Transport, Plot No.- 66, Pratap Nagar Vistaar, VKI, Road No.-05, Jaipur-302013; till date on behalf of M/s. Jai Balaji Roadways, Shri Ranveer Choudhary of M/s. Raipur Orissa Transport provided total 12 trucks to Shri Satish/Shri Ankur in the month of June 2021; he was mainly in contact with Shri Ankur for the aforesaid transportation of areca nuts from Jaipur to Nagpur till 13.06.2021; after that he was in contact mainly with Shri Satish for loading of aforesaid areca nuts at Jaipur and used to receive Tax Invoices & E-way bills from him and accordingly prepared Lorry Receipt and then sent the same to Shri Satish or Shri Ranveer Choudhary; sometimes he contacted Shri Ankur regarding payment of freight.
- Shri Satish/Sateesh used to get mobile numbers of truck drivers provided by M/s. Raipur Orissa Transport on behalf of M/s. Jai Balaji Roadways and accordingly Shri Satish/Sateesh was in touch with drivers for delivery at Nagpur;he came to know from Shri Satish/Sateesh that when the trucks were about to reach Nagpur, one person who would take delivery of aforesaid areca nuts at Nagpur would contact the drivers regarding place where the delivery would take place; he didn't have the mobile number of the said person at Nagpur; he was also in contact with drivers and used to ask regarding delivery at Nagpur; he didn't know the address where the aforesaid areca nuts were delivered, but as per direction of the person at Nagpur, drivers delivered at somewhere at Nagpur probably in market area;
- Also shared the details of 12 Trucks provided by M/s. Raipur Orissa Transport on behalf of M/s. Jai Balaji Roadways.
- In for the all the 12 Trucks, Lorry Receipt were issued by M/s. Jai Balaji Roadways; in all Lorry Receipts the transportation was shown as from Delhi to Nagpur, but transportation was done from Jaipur to Nagpur
- Also produced a consolidated sheet bearing page 01 to 01 containing Lorry Receipt Details viz. LR No. & date, Consignor & Consignee name, truck number, no. of bags of areca nuts, from-to etc.
- Payment of freight charges in respect of aforesaid transportation of areca nuts were received into bank account of M/s. Jai Balaji Roadways maintained with HDFC Bank, Rohini Sector 11 branch Account No. 50200022964862 by way of NEFT transfer; he gave below the details of the payment received.

| Sr. No. | Date | Narration/particulars | Amount | Name of the |
|---------|------|-----------------------|--------|-------------|
|---------|------|-----------------------|--------|-------------|

| | | | deposited (Rs.) | bank from which NEFT transfer made |
|---|----------|---|--------------------|--|
| 1 | 25.06.21 | UPI MR. RANJIT-RANJEETSINGH2005-3@OK.AXIS-BDBL0001779-117614393058-UPI | 20,000 | Bandhan Bank |
| 2 | 25.06.21 | NEFT CE-IBKL NEFT 01-S-JAI BALAJI ROADWAYS REGD-0625126878995501 | 4,00,000 | IDBI Bank |
| 3 | 04.07.21 | NEFT-CR-UTIB0001789-SIVAMKARI INTERNATIONAL PVT LTD -JAI BALAJI ROADWAYS REGD-AX IC211843713327 | 2,90,000 | AXIS BANK |
| | | TOTAL | 7,10,000 | |

- They billed M/s. B&H Overseas and M/s. Blue Gold International for a total amount of Rs. 7,10,000/- towards transportation charges, labour charges etc. However, during panchnama dated 17.08.2021 the amount had been wrongly mentioned as Rs. 7,36,800/- as payment received; in the case of M/s. B& H Overseas they raised bills for the total amount of Rs. 3,36,800/- and in the case of M/s. Blue Gold International they had raised bills for a total amount of Rs.3,73,200/-; the payment received into their bank account on behalf of M/s. Blue Gold International was Rs. 4,00,000/- i.e. excess payment of Rs. 26,800/-; whereas, the payment received into their bank account on behalf of M/s. B & H Overseas was only Rs.3,10,000/- i.e. short payment of Rs.26,800/- ; So in their ledger account they had shown the excess payment received from M/s. Blue Gold International towards adjustment of the short payment received from M/s. B&H Overseas; during the course of panchnama dated 17.08.2021 the total of debit/credit of both the companies were added and shown as Rs. 7,36,800/-; he confirmed that they had billed and received only an amount of Rs. 7,10,000/- towards transportation charges; in respect of both companies, for payment he was in contact with Shri Ankur only; Shri Ankur informed him that the goods in the name of both the above firms belongs to them; they were not in contact with any other person of both the above firms viz. M/s. B& H Overseas and M/s. Blue Gold International, other than Shri Ankur and Shri Satish/Sateesh.
- for payment to M/s. Raipur Orissa Transport towards the aforesaid 12 trucks provided by them, Rs. 2,58,800/- out of total payable amount Rs. 6,87,300/- was transferred to M/s. Raipur Orissa Transport's account and the remaining amount of Rs. 4,28,500/- were transferred directly in bank account of truck's owner from aforesaid HDFC Bank Account No. 5020002296486 of M/s. Jai Balaji Roadways through NEFT; bank account statement of M/s. Jai Balaji Roadways and ledgers account details in respect of aforesaid payment received from M/s. Blue Gold International & M/s. B& H Overseas and payment made by M/s. Jai Balaji Roadways to M/s. Raipur Orissa Transport & owner's of trucks, had already been submitted by them under panchnama dated 17.08.2021 drawn at office premises of M/s. Jai Balaji Roadways

(Regd.), situated at BG-354, Sanjay Gandhi Transport Nagar, New Delhi-110042; he produced a consolidated sheet bearing page 01 to 01 containing details of payment made by M/s. Jai Balaji Roadways to M/s. Raipur Orissa Transport & owner of trucks or account no. provided by truck owners with his dated signature;

- He produced a set of documents bearing page no. 01 to 30 relating to the aforesaid 12 trucks provided by M/s. Raipur Orissa Transport on behalf of M/s. Jai Balaji Roadways; the same were received from Shri Ranveer Choudhary of M/s. Raipur Orissa Transport.

56. Statement of Shri Tarun Dagar, Director of M/s. SFEPL was recorded on 02.10.2021, wherein he inter alia stated that

- He joined M/s. SFEPL in October 2019 as a Director; Shri Naresh also joined M/s. SFEPL as a Director in month of Feb, 2020; after himself and Shri Naresh joined as Directors of the firm, Smt. Renu Kataria and Smt. Beermati resigned from Directorship of M/s. SFEPL.
- After their joining the company as Directors, they were not able to start any import export activity in whole 2020 due to Corona pandemic; due to family pressure had not to go outside from Delhi and further as they could not make any Import-export business; accordingly, they both decided to resign from the said company and approached one Company Secretary namely Shri Ashish (9212000759) who was known to him and Shri Naresh, for doing all the formalities regarding their resignation & appointment of new Directors as per Company Act; on 26.03.2021 two persons namely Shri Suneer Nalagath resident of Mannath Post Kurichiyil Thalassery Temple gate, Kannur, Kerala-670102 and Shri Yogendra Pratap Varma resident of 150 RTC Colony Road, L B Nagar, Chintalakunta, Rangareddi, Telangana-500074 were appointed as Directors of M/s. SFEPL ; further he himself and Shri Naresh resigned from the said company on 07.04.2021.
- Shri Suneer Nalagath and Shri Yogendra Pratap Varma, did not contact him; to the best of his memory, Shri Suneer Nalagath or his representative contacted Shri Naresh and showed their interest for to take over the management of M/s. SFEPL , along with KASEZ LOP; In that regard, Shri Naresh would be able to explain more elaborately as to how the above persons came into his contact; he was not aware of office address of Company Secretary namely Shri Ashish and only Shri Naresh could best explain;
- He didn't have any knowledge regarding share holding of M/s. SFEPL and Shri Naresh would be able to explain in detail.
- As per his knowledge till date of his resignation of Directorship, they did not do any import-export through M/s SFEPL; further, due to his personal pressures he was inactive in the said company M/s. SFEPL; Shri Naresh was the authorized signatory of the said company.
- All the formalities at the time of allotment of unit in KASEZ had been done by Shri Naresh, hence he did not know regarding the bond and bank guarantee, if any, submitted to KASEZ; payment towards rent for KASEZ unit had been made by Shri Naresh only; he had given Rs.2 Lakhs in cash to Shri Naresh for expenditure

happened during acquiring entity at KASEZ; after resigning from the Directorship from M/s. S.F.Express Pvt. Ltd. and took over of the company by new Management, he received a sum of Rs. 1 lakh in cash against his investment of Rs. 2 lakhs in the company.

- He had never visited KASEZ; he had never met Shri Suneer Nalagath and Shri Yogendra Pratap Varma.

57. Further, statement of Shri Naresh, Director of M/s. SFEPL was recorded on 04.10.2021, (**RUD No.30**) under Section 108 of the Customs Act, 1962, wherein he inter alia stated that;

- M/s. SFEPL was established in 2015 for courier services; at that time his aunty (Mamiji) Smt. Renu Kataria and his mother Smt. Beermati were two directors in that company; but due to family problems, they could not start any work under that company; Shri Tarun Dagar was his brother in Law (sister's husband); Shri Tarun Dagar and Shri Praveen Kumar who were Son-in Law of Shri Satdev Kataria were appointed as directors of M/s. SFEPL on 16 October 2019 for Import-export work; after their joining Smt. Renu Kataria and Smt. Beermati resigned from Directorship of M/s. SFEPL on 18.10.2019.
- Due to some family disputes Shri Praveen Kumar resigned from directorship of M/s. SFEPL on 12.02.2020 and he was appointed as director of the M/s. SFEPL on 12 Feb, 2020; M/s. SFEPL got Letter of Approval No. 15/2019-20 dated 23.12.2019 for establishment of unit at KASEZ for Trading & Warehousing Activity
- Initially, premises address of M/s. SFEPL was First floor, Unit No.- 207, Yamuna SDF Complex, Phase-II, KASEZ, Kachchh, Gujarat-370230 after that new premises address was Shed. NO. 214, Spl CIB type, GF & FF, Phase-I, KASEZ.
- they had filed only 03 Bill of entry for import of Unaccompanied Baggage (UB); One Bill of Entry was filed in Oct. 2020 and 02 Bills of entry having No. 1011530 dated 17.11.2020 & 1011529 dated 17.11.2020 were filed for import of Unaccompanied Baggage (UB) in Nov 2020
- M/s. Mehta Consultancy Services (MCS) was their consultant at KASEZ, situated at 16, KASEZ IA Building, KASEZ to deal the said import of Unaccompanied Baggage (UB); he was in contact with Shri Anand Mehta (Mob. No.- 9727707686) of M/s. Mehta Consultancy Services; he produced copies of said 02 Bills of Entry filed in Nov. Month with his dated signature.
- He agreed with the facts recorded in the statement dated 02.10.2021 of Shri Tarun Dagar that only he himself had handled all work related to import in respect of said company.
- He was already engaged in his courier business with his uncle Shri Satdev Kataria under M/s. Budget Couriers Pvt. Ltd., hence, Shri Tarun and he decided to resign from the said company; he also contacted their Consultant Shri Anand Mehta of M/s. Mehta Consultancy Services and informed that they were willing for transfer of ownership of M/s. SFEPL alongwith it's KASEZ LOP.
- For the said purpose of resignation, they approached one Company Secretary namely Shri Ashish of M/s. A. K. Friends & Co., 211A triveni Complex, E-10-12, Behind Hira Sweets, Laxmi Nagar,

Delhi-110092 (92120-00759) for doing all the formalities regarding their resignation & appointment of new Directors as per Company Act; new directors viz. (i) Shri Suneer Nalagath resident of Mannath Post Kurichiyil Thalassery Temple gate, Kannur, Kerala-670102 and (ii) Shri Yogendra Pratap Varma resident of 150 RTC Colony Road, L B Nagar, Chintalakunta, Rangareddi, Telangana-500074 were appointed as directors of M/s. SFEPL on 26.03.2021; further he and Shri Tarun Dagar resigned from the said company on 07.04.2021; in this regard, all the documents had been submitted by him vide letter dated 01.09.2021; Mr. V. Esaki of M/s. V. Esaki & Associates, 52/A, VOC Nagar Nehru Street, Anna Nagar (East), Chennai-600102 was the Company Secretary of Shri Suneer Nalagath and Shri Yogendra Pratap Varma regarding the said appointment of them as director and their resignation from directorship.

- In Feb 2021, one person called him and introduced himself as Shri Suneer Nalagath (Mob.- 9791300933) and showed their interest to take over the management of M/s. SFEPL , along with KASEZ LOP and shareholding of M/s. SFEPL ; as they were willing for the same he told him to contact their CS Shri Ashish; accordingly, one Company Secretary namely Mr. V. Esaki (Mob. 9789804692) of M/s. V. Esaki & Associates, 52/A, VOC Nagar Nehru Street, Anna Nagar (East), Chennai-600102 contacted their C S Shri Ashish in month of Feb, 2021 regarding transfer of management & shareholding alongwith KASEZ LOP; accordingly, all the formalities were done by these two C. S. viz. Shri Ashish (from their side) & Shri V. Esaki (from Suneer Nalagath & Yogendra side) and both Shri Suneer Nalagath & Yogendra Pratap Varma were appointed as directors on 26.03.2021 and further he and Tarun Dagar resigned from M/s. SFEPL on 07.04.2021.
- M/s. SFEPL had 10000 share having value of Rs. 10 per share; initially, out of 10000 Smt. Renu Kataria and his mother Smt. Beermati both have 5000-5000 share; transfer of shareholding from Smt. Renu Kataria and Smt. Beermati to Shri Suneer Nalagath & Shri Yogendra Pratap Varma were happened in two steps. First, 50% shares (5000 shares) were transferred on 26.03.2021 from Smt. Renu Kataria and My mother Smt. Beermati to Shri Suneer Nalagath & Shri Yogendra Pratap Varma; at that time Smt. Renu Kataria, Smt. Beermati, Shri Suneer Nalagath & Shri Yogendra Pratap Varma, each one had 25% shares of the company. Remaining 50% shares (5000 shares) were transferred on 14.06.2021 from Smt. Renu Kataria and his mother Smt. Beermati to Shri Suneer Nalagath & Shri Yogendra Pratap Varma. As per which there were two Director in M/s. SFEPL namely Shri Suneer Nalagath & Shri Yogendra Pratap Varma and both had 50-50% shares of the said company; they had received Rs. 1,00,000/- from one person of Shri Suneer Nalagath & Shri Yogendra Pratap Varma at Delhi in cash and Smt. Renu Kataria and his mother Smt. Beermati gave receipt/acknowledgement to him in token of receiving the said amount of Rs. 1,00,000.
- he was the authorized signatory of M/s. SFEPL till his resignation on 07.04.2021; and except aforesaid import in month of Oct. & Nov. 2020, he didn't file any Bill of Entry and Bill of Export/

Shipping Bill at KASEZ in the name of M/s. SFEPL or in the name any other company/firm; further in respect of digital signature, he didn't know whose that signature was; he provided his digital signature to Shri Anand Mehta of M/s Mehta Consultancy Services and authorized him to use his (Naresh) digital signature for purpose of Custom clearance purpose and any administration purpose at KASEZ; the said digital signature was used at the time filing Bill of Entry in the month of Oct. & Nov. 2020; in month of April, after their resignation Shri Suneer Nalagath called him and told that Shri Ganesh Naidu of M/s. Cross Trade Link, Gandhidham was his consultant at KASEZ and asked Naresh to send his digital signature to Shri Ganesh Naidu of M/s. Cross Trade Link, Gandhidham for change/addition of New directors in SEZ online system or filing resignation of old Directors; accordingly he sent his digital signature to Shri Ganesh Naidu of M/s. Cross Trade Link, Gandhidham for the said purpose on 12.04.2021; if his digital signature had been used for filing aforesaid 09 Bills of Entry & 26 Bill of Export; it might be possible that his digital signature had been misused by M/s. Cross Trade Link, Gandhidham or Shri Suneer Nalagath for the same without his knowledge.

- After their resignation on 07.04.2021, he & Shri Tarun Dagar or old directors his aunty (Mamiji) Smt. Renu Kataria and his mother Smt. Beermati, were not associated to M/s. SFEPL by any means and ways; he produced copy of Indemnity Bond dated 07.04.2021 received from Shri Suneer nalagath & Shri Yogendra Pratap Varma, wherein specifically mentioned by them that " they have accepted the resignation of Mr. Naresh & Mr. Tarun Dagar and will intimate to all Govt. department including ROC, Income tax or other related departments; that the retiring directors Mr. Naresh & Mr. Tarun Dagar shall not be liable for any act, deed of the company from the day of their retirement. Any liability arises after their retirement, from any of my acts, to them shall be indemnified by me and I shall be personally held liable; that the incoming director are liable to all act, deed of whatsoever nature done by me after the date of my appointment i.e. 26.03.2021 and the outgoing directors Mr. Naresh & Mr. Tarun Dagar shall no more be liable for my acts and deeds. I shall be liable to compensate for all loses as may arise to outgoing director on acts and deed as director of the company".
- M/s. SFEPL Pvt. Ltd. had furnished Form-H Bond Cum Legal Undertaking for Special Economic Zone Units dated 30.12.2019.

58. Further, Shri Tarun Dagar, Director of M/s SFEPL vide email dated 28.10.2021 (**RUD No.31**) forwarded the reply received from Mr. Ganesh V. Naidu, Director of M/s Cross Trade Link Pvt. Ltd (Email id (crosstradelink@gmail.com)) on 27.10.2021, wherein Shri Ganesh V. Naidu conveyed to Shri Tarun Dagar regarding the misuse of digital signature. During December-January 2021, two people Shri Sumeer Nalagath (97913001933) and Shri Yogendra Pratap Varma visited his office and sought his professional help for their company related to KASEZ office formalities. In March, they approached his office again and told that they had already acquired a company M/s SFEPL and all the formalities related to ROC had already been completed by them. Later, they told him that they need his consultancy in preparing the paper work related to the change in

management of company. Mr. Raja was appointed by Mr Suneer and Yogendra as their representative for handling their day to day work with his office, KASEZ and to complete the formalities. Shri Ganesh Naidu asked for one digital signature from new director. After that on his request, Shri Naresh had forwarded his Digital Signature alongwith the Authorisation letter dated 12.04.2021 at his office address M/s Cross Trade Link Pvt. Ltd. Shri Ganesh Naidu prepared some of the papers and gave them to the new directors to submit the same at KASEZ office. Further, he also helped them to complete all other online formalities related to KASEZ office for M/s SFEPL. Further, the new directors of M/s SFEPL asked him to use some of his office space for their office work, for which he allowed their representative to use some of his office space and internet facility for time being. During that time, they handed over the documents (which were received from Shri Tarun Dagar) related to Ms SFEPL to the representative of new directors after confirming the same from the new directors. The representative of M/s SFEPL took all the documents and box files from his office staff wherein, all the papers and other things of M/s SFEPL were kept.

