

2769
to 2771

	<p>प्रधान सीमा शुल्क आयुक्त का कार्यालय, मुंद्रा आयुक्तालय सीमा शुल्क हाउस, अदानी पोर्ट और एस.ई.जेड., मुंद्रा (कच्छ), OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA- 370421 Phone No.02838-271426 FAX.No.02838-271425</p>	
A. File No.	:	GEN/ADJ/COMM/306/2022-Adjn-O/o Pr Commr-Cus-Mundra.
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-15-24-25
C. Passed by	:	K. Engineer, Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue	:	02.07.2024. 02.07.2024.
E. SCN No. & Date	:	SCN F. No. GEN/ADJ/COMM/306/2022-Adjn-O/o Pr Commr-Cus-Mundra;
F. Noticee(s) / Party / Importer	:	Ms/ Piyush Industries (IEC-AJJPG4682N) Flat No. 1, Poorvi Apartments, Vasant Vihar, New Delhi 110057; and Others
G. DIN	:	20240771MO000031313A

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

**“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,
2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near
Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

O/C

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ -/ 1000रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

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

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष माँग शुल्क का 7.5% भुगतान करना होगा।

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

FACTS OF THE CASE IN BRIEF:

M/s. Piyush Industries (IEC-AJ JPG4682N) having registered office at Flat No. 1, Poorvi Apartments, Vasant Vihar, New Delhi 110057 (*hereinafter also referred to as "M/s Piyush" also for the sake of brevity*) is engaged in import of PVC RESIN GRADE SG5 under Advance Authorization Scheme.

2. Whereas, specific intelligence gathered by the Customs Preventive, New Customs House, New Delhi revealed that M/s. Piyush were engaged in mis-use of Advance Authorization by way of clearing the imported duty free goods under Advance Authorization in the domestic market without payment of appropriate duty. The import firm M/s Piyush being a proprietorship firm of Mr. Piyush Gupta, resident of Flat No. 1, Poorvi Apartments, Vasant Vihar, New Delhi 110057. Intelligence further suggested that the above firm is not fulfilling the export obligation against the advance authorization as mandated under the provisions of the Customs Act, 1962.

2.1 As per the CBIC notification no. 18/2015-Cus dated 01.04.2015, materials imported into India against an Advance Authorization issued in terms of paragraph 4.03 of the Foreign Trade Policy are exempted from the whole of the Duty of Customs leviable thereon specified in the first Schedule to the Customs Tariff Act, 1975 and from the whole of the Additional Duty leviable under sub-sections (1), (3) and (5) of Section 3 of Customs Tariff Act, 1975, Safeguard Duty leviable under Section 8B and Anti-Dumping duty leviable under Section 9A, IGST leviable under sub-section (7) of Section 3, sub-section (9) of Section 3 of Act ibid, subject to certain conditions. As per the Para 4.03 of the FTP 2015-2020, Advance Authorization is issued to allow duty free import of inputs which is physically incorporated in export product. Further, as per the **Notification No. 18/2015-Cus. Dated 01/04/2015**, the licenses and/or material are non-transferable.

3. Acting on the aforesaid intelligence, a team of Customs Preventive, New Delhi visited and searched the office of M/s Piyush located at Flat No. 1, Poorvi Apartments, Vasant Vihar, New Delhi 110057. Proceedings of the searches were recorded under Panchnamas dated 20.02.2020. During the search conducted at the office premises of M/s Piyush, necessary documents were resumed for further investigation.

4. SCRUTINY OF RECORDS/DOCUMENTS

4.1. During the course of investigation, it was found that **M/s Piyush Industries** were issued an advance authorization no. 0510407399 dated 01.08.2018 for duty free import of **648 MT** of PVC Resin and as per the condition sheet of the above authorization, they were to supply under authorization/export articles such as pipes and fittings to the tune of **7,75,000 Kg** with FOB of **Rs.4,59,53,359/-** in terms of **Notification No. 18/2015-Cus dated 01.04.2015**. As per the RA issued in the matter, it was gathered that the License was registered at ICD Tughlakabad. Further it was observed that M/s Piyush Industries had filed & cleared goods under 7 Bills of Entry for import of 618 MT of PVC resin Grade SG5 at Adani Port Special Economic Zone, Mundra Port and Mundra Port, the details of which are given as below;

S. N. o.	Port	ENTIT Y NAME [IMPO RTERS NAME FROM WHOM BOUG HT]	BE NUMBER /date	ITEM DESCR PTION	QUA NTIT Y (MT)	UNIT PRICE (IN INVOI CE CURRE NCY)	PROD UCT VALU E (IN INVOI CE CURRE NCY)	ASSES SABLE VALU E FOR THE ITEM IN INR	DUT Y FORG ONE	ANTI DUM PING DUT Y FOR GON E
1	Ada ni Port Spec ial Econ omic Zone ,, Mun dra Port	OWS WARE HOUS E SERVI CES LLP	2004089/2 9.11.2018	PVC RESIN GRAD E SG5	100	950	95000	693025 0	31957 59.314	1079 368
2	Ada ni Port Spec ial Econ omic Zone ,, Mun dra Port	OWS WARE HOUS E SERVI CES LLP	2000044/0 3.01.2019	PVC RESIN GRAD E SG5	52	955	49660	354820 7	16327 77.3	5497 31
3	Ada ni Port Spec ial Econ omic Zone ,, Mun dra Port	Oil Field Wareho use and Service s Ltd.	2000121/0 8.01.2019	PVC RESIN GRAD E SG5	200	955	191000	136087 50	62623 34.21	2108 430
4	Ada ni Port Spec ial Econ omic	Oil Field Wareho use and Service s Ltd.	2000631/0 7.02.2019	PVC RESIN GRAD E SG5	88	955	84040	605928 4	27882 98.81	9387 76

Zone , Mundra Port									
5	Adani Port Special Economic Zone , Mundra Port	Oil Field Warehouse and Services Ltd.	2001066/07.03.2019	PVC RESIN GRAD E SG5	32	955	30560	2200320	1012520.56 340900
6	Adani Port Special Economic Zone , Mundra Port	OWS WAREHOUSE SERVICES LLP	2004460/24.12.2018	PVC RESIN GRAD E SG5	48	950	45600	3258120	1502422.045 507449
7	Mundra Port	Suns Shine Sterling International Pvt Ltd./Xinjiang Zhongtai Chemical Co., Ltd.	2283831/04.03.2019	PVC RESIN GRAD E SG5	98	859.59	84240	5715360	2547150.3 825250
					618			41320291	18941263 6339904

As may be seen, M/s Piyush Industries filed 6 Bills of Entry under Advance Authorization no. 0510407399 dated 01.08.2018 at Adani Port Special Economic Zone, Mundra Port for duty free import of 520 MT of PVC resin grade SG5 and cleared the same for home consumption. Similarly, they filed another bill of entry at Mundra Port for clearance of 98 MT of PVC resin grade SG5 under advance authorization no. 0510407399 dated 01.08.2018 and cleared the same for home

consumption. Thus, in all, they cleared the entire quantity of 618 MT of PVC resin grade SG5 under the advance authorization no 0510407399 dated 01.08.2018. **The total duty foregone against the above imports arrives at Rs.1,89,41,263/-.**

4.2. The statements of the responsible persons of M/s Piyush were recorded under Section 108 of Customs Act, 1962:

S. No.	Name of Proprietor/Authorized Signatory of CHA/Customs Broker	Dt. of Statement
1	Sh. Piyush Gupta and his father Sh. Krishan Kumar Gupta	20.02.2020, 22.02.2020, 24.02.2020 and 10.02.2021
2	Sh. Asadullah Siddique, Warehouse Manager, Oil Field Warehouse and Service Limited, Sector A, Mundra Port & SEZ Ltd., Mundra, Kutch	06.10.2020
3	Sh. Ramesh Kumar dealing the legal/court matters of M/s Caravan Project Logistics	20.10.2020
4	Sh. S. K. Arora and his son Sh. Rahul Arora	20.02.2020 & 21.02.2020

STATEMENTS AND INQUIRY:

4.3.1. Sh. Piyush Gupta and his father Sh. Krishan Kumar Gupta tendered their voluntary statements dated 20.02.2020 under Section 108 of the Customs Act, 1962. Sh. Piyush Gupta while tendering his voluntary statement dated 20.02.2020 under Section 108 of the Customs Act, 1962 inter alia stated:

- i. That he had no idea as to how the business of M/s Piyush industries is run and operated and that he was not aware of the technicality of the work;
- ii. on being asked as to who looked after the operation of M/s Piyush Industries, he replied that Mr S.K. Arora had come to him with the offer of creating M/s Piyush Industries;
- iii. that he is the main person who has invested in the company and looks after the day to day operations of that firm along with his Son Mr Rahul Arora;
- iv. on being asked about the contact details and address details of Mr S.K. Arora and Rahul Arora to which he stated that he knew that Office address of Mr S.K Arora and Rahul Arora which is G-13, South Ex part 2;
- v. that the contact number of Mr S.K. Arora is 9873381166 and he had been there to the said address 2-3 times;
- vi. on being asked to what was his role in the firm M/S Piyush Industries to which he replied that he just signed the papers which were given to him by Mr S.K. Arora through his employees;
- vii. that he agreed to submit his ID's for creation of the firm in return of monetary consideration;
- viii. that his role in the firm was only for signing the documents or cheque's for releasing of payments;

- ix. that both Mr Arun and Mr Govind working for S.K. Arora came to his home along with the documents for his signatures;
- x. that Mr Arun used to contact him from his mobile number 9560437542;
- xi. that Sh. Govind contacted him from his mobile number 9873720348 and 9711958683; and he didn't know the address of either Sh Arun or Sh Govind;
- xii. on being asked as to how much had he received in the business to which he replied that he had received Rs. 50000/-cash in hand in October 2018 for signing the documents related to imports of PVC Resin;
- xiii. on being asked whether he knew as to what was the business of the firm M/S Piyush Industries was involved in to which he replied that he just knew that the firm dealt in PVC Plastic resin and imports from outside India;
- xiv. that the 1st consignment came from China and the other one came from Tanzania (Seashells);
- xv. that his firm also had a manufacturing firm based in Rajpura, Punjab; **that he hadn't seen the manufacturing plant;**
- xvi. that he was told by Mr S.K. Arora that M/S Piyush Industries has a manufacturing of plastic products from the raw material imported from outside India;
- xvii. on being asked as to how many firms did he have apart from M/S Piyush Industries to which he replied that he had one more firm in his name i.e. Shashi Udyog in which he was partner along with Mr Krishan Kumar Gupta his father;
- xviii. that Sh. S.K. Arora came over to his house regarding the creation of this firm in which they were planning to import Black Pepper Corns and mainly spices;
- xix. on being asked as to how did he know Mr. S.K. Arora to which he replied that he knew Mr. S.K. Arora through his father;
- xx. that they had known each other for the past 25 years; that his father knew Mr. S.K. Arora better than him;
- xxi. on being asked as to why he agreed to work Mr. S.K. Arora to which he replied that since his IT business was not running well and due to financial problems he accepted his offer to work with him;
- xxii. that he hadn't invested any amount of money in the business or in the company;
- xxiii. he further requested that his statement may be recorded on a later date.

4.3.2. Statement of **Sh. Piyush Gupta** was again recorded under Section 108 of the Customs Act, 1962 on 22.02.2020.

4.3.3. **Sh. Piyush Gupta** while tendering his voluntary statement dated 22.02.2020 under Section 108 of the Customs Act, 1962 inter alia stated that

- i. his firm was in existence since 2018;
- ii. on being about the bank account details related to M/S Piyush Industries to which he stated that there is only one current account of M/s Piyush

Industries maintained with ICICI bank stated in C-17, LOCAL SHOPPING CENTRE, PASCHIMI MARG, VASANT VIHAR, and NEW DELHI. 110057 and the Account number of M/s Piyush Industries is 006505005984, IFSC Code ICIC000065;

- iii. he also submitted a copy of the bank statement for the period 16.05.2018 to 22.02.2020;
- iv. on being informed that as per the bank account statement of ICICI Bank 006505005984 the following entries are reflected i.e. Rs 1000000 lakhs Deposited via RTGS dated 31/1/2019 from M/S Sarvamangalam exports, Rs 500000 lakhs deposited by RTGS dated 1/2/2019 from M/S Narayan Overseas 1/2/2012, Rs 5,90,00,00 Lakhs deposited via RTGS Dated 25/3/2019 from M/S Sarvamangalam Exports, Rs 31,85,000 deposited by RTGS dated 2/4/2019, Rs 27,15,000 deposited by RTGS dated 2/4/2019 from M/S MS Bhanu tradex and then he was asked as to what was the nature of transaction of M/S Piyush Industries with the these mentioned firms to which he replied that these transactions were being done by Mr S.K. Arora and he didn't know about these transactions; he was asked to provide the details of the sales as per the sale invoices retrieved from his premises vide Panchnama dated 20/02/2020 which showed that the sales of PVC resin made by his firm to M/S Shashi Udyog which was also his firm in partnership with his father Sh K. K. Gupta to which he stated that he made such invoices by himself on instructions from Mr S.K.Arora;
- v. that the details to be filled in the invoices were also as per his instructions;
- vi. that he only used to take print of them and keep with him;
- vii. on being asked as to how he used to communicate with Sh. S.K. Arora to which he stated that as and when instructed to him, he received details on his mail id i.e. piyush862002@yahoo.co.in from his email id calcuttaintustrialcorporation@gmail.com.

4.3.4. Voluntary Statement of **Sh. Piyush Gupta** was again recorded on **24.02.2020** under Section 108 of the Customs Act, 1962 wherein he stated that:

- i. on being asked as to whether he looked after the operations of the firm M/s Shashi Udyog to which replied that he didn't look after the day to day operations of M/s Shashi Udyog (IEC No. ADSFS2722A) because he had no idea how this business ran and operated;
- ii. on being asked as to who looked after the operation of M/S Shashi Udyog to which he stated that Mr S.K. Arora was the main person who looked after the day to day operations of that firm along with his Son Mr Rahul Arora;
- iii. on being asked as to what was his role in the firm M/s Shashi Udyog to which he stated that it was informed to him by Sh. S.K. Arora that his role in the firm would be only for signing the documents or cheque's for releasing of payments;
- iv. on being asked as to whether he knew what was the business of the firm M/S Shashi Udyog is involved in to which replied that he was told that this firm was created for dealing in spices;
- v. that he was not aware if any imports had been made by that firm;

- vi. that he was also offered to travel to Vietnam to arrange for some consignment over there as per the instructions of Sh.S.K. Arora;
- vii. that the travel expenses would be borne by Sh.S.K. Arora.

