

DIN :- 20240571MO0000222D10

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

Intelligence gathered by the officers of Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad (hereinafter referred to as DRI) indicated that the container TCLU6626772, which was originated from Cambodia and loaded in the vessel APL ANTWERP was suspected to be containing Cigarettes. The said container TCLU6626772 was imported by M/s Madhav Art (IEC: ACNPV7400J) at Mundra Port and the same was destined to Hazira Port. The details declaration made in the IGM in respect of the above container are as under:

Sr. No.	BL No.	Container No.	Goods declared
1	CBC0242594	TCLU6626772	Readymade Garments

1 . 2 . Based on above intelligence regarding smuggling activities associated with the import of goods via above particular container, the officers of DRI conducted a thorough examination of the above container TCLU6626772 on 23.11.2023 to verify the accuracy of declarations and assess compliance with customs laws under panchanama dated 23.11.2023. (RUD-1)

2. During the examination proceedings, it was also gathered that Bill of Entry was not filed in the said case. The said container was covered under Bill of Lading CBC0242594 dated 17.10.2023, which shows the consignee as M/s Madhav Art from Surat and the goods were declared therein as 'Readymade Garments'. The consignment attempted to be illegally imported and the same was destined to Hazira Port, Ahmedabad.

3. EXAMINATION OF THE GOODS IMPORTED IN CONTAINER BEARING NO. TCLU6626772 UNDER BILL OF LADING CBC0242594 dated 17.10.2023 PERTAINING TO M/S. MADHAV ART.

3.1. The cargo covered under above container bearing no. TCLU6626772 was kept at the M/s PSA Ameya Logistics Private Limited. On 23.11.2023, officers of DRI approached Shri Suresh Vershi Matang, Deputy Manager (Operations), M/s PSA Ameya Logistics Private Limited, Mundra- 370421 and requested him to extend his co-operation in the examination of container bearing no. TCLU6626772. During the said proceeding, Shri Hitesh Aboti, Authorized Representative of shipping line i.e. CMA CGM joined the proceedings and produced the copy of Draft Bill of Lading No. CBC0242594 dated 17.10.2023 (RUD-2). The officers found that the container was sealed with one time bottle seal and found that the seal was intact. The seal No. affixed on the container No. TCLU6626772

was verified, which matched with the seal no. mentioned in the Bill of Lading. The details of Bill of Lading is hereby reproduced below:

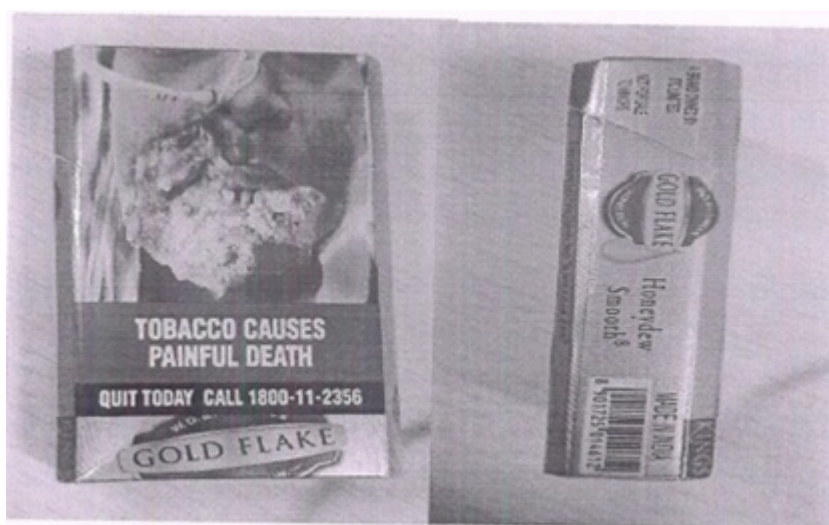
S.N.	Detail Heading	Particulars
1.	Name of Shipper	EANG KIM LAY IMPORT EXPORT CO LTD, Phnom Penh, Cambodia
2.	Name of Consignee	M/s Madhav Art, First Floor, Plot No. 42, Ajanta Diamond Industrial Co. Op. Society, Patel Nagar A K Road, Surat Gujarat - 395008 IEC No. ACNPV7400J
3.	Notify Party	Same as Consignee
4.	Port of Loading	Sihanoukville
5.	Port of Discharge	Hazira Port
6.	Container No./Seal No.	TCLU6626772/L4500535
7.	Description of goods	Readymade Garments (HSN 430390)
8.	Total Cartons	863
9.	Shipping Liner	CMA CGM

3.2. The above seal was cut open. On opening the door of the above said container, it was found that the said container is stuffed with White Carton boxes. During the said proceedings, pictures of the said container was taken, which is affixed below:



3.3. Further, Carton Boxes placed in first row in the container were destuffed and each of the cartons of the first row & second row were opened and examined one by one, wherein, it was found that all the cartons of the first row & second row were containing assorted clothes/garments. Further, cartons placed at third row in the container

were destuffed and examined. On examination of each carton of third row, it was found that all the cartons of third row were containing cigarette boxes of Gold Flake Brand. Subsequently, the entire cartons of the said container bearing no. TCLU6626772 were destuffed and examined by the officers of DRI. During the said examination proceedings, Gold Flake Cigarettes of two different colors (Red & Blue) were found. It was further found that both type of above cigarettes indicated the brand name Gold Flake "Made in India". All the cartons of the said container were segregated in three parts containing assorted clothes/garments, Cigarette (Red color) and Cigarette (Blue Color) separately. During the said proceedings, pictures of the 'Gold Flake' Cigarette Made in India was taken, which is affixed below.



3.4. On further examination of one carton containing Red Colour Packet Cigarettes, it was found that a carton box contains 50 small size boxes, each such small box contains 20 packets of Cigarettes and each such packet contains 10 cigarette sticks. Accordingly, each carton contains 10000 cigarette sticks. Each cigarette stick was of white color and brown color filter portion and 'Gold Flake & Honey Dew Smooth' was printed on white portion, and the length of the stick was approximately 84 mm. On front side of the packet pictorial warning, 'TOBACCO CAUSES PAINFUL DEATH, QUIT TODAY CALL 1800-11-2356: HONEY DEW SMOOTH' was printed. It was further found similar nature Quantity /packings/ were available in all the other carton boxes.

3 . 5 . On further examination of one carton of Blue Color Packet Cigarettes, it was found that a carton box contains 50 small size boxes, each such small box contains 20 packets of Cigarettes and each such packet contains 10 cigarette sticks. Accordingly, each carton contains 10000 cigarette sticks. Each cigarette stick was of white color (both tobacco and filter portion) and 'Gold Flake & Honey Dew Smooth' was printed on white portion, and the length of the stick was approximately 84 mm. On front side of the packet pictorial warning, 'TOBACCO CAUSES PAINFUL DEATH, QUIT TODAY CALL 1800-11-2356: HONEY DEW SMOOTH' was printed. It was further found that similar nature Quantity /packings/ were available in all the other carton boxes.

3.6. The detailed inventory of the goods/cartons destuffed from container was undertaken and mentioned in the panchnama dated 23.11.2023 (Refer RUD-1). The same is as under:

S. N.	Item Description	No. of Cartons	Particulars	Total
1.	Assorted Clothes/Garments	62	-	62 Cartons
2.	Gold Flake Cigarette "Make in India" Blue Colour	401	401 Cartons*50 Small size boxes*20 packets*10 sticks	4010000 Sticks
3.	Gold Flake Cigarette "Make in India" Red Colour	400	400 Cartons*50 Small size boxes*20 packets*10 sticks	4000000 Sticks
Total No. of Cigarette Sticks in above 801 Cartons				8010000

3.7. During the course of examination of the said container, it was found that the description of the goods was grossly mis-declared as 'Readymade Garment' in the Bill of Lading. On the reasonable belief that the same are liable to confiscation under the provisions of the Customs Act, 1962 as goods contained in the said imported cargo were completely mis-declared, the above 801 cartons containing 8010000 cigarette sticks were seized under Section 110 of the Customs Act, 1962 under the panchnama dated 23.11.2023 (Refer RUD-1). Further, 62 cartons of Assorted Clothes/Garments used for concealment of Cigarettes were also seized under Section 110 of the Customs Act, 1962.

3.8. The above seized goods were further handed over to Shri Suresh Vershi Matang of M/s PSA Ameya Logistics Private Limited vide Supratnama dated 23.11.2023 (RUD-3) to keep the said goods in safe custody with a direction not to alter/ deliver and part with the same to any person or otherwise deal with the said goods without permission, in writing, from the competent authority.

#### 4. VERIFICATION OF THE PREMISES OF IEC HOLDER: M/s. MADHAV ART:

4.1. Consequent to the recovery of cigarettes in above container, the premises of M/s Madhav Art located at Ground Floor, Plot No. 55, Ajanta Diamond Industrial Co. Society, Patel Nagar, A K Road, Surat – 395008 was searched on 24.11.2023 under Section 105 of the Customs Act, 1962 and a panchnama dated 24.11.2023 (RUD-4) detailing the search proceedings was also recorded.

4.2. During the search proceeding at above premises, an unsigned letter regarding 'Authority Letter & Declaration' and a signed letter regarding



'Application for amendment in IGM' were found and further resumed under above panchanama. Scrutiny of documents recovered from the above premises indicated that the said documents pertain to the above import container TCLU6626772. Examination of application of amendment in IGM indicated that Shri Nirvabhai Laljibhai Vanani himself had applied for IGM amendment on 21.11.2023 to the Deputy/Assistant Commissioner of Customs, Mundra Custom for change in port destination from Hazira Port (INHZA1) to Mundra Port (INMUN1) in respect of their IGM No. 2359699 dated 07.11.2023 pertaining to Bill of Lading No. CBC0242594 dated 17.10.2023. Image of the said documents obtained from the above premises is shown below:

**MADHAV ART**  
55, AJANTA DIAMOND INDUSTRIAL, A.K. ROAD, SURAT.  
GSTIN: 24ACNPV7400J1ZA

DATE: 21.11.2023

To,  
Deputy/Assistant Commissioner of Customs,  
Mundra Customs

Subject: Application for in the IGM AMENDMENT

Request for Amendment INHZA1 TI to LC INMUN1 (CHANGE IN PORT DESTINATION) in IGM for below:

1. Name and Address of Shipping Line: CMA CGM AGENCIES (INDIA) PVT LTD. IGM No- 2359699 dt: 07.11.2023  
3. MBL No. CBC0242594 DATE-17.10.2023 ITEM NO:-368  
5. Consignee Name- MADHAV ART

FROM	TO
TI	LC
INHZA1	INMUN1

I hereby certify that the aforesaid details are true and correct as per best of my knowledge. It is also certified that I am rightful person for the aforesaid addition in the IGM. I also declare that I am aware about provisions of Customs Act-1962 regarding Import General Manifest (IGM).

Therefore, we request your good self to amend/addition of above said container number in IGM No-2359699 dt: 07.11.2023

Thanking you,

For, M/S CMA CGM AGENCIES (INDIA) PVT LTD.

FOR MADHAV ART  
21.11.2023  
PROPRIETOR

21.11.2023

4.3. During the above proceedings, Shri Niravbhai Laljibhai Vanani informed that the said two letters were forwarded to him by his brother-in-law Shri Dilipbhai Babubhai Sutariya, who wanted to import some garments.

#### 5. VERIFICATION OF THE RESIDENTIAL PREMISES OF SHRI NIRAVBHAI LALJIBHAI VANANI, PROPRIETOR OF IEC FIRM M/S MADHAV ART:

5.1. Premises located at 122, Madhvanand Society, Signapore Road, Katargam, Surat was visited on 24.11.2023 and visit note was prepared (RUD-5). The said premises was found closed. On being enquired from nearby persons, it emerged that the said premises belonged to Shri

Niravbhai Laljibhai Vanani; that Shri Niravbhai Laljibhai Vanani had been residing at Jahangirpura, Surat; that the said premises i.e. 122, Madhvanand Society, Signapore Road, Katargam, Surat was on rent.

5.2. Further, Residential Premises of Shri Niravbhai Laljibhai Vanani (Proprietor of IEC firm M/s Madhav Art), located at B-802, Madhav Platina, Jahangirpur, Surat, was searched under panchanama dated 24.11.2023 (RUD-6). During the search proceeding conducted at the said premises, no incriminating document was found.

**6. VERIFICATION AT THE END OF A PERSON NAMELY SHRI AVINASH SONKAR, WHO HAD APPROACHED SHIPPING LINER FOR CLEARANCE OF THE ABOVE CONAINER:**

6.1. During the process of examination of the above container bearing no. TCLU6626772, it emerged that a person namely Shri Avinash Sonkar working at M/s Aadhar Seasky India Private Limited, 02, 1<sup>st</sup> Floor, Aadinath Arcade-II, Plot No. – 576, Ward 12/C Gandhidham, Kutch, Gujarat – 370201 had approached the shipping liner i.e. CMA CGM for clearance of the said consignment.

6.2. To gather evidences, the above premises i.e. M/s Aadhar Seasky India Private Limited, 02, 1<sup>st</sup> Floor, Aadinath Arcade-II, Plot No. – 576, Ward 12/C Gandhidham, Kutch, Gujarat – 370201 pertaining to Shri Avinash Sonkar was searched under Section 105 of the Customs Act, 1962 under Panchanama dated 24.11.2023 (RUD-7). During the search proceedings, certain documents/ mail/ conversation made from or to avinash@aadharseasky.com and avinashumts@gmail.com were resumed.