59. In response to Summon dated.18.10.2021, Shri Tarun Dagar vide letter Dated. 01.9.2021 submitted that he was not in a position to travel because of some health issues. He forwarded the copy of reply submitted by the erstwhile Director Shri Naresh. He informed that he was not concerned/connected with the business of the company from 07.04.2021. He was not responsible for any activity of the company undertaken after 07.04.2021. He also furnished his IT returns for the A.Ys 2018-19 to 2020-21 and Bank statement from 01.04.2018 to August-2021.

60. Statement of Shri Anand Mehta, Partner of M/s Mehta Consultancy was recorded on 18.11.2021, wherein, he inter alia stated that;

- He was partner in Mehta Consultancy Service operating from a rented office at 16, KASEZIA Bldg., Near Punjab National Bank, KASEZ, Gandhidham.
- They were carrying consulting work for SEZ units/100% EOU units and DGFT licensing Work mainly related to Advising /documentation/Filing work for setting up of SEZ unit and compliance of documents/correspondence on behalf of client on monthly basis as well as on shipment basis.
- They were filing documents viz Import/DTA Bills of Entry/Shipping Bill/Bills of Export in SEZ Online system on behalf of their clients.
- Mr. Manoj kumar had contacted him on his mobile No. 9727707686 and sought guidance for setting up a unit at Kandla SEZ in name of M/s S.F.Express Pvt. Ltd. and accordingly he advised about the requisite documentations.
- Vide email (a kamal.d@budget1.net) dated 18.9.2019 the soft copy of PAN card, Certificate of incorporation, documents related to Ministry of Corporate Affairs-MCA services.pdf and ST-2 return of the firm were forwarded to him.
- The said mail was also sent to cmai.hq@gmail.com as well as marked CC to s.kataria@budget1.net, manoj.kumar@budget1.net & cr.sharma@budget1.net.
- The application was submitted at KASEZ on 09.10.2019; UAC meeting was held on 10.10.2019 attended by him as per the authorisation letter issued in his favour by Ms Renu Kataria, one

- of the director of M/s S.F.Express. Pvt. Ltd.
- He voluntarily produced the copy of the related correspondence/ documents issued by the KASEZ authority to M/s S.F.Express Pvt. Ltd as detailed below:
 - (xii) Principal letter for setting up of Trading and warehousing unit by S.F.Express Pvt. Ltd., issued by the O/o the Development Commissioner vide letter F. No. KASEZ/IA/SFE/32/2019-20/8069 dated. 15.10.2019.
 - (xiii) After successfully bidding of MSTC by M/s S.F.Express Pvt. Ltd., offer letter for unit No. 207, Yamuna SDF Complex, Phase-II, KASEZ issued from F.No. KASEZ/EM/I/S-143-877/19-20 on dated. 13.12.2019.
 - (xiv) Formal letter of Approval F. No. KASEZ/IA/15/2019-20 dated. 23.12.2019.
 - (xv) Eligibility certificate issued vide letter F. No. KASEZ/IA/15/2019-20 dated. 6.1.2020.
 - (xvi) Final Allotment order KASEZ/EM/I/S-143-877/19-20 dated. 3.1.2020.
 - (xvii) Letter of acceptance of Bond Cum legal undertaking issued from F.No. KASEZ/IA/15/2019-20 dated. 17.11.2020.
 - (xviii) Copy of GST Registration and Import Export Code was received through e-mail.
 - (xix) On request vide letter dated. 29.12.2020 by M/s S.F.Epress Pvt. Ltd., a letter for additional Space vide KASEZ/EM/I/S-143-877/19-20 of dated. 29.12.2020.
 - (xx) Offer letter for allotment of Premises Shed No. 214, Spl.CIB Type, Phase-I, KASEZ. Dated. 5.2.2021 issued from F.No. KASEZ/EM/I/S-143-877/19-20.
 - (xxi) Letter for approval for addition of activity under Rule 18(6) were issued to M/s S.F.Express Pvt. Ltd. vide letter F. No. KASEZ/IA/15/2019-20 dated. 1.1.2021 & permission of additional Ware Housing of goods on behalf of DTA/Foreign clients issued from F.No. KASEZ/IA/15/2019-20 dated. 1.1.2021.
 - (xxii) Letter for addition of manufacturing activity issued from F.No. KASEZ/IA/15/2019-20 dated. 23.4.2021 along with the relevant pages of minutes of Unit approval Committee meeting.
 - Also furnished the copy of visiting card of Mr. Manoj kumar showing as Chairman of Budget Courier Pvt. Ltd., Ph. 9999966742 E Mail: Manoj kumar@budget1.net.
 - He met Shri Manoj Kumar twice or thrice when he had come to his office for documentation and seeking advice.
 - He had a only business relations with Shri Manoj Kumar and he did not know much about any other business affairs of Shri Manoj Kumar.
 - Initially M/s S.F.Express Pvt. Ltd., dealt with unaccompanied baggage and as he had no experience in the field, accordingly he did not undertake the documentation work in that regard.
 - However for the sake of integrity, he stated that Shri Manoj Kumar had filed three import bills of entry and DTA thereof from his system/office and initially on the first occasion one import bill of entry had been filed using his digital signature.

- He had never dealt with M/s S.F.Express thereafter.
- 61.** Statement of Shri Ashish Kumar Friends (CS) of M/s A.K. Friends & Co was recorded on 29.11.2021, wherein, he inter alia stated that;

- He was a Company Secretary (CS) and got the membership of the Institute of company secretaries of India on 28/06/2001. He had been practicing for the last Twenty Years.
 - As a Company secretary he dealt with all sort of work related to Companies Act, 2013, as amended, which included to advise/guide/Prepare and filing various forms/documentations etc., also made correspondence in respect to the change in Directorship and Capital of the company with the Registrar of Companies; he was providing services to the regular clients on yearly basis as well as their work basis; fees normally Charged from the Client was Rs. 1,000 (Only Filing) to Rs. 3,000 Per form (where there was Preparation of supporting documents as well as Certification).
 - For any new clients he used to verify genuineness of their PAN and KYC through DIN forms, where they entered all the details of the Clients and PAN; also as regards Aadhar they satisfied while making their DSC they Received OTP on their Registered mobile and then only their Digital Signature was generated.
 - He was already providing his Services to one Mr. Satdev Kataria of M/s Budget Courier Pvt. Ltd Maternal uncle of Mr. Naresh, one of the director of M/s S F Express, who at the time of transferred of management of M/s S F Express, asked him to provide his guidance/services to Mr. Naresh, in which he was asked for the checking of the forms and various papers to be received from Mr. Esaki, Company Secretary at Chennai; his role in relation to the change of management of the company was to received papers through mail from Esaki and forwarded it to Mr. kamal Deep, employee of M/s Budget Courier Pvt. Ltd. who would get them signed from either Mr. Naresh or Mr. Tarun Dagar, another Director of M/s S F Express, either Physically or digitally and after receiving them from Kamal deep, he forwarded the same to Mr. Esaki for filing/Uploading on the MCA Site. Mr. Esaki Mobile Number 9789804692 was given to him By Mr. Manoj, who was a brother of Mr. Naresh to coordinate in relation to the Change in management of M/s. S F Express Pvt. Ltd.
 - He had not received any payment as he had neither prepared any papers, nor Uploaded any of them to ROC also not made any ROC Fees for uploading of the documents so as a courtesy of long term relationship he had not raised any invoice.
 - He voluntarily produced the copy of following e-mail correspondence/ documents available with him for his reference.
3. Printout of screenshot containing Whats app message received from Mr. Manoj wherein Mobile Number of Esaki, Company Secretary from Chennai was forwarded on 26.3.2021 to him.
 4. Mail Dated 26/03/2021 wherein he received various documents sequentially from Esaki and Sending those in Reply mail to Him after getting it signed from the Other side (Naresh & Tarun).

- He had no idea further in respect to the business affair of M/s SFEPL.

62. Statement of Shri Esaki V (CS) of M/s. V. Esaki & Associates was recorded on 06.12.2021, wherein, he inter alia stated that;

- He is a Company Secretary (CS) and dealt with all sort of work related to Companies Act 2013, which included to advise/guide/Prepare and filing various forms/documentations etc., also make correspondence in respect to the change in Directorship and Capital of the company with the Registrar of Companies;
- In August 2020, he had provided his services to M/s. Spice Deccan Impex Private Limited, Survey No.-286, Reddy Gunta Road, Yellayapalem Village, Kodavalur mandal, SPSR Nellore, Andra Pradesh-524366 for obtaining FSSAI license from FSSAI regional office situated in Chennai. In that regard, one person namely Shri Mohameed Farooq Ali (Mob. No. 90304-73479), Director of M/s. Spice Deccan Impex Private Limited contacted him for FSSAI license. Further, Shri Mohameed Farooq Ali gave him mobile number of one of his employee namely Shri Yogendra Pratap Varma (Mob. No.-85550-90454) and asked him to get all the documents & details from him in respect of FSSAI license. After that he was in contact with Yogendra Pratap Varma for the said work of obtaining of FSSAI license.
- In mid of March-2021, Shri Mohameed Farooq Ali, Director of M/s. Spice Deccan Impex Private Limited, Andra Pradesh called him and requested him to provide their services for appointment of two new directors in one firm M/s. SFEPL. He (Farooq) informed him that out of two new directors, one was Shri Yogendra Pratap Varma who was the employee in his firm M/s. Spice Deccan Impex Private Limited and another one was Shri Suneer Nalagath, Kerala; Shri Yogendra Pratap Varma (Mob. No.-85550-90454) was in his contact for his & Suneer's appointment as new directors in M/s. SFEPL; Shri Yogendra Pratap Varma provided him the KYC documents i.e. mail id, Identity proof, mobile number & passport size photo etc. of him & Suneer Nalagath through whatsapp; Shri Yogendra Varma gave him digital signature of him & Suneer Nalagath through courier for generating DIN number for new appointed directors viz. Shri Yogendra Pratap Varma & Shri Suneer Nalagath;
- Shri Yogendra gave contact number of one Shri Ashish (Mob No. 9911000759) and told him that he was Company Secretary of old directors and requested him to contact him (Ashish) for details/documents from old directors; accordingly, he contacted Ashish and asked him to provide digital signature of Shri Naresh, one of old director of M/s. SFEPL for appointment of new directors in MCA website; Further, he received digital signature of Shri Naresh through courier from old director.
- Appointment of new directors viz. Shri Yogendra Pratap Varma & Shri Suneer Nalagath and resignation of old directors viz. Shri Naresh and Shri Tarun Dagar on MCA website were done through his MCA login credentials; DIN number generation for new appointed directors viz. Shri Yogendra Pratap Varma & Shri

Suneer Nalagath were also done through his MCA login credentials.

- KYC documents were not verified by him; as per section 168 of Companies Act, 2013 if professional certification of form was not applicable since M/s. SFEPL was a small company; hence, KYC documents were not needed to be verified; he never met Shri Yogendra Pratap Varma & Shri Suneer Nalagath. He used to talk Shri Suneer nalagath
- He had no idea further in respect to the business affair of M/s SFEPL.

63. Statement of Shri Suneer Nalagath, Director of M/s S.F.Express Pvt. Ltd. was recorded on 09.03.2022, wherein he inter alia stated that;

- His permanent address was Mannath, Post-Kurichiyli, Thalassery, Tample Gate, Kannur, Kerala - 670102. But he did not live there. His current address was Ground Floor, kadeeja Quarters, Pilakool, Thalasherry, District-Kannur, Kerala-670101.
- In January 2020, he started working in one trading firm namely M/s. Roshan International, Pollachi, Coimbatore, Tamil Nadu, which was a proprietorship firm owned by Shri Firoz Ahamed of Tamil Nadu, engaged in trading of imported paper, cashew, etc.
- He and Firoz Ahamed had been friends and knowing each other since 1999; they had worked together in the paper trading company i.e. M/s. Unigraph International Trading during the period from 1999-2003.
- He joined M/s Southern Impex, Karppadi, Pollachi, Coimbatore, Tamil Nadu in February 2020 as per the direction of Shri Firoz Ahamed. The said firm was owned by Firoz Ahamed's brother namely Fashid Ahamed, but was actually run/operated by Shri Firoz Ahamed only.
- M/s. Southern Impex had been a manufacturing unit and 100% EOU which was engaged in import of Areca Nuts and export of Areca Nut Powder.
- He looked after the Import-Export documentation related work along with correspondences with Bank regarding remittances and issuance of BRC/FIRCs of the said firm.
- Directorate of Revenue Intelligence, Coimbatore had booked a case against M/s. Southern Impex in the month of October 2020 for diversion of duty-free imported Areca Nuts in Domestic Tariff Area.
- Shri Firoz Ahamed had asked him to go to Nellore in November 2021 to operate one EOU firm namely M/s. Spice Deccan Impex Pvt. Ltd., Nellore whose director/owner was Shri Muhammad Farooq Ali; Muhammad Farooq Ali was business associate of Shri Firoz Ahamed.
- M/s. Spice Deccan, Nellore was engaged in import of Areca Nuts and export of Areca Nut Powder; since he had joined M/s Spice Deccan Impex Pvt Ltd, total 04 consignments of Areca nuts were imported and diverted in the domestic market by him as per the directions/instructions of Firoz Ahamed.
- DRI Nellore, Hyderabad and Vijaywada had conducted search operation against M/s Spice Deccan Impex Pvt. ltd. for diversion of duty-free goods.
- He was one of the Directors of M/s. SF Express Pvt. Ltd., KASEZ

Gandhidham and another director was Shri Yogendra Pratap Varma. The management of M/s. SFEPL, KASEZ Gandhidham got changed in month of March 2021. The old directors of the said firm were Shri Naresh and Shri Tarun Dagar.

- In February 2021, Firoz Ahamed had told him that he wanted to establish a unit in Kandla SEZ, Gujarat and told him to go to Gandhidham with Shri Muhammad Farooq Ali, Sadiq and Yogendra Pratap Varma; he had not been knowing Sadiq and Yogendra Pratap Varma; Shri Farooq Ali introduced him with Mr.Sadiq and Yogendra Pratap Varma.
- Shri Firoz Ahamed had told him that he was going to operate one firm namely M/s. SF Express Pvt. Ltd, KASEZ and had told him that he and Shri Yogendra Pratap Varma would be the directors of the said firm, wherein they would carry out import export business.
- Shri Firoz Ahamed appointed Shri Esaki V. Company Secretary for documentation related work and had asked him to forward the documents viz. Aadhar Card, Photograph, Pan Card, Electoral ID etc. to Shri Esaki V. on his Whatsapp No. 9789804692.
- He and Shri Yogendra Pratap Varma visited Gandhidham for bank and customs related formalities on the direction of Shri Firoz Ahamed; one Mr. Rajesh met them in Gandhidham informed that he would help them to carry out all the work to be done as suggested by Mr.Firoz Ahamed.
- Mr. Rajesh had first brought both of them to the office of Shri Ganesh Naidu of M/s. Cross Trade Link Pvt. Ltd., Consultant at KASEZ and also accompanied them to the Bank.
- He did not know any thing regarding import-export made through M/s. SF Express Pvt. Ltd, KASEZ but Firoz Ahamed or Shri Muhammad Farooq Ali would be the right person to answer the said question.
- He did not know Shri Zia Faisal, Shri Aamir Hussain, Shri Satish and Shri Loon Singh (Chokidar).

64. Statement of Shri Suneer Nalagath was recorded on 10.03.2022 wherein he inter alia stated that;

- The house of Shri Firoz Ahamed was Near Lakshmi Ammal School, Jyothi Nagar, Pollachi, Coimbatore, Tamil Nadu and his mobile number was 9790415598; he did not know the residential address & mobile number of Shri Mohammed Farooq Ali.
- On receipt of Summons by DRI, Shri Firoz Ahamed directed him and Yogendra Pratap Varma to go underground. Accordingly, he remained underground till October-2021. Then in the month of November-2021, he started working in M/s Spice Deccan Impex Pvt. Ltd. He did not come forward before the DRI, Ahmedabad for recording of statement on the directions of Shri Firoz Ahamed.
- On 15.08.2021, Shri Rajesh had presented one pre-prepared/backdated (Dated 01.04.2021) appointment letter in the name of Mr. Ankur. He and Yogendra Pratap Varma both signed that appointment letter in the name of Shri Ankur on the instruction of Shri Firoz Ahamed, however, he did not know or ever met Ankur.