5.1 Statement of **Sh Krishan Kumar Gupta**, father of Sh. Piyush Gupta was recorded on 20.02.2020 under Section 108 of the Customs Act, 1962. While tendering the voluntary statement under Section 108 of the Customs Act, 1962 dated 20.02.2020, Sh. Krishan Kumar Gupta inter alia stated

- I. that he was B. Tech from IIT Delhi passed out in 1969; that his son was the sole proprietor in the firm of M/s Piyush Industries;
- II. on being asked as to what did he know about the operations of the firm M/s Piyush Industries to which he replied that he introduced his son Sh Piyush Gupta to one Mr S.K. Arora to start PVC granules import and other import like Sh S.K. Arora was doing with the firm in his (Krishan Kumar Gupta) name i.e. M/S Aggrasen Industries;
- III. that he was the proprietor of M/S Aggrasen Industries;
- IV. on being asked as to who looked after the operation of M/s Piyush Industries and M/s Aggrasen Industries to which he replied that there are 4 people who look after the operations of M/s Piyush Industries and M/s Aggrasen Industries;
- V. he told that those 4 people were Mr S.K.Arora, his Son Rahul Arora and his employees Mr Arun Kumar and Mr Govind Saini;
- VI. that Mr S.K. Arora himself invested or he arranged to finance the running of M/S Piyush Industries and M/S Aggrasen Industries;
- VII. that neither him nor his son had ever invested in either of the firms;
- VIII. on being asked about the contact details and address of Mr S.K. Arora and Rahul Arora, Arun Kumar and Mr Govind Saini to which he stated that he knew the office address of Mr S.K Arora and Rahul Arora which was G-13, South Ex Part 2;
- IX. that the contact number of Mr S.K. Arora was 9873381166 and contact number of Rahul Arora was 9810818977. Contact number of Arun Kumar is 9560437542;
- X. that the contact number of Govind Saini was 9873720348 and 9711958683;
- XI. that Govind Saini lives in Sangam Vihar but he didn't know his complete address;
- XII. that he also didn't know the address of Arun Kumar;
- XIII. that he visited the office of Sh S.K. Arora at G-13, South Ex Part 2 twice a month for the past 3-4 years;
- XIV. on being asked as to what was his role in the firm M/s Aggrasen Industries to which he replied that his role in the firm was only for signing the documents or cheque's for releasing of payments;
- XV. that Mr Arun Kumar and Mr Govind Saini both of whom worked for S.K. Arora used to come to his home along with the documents for his signatures;

XVI. on being asked as to how much money had he received in the business to which he replied that he had received approximately Rs 200000/- over the past 3 years for signing the documents; on being asked whether he knew what was the business the firm M/S Aggrasen Industries was involved in to which he replied that the firm M/S Aggrasen industries dealt in import of PVC granules;

XVII. that the PVC resin imported by M/S Aggrasen Industries was mainly sold in the domestic market. To his knowledge there has been no export done in M/S Aggrasen Industries;

XVIII. on being asked as to how many firm did he have apart from M/S Aggrasen Industries to which he stated that he had one more firm in his name i.e. Shashi Udyog in which he was partner along with his son Piyush Gupta;

XIX. that S.K. Arora came over to his house regarding the creation of that firm which dealt in black pepper;

XX. on being asked as to how did he know Mr S.K. Arora to which he replied that he knew him from the last 25-30 years; that he was a very old friend of him;

XXI. on being asked as to why he agreed to work with Mr S.K. Arora to which he replied that he lost money in one of the industries they tried to setup in Bhiwandi in 2011-12 with 5 partners which failed miserably after an investment of 30 lakh Rupees Loan which he was still indebted;

XXII. that Sh. S K Gupta told him that his loan will be wiped out within 2-3 years in 2017 and then Aggrasen industries started;

5.2.1. On the basis of the voluntary statements tendered by both **Sh. Piyush Gupta, proprietor of M/s Piyush Industries and his father, Shri Krishan Kumar Gupta** under Section 108 of the Customs Act, 1962 both dated **20.02.2020**, it was revealed that Sh. Piyush Gupta was a mere signatory in the firm M/s Piyush Industries and the actual work relating to M/s Piyush Industries was dealt with by Sh. S. K. Arora and his son Sh. Rahul Arora who as per the information provided by both Sh. Piyush Gupta and Sh. Krishan Kumar Gupta were residing at G-13, South Extension, Part II, South Delhi, therefore, it was imperative to conduct search at the premises at G-13, South Extension, Part II, South Delhi. Accordingly, search was conducted at G-13, South Extension, Part II, South Delhi on 20.02.2020 in the presence of independent witnesses and the proceedings were recorded under panchnama dated 20.02.2020 however nothing fruitful found during the search.

5.2.2. During the investigation in the matter, it was gathered that M/s Piyush Industries had another premises at 27, Focal Point Industrial Area, Rajpura, Patiala, Punjab. Accordingly, the jurisdictional Customs office of Customs, Ludhiana was requested to verify the address vide letter dated 27.02.2020 and the said office vide letter dated 17.04.2020 intimated that no industry in the name of M/s Piyush Industries was found at the above address and instead another unit in the name of M/s Alcon Wire and Cable Industries was found operating at the give premises. Further, as per panchnama dated 11.03.2020 drawn at the above premises, it was revealed that M/s Alcon Wire & Cable Industries were found working there and it had been operating there for 5 years and no firm in the name of M/s Piyush Industries was found working there (RUD-9) Accordingly summons dated 19.03.2020, 29.06.2020, 13.07.2020, 22.07.2020

were issued to M/s Alcon Wire & Cable Industries to give evidence in the matter. Though none appeared from M/s Alcon Wire & Cable Industries to give evidence however, M/s Alcon Wire & Cable Industries vide letter no. AWCI/F&A/1456 dated 22.07.2020 informed that they had no dealing whatsoever with M/s Piyush Industries. That neither did they purchase any material from M/s Piyush Industries nor have supplied any material to M/s Piyush Industries and that they were ready to give an affidavit in this regard.

6. As while tendering the voluntary statements under Section 108 of the Customs Act, 1962 dated **20.02.2020 & 22.02.2020**, **Sh. Piyush Gupta** had stated that the firm was being operated by Sh. S. K. Arora. Further, during the search conducted at the premises of Sh. S. K. Arora, he was not found there. However, during the course of investigation, it was found that one Sh. Govind Saini was an employee of Sh. S. K. Arora and might be in possession of documents related to the case. Accordingly, search was conducted at the premises of Sh. Govind Saini at H-16/1949, Sangam Vihar, New Delhi on 04.03.2020 in the presence of two independent witnesses, however, nothing incriminating was found during the search. Later, **Sh. Govind Saini** tendered his voluntary statement dated 04.03.2020 under Section 108 of the Customs Act, 1962. While tendering his voluntary statement recorded under Section 108 of the Customs Act, 1962, and on being asked, Sh. Govind Saini inter alia stated

- i. that he used to work as field boy where his work included documents dispatch/delivery and bank related work mainly withdrawal of cash from bank account as instructed by Sh. S. K. Arora;
- ii. that the office address of Sh. S. K. Arora which he changed over the years are S-505, Greater Kailash-2, then after a few years shifted to B-226, Greater Kailash-1 and finally at G-13, South Extension-2;
- iii. that his main work since 2008 was related to site visit of client regarding real estate; that it was only for last 2 years that he used to also deliver document regarding imports as instructed by Sh. S. K. Arora;
- iv. on being asked as to what was his role in the firms namely M/s Aggrasen Industries, M/s Piyush Industries and M/s Shashi Udyog, he stated that on instructions of Sh. S. K. Arora, he used to handover the documents for signing to Sh. Piyush Gupta and Sh. K. K. Gupta and made transactions from the bank account of those firms;
- v. that he also knew that some plastic was imported which was then sold;
- vi. that one company which he knew was M/s Ridhi Sidhi Polymers to which the imported plastic was sold;
- vii. that he also visited the CHA for clearing of imported goods for which he along with Sh. Arun Kumar Singh used to visit their office;
- viii. that he did not know the complete address of Sh. Arun Kumar Singh;
- ix. that the CHA are M/s Marine International office at opposite Gurudwara, Govindpuri Delhi where he used to contact the owner Sh. Atul Khanna and one Sh. Vinod who was the dealing hand there;
- x. that the other CHA was M/s OSR Logistics office at Ansal Tower, Rajouri Garden where he used to meet one Sh. Vishal Yadav to give the documents;

- xi. that seven licenses were issued in the name of M/s Aggrasen Industries and one license in the name of M/s Piyush Industries which used to come from ITO office then Sh. Piyush Gupta and Sh. K. K. Gupta used to call Sh. S. K. Arora;
- xii. that he was then told by Sh. S. K. Arora to go and get the licenses;
- xiii. on being asked about the contact details and addresses of Sh. S. K. Arora and Sh. Rahul Arora, he replied that the address of Sh. S. K. Arora and Sh. Rahul Arora which is G-13, South Extension Part 2; that Sh. Rahul Arora lives in G-13, South Extension part 2 and Sh. S. K. Arora lives at A-43, South Extension Part 2;
- xiv. that contact number of Sh. S. K. Arora is 9873381166 and the contact details of Sh. Rahul Arora is 7689933682, 8368462359 and 981081877;
- xv. on being asked about the other companies being operated by Sh. S. K. Arora, he stated that the names he remembered were M/s Baba Chemicals, M/s Green Transition, M/s Green View Apartments, M/s Calcutta Industrial Corporation, M/s Calcutta Industries, M/s Vrinda Enterprises; on being asked as to who else worked with Sh. S. K. Arora, he stated that one person namely Dabral, who is CA living in NIT Faridabad used to discuss matters with Sh. S. K. Arora. The mobile number of Sh. Dabral is 9810752530;
- xvi. on being asked as to why he left working of Sh. S. K. Arora, he stated that in January, he was told by Sh. S. K. Arora to stop coming to G-13, South Extension-II office and to work from home;
- xvii. that then they also started to lock the office from outside and used to live inside;
- xviii. that later only he was asked to work from the residential premises of Sh. Piyush Gupta i.e. Flat No. 1, Poorvi Apartments, Vasant Vihar where he instructed that he take the laptop of Sh. S. K. Arora but he did not attend office at Vasant Vihar address; that Sh. S. K. Arora also did not give him complete salary;
- xix. that he also told him to go his village for 1-2 months and then come back and contact him for work if everything became ok by then; that then he started looking for new job.

7. During the search conducted at the premises of **Sh. S. K. Arora** i.e. G-13, South Extension Part 2, it was found that two persons namely Sh. Pujari alias Sh. Ashok and Sh. Sintu Bharti were residing at the at the premises of Sh. S. K. Arora i.e. G-13, South Extension Part 2, therefore, statements of both the persons were recorded under Section 108 of the Customs Act, 1962. While tendering the voluntary statement under Section 108 of the Customs Act, 1962 dated 21.02.2020, Sh. Pujari alias Sh. Ashok stated as under:

- i. that he had signed the panchnama dated 20-21.02.2020 drawn there;
- ii. that he was residing at G-13, South Extension Part 2 at that time whose owner is Sh. Sudesh Arora; that he was working there as cook;
- iii. that the said premises is the office of Sh. Sudesh Arora and his son Sh. Rahul Arora lives there;
- iv. that as per his knowledge, there is no other residential premises of Sh. Rahul Arora;

- v. that Sh. Rahul Arora had instructed him not to tell anyone the fact that he (Sh. Rahul Arora) was residing there; that Sh. Sudesh Arora lives in a nearby address at A-43, South Extension Part 2, New Delhi-110049;
- vi. he further stated that before arrival of the Customs officers, he had received a call from Sh. Rahul Arora (Mob:7683061006) at about 15:19, the printout of which had his signature and during the above call, he had instructed him to go outside and see if there was any government officer and then he (Sh. Rahul Arora) asked him to call him after coming outside the gate of his room with three bags from the room;
- vii. that after coming outside and seeing the officers, he got scared and then went back into the house and on being directed by Sh. Rahul Arora, he unleashed the dog outside and closed the door from inside and did not open the gate in spite of repeated calls from the government officers;
- viii. that after closing the house from inside, he along with his colleague Sintu Bharti escaped to the roof of the neighbor and hid there but after some time, he along with Sintu Bharti came back to the house where the search was going on.

8.1 Similarly, while tendering the voluntary statement under Section 108 of the Customs Act, 1962 dated 21.02.2020, **Sh. Sintu Bharti** inter alia stated

- i. that he was living at G-13/B, South Extension Part 2 which is owned by Sh. Sudesh Arora;
- ii. that he was working as a maid as well as dog keeper;
- iii. that he had been living there for last 5 months and prior to that he had been living at P-71, South Extension part-2 and working there as maid and cook;
- iv. that he had been shown the panchnama dated 20-21.02.2020 and its annexure which was drawn at G-13, South Extension Part 2 and that he appended his dated signature;
- v. on being asked, he stated that the said premises was the office of Sh. Sudesh Arora and his son Sh. Rahul Arora lived there;
- vi. that he was not aware of the work of Sh. S. K. Arora and that his work was limited to cleaning of the house;
- vii. that he had no idea about the residential address of Sh. Sudesh Arora;
- viii. that on being asked to do by Sh. Pujari alia Sh. Ashok, they picked three bags and were going towards outside premises and at that time Sh. Pujari alias Sh. Ashok told that some government officer were standing outside and they ran back inside and unleashed the dog and locked the house from inside and did not open the door in spite of repeated calls from government officers;
- ix. that then he along with his colleague Sh. Pujari alias Ashok escaped to the roof of the neighbor and hid there but after some time, he along with Sh. Pujari alias Sh. Ashok came back to the house where the search was going on.

8.2. Since **M/s Piyush Industries** had cleared 520 MT of PVC resin grade SG5 from Adani Port and Special Economic Zone Mundra Port and the agent of overseas suppliers there were M/s OWS WAREHOUSE SERVICES LLP & M/s Oil

Field Warehouse and Services Ltd., therefore summons to both the above parties were issued under Section 108 of the Customs Act, 1962 and Sh. Asadullah Siddique, authorized representative of M/s OWS WAREHOUSE SERVICES LLP appeared on 06.10.2020 (RUD-15) for tendering voluntary statement under Section 108 of the Customs Act, 1962 wherein he inter alia stated

- (i) that the work at OWS Warehouse Services LLP inter alia includes in bonding and out bonding of the goods, handling, storing, loading and unloading of the goods in the warehouse situated in the MPSEZ;
- (ii) that the above warehouse is constituted as per the Special Economic Zones Rules, 2006;
- (iii) that the work in the warehouse is related to handling of inward and outward movement of goods of different parties and the above goods may come from abroad and go to abroad;
- (iv) that they store goods of different parties and they file the Bill of Entry on behalf of the parties as per the instructions given to them by the parties;
- (v) that most of the parties for which they file the Bills of Entry are overseas parties; that for the purpose, they enter into agreement with the overseas suppliers and on the basis of the same, they file the Bills of Entry working as agent of the overseas supplier;
- (vi) that generally, bill of entry is filed two times, firstly when the goods arrive into the warehouse and in that case they along with the overseas supplier jointly file the in bond bill of entry and the reason for the same is that the Letter of Approval (LOA) is issued in their name;
- (vii) that when the goods are to be sent out (out bond), the bill of entry is filed by them on the instructions of the overseas supplier;
- (viii) that apart from the above work, the work related to stuffing, de-stuffing, loading, unloading of the goods arrived in warehouse/went outside the warehouse is also handled under his supervision;
- (ix) that all such bills of entry are filed under his supervision; on being asked whether he was aware that M/s Piyush Industries (IEC-AJJPG4682N) has procured some goods namely PVC Resin from M/s United Raw Material PTE. Ltd. Singapore under Bills of Entry no. 2004460 dated 24.12.2018 & 2004089 dated 29.11.2018 to which he replied that he was aware of the above fact and the above referred bills of Entry 2004460 dated 24.12.2018 & 2004089 dated 29.11.2018 were filed by them on the instructions of their overseas party M/s United Raw Material PTE. Ltd. Singapore and the same were imported by M/s Piyush Industries;
- (x) that the goods under the above four bills of entry was PVC Resin;
- (xi) that they had already submitted the relevant documents in respect of the above four bills of entry vide letter dated 22.09.2020 which include copy of manual bill of entry and the corresponding invoice;
- (xii) on being asked as to who contacted them for supply of the goods from M/s Piyush Industries to which he stated that Sh. Piyush Gupta from M/s Piyush Industries had contacted them and had sought the address to which the advance license/RA was to be sent;