6.3.1. As per printouts of mail/conversation, Shri Avinash Sonkar, whose name appears to be as Shri Avinash Kumar was constantly in touch with shipping liner i.e. CMA CGM regarding clearance of the above container TCLU66296772 covered under Bill of Lading No. CBC0242594. For illustration, images of certain mail/conversation are shown below:

avinash@aadharseasky.com

From: avinash@aadharseasky.com  
Sent: 20 November 2023 14:02  
To: avinashumts@gmail.com  
Subject: FW: TCLU6626772 BL NO: CBC0242594



DF ALLIANCE  
by DP WORLD

Member's ID: AAOB

AVINASH KUMAR

E: [avinash@aadharseasky.com](mailto:avinash@aadharseasky.com)  
M: +91 757 4861 175  
A: #02, 1ST FLOOR AADINATH ARCADE-II,  
PLOT NO: 576, WARD 12/C GANDHIDHAM  
KUTCH-GUJARAT-INDIA 370201  
[www.aadharseasky.com](http://www.aadharseasky.com)



From: LEUVA Salaka <AMD.SLEUVA@cma-cgm.com>  
Sent: 20 November 2023 13:14  
To: avinash@aadharseasky.com; EGJCOMMERCIAL@GMAIL.COM  
Cc: CMA CGM & ANL - Import Customer Service -Gujarat <knd.impcc@cma-cgm.com>; MHATRE Nikhil <MBY.NMHATRE@cma-cgm.com>  
Subject: RE: TCLU6626772 BL NO: CBC0242594

Dear Avinash,

Please advise your role in this shipment.  
Also note, we have received request form POL side for COD of the shipment from Hazira to Mundra.  
Manifest has already been filed in customs for Hazira, pls advise from where you will clear the shipment.

Find out more about our local services & procedures- [Import](#)

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CBC0242594

On Thu, Nov 16, 2023, 18:19 CMA CGM & ANL - Import Customer Service - Gujarat <[knd.impcc@cma-cgm.com](mailto:knd.impcc@cma-cgm.com)> wrote:

Dear Sir/Ma'am,  
Good Day!

Kindly share correct B/L number.

Thank you for contacting the Customer Service Imports team. If you have any more questions, please do not hesitate to contact us.



Rahul Adhikari  
Customer Service (Imports) - Gujarat

+917208496638  
CMA CGM Agencies (India) Pvt Ltd ISO 9001:2015 Certified Organization  
WEST GATE, B-Block, 1903-1907(19th Floor), Near YMCA Club, S.G Highway,  
Ahmedabad-380051  
Business website: [www.cma-cgm.com](http://www.cma-cgm.com)  
Group website: [www.cmacgm-group.com](http://www.cmacgm-group.com)

Please visit the link for tariff and import procedure [Import Welcome Kit](#)

----- Original Message -----

From: [avinash@aadharseasky.com](mailto:avinash@aadharseasky.com)  
Sent: 16/11/2023 16:50  
To: [knd.impcc@cma-cgm.com](mailto:knd.impcc@cma-cgm.com)  
Cc: [mby.gmiranda@cma-cgm.com](mailto:mby.gmiranda@cma-cgm.com)  
Subject: RE: TCLU6626772 BL NO: CBC024594

Dear Sir,

Please find below bl no

CBC024594



## ILLUSTRATION – II

6.3.2. The above illustration-I & illustration-II indicate the communication held between Shipping Liner i.e. CMA CGM and Shri Avinash Sonkar regarding the subject matter RE:TCLU6626772 BL NO: CBC0242594.

6.4. In addition to above, other documents resumed from the above said premises of Shri Avinash Sonkar includes Commercial Invoice, Packing list, Original Bill of Lading, Certificate of Origin, Checklist – Bill of Entry for Home Consumption etc. Perusal of the same indicated that all the resumed documents pertain to the container TCLU6626772, which was illegally imported into India in violation of the provisions of the Customs Act, 1962 and FTP.

6.5. Examination of packing list & Commercial Invoice as well as Original Bill of Lading (Collective RUD-8) resumed from the premises of M/s Aadhar Seasky India Private Limited, 02, 1<sup>st</sup> Floor, Aadinath Arcade-II, Plot No. – 576, Ward 12/C Gandhidham, Kutch, Gujarat – 370201 revealed that the same were also containing the description & quantities of goods as Readymade Garment & 863 Cartons respectively. The said



packing list & commercial invoice have been issued by M/s Eang Kim Lay Import Export Co. Ltd, Phnom Penh, Cambodia. The Invoice No. mentioned at packing list as well as commercial invoice is CBC0242594, which is Original Bill of Lading Number. Further, Container No. TCLU6626772 mentioned at Packing List and Commercial Invoice is the same as mentioned in Bill of Lading.

6.6. From the above, it appears that all the above documents have been purportedly prepared declaring the goods as “Readymade Garments” with a clear-cut intent to smuggle the above cigarettes in guise of the above declared goods. However, the container was intercepted by the officers of DRI and Cigarettes, which were concealed with assorted clothes/garments were recovered from the said container TCLU6626772 and consequently seized under Section 110 of the Customs Act, 1962.

6.7. During the above search proceedings, it was known that Shri Avinash Sonkar was out of station. Consequently, a summon was issued to Shri Avinash Sonkar to remain present in office of DRI, Ahmedabad Zonal Unit on 20.12.2023 to tender his statement. In response to the same, Shri Avinash Sonkar vide email dated 18.12.2023 (RUD-9) requested to give some other date to be present as he had some personal work on 20.12.2023.

6.8. Further, several summons were again issued to Shri Avinash Sonkar. However, he did not join the investigation, which clearly shows his non-cooperation in the investigation.

6.9. Several summons were also issued to Shri Hitesh Aboti, authorized person of M/s Shipping Liner i.e. CMA CGM for recording of his statement. However, he did not appear in this office and hence he did not join the investigation.

7.1. Statement of Shri Niravbhai Laljibhai Vanani, Proprietor of IEC firm M/s Madhav Art was recorded on 24.11.2023, (RUD-10) wherein, he inter-alia stated that

- He resides with his family at B-802, Madhav Paltina, Jahangirpura, Surat – 395003;
- He is owner of M/s Madhav Art (GSTIN: 24ACNPV7400J1ZA), which is located at Ground Floor, Plot No. 55, Ajanta Diamond Industrial Co. Society, Patel Nagar, A K Road, Surat – 395008;
- He had started his business in the name of M/s Madhav Art in 2015 at 1<sup>st</sup> Floor, Plot No. 42 Ajanta Diamond Industrial Co. Society, Patel Nagar, A K Road, Surat – 395008. But after increase in rent, he shifted his business to a new location at Ground Floor, Plot No. 55, Ajanta Diamond Industrial Co. Society, Patel Nagar, A K Road, Surat – 395008; that he had not got amended his GST Registration for new address as rent agreement was not executed till the time;
- He has never done any import & export business; that recently on request of his brother-in-law namely Shri Dilipbhai Babubhai Sutariya, IEC in the name of

M/s Madhav Art was obtained, which is ACNPV7400J;

- His brother-in-law namely Shri Dilipbhai Babubhai Sutariya had wished to import some goods and further requested him to provide details of firm M/s Madhav Art such as PAN Card, Aadhar Card, Electricity Bill etc.; that his brother-in-law informed him that with the help of his friend, he wanted to import, from which, he will get good amount of profit. His brother-in-law also offered him some part of profit, which would arise from such import, to which he agreed to provide all the details of M/s Madhav Art to his brother-in-law namely Shri Dilipbhai Babubhai Sutariya.
- His brother-in-law namely Shri Dilipbhai Babubhai Sutariya did not have any GST registered firm, so he requested him to provide the details of M/s Madhav Art for obtaining IEC;
- Recently, he has not imported any goods. However, his brother-in-law had provided a document for amendment in IGM and his consent for clearance of goods, to which he agreed and signed on such document;
- He was shown Panchanama dated 23.11.2023 drawn at M/s PSA Ameya Logistics Private Limited, Mundra. He further stated that he understood that by way of mis-declaration, total 8010000 sticks of gold flake cigarettes have been attempted to be imported by using his IEC of M/s Madhav Art.
- He did not know any person in the name of Shri Avinash or Credence CHA Firm.

7.2. During his recording of statement dated 24.11.2023, Shri Niravbhai Laljibhai Vanani also submitted his mobile phone iPhone 11, Model No. MWLY2HN/A, Serial No. GV4D810JN73C for investigation.

8.1. Statement of Shri Dilipbhai Babubhai Sutariya, brother-in-law of Shri Niravbhai Laljibhai Vanani was recorded on 24.11.2023 (RUD-11) under Section 108 of the Customs Act, 1962, wherein, he inter-alia stated that -

- He had been doing agriculture work at his native since last two to three years; after completion of his graduation, he was engaged in business of textile; that he used to do embroidery work of Saree or Lahanga with the help of imported embroidery machines;
- He perused the panchanama dated 23.11.2023 drawn at M/s PSA Ameya Logistics Private Limited, Mundra and further stated that he had asked Shri Niravbhai Laljibhai Vanani to provide his firm details for issuance of IEC (Import Export Code) for importing some garment goods from China;
- He was in touch with one of his friends namely Shri Rakesh Nashit, who was engaged in trading through import etc. and therefore one day, Shri Rakesh Nashit asked him to provide details of any firm, which had GST registration to import a consignment from China and to get good profit after deducting expenses; that in lieu of getting good profit, he asked his brother-in-law to provide him the details of his firm to obtain IEC and subsequently to import consignment;
- He had given his brother-in-law's firm (M/s Madhav Art) details viz. Pan Card, Aadhar Card and Light Bill to Shri Rakesh Nashit and within 1-2 week, Shri Rakesh Nashit had created an IEC and asked him to arrange some amount to invest in the said import consignment;
- He had not given any amount to Shri Rakesh Nashit for investment as requirement of such amount for investment did not arise;

- Shri Rakesh Nashit informed him that a consignment was pending at Mundra Port and therefore, he had sent him a document regarding amendment in Bill of Lading, which he (Shri Dilipbhai B. Sutariya) was required to get signed on the said document by his brother-in-law Shri Niravbhai Laljibhai Vanani;
- Shri Rakesh Nashit lives at Ashwin Society, Kodyar Nagar Road, Varachha, Surat, Gujarat – 395006 having mobile no. 9825562292 and 7359990333; that he was his senior in Amroli College, Surat and since then, they knew each other; that he came to know about his good profit, which Shri Rakesh Nashit had earned from import of various cheap items, from his other friends. Therefore, when Shri Rakesh Nashit offered him to get details of GST registered firm, to which he agreed and further obtained the requisite documents from his brother-in-law Shri Niravbhai Laljibhai Vanani and provided the same to Shri Rakesh Nashit;
- Shri Rakesh Nashit informed him to change port from Hazira to Mundra to clear the consignment and provided him the document to be signed by Shri Niravbhai Laljibhai Vanani. Therefore, he had requested Shri Niravbhai Laljibhai Vanani to sign on such document.

8.2. During his recording of statement dated 24.11.2023, Shri Dilipbhai Babubhai Sutariya also submitted his mobile phone Galaxy 30s, Model No. SM-A307FN/DS, Serial No. RZ8MB0SG0AD for investigation.

9.1. Further, the evidences, both oral and documentary, available on records, clearly establish the roles of Shri Niravbhai Laljibhai Vanani and Shri Dilipbhai Babubhai Sutariya, in the organized smuggling of the said mis-declared/prohibited/contrabands goods without them, the said smuggling could not have been taken place.

9.2. Accordingly, Shri Niravbhai Laljibhai Vanani, Proprietor of IEC firm M/s Madhav Art and Shri Dilipbhai Babubhai Sutariya were arrested on 24.11.2023 vide Arrest Memo dated 24.11.2023 (RUD-12) under the provisions of Section 104 of the Customs Act, 1962, after getting required order from the competent authority, as there were enough reasons and evidences to be believed that he had committed an offence punishable under Section 135 of the Customs Act, 1962. Therefore, they were arrested and produced before the Hon`ble ACMM court, Ahmedabad on 24.11.2023. The Court had granted judicial custody to both of them.

## 10. FORENSIC EXAMINATION OF ELECTRONIC DEVICES

10.1. The mobile phones voluntarily submitted by Shri Niravbhai Laljibhai Vanani and Shri Dilipbhai Babubhai Sutariya under their respective statements dated 24.11.2023 were sent to ECS Infotech Private Limited for forensic examination and data retrieval of the said device in the process of obtaining further evidences, if any.

10.2. The above process of data retrieval was done under panchanama dated 29.11.2023 (RUD-13). M/s ECS Infotech provided certificate under Section 65-B of Indian Evidence Act, 1872 dated 29.11.2023 (RUD-14) after completion of process of retrieval of all the data from the digital exhibits.