65. Statement of Shri Suneer Nalagath was recorded on 11.03.2022

wherein he inter alia stated that;

- Shri Naresh & Shri Tarun Dagar were the previous directors of M/s. SFEPL.
- M/s. S F Express Pvt Ltd had imported duty-free goods i.e. Areca Nuts & Wall Nuts in the month of May, June & July 2021 for further export to Bangladesh.
- During his appointment proceedings as a Director of M/s S.F.Express Private Limited, he had obtained a Digital Signature through CS Esaki and it had also been received by Esaki. He stated that his digital signature would be either with Esaki or with Rajesh/Ganesh Naidu of M/s Cross Trade Link, Gandhidham. He had seen his digital signature with Shri Rajesh at last.
- The Areca Nuts imported by M/s. SFEPL, KASEZ during the month of May-2021 to July-2021 was diverted to Nagpur without payment of duty under the guise of clearing the same from SEZ, Kandla for export to Bangladesh.
- M/s. SFEPL had diverted around 414 MTs of Areca Nuts/Wall Nuts out of total 546 MTs of Areca Nuts/Wall Nuts in Domestic Tariff Area i.e. Nagpur under the guise of clearing the same from SEZ for export to Bangladesh and the proportionate duty forgone in this manner was around 3.18 Crores.
- Shri Firoz Ahamed had promised him a salary of Rs. 75,000/- and a joining bonus of Rupees Five Lakh to cover the loss which he had incurred while closing his Sports Garments Business. Shri Firoz had assured him that he would give him share in the profit of the company.
- After appointment as a Director of M/s. S F Express, he had received 15000/- in the month of May-2021, Rs. 8750/- in the month of July-2021 and Rs. 1,00,000/- in the month of August-2021.
- Rs 40000/- out of Rs 1,00,000/- received by him from Shri Firoz Ahamed in month of August-2021, were given to Shri Yogendra Pratap Varma as per the instruction of Shri Firoz Ahamed.
- He agreed that M/s. S F Express Pvt. Ltd. was involved in diversion of duty-free imported goods which were actually meant for export to Bangladesh from Kandla SEZ and thus evaded Customs Duty.
- M/s S.F.Express Pvt. Ltd. had breached various provisions of SEZ Act, 2005, Foreign Trade (Development and Regulations) Act, 1992.
- The goods diverted by M/s. S F Express Pvt. Ltd. in domestic market are liable to confiscation as per the provisions of Section 111 & 113 of the Customs Act, 1962. As per Section 2 (39) of the Customs Act 1962, the said illegal activities performed by M/s. S.F. Express were smuggling activities.

66. Statement of Shri A. Feroze Ahamed was recorded on 22.07.2023 (**RUD No.40**) under Section 108 of the Customs Act 1962 before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Coimbatore, wherein he inter-alia stated that;

- He was the Proprietor of M/s. Roshan International, No. 100-C, P.K. Kandasamy Pillai Street, D Colony, Jothi Nagar, Pollachi - 642001.
- His permanent address was No.100-C, P.K. Kandasamy Pillai Street, D Colony, Jothi Nagar, Pollachi - 642001 and Current address is St. Thomas Church Road, Apartment 1st Floor, 96/1,

Fernhill, Ooty, Tamil Nadu – 643001.

- He owned the following four firms:
 - i) M/s Roshan International Establishment (Dealing in trading of Timber, Cashews, Coir, Plastic, Other Agri products etc.)
 - ii) M/s Hana Food Industry (Dealing in trading of Chocolates)
 - iii) M/s Samak Hatcheries (Dealing in fisheries – presently not active)
 - iv) M/s Ever Soil Private Limited (Not functioning – closed now)
- He agreed with the content therein the statement of Shri Suneer Nalagath recorded under section 108 of the Customs Act, 1962 on dated 09.03.2022, 10.03.2022 & 11.03.2022.
- He did not have any connection with M/s. SF Express Pvt. Ltd. Gandhidham and he had not done any business with M/s. SF Express Pvt. Ltd.
- He did not agree with facts that he offered directorship of M/s S.F.Express Private Limited, KASEZ Gandhidham to Shri Suneer Nalagath.
- He did not know anybody in the name of Shri Yogendra Pratap Varma and he did not offer directorship of M/s. SFEPL to anybody.
- He did not have any connection with M/s. SFEPL. He did not know who the previous director of M/s. SFEPL was. He did not take over the said firm.
- He denied all the facts and allegations made against him regarding his involvement in illegal diversion of duty-free goods in DTA by M/s. SFEPL, as stated by Shri Suneer Nalagath in his statements dated 09.03.2022, 10.03.2022 & 11.03.2022.
- He denied all the facts stated by Shri Suneer Nalagath in his statements dated 09/10/11.03.2022. He did not instruct Shri Suneer Nalagath to leave Gandhidham and come back to Chennai and also did not book any Air tickets to travel from Ahmedabad to Chennai for Shri Suneer & Shri Yogendra Pratap Varma. He did not give any instructions to Suneer to go back to Gandhidham to sign any appointment letter. He didn't give any i-phone to Shri Suneer Nalagath and also didn't give keypad mobile for Shri Yogendra Pratap Varma. He did not go to Bangalore on 17.08.2021 to meet Shri Suneer and did not ask Shri Suneer to remain underground and switch off his personal mobiles. He didn't ask Shri Suneer to start work in M/s. Spice Deccan Impex Pvt. Limited, Sy No. 286, Reddy Gunta Road, Kodavalluru, Yallaiyapalem Village, SPSR Nellore, Andhra Pradesh – 524366 Nellore (100% EOU unit).
- He denied all the facts stated by Shri Suneer Nalagath that Shri A. Feroze Ahamed told him that he was going to operate one firm namely M/s. SF Express Pvt. Ltd, KASEZ and Shri Suneer and Shri Yogendra Pratap Varma would be the Directors of the said firm. He denied to the fact that he informed about carrying out import export business through the said firm and also about the appointment of Shri Esaki V., Company Secretary for documentation related work. He also denied the fact that he asked Shri Suneer to forward the documents viz. Aadhar Card, Photograph, Pan Card, Electoral ID etc. to Shri Esaki V. on his Whatsapp No. 9789804692. He further stated that he did not told Shri Suneer to go to Gandhidham with Shri Muhammad Farooq Ali, Shri Sadiq and Shri Yogendra Pratap Varma.

- He denied all the facts stated by Shri Suneer Nalagath in his statement recorded on 09.03.2022, wherein Shri Suneer stated that during the month of March-2021, Shri A. Feroze Ahamed asked him to become the Managing Partner in a trading firm namely M/s SFEPL and that they would import dry fruits and sell the same in the domestic market. He denied that he promised Shri Suneer a salary of Rs. 75,000/- and a joining bonus of Rupees Five Lakh to cover the loss which Shri Suneer had incurred while closing his Sports Garments Business.
- He did not have any business transactions at KASEZ, Kandla and also had never been to Kandla. He did not have any consultant at KASEZ, Kandla. He did not know any person namely Shri Rajesh. Upon perusal of the Bill of Entry/Bill of Export, wherein Digital signature of one person namely Shri Naresh was used and in reply to a question about the said person Shri Naresh, he stated that he did not know about details of any import or export made through M/s. SF Express Pvt. Ltd, KASEZ and also he did not know any person namely Shri Naresh.
- He perused the documents i.e. Import & Export documents of M/s S.F. Express Pvt Ltd, E-way bill data, Statement of transporters, panchanama drawn at Gandhidham, Jaipur & Delhi, Letter dated 18.08.2021 & 17.12.2021 received by DRI Ahmedabad from the Office of the Commissioner of Customs (Preventive), North Eastern Region, Shillong. As per the said documents, the goods i.e. Areca Nuts imported by M/s SFEPL, KASEZ during the month of May-2021 to July-2021, which were meant for export to Bangladesh, were diverted to Nagpur instead of export of the same to Bangladesh. Upon perusal of the said documents, he stated that he had no comments to offer on the above documents, as he was not involved in the above transactions of M/s. SFEPL.
- He had no comments to offer on the duty evasion/destination of the goods declared for export/mode of transport used for movement of the said goods by M/s SFEPL, as he was not involved in the above transactions of M/s SFEPL.
- He had no connection with M/s SFEPL and did not know about M/s Blue Gold International, Delhi, M/s B & H Overseas, Delhi & M/s Sai International, Crodak Road, Itwari, Nagpur.
- He did not know the persons namely Shri Zia Faisal, Shri Aamir Hussain, Shri Satish, Shri Loon Singh (Chokidar) & Shri Ankur of Delhi.
- On perusal of the Show Cause Notice F. No. KASEZ/IA/015/2015-16 dated 16.02.2022 issued by the Office of the Development Commissioner, KASEZ, he did not offer any comments on the above, as he stated that he was no way connected with the said firm viz. M/s SF Express Pvt. Ltd.
- He had carefully gone through the provisions of the Sections 111 & 113 of the Customs Act 1962 and agreed that the duty-free goods diverted in DTA were liable to confiscation as per Section 111 & 113 of Customs Act 1962.
- He agreed and was aware of the fact that DRI Coimbatore had booked a case against M/s Southern Impex for diversion of duty-free imported Areca Nuts in Domestic Tariff Area.
- He agreed and was aware of the fact that DRI Hyderabad had

booked a case against M/s Spice Deccan for diversion of duty-free imported Areca Nuts in Domestic Tariff Area. However, he stated that though he was a noticee to the SCN issued in the case of M/s Spice Deccan, he was not involved in the said alleged diversion of imported goods.

- Shri Suneer Nalagath was lying and falsely implicating him. However, he failed to give reason for the same.
- He did not have any business rivalry with Shri Suneer Nalagath but Shri Suneer Nalagath had requested him to arrange for a personal loan of Rs 5 Lakhs, which he could not arrange and Shri Suneer was not happy with that issue.
- Upon perusal of the statement of Shri V. Esaki. recorded on 06.12.2021, he stated that he had no comments to offer on the said statement, as he had no connection with M/s SFEPL.
- He did not have any rivalry with Shri V. Esaki. He had consulted him regarding FSSAI details in respect of M/s Roshan International. He had no issue with Shri V. Esaki.
- He was not involved in any illegal activities of M/s. Southern Impex, M/s Spice Deccan and M/s S.F.Express Pvt. Ltd.
- He had no comments to offer on the involvement of Shri Suneer Nalagath with the firms namely M/s Southern Impex, M/s Spice Deccan and M/s S.F. Express Pvt. Ltd.

CREATION OF FAKE/DUMMY FIRMS-

67. M/s Blue gold International, Office No. RA-D-60, syndicate Enclave, Raghu Nagar, South West Delhi-07, M/s B & H Overseas, Plot No. 64, Ground Floor, Pole No. 75-A, Raghu Nagar, Dabari, South West Delhi-111045 & M/s Sai International, H.No. 288, W.No. 36, Crodak Road, Itwari, Nagpur, Maharashtra-440002 were not in existence and merely created upon paper to misled the investigation.

- a. Search proceedings was conducted at M/s Blue gold International, Office No. RA-D-60, syndicate Enclave, Raghu Nagar, South West Delhi-07 by the officer of DRI, Delhi Zonal Unit and as reported by the Assistant Director, DZU vide letter F.No. DRI/DZU/25/37/2020/follow up dated 18.8.2021 (RUD No. 15), it was a residential premises where no such firm was existing and the residents were not connected with firm.
- b. Search was conducted at M/s B & H Overseas, Plot No. 64, Ground Floor, Pole No. 75-A, Raghu Nagar, Dabari, Southwest Delhi-111045 by the officer of DRI, Delhi Zonal Unit, and as reported by the Assistant Director, DRU, DZU vide letter F.No. DRI/DZU/25/37/2020/follow up dated 18.8.2021, address was found to be incomplete and incorrect as no Pole No. 75-A was found to be there in the area.
- c. Vide letter dated. 12.8.2021, letter was sent to DD, DRI, Nagpur, to conduct Search at M/s Sai International, H.No. 288, W.No. 36, Crodak Road, Itwari, Nagpur, Maharashtra-440002. As reported vide letter F. No. DRI/MZU/NRU/Misc.Enq-01/2018/179 dated 13.8.2021 Deputy Director, Nagpur (RUD No.-16) the premise was not located as the address was not complete.

APPRECIATION OF EVIDENCES PLACED ON RECORD-

68. I find that M/s SFEPL imported 530.12 MTs. of Areca Nuts from

Indonesia without payment of duty under Notification No.52/2003-Customs dated 31.03.2003 during the period May 2021 to June 2021 through Mundra Port **(Annexure-B)**. M/s SFEPL had filed 26 Bills of Export for the purpose of export of Areca Nuts (CTH 0828010), total Quantity- 414 MT, Declared FOB Value-2,60,31,508/- **(as per annexed Annexure- A)** to Bangladesh through Land Customs Station-LCS Mankachar during the month of June 2021 & July 2021. However, on being inquired with Customs (Preventive), Shillong, Deputy Commissioner vide letter F. No. VIII (10)02/Cus/HQRS. Prev/SH/2020-21 Dated. 17.12.2021, informed that there had been no export by M/s. SFEPL either through Mankachar LCS or through any other LCSs under the jurisdiction of Shillong Customs (Preventive) Commissionerate and the investigation conducted as detailed above revealed that the said duty-free imported Areca Nuts were diverted into domestic tariff area i.e. at Nagpur without payment of duty with the aid of bogus e-way bills. Though the areca nuts were destined to Bangladesh as per e-way bills, the toll plaza data gathered revealed that the same were transported till Jaipur only **(RUD No. 52)** and subsequently diverted to Nagpur. Further inquiry with the transporter/forwarder revealed that the subject trucks/goods had not crossed the Jaipur and loaded goods i.e. areca nuts were unloaded at Jaipur and shifted to another trucks and then diverted into Domestic Tariff Area i.e. in Nagpur. It was further revealed that the names of the consignor firms mentioned in the said the e-way bills/Lorry Receipts were not in existence.

69. On verifications of the following E-Way bills from the E-way portal, it was observed that though the E-way bills were issued for goods to be traveled from Delhi to Nagpur but goods were moved from Jaipur to Nagpur.

| E way bill No. | Date | Tax Invoice No. and date(As given in the respective E-Way bill) | From | To |
|----------------|-----------|---|---------------------------------|---------------------------|
| 701193487116 | 13.6.2021 | 182/13.6.2021 | Blue Gold International , Delhi | Sai International, Nagpur |
| 701193486577 | 13.6.2021 | 160/13.6.2021 | -do- | -do- |
| 751193592390 | 14.6.2021 | 185/13.6.2021 | -do- | -do- |
| 711193598648 | 14.6.2021 | 184/14.6.2021 | -do- | -do- |
| 741193640386 | 14.6.2021 | 187/14.6.2021 | -do- | -do- |
| 761193785261 | 15.6.2021 | 190/15.6.2021 | -do- | -do- |
| 701193487116 | 13.6.2021 | 182/13.6.2021 | -do- | -do- |
| 761194009566 | 16.6.2021 | 186/16.6.2021 | B.H.Overseas | -do- |
| 741194133124 | 17.6.2021 | 190/17.6.2021 | -do- | -do- |
| 781194206387 | 17.6.2021 | 192/17.6.2021 | -do- | -do- |
| 741193640386 | 14.6.2021 | 187/14.6.2021 | Blue Gold International , Delhi | -do- |
| 781195409662 | 24.6.2021 | 250/24.6.2021 | -do- | -do- |
| 741195408498 | 24.6.2021 | 255/24.6.2021 | B.H.Overseas | -do- |

70. I find that Shri Suneer Nalagath, Director of M/s SFEPL in his voluntary statements admitted the violations committed by M/s SFEPL i.e. diversion of

imported areca nuts and further deposed that Shri Feroze Ahamed of M/s Roshan International & Shri Mohammed Farooq Ali, Managing Director of M/s Spice Deccan Impex Private Limited (100% EOU) were the key persons in the illegal activities committed by M/s SFEPL; Shri Mohammed Farooq Ali had engaged Shri Yogendra Varma. Shri Suneer and Shri Yogendra Pratap Varma, followed the instruction of Shri Feroze Ahamed from time to time and approached the Company Secretary; provided the required documents to Company Secretary and also signed many documents from time to time relevant to M/s SFEPL. After perusing the relevant documents shown to him during recording of his statement, Shri Suneer Nalagath also admitted that the duty-free imported goods were diverted into domestic market.

- 71.** In view of the above discussion and findings, it is crystal clear that the duty free imported goods were diverted to Nagpur in the guise of exporting the goods to Bangladesh in order to evade duties of Customs. Diversion of duty-free imported Areca nuts into the Domestic Tariff Area (DTA) under the false pretext of export is a matter of grave concern as on the one hand it is a case of evasion of import duties and on the other hand it is a case of fictitious export as the government intends to create SEZ for allowing an SEZ unit to boost exports. The instant case of misusing the SEZ export mechanism by declaring fictitious exports to neighboring countries while clandestinely diverting the goods into the domestic market, thereby evading customs duties and other levies is a serious offence under Customs Act, 1962. This not only causes significant revenue loss to the government but also severely impacts domestic manufacturers and farmers of Areca nuts, who struggle to compete with the influx of cheaper, duty-free imports flooding the market. The artificially suppressed prices destabilize the domestic supply chain, reduce profit margins for legitimate producers, and threaten the livelihood of thousands dependent on this sector. Moreover, the offence undermines the integrity of trade regulations, distorts market dynamics, and fuels a parallel economy that thrives on deceit. The seriousness of the diversion demands exemplary penal measures to deter such fraudulent practices.

DEMAND OF DUTY-

- 72.** I find that it is a clear case of willful mis-statement, suppression as well as collusion by M/s SFEPL and others in respect of clearance of the said goods into the local market, with an intent to evade the applicable Customs Duty leviable thereon. The diversion of duty-free imported Areca Nuts into domestic market without payment of Customs Duty by M/s SFEPL would not have come to light without the in-depth investigation carried out by the officers of DRI. From the facts given above, it is clear that M/s. SFEPL have wilfully diverted the duty-free imported Areca Nuts into domestic market to evade the payment of Customs Duty. Hence, the Customs duty not paid by M/s SFEPL in respect to the domestic sale of 414 MTs of duty-free imported Areca Nuts is recoverable in terms of Section 28(4) of the Customs Act, 1962 and the same is invocable for the recovery of the said customs duty evaded in this manner along with interest under Section 28AA of the Customs Act, 1962.
- 73.** In view of the demand of duty under Section 28(4), penalty under Section 114A of the Customs Act, 1962 is also imposable upon M/s. SFEPL. However, once penalty is imposed under 114A, no penalty is required to be imposed under Section 112 or 114.

- 74.** With regard to penal action under Section 117, I find that M/s. SFEPL is liable for penal action as they have contravened Section 46 as well as Section 50 of the Customs Act, 1962 in order to evade duties of Customs and cause loss to the exchequer.