- (xiii) on being asked whether he met Sh. Piyush Gupta to which he stated that he had never met Sh. Piyush Gupta;
- (xiv) on being asked if he didn't know Sh. Piyush Gupta, then how did he release the goods to him after filing of the Bill of Entry to which he replied stating that they got instructions from overseas supplier M/s United Raw Material PTE. Ltd. Singapore on email for supplying the goods to M/s Piyush Industries;
- (xv) that for the same purpose, they got the email from Sh. Piyush Gupta sending the details of vehicles on which the goods were to be loaded after out of charge from Customs;
- (xvi) that he would submit the email transactions between us and M/s United Raw Material PTE. Ltd. Singapore and M/s Piyush Industries and us within 7 days;
- (xvii) on being asked whether they entered into any agreement with M/s United Raw Material PTE. Ltd. Singapore to which he stated that they had entered into an agreement with M/s United Raw Material PTE. Ltd. Singapore but presently, he was not carrying a copy of the same and that he would submit the same within 7 days;
- (xviii) on being asked as to how the good were sent from their warehouse to the address of M/s Piyush Industries after the out of charge of the goods under the bills of entry as referred to above previously to which he stated that they had received the address details of the destination of M/s Piyush Industries on email from Sh. Piyush Gupta and he had also sent the details of the vehicles on which the goods were to be loaded;
- (xix) that at that time he was not carrying the details of address and the vehicles, but he would submit the details of the vehicles, the respective E-way bills and the addresses within 7 days;
- (xx) on being asked to provide the agreement/Purchase/Sales Order between M/s United Raw Material PTE. Ltd. Singapore and M/s Piyush Industries to which he stated that since that was an agreement/Purchase/Sales Order between M/s United Raw Material PTE. Ltd. Singapore and M/s Piyush Industries, therefore, he was not carrying the same and he would submit the same within 7 days;
- (xxi) on being asked as to how was the payment against the sale on behalf of M/s United Raw Material PTE. Ltd. Singapore was received to which stated that the payment was received by M/s United Raw Material PTE. Ltd. Singapore, therefore, the same was available with M/s United Raw Material PTE. Ltd. Singapore, however, he would arrange the same from the above firm and submit the same within 7 days;
- (xxii) on being asked as to who was the Customs Broker for the clearance of the above referred consignments to which he stated that there was no Customs Broker for the above referred consignment and all the documents were filed by them and no services of any Customs Broker was hired for above referred consignments;
- (xxiii) on being asked as to who was the transporter in the case to which he replied that he was aware of the same and he stated that M/s CARAVAN Project Logistics, was the transporter in the instant case and its Delhi address is AG-28, Sanjay Gandhi Transport Nagar, G. T. Karnal road,

Delhi; that he would submit the transport details in respect of both the Bills of Entry within 7 days;

8.3. Similarly, **Sh. Asadullah Siddique**, Warehouse Manager, Oil Field Warehouse and Service Limited, Sector A, Mundra Port & SEZ Ltd., Mundra, Kutch, appeared on **06.10.2020** to tender his voluntary statement Section 108 of the Customs Act, 1962 wherein he inter alia stated

- i. that he is a Warehouse Manager, Oil Field Warehouse and Service Limited since 2010;
- ii. that the above warehouse is constituted as per the Special Economic Zones Rules, 2006;
- iii. that the work in the warehouse is related to handling of inward and outward movement of goods of different parties and the above goods may come from abroad and go to abroad;
- iv. that they store goods of different parties and they file the Bill of Entry on behalf of the parties as per the instructions given to them by the parties;
- v. that most of the parties for which they file the Bills of Entry are overseas parties;
- vi. that for this purpose, they enter into agreement with the overseas suppliers and on the basis of the same, they file the Bills of Entry working as agent of the overseas supplier;
- vii. that generally, bill of entry is filed two times, firstly when the goods arrive into the warehouse and in that case they along with the overseas supplier jointly file the in bond bill of entry and the reason for the same is that the Letter of Approval (LOA) is issued in their name;
- viii. that when, when the goods are to be sent out (out bond), the bill of entry is filed by them on the instructions of the overseas supplier;
- ix. that apart from the above work, the work related to stuffing, de-stuffing, loading, unloading of the goods arrived in warehouse/went outside the warehouse is also handled under his supervision and all such bills of entry are filed under his supervision;
- x. on being asked whether he was aware that M/s Piyush Industries (IEC-AJPG4682N) had procured some goods namely PVC Resin from Ms. AJK General Trading LLC Dubai under Bills of Entry no. 2000044 dated 03.01.2019, 2000121 dt 08.01.2019, 2000631 dt. 07.02.2019 & 2001066 dt.07.03.2019 to which he replied that he was aware of the above fact and the above referred bills of Entry 2000044 dated 03.01.2019, 2000121 dt 08.01.2019, 2000631 dt. 07.02.2019 & 2001066 dt.07.03.2019 were filed by them on the instructions of their overseas party M/s AJK General Trading LLC, Dubai and the same were imported by M/s Piyush Industries. The goods under the above four bills of entry was PVC Resin;
- xi. that they had already submitted the relevant documents in respect of the above four bills of entry vide letter dated 22.09.2020 which include copy of manual bill of entry and the corresponding invoice;
- xii. on being asked as to who contacted them for supply of the goods from M/s Piyush Industries to which he stated that Sh. Piyush Gupta from M/s Piyush Industries had contacted them and had sought the address to which the advance license/RA was to be sent;

- xiii. on being asked whether he met Sh. Piyush Gupta to which he stated that he never met Sh. Piyush Gupta;
- xiv. on being asked whether he did not know Sh. Piyush Gupta, then how did he release the goods to him after filing of the Bill of Entry to which he stated that they got instructions from overseas supplier M/s AJK General Trading LLC on email for supplying the goods to M/s Piyush Industries;
- xv. that for the same purpose, they got the email from Sh. Piyush Gupta sending the details of vehicles on which the goods were to be loaded after out of charge from Customs;
- xvi. that he would submit the email transactions between them and M/s AJK General Trading LLC and M/s Piyush Industries and them within 7 days;
- xvii. on being asked as to whether they entered into any agreement with M/s AJK General Trading LLC to which he stated that they entered into an agreement with M/s AJK General Trading LLC and he would submit the same within 7 days;
- xviii. on being asked as to how were the goods sent from their warehouse to the address of M/s Piyush Industries after the out of charge of the goods under the bills of entry as referred to previously to which he stated that they received the address details of the destination of M/s Piyush Industries on email from Sh. Piyush Gupta and he had also sent the details of the vehicles on which the goods were to be loaded;
- xix. that he would submit the details of the vehicles, the respective E-way bills and the addresses within 7 days;
- xx. on being asked to provide the agreement/ Purchase/Sales Order between M/s AJK General Trading LLC and M/s Piyush Industries to which he stated that since it was an agreement/Purchase/Sales Order between M/s AJK General Trading LLC and M/s Piyush Industries, therefore, presently, he was not carrying the same and he would submit the same within 7 days;
- xxi. on being asked as to how was the payment against the sale on behalf of M/s AJK General Trading LLC was received to which he stated that the payment was received by M/s AJK General Trading LLC, therefore, the same is available with M/s AJK General Trading LLC and that he would arrange the same from the firm and submit the same within 7 days;
- xxii. on being asked as to who was the Customs Broker for the clearance of the above referred consignments to which he stated that there was no Customs Broker and all the documents were filed by them and no services of any Customs Broker was hired;
- xxiii. on being asked whether he was aware as to who was the transporter in the case to which he stated that he was aware of the same and stated that M/s CARAVAN Project Logistics, was the transporter in the instant case and its Delhi address is AG-28, Sanjay Gandhi Transport Nagar, G. T. Karnal road, Delhi;
- xxiv. that he submitted the LRs in respect of the goods transported and covered under Bill of Entry no. 2000121 dated 08.01.2020;
- xxv. that he would submit the transport details in respect of the rest of the Bills of Entry within 7 days.

9. During the course of investigation, it was found that the transporter who transported the goods pertaining to M/s Piyush Industries from Mundra was **M/s Caravan Project Logistics**. Accordingly summons under Section 108 of the Customs Act, 1962 was issued to them and **Sh. Ramesh Kumar** from dealing the legal/court matters of M/s Caravan Project Logistics appeared on 20.10.2020 to tender his voluntary statement.(RUD-17) While tendering the statement, he inter alia stated

- i. that he had been working in M/s Caravan Project Logistics for past 3-4 years and since beginning, he had been working in the Delhi Branch;
- ii. that presently he was taking care of all the legal/court matters of his firm;
- iii. that M/s Caravan Project Logistics is owned by Sh. Rajiv Gupta and he sits in Delhi office. Apart from Delhi branch, they have branches in Mumbai and Gandhidham also.
- iv. On being asked, he stated that M/s Caravan Project Logistics had transported goods of M/s Piyush Industries during the period from December-2018 to April-2019 and in total they had transported 17 consignments all from Mundra;
- v. On being asked, as to who contacted M/s Caravan Project Logistics for transportation of goods of M/s Piyush Industries to which he stated that he got calls from Sh. Arpit Aggarwal, Manoj Gupta and Sh. Sandip Goyal for the transportation of goods of M/s Piyush Industries;
- vi. on being asked as to what did they tell him and whether he had their contact details to which he stated that they sought the quotation and rates of transportation of the goods from Mundra to Delhi/Mandi Govindgarh, which they provided and then after being agreed mutually, they informed them to transport the goods from M/s Piyush Industries;
- vii. that the mobile phone number of Sh. Arpit Aggarwal 9881667950, Manoj Gupta 7982284861 & 9899915739 and the mobile phone number of Sh. Sandip Goyal is 9811255946;
- viii. on being asked whether they told him as to what goods were to be transported from Mundra to which he replied that they had informed them that the goods were PVC resin (Plastic dana) in all the consignments;
- ix. on being asked whether any of the above persons told them the address of M/s Piyush Industries to which he stated that during the discussion, it was informed by them that the address of M/s Piyush Industries was Flat No.-1, Ground Floor Poorvi Apartments, Vasant Vihar, New Delhi-110057 and many a time, their staff used to visit the above address for submitting the bills and other documents; that Sh. Arpit Aggarwal used to sit there and used to handle their bills etc.;
- x. on being asked as to how that the payment of the transportation was received by his firm i.e. M/s Caravan Project Logistics to which he replied that most of the payments for transportation had been received by them through banking channel i.e. RTGS and as per his memory some payment had also been received by Cash also but to confirm about the cash receipt, he would have to check the records of the firm;
- xi. he further stated he was not carrying the bank statement showing the receipts from M/s Piyush Industries as their accountant who looked after

the banking and other work tested Covid-19 positive and was home quarantined;

- xii. he agreed to submit the bank statement within 4-5 days positively;
- xiii. on being asked as to where did they transport the goods which were loaded from Mundra to which he replied that three consignments with Truck No. PB13AW-6811, HR62-9957 & HR62-9014 were transported by them from Mundra to Rajpura, Punjab and all the above three consignments were sent on 01.12.2018 from Mundra to Rajpura, Punjab;
- xiv. he further stated that though the ability in the case was issued from Mundra to Mandi Govindgarh, but the goods were unloaded in Rajpur only under all the three trucks as above;
- xv. that the goods in the above three consignments were also PVC Resin (Plastic Dana);
- xvi. that I didn't remember the exact place where the good under the above three trucks were unloaded and but he stated that the unloading of the goods were handled by one person whose name he could not remember but his mobile number is 7988783045. This number was provided to them by Sh. Sandip Goyal;
- xvii. he further stated that the rest 14 consignments were all sent to Delhi and were unloaded in the Bawana and Puth Khurd area of Delhi;
- xviii. that Mr. Govind who was from M/s Piyush Industries and his mobile number was 8851301504 and 9310006640, used to handle the unloading of the goods at Bawana, Delhi and another person namely Amit having mobile number 8076817306 used to handle the unloading of goods in Puth Khurd;
- xix. He also submitted the details of all the 17 consignments along with the GR copy;
- xx. on being asked as to where the goods in Delhi in Bawan and Puth Khurd were unloaded to which he stated that as he had already stated that the unloading work was handled by Mr. Govind and Mr. Amit from M/s Piyush Industries, therefore, the exact location could be told by them only, however, both of them had told them that after the consignment had reached in the respective area of Bawana and Puth Khurd, the trucks were to be parked at Shree Sai Dharam Kanta, Sector 1, Pocket L, DSIIDC Indl Area, Bawana, Delhi and Sadh Dharm Kanta, 155/22, Firni Road, Puth Khurd, New Delhi-110086 respectively and from there, they used to take the truck to the exact unloading point;
- xxi. he further stated that as per their records, out of 14 consignments, 10 were unloaded in the Bawana, Delhi and 4 were unloaded in Put Khurd, Delhi;
- xxii. that the goods however, in all the above consignments were PVC resin (Plastic Dana);
- xxiii. he further stated that he at his level will further try to gather the details of the address where the goods were unloaded in Bawana and Puth Khurd and shall submit the same within 4-5 days;
- xxiv. on being asked whether he was aware as to who is the owner of M/s Piyush Industries to which he stated that as per their knowledge it was Sh. Manoj

Gupta who is the owner of M/s Piyush Industries as he used to give the instructions to all for work related M/s Piyush Industries and apart from him, Sh. Sandip Goyal is also actively involved in the working of M/s Piyush Industries;

xxv. he was informed that on examination of the details of the 17 consignments submitted by him on that day, it was seen that in the sheet showing the details of gist of transportation, the consignor in the first three consignments is M/s Singh Trading Company and the consignee is M/s Ekam Steel Tubes and then he was asked as to how it was related to M/s Piyush Industries and asked to explain to which he replied that it is related to M/s Piyush Industries and Sh. Manoj Gupta from M/s Piyush Gupta had told so and also instructed them to transport the goods under the three consignments under trucks PB13AW-6811, HR62-9957 & HR62-9014 to Rajpura, Punjab, though the bility was for Mandi Govind Garh, Punjab;

xxvi. on being asked as to what was the goods in the above three trucks to which he stated that the goods in the above three trucks was same as was in the other trucks and it was PVC resin in all the above consignments;

xxvii. on being asked that it was seen that on the back side of GR No. 4567 dated 01.12.2018 prepared for Singh Trading Company to Ekam Steel Tubes transported by Truck no. HR62-9014, there is acknowledgement of "1360 B.gRasin received 05/12/18" and also one mobile number written and then he was asked to explain the same to which he stated that the above was the acknowledgement of receipt of 1360 bags of PVC resin by the recipient on 05.12.2018 and there were signatures of the recipient and the mobile number i.e. 9417594440 is the mobile number of recipient;

xxviii. on being asked that as per the sheet provided by him that day and in the light of the above submissions made by him, it was seen that they had transported 524350 Kgs of PVC resin (Plastic dana) pertaining to M/s Piyush Industries to different destinations to which he replied that it was true and he agreed that they transported 524350 Kgs of PVC Resin (plastic dana) pertaining to M/s Piyush Industries on instructions of Sh. Manoj Gupta and Sh. Sandip Goyal under 17 ferries;

xxix. on being asked whether he knew as to where Sh. Manoj Gupta and Sh. Sandip Goyal live or resided to which he stated that they didn't know their residential addresses but they knew only their address at Vasant Vihar of Delhi;

xxx. on that day he further stated that around 10-12 days ago we received a letter from one Sh. Piyush Gupta dated 07.10.2020 wherein it has been alleged by him that all the irregularities of M/s Piyush Industries have been done by them (the transporter);

xxxi. he stated that these all the allegations were baseless and they duly rebutted all the allegation against them. He also submitted a copy of the above communication exchanged between them and M/s Piyush Industries.