10.3. The data so extracted from mobile phone Galaxy 30s, Model No. SM-A307FN/DS, Serial No. RZ8MB0SG0AD belonging to Shri Dililpbhai Babubhai Sutariya were examined and it was found that there were some images including some parts of the chats/conversations pertaining to M/s Madhav Art. To illustrate the same, some images are shown below:

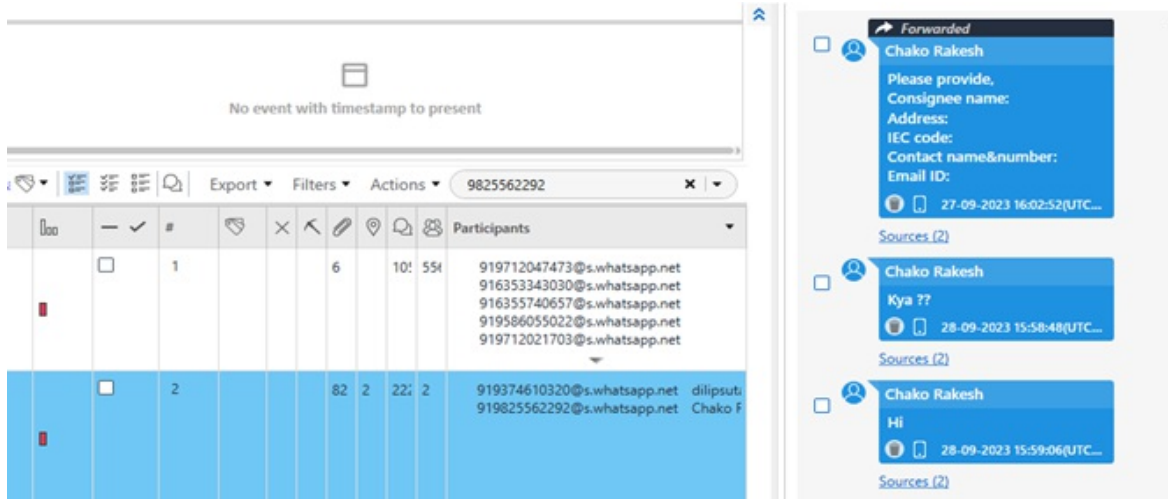


IMAGE – 1

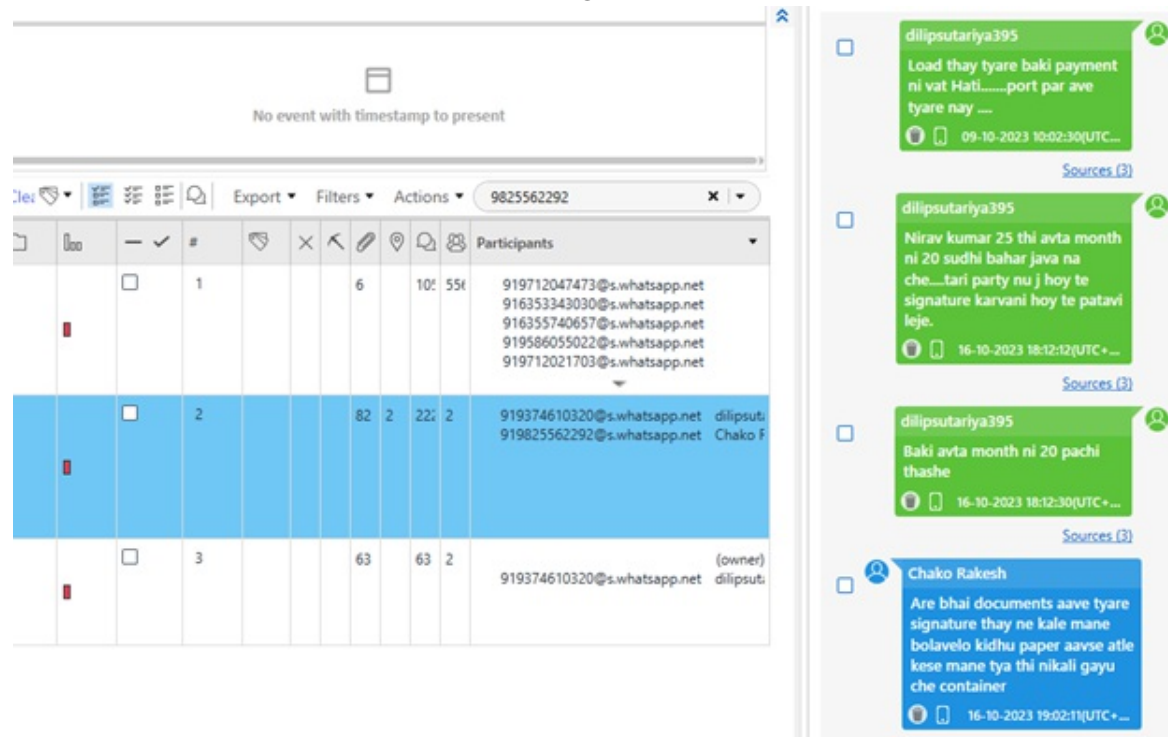


IMAGE – 2

The screenshot displays a WhatsApp chat interface. On the left, a list of participants is shown with columns for status, name, and phone number. The participants listed are:

- Participant 1: 919712047473@s.whatsapp.net, 916353343030@s.whatsapp.net, 916355740657@s.whatsapp.net, 919586055022@s.whatsapp.net, 919712021703@s.whatsapp.net
- Participant 2: 919374610320@s.whatsapp.net, 919825562292@s.whatsapp.net (labeled as Chako F)
- Participant 3: 919374610320@s.whatsapp.net (labeled as owner) and 919825562292@s.whatsapp.net (labeled as dilipsut:)

On the right, a chat history is visible with messages from 'dilipsutariya395' and 'Chako Rakesh'. The messages include text about a party, a signature, and a payment.

IMAGE – 3

The screenshot shows a photo of a document titled 'MADHAV ART'. The document is dated 24.11.2023 and is signed by 'Dilip Sutariya'. The photo is being viewed in a WhatsApp chat interface, with the sender's name 'dilip sutariya' and the recipient's name 'rakeshnasit92' visible. The photo is labeled 'IMG-2...013.jpg'.

IMAGE – 4



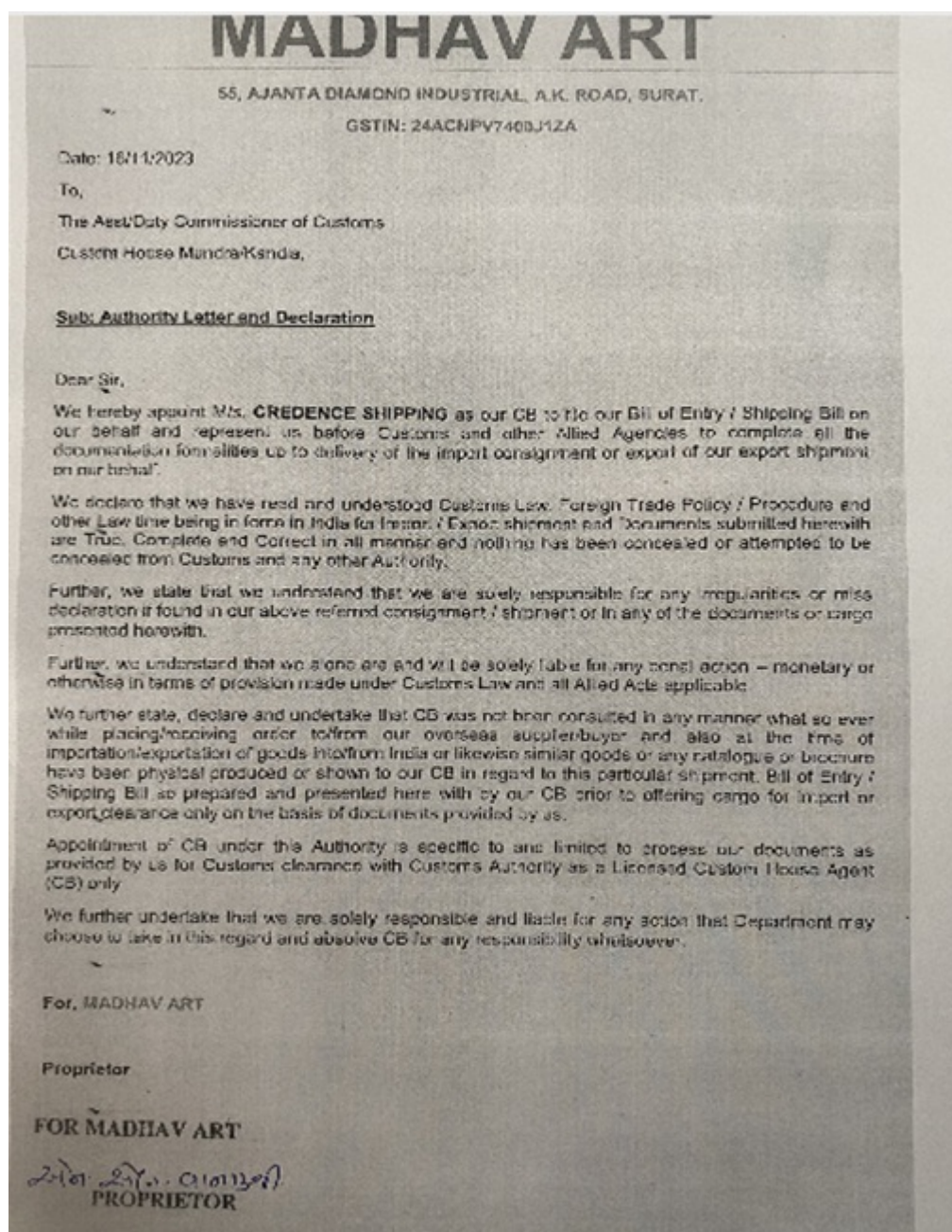


IMAGE – 5

10.4. The above Image – 1 to Image – 3 are the chats/conversations held between Shri Dilipbhai Babubhai Sutariya and Shri Rakesh Nasit/Chako Rakesh. Whereas, the image 4 & Image -5 are related to authority letter and declaration issued by Shri Niravbhai Laljibhai Vanani, which have been forwarded to Shri Rakesh Nasit. From the above It clearly appears that Shri Dilipbhai Babubhai Sutariya had knowingly obtained such 'Authority Letter & Declaration' from Shri Niravbhai Laljibhai Vanani, for executing the above importation of M/s Madhav Art.

10.5. Consequent upon the remand under the custody of DRI granted by Hon'ble ACMM, Ahmedabad, statement of Shri Dilipbhai Babubhai Sutariya, brother-in-law of Shri Niravbhai Laljibhai Vanani was also recorded on 06.12.2023 (RUD-15) under Section 108 of the Customs Act,

1962, wherein, he inter-alia stated that

- Shri Nirav Laljibhai Vanani is his brother-in-Law to whom his own sister namely Smt. Hiral N. Vanani is married in the year 2011. Shri Nirav Laljibhai Vanani is proprietor of M/s Madhav Art, which deals in trading/manufacturing of textile clothing such as Chaniya Choli etc. since 2014 onwards. M/s Madhav Art is registered under GST regime having GSTIN 24ACNPV7400J1ZA.
- Shri Rakesh Nasit was one of his friends. He was his college senior and since last three years, they were having a very good friendship terms and they often used to meet each other in Surat. Around in the month of August or September of this year 2023 itself, Shri Rakesh Nasit enquired from him that whether he had any textile firm having GST no. Shri Rakesh Nasit said that he wanted to import textile items so he requires a firm having GST Number, so as he can import his consignment of textile and GST No. is necessary for such importation, to which he (Shri Dilipbhai Babubhai Sutariya) said that he would enquire from his friends circle and he would manage to obtain from any of his friends. He (Shri Dilipbhai Babubhai Sutariya), thereafter, enquired from his brother-in-law Shri Nirav Laljibhai Vanani and asked him to give the firm details of M/s Madhav Art having GSTIN 24ACNPV7400J1ZA, which was engaged in textile business. After obtaining all the details of firm M/s Madhav Art, he had given to Shri Rakesh Nasit.
- Shri Rakesh Nasit further informed him that IEC No. would be required in the name of M/s Madhav Art for the purpose of Importation and asked him to provide PAN Card, Aadhar Card, Electricity Bill of M/s Madhav Art; that he, therefore, asked his brother-in-law Shri Nirav Laljibhai Vanani, proprietor of M/s Madhav Art to provide the above documents stating that these documents are required for obtaining IEC. After obtaining such documents, he forwarded the same to Shri Rakesh Nasit through whats app. Few days later, from the date of providing such documents viz. PAN Card, Aadhar Card, Electricity Bill, GST details etc. to Shri Rakesh Nasit, the process of registration to obtain IEC was done by Shri Rakesh Nasit and Shri Rakesh Nasit called and informed him about the process of registration for obtaining IEC and asked him to obtain OTP, which was received on Nirav Vanani's mobile No. 9825493132. Thereafter, he asked Shri Nirav L. Vanani and asked him to share the OTP for registration of IEC, to which he forwarded though whats app/text message, which he (Shri Dilipbhai Babubhai Sutariya) further forwarded to Shri Rakesh Nasit.
- He knowingly gave all the above details to Shri Rakesh Nasit after obtaining the same from his brother-in-law Shri Nirav L. Vanani. He was also aware of the import to be made in the name of M/s Madhav Art at Mundra Port. However, he was not aware of the importation of Cigarettes.
- Shri Rakesh Nasit had also offered him to invest in such importation of consignment and offered certain percentage of profit. Since, he had no fund available with himself, he denied to invest. He also stated that no consideration was receivable/received by him from Rakesh Nasit in lieu of providing all the above details and facilitating the same to him. He gave all the details to him based the trust only.
- He only came to know about importation of cigarettes when officers of DRI came to the premises of M/s Madhav Art. He further stated Shri Nirav L. Vanani was also aware of import made under IEC of M/s Madhav Art and he knowingly provided him all the documents/records for facilitating such import on his request. However, Shri Niravbhai Laljibhai Vanani was also not aware of import

of cigarettes instead of textiles.