CONFISCATION OF GOODS-

- 75.** I find that the impugned goods were cleared from the SEZ by M/s SFEPL for purported exportation to Bangladesh etc. The details of consignee and country of destination were mis-declared in the Shipping Bills of Exports filed by M/s. SFEPL with Customs Authorities at KASEZ. Enquiries with Shillong Customs Bangladesh border, had revealed that the subject goods were never exported from any of the LCS. Further, during the course of investigation, all the concerned persons involved in the scandal including the Directors of M/s. SFEPL had also categorically admitted the fact that the impugned goods cleared for exportation under various Shipping Bills were in fact never exported out of India but were diverted to Domestic Market.
- 76.** In view of the above facts, the impugned goods, as detailed in Annexure-A to the Show cause notice were removed from a customs area without the permission of the proper officer and/or contrary to the terms of such permission and thus the same are liable for confiscation under section 111(j) of the Customs Act. The goods imported by them were unloaded from the conveyance without supervision of the proper officer in DTA which resulted in contravention of provisions of Section 34 of Customs Act, 1962 and thus the same are held to be liable for confiscation under Section 111(h) of the Customs Act, 1962. M/s. SFEPL or buyer of it's domestic tariff area did not file Bill of Entry while removing the goods from SEZ to DTA and thus the goods so cleared by them are held to be liable for confiscation under Section 111(l) of the Customs Act, 1962. The goods were cleared from Customs for export to Bangladesh violating the Special Economic Zones Act, 2005 and Rules and orders made there-under. Thus, the offending goods as mentioned in Annexure-A are also liable for confiscation under Section 111(d) and Section 111(o) of the Customs Act, 1962
- 77.** I further find that the Shipping Bills and other related documents submitted by M/s. SFEPL were containing forged/manipulated details of consignee and country of destination for the goods cleared for export from SEZ. In view of the above facts, the impugned goods, as detailed in Annexure-A to the SCN entered for exportation did not correspondence in respect of material particular (details of consignee and country of destination) with the Shipping Bills for Export under this Act and thereby the same are liable for confiscation under Section 113 (i) of the Customs Act, 1962. Also the subject goods were prohibited to be exported in terms of Section 2 (39) as discussed in foregoing paras and thus the goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition Imposed by or under this Act or any other law for the time being in force, are liable to confiscation under Section 113(d) of Customs Act, 1962
- 78.** The impugned goods covered under 26 Shipping Bills of Exports filed by M/s. SFEPL (as detailed in Annexure-A) cleared for exportation but not

exported, deliberately with fraudulent intention of evasion of Customs Duty and the same were unloaded without the permission of the proper officer. Accordingly, such goods are also liable for confiscation under Section 113 (k) of Customs Act, 1962.

- 79.** In the instant case, it is seen that goods were cleared in the past and were never seized by the department. In such cases, redemption fine is imposable if it is found that the goods were liable for confiscation. In this regard, reliance is placed on the decision *Visteon Automotive Systems India Limited v. CESTAT, Chennai 2018 (9) G.S.T.L. 142 (Mad.)* and *Synergy Fertichem Pvt. Ltd v. State of Gujarat 2020 (33) G.S.T.L. 513 (Guj.)* to hold that the availability of the goods is unnecessary for imposing the redemption fine or penalty.

ROLE PLAYED BY VARIOUS PERSONS/FIRMS AND PENALTIES THEREUPON-

Role of Shri Suneer Nalagath, Director of M/s SFEPL :

- 80.** I find that from deposition during the recording of his statement recorded on Dated 9,10 & 11.3.2022 that Shri Suneer Nalagath and Firoz Ahamed were friends and knowing each other since 1999 and they had worked together during the period from 1999-2003; Shri Suneer joined M/s. Southern Impex, Pollachi, Coimbatore, Tamil Nadu, 100% EOU and manufacturing unit engaged in import of Areca Nuts and export of Areca Nut Powder in February 2020 as per the direction of Shri Firoz Ahmed; the said unit was actually run/operated by Shri Firoz Ahamed; Shri Suneer looked after documentation related work for their Import-Export along with correspondences with Bank regarding remittances and issuance of BRC/FIRCs of the said firm; DRI, Coimbatore had booked a case against M/s. Southern Impex in the month of October 2020 for diversion of duty-free imported Areca Nuts in Domestic Tariff Area; he was one of the directors of M/s. SFEPL Pvt. Ltd., KASEZ, Gandhidham; Shri Firoz Ahamed had told him that he was going to operate one firm namely M/s. SFEPL Pvt. Ltd, KASEZ, wherein they would carry out import export business; on following the direction of Shri Suneer visited Gandhidham, forwarded the documents viz. Aadhar Card, Photograph, Pan card, Electoral ID etc. to Shri Esaki V. Company Secretary; he and Shri Yogendra Pratap Varma visited Gandhidham for bank and customs related formalities on the direction of Shri Firoz Ahamed; shri Suneer visited the consultant office as well as to the bank; after receiving of Summons from DRI, Ahmedabad went underground on following the direction of Shri Firoz Ahamed and remained underground till October-2021; he did not come forward before the DRI, Ahmedabad for recording of statement on the directions of Firoz Ahamed; he signed pre-prepared/backdated (Dated 1.4.2021) appointment letter in the name of Mr. Ankur ;M/s. SFEPL had imported duty-free goods i.e. Areca Nuts & Wall Nuts in the month of May, June & July 2021 for further export to Bangladesh; agreed with the facts that Areca Nuts imported by M/s. SFEPL during the month of May, 2021 to July 2021 were further diverted to Nagpur without payment of duty under the guise of clearing the same from SEZ, Kandla for export to Bangladesh; he was to receive monthly salary of Rs. 75000/- and a joining bonus of Rupees Five Lakh ; he was assured to share from the profit also; upon appointment as director of M/s. SFEPL , he received 15000/- in month of May 2021, Rs. 8750/- in the month of July

2021 and Rs. 1,00,000/- in the month of August 2021; Further, as per the instruction of Shri Firoz Ahamed, he gave 40,000/- to Shri Yogendra Pratap Varma; As per the direction of Shri Firoz Ahamed, Shri Suneer joined M/s. Spice Deccan Impex Pvt. Ltd., Nellore, the unit engaged in import of Areca Nuts and export of Areca Nut Powder; since his joining at M/s Spice Deccan Impex Pvt Ltd, total 04 consignments of Areca nuts were imported and diverted in the domestic market by him as per the directions/instructions of Firoz Ahamed; DRI, Nellore/Hyderabad and Vijaywada had initiated inquiry against M/s Spice Deccan Impex Pvt. Ltd. for diversion of duty-free goods. The above said facts are also corroborated with the statement of Shri V.Esaki and also of Shri Ashish of M/s A.K.Friends & Co.

81. I find that Shri Suneer Nalagath was one of the masterminds behind the whole gamut of the fraudulent diversion of the duty-free Areca Nuts cleared from M/s SFEPL, KASEZ, Gandhidham to the DTA. He hatched the conspiracy along with Shri Yogendra Pratap Singh, Shri Firoz Ahamed, Shri Muhammad Farooq Ali & Shri Naresh. They purchased the SEZ unit M/s SFEPL with an clear intention to make it a gate way for diversion of duty-free goods in the DTA in order to evade Customs Duty on import of various goods. M/s SFEPL imported Areca Nuts and the cleared the same to DTA under the guise of purported Exports to Bangladesh. Shri Suneer Nalagath, had accepted the directorship of M/s SFEPL in lure of money and also provided the documents for change in directorship. Shri Suneer Nalagath deliberately did not appear before the investigating officers and dishonored repeated summons. Though he was one of the mastermind, did not reveal any facts of the case regarding the ultimate domestic buyers of goods, payment chain and documents relating to diversion of goods in DTA and other aspects. Though he has denied his involvement but looking to the facts and evidences of the case as narrated above, he can not deny his responsibility and accountability in non-fulfilling the required export obligation of the impugned goods, Similarly, he can not be discharged from the organized fraud and criminal conspiracy committed by him.

82. Further, Shri Suneer Nalagath, was served summons on dated. 13.8.2021, 18.8.2021, 10.09.2021 & 22.10.2021. However, he did not appear before the investigating agency.

83. Call Data Record for Suneer`s mobile number 9791300933 was called for from the carrier M/s Airtel (**RUD No.-54**). Further, during recording of his statement dated 11.3.2022, Shri Suneer voluntarily submitted his mobile phone (without Sim Card), which was having IME-I Number 864130043323294 IME-II 864130043323302. However, on comparing the said IME-1 number with the IME No. figuring in the said CDR, it is observed that IME numbers are different than each other. Hence, It transpired that Shri Suneer was using another mobile instrument at the relevant time and the said instrument might have contained the relevant digital evidences in the form of messages, images, chats etc. and same could have been retrieved by investigating agency. Accordingly, the correct instrument was not produced before the investigating agency. The above acts was nothing but efforts made by Shri Suneer so that no digital evidence could be gathered by the investigating agency against his involvement/or M/s SFEPL and the same had been done to mis-lead/derail the investigation.

84. Thus by his acts of omission and commission, it is clear that Shri Suneer Nalagath had actively participated in the illegal activities and indulged in diversion of duty-free Areca Nut by M/s SFEPL, KASEZ, Gandhidham under the guise of showing export to Bangladesh, which he

knew or had reasons to believe were liable to confiscation under Section 111 and 113 of the Customs Act, 1962. Further, it is also apparent that by the acts of commission/omission of Shri Suneer Nalagath also concerned himself in removing and selling the duty-free imported Areca-nuts in the domestic market which he knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j), 111(l), 111(o), 113(d), 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a), 112(b), 114(i), 114(iii) of the Customs Act, 1962 in as much as he was knowingly concerned and dealing with the offending imported goods cleared from the KASEZ and then diverted into DTA without order of proper officer; violating provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975, the same were attempted to be exported improperly and got unloaded and diverted into DTA without the permission of the proper officer.

85. However, penalty under Section 114A is not invokable upon Shri Suneer as the said penalty is invoked on person liable to pay duty under Section 28(4) and in the instant case, such duty is liable to be recovered from m/s. SFEPL.

86. I find that Shri Suneer Nalagath has made himself liable for penal action under Section 114AA in as much as he knowingly or intentional makes, signs or uses or causes to be made signed or used, wrong declaration or documents by showing the clearance of the subject goods for export to Bangladesh, whereas goods were diverted to the domestic market. Shri Suneer Nalagath was issued summons on dated.13.8.2021, 18.8.2021 and 10.9.2021 (**RUD No.-55**), however none of the date he presented or represented himself. Further, at the time of recording of his statement, produced the wrong mobile instrument, which were not in use at the relevant time and thereby made efforts to mis-lead/derail the investigations. Above act and omission on the part of Shri Suneer Nalagath also make him liable for penalty under section 117 of the Customs Act, 1962.

Role of Shri Yogendra Pratap Varma, Director of M/s. SFEPL :

87. I find that Shri Yogendra Pratap Varma was one of the directors of M/s. SFEPL Pvt. Ltd., KASEZ, Gandhidham; Shri Firoz Ahamed had told him that he was going to operate one firm namely M/s. SFEPL Pvt. Ltd, KASEZ, wherein they would carry out import export business; on following the direction of Shri Suneer visited Gandhidham and Shri Muhammad Farooq Ali, Sadiq and Yogendra Pratap Varma; he and Shri Yogendra Pratap Varma visited Gandhidham for bank and customs related formalities on the direction of Shri Firoz Ahamed; after receiving of Summons from DRI, Ahmedabad Shri Yogendra Pratap Varma and Shri Suneer went underground on following the direction of Shri Firoz Ahamed and he did not come forward before the DRI, Ahmedabad for recording of statement on the directions of Firoz Ahamed; Shri Yogendra Pratap Varma signed pre-prepared/backdated (Dated 1.4.2021) appointment letter in the name of Mr. Ankur ; as per the instruction of Shri Firoz Ahamed, Suneer gave Rs. 40,000/- to Shri Yogendra Pratap Varma. Further, as deposed by Shri Esaki V, CS of M/s. V. Esaki & Associates in his statement recorded on 06.12.2021, under Section 108 of the Customs Act, 1962 that in mid of march, 2021 Shri Mohameed Farooq Ali, director of M/s. Spice Deccan Impex Private Limited, Andhra Pradesh requested him to provide their services for appointment of two new directors in one firm M/s. SFEPL , wherein one was Shri Yogendra Pratap Varma who was the employee in his firm M/s. Spice Deccan Impex Private Limited and another one was Shri Suneer Nalagath, Kerala; Shri Yogendra Pratap Varma (Mob. No.-85550-

90454) was in his contact for his & Suneer's appointment as new directors in M/s. SFEPL ; Shri Yogendra Pratap Varma provided him the KYC documents i.e. mail id, Identity proof, mobile number & passport size photo etc. of him & Suneer Nalagath, through whatsapp; Shri Yogendra Varma gave him digital signature of him & Suneer Nalagath's through courier for generating DIN number for new appointed directors viz. Shri Yogendra Pratap Varma & Shri Suneer Nalagath; Shri Yogendra gave contact number of one Shri Ashish, Company Secretary of old directors and requested him to contact him.

88. Further, Shri Yogendra Pratap Varma, was served summons on dated. 10.9.2021, 22.10.2021 & 16.5.2022, however, till now, he had not come forward before the investigating agency.

89. It is amply clear that Shri Yogendra Pratap Varma was one of the masterminds behind the whole gamut of the fraudulent diversion of the duty-free Areca Nuts cleared from M/s SFEPL, KASEZ, Gandhidham to the DTA. He hatched the conspiracy along with Shri Suneer Nalagath, Shri Firoz Ahamed, Shri Muhammad Farooq Ali & Shri Naresh. They purchased the SEZ unit M/s SFEPL with a clear intention to make it a gate way for diversion of duty-free goods in the DTA in order to evade Customs Duty on import of various goods. M/s SFEPL imported Areca Nuts and cleared the same to DTA under the guise of purported Exports to Bangladesh. Shri Yogendra Pratap Varma deliberately did not appear before the investigating officers and dishonored repeated summons. His gestures of non-appearance before the investigating officers for tendering statement and the evidences & statements of various concerned persons available on record clearly indicate his deep involvement in the evasion of Customs Duty through M/s SFEPL by way of diversion of duty-free imported goods, in the guise of fraudulent export into DTA of India. Hence, looking to the facts and evidences of the case as narrated above, he can not deny his responsibility and accountability in non-fulfilling the required export obligation of the impugned goods, Similarly, he cannot be discharged from the organized fraud and criminal conspiracy committed by him.

90. Thus by his acts of omission and commission, it is evident that Shri Yogendra Pratap Varma has actively participated in the illegal activities and indulged in diversion of duty-free Areca Nut by M/s SFEPL , KASEZ, Gandhidham under the guise of showing export to Bangladesh, which he knew or had reasons to believe were liable to confiscation under Section 111 and 113 of the Customs Act, 1962. Further, it is also evident that by the acts of commission/omission of Shri Yogendra Pratap Varma also concerned in removing and selling the duty-free imported Areca-nuts in the domestic market which he knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j) ,111(l), 111(o), 113(d) 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a),112(b), 114(i) ,114(iii) of the Customs Act, 1962 in as much as he was knowingly concerned and dealing with the offending imported goods cleared from the KASEZ and then diverted into DTA without order of proper officer; violating provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975, the same were attempted to be exported improperly and got unloaded and diverted into DTA without the permission of the proper officer.

91. Further, as discussed above, Shri Yogendra Pratap Varma, is also not liable for penal action under Section 114A of the Customs Act, 1962

92. However, he is liable for penal action under Section 114AA in as much as he knowingly or intentional makes, signs or uses or causes to be made signed or used, wrong declaration or documents by showing the clearance of the subject goods for export to Bangladesh, whereas goods were diverted to the domestic market. Shri Yogendra Pratap Varma was issued

summons on dated. 10.9.2021, 22.10.2021 & 16.5.2022 (**RUD No.-56**), however none of the date he presented or represented himself. Above act and omission on the part of Shri Yogendra Pratap Varma also make him liable for penalty under section 117 of the Customs Act, 1962.

Role of Shri A.Feroze Ahmed & Shri Muhammad Farooq Ali

- 93.** On carefully going through the evidences available on record in the form of Panchnamas of dated 24.07.2022 and statements of concerned persons recorded under Section 108 of the Customs Act, 1962 etc., it is clear that Shri Feroze Ahmed & Shri Muhammad Farooq Ali appears to be the masterminds behind the whole gamut of the fraudulent diversion of the duty-free Areca Nuts cleared from M/s. SFEPL, KASEZ, Gandhidham to the DTA. They both hatched the conspiracy along with Shri Suneer Nalagath, Shri Yogendra Pratap Varma & Shri Naresh for the said diversion of duty-free areca nuts from KASEZ as discussed as supra. They are the main conspirator/ beneficiary owner and for the said illegal activity they have created a syndicated involved in the said illegal act.
- 94.** As evident from the deposition of Shri Suneer Nalagath, during the recording of his statements on dated. 9,10 & 11.3.2022 under Section 108 of the Customs Act, 1962 that Shri Suneer Nalagath and Firoz Ahamed were friends and knowing each other since 1999 and they had worked together during the period from 1999-2003; Shri Suneer joined M/s. Southern Impex, Pollachi, Coimbatore, Tamil Nadu, 100% EOU and manufacturing unit engaged in import of Areca Nuts and export of Areca Nut Powder in February 2020 as per the direction of Shri Firoz Ahmed; the said unit were were actually run/operated by Shri Firoz Ahamed; DRI, Coimbatore had booked a case against M/s. Southern Impex in the month of October 2020 for diversion of duty-free imported Areca Nuts in Domestic Tariff Area; Shri Firoz Ahamed had told him that he was going to operate one firm namely M/s. SFEPL Pvt. Ltd, KASEZ, wherein they would carry out import export business and Shri Suneer Nalagath and Shri Yogendra Pratap Varma would be the directors of the M/s SFEPL ; on following the direction of Shri Feroze Ahmed, Shri Suneer visited Gandhidham, forwarded the documents viz. Aadhar Card, Photograph, Pan card, Electoral ID etc. to Shri Esaki V. Company Secretary; he and Shri Yogendra Pratap Varma visited Gandhidham for bank and customs related formalities on the direction of Shri Firoz Ahamed; Shri Suneer & Shri Yogendra Pratap Varma, visited the consultant office as well as to the bank; after receiving of Summons from DRI, Ahmedabad Shri Suneer Nalagath and Shri Yogendra Pratap Varma, went underground on following the direction of Shri Firoz Ahamed and remained underground till October-2021; Shri Suneer & Shri Yogendra Pratap Varma did not come forward before the DRI, Ahmedabad for recording of statement on the directions of Firoz Ahamed; Shri Suneer Nalagath and Shri Yogendra Pratap Varma signed pre-prepared/backdated (Dated 1.4.2021) appointment letter in the name of Mr. Ankur; M/s. SFEPL had imported duty-free goods i.e. Areca Nuts & Wall Nuts in the month of May, June & July 2021 for further export to Bangladesh; agreed with the facts that Areca Nuts imported by M/s. SFEPL during the month of May, 2021 to July 2021 were further diverted to Nagpur without payment of duty under the guise of clearing the same from SEZ, Kandla for export to Bangladesh; He was informed by Shri Feroz that Ahmed he was to receive monthly salary of Rs. 75000/- and a joining bonus of Rupees Five Lakh ; he was assured by Shri Feroz Ahmed to share from the profit also; upon appointment as director of M/s. SFEPL, Suneer was paid 15000/- in month of May 2021, Rs. 8750/- in the month of July 2021 and Rs. 1,00,000/- in the month of August 2021 by Shri Feroz Ahmed; Further, as per the instruction of Shri Firoz Ahamed, Suneer gave 40,000/- to Shri Yogendra Pratap Varma; As per the direction of Shri Firoz Ahamed, Shri Suneer joined M/s. Spice Deccan Impex Pvt. Ltd., Nellore, the unit engaged in import of Areca Nuts and export of Areca Nut

Powder; since his joining at M/s Spice Deccan Impex Pvt Ltd, total 04 consignments of Areca nuts were imported and diverted in the domestic market by him as per the directions/instructions of Firoz Ahamed; DRI, Nellore/Hyderabad and Vijaywada had initiated inquiry against M/s Spice Deccan Impex Pvt. ltd. for diversion of duty-free goods: on being asked regarding import export made through/s SFEPL, Firoz Ahamed or Shri Muhammad Farooq ali would be the right person to answer the said question; Muhammad Farooq Ali was business associate of Shri Firoz Ahamed: Shri Firoz Ahamed had asked him to go to Nellore in November 2021 to operate one EOU firm namely M/s. Spice Deccan Impex Pvt. Ltd., Nellore whose director/owner was Shri Muhammad Farooq Ali; Muhammad Farooq Ali was business associate of Shri Firoz Ahamed.