10. In the light of the statements tendered by the agent of the overseas supplier and the transporter, it was imperative to record the voluntary statement of **Sh. Piyush Gupta** accordingly, summons was issued to Sh. Piyush Gupta and he

appeared on **10.02.2021** to tender his voluntary statement in the matter wherein he inter alia stated

- i. that he was the proprietor of M/s Piyush Industries, Flat No. 1, Ground Floor, Poorvi Apartments, Vasant Vihar, New Delhi-110057;
- ii. that he was only a signatory in the above firm and the entire operation of the firm are taken care of by Sh. S. K. Arora and his son Sh. Rahul Arora;
- iii. that he had appeared before Customs Preventive office in the month of February-2020 and had tendered voluntary statement recorded under Section 108 of the Customs Act, 1962 on 20.02.2020 & 21.02.2020 and he reiterated the contents of both the above statement and stated that the contents are true to the best of his knowledge;
- iv. that at the time of tendering the above statements also, he had stated that he was not aware in detail of the functioning/working of M/s Piyush Industries and it were Sh. S. K. Arora and Sh. Rahul Arora who are the key persons responsible behind all the operations of M/s Piyush Industries;
- v. he had been shown the copies of his two statements of mine dated 20.02.2020 & 22.02.2020 respectively and after having seen them, he appended his dated signature in token of having seen them and finding them to be true;
- vi. on being asked whether he was aware that M/s Piyush Industries (IEC-AJJPG4682N) has imported PVC Resin from M/s United Raw Material PTE. Ltd. Singapore under Bill of Entry no. 2004460 dated 24.12.2018 (48 MT) & Bill of Entry no. 2004089 dated 29.11.2018 (100 MT) and also from M/s AJK General Trading LLC under Bills of Entry no. 2000044 dated 03.01.2019 (52 MT), Bill of Entry no. 2000121 dated 08.01.2019 (200 MT), Bill of Entry no. 2000631 dated 07.02.2019 (88 MT) and Bill of Entry no. 2001066 dated 07.03.2019 (32 MT) from Adani Port and Special Economic Zone, Mundra Port and Bill of Entry No. 2283831 dated 04.03.2019 (98 MT) at Mundra portal bills of entry filed under Advance Authorization no. 0510407399 for PVC resin to which he replied that he came to know about the same as Sh. S. K. Arora had come to him to sign some documents and when he had asked him about the same, he informed that the same are related to the transportation of the goods to be brought from Kandla;
- vii. that what actually was in the consignment was not known to him nor did anyone tell him;
- viii. on being asked as to how it was possible that he was not aware of the actual events related to his firm M/s Piyush Industries as he was the proprietor of the firm and also that the communication address was also the same as his residence to which he stated that it was that he was the proprietor of M/s Piyush Industries however, as he stated earlier, all the work related to M/s Piyush Industries was taken care of by Sh. S. K. Arora who was a friend of his father and also his son;
- ix. that it was correct that communications related to M/s Piyush Industries used to come to his residential address by post, however, all the time Sh. S. K. Arora was aware of all such communications and

was always there whenever such communications came or he used to send someone for collecting the communication/documents so arrived;

- x. then he was never told the reality of the matter neither by Sh. S. K. Arora nor anyone else;
- xi. on being asked whether he was aware that an Advance Authorization no. 0510407399 issued by DGFT has been issued to M/s Piyush Industries for duty free import of 648 MT quantity of PVC Resin to which he stated to which he agreed and stated that he had received the above authorization at his residential address and later the same was taken into possession by Sh. S. K. Arora;
- xii. that he had come to knowledge about the details of the above authorization such as the features of the authorization, export obligation for the same, the quantity cleared only after the Customs Preventive officers conducted searches in the month of February-2020;
- xiii. he also submitted a copy of the documents available with him;
- xiv. on being asked whether he was aware that after duty free import under the Advance Authorization scheme, one has to meet export obligation against the duty free imports made and also asked as to whether he had met the export obligation as mandated under the Advance Authorization scheme to which he stated that he was aware about that and had come to know about the same only after the raid by the Customs Department;
- xv. he stated that he was not aware as to how much quantity was imported in his firm's name under the advance authorization scheme;
- xvi. he was shown copies of the Bills of Entry nos 2004460 dated 24.12.2018 (48 MT), Bill of Entry no. 2004089 dated 29.11.2018 (100 MT), Bill of Entry no. 2000044 dated 03.01.2019 (52 MT), Bill of Entry no. 2000121 dated 08.01.2019 (200 MT), Bill of Entry no. 2000631 dated 07.02.2019 (88 MT) and Bill of Entry no. 2001066 dated 07.03.2019 (32 MT) along with the respective supplier invoices for import of PVC resin, filed by M/s Piyush Industries from Adani Port Special Economic Zone and Bill of entry no. 2283831 dated 04.03.2019 (98 MT) from Mundra Port, all under Advance Authorization and was asked as to what he had to say about it to which he stated that he had seen all the above Bills of Entry along with the respective invoices of the supplier as above and in token of having seen them, he appended his dated signatures on the each page of the above bill of entry and the respective invoice and after seeing the same, he stated that all the above bills of entry have been filed in the name of his firm M/s Piyush Industries (IEC no. AJ JPG4682N) and the total quantity of PVC resin cleared under all the above bills of entry when added comes to **618 Metric Tons of PVC Resin**;
- xvii. on being asked if he could explain as to how the payments to the suppliers for the above import were made by his firm to which he stated that he was not aware of any of the payments made to the suppliers, however, he stated that the payments were made from his firm's account;

- xviii. that further details in the matter could be told by Sh. S. K. Arora only as he along with his son Sh. Rahul Arora used to handle the day to day matter of M/s Piyush Industries;
- xix. on being asked about the factory address i.e. 27, Focal Point Industrial Area, Rajpura, Patiala, Punjab (also mentioned in the IEC as well as in the enclosure to the Advance Authorization No. 0510407399) and whether he owned the premises or was it a rented place to which he stated that he didn't know anything about the address and he had never visited the above premises, therefore, there is no question of owning or renting the above premise;
- xx. on being asked whether he was aware that Customs Department while enquiring about his premises at 27, Focal Point Industrial Area, Rajpura, Patiala, Punjab found that no such unit in the name of M/s Piyush Industries was found at the given address and instead another in the name of M/s Alcon Wire and Cable Industries found working there and on being asked as to what he had to say about it and whether he in in anyway concerned with the unit namely M/s Alcon Wire and Cable Industries to which he replied that he was not aware about any such enquiry by the Customs Department;
- xxi. that since he had already stated that he was in no way concerned with any premises at 27, Focal Point Industrial Area, Rajpura, Patiala, Punjab;
- xxii. that it was possible that Sh. S. K Arora may have forged the documents to show it as M/s Piyush Industries' premises at the above premises;
- xxiii. that he didn't know any unit namely M/s Alcon Wire and Cable Industries;
- xxiv. on being asked whether he was aware that the goods i.e. PVC Resin was transported from Kandla/Mundra to Delhi/Punjab by truck after the goods were cleared from Customs and the transporter in the matter was M/s Caravan Project Logistics to which he replied that he was not aware of any such transportation;
- xxv. that in all these activities, he was nowhere concerned and Sh. S. K. Arora got his signatures for all such activities;
- xxvi. that it was Sh. S. K Arora who is the mastermind in the case and it is he who has handled all the operation related to import of duty free goods and its diversion to domestic market without payment of appropriate duty of customs;
- xxvii. that he didn't know anyone from the transporter firm M/s Caravan Project Logistics and it was Sh. S. K. Arora who had arranged the transporter through his personnel;
- xxviii. he further added that in the month of October-November, 2020, Sh. S. K. Arora had approached him and pressurized him to implicate M/s Caravan Project Logistics in the matter;
- xxix. that he coerced him to write a complaint dated 02.11.2020 to the Police that it was the transporter M/s Caravan Project Logistics who had illegally taken away all the imported material under the advance license of M/s Piyush Industries and that due to the cheating and fraud

committed by the transporter M/s Caravan Project Logistics, that he lost his father and also incurred heavy loss;

- xxx. that he was in very much depression and did not have any well-wisher with him;
- xxxi. that due to the repeated pressures and threats from Sh. S. K. Arora, he finally signed the pre-printed papers brought by Sh. S. K. Arora to implicate the transporter M/s Caravan Project Logistics for misuse of advance authorization scheme by M/s Piyush Industries;
- xxxii. that subsequent to the above letter dated 02.11.2020 to the Officer in charge, EOW, Mandir Marg, New Delhi, Sh. S. K. Arora again pressurized him and then under the repeated threats and pressure, he signed another letter dated 24.11.2020 for Customs Preventive Department in which it was mentioned that all the misuse of the advance authorization for M/s Piyush Industries was done by M/s Caravan Project Logistics;
- xxxiii. on being asked as to why he signed the documents to which he replied that he lost his father in the month of March 2020 due to misdeeds of Sh. S. K. Arora and then lost his mother in the month of December-2020 that too due to misdeeds of Sh. S. K. Arora;
- xxxiv. that he was then all alone in the world and at that time fell prey to the persistent pressure and threats of Sh. S. K. Arora, therefore, he had signed the pre-printed papers brought by Sh. S. K. Arora;
- xxxv. he also submitted a copy of two pages' letter/declaration dated 06.03.2020 made by his late father wherein he has categorically stated that Sh. S. K. Arora is responsible for spoiling his life and the last words of the above letter/declaration was to save his son's life who does not know abcd of this work;
- xxxvi. he further added that his father committed suicide on 12.03.2020, just 6 days after writing the above letter/declaration;
- xxxvii. that all the wrongdoings have been done by Sh. S. K. Arora and his son Sh. Rahul Arora;
- xxxviii. on being asked whether he was aware about the bank account with ICICI Bank no. 006505005984 (Vasant Vihar Branch) pertaining to M/s Piyush Industries to which he stated that Sh. S. K. Arora could tell more details about the above bank account as he handled the transactions under the above bank account;
- xxxix. that he didn't any knowledge about the transactions being undertaken by the above said bank account;
- xl. but he stated that the above bank account pertained to M/s Piyush Industries;
- xli. he was informed that the freight payment of total Rs. 9,50,000/- to M/s Caravan Project Logistics for the transportation of the goods from Kandla/Mundra to Delhi/Punjab had been made from the ICICI bank account of M/s Piyush Industries on 01.02.2019 and was asked as to what did he have to say about it to which he stated that he was not aware about any such payments to the transporter M/s Caravan

Project Logistics through bank and further details could be provided by Sh. S. K. Arora as he or his men had done the same;

- xlii. on being asked whether he met anyone from the transporter M/s Caravan Project Logistics, the transporter of his firm from Kandla/Mundra to Delhi/Punjab to which he replied that he didn't know anyone from the transporter M/s Caravan Project Logistics and further details in the matter could be told by Sh. S. K. Arora;
- xliii. on being asked whether he was aware as to who filed the bills of entry under advance authorization no. 0510407399 in respect of M/s Piyush Industries for clearance of the goods i.e. PVC resin to which he stated that he had seen the bills of entry filed for clearance of the goods for M/s Piyush Industries and as per the bills of entry filed at Adani Port, the same were filed by self, however, he had not filed the bills of entry. Further, the bill of entry at Mundra port has been filed through M/s Aman Seatrans, the Customs Broker, but he didn't know anyone from the Customs Broker firm and further, details could be told by Sh. S. K. Arora;
- xliv. on being asked that as per the Bills of entry filed by M/s Piyush Industries for clearance of PVC resin of different grades, imported under advance authorization, the total duty liability arrives at Rs. 1.89 Crores appx and what did he have to say to which he stated that he had seen the bills of entry and after having seen the same, he stated that he agreed with the above amount of Rs. 1.89 Crores for customs duty which is for the imports made by M/s Piyush Industries under 7 bills of entry filed at Mundra/Kandla Port;
- xlv. he was shown the calculation chart for tentative amount of duty (Rs. 1.89 Crores appx) evaded against the bills of entry filed by M/s Piyush Industries and was asked to see and tell what did he have to say to which he stated that he had seen the duty calculation chart and appended his dated signature on the same and after having seen the same, he stated the duty calculation of Rs. 1.89 Crores appx is calculated for the imports made by M/s Piyush Industries under advance authorization under 7 bills of entry for total quantity of **618 Metric Tons**;
- xlvi. on being asked if could tell as to where are the goods viz. 618 MT of PVC resin imported duty free under advance authorization lying after the clearance from Customs as the factory premises of M/s Piyush Industries is not found and instead a different firm has been found working there and that the address of M/s Piyush Industries is a residential address to which he stated that he was not aware as to where the goods viz. 618 MT of PVC resin imported duty free under advance authorization went after the clearance from Customs;
- xlvii. that he had not seen any goods viz. PVC resin at his residential address i.e. Flat No. 1, Ground Floor, Poorvi Apartments, Vasant Vihar, New Delhi and as he stated earlier the address in Punjab was not known to him and Sh. S. K. Arora could tell further details about the same;
- xlviii. on being asked whether he was aware that they had to fulfill export obligation against the duty free imports made by M/s Piyush Industries under the advance authorization to which he stated that he was aware

that the duty free import of PVC resin under advance authorization made by his firm M/s Piyush Industries entails the export obligation against the said imports;

xlix. on being asked whether he fulfilled the export obligation required to be fulfilled for the duty free imports made by M/s Piyush Industries under advance authorization to which he stated that he was aware whether the export obligation has been fulfilled for the duty free imports made by M/s Piyush Industries under advance authorization and further details could be told by Sh. S. K Arora;

1. on being asked whether he received any amount from Sh. S. K. Arora as consideration for working for him and signing the documents to which he stated that he had received an amount of Rs. 50,000/- only in the month of October 2018 and after that he did not receive any amount;
- ii. he further stated that it was true that he was the proprietor of the firm M/s Piyush Industries and that the duty free imports made and as detailed in foregoing has been made by M/s Piyush Industries and has imported 618 MT of PVC resin under Advance authorization No. 0510407399 and he owned the responsibility of all the dues related to Customs in the matter as he was the proprietor of the firm;
- iii. that though the primary liability of the export obligation or payment of duty otherwise is with him but he stated that he have been first lured and then pressurized by Sh. S. K. Arora and his son for all the work related to M/s Piyush Industries including duty free imports and its subsequent clearance in the matter that Sh. S. K Arora and his son are the main persons behind all the activities of M/s Piyush Industries and they have handled all the work related to the firm;
- iii. that he has been used only as a tool by them for all the wrongdoings.

11. Another voluntary statement of **Sh. Piyush Gupta** was recorded under Section 108 of the Customs Act, 1962 on **18.03.2021** wherein he inter alia stated

- (i) that he was the proprietor of M/s Piyush Industries, Flat No. 1, Ground Floor, Poorvi Apartments, Vasant Vihar, New Delhi-110057;
- (ii) that he was only a signatory in the above firm working as a dummy and the entire operation of the firm are taken care of by Sh. S. K. Arora and his son Sh. Rahul Arora;
- (iii) that he appeared before Customs Preventive office in the month of February-2020 and had tendered voluntary statement recorded under Section 108 of the Customs Act, 1962 on 20.02.2020 & 21.02.2020 and also on 10.02.2021;
- (iv) that he reiterated the contents of all the above statements and stated that the contents of the above statements are true to the best of his knowledge;
- (v) he further stated that at the time of tendering the above statements also, he had stated that he was not aware in detail of the functioning/working of M/s Piyush Industries and it were Sh. S. K.