10.5.1. During the above statement dated 06.12.2023, he was also confronted with certain data/images retrieved from his mobile phone as mentioned in para supra.

10.5.2. On being asked to peruse below shown image of printout taken from the data retrieved from his mobile and to explain the same:

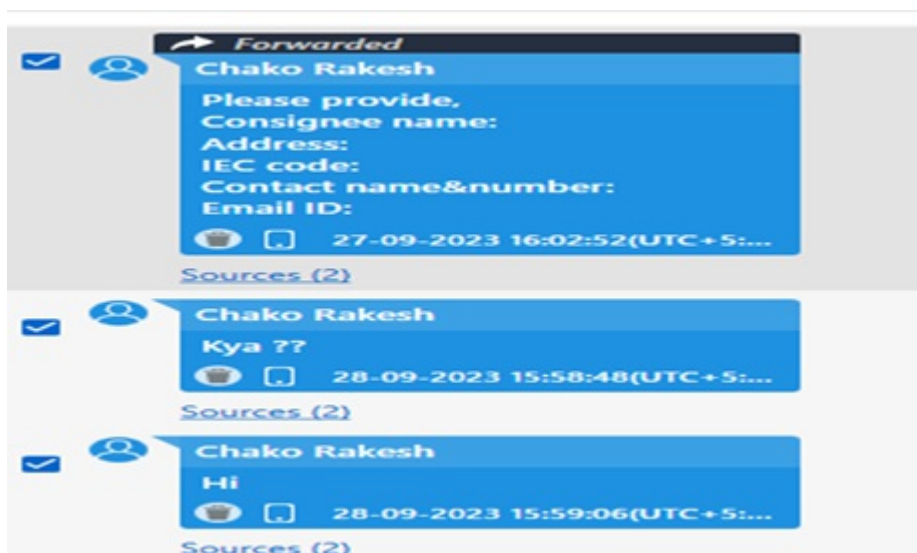


IMAGE – 6

he stated that after obtaining IEC No., Shri Rakesh Nasit asked him to provide a PDF containing all the above details such as Consignee Name, address, IEC Code, Contact No, Email ID etc. for the importation of consignment.

10.5.3. On being shown the below mentioned image of printout of data retrieved from his mobile phone:



IMAGE – 7

he stated that the above conversation has been taken place between himself and Shri Rakesh Nasit, whose contact no. is saved as Chako Rakesh as his nick name is Chako. The above conversation has been made in respect of importation of container by him. In the conversation, he informed Shri Rakesh Nasit that Shri Nirav L. Vanani was going out of station and would return on certain date in next month, hence, Shri Rakesh Nasit asked him to complete all kind of formalities of signatures for such importation and also informed him that container has left for India. In the further message, Shri Rakesh Nasit informed him that remaining payment was required to be paid to Shri Dilipbhai Babubhai Sutariya after loading of consignment only and not after the arrival at port.

10.5.4. On being specifically asked referring the above message about payment to be received, he stated that he had lent Rs. 10000 to Shri Rakesh Nasit, wherein, Shri Rakesh Nasit had returned him Rs. 8000. However, remaining 2000 was receivable from him so Shri Dilipbhai Babubhai Sutariya was just kidding to him in the above message about return of his remaining Rs. 2000 linking with the above container.

10.5.5. On being further shown the below two images of printouts taken of data retrieved from my mobile:

Photo from dilipsutariya395



Add label



dilip sutariya 15:37  
to rakeshnasit92 ▾





**MADHAV ART**

55, AJANTA DIAMOND INDUSTRIAL, A.K. ROAD, SURAT.  
GSTIN: 24ACNPV7400J1ZA

DATE: 21.11.2023

To,  
Deputy/Assistant Commissioner of Customs,  
Mundra Customs

Subject: Application for in the IGM AMENDMENT

Request for Amendment INHZA1 TI to LC INMUN1 (CHANGE IN PORT DESTINATION) in IGM for below:

1. Name and Address of Shipping Line: CMA CGM AGENCIES (INDIA) PVT LTD. IGM No- 2359699 dt: 07.11.2023  
3. MBL No. CBC0242594 DATE-17.10.2023 ITEM NO:-368  
5. Consignee Name- MADHAV ART

FROM	TO
TI	LC
INHZA1	INMUN1

I hereby certify that the aforesaid details are true and correct as per best of my knowledge. It is also certified that I am rightful person for the aforesaid addition in the IGM. I also declare that I am aware about provisions of Customs Act-1962 regarding Import General Manifest (IGM).

Therefore, we request your good self to amend/addition of above said container number in IGM No-2359699 dt: 07.11.2023

Thanking you,

For, M/S CMA CGM AGENCIES (INDIA) PVT LTD.

FOR MADHAV ART  
શ્રી રાકેશ નસિત  
PROPRIETOR

IMAGE – 8

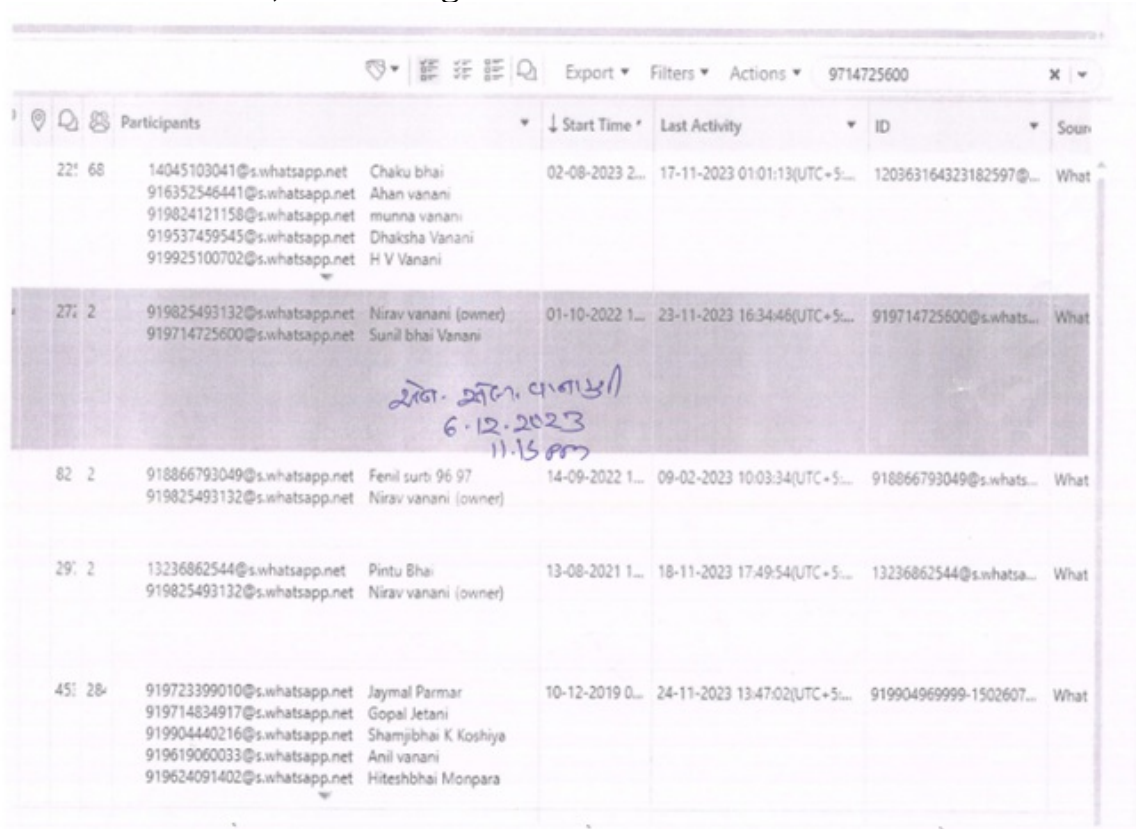
he stated that Shri Rakesh Nasit had sent him the above application in PDF format and further asked him to obtain signature on such application for port change from Shri Nirav L. Vanani (Prop. of M/s Madhav Art). Thereafter, he called Shri Nirav L. Vanani and requested him to sign the said applicable. After obtaining such application from Shri Nirav L. Vanani duly signed by him, he further sent the same to Shri Rakesh Nasit through email.

10.5.6. He further stated that as per best of his knowledge, Shri Rakesh Nasit is engaged in the business of trading of seasonal items such as mangoes, Kite selling etc. He also provided contact details of Shri Rakesh Nasit as under:

- Name: Rakesh Nasit
- Mobile No.: 9825562292, 7359990333
- Address : 1. Ashwin Society, Kodyar Nagar, Varachha, Surat  
2. Mityani/Jityani Village, Junagadh Dist (Exact name not known)

- Email ID: rakeshnasit92@gmail.com

10.6. Further, the data so extracted from mobile phone iPhone 11, Model No. MWLY2HN/A, Serial No. GV4D810JN73C of Shri Niravbhai Laljibhai Vanani were examined and it was found that there were some images including some parts of the chats pertaining to M/s Madhav Art. To illustrate the same, some images are shown below:



	Participants	Start Time	Last Activity	ID	Sound
22: 68	14045103041@s.whatsapp.net 916352546441@s.whatsapp.net 919824121158@s.whatsapp.net 919537459545@s.whatsapp.net 919925100702@s.whatsapp.net	02-08-2023 2...	17-11-2023 01:01:13(UTC+5...	120363164323182597@...	What
27: 2	919825493132@s.whatsapp.net 919714725600@s.whatsapp.net	01-10-2022 1...	23-11-2023 16:34:46(UTC+5...	919714725600@s.whats...	What
82: 2	918866793049@s.whatsapp.net 919825493132@s.whatsapp.net	14-09-2022 1...	09-02-2023 10:03:34(UTC+5...	918866793049@s.whats...	What
29: 2	13236862544@s.whatsapp.net 919825493132@s.whatsapp.net	13-08-2021 1...	18-11-2023 17:49:54(UTC+5...	13236862544@s.whatsa...	What
45: 28	919723399010@s.whatsapp.net 919714834917@s.whatsapp.net 919904440216@s.whatsapp.net 919619060033@s.whatsapp.net 919624091402@s.whatsapp.net	10-12-2019 0...	24-11-2023 13:47:02(UTC+5...	919904969999-1502607...	What

20th. 20th. 11.15 PM  
6.12.2023

IMAGE – 9

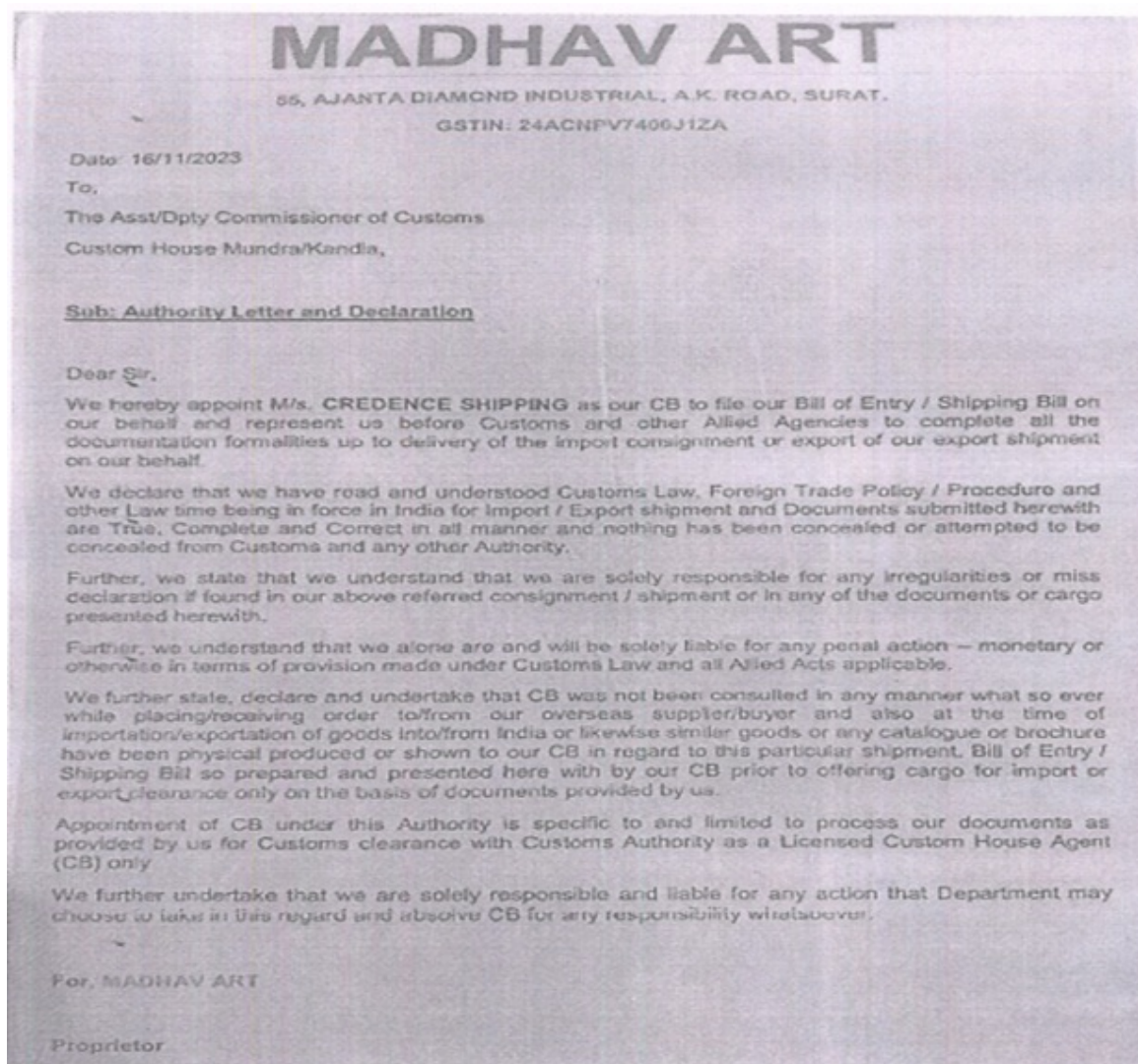


IMAGE – 10

10.7.1. Consequent upon the remand under the custody of DRI granted by Hon'ble ACMM, Ahmedabad, statement of Shri Niravbhai Laljibhai Vanani, Proprietor of IEC firm M/s Madhav Art was recorded on 06.12.2023 (RUD-16) under Section 108 of the Customs Act, 1962, wherein he was shown to the Panchanama dated 23.11.2023 drawn at M/s PSA Ameya Logistics Private Limited. In his statement, he inter-alia stated that