95. Shri Firoze Ahmedabad in his statement recording under Section 108 of the Customs Act, 1962 deposed that denied his relation with the business transaction with M/s SFEPL, however, failed to give proper reply in respect to the question that then why Shri Suneer Nalagath and Shri V.Esaki implicated him.
96. As deposed by Shri V.Esaki in his statement recorded under Section 108 of the Customs Act, 1962, Shri Mohameed Farooq Ali, director of M/s. Spice Deccan Impex Private Limited, Andra Pradesh requested Shri V.Esaki, Company Secretary, to provide his services for appointment of two new directors in one firm M/s. SFEPL, wherein one was Shri Yogendra Pratap Varma who was the employee in his firm M/s. Spice Deccan Impex Private Limited and another one was Shri Suneer Nalagath, Kerala; Shri Yogendra Pratap Varma (Mob. No.-85550-90454) was in contact with Shri V.Esaki for his & Suneer's appointment as new directors in M/s. SFEPL; Shri Yogendra Pratap Varma provided Shri V.Esaki the KYC documents i.e. mail id, Identity proof, mobile number & passport size photo etc. of him & Suneer Nalagath through whatsapp; Shri Yogendra Varma gave to Shri V.Esaki digital signature of him & Suneer Nalagath through courier for generating DIN number for new appointed directors viz. Shri Yogendra Pratap Varma & Shri Suneer Nalagath; Shri Yogendra gave contact number of one Shri Ashish, Company Secretary of old directors and requested him to contact him.
97. Further Shri Feroze Ahmed were issued summons of dated.16.5.2022 for appearance on 26.5.2022& 22.7.2023 for his appearance on 24.7.2023. In response to the summons dated.22.7.2023, vide email dated. 23.7.2023, Shri Feroze Ahamed stated that for the very same case he had received the similar notice and accordingly, he had complied and his statement was recorded on 22.07.2023; he is heart patient and hence unable to appear Ahmedabad office on 24.07.2023. Also forwarded the required bank statement and employee details by mail. It is important to mention that he failed to appreciate the fact that DRI, Ahmedabad was conducting investigation and after going through his statement dated. 22.7.2023 only, investigating agency had issued to him another summons for his appearance on 24.7.2023 to record his further statement. Further, if he was intended to co-operate in the investigation, he could have requested for another date but he did not do so. Further, his submission with respect to the submission of Bank statement is concerned, he failed to submit the statement for the period from 1.4.2021 to 31.3.2022 for HDFC Bank Account No. 50200026301114, which is very well relevant to the period of investigation. Further, he had submitted employee details as below, "M/S Roshan International: No staff, M/s Hana food industries Shafi Mohammed & Boobalan". However he did not forward the details with supporting documents. His non co-operational attitude clearly raised a doubt of his malafied intent.
98. Shri Farooq Ali was issued summons on dated. 16.5.2022, 16.8.2023, 21.7.2023(@ HZU), 22.7.2023 & 6.9.2023, however he failed to present himself before the DRI. In respect to the summons dated 06.09.2023 issued to appear on 11.09.2023 (received through email 18.9.2023), Shri Mohammed Farooq Ali submitted that he was not in station; he has no

knowledge of any information pertaining to M/s. S.F. Express Private Limited and therefore the requirement of his deposing to any statement or furnishing of any documents, pertaining to M/s. S.F. Express, does not and would not arise ; by referring to the judgement of the Hon'ble High Court Madras in W.p.No.24062/2021 dated 29.11.2021, more particularly at paragraphs 78 to 90 that categorically stated that merely because the Offices attached to the Directorate of Revenue Intelligence, have all India jurisdiction, the same would not ipso facto mean that they can interfere with the functioning of identical officers of the Directorate of Revenue Intelligence, under whose jurisdiction, I am functioning and operating the business.; he had no knowledge of any export / import undertaken by M/s. S.F.Express Private Limited and have nothing to state in the matter;requested to take this communication as his deposition under section 108 of the Customs Act, 1962; if any further statement has to be recorded he may be permitted to appear before the Office of the Directorate of Revenue Intelligence, at Hyderabad. However, he failed to appreciate the facts that summons dated 21.7.2023 was issued for recording of his statement at DRI, Hyderabad and further as reported by Deputy Director,DRI, HZU vide letter F.No.DRI/HZU/Misc./D/2022 Dated 24.7.2023, officers of DRI, Hyderabad also visited his residence on 21.7.2023 to record his statement at his home, however, they were informed that he was not available.Further, summons dated 22.7.2023 was served to him through his wife Ms Saira, however, he neither come forward nor contacted the officers on that day or afterwards.Thus, if he intended to appear and co-operate in the investigation, then he could have approach to the officer at DRI,Hyderabad or Ahmedabad but he did not do so, which clearly shows his wrong intent.

- 99.** It is clear that Shri Feroze Ahmed & Shri Muhammad Farooq Ali were the masterminds behind the whole gamut of the fraudulent diversion of the duty-free Areca Nuts cleared from M/s SFEPL, KASEZ, Gandhidham to the DTA. They hatched the conspiracy along with Shri Suneer Nalagath, Shri Yogendra Pratap Varma & Shri Naresh. They purchased the SEZ unit M/s SFEPL with a clear intention to make it gate way for diversion of duty-free goods in the DTA in order to evade Customs Duty on import of various goods. M/s SFEPL imported Areca Nuts and cleared the same to DTA under the guise of purported Exports to Bangladesh. Shri Muhammad Farooq Ali deliberately did not appear before the investigating officers and dishonored repeated summons.
- 100.** Though in his voluntarily statement of dated.22.7.2023, Shri Feroze Ahmed denied having any connection with M/s SFEPL /Persons involved in the present case, his non-cooperative attitude and malafide intention to avoid his appearance before investigating officers for tendering statement and the evidences & statements of various concerned persons available on record clearly indicate his deep involvement in the evasion of Customs Duty through M/s SFEPL by way of diversion of duty-free imported goods, in the guise of fraudulent export into DTA of India. Hence, looking to the facts and evidences of the case as narrated above, he can not deny his responsibility and accountability in non-fulfilling the required export obligation of the impugned goods, Similarly, he cannot be discharged from the organized fraud and criminal conspiracy committed by him.
- 101.** Further, Though Shri Muhammad Farooq Ali vide email dated 18.9.2023 has denied having any connection with the companies/persons involved in the present case and for having documents/details/information relating to the import/export in present case, available with him, his non-cooperative attitude and malafide intention to avoid his appearance before investigating officers for tendering statement and the evidences & statements of various concerned persons available on record clearly indicate his deep involvement in the evasion of Customs Duty through M/s. SFEPL by way of diversion of duty-free imported goods, in guise of fraudulent export into DTA of India. Though he was the mastermind of the case, he did not reveal any facts of the case regarding the ultimate

domestic buyers of goods, payment chain and documents relating to diversion of the goods in DTA and other aspects. Hence, looking to the facts and evidences of the case as narrated above, he can not deny his responsibility and accountability in non-fulfilling the required export obligation of the impugned goods, Similarly, he cannot be discharged from the organized fraud and criminal conspiracy committed by him.

102. Thus by his acts of omission and commission, it is clear that Shri Feroze Ahmed & Shri Muhammad Farooq Ali have actively participated in the illegal activities and indulged in diversion of duty-free Areca Nut by M/s SFEPL, KASEZ, Gandhidham under the guise of purported export to Bangladesh, which they knew or had reasons to believe were liable to confiscation under Section 111 and 113 of the Customs Act, 1962. Further, it is also evident that by the acts of commission/omission of Shri Feroze Ahmed & Shri Muhammad Farooq Ali, also concerned in removing and selling the duty-free imported Areca-nuts in the domestic market which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j), 111(l), 111(o), 113(d) 113(i) and 113(k) of the Customs Act, 1962, thereby rendering themselves liable for penal action under Section 112(a), 112(b), 114(i), 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the KASEZ and then diverted into DTA without order of proper officer; violating provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975, the same were attempted to be exported improperly and got unloaded and diverted into DTA without the permission of the proper officer. Further, Shri Feroze Ahmed & Shri Muhammad Farooq Ali, also made them liable for penal action under Section 114A of the Customs Act, 1962 in much as their involvement in the said diversion of duty-free Areca Nuts into DTA, which resulted non-payment of duty and also made them liable for penal action under Section 114AA in as much as they knowingly or intentional makes, signs or uses or causes to be made signed or used, wrong declaration or documents by showing the clearance of the subject goods for export to Bangladesh, whereas goods were diverted to the domestic market. They were issued summons, however Shri Feroze Ahmed & Shri Muhammad Farooq Ali always avoided their presence before the investigating agency, which make them both liable for penalty under section 117 of the Customs Act, 1962.

Role of Ms Beermati & Ms Renu Kataria, Director of M/s SFEPL

103. M/s SFEPL was granted Letter of Approval F. No. KASEZ/IA/15/2019-20/10980 dated 23.12.2019 by the Development Commissioner, KASEZ, Gandhidham as approved under UAC (Unit Approval Committee) Meeting No.149/2019-20 Dated 10.10.2019, to set up a Trading Activity and Warehousing Service activity in Kandla SEZ subject to conditions imposed therein and all the rules and regulations related to SEZ/Customs/Foreign Trade were binding on them. In terms of condition of Letter of Approval, M/s SFEPL executed Bond Cum Legal Undertaking for SEZ unit (as per Rule 22) 18/2019-20 Dated. 7.1.2020 for Rs. 25,00,000/-(Rupees Twenty Five Lacs only) with DC, KASEZ. The subject Bond Cum Legal Undertaking was signed by Ms. Renu Kataria and Ms. Beermati.

104. Further, Vide letter dated KASEZ/CUS/P&I/03/2021-22 Dated 10.9.2021, Deputy Commissioner, KASEZ, Gandhidham informed that at the time of issuance of the LOA two directors of the unit were M/s Renu Kataria and Ms Beermati. M/s SFEPL vide letter dated. 27.7.2021 had informed about the change in directorship/shareholding patten of the unit, wherein it was informed that Shri Suneer Nalagath and Shri Yogendra Pratap had been

appointed as the new Director in the said company. Further, the unit had not informed anything about the addition of two Additional Directors i.e. Shri Naresh and Shri Tarun Dagar and as per the instruction No.89 Dated 17.5.2018 issued by the Department of commerce, M/s SFEPL was under obligation to inform about the change of director/share holding pattern, whereas M/s SFEPL had failed to comply with the above said obligation.

105. As evident from the deposition of Shri Naresh during recording of his statement 4.10.2021 that M/s. SFEPL had 10000 share having value of Rs. 10 per share; initially, out of 10000 Smt. Renu Kataria and his mother Smt. Beermati both have 5000-5000 share; transfer of shareholding from Smt. Renu Kataria and Smt. Beermati to Shri Suneer Nalagath & Shri Yogendra Pratap Varma were happened in two steps. First, 50% shares (5000 shares) were transferred on 26.03.2021 and remaining 50% shares (5000 shares) were transferred on 14.06.2021. They received Rs. 1,00,000/- in cash and Smt. Renu Kataria and his mother Smt. Beermati gave receipt/acknowledgement in token of receiving the said amount of Rs. 1,00,000, shares of M/s SFEPL were fully transferred on 14.6.2021, whereas exports consignments in question(attributed to 16 Bills of Export out of the disputed 26 bills of Export) were took place in the till 14.6.2021 only.

106. It is evident from the facts that M/s SFEPL and their director Ms Renu Kataria & Ms Beermati were issued SCN bearing No. KASEZ/IA/015/2015-16 Dated 16.2.22 proposing penal action for contravention the provisions of FT (D&R) Act, 1992 & SEZ Act, 2005 by the Development Commissioner, KASEZ.

107. As evident from the facts that subject 26 Bills of Export were filed by M/s SFEPL and the digital signature of Shri NARESH was utilized for filing the subject bills of Exports. Accordingly, they both cannot deny their responsibility and accountability in non-fulfilling the required export obligation of the impugned goods M/s SFEPL, Similarly, they cannot be discharged from the organized fraud and criminal conspiracy committed by M/s SFEPL.

108. Thus by his acts of omission and commission, it is clear that M/s Renu Kataria and Ms Beermati have actively participated in the illegal activities and indulged in diversion of duty-free Areca Nut by M/s SFEPL, KASEZ, Gandhidham under the guise of showing export to Bangladesh, which they knew or had reasons to believe were liable to confiscation under Section 111 and 113 of the Customs Act, 1962. Further, it is also observed that by the acts of commission/omission of M/s Renu Kataria and Ms Beermati also concerned in removing and selling the duty-free imported Areca-nuts in the domestic market which he knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j) ,111(l), 111(o), 113(d) 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a),112(b), 114(i), 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the KASEZ and then diverted into DTA without order of proper officer; violating provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES} issued by Spices Board), Import policy of ITC (HS} for CTH 080280/08029000 of Customs Tariff Act, 1975, the same were attempted to be exported improperly and got unloaded and diverted into DTA without the permission of the proper officer.

109. Ms Renu Kataria and Ms Beermati are not liable for penal action under Section 114A of the Customs Act, 1962 as the liability of duty is fastened upon M/s. SFEPL.

110. I find that they have made themselves liable for penal action under Section 114AA in as much as they knowingly or intentional makes, signs or uses or causes to be made signed or used, wrong declaration or documents by showing the clearance of the subject goods for export to Bangladesh, whereas goods were diverted to the domestic market. Ms Renu Kataria and Ms Beermati were issued summons, however they did not present themselves on the said date. Above act and omission on the part of M/s Renu Kataria and Ms Beermati also make them liable for penalty under section 117 of the Customs Act, 1962.

Role of Shri Naresh and Tarun Dagar, Director of M/s SFEPL

111. It is evident from the deposition by Shri Naresh, Director of M/s. SFEPL, during recording of his statement on dated. 4.10.2021 that M/s. SFEPL was established in 2015 and at that time his aunty (Mamiji) Smt. Renu Kataria and his mother Smt. Beermati were two directors in that company; Shri Tarun Dagar was appointed as directors of M/s. SFEPL on 16 October 2019 for Import-export work; he was appointed as director of the M/s. SFEPL on 12 Feb, 2020; Shri Suneer Nalagath and Shri Yogendra Pratap Varma were appointed as directors of M/s. SFEPL on 26.03.2021; further he and Shri Tarun Dagar resigned from the said company on 07.04.2021; Transfer of shareholding from Smt. Renu Kataria and Smt. Beermati to Shri Suneer Nalagath & Shri Yogendra Pratap Varma were happened in two steps. i.e. First 50% shares on 26.03.2021 and remaining 50% shares on 14.06.2021. They received Rs.1,00,000/- in cash and Smt. Renu Kataria and his mother Smt. Beermati gave receipt/acknowledgement in token of receiving the said amount of said amount. He was the authorized signatory of M/s. SFEPL till his resignation. Further in respect of digital signature; he provided his digital signature to his consultant for purpose of Custom clearance purpose and any administration purpose at KASEZ; he sent his digital signature to Shri Ganesh Naidu of M/s. Cross Trade Link, Gandhidham on 12.04.2021; it might be possible that his digital signature had been misused for filing 09 Bills of Entry & 26 Bill of Export by M/s. Cross Trade Link, Gandhidham for the same without his knowledge.

112. Further, Vide letter dated KASEZ/CUS/P&I/03/2021-22 Dated 10.9.2021, Deputy Commissioner, KASEZ, Gandhidham informed that M/s SFEPL vide letter dated. 27.7.2021 had informed about the change in directorship/shareholding pattern of the unit, wherein it was informed that Shri Suneer Nalagath and Shri Yogendra Pratap had been appointed as the new Director in the said company. Further, the unit had not informed anything about the addition of two Additional Directors i.e. Shri Naresh and Shri Tarun Dagar and as per the instruction No.89 Dated 17.5.2018 issued by the Department of commerce, M/s SFEPL was under obligation to inform about the change of director/share holding pattern, whereas M/s SFEPL had failed to comply with the above said obligation.

113. It is evident from the deposition by Shri Tarun Dagar, Director of M/s. SFEPL, during recording of his statement on dated. 4.10.2021 he was inactive in M/s SFEPL; Shri Naresh was the authorized signatory in M/s SFEPL; he had given Rs.2 Lakhs in cash to Shri Naresh during acquiring entity at KASEZ; after resigning from the Directorship from M/s. S.F.Express Pvt. Ltd., he received a sum of Rs. 1 lakh in cash against his investment of Rs. 2 lakhs in

the company.