Arora and Sh. Rahul Arora who are the key persons responsible behind all the operations of M/s Piyush Industries;

- (vi) on being asked that as per the bank account statement of ICICI Bank 006505005984 pertaining to M/s Piyush Industries, the following entries are reflected i.e. Rs 1000000 lakhs Deposited via RTGS dated 31/1/2019 from M/s Sarvamangalam exports, Rs 5,00,000 lakhs deposited by RTGS dated 1/2/2019 from M/S Narayan Overseas, Rs 5,90,00,00 Lakhs deposited via RTGS Dated 25/3/2019 from M/S Sarvamangalam Exports, Rs 31,85,000 deposited by RTGS dated 2/4/2019 from Shubham Enterprises, Rs 27,15,000 deposited by RTGS dated 2/4/2019 from M/S MS Bhanu Tradex, Rs. 3,68,160/-, Rs. 2,77,005/-, Rs. 3,00,000/- & Rs. 2,77,500/- through RTGS on 12/12/2019, 13/12/2019, 16/12/2019 & 17/12/2019 respectively from M/s Well Rope International and was asked about the nature of transaction of M/s Piyush Industries with these mentioned firms to which he stated that those transactions were done by Mr S. K. Arora and he didn't know about these transactions;
- (vii) that he further added that add that as per his knowledge M/s Well Rope International is owned by Sh. S. K. Arora and Sh. Rahul Arora;
- (viii) on being asked that as per the bank account statement of ICICI Bank 006505005984 pertaining to M/s Piyush Industries, for what purposes, the payments of Rs 26,75,000/- through RTGS to Raj Arora on 27.03.2019, Rs. 30,00,000/- through RTGS to M/s Calcutta Industries on 27.03.2019 were made to which he stated that he was not aware about the above referred transactions and the above transactions have been made by Sh. S. K. Arora and Sh. Rahul Arora;
- (ix) so they could tell in detail about the above transactions;
- (x) he stated that M/s Calcutta Industries is owned by Sh. S. K. Arora and Sh. Rahul Arora; on being asked that it was strange that the transactions are taking place in a bank account pertaining to his firm and he was unaware of the same and how it was possible to which he stated that Sh. S. K. Arora and his son Sh. Rahul Arora are the persons behind the entire working of M/s Piyush Industries and he was used by them merely as a dummy only for signature purposes;
- (xi) that he wasn't informed or given any information about any transaction being undertaken on behalf of M/s Piyush Industries, therefore, he could not tell anything about the financial transactions being undertaken from the account of M/s Piyush Industries he further stated that they even got the cheque book of M/s Piyush Industries signed from him, therefore, he didn't know and could not tell as to whom the payments were made from the above bank account;
- (xii) he further submitted some E-way bills issued by M/s Piyush Industries to M/s Well Rope International;
- (xiii) that the above said E-way bills were also issued by Sh. S. K. Arora and were sent through his email id i.e. nirmaan2014@gmail.com to email id calcuttaindustrialcorporation@gmail.com;

- (xiv) that he had already stated in his earlier statement dated 22.02.2020 and then again reiterated that the above email id belongs to Sh. S. K. Arora and pertains to one of his firms;
- (xv) he further stated that the bank account of M/s Piyush Industries at ICICI bank having account no 006505005984 at Vasant Vihar Branch was being operated by Sh. S. K. Arora and his son Sh. Rahul Arora.

12. Since the transporter in the case i.e. **M/s Caravan Project Logistics** while tendering voluntary statement under Section 108 of the Customs Act, 1962 inter alia stated that the goods transported by them were also delivered in Delhi and the persons handling the goods on behalf of M/s Piyush Industries were Sh. Manoj Gupta, Sh. Govind Singh, Sh. Arpit Aggarwal and Sh. Sandeep Goel, therefore, summons were issued and voluntary statements under Section 108 of the Customs Act, 1962 were recorded.

13. Voluntary statement of **Sh. Govind Singh** was recorded under Section 108 of the Customs Act, 1962 on **30.06.2021** wherein he inter alia stated

- (i) that he was the proprietor of M/s Balaji Enterprises; that the firm was established by him in the late 2017 and the firm was registered with the GST department; that M/s Balaji Enterprises is in the business of transportation;
- (ii) that M/s Caravan Project Logistics had transported certain goods of M/s Piyush Industries during the period from December-2018 to April-2019 and some of the consignments which had reached in Bawana were later transported by his firm;
- (iii) on being asked as to who contacted him from M/s Piyush Industries to which he replied that he didn't know anyone from M/s Piyush Industries, however, during the transportation of the goods from M/s Caravan Project Logistics, it was later found that the goods that were loaded in the trucks were pertaining to M/s Piyush Industries and were to be delivered to its customers in different areas;
- (iv) on being asked whether he was aware as to what were the goods pertaining to M/s Piyush Industries to which he stated that he was told by Sh. Manoj Gupta and Sh. Sandeep Goyal that all the trucks were of plastic dana (PVC Resin);
- (v) on being asked as to who were Sh. Manoj Gupta and Sh. Sandeep Goyal to which he stated that Sh. Manoj Gupta and Sh. Sandeep Goyal had contacted him for transportation of the goods pertaining to M/s Piyush Industries;
- (vi) that they told that the goods pertaining to M/s Piyush Industries would arrive from Kandla/Mundra through transporter namely M/s Caravan Project Logistics and they further told him that once those trucks reached Bawna/Pooth Khurd in delhi, he was to transport the goods so arrived to the places as guided by them;
- (vii) on being asked as to how did he know Sh. Manoj Gupta and Sh. Sandeep Goyal to which he stated that Sh. Arpit Aggarwal who lives nearby his residence was aware of his profession and it was him who told him to work for Sh. Manoj Gupta and Sh. Sandeep Goyal; he also introduced him to them;

- (viii) that once he met, he negotiated the rates and conditions and after mutually agreeing, he started transporting the goods for them;
- (ix) that later he came to know that Sh. Sandeep Goyal was an employee of Sh. Manoj Gupta who owns a firm namely Riddhi Siddhi Polymers;
- (x) on being specifically asked about his role in the matter to which he stated that he acted on the directions of Sh. Manoj Gupta and Sh. Sandeep Goyal who told him to transport the plastic dana (PVC Resin) from Bawana/Pooth Khurd to their godowns. They had told him that the consignment would arrive at Bawana/Pooth Khurd from Kandla/Mundra by the trucks of M/s Caravan Project Logistics and once they were about to reach there, Sh. Manoj Gupta and Sh. Sandeep Goyal used to give him the mobile phone numbers of the drivers of such trucks;
- (xi) that Sh. Manoj Gupta and Sh. Sandeep Goyal also told that they had directed such truck drivers to come to Shree Sai Dharam Kanta, Sector 1, Pocket L, DSIIDC Indl Area, Bawana, Delhi and Sadh Dharm Kanta, 155/22, Firni Road, Puth Khurd, New Delhi-110086;
- (xii) that then, he used to call the drivers to tell them to reach there and once they reached there, the trucks were got unloaded there and the goods i.e. plastic dana (PVC Resin) was then loaded in his trucks;
- (xiii) that he was also instructed by Sh. Manoj Gupta and Sh. Sandeep Goyal to arrange labour for unloading and loading of the goods;
- (xiv) that accordingly, he used to get the goods transported and delivered at godowns at Bawana and Pooth Khurd as per the directions of Sh. Manoj Gupta and Sh. Sandeep Goyal;
- (xv) that apart from the above, some of the consignments were also transported by him to Punjab as per the directions of Sh. Manoj Gupta and Sh. Sandeep Goyal;
- (xvi) on being asked as to what was the consideration which he received for such transportation to which he stated that whenever his own vehicle was used, he used to get about Rs. 10000- Rs. 35000 per truck which included the unloading of the goods from the trucks of M/s Caravan Project Logistics and then loading of the goods into his trucks and the subsequent transportation to their godowns;
- (xvii) that whenever, he used to hire the trucks of others, he used to get a commission ranging between Rs. 500/- to Rs. 2000/- per truck;
- (xviii) that in all the cases where goods were to be sent to Punjab, he arranged the hired vehicles as he preferred working in Delhi NCR only;
- (xix) that some of the amount was paid by them in cash and some was through cheque/RTGS;
- (xx) on being asked as to what was the period when he had transported the goods at the instructions of Sh. Manoj Gupta and Sh. Sandeep Goyal to which he stated that he had worked for them during the period from December, 2018 to April, 2019;
- (xxi) that it was only these consignments that he had transported for them;
- (xxii) he was shown a voluntary statement dated 20.10.2020 tendered under Section 108 of the Customs Act, 1962 by Sh. Ramesh Kumar, Branch

Manager, Caravan Project Logistics, AG-28, Sanjay Gandhi Transport Nagar, G. T. Karnal Road, Delhi. Please see and then was asked as to what did he have to tell about it to which he stated that he had seen the above referred statement of Sh. Ramesh Kumar, Branch Manager, Caravan Project Logistics, AG-28, Sanjay Gandhi Transport Nagar, G. T. Karnal Road, Delhi and in token of the same, he appended his dated signature on the copy of the above statement;

- (xxiii) after seeing the same, he stated that they had transported 17 consignments of M/s Piyush Industries during the period from December, 2018 to April, 2019 all of PVC resin i.e. plastic dana;
- (xxiv) he however, stated that he didn't work for M/s Piyush Industries as stated by him in the above statement and in fact he worked at the directions of Sh. Manoj Gupta and Sh. Sandeep Goyal;
- (xxv) that they can better tell about M/s Piyush Industries;
- (xxvi) that Sh. Arpit Aggarwal may also be involved in the case as it was him who had introduced him to Sh. Manoj Gupta and Sh. Sandeep Goyal;
- (xxvii) that Sh. Amit for whom it has been stated by Sh. Ramesh Kumar that he used to handle the goods arrived at Pooth Khurd, was an employee of Sh. Manoj Gupta and as per his knowledge, he has now left the job;
- (xxviii) on being asked as to who gave him the cash against the work done by him for Sh. Manoj Gupta and Sandeep Goyal to which he stated that he used to go to the Tri Nagar, Delhi office of Sh. Manoj Gupta for collecting the payments against services rendered to him;
- (xxix) that as per his memory, the address of M/s Riddhi Siddhi Polymers is 4580/13, Gali No. 5, Jai Mata Market, Tri Nagar, New Delhi;
- (xxx) he promised to submit the transport documents pertaining to Sh. Manoj Gupta in next 3 days.

14. Similarly, the voluntary statement of **Sh. Arpit Aggarwal** was recorded under Section 108 of the Customs Act, 1962 on **01.07.2021** wherein he inter alia stated

- (i) that currently he was a freelance accountant and do the accounting for some firms/companies on part time basis;
- (ii) that before lockdown in the year 2020, he was working for M/s Riddhi Siddhi Polymers, Khasra No. 156/345, Pooth Khurd, Bawana, New Delhi-110039;
- (iii) that he had worked there since July-2017; that his work there was relating to accounting and he was responsible for all the matters relating to accounting of M/s Riddhi Siddhi Polymers which included maintenance of all the ledgers related to sale, purchase, expenses, income of the firm, filing of all the tax returns, payment of taxes and all the accounting related work as assigned to him;
- (iv) that the owner of the above firm is Sh. Madan Gopal Gupta but the actual work and day to day work is handled by his son Sh. Manoj Gupta;

- (v) that the above firm deals in the trading of PVC Resin and they procure it from different sources and supply locally in New Delhi and nearby area;
- (vi) that his salary at M/s Riddhi Siddhi Polymers was Rs. 55,000/- per month;
- (vii) that during the previous lockdown in the year 2020, they did not pay him two month's salary and for that he made repeated requests, however, he did not receive any amount from them and ultimately in the month of June-2020, he left that job;
- (viii) that apart from the Bawana office, M/s Riddhi Siddhi Polymers have an office is 4294/5, Jai Mata Market, Tri Nagar, New Delhi where Sh. Manoj Gupta occasionally sits but main sitting of Sh. Manoj Gupta is at his Bawana office as there are many industrial units in that area and the main clients of the firm are from that area; so to cater the needs of their clients, Sh. Manoj Gupta sits in his Bawana office;
- (ix) that they have a godown at the above referred premises in bawana where Sh. Manoj Gupta sits;
- (x) that earlier they had another premises situated at F-239, Sector-1, DSIIIDC, Bawana, New Delhi but it was later vacated and then they shifted to the present premises situated at Khasra No. 156/345, Pooth Khurd, Bawana, New Delhi-110039;
- (xi) he further stated that transporters who used to transport the goods i.e. PVC resin from their godowns to local buyers was M/s Balaji Enterprises and M/s AC Transporters;
- (xii) that he knew Sh. Govind Singh who is the proprietor of M/s Balaji Enterprises as he lives near his house.
- (xiii) On being asked as to who the owner of M/s Riddhi Siddhi Polymers to which he replied that the owner of M/s Riddhi Siddhi Polymers is Sh. Madan Gopal Gupta but the actual work of the firm is handled by his son Sh. Manoj Gupta;
- (xiv) on being asked about the other staff of M/s Riddhi Siddhi Polymers to which he stated that as per his knowledge there, was another person called Sh. Sandeep Goel who was also employed in the above named firm;
- (xv) that he acted in the capacity of manager and was responsible for sales, marketing and delivery of the goods to the client of M/s Riddhi Siddhi Polymers and basically he was second in command in the above firm;
- (xvi) on being asked whether he knew any firm in the name of M/s Piyush Industries whose goods appeared to have been procured by M/s Riddhi Siddhi Polymers to which he stated that he didn't know any firm/company with the above name and further information in the matter could be told by Sh. Manoj Gupta of M/s Riddhi Siddhi Polymers;
- (xvii) on being asked whether he was aware of any persons namely Sh. Piyush Gupta and/or Sh. S. K. Arora from M/s Piyush Industries to

which he stated that I was assigned the accounting work related to M/s Riddhi Siddhi Polymers;

(xviii) therefore, he used to deal with the accounting of the firm;

(xix) that it might happen that any firm/persons namely M/s Piyush Industries/Sh. Piyush Gupta/Sh. S. K. Arora may have contacted Sh. Manoj Gupta;

(xx) that since he was not into the sales and marketing, therefore his work was confined to accounting only;

(xxi) that further details in the matter could be told by Sh. Manoj Gupta only;

(xxii) he was informed that M/s Piyush Industries has been found indulged in evading huge amount of Customs duty through misuse of Advance Authorization scheme by diverting the duty free imported goods (PVC resin) to DTA and then he was asked what did he have to say about it to which he replied that he handled the accounting related work of M/s Riddhi Siddhi Polymers, therefore, if any goods has been procured by M/s Riddhi Siddhi Polymers, the further details can be provided by Sh. Manoj Gupta only as he is the owner of the firm and such matters were dealt with only by him;

(xxiii) on being asked whether he knew Sh. Govind Singh of M/s Balaji Enterprises who used to transport the PVC resin of M/s Riddhi Siddhi Polymers to which he stated that he knew him for long as he lived near his home;

(xxiv) that he was also aware that he used to transport PVC resin of M/s Riddhi Siddhi Polymers;

(xxv) he was informed that while tendering his voluntary statement dated 30.06.2021 under Section 108 of the Customs Act, 1962, Sh. Govind Singh has inter alia stated that acting on the directions of Sh. Manoj Gupta and Sh. Sandeep Goyal, he used to transport the plastic dana (PVC Resin) from Bawana/Pooth Khurd to their godowns;

(xxvi) that they had told him that the consignment would arrive at Bawana/Pooth Khurd from Kandla/Mundra by the trucks of M/s Caravan Project Logistics and once they were about to reach there, Sh. Manoj Gupta and Sh. Sandeep Goyal used to give him the mobile phone numbers of the drivers of such trucks. Sh. Manoj Gupta and Sh. Sandeep Goyal also told that they had directed such truck drivers to come to Shree Sai Dharam Kanta, Sector 1, Pocket L, DSIIDC Indl Area, Bawana, Delhi and Sadh Dharm Kanta, 155/22, Firni Road, Puth Khurd, New Delhi-110086;

(xxvii) thereafter, he used to call the drivers to tell them to reach there and once they reached there, the trucks were got unloaded there and the goods i.e. plastic dana (PVC Resin) was then loaded in his trucks;

(xxviii) that he was also instructed by Sh. Manoj Gupta and Sh. Sandeep Goyal to arrange labour for unloading and loading of the goods; accordingly, he used to get the goods transported and delivered at godowns at Bawana and Pooth Khurd as per the directions of Sh. Sh. Manoj Gupta and Sh. Sandeep Goyal. Apart from the above, some of

the consignments were also transported by him to Punjab as per the directions of Sh. Manoj Gupta and Sh. Sandeep Goyal;

(xxix) then he was asked as to what did he have to say about it to which he stated that whatever Sh. Govind Singh has stated in his voluntary statement dated 30.06.2021 may be true but the exact details in this regard can be explained by Sh. Manoj Gupta and Sh. Sandeep Goel;

(xxx) on being asked as to how did he get salary from M/s Riddhi Siddhi Polymers to which he replied that he used get the salary in bank account.