- The name of consignee in the draft bill of lading has been shown as M/s Madhav Art, First Floor, Plot No. 42, Ajanta Diamond Industrial Co. Society, Patel Nagar, A K Road, Surat – 395008
- M/s Madhav Art is a proprietorship firm, wherein, he is the proprietor of the said business unit. IEC of the said unit is ACNPV7400. He also stated that the container TCLU6626772 has been declared as 'Readymade Garments' against the IEC ACNPV7400J.
- As per request of Shri Dilipbhai Babubhai Sutariya, he had forwarded his documents viz. Aadhar Card, Pan Card, Registration No., Electricity Bill etc to him.
- As per his request, he had also shared OTP received on his mobile no. through

phone call & text message to Shri Dilipbhai B. Sutariya.

10.7.2. During the above statement, on being confronted the images shown above, which were recovered from his mobile phone, Shri Niravbhai Laljibhai Vanani stated that he had obtained the document shown in above image from Shri Dilipbhai Babubhai Sutariya through whats app; that he further forwarded to the said document to his cousin Shri Sunilbhai Vanani, who works in his firm, for getting printout of the said document. He further stated that after putting his signature on such document, he sent the same to Shri Dilipbhai Babubhai Sutariya.

11. From the investigations conducted and Statement of the above persons, it was revealed that Shri Rakesh Nasit/Shri Rakesh Patel appears to be the main mastermind in the entire act of smuggling of Cigarettes in the container attempted to be illegally imported by M/s. Madhav Art by declaring the goods as 'Readymade Garment'. Shri Rakesh Nasit/Shri Rakesh Patel in association with Shri Dilipbhai Babubhai Sutariya enticed Shri Niravbhai Laljibhai Vanani and obtained his documents and signature for importing the above consignment. It is evident from the statement of Shri Shri Dilipbhai Babubhai Sutariya that in lieu of profit/consideration, he obtained the requisite documents & signature from Shri Niravbhai Laljibhai Vanani. Shri Dilipbhai Babubhai Sutariya has also admitted in his statement dated 24.11.2023 (Refer RUD-11) that Shri Rakesh Nasit had offered him a part of profit and in lieu of the same, he agreed to provide all the requisite documents to a firm having GST registration and consequently, he obtained all the requisite documents and signature from his brother-in-law Shri Niravbhai Laljibhai Vanani in respect of M/s Madhav Art. Further, Shri Niravbhai Laljibhai Vanani in his statement dated 24.11.2023 (Refer RUD-10) stated that his brother-in-law Shri Dilipbhai Babubhai Sutariya had offered him some part of profit, which would arise from such import, to which Shri Niravbhai Laljibhai Vanani agreed to provide all the details of M/s Madhav Art to his brother-in-law namely Shri Dilipbhai Babubhai Sutariya. Thus, it evidently appears that Shri Rakesh Nasit/Shri Rakesh Patel in association with Shri Dilipbhai Babubhai Sutaiya and Shri Niravbhai Laljibhai Vanani had entered into conspiracy and attempted to smuggle the Cigarettes, which were declared in the Bills of Lading, Packing List & Commercial Invoice as "Readymade Garment" to hoodwink the Customs authorities at the time of import. They were partially successful in getting the goods imported in the name of M/s. Madhav Art. It was due to the intervention of the officers of DRI, Ahmedabad, that the entire smuggled goods through the consignments illegally imported by of M/s. Madhav Art were recovered and seized under Section 110 of the Customs Act, 1962 as the same were liable to confiscation.

12.1. During the course of recording of statement on 06.12.2023 (Refer RUD-15), Shri Dilipbhai Babubhai Sutariya had provided address and contact nos. of Shri Rakesh Nasit, who appeared to be actively involved in the above said smuggling of Cigarettes. However, the address provided by him appeared to be incomplete. Hence, he did not provide the complete whereabouts such as full name, complete address etc. of the above

persons. Hence, further, to ascertain the whereabouts of Shri Rakesh Nasit in the instant case as mentioned by Shri Dilipbhai Babubhai Sutariya in his statement, Subscriber Details Records (SDR) in respect of the following mobile nos. of Shri Rakesh Nasit provided by him were obtained from the respective service providers, which are as under:

S. N.	MOBILE NO.	HOLDER AS PER SDR	ADDRESS AS PER SDR
1.	9825562292	Shri Rakesh Patel	C/o Shree Rani Sati Travel House, 41 Siddhi Vinayak Industries 1, Nr. Bombay Market Circle, Varachha Road, Khodiyar Nagar Road 003, Surat-395010
2.	7359990333	Shri Hardik Tejani	93, Neheru Nagar, Near Somnath Mahadev Temple, Umra Surat City SVR College, Surat - 395007

12.2. From the above it appears that Shri Rakesh Nasit had been using above two nos. 9825562292 and 7359990333, which are registered in the name of Shri Rakesh Patel and Shri Hardik Tejani respectively. From the above details of subscribers, it appears that Shri Rakesh Nasit's full name is Shri Rakesh Patel.

12.3. Further, several summons were issued to Shri Rakesh Nasit/Rakesh Patel and Shri Hardik Tejani at their respective addresses. However, None of them turned up for recording of statement and consequently none of them joined the investigation.

12.4. Consequent to the non-compliance of the summon by Shri Rakesh Nasit/Shri Rakesh Patel, who appears to be mastermind in the above smuggling of cigarettes, the above premises of Shri Rakesh Nasit/Shri Rakesh Patel, which was mentioned at Subscriber Details Records (SDR), located at 41 Siddhi Vinayak Industries 1, Nr. Bombay Market Circle, Varachha Road, Khodiyar Nagar Road 003, Surat-395010 was visited by the officers of DRI on 16.04.2024. During the said visit, it was found that the said premises is commercial building and a firm M/s Veera International was running from the said premises. On being enquired about Shri Rakesh Nasit/Shri Rakesh Patel, it was informed that no such person with such name was working or residing at the said premises. A visit note dated 16.04.2024 (RUD-17) detailing the said proceeding was also prepared.

### 13. VALUATION OF GOODS SEIZED UNDER PANCHANAMA DATED 23.11.2023

13.1. From the above, it appears that the mis-declared goods viz. Gold Flake Cigarettes 'made in India' in two different packet colour i.e. Blue colour as well as Red Colour were attempted to be illegally imported in container bearing no TCLU6626772 covered by BL CBC0242594 dated 17.10.2023 by M/s. Madhav Art by concealing the same behind the declared goods i.e. 'Readymade Garments in violation of the provisions of the Customs Act, 1962. Further, it evidently appears that the assorted Clothes/garments were used to conceal the smuggled Cigarettes. Hence,



all these acts of omission and commission tantamount to “prohibited goods” under Section 2(33) and “Smuggling goods” as defined under Section 2(39) of the Customs Act, 1962. The said Cigarettes were also non-compliant to the provisions of Section 3(o), 7(1), 7(2), 7(3) of the Cigarettes and Other Tobacco Products Act, 2003 (Prohibition of Advertisement and regulation of trade & commerce, production, supply and distribution); Rule 2 of the provisions of Legal Metrology (Packaged Commodities) Rules, 2011; Rule 6 read with Section 18 of the Legal Metrology Act, 2009; Rule 3 GSR 727(E), Rule 2 Clause 4(h) of Notification dated 15<sup>th</sup> October 2014. Consequently, the all the mis-declared goods i.e. Cigarettes along with assorted clothes/garments, which were used for concealing the mis-declared goods, were seized under Section 110 of the Customs Act, 1962, with a reasonable belief that the same are liable to confiscation under Section 111 & Section 119 of the Customs Act, 1962 respectively.

13.2. Market value of Gold Flake Cigarette ‘Made in India’ has been arrived based on MRP mentioned on packet of Cigarettes. The value of Gold Flake Cigarette ‘Made in India’ Blue colour packet has MRP of Rs. 170/- per packet and the value of Gold Flake Cigarette ‘Made in India’ Red Colour Packet has MRP of Rs. 165/- per Packet. However, the value of ‘Assorted Clothes/Garments’ used for concealing the above smuggled cigarettes have been taken as NIL. Further, Seizure Memo dated 24.11.2023 (RUD-18) was also issued for the goods seized under Panchanama dated 23.11.2023 (Refer RUD-1). The same are as under:

SN	Item	Cartons (in Nos)	Price mentioned on each packet containing 10 stick (in Rs.)	Total Market Value (in Rs.)
1	Assorted Clothes/ Garments	62	-	-
2	Gold Flake ‘Made in India’ Blue Colour	401 (4010000 sticks)	170/-	6,81,70,000/-
3	Gold Flake ‘Made in India’ Red Colout	400 (4000000 sticks)	165/-	6,60,00,000/-
	<b>Total</b>	<b>863 (80,10,000 sticks)</b>		<b>13,41,70,000/-</b>

14. From all the above paras, it appears that total 8010000 sticks of Cigarettes for total market value of INR 13,41,70,000/- (Rupees Thirteen Crores Forty-One Lakh and Seventy Thousand only) have been seized and the same appeared to be liable to confiscation under Section 111 of the Customs Act, 1962. Further, 62 Cartons containing assorted clothes/garments, which were used for concealment of above Cigarettes were also seized under Section 110 of the Customs Act, 1962 as the same appeared to be liable to confiscation under Section 119 of the Customs Act, 1962.

15.1. It has been learnt that Cigarettes bearing Gold Flake brand are manufactured and sold in India under the control of M/s ITC Limited. Accordingly, a letter dated 02.05.2024 was issued to ITC, Limited, Ahmedabad. Consequent to the said letter, ITC Limited vide their letter dated 08.05.2024 (RUD-19) informed this office that the cigarettes described in the said letter are counterfeit as the 14-digit code printed alongside the date of manufacture on the pack of detained cigarettes does not conform to ITC's protocol of having a different/ unique 14-digit identification code on each packet of GOLD FLAKE cigarettes manufactured by ITC; that ITC neither has any cigarette manufacturing unit outside India nor has ITC exported GOLD FLAKE cigarettes manufactured in India to any other country. Therefore, there is no question of import of ITC's GOLD FLAKE cigarettes into India.

15.2. The above clearly indicates that 8010000 cigarettes sticks of Gold Flake brand are counterfeit cigarettes, which have been attempted to be imported into India in violation of the various provisions of the Customs Act, 1962 and other allied acts.

## 16. SUMMATION

16.1. Investigations conducted revealed that Shri Rakesh Nasit/Shri Rakesh Patel in association with Shri Dilipbhai Babubhai Sutariya and Shri Niravbhai Laljibhai Vanani, had attempted to illegally import the Gold Flake Cigarettes by making gross misdeclaration. From the investigation conducted and statements of Shri Niravbhai Laljibhai Vanani and Shri Dilipbhai Babubhai Sutariya, it evidently appears that Shri Niravbhai Laljibhai Vanani proprietor of M/s Madhav Art had knowingly provided all his details such as copy of Aadhar Card, PAN Card alongwith all other necessary documents as well as his signatures to Shri Dilipbhai Babubhai Sutariya for monitory consideration as admitted in his statement dated 24.11.2023 and assisted to Shri Dilipbhai Babubhai Sutariya and Shri Rakesh Nasit for making import in the name of M/s Madhav Art. Thus, it evidently appears that M/s Madhav Art (Prop: Shri Niravbhai Laljibhai Vanani) in connivance with Shri Dilipbhai Babubhai Sutariya and Shri Rakesh Nasit/Shri Rakesh Patel attempted to illegally import 8010000 sticks of cigarettes bearing GOLD FLAKE brand for estimated market value of INR 13,41,70,000/- in guise of declared goods viz. Readymade Garment.