114. It is evident from the facts mentioned in the above para that Shri Naresh and Shri Tarun Dagar were appointed as Directors of M/s SFEPL, however, above change of directorship had been reported to the KASEZ authority. It is important to mention that shareholdings of M/s SFEPL were fully transferred on 14.6.2021, whereas export consignments in question (attributed to 16 Bills of Export out of the disputed 26 bills of Export) took place till 14.6.2021 only. Further, the digital signature was given by Naresh to his consultant. As evident from the facts that subject 26 Bills of Export were filed by M/s SFEPL and the digital signature of Shri NARESH was utilized for filing the subject bills of Exports. Accordingly, they both cannot deny their responsibility and accountability in non-fulfilling the required export obligation of the impugned goods M/s SFEPL. Similarly, they cannot be discharged from the organized fraud and criminal conspiracy committed by M/s SFEPL.

115. Thus by his acts of omission and commission, it is clear that Shri Naresh and Shri Tarun Dagar have actively participated in the illegal activities and indulged in diversion of duty-free Areca Nut by M/s SFEPL, KASEZ, Gandhidham under the guise of showing export to Bangladesh, which they knew or had reasons to believe were liable to confiscation under Section 111 and 113 of the Customs Act, 1962. Further, it is also clear that by the acts of commission/omission of Shri Naresh and Tarun Dagar also concerned in removing and selling the duty-free imported Areca-nuts in the domestic market which he knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j), 111(l), 111(o), 113(d), 113(i) and 113(k) of the Customs Act, 1962, thereby rendering themselves liable for penal action under Section 112(a), 112(b), 114(i), 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the KASEZ and then diverted into DTA without order of proper officer; violating provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975, the same were attempted to be exported improperly and got unloaded and diverted into DTA without the permission of the proper officer.

116. However, Shri Naresh and Tarun Dagar are not liable for penal action under Section 114A of the Customs Act, 1962 as the duty liability is fastened upon M/s. SFEPL and penalty under S.114A is imposed on person liable to pay duty.

117. I find that they are liable for penal action under Section 114AA in as much as he knowingly or intentional makes, signs or uses or causes to be made signed or used, wrong declaration or documents by showing the clearance of the subject goods for export to Bangladesh, whereas goods were diverted to the domestic market. Shri Naresh and Tarun Dagar were issued summons, however none of the date they presented themselves. Above act and omission on the part of Shri Naresh and Tarun Dagar also make them liable for penalty under section 117 of the Customs Act, 1962.

Role of Shri Krishan Kumar Sharma, Proprietor of M/s Vishal Freight Carrier, Gandhidham

118. I find that the show cause notice has proposed penal actions under various sections upon Shri Krishan Kumar Sharma, proprietor of M/s. Vishal Freight Carrier.

118.1. Shri Krishan Kumar Sharma in his voluntarily statement of dated. 5.8.2021 deposed that M/s Vishal Freight Carrier had transported 26 consignments of areca nut/areca nuts of M/s. SFEPL, KASEZ through 26 hired trucks to Jaipur, but destination was mentioned as Mongla (Bangladesh) in the Lorry Receipt; handed over the Lorry receipt book to Rupesh; M/s. Vishal Freight Carrier had to prepare Lorry receipt from KASEZ to Mongla (Bangladesh), however, they had to transport the said areca nuts from KASEZ to Jaipur only and from Jaipur said consignment of Areca nuts were to be transfer into different trucks; sometimes they used to prepare Lorry Receipt in their office situated at Shop No. 70, Kutch Arcade, NH-08, Gandhidham-370201 also; Shri Rupesh had given him number of Shri Satish (Mob: 99580-78505) and address Plot No. 68, Pratap Nagar Vishtar, VKIA Road no.-5, Jaipur, who had to take the delivery of the aforesaid transported areca nuts in Jaipur and to transport them in another trucks; transportation charges of Rs 62,000/- per truck was fixed with Shri Ziyabhai and out of 16 lakhs, till now he had received Rs. 5,00,000/- in cash, which were received as advance payment for fuel; they had not raised any invoice to M/s SFEPL; as confirmed by their drivers, the areca nuts were transferred at roadside areas.

118.2 Further, from voluntarily statement of Shri Rupesh Natwarlal Jadwani of dated. 5.8.2021 it is seen that Shri Ziya Faisal informed Shri Krishankumar that he had to prepare Lorry receipt from KASEZ to Mongla, whereas transportation of imported goods would be done by Krishankumar till Jaipur only. Shri Krishankumar accepted his proposal. Shri Ziya Faisal introduce to him and Shri Krishankumar with Shri Rajabhai; Ziyabhai would provide Shri Krishankumar more business; in all the 26 LRS w.r.t. to transportation done by M/s Vishal Freight Carrier from M/s S.F.Express till Jaipur. He (Shri Rupesh) received Rs. 7000/- towards his commission.

118.3 On the basis of above, the show cause notice alleges that Shri Krishan Kumar Sharma had complete idea about the whole conspiracy as evident from his own deposition corroborated with the statement of the other related persons that though areca nuts were to transport upto Jaipur, Lorry receipt was to be prepared from KASEZ to Mongla. Thus, it appeared that he had connived with the masterminds in evasion of Customs Duty as they were deliberately preparing transportation documents/LRs/Bilties showing destination of goods as Bangladesh whereas the goods were actually sent up to Jaipur.

118.4 Shri Krishan Kumar in his submission has argued that during his statement dated 05.08.2021, he stated that the lorry receipts were prepared by Shri Rupesh himself and the noticee was not involved in the preparation of lorry receipts. He acted as transporter and delivered goods in Jaipur as per the instructions of SF Express, KASEZ. Further, merely because the lorry receipts were issued for transportation of goods from KASEZ to Mongla and in fact the goods were delivered at Jaipur by Noticee, does not infer and proves the allegation of the Department that the noticee was involved in the conspiracy and had pre-knowledge about the diversion of goods as alleged in the notice. He has referred on various case laws to argue that the allegations in show cause notices are vague and without any evidence.

118.5. He further argued that all lorry receipts for 26 consignments trucks were prepared by Rajabhai of SFE, KASEZ. The lorry receipt book was taken by

Shri Rupesh Natwarlal Jadwani and the same were prepared by SFE in KASEZ. The said fact regarding preparation of lorry receipts by SFE has been specifically stated by Mr. Rupesh Natwarlal Jadwani in his statement dated 05.08.2021.

118.6. He also emphasized that none of the statements of the co-noticees recorded under Section 108 of the Customs Act, 1962 proves that the noticee Mr. Krishan Kumar Sharma was informed by SFE about the diversion of duty free imported goods into domestic market instead of exporting the same to Bangladesh.

118.7 I find that Shri Krishan Kumar Sharma hired 26 trucks from different transporters and transported 26 consignments of goods from KASEZ to Jaipur, Rajasthan. As per the instructions of Mr. Ziya bhai and Mr. Rajabhai to Mr. Rupesh, the goods were to be delivered to Mr. Satish in Jaipur. From the statement of Shri Krishan Kumar Sharma and Shri Rupesh Natwarlal, Mr. Ziyabhai and Mr. Rajabhai only proposed transportation of goods from KASEZ to Jaipur against consideration of Rs. 62,000/- per truck for which Shri Rupesh received Rs. 1000/- per truck as commission. From the statements, involvement of Shri Krishan Kumar sharma in the conspiracy of diversion of goods into DTA is not forthcoming as his job was to handover the goods at Jaipur. Thus the argument of the noticee that the show cause notice has not placed evidence to establish that he was aware of the diversion of the imported goods into DTA has merit.

118.8 However, there are circumstantial evidences, given below, which establishes that he abetted the diversion of goods as given below:-

(i) M/s. Vishal Freight Carrier was entrusted with the task of transporting goods from KASEZ to Bangladesh and the same was duly reflected in the Lorry receipts. Even though the Lorry Receipts were prepared by persons other than Shri Krishan Kumar Sharma, the effective control over the transportation was with Shri Krishan Kumar Sharma as being a transporter it was his responsibility to safely transport the goods to destination.

(ii) M/s. Vishal Freight Carrier was fully aware of the fact that the goods being transported were Areca nuts which is a highly sensitive product and prone to evasion of duties of customs.

(iii) M/s. Vishal Freight Carrier had knowledge that the goods were meant for Bangladesh (a foreign country) therefore unloading and handing over the goods to someone else in Jaipur can not be accepted as a mere greed for more business as being a transporter he ought to know that goods leaving KASEZ and meant for foreign country can not be unloaded at any other place without the permission of Customs.

118.9 In view of the above discussion and findings, I hold that Shri Krishan Kumar Sharma, Prop. M/s. Vishal Freight Carrier has rendered the export goods liable for confiscation under Section 113, thus rendering himself liable for penal action under Section 114 of the Customs Act, 1962. However, I don't find him liable for penal action under Section 112 as he was not actively involved in the diversion of goods.

118.10 With regard to penal provisions under Section 114AA of the Customs Act, 1962, I hold him liable for penal action under Section 114AA as he, being the transporter, has declared false/incorrect information in the lorry receipts for the purpose of Customs Act, 1962.

Role of Shri Rupesh Natwarlal Jadwani (Mobile No.-9099588811) (Transporter broker) Proprietor of M/s Leading Logistics,Gandhidham

119. I find that as deposed by Shri Krishan Kumar Sharma, Proprietor of M/s Vishal Freight Courier in his voluntarily statement of dated. 5.8.2021 recorded under Section 108 of Customs Act, 1962, Shri Rupesh approached him; participated in preparation of Lorry Receipt for KASEZ TO Mongla along with Shri Ziyabhai, wherein they mentioned the destination of subject consignment as Mongla (Bangladesh); Shri Rupesh had given him number of Shri Satish (Mob: 99580-78505) and address Plot No. 68, Pratap Nagar Vishtar, VKIA Road no.-5, Jaipur, who had to take the delivery of the aforesaid transported areca nuts in Jaipur and to transport them in another trucks.

120. Further, as evident from his voluntarily statement of dated. 5.8.2021 recorded under Section 108 of Customs Act, 1962, he introduced Shri Ziya H. Faisal to Shri Krishankumar Sharma, Prop. of M/s. Vishal Freight Carrier; Ziya Hussein Faisal informed that for first consignment he would require 5 trucks daily and almost 50 trucks would be needed within 15-20 days to transport 'Supari'. Shri Ziya H. Faisal informed that documents i.e. Invoice, packing list of first consignment would be for Bangladesh and goods would be loaded from SF Express Pvt. Ltd., KASEZ, for transporting upto Jaipur and goods would be transferred to another vehicle at Jaipur; handed over the Lorry Book to Rajabhai at KASEZ gate and in this way LRs were prepared by Rajabhai at SF Express, KASEZ; his role was to communicate between Ziyabhai/Rajabhai and Shri Krishan Kumar Sharma for movement of trucks since pre-arrival of empty truck at SF Express to unloading of the goods from their transport truck to some other transport truck/vehicle at Jaipur; shri Ziyabhai gave him mobile number 99580-78505 of Shri Satish, with an address as "Plot No. 68, Pratap nagar Vistar, Murlipura, Jaipur (near transport nagar)" which was given/intimated by him to the truck drivers for crossing of goods at Jaipur; He received Rs. 7000/- towards his commission.

121. It is evident that Shri Rupesh Natwarlal Jadwani , Transport Broker, had complete idea about the whole conspiracy as evident from his own deposition and from deposition of the other related person that though areca nuts were to transport upto Jaipur, Lorry receipt was prepared from KASEZ to Mongla (Bangladesh). Thus, he had connived with the masterminds in evasion of Customs Duty as they were deliberately preparing transportation documents /LRs/Bilties showing destination of goods as Bangladesh whereas the goods were actually sent up to Jaipur.

122. In view of the above, it is clear that Shri Rupesh Natwarlal Jadwani , Transport Broker, had complete knowledge about the said illegal activities and knowingly abetted the fraudulent export/diversion of the duty-free imported areca nuts which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, it is also clear that by the acts of commission/omission of Shri Krishan Kumar Sharma also concerned in removing which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j) ,111(l), 111(o), 113(d) 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the Customs area/warehouse without order of proper officer; in violation of provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety

Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975, provisions relating to unloading of imported goods from conveyance under supervision of proper officer and finally diverted in Domestic Tariff Area which resulted in evasion of the substantial Customs duty. Since Shri Rupesh Natwarlal Jadwani , Transport Broker, knowingly and intentionally made/signed/used or caused to be made/signed /used the Transport Documents and other related document which was false or incorrect, in material particular, for the purposes of evading the Customs Duty, therefore Shri Rupesh Natwarlal Jadwani , Transport Broker, shall also be separately liable to penalty under Section 114AA of the Customs Act, 1962.

Role of Shri Ziya Hussein Faisal Alias Ziyabhai (Mobile No.-9716664598 & 971588593017)(Passport No. H7349734) Employee of M/s SFEPL.

123. I find that as deposed by Shri Krishan Kumar Sharma, Proprietor of M/s Vishal Freight Courier in his voluntarily statement of dated. 5.8.2021 recorded under section 108 of the Customs Act, 1962, Shri Ziyabhai introduced himself as employees of M/s. SFEPL , KASEZ; wanted to transport areca nuts of M/s. SFEPL from KASEZ to Bangladesh; M/s. Vishal Freight Carrier had to prepare Lorry receipt from KASEZ to Mongla (Bangladesh), however, they had to transport the said areca nuts from KASEZ to Jaipur only and from Jaipur they would transfer the said areca nuts into different trucks; participated in preparation of Lorry Receipt for KASEZ TO Mongla, Bangladesh along with Shri Rupesh, wherein they mentioned the destination of subject consignment as Mongla (Bangladesh); the number of Shri Satish and his address was given to Rupesh by Shri Ziyabhai; Shri Ziyabhai offered him more business in future; transportation charges of Rs 62,000/- per truck was fixed with Shri Ziyabhai.

124. I further find that as deposed by Shri Rupesh Natwarlal Jadwani in his statement recorded on 05.08.2021 under Section 108 of Customs Act, 1962 that Shri Ziya H. Faisal introduced to him as manager of M/s SFEPL ; he introduced Shri Ziya H Faisal to Shri Krishankumar Sharma, prop. of M/s. Vishal Freight Carrier; Ziya Hussein Faisal informed that for first consignment he would require 5 trucks daily and almost 50 trucks will be needed within 15-20 days to transport 'Supari'; Shri Ziya H. Faisal informed to Shri Krishanan kumar that documents i.e. Invoice, packing list of first consignment will be for Bangladesh and goods will be loaded from SF Express Pvt. Ltd., KASEZ, for transporting upto Jaipur and goods will be transferred to another vehicle at Jaipur; Shri Ziya Faisal informed Shri Krishankumar that he had to prepare Lorry receipt from KASEZ to Mongla, whereas transportation of imported would be done by Krishankumar till Jaipur only; Shri Ziya Faisal introduce to him and Shri Krishankumar with Shri Rajabhai; he had handed over the Lorry Book to Rajabhai at KASEZ gate and in this way LR's were prepared by Rajabhai at SF Express, KASEZ; Shri Ziyabhai gave him mobile number 99580-78505 of Shri Satish, with an address as "Plot No. 68, Pratap nagar Vistar, Murlipura, Jaipur (near transport nagar)" which was given/intimated by him to the truck drivers for crossing of goods at Jaipur.

125. Shri Ziya Hussein Faisal was issued summons on dated 9.8.2021, 18.8.2021, 10.9.2021, 22.10.2021 & 16.5.2022, however, none of the occasion, he presented himself before the investigation agency or any representation/communication were received.

126. It is clear that Shri Ziya Hussein Faisal Alias Ziyabhai, Employee of M/s SFEPL had a completely idea about the whole conspiracy as evident from the deposition of the other related person that though areca nuts were to

transport upto Jaipur, Lorry receipt was prepared from KASEZ to Mongla (Bangladesh). Thus, it is clear that he had connived with the masterminds in evasion of Customs Duty as they were deliberately preparing transportation documents /LRs/Bilties showing destination of goods as Bangladesh whereas the goods were actually sent up to Jaipur.

127. In view of the above, it is apparent that Shri Ziya Hussein Faisal Alias Ziyabhai, Employee of M/s SFEPL had knowledge about the said illegal activities and knowingly abetted the fraudulent export/diversion of the duty-free imported areca nuts which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, by the acts of commission/omission of Shri Krishan Kumar Sharma also concerned in removing which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j), 111(l), 111(o), 113(d), 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the Customs area/warehouse without order of proper officer; in violation of provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975, provisions relating to unloading of imported goods from conveyance under supervision of proper officer and finally diverted in Domestic Tariff Area which resulted in evasion of the substantial Customs duty. Since Shri Ziya Hussein Faisal Alias Ziyabhai, knowingly and intentionally made/signed/used or caused to be made/signed /used the Transport Documents and other related document which was false or incorrect, in material particular, for the purposes of evading the Customs Duty, therefore Shri Ziya Hussein Faisal Alias Ziyabhai, shall also be separately liable to penalty under Section 114AA of the Customs Act, 1962. Shri Ziya Hussein Faisal Alias Ziyabhai, was issued summons, however none of the date he presented himself. Above act and omission on the part of Shri Ziya Hussein Faisal Alias Ziyabhai also make him liable for penalty under section 117 of the Customs Act, 1962.

Role of Shri Rajabhai Alias Amir Javed Hussain (Mobile No.-9054323751)

128. I find that as evident from the voluntarily statement of Shri Rupesh Natwarlal Jadwani of dated. 5.8.2021 recorded under section 108 of the Customs Act, 1962, Shri Rupesh handed over the Lorry Book to Rajabhai at KASEZ gate and LR's were prepared by Rajabhai at SF Express, KASEZ; Shri Ziyabhai introduce Rupesh and Shri Krishnan kumar with Shri Rajabhai; His role was to communicate between Ziyabhai/Rajabhai and Shri Krishan Kumar Sharma for movement of trucks since pre-arrival of empty truck at SF Express to unloading of the goods from their transport truck to some other transport truck/vehicle at Jaipur,

129. It is clear that Shri Rajabhai had complete idea about the whole conspiracy that though areca nuts were to transport upto Jaipur, Lorry receipt was prepared from KASEZ to Mongla (Bangladesh). He is the person who have prepared the Lorry Receipt. Thus, he had connived with the masterminds in evasion of Customs Duty as they were deliberately preparing transportation documents /LRs/Bilties showing destination of goods as Bangladesh whereas the goods were actually sent up to Jaipur.