15. Voluntary statement of **Sh. Sandeep Goel** under Section 108 of the Customs Act, 1962 was recorded on **06.07.2021** wherein he inter alia stated

(i) that he was presently unemployed and help his wife in her profession which relates to Recurring Deposits (RD) on behalf of Post Office in addition to the working of commission basis for supply of PVC Resin in the local market;

(ii) that he gets queries for supply of PVC Resin from the local market on the basis of his 5 years' experience in the trade of PVC Resin and working as a middleman he earns some commission for the same;

(iii) he further stated that before the previous lockdown in the year 2020, he was working with M/s Riddhi Siddhi Polymers, Khasra No. 156/345, Pooth Khurd, Bawana, New Delhi-110039;

(iv) that he had worked there since April-2015, therefore, he had worked there for a period of about 5 years;

(v) that as there was no or little work in the above firm during lockdown of 2020, therefore, he left the job from the above firm in the month of April-2020;

(vi) that his work there was relating to sales and distribution of the goods purchased by the firm, M/s Riddhi Siddhi Polymers;

(vii) that he was responsible for all the matters relating to sales and distribution of the goods pertaining to M/s Riddhi Siddhi Polymers;

(viii) that the owner of the above firm is Sh. Madan Gopal Gupta but the actual work and day to day work is handled by his son Sh. Manoj Gupta;

(ix) that the above firm deals in the trading of PVC Resin and they procure it from different sources including imported goods and supply locally in New Delhi and nearby area;

(x) that his salary at M/s Riddhi Siddhi Polymers was Rs. 47,000/- per month when he left the job;

(xi) that as per his knowledge, apart from the Bawana office, M/s Riddhi Siddhi Polymers have an office at 4294/5, Jai Mata Market, Tri Nagar, New Delhi where Sh. Manoj Gupta sits but Sh. Manoj Gupta also sits at his Bawana office as there are many industrial units in that area and the main clients of the firm are from that area;

(xii) that so to cater the needs of their clients, Sh. Manoj Gupta sits in his Bawana office;

(xiii) that they have a godown at the above referred premises in bawana where Sh. Manoj Gupta sits; that they had another premises situated at F-239, Sector-1, DSIIDC, Bawana, New Delhi but it was later vacated and then they shifted to the present premises situated at Khasra No. 156/345, Pooth Khurd, Bawana, New Delhi-110039;

(xiv) that the transporters who used to transport the goods i.e. PVC resin from their godowns to local buyers was M/s Balaji Enterprises and M/s AC Transporters;

(xv) that he knew Sh. Govind Singh who is the proprietor of M/s Balaji Enterprises; that he also knew Sh. Arpit Aggarwal who used to handle the accounting of the firm;

(xvi) on being asked as to who the owner of M/s Riddhi Siddhi Polymers was to which he replied that the owner of M/s Riddhi Siddhi Polymers is Sh. Madan Gopal Gupta but the actual work of the firm is handled by his son Sh. Manoj Gupta;

(xvii) on being asked about the name of the other staff of M/s M/s Riddhi Siddhi Polymers, he stated that there was another person called Sh. Arpit Aggarwal who was also employed in the above named firm;

(xviii) that he was an accountant in the firm and handled all the accounting related matters of the firm;

(xix) that he was not aware whether they are still working in the above firm as he left the job in the month of April-2020 but at that time he was working with the above firm;

(xx) on being asked whether he knew any firm in the name of M/s Piyush Industries whose goods it appeared have been procured by M/s Riddhi Siddhi Polymers to which he replied that he didn't know any firm/company with the above name and further information in the matter can be told by Sh. Manoj Gupta of M/s Riddhi Siddhi Polymers;

(xxi) on being asked whether he was aware of any persons namely Sh. Piyush Gupta and/or Sh. S. K. Arora from M/s Piyush Industries to which he replied that he was into sales and distribution of the goods of M/s Riddhi Siddhi Polymers and as per his knowledge, they did not supply any goods to the above named persons or the above named firm;

(xxii) that it might happen that any firm/persons namely M/s Piyush Industries/Sh. Piyush Gupta/Sh. S. K. Arora may have contacted Sh. Manoj Gupta;

(xxiii) that Since he was not into the purchase of the goods which was undertaken directly by Sh. Manoj Gupta, therefore, further details in the matter could be told by Sh. Manoj Gupta only;

(xxiv) he was informed that M/s Piyush Industries has been found indulged in evading huge amount of Customs duty through misuse of Advance Authorization scheme by diverting the duty free imported goods (PVC resin) to DTA and he was asked as to what did he have to say about it to which he replied that he handled the sales and distribution of the goods relating to M/s Riddhi Siddhi Polymers, therefore, if any goods as asked in the questions has been procured by M/s Riddhi

Siddhi Polymers from M/s Piyush Industries, the further details could be provided by Sh. Manoj Gupta only as he is the owner of the firm and such matters were dealt with only by him;

(xxv) on being asked whether he knew Sh. Govind Singh of M/s Balaji Enterprises who used to transport the PVC resin of M/s Riddhi Siddhi Polymers to which he replied that he knew him as the transportation of the goods of M/s Riddhi Siddhi Polymers was also undertaken by him; he was informed that while tendering his voluntary statement dated 30.06.2021 under Section 108 of the Customs Act, 1962, Sh. Govind Singh has inter alia stated that acting on the directions of Sh. Manoj Gupta and Sh. Sandeep Goyal, he used to transport the plastic dana (PVC Resin) from Bawana/ Pooth Khurd to their godowns. That they had told him that the consignment would arrive at Bawana/ Pooth Khurd from Kandla/Mundra by the trucks of M/s Caravan Project Logistics and once they were about to reach there, Sh. Manoj Gupta and Sh. Sandeep Goyal used to give him the mobile phone numbers of the drivers of such trucks. Sh. Manoj Gupta and Sh. Sandeep Goyal also told that they had directed such truck drivers to come to Shree Sai Dharam Kanta, Sector 1, Pocket L, DSIIDC Indl Area, Bawana, Delhi and Sadh Dharm Kanta, 155/22, Firni Road, Puth Khurd, New Delhi-110086. Thereafter, he used to call the drivers to tell them to reach there and once they reached there, the trucks were got unloaded there and the goods i.e. plastic dana (PVC Resin) was then loaded in his trucks. That he was also instructed by Sh. Manoj Gupta and Sh. Sandeep Goyal to arrange labour for unloading and loading of the goods. Accordingly, he used to get the goods transported and delivered at godowns at Bawana and Pooth Khurd as per the directions of Sh. Manoj Gupta and Sh. Sandeep Goyal. Apart from the above, some of the consignments were also transported by him to Punjab as per the directions of Sh. Manoj Gupta and Sh. Sandeep Goyal and then he was asked as to what did he have to say about it to which he replied that whatever Sh. Govind Singh has stated in his voluntary statement dated 30.06.2021 is partially true to the extent that he was not involved in the procurement of the goods i.e. PVC Resin;

(xxvi) that he did not supply any goods from M/s Riddhi Siddhi Polymers to M/s Piyush Industries and for any procurement of the goods from M/s Piyush Industries, it may be true as the purchase of the goods in the firm was dealt with directly by him but the exact details in this regard can be explained by Sh. Manoj Gupta and Sh. Sandeep Goel;

(xxvii) on being asked as to how did he get his salary from M/s Riddhi Siddhi Polymers to which he replied that he used get the salary in bank account.

16. As while tendering the voluntary statements by **Sh. Govind Singh, Sh. Sandeep Goel and Sh. Arpit Aggarwal** under Section 108 of the Customs Act, 1962, addresses of Sh. Manoj Gupta, the person behind M/s Riddhi Siddhi Polymers were found therefore, it was imperative to visit such premises to gather further evidence in the case. Therefore, search was conducted at the residential premises of Sh. Manoj Gupta at B1/147, Ground Floor, Phase-2, Ashok Vihar, New Delhi-110052 with proper search authorization. However, during the visit

to the above premises, it was found that Sh. Manoj Gupta had vacated the above premises and some other person namely Sh. Vinod Kumar Mangal was found to be residing along with his family since August-2019 at the above premises. The above person gave a declaration to the effect.

17. Similarly, during the enquiry for the business premises of **Sh. Manoj Gupta** viz. (i) 4294/5, Jai Mata Market, Tri Nagar New Delhi (his office) & (ii) Khaśra No 156/345, Pooth Khurd, Bawana, North Delhi, Delhi-110009 (his godown), it was found that the address at Tri Nagar, New Delhi was an office pertaining to Sh. Manoj Gupta (Firm-M/s Riddhi Siddhi Polymers) but was closed for past 4 months. As regards to the address at Bawana, it was found that the above premises was a godown of M/s Riddhi Siddhi Polymers but was found closed and no activity were being carried out at the above place as the same was found locked during the visit.

18. Sh. Ramesh Kumar from the transport firm **M/s Caravan Project Logistics** while tendering his voluntary statement dated **20.10.2020** under Section 108 of the Customs Act, 1962, inter alia stated that mobile numbers 7982284861 & 9899915739 pertained to Sh. Manoj Gupta. Efforts were made to make contact to the above numbers, however, on repeatedly trying to reach to the above number, both the numbers were found switched off every time, thus Sh. Manoj Gupta was found untraceable and could not be located.

19. During the course of investigation, the bank statement (Bank Account No. of M/s Piyush Industries - 006505005984 in M/s ICICI Bank, Vasant Vihar Branch) for the period from **January-2019 to December-2019** was examined and it was found that some remittances were made to the account of M/s Piyush Industries in the early part of 2019 which are as follows;

- (i) A payment of Rs. 10,00,000/- by M/s Sarvamangalam Exports on 31.01.2019 (RTGS Details-HDFC52019013163027873-SARVAMANGALAMEXPORTS- 0200019622617- HDFC0000240)
- (ii) A payment of Rs. 5,00,000/- by M/s Naryan Overseas on 01.02.2019 (RTGS Details- HDFCR52019020163135946-NARAYANOVERSEAS- 50200019769702-HDFC0000240)
- (iii) A payment of Rs. 59,00,000/- by M/s Sarvamangalam Exports on 25.03.2019 (RTGS Details-HDFC520190132570482284-SARVAMANGALAMEXPORTS-50200019622617- HDFC0000240)
- (iv) A payment of Rs. 31,85,000/- by M/s Shubham Enterprises on 02.04.2019 (RTGS Details- CBINR52019040210009401-SHUBHAM ENTERPRISES-00000003677718179-CB)
- (v) A payment of Rs. 27,15,000/- by M/s Bhanu Tradex on 02.04.2019 (RTGS Details- CBINR52019040210010188- MS BHANU TRADEX- 00000003691144749-CB)

As the transactions as above were contemporaneous to the imports made by M/s Piyush Industries, therefore, enquiries were made with the respective banks (i.e. HDFC Bank and Central Bank of India) with which the above remitters' account were maintained and HDFC Bank vide email dated 28.07.2021(RUD-25) informed that M/s Sarvamanglam Exports and M/s Narayan Overseas had account with them and provided the following detail;

<u>Account no</u>	<u>Account title</u>	<u>Account operator's name</u>	<u>Address (Regd)</u>	<u>Address of account operator</u>	<u>Contact details</u>
502000196226 17	SARVAMANGALA M EXPORTS	SACHIN KUMAR	SHOP NO 78 DDA MINI MARKET, SULTANPU RI SANI BAZAR ROAD, DELHI - 110086.	F-464 VARDHAMAN ENCLAVE, VILLAGE KARALA, DELHI - 110081	729098175 8
502000197697 02	NARAYAN OVERSEAS	PREM NARAYA N	C/O NO HOUSE NO 1952 SHOP NO 5,PLOT NO 52 GRD FLR BLK, WZ RANI BAGH, SHAKURBASTI MAYUR TENT HSE WALI GALI, DELHI - 110034	J 220 J BLOCK 4 PUSTA KARTAR NAGAR, DELHI - 110053	991187419 8

Similarly, Central Bank of India vide letter dated 03.08.2021 informed about the account details as follows;

<u>Account title</u>	<u>Account operator's name</u>	<u>Address (Regd)</u>	<u>Address of account operator</u>	<u>Contact details</u>
Shubham Enterprises	Rishi Rishi	Near Lefa Beauty Parlour, Village Begumpur, Rohini- Sector-22, New Delhi- 110086	Village Kharak Khurd, Sura Pana, Kharak Khurd, Bhiwani-127114	8860596487, 9821676105
Bhanu Tradex	Parveen	House No. 081, JJ Colony, D Block, DSIDC, Bawana, New Delhi-110039	462/18, Arya Nagar, Bahadurgarh, Rohtak, Rohtak Haryana-124004	7838676347

All the transactions for crediting to M/s Piyush Industries summed up to **Rs. 1,33,00,000/- (Rs. One Crore Thirty-Three Lakhs only)** by the above four firms. Since all the imports of PVC Resin by M/s Piyush Industries were made during a brief period of 4 months up to March-2019 during which these payments to the credit of M/s Piyush Industries were made and these remittances appeared to be against the sale proceeds of the duty free PVC resin imported by M/s Piyush Industries. Besides, while tendering his voluntary statements, Sh. Piyush Gupta, Prop. of M/s Piyush Industries had inter alia stated that he had no knowledge about the amounts as above credited to the account of M/s Piyush Industries as it was Sh. S K Arora who could tell further details in this regard.

20. Therefore, it was imperative to cause at the above 8 addresses. However, during the search at the above premises, either the premises could not be located or was found occupied by some other persons as detailed below:

- (i) **Shop NO 78 DDA Mini Market, Sultanpuri Sani Bazar Road, Delhi - 110086-** The premises pertaining to M/s Sarvamanglam Exports as per the bank details was found to be existing, however, a person namely Babulal r/o G-180, Sultanpuri, New Delhi-110086 was found who informed that he had bought the above premises in the name of his son Sh. Dinesh from a person namely Sh. Manish. No firm in the name of

M/s Sarvamangal Export was found working there. He also declared that he was not aware of any firm with such name.

(ii) **House NO 1952 Shop No 5,Plot No 52 Grd FLR Blk, WZ Rani Bagh, Shakurbasti Mayur Tent house Wali Gali, Delhi - 110034-** The premises pertaining to M/s Narayan Overseas as per the bank details was found existing in the form of a shop which was found closed and a person namely Sh. Vijay Kumar Malhotra, R/o 1792, Multani Mohalla, Rani Bagh, Delhi-110034 was found who informed that the above premises is in the name of his mother who expired on 09.02.2020 and it was her who used to rent it out. That he was not aware at all about any Narayan Overseas and that the shop was lying vacant for past one year and prior to that his nephew was doing business in Niwansi Foot Wear. He also submitted a declaration to the effect. (RUD-28)

(iii) **Near Lefa Beauty Parlour, Village Begumpur, Rohini-Sector-22, New Delhi-110086-** The premises pertaining to M/s Shubham Enterprises as per the bank details could not be located in the area and it was gathered that no such landmark as Lefa Beauty Parlour was existing there. However, another beauty parlour in the name of Lotus Beauty Parlour was found in the area. Thus, the premises was found nonexistent.

(iv) **House No. 081, JJ Colony, D Block, DSIDC, Bawana, New Delhi-110039-** The premises pertaining to M/s Bhanut Tradex as per the bank details was found to be existing and a person came out who informed that he was a tenant at the above premises and the owner of the premises is Mrs. Om Wati. Later Mrs. Om Wati who came to the premises informed that she is the resident of House no. 550, Bawana and that the above premises in JJ colony is in her name which was allotted to her in the year 2004 and that they never let it out/rented to any firm namely M/s Bhanu Tradex and that someone has misused their address. She submitted a copy of allotment letter DDA, copy of National Food Security Card, a copy of her Adhaar Card and her declaration in support of her claim.

(v) **F-464 Vardhaman Enclave, Village Karala, Delhi -110081-** The said premises pertained to Sh. Sachin Kumar, the account operator of M/s Sarvamanglam Exports as per the bank details. However, during the visit to the area, no such address was found in that area of Vardhaman Enclave, Village Karal, Delhi-110086 and it was gathered that in that colony the marking/numbering of the houses is only up to 300 numbers whereas, the address was F-464 in the area.

(vi) **J 220 J Block 4 PustaKartar Nagar, Delhi-110053-** The said premises belonged to one Sh. Prem Naryan as per the bank details and during the visit to the premises, it was found to be a residential house where a woman namely Seema came out and told that she along with her family has been residing there for past 20 years. She also declared that no such person with the name of "Prem Narayan" has ever resided over there.