16.2. It also appears that the said imported goods i.e. in respect to cigarette packets/packing (made in India), does not contain the Indian Statutory Health Warning (which is 85% of the front & back face of the pack and contains the text/pictures in terms of Section 3 & Section 7 of the Cigarettes and other Tobacco Products Act, 2003 (prohibition of advertisement and regulation of trade and commerce, production, supply and distribution) (herein after referred to as COTPA). Further, It does not comply with the declaration requirement in terms of Rule 2 of the Provisions of the Legal Metrology (Packaged Commodities) Rules, 2011; Rule 6 read with Section 18 of the Legal Metrology Act, 2009 for foreign/imported products (including cigarettes) viz. Name & Address of

Importer, Common or generic name of the commodity (i.e. cigarettes), Net quantity (i.e. 10 or 20 cigarettes), Month & year in which the commodity is imported. Further, it appears that it does not satisfy the requirements of particulars to be there on every packing/packages/packets of cigarette in terms of rule: 3 GSR 727(E), Rule 2 clause 4 (h) notification dated 15th Oct 2014, says, viz. a. Name of the product b. Name and address of the manufacturer or importer or packer c. Origin of the product (for import) d. Quantity of the product etc.

16.3. It also appears that the goods imported into India without declaring and concealing the same behind the declared goods appears to be imported into India in contravention of the relevant provisions of the Foreign Trade Policy, as well as, the Customs Act, 1962. Hence the mis-declared goods, as well as, the declared goods, which were used for concealment were seized under Panchanama dated 23.11.2023. The details of goods seized along with value have been tabulated below:

SN	Item	Cartons (in Nos)	Price mentioned on each packet containing 10 stick (in Rs.)	Total Market Value (in Rs.)
1	Assorted Clothes/ Garments	62	-	-
2	Gold Flake 'Made in India' Blue Colour	401 (4010000 sticks)	170/-	6,81,70,000/-
3	Gold Flake 'Made in India' Red Colout	400 (4000000 sticks)	165/-	6,60,00,000/-
	<b>Total</b>	<b>863 (80,10,000 sticks)</b>		<b>13,41,70,000/-</b>

16.4. The seized goods totally valued at Rs. 13,41,70,000/-, as aforesaid had already been handed over to the custodian of M/s PSA Ameya Logistics Private Limited, Mundra, for safe custody under Supratnama dated 23.11.2023. The value of seized goods was based on the MRP.

16.5. It appears that in a very planned manner M/s Madhav Art (Proprietor – Shri Niravbhai Laljibhai Vanani) in connivance with his brother-in-law Shri Dilipbhai Babubhai Sutariya and Shri Rakesh Nasit/Shri Rakesh Patel had attempted to illegally import Cigarettes by way of gross misdeclaration and contravention of various provisions of the Customs Act, 1962 & FTP. Shri Rakesh Nasit/Shri Rakesh Patel appears to be the mastermind, who lured Shri Dilipbhai Babubhai Sutariya for obtaining documents of M/s Madhav Art from Shri Niravbhai Laljibhai Vanani. Accordingly, Shri Dilipbhai Babubhai Sutariya further lured Shri Niravbhai Laljibhai Vanani for monetary consideration and obtained the requisite documents as well as his signatures for performing the above import of the said consignment. From the above paras, it is evidently

established that Shri Niravbhai Laljibhai Vanani was well aware of the consignment being imported as he himself signed all the document provided by Shri Dilipbhai Babubhai Sutariya including the application for change of port for the said consignment.

16.6. It has also been found that despite issuance of several summons to Shri Rakesh Nasit/Shri Rakesh Patel, Shri Hitesh Aboti, Authorized Person of Shipping Liner M/s CMA CGM, no one turned in this office for recording of statements. Many of the summon got returned undelivered to this office from postal remarks as not known/left/incomplete address. Hence, they did not join the investigation.

16.7. Several Summons were also issued to Shri Avinash Sonkar, who had approached shipping liner i.e. M/s CMA CGM for clearance of the above imported container, but he did not join the investigation. Shri Avinash Sonkar appeared to be a key person in nexus with the said consignment illegally imported as he had in possession of all the purported documents of M/s Madhav Art and he himself was managing the clearance part of the said container. His non-cooperation in the investigation also indicates his due roles in the said illegally imported container.

16.8. From all the foregoing paras, it appears that in a very planned manner & with conspiracy, Shri Rakesh Nasit/Shri Rakesh Patel in association with Shri Dilipbhai Babubhai Sutariya and Shri Niravbhai Laljibhai Vanani had knowingly and willingly involved themselves in the smuggling of Cigarettes along with the declared goods imported by M/s Madhav Art. All of them form a syndicate of smuggling of cigarettes in the instant case.

## 17. LEGAL PROVISIONS:

### 17.1. THE CUSTOMS ACT, 1962:

*( i ) Section 2(33) of the Customs Act, 1962: - "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.*

*(ii) Section 2(39) of the Customs Act, 1962: - "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.*

*(iii) Section 110 of the Customs Act, 1962: - Seizure of goods, documents and things—*

*(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:*

*Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous*

*permission of such officer.*

(iv) Section 111: Confiscation of improperly imported goods, etc. -

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

*(a)....(b)...(c)....*

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

*.....*

*(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;*

*.....*

*(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or.....*

*(m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 3 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];*

*.....*

(v) Section 112: Penalty for improper importation of goods, etc. -

*Any person, -*

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

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

*shall be liable, -*

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

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

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

*(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than*



*the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;*

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

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

*(vi) Section 114AA: Penalty for use of false and incorrect material –*

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

*(vii) Section 117: Penalties for contravention, etc., not expressly mentioned*

*Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees.*

*(viii) Section 119. Confiscation of goods used for concealing smuggled goods.*

*- Any goods used for concealing smuggled goods shall also be liable to confiscation.*

*Explanation. - In this section, "goods" does not include a conveyance used as a means of transport.*

*(ix) Section 123: - Burden of proof in certain cases. –*

*(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be –*

*(a) in a case where such seizure is made from the possession of any person, -*

- i. on the person from whose possession the goods were seized; and*
  - ii. if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;*
- (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.*

*(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.*

*(x) Section 124 - Issue of show cause notice before confiscation of goods, etc.*

*No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -*

(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.

#### 17.2. Notification No. 103/2016-Customs (N.T.), New Delhi, the 25<sup>th</sup> July, 2016

GSR.... (E)- In exercise of the power conferred by sub-section (2) of Section 123 of the Customs Act, 1962 (52 of 1962), and in suppression of the Notification of the Government of India in the Ministry of Finance (Department of Revenue) No.204/84-Customs, dated the 20<sup>th</sup> July, 1984, the Central Government hereby specifies the following other classes of goods, for the purposes of the said Section, namely: -

1. Silver Bullion.

2. Cigarettes.

[ File No. 394/32/2007-Cus (AS)]

17.3. Section 18(1) of The Legal Metrology Act, 2009 regarding making declarations on pre-packaged commodities stipulates "No person shall ... import...any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed."

17.4. Proviso to Rule 3(1)(b) of the Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2008 provides as under: -

"Provided further that on box, carton and pouch type of package, the specified health warning shall appear on both sides of the package, on the largest panels and for cylindrical and conical type of package, the specified health warning shall appear diametrically opposite to each other on two largest sides or faces of the package and the specified health warning shall cover eighty-five per cent. (85%) of each side or face of the principal display area of the package of which sixty per cent. (60%) shall cover pictorial health warning and twenty-five per cent. (25%) shall cover textual health warning".

17.5. Section 7 of the Cigarettes and other Tobacco Products ((Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003. (COTPA 2003)):-

Restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products. – (1) No person shall, directly or indirectly, produce,

supply or distribute the cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him bears thereon, or on its label 1 [such specified warning including a pictorial warning as may be prescribed.] (2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning. (3) No person shall import cigarettes or any other tobacco products for distribution or supply for a valuable consideration or for sale in India unless every package of cigarettes or any other tobacco products so imported by him bears thereon, or on its label, the specified warning. (4) The specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply for a valuable consideration. (5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him indicates thereon, or on its label, the nicotine and tar contents on each cigarette or as the case may be on other tobacco products along with the maximum permissible limits thereof: Provided that the nicotine and tar contents shall not exceed the maximum permissible quantity thereof as may be prescribed by rules made under this Act.

17.6. Section 8 of the Cigarettes and other Tobacco Products ((Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, (COTPA 2003)):- Manner in which specified warning shall be made.– (1) The specified warning on a package of cigarettes or any other tobacco products shall be– (a) legible and prominent; (b) conspicuous as to size and colour; (c) in such style or type of lettering as to be boldly and clearly presented in distinct contrast to any other type, lettering or graphic material used on the package or its label and shall be printed, painted or inscribed on the package in a colour which contrasts conspicuously with the background of the package or its labels. (2) The manner in which a specified warning shall be printed, painted or inscribed on a package of cigarettes or any other tobacco products shall be such as may be specified in the rules made under this Act. (3) Every package containing cigarettes or any other tobacco products shall be so packed as to ensure that the specified warning appearing thereon, or on its label, is, before the package is opened, visible to the consumer.

17.7. Para 6 of the CBEC Circular No. 09/2017-Customs, issued vide F.No. 711/07/2003-Cus (AS) dated 29<sup>th</sup> March 2017: -. All tobacco products (whether domestically manufactured and sold or imported) are required to comply with the requirements contained in the Cigarettes and other Tobacco Products ((Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, (COTPA 2003)) and the Rules framed thereunder. Ministry of Health and Family and Welfare vide Notification GSR 727(E) dated 15.10.2014 notified the Cigarettes and other Tobacco Products (Packaging and Labeling) Amendment (COTP) rules, 2014, which came into effect from 01.04.2016 (G.S.R. 739 (E) dated 24.09.2015). The COTP Rules are strict in nature and their compliance requires that the printing of pictorial and textual warning on cigarette packets is in specified format, colors, resolution, for and Language.

17.8. The Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011 apply to packaged commodity, which includes cigarettes. As the imported cigarettes packs are intended for retail sale, they are covered under the Legal Metrology (Packaged Commodity) Rules, 2011 which require a declaration on the packs containing the name and address of the manufacturer or importer or packer, quantity of the product, month and year of manufacturing or pre-packing or importation, the retail sale price, etc. In terms of the said Act and Rules it is illegal to manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless the package is in such standard quantities or number and bears thereon such declarations and

*particulars in such a manner as prescribed.*

17.9. *As per CBEC instruction dated 30.11.2011, The Board has issued instructions to the Customs field formations dealing with clearance of these products to ensure strict compliance and implementation of the specified health warning on the cigarette and other tobacco products prescribed under "The Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2008 Rules" in the manner in which the specified health warning shall be displayed on the tobacco product packs covering all types of tobacco products produced, supplied, imported and distributed in India.*

17.10. *Also a set of new pictorial health warning has been issued by the Ministry of Health & Family Welfare vide Notification G.S.R. No. 592 (E) dated 21st July, 2022 which came into force from 1st December, 2022. Accordingly, all the tobacco products manufactured / packaged / imported for sale in India have to bear the new specified health warnings as prescribed in the said Notification.*

17.11. Foreign Trade (Development and Regulation) Act, 1992.

**(a)** *As per Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.*

**(b)** *As per Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 all goods to which any Order under subsection (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.*

**(c)** *As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.*

**(d)** *As per Section 11(3) of the Customs Act, 1962 any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.*

17.12. DGFT Notification No. 18/2015-2020 dated 01.08.2017

**To be Published in the Gazette of India Extraordinary Part-II, Section - 3, Sub-Section (ii)**  
**Government of India**  
**Ministry of Commerce & Industry**  
**Department of Commerce**  
**Directorate General of Foreign Trade**

**Notification No. 18/2015-2020**  
**New Delhi, Dated: 1 August, 2017**

**Subject: Amendment in Para 13 of the General Notes Regarding Import Policy of ITC (HS), 2017 – Schedule – 1 (Import Policy).**

**S.O. (E):** In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends Para 13 of the General Notes Regarding Import Policy of ITC (HS), 2017 – Schedule – 1 (Import Policy), as under:

Existing Para 13 of the General Notes Regarding Import Policy of ITC (HS), 2017	Existing Para 13 of the General Notes Regarding Import Policy of ITC (HS), 2017
<b>Cigarettes or any other Tobacco product:</b>  Import of cigarette or any other tobacco product shall be subject to the provisions contained in the Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment Rules, 2009 (as amended from time to time) as notified by the Ministry of Health & Family Welfare (the details can be accessed from the website of the Ministry of Health & Family Welfare: <a href="http://www.mohfw.nic.in">www.mohfw.nic.in</a> )	<b>Cigarettes or any other Tobacco product:</b>  Import of cigarette or any other tobacco product shall be subject to the provisions contained in the Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment Rules, 2017 (as amended from time to time) as notified by the Ministry of Health & Family Welfare (the details can be accessed from the website of the Ministry of Health & Family Welfare: <a href="http://www.mohfw.nic.in">www.mohfw.nic.in</a> )

**2. Effect of this Notification:** Para 13 of the General Notes Regarding Import Policy of ITC (HS), 2017 – Schedule – 1 (Import Policy), has been amended in consonance with Cigarettes and other Tobacco Products (Packaging and Labeling) Amendment Rules, 2017.