130. Shri Rajabhai Alias Amir Javed Hussain was issued summons on dated

9.8.2021, 18.8.2021, 10.9.2021, 22.10.2021 & 16.5.2022, however, none of the occasion, he presented himself before the investigation agency or any representation/communication were received.

131. In view of the above, it is clear that Shri Rajabhai had knowledge about the said illegal activities and knowingly abetted the fraudulent export/diversion of the duty-free imported areca nuts which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, by the acts of commission/omission of Shri Krishan Kumar Sharma also concerned in removing which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j), 111(l), 111(o), 113(d), 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the Customs area/warehouse without order of proper officer; in violation of provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975, provisions relating to unloading of imported goods from conveyance under supervision of proper officer and finally diverted in Domestic Tariff Area which resulted in evasion of the substantial Customs duty. Since Shri Rajabhai knowingly and intentionally made/signed/used or caused to be made/signed/used the Transport Documents and other related document which was false or incorrect, in material particular, for the purposes of evading the Customs Duty, therefore Shri Rajabhai, shall also be separately liable to penalty under Section 114AA of the Customs Act, 1962. Shri Rajabhai, was issued summons, however none of the date he presented himself. Above act and omission on the part of Shri Rajabhai also make him liable for penalty under section 117 of the Customs Act, 1962.

Role of Shri N Satheesh/Satish (Mobile No. 99580-78505)

132. I find that as deposed by Shri Krishan Kumar Sharma, Proprietor of M/s Vishal Freight Courier in his voluntarily statement of dated. 5.8.2021 recorded under Section 108 of the Customs Act, 1962, Satish was the person who had to take delivery of the subject consignment at Jaipur and the number of Shri Satish and his address was given to Rupesh by Shri Ziyabhai;

133. I further find that as deposed by Shri Rupesh Natwarlal Jadwani in his statement recorded on 05.08.2021 under Section 108 of Customs Act, 1962 that Shri Ziyabhai gave him mobile number 99580-78505 of Shri Satish, with an address as "Plot No. 68, Pratap nagar Vistar, Murlipura, Jaipur (near transport nagar)" which was given/intimated by him to the truck drivers for crossing of goods at Jaipur.

134. Further, deposed by Shri Ranveer Singh in his voluntarily statement of dated.9.8.2021 recorded under Section 108 of the Customs Act, 1962 Shri Satish (mobile number 9958078405) came to his transport company office and informed that he had to send supari to Nagpur and asked him for a truck; Satish ordered 14 trucks of areca nut from Gandhidham and when those trucks reached Jaipur, all the goods (areca nut) from those trucks were shifted to the trucks given by him in front of his office; all the areca nuts were delivered to Nagpur by the trucks given by him, and the person to whom he got the delivery of areca nut, that person's mobile number was 8080801986; transport related documents such as tax invoice, e-Way bill, etc. in Delhi was

got prepared/provided by Shri Satish and the same were sent to him by the owner of M/s Jai Balaji Roadways.

135. As evident from the voluntarily statement of Shri Ashish Goel, Manager of M/s. Jai Balaji Roadways (Regd.) recorded on 01.10.2021 under Section 108 of the Customs Act, 1962, was in touch with Shri Ankur; Managed unloading and loading and transportation of the subject betelnut consignment from Jaipur to Nagpur ;shri Satish used to get mobile number of truck drivers provided by M/s. Raipur Orissa Transport on behalf of M/s. Jai Balaji Roadways and accordingly he was in touch with drivers for delivery at Nagpur;

136. Shri Satheesh was issued summons on dated 16.5.2022 and message was conveyed through her sister available at the time of search conducted at a known place of Shri Satheesh, However till now he failed to present himself before the and not any representation/communication have been received so far.

137. I find that Shri Satheesh had complete idea about the whole conspiracy that though areca nuts were to transport upto Jaipur, Lorry receipt was prepared from KASEZ to Mongla (Bangladesh). He is the person who had to take delivery of the said goods at Jaipur and then to shift into another trucks for their transportation to Nagpur and also to be delivered at Nagpur. Thus, it is apparent that he had connived with the masterminds in evasion of Customs Duty as they were deliberately preparing transportation documents /LRs/Bilties/E-Way Bills showing destination of goods as Bangladesh whereas the goods were actually sent up to Jaipur. Further, through subject goods travelled from Jaipur to Nagpur but LR/E-way bills were prepared from Delhi to Nagpur and Further, consignor details was also fake in nature as it was in not in existence.

138. In view of the above, it is established that Shri Satheesh had all the knowledge about the said illegal activities and knowingly abetted the fraudulent export/diversion of the duty-free imported areca nuts which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, it is also clear that by the acts of commission/omission of Shri Krishan Kumar Sharma also concerned in removing which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j) ,111(l), 111(o), 113(d) 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the Customs area/warehouse without order of proper officer; in violation of provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975, provisions relating to unloading of imported goods from conveyance under supervision of proper officer and finally diverted in Domestic Tariff Area which resulted in evasion of the substantial Customs duty. Since Shri Satheesh knowingly and intentionally made/signed/used or caused to be made/signed /used the Transport Documents and other related document which was false or incorrect, in material particular, for the purposes of evading the Customs Duty, therefore Shri Rajabhai, shall also be separately liable to penalty under Section 114AA of the Customs Act, 1962. Shri Satheesh, was issued summons, however none of the date he presented himself. Above act and omission on the part of Shri

Satheesh also make him liable for penalty under section 117 of the Customs Act, 1962.

Role of Shri Ranveer Singh of M/s. Raipur Orissa Transport Company, Pratap Nagar Vistar, VKIA, Road No. 05, Jaipur-302013

139. I find that as evident from his voluntarily statement of dated. 9.8.2021 recorded under Section 108 of the Customs Act, 1962 that M/s. Jai Balaji Roadways (Regd.) (Mob: 9810116638), situated at BG-354, Sanjay Gandhi Transport Nagar, Delhi-42 informed him that one person namely Shri Satish (mobile number 9958078405) had to transport areca nuts to Nagpur; Shri Satish came to his transport company office and informed that he had to send Supari to Nagpur and asked him for a truck; Shri Satish ordered 14 trucks of areca nut from Gandhidham and when those trucks reached Jaipur, all the goods (areca nut) from those trucks were shifted to the trucks given by him in front of his office; all the areca nuts were delivered to Nagpur by the trucks given by him, and the person to whom he got the delivery of areca nut, that person's mobile number was 8080801986; his work was only to provide trucks and he used to get commission of Rs. 1000/-

140. It is clear that the transporter had connived with the masterminds in evasion of Customs Duty as they were deliberately preparing transportation documents /LRs/Bilties as per the say of the conspirator i.e. Delhi to Nagpur and did not bother to confirm the genuineness of the said documents; to confirm the genuineness of the goods also.

141. In view of the above, it is clear that Shri Ranveer Singh of M/s. Raipur Orissa Transport Company had knowledge about the said illegal activities and knowingly abetted the fraudulent export/diversion of the duty-free imported areca nuts which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, by the acts of commission/omission also concerned in removing which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j), 111(l), 111(o), 113(d), 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the Customs area/warehouse without order of proper officer; in violation of provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975, provisions relating to unloading of imported goods from conveyance under supervision of proper officer and finally diverted in Domestic Tariff Area which resulted in evasion of the substantial Customs duty. Since Shri Ranveer Singh of M/s. Raipur Orissa Transport Company knowingly and intentionally made/signed/used or caused to be made/signed /used the Transport Documents and other related document which was false or incorrect, in material particular, for the purposes of evading the Customs Duty, therefore Shri Ranveer Singh of M/s. Raipur Orissa Transport Company, shall also be separately liable to penalty under Section 114AA of the Customs Act, 1962.

Role of M/s. Jai Balaji Roadways (Regd.)

142. As evident from the voluntarily statement of Shri Ranveer Singh of M/s. Raipur Orissa Transport Company, Pratap Nagar Vistar, VKIA, Road No. 05, Jaipur-302013 dated. 9.8.2021 recorded under Section 108 of the Customs Act, 1962; The areca nuts were transported from Jaipur to Nagpur, however

the LRs prepared by M/s Jai Balaji Roadways mentioned the transportation from Delhi to Nagpur.

143. As evident from the voluntarily statement of Shri Ashish Goel, Manager of M/s. Jai Balaji Roadways (Regd.), was recorded on 01.10.2021 under Section 108 of the Customs Act, 1962; M/s. Jai Balaji Roadways had provided transportation service for transport of Areca nuts from Jaipur to Nagpur wherein Consignor's name were M/s. B & H Overseas, Plot No.75-A, Raghu Nagar, Dadri, South West Delhi-110045 & M/s. Blue Gold International, RZ-D-60, Syndicate Raghu Nagar, South West Delhi-110045 and consignee's name was M/s. Sai International, Crodak Road, Itawari, Nagpur-440002 in month of June 2021; on being asked about the freight charges for transportation of their goods from Jaipur to Nagpur by person namely Shri Ankur (Mob. No. 9354524221), he sent the quotation for Delhi to Nagpur; managed to provide the truck through Jaipur based transporter namely M/s. Raipur Orissa Transport; prepared Lorry Receipt showing transportation from Delhi to Nagpur instead of Jaipur to Nagpur, but actually transportation was done from Jaipur to Nagpur; on the basis of E-way bills & Tax invoices received from Shri Satish, prepared the Lorry Receipt and forwarded the same to Shri Satish or Shri Ranveer choudhary; provide total 12 trucks to Shri Satish/Ankur in the month of June 2021; in all Lorry Receipts the transportation was shown as from Delhi to Nagpur, but actually transportation was done from Jaipur to Nagpur; received total amount of Rs. 7,10,000/- towards transportation charges, labour charges etc.

144. It is clear that the transporter had completely connived with the masterminds in evasion of Customs Duty as they were deliberately preparing transportation documents /LRs/Bilties as per the say of the conspirator i.e. Delhi to Nagpur.

145. In view of the above, it is clear that M/s Jai Balaji Roadways had knowledge about the said illegal activities and knowingly abetted the fraudulent export/diversion of the duty-free imported areca nuts which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, it is also evident that by the acts of commission/omission of Shri Krishan Kumar Sharma also concerned in removing which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j), 111(l), 111(o), 113(d) 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the Customs area/warehouse without order of proper officer; in violation of provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975, provisions relating to unloading of imported goods from conveyance under supervision of proper officer and finally diverted in Domestic Tariff Area which resulted in evasion of the substantial Customs duty. Since M/s Jai Balaji Roadways knowingly and intentionally made/signed/used or caused to be made/signed /used the Transport Documents and other related document which was false or incorrect, in material particular, for the purposes of evading the Customs Duty, therefore M/s Jai Balaji Roadways, shall also be separately liable to penalty under Section 114AA of the Customs Act, 1962.

Role of Shri Ankur (Mob. No. 9354524221)

146. As deposed his voluntarily statement of Shri Ashish Goel, Manager of M/s. Jai Balaji Roadways (Regd.), was recorded on 01.10.2021 under Section

108 of the Customs Act, 1962; Shri Ankur (Mob. No. 9354524221) called him on around 10 June 2021 and enquired about freight charges for transportation of their goods from Jaipur to Nagpur and he quoted Rs. 42,000/- or 44,000/- per truck for goods quantity of 16 MT; they were Delhi based transporter, hence freight charges would be as transportation from Delhi to Nagpur viz. Rs. 42,000/- or 44,000/- and the same would vary as per weight of the goods to be transported to Nagpur; Shri Ankur agreed on the said freight charges though the transportation was from Jaipur to Nagpur and asked to provide trucks for the transportation of Areca Nuts from Jaipur to Nagpur on 13.06.2021 and Shri Ankur also provided him mobile number-9958078405 of one person namely Shri Satish and told that Shri Satish would be present during loading of areca nuts at Jaipur & asked to provide Lorry Receipt issued by M/s. Jai Balaji Roadways to Shri Satish on whatsapp; Shri Ankur also told him that e-way bills & Tax Invoices would be given by Shri Satish to truck drivers at Jaipur at the time of loading.

147. As evident from the voluntarily statement of Shri Ashish Goel, Manager of M/s. Jai Balaji Roadways (Regd.) recorded on 01.10.2021 under Section 108 of the Customs Act, 1962 that; Shri Ankur managed to get 12 trucks from M/s Jai Balaji Roadways, Delhi for transportation of the subject beetlenut consignments from Jaipur to Nagpur; prepared/forwarded E-way bills and invoice for the betelnut consignment transported from Jaipur to Nagpur to Shri Ashish Goel ; after loading requested Shri Ashish Goel of M/s Jai Balaji Roadways, to prepare Lorry Receipt by showing transportation of areca nuts from Delhi to Nagpur instead of Jaipur to Nagpur; shared the contact details of Shri Satish to Shri Ashish Goel; asked to provide Lorry Receipt issued by M/s. Jai Balaji Roadways to Shri Satish on whatsapp; he was informed that the goods in the name of both the above firms belongs to them; managed to payment of freight charges to M/s Jai Balaji Roadways.

148. Shri Ankur was issued summons on dated 16.5.2022 and message was conveyed through her sister available at the time of search conducted at a known place of Shri Ankur. However till now he failed to present himself before the investigating officer and not any representation/communication have been received so far.

149. It is clear that the Shri Ankur had connived with the masterminds in evasion of Customs Duty as he had managed the truck transporter for transport of areca nut from the Jaipur to Nagpur. He managed of preparation of transportation documents /LRs/Bilties/E-Ways bills as per the say of the conspirator i.e. Delhi to Nagpur.

150. In view of the above, it is clear that **Shri Ankur** had knowledge about the said illegal activities and knowingly abetted the fraudulent export/diversion of the duty-free imported areca nuts which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, by the acts of commission/omission of Shri Krishan Kumar Sharma also concerned in removing which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j), 111(l), 111(o), 113(d), 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 in as much as they were knowingly concerned and dealing with the offending imported goods cleared from the Customs area/warehouse without order of proper officer; in violation of provisions of Plant Quarantine (Regulation of Import into India) Order, 2003 as amended, Food Safety Standards Act, 2006, Para 2.56 of FTP 2015-20 (by not having Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board), Import policy of ITC (HS) for CTH 080280/08029000 of Customs Tariff Act, 1975,

provisions relating to unloading of imported goods from conveyance under supervision of proper officer and finally diverted in Domestic Tariff Area which resulted in evasion of the substantial Customs duty. Since Shri Ankur knowingly and intentionally made/signed/used or caused to be made/signed /used the Transport Documents and other related document which was false or incorrect, in material particular, for the purposes of evading the Customs Duty, therefore Shri Ankur, shall also be separately liable to penalty under Section 114AA of the Customs Act, 1962. Shri Ankur, was issued summons, however none of the date he presented himself. Above act and omission on the part of Shri Ankur also make him liable for penalty under section 117 of the Customs Act, 1962.

Role of Shri Ganesh V Naidu of M/s Cross Tradelink Pvt. ltd.

151. As evident from the 26 bills of Export, it is evident that the DIGITAL signature of NARESH was utilised for filing the subject bills of Exports.

152. As deposed in his statement of dated. 4.10.2021 recorded under Section 108 of the Customs Act, 1962, Shri Naresh, Director of M/s. SFEPL deposed that in month of April, after his resignation Shri Suneer Nalagath called him and told that Shri Ganesh Naidu of M/s. Cross Trade Link, Gandhidham was his consultant at KASEZ and asked Naresh to send his digital signature to Shri Ganesh Naidu of M/s. Cross Trade Link, Gandhidham for change/addition of New directors in SEZ online system or filing resignation of old Directors; accordingly he sent his digital signature to Shri Ganesh Naidu of M/s. Cross Trade Link, Gandhidham for the said purpose on 12.04.2021; if his digital signature had been used for filing aforesaid 09 Bills of Entry & 26 Bill of Export; it might be possible that his digital signature had been misused by M/s. Cross Trade Link, Gandhidham or Shri Suneer Nalagath for the same without his knowledge.

153. Further, Mr. Ganesh V. Naidu, Director of M/s Cross Trade Link Pvt. Ltd through email (crosstradelink@gmail.com) dated 27.10.2021 in reply to query regarding misuse of digital signature, he himself confirmed the receipt of Digital Signature of one of the old director of M/s SFEPL ; also stated documents/Box files and other things pertaining to M/s SFEPL , kept in his office was handed over to the representative of M/s SFEPL (after getting approval from New Director) and also allowed to use some space and internet to the representative of M/s SFEPL ; he helped the new director to complete all other online formalities related to KASEZ. However, as per the above, the online formalities related to KASEZ were done in the month of April-2021, whereas KASEZ authority had confirmed that change in Directorship/Shareholding Patter of the unit, had never been informed prior to 27.7.2021; Further, it appears that Shri Ganesh V Naidu did not clearly replied to the query of misuse of digital signature and simultaneously neither denied of giving the digital signature to the representative of M/s SFEPL.

154. Shri Ganesh V. Naidu was issued summons on dated.13.11.2021, 16.5.2022 & 6.9.2023. However, However, he did not present himself before the investigation authority.

155. In view of the above, it is clear that Shri Ganesh V Naidu of M/s Cross Trade Link Pvt. ltd. had knowledge about the said illegal activities and knowingly indulged in attempting to diversion of the duty-free imported areca nut which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, it is also clear that by the acts of commission/omission of Shri Ganesh V Naidu of M/s Cross Trade Link Pvt. ltd. also concerned in removing which they knew or had reasons to

believe were liable to confiscation under 111(d), 111(h), 111(j) ,111(l), 111(o), 113(d) 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 and also liable for penal action under Section 114AA of the Customs Act, 1962 in as much as they knowingly or intentional makes, signs or uses or causes to be made signed or used, wrong declaration or documents by showing the clearance of the subject goods for export to Bangladesh, whereas goods were diverted to the domestic market.

156. Further, Shri Ganesh V. Naidu, was did not present himself before the investigating agency in response to the summons issued to him, which made his liable penal action under Section 117 of the Customs Act, 1962.

Role of M/s Sivamkari International Pvt. Ltd.