(vii) **Village Kharak Khurd, Sura Pana, Kharak Khurd, Bhiwani-** The address given by bank pertained to one Sh. Rishi and during the visit to the place i.e. Sura Pana, Kharak Khurd, Bhiwani, no such person with the name of Sh. Rishi was found residing there. On enquiry from local persons, the same was also confirmed and it was informed that no such person Sh. Rishi was residing in Sura Pana, Kharak Khurd, Bhiwani. One local resident Sh. Satveer Singh gave a declaration to this effect.

(viii) **462/18, Arya Nagar, Bahadurgarh, Rohtak, Rohtak Haryana-124044**- As per the details given by the bank, the said address pertained to Sh. Parveen and during the visit to the Arya Nagar, it was found that no such address was existing. On local enquiry from one Sh. Rajpal Yadav, owner of M/s Yadav Kiryana Store, Near Gali No. 1, Arya Nagar, Bahadurgarh, it was found that no such address as 462/18, Arya Nagar, Bahadurgarh, Rohtak, Rohtak Haryana-124044 was existing in the area. He further informed that the above area comes under ward no. 13 and that there are only 6 streets in Arya Nagar. The houses in the area are referred to with either ward no. or the street number. The address 462/18, therefore, does not appear to be a genuine address. Therefore, the address as mentioned above appears to be fake.

As may be seen that the remitters (M/s Sarvamanglam Exports, M/s Narayan Overseas, M/s Bhanu Tradex & M/s Shubham Enterprises) who made payments to M/s Piyush Industries appear to have used fake identities/addresses to obfuscate the investigation. The addresses used by them have been found either non-existing or being occupied by someone else having no relation whatsoever with the remitters/their firms.

LEGAL PROVISIONS: -

21. Whereas, Notification No. 18/2015-Cus dated 01.04.2015 “*In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act, subject to the following conditions, namely :-*

- (i) ...
- (ii) ...
- (a) ...
- (b) ...
- (c) ...
- (iii) ...

(iv) that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials;

- (v) ...
- (vi) ...

(vii) ...

(viii) that the export obligation as specified in the said authorisation (both in value and quantity terms) is discharged within the period specified in the said authorisation or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorisation:

Provided that an Advance Intermediate authorisation holder shall discharge export obligation by supplying the resultant products to exporter in terms of paragraph 4.05 (c) (ii) of the Foreign Trade Policy;

(ix) that the importer produces evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, within a period of sixty days of the expiry of period allowed for fulfillment of export obligation, or within such extended period as the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow;

(x) that the said authorization shall not be transferred and the said materials shall not be transferred or sold;

21.1. SECTION 28. [duties not levied or not paid or short-levied or short-paid] or erroneously refunded. -

(1) -----

(2) -----

(3) -----

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

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

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

21.2. Whereas, Section 111 of the Customs Act, 1962 provides various situations wherein the imported goods would be liable for confiscation. Section 111(o) provides for confiscation of goods in cases where conditions applicable for import are violated by the importer

“111. Confiscation of improperly imported goods, etc.—The following goods brought from a place outside India shall be liable to confiscation: —

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

21.3. Whereas Section 112 of the Customs Act, 1962, stipulates that where “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 all also be liable to pay a penalty so determined.

21.4. Whereas, Section 114A of the Customs Act, 1962 stipulates that “Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under 23[sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:”

[Provided that where such duty or interest, as the case may be, 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 the 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 duty or interest, as the case may be, so determined:

...”

21.5 Whereas, Section 114AA of the Customs Act, 1962, stipulates that where “[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.]”

FINDINGS OF INVESTIGATION

22. From the facts and discussion hereinabove it emerged that: -

M/s Piyush have obtained **Advance Authorization No. 0510407399 dated 01.08.2018** from Directorate General of Foreign Trade (DGFT), for import of “PVC RESIN GRADE SG5” and undertaken to export “articles such as pipes and fittings” in terms of **chapter 4 of the Foreign Trade Policy 2015-20**.

22.1 M/s Piyush have imported “PVC RESIN GRADE SG5” vide 7 Bills of Entry without payment of duty of Customs under Advance Authorization No. 0510407399 dated 01.08.2018 issued by Directorate General of Foreign Trade (DGFT), New Delhi.

22.2. Para 4.03 & 4.05 of the Foreign Trade Policy, in force at the time of issuance of the authorization indicate that benefit of exemption from payment of Customs duty is extended to the imported input materials subject to strict

condition, that such materials would be exclusively used in the manufacture of export goods which would be ultimately exported.

22.3. Para 4.16 of the Foreign Trade Policy restricts use of such duty free imported goods and stipulates that such import will be with actual user condition. It will not be transferable even after completion of export obligation.

22.4. M/s Piyush has availed benefit of exemption extended by notification No. 18/2015-Cus, dated 01.04.2015, as amended. The notification under reference does not offer absolute exemption rather is a conditional notification. The notification stipulates that such exemption is exclusively on actual user condition and the importer availing benefit of the same should use such materials for production of exports goods only, unless and until specifically allowed otherwise and the same can neither be sold nor transferred.

22.5. The Condition (ix) of the **Notification No. 18/2015-Cus dated 01.04.2015**, as amended requires an importer to produce evidence of discharge of export obligation. M/s Piyush did not make any export, instead, it reportedly diverted entire material into the domestic market. Such a failure to export and diversion of duty free material led to outright violation of the conditions of the notification read with the Policy in vogue rendering goods so imported duty free, liable to confiscation under section 111(o) of the Customs Act, 1962. M/s Piyush imported 618 MTS PVC RESIN GRADE SG5 from Mundra Port and Adani SEZ during the period 29.11.2018 to 07.03.2019 and saved Customs duty amounting to **Rs. 1,89,41,263/-**.

22.6. M/s Piyush was not having any facility for manufacture of item which it undertaken to export in its applications before the DGFT. Thus, it made a false declaration before the office of the DGFT while applying for Advance Authorisations. Therefore, M/s Piyush obtained these Advance Authorisations fraudulently.

22.7. Shri Piyush Gupta in collusion with M/s S.K. Arora has evaded Customs duty to the tune of **Rs. 1,89,41,263/-**.

22.8. M/s Piyush made repeated false declarations before the Customs Authorities at port of import as it filed Bills of Entry under Notification no. 18/2015-Cus dated 01.04.2015 implying thereby that it would use the material in manufacture of export goods in-spite of the fact that neither M/s Piyush was having any manufacturing facility nor it has declared any supporting manufacturer.

DEMAND/RECOVERY OF DUTY & PENAL LIABILITIES: -

23. M/s Piyush has made these imports under **Notification No. 18/2015-Cus dated 01.04.2015**, as amended. This notification has inbuilt mechanism for payment of saved duty by the importer in case of non fulfilment of obligations and have placed the onus upon the importer itself to do so. The relevant para of the said notification is reproduced below:

iv:- that in respect of imports made before the discharge of export obligation, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant

Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials;

23.1. Therefore, before import under Notification No.18/2015-Cus dated 01.04.2015, the importer is required to file a Bond before Customs binding himself to pay duty saved along with interest in case of non-fulfillment of conditions of the notification. The Bond submitted for import under advance authorization scheme have following standard clauses;

- I. We, the obligor(s) shall observe all the terms and conditions of the said notification.*
- II. We, the obligor(s) shall observe all the terms and conditions specified in the license.*
- III. We, the obligor(s) shall fulfill the export obligations as specified in the said notification and the license and shall produce evidence of having so fulfilled the export obligations within 30 days from the expiry of specified export obligation period to the satisfaction of the Government.*
- IV. In the event of failure to fulfill full or part of the export obligations as specified in the said notification and license. I/ We the obligor(s) herein undertake to pay the customs duty for the exemption and also interest @ 15% per annum thereon forthwith and without any demur, to the Government.*
- V. We, the obligor(s) shall comply with the conditions and limitations stipulated in the said Import and Export Policy as amended from time to time.*
- VI. We, the obligor(s) shall not change the name and style under which we, the obligor(s) are doing business or change the location of the manufacturing premises except with the written permission of the Government.*

23.2. Thus, in view of the conditions of the notification and Bond executed, M/s. Piyush was duty bound to pay back the duty saved on imports as it not only failed to fulfill the export obligations but also violated other conditions of notifications as instead of use in manufacture of export product, the duty free material was sold in the market. Therefore, the saved duty is demandable and recoverable from M/s Piyush along with interest in terms of Notification number 18/2015-Cus dated 01.04.2015. However, as may be seen from the facts emerged in investigation, this case is not about a simple or bonafide failure to fulfil export obligations in lieu of duty free imports under Customs Notifications, instead, it is a case of organized, systematic and repeated evasion of customs duty by Shri Piyush Gupta and Shri S.K. Arora under the garb of import under Customs **Notification 18/2015-Cus dated 01.04.2015**. Thus, it appears that apart from the inbuilt provisions in this notification for recovery of duty with interest, provisions of Section 28(4) of the Customs Act, 1962 for recovery of duty and interest are also applicable along with other consequential provisions of penalties envisaged in the Customs Act, 1962. Therefore, an amount of

Rs.1,89,41,263/- appears demandable and recoverable from the said importer forthwith in terms of the said notification and conditions of Bond executed at the port of import at the time of clearance of imported goods under the said notification read with Section 28(4) of the Customs Act,1962. Further, M/s Piyush appears liable for penalty under Section 114A of the Customs Act, 1962 as the said duty has not been paid by reason of collusion and willful mis-statement.

23.3. The contraventions of the provisions of subject Customs notification appears to have rendered the goods liable to confiscation under section 111(o) of the Customs Act, 1962, as the said goods were imported duty free subject to observance of certain condition of the Notification No. 18/2015-Cus dated 01.04.2015, however, M/s Piyush have diverted duty free raw material i.e. "PVC Resins" in domestic market without informing/ intimating to Customs Authorities or DGFT. The acts of omission and/or commission by M/s Piyush of deliberate violations of conditions of the Customs notifications appears to have rendered the duty free goods liable to confiscation under Section 111 of the Customs Act, 1962. M/s Piyush acquired possession, was concerned in carrying, keeping, selling & purchasing the goods which they knew were liable for confiscation under Section 111 of the Customs Act, 1962. **Thus, M/s Piyush appears liable for penalty under Section 112(a) and/or 112(b) of the Customs Act, 1962.**

23.4. While applying to the DGFT Office for obtaining Advance Authorizations, **M/s Piyush have undertaken that "I/We undertake to abide by the provisions of FT (D&R) Act, the rules and orders framed there-under, the FTP, HBPv1, HBPv2 and the ITC (HS) Classification of export and import items."** The condition no.6 provided in the Condition Sheet attached to all the 02 Advance Authorizations issued to M/s Piyush specifically mentioned that "the exempt goods imported against this authorization shall only be utilized in accordance with the provisions of paragraph 4.16 of the FTP 2015-20 and other provisions and the relevant Customs Notifications [Customs Notification 18/2015 dated 01.04.2015 (for physical exports), 21/2015 dated 01.04.2015] as amended from time to time". M/s Piyush itself was mentioned as manufacturer in the Advance Authorizations issued to them. However, no manufacturing facility was found at their declared address. M/s Piyush have diverted/sold the PVC Resins imported under Advance Authorization scheme in domestic market instead of its use in manufacture of export goods. From the statements of transporters, Govind Singh, Shri S.K. Arora and Shri Piyush Gupta, himself, it is evident that the said duty free imported material was never brought to the premises of M/s Piyush. It was directly sold from the port of import to other places. Shri Piyush Gupta, has signed applications to the DGFT for obtaining authorizations, he has authorized CHA to file Bills of Entry under Advance Authorisation scheme. Thus, Shri Piyush Gupta, Director of M/s Piyush Industries, appears to have knowingly and intentionally made, signed and used declarations and documents which were false for the purpose of duty free import of PVC Resins. Therefore, **Shri Piyush Gupta** appears liable for penalty under Section 114AA of the Customs Act, 1962.

23.5. From the facts of the case stated in foregoing paras and statements tendered by Shri Piyush Gupta, Director of M/s Piyush, Shri S.K. Arora, Shri Govind Saini and Shri Asadullah Siddique etc., under Section 108 of the

Customs Act, 1962, it emerged that Shri Piyush Gupta was main person responsible for activities of Piyush and on his directions the import & further movement/sale of duty free imported raw material under Advance Authorization scheme took place. **Shri Piyush Gupta**, was aware of the fact that the material imported under Advance Authorization scheme cannot be diverted/sold in domestic market. Yet, he, with malafide intention misused the scheme of Advance Authorization. Further, it is evident that he has sold **618 MTS** of imported duty free PVC Resins for a total amount of Rs.4.13 Crores over a period of time and by way of this illegal sale of goods, he has evaded duty amounting to **Rs.1,89,41,263/-**. It is prevalent that Shri Piyush Gupta has violated the provisions laid down in condition sheet of Advance Authorizations. He admitted that he was well aware of the facts that diversion of duty free goods imported under Advance Authorizations was not permitted under Customs Act and the diverted goods were liable for confiscation. M/s Piyush filed 7 Bills of entry starting from 29.11.2018, however no consignment was ever brought to the premises mentioned on the authorization, instead Shri Piyush Gupta has sold the goods in domestic market whereas at the time of filing of bills of entry, declared that the goods being imported duty free would be used for production of export goods in their declared premises (manufacturing) only. This has happened repeatedly. Thus, acts of commission and omission on part of Shri Piyush Gupta rendered these duty free goods liable to confiscation under Section 111 of the Customs Act, 1962. Shri Piyush Gupta acquired possession and was concerned in carrying, keeping, selling & purchasing the goods which he knew were liable for confiscation under Section 111 of the Customs Act,1962. **Therefore, Shri Piyush Gupta appears to be liable for penalty under Section 112(a) and/or 112 (b) of the Customs Act, 1962. Besides, he is also liable for penalty under Section 114AA of the Customs Act, 1962 for making false declaration at the time of filing Bills of Entry that the goods will be used for manufacturing wherein in fact he did not have any manufacturing facility.**

23.6. Shri S.K. Arora was instrumental in execution of this planned strategy of evasion of duty on imports under Advance Authorization scheme in the name of M/s Piyush, which is evident;

- i. from the statements of the Piyush Gupta and Krishan Kumar Gupta in his statement under Section 108 of the Customs Act,1962 that Shri S.K. Arora is the main person behind the operations of M/s Piyush. He acted on the direction of Shri S.K. Arora for import of PVC Resins under Advance Authorisation Scheme;
- ii. M/s Well Rope International is owned by Sh. S. K. Arora and Sh. Rahul Arora; it is evident from Bank Statement that regular transaction has been done between M/s Piyush and M/s Well Rope International, which is again evident that S.K. Arora was well aware and instrumental in execution of the evasion of duty.