(Shri Alok Vardhan Chaturvedi)  
 Director General of Foreign Trade

[Issued from F. No. Mon.-6872/AM - 04/PC-2 (A)/Vol.III]

17.13. Rule 3 of the cigarettes and Other Tobacco products (Packaging and Labeling) Rules, 2008 and its Amendment Rules, 2017, read-with Circular No. 09/2017- Customs, issued under F. No. 711/07/2003-Cus (AS) dated 29.03.2017:

*The manner of packing and labeling of the Cigarettes and other Tobacco products have been defined as under –*

*Manner of packing and labeling:-*

1. Every person engaged directly or indirectly in the production, supply, import or distribution of cigarettes or any other tobacco product shall ensure that:
  - a. Every package of cigarettes or any other tobacco product shall have the specified health warning exactly as specified in the Schedule to these rules.
  - b. Para 3 of Circular No. 09/2017-Customs dated 29.03.2017 states

*The Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011 apply to packaged commodity which includes cigarettes. As the imported cigarette packs are intended for retail sale, they are covered under the Legal Metrology (Packaged Commodity) Rules, 2011 which require a declaration on the packs containing the name and address of the manufacturer or importer or packer; quantity of the product, month and year of manufacturing or pre-packing or importation, the retail sale price, etc. In terms of the said Act and Rules it is illegal to manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless the package is in such standard quantities or number and bears thereon such declarations and particulars in such a manner as prescribed*

*B. Para 5 of Circular No. 09/2017-Customs dated 29.03.2017 states-*

*<i> "The Cigarette packets shall have, inter alia, specified health warning to cover 85% of the principal display area of the package; 60% shall cover pictorial warning and 25% shall cover textual health warning, the placement of the warning; the language to be used on the package; every package of Cigarette should have name of the product; name and address of the manufacturer or importer or packer; origin of the product ( for import) quantity of the product and date of manufacture (Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution Act, 2003 (COTPA 2003) and rules may be referred.*

*<ii> Cigarette Packets shall have the name and address of the manufacturer or packer or importer and the month and year in which the commodity is manufactured or pre-packed or imported (Legal Metrology (Packaged Commodity) Rules, 2011 refers]*

*Provided that for conical package, the widest end of the package shall be considered as the top edge of the package:*

*Provided further that on box, carton and pouch type of package, the specified health warning shall appear on both sides of the package, on the largest panels and for cylindrical and conical type of package, the specified health warning shall appear diametrically opposite to each other on two largest sides or faces of the package and the specified health warning shall cover eighty five per cent (85%) of each side or face of the principal display area of the package of which sixty per cent (60%) shall cover pictorial health warning and twenty-five per cent (25%) shall cover textual health warning;*

- a. none of the elements of the specified warning are severed, covered or hidden in any manner when the package is sealed or opened;*
- b. no messages, images or pictures that directly or indirectly promote the use or consumption of a specific tobacco brand or tobacco usage in general or any matter or statement which is inconsistent with, or detracts from, the specified health warning are inscribed on the tobacco product package;*
- c. no product shall be sold unless the package contains the specified health warning: Provided that the specified health warning shall be printed on every retail pack in which the tobacco product is normally intended for consumer use or retail sale, as well as any other external packaging, such as cartons or boxes and will not include other packaging such as gunny bags;*
- d. the textual health warning shall be inscribed in the language used on the pack: Provided that where the language used on a package or on its label is :-*
  - a. English, the health warning shall be expressed in English*
  - b. English and Indian languages, the health warning shall be expressed in English and any one of the Indian languages in which the brand name appears;*
  - c. Hindi and other Indian languages, the health warning shall be expressed in Hindi and any one of the Indian language in which the brand name appears;*
  - d. any Indian language, the health warning shall be expressed in such Indian language;*
  - e. Indian languages, the health warning shall be expressed in any two Indian languages in which the brand name appears;*
  - f. foreign language, the health warning shall be expressed in English;*
  - g. foreign and Indian languages, the health warning shall be expressed in English and any one of the Indian languages in which the brand name appears :*

*Provided further that the textual health warning shall appear in not more than two languages used on the package:*



*Provided also that the textual health warning in one language shall be displayed on one side or face of principal display area and the textual health warning in the other language shall be displayed on the other side or face of principal display area of the package.*

- h. *no tobacco product package or label shall contain any information that is false, misleading, or deceptive, or that is likely or intended to create an erroneous impression about the characteristics, health effects, or health or other hazards of the tobacco product or its emissions. This prohibition includes, but is not limited to, the use of words or descriptors, whether or not part of the brand name, such as "light", "ultra light", "mild", "ultra mild", "low tar", "slim", "safer", or similar words or descriptors; any graphics associated with, or likely or intended to be associated with, such words or descriptors; and any product package design characteristics, associated with, likely or intended to be associated with, such descriptors.*
- i. *The specified Health warning an in terms of the Schedule is: "Smoking Kills" (on smoking forms of tobacco products)*

## 18. VIOLATIONS & CONTRAVENTION OF VARIOUS PROVISIONS:

18.1. The seized goods, i.e. 8010000 sticks of Gold Flake Cigarettes 'Made in India' totally valued at Rs. 13,41,70,000/- have been attempted to be illegally imported into India by way of gross misdeclaration and without valid/proper documents in violation of the provisions of the Customs Act, 1962. The said goods were mis-declaring as "Readymade Garment" with a motive to smuggle into India by way of fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations.

18.2. Further, the seized packets of cigarettes i.e. Gold Flake "Made in India" do not bear pictorial warning as mandated under Section 7 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) and Rule 3 of the cigarettes and Other Tobacco products (Packaging and Labeling) Rules, 2008 and its Amendment Rules, 2017, read-with Circular No. 09/2017- Customs, issued under F. No. 711/07/2003-Cus (AS) dated 29.03.2017 and therefore appears to be a violation of the said provisions. Further, in terms of General Note 13 (regarding Import Policy) of the schedule to the Customs Tariff Act, 1975, the import of cigarettes or any other tobacco product are subject to the provisions contained in the Cigarettes and other Tobacco Products (Packaging and Labeling) Amendment Rules, 2009, as notified by the Ministry of Health & Family Welfare. Accordingly, all the cigarettes and tobacco products should have new specified health warning and new pictorial health warning on all cigarette's packets for sale in India when imported as prescribed in the Notification dated 27.05.2011 of Ministry of Health and Family Welfare. It therefore appears that the seized consignment of Cigarettes, have been smuggled/ imported, contrary to the prohibitions imposed by Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) and in contravention of the provisions of Foreign Trade Policy 2015-20 and Section 11(1) read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 as amended. Therefore, the same

may be treated as imported illegally into India and liable to confiscation under the provisions of Section 111(d) of the Customs Act, 1962.

18.3. Thus, the import made as such is in violation of the provisions of Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Rule 14 of the Foreign Trade (Regulation) Rules, 1993 and Para 2.01(b), 2.03(a) of the Foreign Trade Policy 2015-2020. Therefore, the same may be treated as imported illegally into India and liable to confiscation under the provisions of Section 111(d) of the Customs Act, 1962.

18.4. As per clause 5 of the Chapter 1A of the General Notes regarding Import Policy given with the ITC (HS) Classification, import of all packaged commodities which are subject to the provisions of Legal Metrology (Packaged Commodities) Rules, 2011, shall also be subject to the condition laid down in the aforesaid Rules and non-compliance with such provisions shall constitute violation of the provisions of Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Rule 14 of the Foreign Trade (Regulation) Rules, 1993 and Para 2.01(b), 2.03(a) of the Foreign Trade Policy. The packages of Cigarettes being ready to consume goods, Name and Address of the Importer were also required to be pre-printed on the packages in terms of the provisions of the Rule 6(1)(e), 6(2), and 10 of the Legal Metrology (Packaged Commodities) Rules, 2011, but it is observed that such details are absent on each of the packages of the concealed goods. Further in terms of Rule 27 of the Legal Metrology (Packaged Commodities) Rules, 2011, the importer of any pre-packed commodity should register with the Director or Controller. Section 18 of the Legal Metrology Act, 2009 also prescribes the manner of making declaration on the pre-packed commodities. It is evident that M/s. Madhav Art or the masterminds involved in the smuggling or any other claimant/beneficiary of the goods has not produced any such registration certificate issued to them so far and for that the goods imported by them under concealment do not follow the manner of making declaration as prescribed. This is being in violation of the provisions of Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Rule 14 of the Foreign Trade (Regulation) Rules, 1993 and Para 2.01(b), 2.03(a) of the Foreign Trade Policy 2015-2020. Therefore, the same has to be treated as imported illegally into India and liable to confiscation under the provisions of Section 111(d) of the Customs Act, 1962.

18.5. The packages of Cigarettes of Gold Flake Brand are of well-known branded products and it appears that such branded goods are protected as "intellectual property" in terms of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. M/s. Madhav Art or the mastermind or the beneficiary involved in the smuggling or any other claimant of the goods have not come forward with the evidence of them being legal right holders for importing such goods into India for sale and marketing within India. Further, they have not produced any evidence to establish that the goods imported by them were not bearing false trade mark, brand name etc. Moreover, on being enquired from ITC Limited, who is the legal holder of such Trade Mark of Gold Flake explicitly informed this office that ITC Limited does not import or export cigarettes of Gold Flake Brand and the

above cigarettes are counterfeit Cigarettes. Therefore, the goods imported illegally by way of concealment may be treated as imported illegally into India, infringing the intellectual property rights and thereby the same are liable to confiscation under the provisions of Section 111(d) of the Customs Act, 1962 read with the provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

18.6. The above Cigarettes were not declared in the relevant Bill of Lading No. CBC0242594 dated 17.10.2023, packing list, commercial invoice etc. and same were found concealed behind the declared goods viz. 'Readymade Garment' and the same also do not correspond in respect of value. Hence the same are liable to confiscation under the provisions of 111(i), 111(l) and 111(m) of the Customs Act, 1962.

18.7. Moreover, the 62 Cartons/boxes of 'Assorted Cloth/Garments, having assessable value NIL have been used for concealment of illegally imported Cigarettes in container bearing no. TCLU6626772, hence, the same are also liable to confiscation under Section 119 of the Customs Act, 1962.

19. Cigarette is an item specified under Section 123 of Customs Act, 1962 by virtue of Notification No.103/2016 dated Cus (N.T.) dated 25.07.2016. The burden of proof that 8010000 sticks of Gold Flake Cigarettes totally valued at Rs. 13,41,70,000/-, placed under seizure are not smuggled goods lies with the legal owner/claimant/beneficiary/importer of such goods.

20. ROLES OF PERSONS INVOLVED IN THE ABOVE SMUGGLING, WHICH HAVE BEEN ASCERTAINED BASED ON INVESTIGATION CONDUCTED AND STATEMENTS RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT.

20.1. ROLE OF SHRI NIRAVBHAI LALJIBHAI VANANI, PROPRIETOR OF IEC FIRM M/S. MADHAV ART:

20.1.1. It appears that Shri Niravbhai Laljibhai Vanani, Proprietor of M/s Madhav Art (IEC: ACNPV7400J), had knowingly and intentionally involved himself in the smuggling of Cigarettes, by providing the KYC documents such as PAN card, Adhaar Card, Signatures etc., to his brother-in-law Shri Dilipbhai Babubhai Sutariya for obtaining IEC (Import Export Code) and importing the above consignment in lieu of monetary considerations. Shri Niravbhai Laljibhai Vanani had further signed the documents for changing of port destination for the container bearing no. TCLU6626772 imported by M/s. Madhav Art. He himself had forwarded the above document after duly signed by him to Shri Dilipbhai Babubhai Sutariya, who further forwarded the same to Shri Rakesh Nasit/Shri Rakesh Patel. He also shared OTP on receipts of the same, as and when, it was required. Document seized from the office premises of M/s Madhav Art and images retrieved from his mobile during forensic retrieval, evidently indicated that he was well aware of the above import of the said container TCLU6626772. Based on such documents & signature, IEC in the name of M/s Madhav Art was obtained and all the requisite process of documentation for such

import were performed. Hence, his all claims about unawareness of above illegal import of cigarettes through the container TCLU6626772 are hereby negated. Shri Niravbhai Laljibhai Vanani, Proprietor of M/s. Madhav Art, appears to be associate of Shri Rakesh Nasit/Shri Rakesh Patel and Shri Dilipbhai Babubhai Sutariya in the instant case, as he appears to be instrumental for effecting the smuggling of Cigarettes, which were concealed behind the declared goods viz. 'Readymade Garment', attempted to be imported from Cambodia. He is the person who had signed all the documents and provided his KYC documents which was the basis for the import of the above goods vide container no. TCLU6626772 covered by Bill of Lading CBC0242594 dated 17.10.2023. The said willful mis-declaration of actual goods imported and suppression of facts on the part of Shri Niravbhai Laljibhai Vanani, Proprietor of M/s. Madhav Art, construes "smuggling" as defined in section 2(39) of the Customs Act, 1962. It, thus, appears that Shri Niravbhai Laljibhai Vanani, Proprietor of M/s. Madhav Art is involved in the smuggling of goods by resorting to concealment of the cigarettes behind the declared goods viz. 'Readymade Garment' with an intent to smuggle the same into India.