157. I find that Shri Ashish Goel, Manager of M/s. Jai Balaji Roadways (Regd.), in his voluntarily statement of dated 1.10.2021 deposed that payment of freight charges in respect of transportation of areca nuts were received into bank account of M/s. Jai Balaji Roadways maintained with HDFC Bank, Rohini Sector 11 branch Account No. 50200022964862 by way of NEFT transfer and also shared the details of payment received.

158. On being inquiry with the bank, it was further revealed that the subject bank account was in the name of M/s Sivamkari International Pvt. Ltd. Accordingly, summons were issued to Shri Dipak Sharma & Shri Arun Singh, both the Director of M/s Sivamkari International Pvt. ltd., at Shop No. 106(or Shop No. 6), Plot No. 4, LSC Market Main Road, Gazipur, New Delhi-110092 on dated. 16.5.2022 & 6.9.2023. However neither any person appeared nor any representation were received.

159. It is clear that M/s Sivamkari International Pvt. ltd. is also the part of the whole conspiracy.

160. In view of the above, it is clear that M/s Sivamkari International Pvt. ltd. had knowledge about the said illegal activities and knowingly indulged in attempting to diversion of the duty-free imported areca nus which they knew or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Further, the acts of commission/omission of M/s Sivamkari International Pvt. ltd. also concerned in removing which they knew or had reasons to believe were liable to confiscation under Section 111(d), 111(h), 111(j) ,111(l), 111(o), 113(d) 113(i) and 113(k) of the Customs Act, 1962, thereby rendering himself liable for penal action under Section 112(a) & 112(b), 114(i) & 114(iii) of the Customs Act, 1962 and also liable for penal action under Section 114AA of the Customs Act, 1962 in as much as they knowingly or intentional makes, signs or uses or causes to be made signed or used, wrong declaration or documents by showing the clearance of the subject goods for export to Bangladesh, whereas goods were diverted to the domestic market.

161. Further, none of the directors of M/s Sivamkari International Pvt. ltd. appeared before the investigating agency in response to the summons issued to him, which made his liable penal action under Section 117 of the Customs Act, 1962.

Penalty under various sections are quantified, taking into consideration, the non-cooperation of various persons/firms etc.

162. In view of the above discussion and findings, I hereby pass the following order:-

A. ORDER IN RESPECT OF M/s SFEPL-

- (i) I reject the declared value i.e. Rs. 2,60,31,508/- (Rupees Two Crore Sixty Lacs Thirty one thousand five hundred and eight only) and order to take the value as Rs. 14,65,07,163/- as per the Annexure-A, in terms of the provisions of the Notification No. 36/2001-Customs (NT) dated. 3.8.2021, as amended.
- (ii) I order to confiscate the duty-free imported areca nuts of 414.00 MTs. which have been diverted into domestic market valued at Rs.14,65,07,163/- under Sections 111(d), 111(h), 111(O), 111(l), 113(d), 113(i) and 113(k) of the Customs Act, 1962.

Since the said goods are not available for confiscation, I impose redemption fine of Rs. 16,00,00,000/- (Rupees Sixteen Crores only) under Section 125 of the Customs Act, 1962.

- (iii) I determine and confirm the applicable Customs duty & IGST amounting to Rs.16,11,57,879/- (Rupees Sixteen Crores Eleven Lakhs Fifty Seven Thousand Eight Hundred and Seventy Nine only) **(as per annexed Annexure-A)** in respect of 414 MTs of duty-free goods purportedly cleared for exportation out of India but illicitly diverted to DTA into India, during the period from June-2021 and July 2021 and order to recover the same under the provisions of Section 28(4) of the Customs Act, 1962 read with Section 143(3) of the Customs Act, 1962 and FTP 2015-20;
- (iv) I order to recover interest at the applicable rate on the duty confirmed at (iii) above in terms of Section 28AA of the Customs Act, 1962;
- (v) I order to enforce the Bond, if any, furnished by them against the consignments imported duty-free under provisions of SEZ Act, 2005 and Rules framed thereunder but diverted as such to the domestic market, and order to encash the security, if any, furnished with bond and appropriate towards their duty liabilities, interest thereon, fine and penalties.
- (vi) I impose penalty equal to the duty plus interest confirmed above upon M/s. SFEPL under Section 114A of the Customs Act, 1962
- (vii) I don't impose penalty under Section 112(a)/112(b)/114(i)/114(iii) upon M/s. SFEPL in terms of fifth proviso to Section 114A of the Customs Act, 1962.
- (viii) I impose penalty of Rs. 16,00,00,000/- (Rupees Sixteen Crore only) under Section 114AA of the Customs Act, 1962.
- (ix) I impose penalty of Rs. 4,00,000/- (Rupees Four lakhs only) under Section 117 of the Customs Act, 1962 .

B. ORDER IN RESPECT OF OTHER PERSONS/FIRMS-

I impose penalty on the co-noticees as given below:-

| Sr.No. | Name | Penal Provisions under Customs Act, 1962 | | | | | | |
|--------|---|---|--|--|---|--|---|--|
| | | 112(a) | 112(b) | 114 (i) | 114(iii) | 114A | 114AA | 117 |
| 1 | Shri Suneer Nalagath, Director of M/s SFEPL | 1,00,00,000/- (Rupees One Crore only) | 1,00,00,000/- (Rupees One Crore only) | 2,00,00,000/- (Rupees Two Crore only) | 1,00,00,000/- (Rupees One Crore only) | Not imposed as the same is imposed upon M/s. SFEPL | 4,00,00,000/- (Rupees Four Crore only) | 4,00,000/- (Rupees Four lakhs only) |
| 2 | Shri Yogendra Pratap Varma, Director of M/s SFEPL | 1,00,00,000/- (Rupees One Crore only) | 1,00,00,000/- (Rupees One Crore only) | 2,00,00,000/- (Rupees Two Crore only) | 1,00,00,000/- (Rupees One Crore only) | Not imposed as the same is imposed upon M/s. SFEPL | 4,00,00,000/- (Rupees Four Crore only) | 4,00,000/- (Rupees Four lakhs only) |
| 3 | Shri A. Feroze Ahamed | 1,00,00,000/- (Rupees One Crore only) | 1,00,00,000/- (Rupees One Crore only) | 2,00,00,000/- (Rupees Two Crore only) | 1,00,00,000/- (Rupees One Crore only) | Not imposed as the same is imposed upon M/s. SFEPL | 4,00,00,000/- (Rupees Four Crore only) | 4,00,000/- (Rupees Four lakhs only) |
| 4 | Shri Farooq Ali | 1,00,00,000/- (Rupees One Crore only) | 1,00,00,000/- (Rupees One Crore only) | 2,00,00,000/- (Rupees Two Crore only) | 1,00,00,000/- (Rupees One Crore only) | Not imposed as the same is imposed upon M/s. SFEPL | 4,00,00,000/- (Rupees Four Crore only) | 4,00,000/- (Rupees Four lakhs only) |
| 5 | M/s Beermati. Director of M/s SFEPL | 25,00,000/- (Rupees Twenty Five lakhs) | 25,00,00,000/- (Rupees Twenty Five lakhs) | 50,00,000/- (Rupees Fifty lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | Not imposed as the same is imposed upon M/s. SFEPL | 1,00,00,000/- (Rupees One Crore only) | 4,00,000/- (Rupees Four lakhs only) |
| 6 | M/s Renu Kataria , Director of M/s SFEPL | 25,00,000/- (Rupees Twenty Five lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | 50,00,000/- (Rupees Fifty lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | Not imposed as the same is imposed upon M/s. SFEPL | 1,00,00,000/- (Rupees One Crore only) | 4,00,000/- (Rupees Four lakhs only) |
| 7 | Shri Naresh, Director/Authorised Signatory of M/s SFEPL | 25,00,000/- (Rupees Twenty Five lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | 50,00,000/- (Rupees Fifty lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | Not imposed as the same is imposed upon M/s. SFEPL | 1,00,00,000/- (Rupees One Crore only) | 4,00,000/- (Rupees Four lakhs only) |
| 8 | Shri Tarun Dagar, Director of M/s SFEPL | 25,00,000/- (Rupees Twenty Five lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | 50,00,000/- (Rupees Fifty lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | Not imposed as the same is imposed upon M/s. SFEPL | 1,00,00,000/- (Rupees One Crore only) | 4,00,000/- (Rupees Four lakhs only) |

| | | | | | | | | |
|----|---|---|---|--|---|---------------------|---------------------------------------|-------------------------------------|
| 7 | Shri Ganesh V. Naidu, Ganesh Trade Link/Consultant of M/s SFEPL | 15,00,000/- (Rupees Fifteen Lakhs only) | 15,00,000/- (Rupees Fifteen Lakhs only) | 30,00,000/- (Rupees Thirty Lakhs only) | 15,00,000/- (Rupees Fifteen Lakhs only) | Not proposed in SCN | 50,00,000/- (Rupees Fifty lakhs) | 4,00,000/- (Rupees Four lakhs only) |
| 8 | Shri Krishan Kumar Sharma, Proprietor of M/s Vishal Freight Courier, | Not imposed as discussed in the discussion and findings | Not imposed as discussed in the discussion and findings | 10,00,000/- (Rupees Ten Lakhs only) | 5,00,000/- (Rupees Five Lakhs only) | Not proposed in SCN | 10,00,000/- (Rupees Ten Lakhs only) | Not proposed in SCN |
| 9 | Shri Rupesh Natwarlal Jadwani (Mobile No.- 9099588811) , Transporter broker | 25,00,000/- (Rupees Twenty Five lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | 50,00,000/- (Rupees Fifty lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | Not proposed in SCN | 1,00,00,000/- (Rupees One Crore only) | Not proposed in SCN |
| 10 | Shri Ziya Hussein Faisal Alias Ziyabhai | 25,00,000/- (Rupees Twenty Five lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | 50,00,000/- (Rupees Fifty lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | Not proposed in SCN | 1,00,00,000/- (Rupees One Crore only) | 4,00,000/- (Rupees Four lakhs only) |
| 11 | Shri Rajabhai | 25,00,000/- (Rupees Twenty Five lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | 50,00,000/- (Rupees Fifty lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | Not proposed in SCN | 1,00,00,000/- (Rupees One Crore only) | 4,00,000/- (Rupees Four lakhs only) |
| 12 | Shri Satish | 25,00,000/- (Rupees Twenty Five lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | 50,00,000/- (Rupees Fifty lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | Not proposed in SCN | 1,00,00,000/- (Rupees One Crore only) | 4,00,000/- (Rupees Four lakhs only) |
| 13 | M/s. Raipur Orissa Transport Company, Pratap Nagar Vistar, VKIA, Road No. 05, Jaipur-302013 | 15,00,000/- (Rupees Fifteen Lakhs only) | 15,00,000/- (Rupees Fifteen Lakhs only) | 30,00,000/- (Rupees Thirty Lakhs only) | 15,00,000/- (Rupees Fifteen Lakhs only) | Not proposed in SCN | 50,00,000/- (Rupees Fifty lakhs) | Not propped in SCN |
| 14 | M/s Jai Balaji Roadways | 15,00,000/- (Rupees Fifteen Lakhs only) | 15,00,000/- (Rupees Fifteen Lakhs only) | 30,00,000/- (Rupees Thirty Lakhs only) | 15,00,000/- (Rupees Fifteen Lakhs only) | Not proposed in SCN | 50,00,000/- (Rupees Fifty lakhs) | Not propped in SCN |
| 15 | Shri Ankur (Mob. No. 9354524221 | 25,00,000/- (Rupees Twenty Five lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | 50,00,000/- (Rupees Fifty lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | Not proposed in SCN | 50,00,000/- (Rupees Fifty lakhs) | 4,00,000/- (Rupees Four lakhs only) |
| 16 | M/s Sivamkari International Pvt. Ltd. | 25,00,000/- (Rupees Twenty Five lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | 50,00,000/- (Rupees Fifty lakhs) | 25,00,000/- (Rupees Twenty Five lakhs) | Not proposed in SCN | 50,00,000/- (Rupees Fifty lakhs) | 4,00,000/- (Rupees Four lakhs only) |

163. This order is issued without prejudice to any action that can be taken under any section of the Customs Act, 1962 including Section 132 of the Customs Act, 1962 or any other law for the time being in force.

(M. RAM MOHAN RAO)
COMMISSIONER

F.No. GEN/ADJ/COMM/270/2024-ADJN-O/o-Commr-Cus-Kandla

DIN-20250771ML000000A9AB

To,

| Sr.No. | Name | Available Details of Address | E-Mail |
|--------|---|---|---|
| (1) | (2) | (3) | |
| 1 | M/s SFEPL | M/s. SFEPL situated at Shade No.-214, Special C. I. B. Type, Ground & first floor, Phase-I, Kandla SEZ (KASEZ), Gandhidham | |
| 2 | Shri Suneer Nalagath, Director of M/s SFEPL | Ground Floor, Kadeeja Quarters, Pilakool, Thalasherry, District-Kannur, Kerala-670101. | snalagath@gmail.com & armanaim22@gmail.com |
| 3 | Shri Yogendra Pratap Varma, Director of M/s SFEPL (aadhar No. 780244527385) | 150,TRC Colony Road,LB Nagar, Chintalakunta, Rangareddi,Telangana-500074. | ypvarma892@gmail.com |
| 4 | Shri A. Feroze Ahamed | Proprietor, M/s. Roshan International, No.100-C, P.K. Kandasamy Pillai street, D Colony, Jothi Nagar, Pollachi – 642001. <u>Residcnce Address</u> St. Thomas Church Road, Apartment 1 st Floor, 96/ 1, Fernhill, Ooty, Tamilnadu – 643001 | ferozeahamed12@gmail.com |
| 5 | Shri Mohammed Farooq Ali | 17-8-617,Fatehkha Bazar Road, Near Aman Hotel, Chanchalguda,Hyderabad,Telangana-500024 | mdfarooqali1989@gmail.com |
| 6 | M/s Beermati. Director of M/s SFEPL | Flat No. 812, Nav Sansad Vihar, Plot No. 4, Sector 22, Dwarka, Delhi-110077. | beermati4321@gmail.com ; |
| 7 | M/s Renu Kataria , Director of M/s SFEPL | House No. 201/23, Hira Nagar, Gurugram, Haryana-122001. | beermati4321@gmail.com |
| 8 | Shri Naresh, Director/Authorised Signatory of M/s SFEPL | 34, Shiv Mandir wali Gali, Village-Samaspur Khalsa, South West Delhi-110073 Residing at :Flat No.-812, Plot No.-4, Sector-22, Nav Sansad Vihar, Dwarka, Amberhai, Sector-6, South West Delhi-110075 | |
| 7 | Shri Tarun Dagar, Director of M/s | 34, Shiv Mandir wali Gali, Village-Samaspur Khalsa, South West Delhi- | tarund009@gmail.com ; |

| | | | |
|----|--|--|--|
| | SFEPL | 110073 | |
| 8 | Shri Ganesh V. Naidu, Ganesh Trade Link/Consultant of M/s SFEPL | Ganesh Trade Link Pvt. Ltd., Office-8,KASEZ Association building, KASEZ, Gandhidham,Gujarat-370230. | crosstradelink@gmail.com; |
| 9 | Shri Krishan Kumar Sharma, Proprietor of M/s Vishal Freight Courier, | M/s. Vishal Freight Carrier, Shop No.-70, Kutch Arcade, NH-08, Gandhidham-370201 | |
| 10 | Shri Rupesh Natwarlal Jadwani (Mobile No.-9099588811) , Transporter broker Aadhar Card No. 808272888695 | Proprietor of M/s Leading Logistics, D-5 Sagar Bunglows, Near Kovay Nagar, Mundra Road, Bhuj. | |
| 11 | Shri Ziya Hussein Faisal Alias Ziyabhai (Passport No. H7349734) | B-895, Muyur vihar, PH-3, New Delhi-110096 Residence: Son of Shri Javed Mumtaz, 56/E/F-11,Gokul Das Road, Mufti Tola Anshik, Police Station-Mughaloura, Mufti Town, Tehsil-Moradabad,Uttar Pradesh-203003 | |
| 12 | Shri Rajabhai Alias Aamir Hussain (Aadhar Card No.871975711477) | A-370, Jigar Colony, Opposite Damdama Kothi, Moradabad, Moradabad, Uttar Pradesh-244001 | |
| 13 | Shri N. Satheesh(Aadhar Card_683294174611) | H.NO. A-86,Gali No. 1,Room No. 10,Mahipalpur, South West Delhi,Gurgaon Road, Vasant Vihar, Near by Desu Office, Delhi-110037. | |
| 14 | M/s. Raipur Orissa Transport Company, Pratap Nagar Vistar, VKIA, Road No. 05, Jaipur-302013 | Pratap Nagar Vistar, VKIA, Road No. 05, Jaipur-302013 | |
| 15 | M/s Jai Balaji Roadways | M/s. Jai Balaji Roadways (Regd.), TRANSPORT CONTRACTORS AND FLEET OWNERS , BG-354, Sanjay Gandhi Transport Nagar, New Delhi-110042 | balajidelhi@yahoo.co.in, info@balajidelhi.in |
| 16 | Shri Ankur (Mob. No. 9354524221 | A-51, Jain Colony, Part-III,Near Shiksha Deep Public School, Uttam Nagar, West Delhi-110059 | |
| 17 | M/s Sivamkari International Pvt. Ltd. | Shop No. 106 or 6 Plot No. 4, LSC, Market Main Road, Gazipur, New Delhi-110092 | sivamkarinternational@gmail.com |

Copy to

1. The Chief Commisisoner, Guajrat Customs Zone, Ahmedabad.

2. The Additional Director General, Directorate of Revenue Intelligence, Unit No. 15, Magnet Corporate P ark, Near Sola Flyover, S. G. Highway, Thaltej, Ahmedabad – 380054 for information please.
 3. The Additional Director General of Foreign Trade, (CLA) A-Wing, Indraprastha Bhawan, I.P. Estate, New Delhi-110002 for kind information please.
 4. The Additional Director General of Foreign Trade, CGO Office, New Building, SE Wing New Marine Lines, Churchgate, Mumbai-400020 for kind information please
 5. The Additional Director General, Central Economic Intelligence Bureau, 6th Floor, B Wing, Janpath Bhawan, Janpath, New Delhi-110001 for kind information please.
 6. The Development Commissioner, KASEZ, Gandhidham.
 7. The Superintendent (EDI/TRC) for necessary action.
 8. Guard File
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