20.1.2. Thus, it appears that, Shri Niravbhai Laljibhai Vanani, Proprietor of M/s. Madhav Art, by his acts of commission and omission rendered the undeclared, as well as, declared goods liable to confiscation under the provisions of Section 111 and Section 119 of the Customs Act, 1962, as he knowingly and intentionally made, signed and used, and caused to be made, signed and used, declaration, statement and document which was false and incorrect in material particulars, in the transaction of business for the purposes of the Customs Act, 1962 and thereby he is liable for penalty under Sections 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962.

## 20.2. ROLE OF SHRI DILIPBHAI BABUBHAI SUTARIYA:

20.2.1. Based on the statement of Shri Niravbhai Laljibhai Vanani, it appears that Shri Dilipbhai Babubhai Sutariya, in association with Shri Rakesh Nasit/Shri Rakesh Patel, had lured Shri Niravbhai Laljibhai Vanani and obtained all the requisite documents such as Aadhar Card, Pan Card, Electricity Bill etc. from Shri Niravbhai Laljibhai Vanani, Proprietor of M/s Madhav Art and he also obtained signature and OTP from Shri Niravbhai Laljibhai Vanani for onward submission to Shri Rakesh Nasit/Shri Rakesh Patel for issuance of IEC in the name of M/s Madhav Art. He has been very instrumental in importation of above container. Further, from Chats/conversations retrieved from his mobile phone as discussed above, it evidently appears that Shri Dilipbhai Babubhai had knowingly obtained all the above documents including 'Authority Letter & Declaration' and 'Application for amendment in IGM' from Shri Niravbhai Laljibhai Vanani, for executing the above importation of M/s Madhav Art and shared to his friend Shri Rakesh Nasit/Shri Rakesh Patel. As per details mentioned at para 10.5.4. above, which revealed that he had also received certain monetary consideration from Shri Rakesh Nasit/Shri Rakesh Patel in respect of importation of such container. Hence his claim in his statement that he had lent some money to Shri Rakesh Nasit/Shri

Rakesh Patel, which was returned by him appears to be totally false and hence the same is not tenable. His all claims about unawareness of above illegal import of cigarettes through the container TCLU6626772 are also hereby negated as he was the person, who lured Shri Niravbhai Laljibhai Vanani, Proprietor of M/s. Madhav Art and obtained all the requisite documents & signature from him for illegal importation of such container. Shri Dilipbhai Babubhai Sutariya appears to be associate of Shri Rakesh Nasit/Shri Rakesh Patel and he in association with Shri Rakesh Nasit/Shri Rakesh Patel & Shri Niravbhai Laljibhai Vanani conspired such smuggling of cigarettes. He appears to be instrumental for effecting the smuggling of Cigarettes, which were concealed behind the declared goods viz. 'Readymade Garment', attempted to be imported from Cambodia. He is the person who had obtained all the requisite documents and signature of the proprietor of M/s Madhav Art, which was the basis for the import of the above goods vide container no. TCLU6626772 covered by Bill of Lading CBC0242594 dated 17.10.2023. The said willful mis-declaration of actual goods imported and suppression of facts on the part of Shri Dilipbhai Babubhai Sutariya construes "smuggling" as defined in section 2(39) of the Customs Act, 1962. It, thus, appears that Shri Dilipbhai Babubhai Sutariya is involved in the smuggling of goods by resorting to concealment of the cigarettes behind the declared goods viz. 'Readymade Garment' with an intent to smuggle the same into India.

20.2.2. Thus, it appears that, Shri Dilipbhai Babubhai Sutariya, by his acts of commission and omission rendered the declared, as well as, undeclared goods liable to confiscation, as he was concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing and dealing with the goods which he knew were liable to confiscation under the provisions of Section 111 and Section 119 of the Customs Act, 1962, as he knowingly and intentionally used and caused to be made, signed and used, declaration, statement and document which was false and incorrect in material particulars, in the transaction of business for the purposes of the Customs Act, 1962 and thereby he is liable for penalty under Sections 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962.

### 20.3. ROLE OF SHRI RAKESH NASIT/SHRI RAKESH PATEL

20.3.1. From all the investigation conducted and statement of Shri Dilipbhai Babubhai Sutariya and Shri Niravbhai Laljibhai Vanani, it appear that Shri Rakesh Nasit/Shri Rakesh Patel is the mastermind and main kingpin who has knowingly and intentionally involved himself in the smuggling of cigarettes, by conspiring the above illegal importation of cigarettes, which has been illegally imported by M/s. Madhav Art. Shri Rakesh Nasit/Shri Rakesh Patel in association with Shri Dilipbhai Babubhai Sutariya and Shri Niravbhai Laljibhai Vanani obtained IEC in the name M/s Madhav Art and managed all kind of process of documentation for illegally importing 8010000 sticks of cigarettes of Gold Flake 'Made in India' for estimated market value of Rs. 13,41,70,000/-, by way of concealing the same by declared goods 'Readymade Garment' in containerized cargo bearing no. TCLU6626772 covered by Bill of Lading CBC0242594 dated 17.10.2023. Shri Rakesh Nasit in a very planned

manner in association with Shri Dilipbhai Babubhai Sutariya and Shri Nirvabhai Laljibhai Vanani conspired such illegal importation of Cigarettes in violation of various provisions of the Customs Act, 1962 as well as allied acts & rules made thereunder. Hence, it appears that Shri Rakesh Nasit/Shri Rakesh Patel is the beneficial owner of these smuggled goods. The said willful mis-declaration of actual goods imported and suppression of facts on the part of Shri Rakesh Nasit, construes "smuggling" as defined in section 2(39) of the Customs Act, 1962. It, thus, appears that Shri Rakesh Nasit is involved in the entire organized smuggling of goods by resorting to concealment of the consumer goods behind the declared goods with an intent to smuggle the same into India.

20.3.2. Thus, it appears that Shri Rakesh Nasit/Shri Rakesh Patel, by his acts of commission and omission rendered the declared, as well as, undeclared goods liable to confiscation, as they were concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing and dealing with the goods which they knew were liable to confiscation under the provisions of Section 111 and Section 119 of the Customs Act, 1962, as they knowingly and intentionally used and caused to be made, signed and used, declaration, statement and document which was false and incorrect in material particulars, in the transaction of business for the purposes of the Customs Act, 1962 and thereby they are liable for penalty under Sections 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962.

#### 20.4. ROLE OF SHRI AVINASH SONKAR

20.4.1. It appears that as per printouts of email communication/conversation resumed during the search conducted at the premises related to Shri Avinash Sonkar located at M/s Aadhar Seasky India Private Limited, 02, 1<sup>st</sup> Floor, Aadinath Arcade-II, Plot No. – 576, Ward 12/C Gandhidham, Kutch, Gujarat – 370201, Shri Avinash Sonkar, whose name appears to be as Shri Avinash Kumar was constantly in touch with shipping liner i.e. CMA CGM regarding clearance of the above container TCLU6626772 covered under Bill of Lading No. CBC0242594. He was the person, who was co-ordinating all the process of documentation for clearances of illegally imported container. He was in possession of all the purported documents including Bill of Lading, Packing List, Commercial Invoice, Application for change of port etc. having declared goods as 'Readymade Garment'. Several summon were also issued to Shri Avinash Sonkar. However, he did not join the investigation. Hence, it evidently appears that Shri Avinash Sonkar/Shri Avinash Kumar was key contact person for getting the above consignment of cigarettes cleared from the Customs Authorities. However, the said container was put on hold and examined by the DRI officers. Hence, it appears that Shri Avinash Sonkar/Shri Avinash Kumar was involved in such smuggling of cigarettes.

20.4.2. Thus, it appears that, Shri Avinash Sonkar/Shri Avinash Kumar, by his acts of commission and omission rendered the declared, as well as, undeclared goods liable to confiscation, as he was concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or



purchasing and dealing with the goods which he knew were liable to confiscation under the provisions of Section 111 and Section 119 of the Customs Act, 1962 and thereby he is liable for penalty under Sections 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962.

20.5. Further, several summons were also issued to Shri Hardik Tejani, subscriber of Mobile No. 7359990333 being used by Shri Rakesh Nasit, and Shri Hitesh Aboti, who was the authorized persons of shipping liner i.e. CMA CGM. However, they did not appear in this office and did not join the investigation.

21. Now, therefore, M/s Madhav Art (Proprietor: Shri Nirvabhai Laljibhai Vanani), (IEC: ACNPV7400J) having their registered office at Ground Floor, Plot No. 55, Ajanta Diamond Industrial Co. Society, Patel Nagar, A K Road, Surat – 395008 is hereby called upon to show cause to the Additional Commissioner of Customs (Import), having his office at 1st floor, Building No. 5B, Port User Building, Mundra Custom House, Mundra-370421 as to why:-

(i) the seized 801 Carton boxes containing 8010000 sticks of Gold Flake Cigarettes 'Made in India' which were not declared having total assessable value of Rs. 13,41,70,000/- (Rupees Thirteen Crore Forty-One Lakh and Seventy Thousand only), which were smuggled in containers bearing no. TCLU6626772 vide Bill of Lading No. CBC0242594 dated 17.10.2023, should not be confiscated under the provisions of Section 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962;

(ii) the seized 62 Cartons of Assorted Clothes/Garments, which were used for concealment of above Cigarettes mentioned at (i) above (undeclared and concealed goods), should not be confiscated under the provisions of Section 119 of the Customs Act, 1962;

(iii) penalty should not be imposed upon him under Section 112(a) and 112(b) of the Customs Act, 1962;

(iv) penalty should not be imposed upon him under Section 114AA of the Customs Act, 1962; and

(v) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

22. Now, therefore **(i)** Shri Rakesh Nasit/Shri Rakesh Patel, who appears to be beneficial owner/mastermind of the imported goods; **(ii)** Shri Dilipbhai Babubhai Sutariya, residing at 10, Panchvati ro-hause, Yogichok, Vaaracha, Surat City, Varachha Road, Surat, Gujarat-395006; **(iii)** Shri Avinash Sonkar, residing at Plot No. 253, S. No. 123, Apna Nagar, Kidana, Gandhidham, Katchch, Gujarat – 370205 are hereby called upon to show cause to the Additional Commissioner of Customs (Import), having office at 1st floor, Building No. 5B, Port User Building, Mundra Custom House, Mundra-370421 as to why:-

(i) penalty should not be imposed upon him under Section 112(a) and 112(b) of the Customs Act, 1962;

(ii) penalty should not be imposed upon him under Section 114AA of the Customs Act, 1962; and

(iii) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

23. Shri Hardik Tejani, residing at 93, Neheru Nagar, Near Somnath Mahadev Temple, Umra Surat City SVR College, Surat - 395007 & Shri Hitesh Aboti, is hereby called upon to show cause to the Additional Commissioner of Customs (Import), having office at 1st floor, Building No. 5B, Port User Building, Mundra Custom House, Mundra-370421 as to why:-  
as to why

- i. Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962 as he failed to comply the summons issued to them.

24. All the Noticees are further required to produce at the time of showing cause all evidences upon which they intend to rely in support of their defence. They are further advised to indicate in their written submission as to whether they desire to be heard in person before the case is adjudicated. If no mention is made about this in their written submissions, it would be presumed that they do not desire to be heard in person. If no cause is shown by them against the action proposed to be taken within 30 days from the date of receipt of this Notice or if they do not appear before the adjudicating authority, when the case is posted for hearing, the case is liable to be decided Ex-Parte on the basis of material evidence available on record.

25. The documents/articles as listed at Annexure-R are relied upon and are enclosed with this show cause notice, and where not enclosed with this Notice will be made available for inspection on demand made in writing.

26. The department reserves its right to issue addendum/ corrigendum to show cause notice or to make any additions, deletions amendments or supplements to this notice, if any, at a later stage. The department/DRI also reserves its right to issue separate Notice/s for other Noticees, offences etc related to the above case, if warranted.

27. If the said Noticee/s will pay the duty with interest and penalty as specified under Section 28(5) of Custom Act, 1962 within 30 days from the receipt of this notice the proceedings may be deemed to be conclusive as to the matters stated therein, without prejudice to the provisions of section 135, 135A and 140 of the Custom Act, 1962, if applicable.

ApprovedByName  
ApprovedByDesignation  
ApprovedDate

BY REGISTERED/SPEED POST

1. M/s Madhav Art (Proprietor: Shri Nirvabhai Laljibhai Vanani), IEC: ACNPV7400J, Ground Floor, Plot No. 55, Ajanta Diamond Industrial Co. Society, Patel Nagar, A K Road, Surat – 395008.
2. Shri Dilipbhai Babubhai Sutariya, 10, Panchvati ro-hause, Yogichok, Vaaracha, Surat City, Varachha Road, Surat, Gujarat-395006.
3. Shri Rakesh Nasit/ Shri Rakesh Patel, Ashwin Society, Kodiyar Nagar, Varachha, Surat-395010 ( Email rakeshnasit92@gmail.com)
4. Shri Avinash Sonkar, Plot No. 253, S. No. 123, Apna Nagar, Kidana, Gandhidham, Katchch, Gujarat – 370205.
5. Shri Hardik Tejani, 93, Neheru Nagar, Near Somnath Mahadev Temple, Umra Surat City SVR College, Surat – 395007

Copy to :-

1. ADG, DRI, Ahmedabad, Magnet Corporate par, Sola, Ahmedabad, Gujarat 380059