SHOW CAUSE NOTICE: -

24. Therefore, a Show Cause Notice bearing No. **GEN/ADJ/COMM/306/2022-Adjn-O/o Pr. Commr-Cus-Mundra** dated 03.05.2023 was issued to **Ms/ Piyush Industries**, Flat No. 1, Poorvi Apartments, Vasant Vihar, New Delhi 110057 (**IEC No. AJJPG4682N**), to Show Cause to the

Commissioner of Customs, Custom House, Mundra, New Port User Building, Mundra Port & SEZ Mundra, Kutch, Gujarat-370421, wherein it has been proposed to:

- i. Confiscate 618 MTS of goods i.e. PVC Resins imported duty free under Notification No. 18/2015-Cus, dated 01.04.2015, as amended, having assessable value of **Rs. 4,13,20,291/-**; under Section 111(o) of the Customs Act, 1962, for violation of conditions Notification No. 18/2015-Cus, dated 01.04.2015, as amended,
- ii. Demand and recover the Duty of Customs amounting to **Rs. 1,89,41,263/-** payable on the aforesaid quantity of 618 MTS of goods PVC Resins confiscated vide SCN dated 03.05.2023 diverted and sold in market in violation of conditions of Notification No. 18/2015-Cus, dated 01.04.2015, as amended; along with applicable interest under the conditions of Notification No. 18/2015-Cus dated 01.04.2015 read with Section 28(4) of the Customs Act, 1962.
- iii. Impose the Penalty upon **M/s Piyush Industries** under Section 112(a) and/or 112(b) of the Customs Act, 1962, for the reasons discussed in foregoing paras.
- iv. Impose the Penalty upon **M/s Piyush Industries** under Section 114AA of the Customs Act, 1962, for the reasons discussed in foregoing paras.
- v. Impose penalty upon **Shri Piyush Gupta, Director of M/s Piyush Industries**, (IEC No. AJJPG4682N), under Section 112(a) and/or 112(b) of the Customs Act, 1962, for the reasons discussed in foregoing paras;
- vi. Impose penalty upon **Shri Piyush Gupta, Director of M/s Piyush Industries**, (IEC No. AJJPG4682N), under Section 114AA of the Customs Act, 1962, for the reasons discussed in foregoing paras;
- vii. Impose penalty upon **Shri S.K. Arora, Director of M/s Well Rope International**, under Section 112(a) and/or 112(b) of the Customs Act, 1962 for the reasons discussed in foregoing paras.

25. LEGAL PROVISIONS: -

25.1. Para 4.16 of the Foreign Trade Policy 2015-20 stipulates that:

- (i) Advance Authorisation and/ or material imported under Advance Authorisation shall be subject to 'Actual User condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed.

25.2. Para 4.10 of the Hand Book of Procedure 2015-20 stipulates that:

- (i) Transfer of any duty free material imported or procured against Advance Authorisation from one unit of a company to another unit for manufacturing purpose shall be done with prior intimation to jurisdictional Excise Authority. Benefit of CENVAT shall not be claimed on such transferred input.
- (ii) ...
- (iii)...

25.3. Para 4.21 of the Hand Book of Procedure 2015-20 stipulates that: Every Advance Authorisation holder shall maintain a true and proper account of consumption and utilization of duty free imported/ domestically procured inputs against each Authorisation as prescribed in Appendix 41. This record in Appendix 41 format, duly verified and certified by the jurisdictional Excise Authority, shall be submitted to the concerned Regional Authority at the time of filing application for redemption/ bond waiver. Regional Authority shall compare the details of Appendix 41, with that of the inputs allowed in the Authorisation, before allowing redemption or bon waiver against individual authorization. Such records shall be preserved for a period of at least three years from the date of redemption.

25.4. The Condition Sheet attached with the Advance Authorisation issued by the DGFT under **Notification No. 18/2015-Customs dated 01.04.2015**, have following conditions amongst others:

- i) **condition No. 6:-** The exempt goods imported against this Authorisation shall only be utilized in accordance with the provisions of paragraph 4.16 of the Foreign Trade Policy 2015-20 and other provisions and the relevant Customs Notification [Custom Notification No. 18/2015 dated 01.04.2015 (for physical exports), 21/2015 dated 01.04.2015 (for deemed exports), 22/2015 dated 01.04.2015 (for Advance authorizations for prohibited goods) and 20/2015 (for annual Advance authorizations) as the case may be, as amended from time to time.
- ii) **condition No. 7:-** The Authorisation holder shall abide by the instructions contained in paragraph 4.21 of the HBP, (2015-2020), as the case may be, for maintenance of a true and proper account of consumption and utilization of inputs and furnish returns to the concerned Regional Authority as per the provisions of FP and the procedure laid there under.
- iii) **condition No. 10:-** the Authorisation holder to comply with the provisions of paragraph 4.10 and paragraph 4.35 of Handbook of Procedure, 2015-2020, as amended from time to time, with regard to transfer of any material from one unit of the Authorisation holder to any other unit of the Authorisation holder included in IEC or to the supporting manufacturer/jobber

25.5. Condition No. (x) of the Notification No. 18/2015-Customs dated 01.04.2015 stipulates that "the said Authorisation shall not be transferred and the said materials shall not be transferred or sold".

25.6. Further the condition no. (vi) of the Notification No. 18/2015-Customs dated 01.04.2015 stipulates that, "the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials"

25.7. Thus in case of violation of condition of Notification by the importer, the proper officer of Customs may issue demand notice to the importer under the provisions of **Notification No. 13/2015- Cus dated 01.04.2015** [Condition No.

(x)] directing the importer to deposit duty with interest immediately. Simultaneously, on the failure to deposit the said duty foregone, he may proceed under Section 142 of the Customs Ad. 1962, for recovery of government dues which is reproduced below:-

(1) *Where any sum payable by any person under this Act inducing the amount required to be paid to the credit of the Central Government under section 28B is not paid, -*

(a) the proper officer may deduct or may require any other officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other officer of customs: or

(b) the Assistant Commissioner of Customs or Deputy Commissioner of Customs may recover or may require any other officer of customs to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the Assistant Commissioner of Customs or Deputy Commissioner of Customs or such other officer of customs; or

(c) if the amount cannot be recovered from such person in the manner provided in cause (a) or cause (b) -

(i) the Assistant Commissioner of Customs or Deputy Commissioner of Customs may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector on receipt of such certificate shall proceed to recover from such person the amount specified there under as if it were an arrear of land revenue; or

(ii) the proper officer may, on an Authorisation by Commissioner of Customs and in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus, if any, to such person.

Provided that where the person (hereinafter referred to as predecessor), by whom any sum payable under this Act including the amount required to be paid to the credit of the Central Government under section 28B is not paid, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by the proper officer, after obtaining written approval from the Commissioner of Customs, for the purposes of recovering the amount so payable by such predecessor at the time of such transfer or otherwise disposal or change.

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made there under provide that any amount due under such instrument may be recovered in the manner laid down in subsection (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

25.8. Whereas, Section 112 of the Customs Act, 1962, stipulates that where 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 also be liable to pay a penalty so determined.

26. DEFENCE SUBMISSION:

None of the noticees made any submission in his defence.

27. RECORD OF PERSONAL HEARING:

Following principal of natural justice, Personal hearing (i.e. PH) in the matter was granted to all the noticees on **26.07.2023 and 06.09.2023**. Details of the PH are as under:

- i. **1st PH conducted on 26.07.2023:** None of the noticees appeared to attend the PH.
- ii. **2nd PH conducted on 06.09.2023:** None of the noticees appeared to attend the PH.

28. DISCUSSION AND FINDINGS:

28.1 I have carefully gone through the impugned **SCN No. GEN/ADJ/COMM/306/2022-Adjn dated 03.05.2023**; issued to M/s Piyush Industries, (IEC No. AJJPG4682N) and were made answerable to the **Commissioner of Customs**, Custom House, Mundra; the relied upon documents, relevant legal provisions and records available before me. The issues before me to decide are as under:

- (i) Whether, **618 MTS** of goods i.e. PVC Resins imported duty free under Notification No. 18/2015-Cus, dated 01.04.2015, as amended, having assessable value of **Rs.4,13,20,291/-**; is liable to be confiscated under Section 111(o) of the Customs Act, 1962, for violation of conditions Notification No. 18/2015-Cus, dated 01.04.2015, as amended, or otherwise;
- (ii) Whether, Duty of Customs amounting to **Rs. 1,89,41,263/-** payable on the aforesaid quantity of **618 MTS** of goods diverted and sold in market in violation of conditions of **Notification No. 18/2015-Cus, dated 01.04.2015**, as amended; is to be demanded and recovered along with applicable interest under the conditions of Notification No. 18/2015-Cus dated 01.04.2015 read with Section 28(4) of the Customs Act, 1962, or otherwise;
- (iii) Whether, Penalty is imposable upon the noticees as proposed vide the subject SCNs, or otherwise;

28.2. I observe that Personal Hearings in case of both the Show Cause Notices i.e. **SCN dated 03.05.2023** were scheduled on two occasions i.e. 26.07.2023

and 06.09.2023 in order to provide natural justice to all the noticees; however, no one appeared for PH on aforementioned dates nor did they submit any request for adjournment in the matter. The adjudication is a time bound process which cannot be kept pending for long. Hence, I find that principles of natural justice have been duly followed since sufficient opportunities have been granted to all the noticees to defend their case. Therefore, the instant case is taken up for adjudication based on material facts, provisions of law and documents available on records.

I observe that the Section 122 A of the Customs Act, 1962 ('the Act' in short) provides that adjudicating authority shall not grant adjournment more than three time, to the noticees during the proceeding. Section 122A of the Act is reproduced hereunder:

122A. Adjudication procedure.

(1)The adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2)The adjudicating authority may, if sufficient cause is shown at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during the proceeding.]

Emphasis supplied

28.3. I find that **M/s Piyush** obtained **Advance Authorization No. 0510407399 dated 01.08.2018** from by Directorate General of Foreign Trade (DGFT), for import of 'PVC Resins' and undertaken to export "PVC pipes and fittings" **in terms of chapter 4 of the Foreign Trade Policy 2015-20**. M/s Piyush imported "PVC Resins", vide **7 Bills of Entry** without payment of duty of Customs under the said Advance Authorizations.

28.4. I observe that **Para 4.03 & 4.05 of the Foreign Trade Policy**, in force at the time of issuance of the authorization indicate that benefit of exemption from payment of Customs duty is extended to the imported input materials subject to strict condition, that such materials would be exclusively used in the manufacture of export goods which would be ultimately exported. Whereas, Para 4.16 of the Foreign Trade Policy restricts use of such duty free imported goods and stipulates that such import will be with actual user condition. It will not be transferable even after completion of export obligation.

28.5. I find that **M/s Piyush** has availed benefit of exemption extended by **Notification No. 18/2015-Cus, dated 01.04.2015**, as amended. The notification under reference does not offer absolute exemption rather is a conditional notification, which stipulates that such exemption is exclusively on actual user condition and the importer availing benefit of the same should use such materials for production of exports goods only, unless and until specifically allowed otherwise and the same can neither be sold nor transferred. I observe that the **Condition (ix) of the Notification No. 18/2015-Cus dated 01.04.2015**, as amended requires an importer to produce evidence of discharge of export obligation.

28.6. I find that in the instant case, M/s Piyush did not make any export, instead in contravention to conditions imposed vide subject Notification, they reportedly sold entire material to domestic market. Such an act of diverting of duty-free material to local market, has led to outright violation of the conditions of the notification read with the Policy in force rendering goods so imported duty free, liable to confiscation under Section 111(o) of the Customs Act, 1962.

28.7. I find that M/s Piyush imported **618 MTs** PVC Resins effected from Mundra Port during the period from 29.11.2018 to 07.03.2019 and saved Customs duty amounting to **Rs.1,89,41,263/-**.

28.8. I find that **M/s Piyush** were not having any facility for manufacture of item "PVC Pipes and Fittings" which it undertaken to export in its applications before the DGFT. Thus, it made a false declaration before the office of the DGFT while applying for Advance Authorisations. Therefore, M/s Piyush obtained these Advance Authorisations fraudulently.

28.9. I find that M/s Piyush made repeated false declarations before the Customs Authorities at port of import as they filed Bills of Entry under **Notification No. 18/2015-Cus dated 01.04.2015** implying thereby that it would use the material in manufacture of export goods in-spite of the fact that M/s Piyush neither had any manufacturing facility nor did they declare any supporting manufacturer.

28.10. I find that investigation carried out by the DRI, Noida revealed evidences that M/s. Piyush wrongly availed the benefit of exemption extended by **Notification No. 18/2015-Cus, dated 01.04.2015, as amended**. The investigation carried out by the DRI is as under:

- i. **Shri S.K. Arora**, Owner of M/s Well Rope International in coordination with Shri Piyush Gupta and his employee was looking after work of M/s Piyush Industries. He is one of the beneficiary of benefit availed by M/s Piyush. As per bank transaction between M/s Piyush Industries and M/s Well Rope International, it is evident that S.K. Arora is benefited by the duty evasion done by M/s Piyush.
- ii. **Shri Ramesh Kumar**, Representative of Transporter of M/s Piyush in his statement dated 20.10.2020 stated that total of 17 consignments were transported by them during **Dec-2018 to April-2019**, it is evident that M/s. Piyush did not receive imported PVC Resins in their godown instead the goods were directed directly to the domestic market in various cities such as Rajpura, Punjab, Bawana, Delhi and Mandi, Punjab etc.

28.11. I find that the exemption **Notification No.18/2015-Cus., dt. 01.04.2015** as amended, clearly stipulates that exemption from payment of customs duty, additional duty, safeguard duty and anti-dumping duty is provided in respect of material imported against the valid Advance Authorizations, subject to the conditions specified therein. As per Para (ix) of the said Notification it is obligatory for the importer to produce the proof of discharge of export obligation.

...

(ix) that the importer produces evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, within a period of sixty days

of the expiry of period allowed for fulfillment of export obligation, or within such extended period as the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow;

...

28.12. In this connection, I observe that the burden to prove the eligibility of exemption notification is on importer; and that the exemption notification are subject to **strict interpretation**. I place reliance upon following relevant legal pronouncements:

- Hon'ble Supreme Court in the case of **Hotel Leela Venture Ltd. Vs. Commr. of Customs (General), Mumbai [2009(234) ELT-389(SC)]** held that the burden was on the appellant to prove that the appellant satisfies the terms and conditions of the Exemption Notification. It is well settled that Exemption Notification have to be read in the strict sense.
- Hon'ble Supreme Court in the case of **Krishi Upaj Mandi Samiti v/s. CCE reported in 2022 (58) GSTL 129 (SC)** held that law of the issue of interpretation of taxing statute has been laid down in catena of decisions that plain language capable of defined meaning used in a provision has to be preferred and strict interpretation has to be adopted except in cases of ambiguity in statutory provisions.
- Hon'ble Supreme Court in the case of **Uttam Industries V/s. CCE reported in 2011 (265) ELT 14(SC)** held that it is well settled law that exemption notification should be construed strictly and exemption notification is subject to strict interpretation by reading it literally.
- The constitutional bench dated July 30, 2018 of Hon'ble Supreme Court of India in the case of **COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI ...APPELLANT(S) VERSUS M/S. DILIP KUMAR AND COMPANY & ORS. (CIVIL APPEAL NO. 3327 OF 2007)** held that the benefit of ambiguity in exemption notification cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue/state. Exemption notifications are subject to strict interpretation.

Relevant Para the said judgement is reproduced hereunder;

"41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/ assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/ State."

29. I find that in the instant case **M/s. Piyush** failed to fulfil export obligation, moreover they obtained Advance Authorization to import the impugned goods merely to sale the same in the domestic market. Thus, they have evaded the Customs duty by resorting to the scheme of mis-using the Advance Authorization under **Notification No.18/2015-Cus., dt. 01.04.2015** as amended.

30.1. I find that the confirmatory statements of various key managerial persons recorded under Section 108 of the Customs Act, 1962, have sufficient

evidentiary value to establish that M/s. Piyush have mis-used the Notification No.18/2015-Cus., dt. 01.04.2015 as amended in order to evade the Customs duty.

- i. statement of **Shri Piyush Gupta, Director of M/s Piyush** recorded on 20.02.2020, 22.02.2024 and 24.02.2024; **wherein** he admitted that the entire imported duty free PVC Resins **618 MTS** approx. imported under Advance Authorization Scheme in domestic Market; that no material (duty free imported PVC Resins) is available in his godown or in his office and also that he was aware that it was not allowed to sale the duty free material imported under Advance Authorization.
- ii. Similarly, **Shri Ramesh Kumar**, Representative of Transporter of M/s Piyush in his statement dated 20.10.2020 stated that total of 17 consignments were transported by them during Dec-2018 to April-2019, it is evident that M/s. Piyush did not receive imported PVC Resins in their godown instead the goods were directed directly to the domestic market in various cities such as Rajpura, Punjab, Bawana, Delhi and Mandi, Punjab etc.

31. In view of above, I find that **M/s. Piyush** have mis-used the Advance Authorization under **Notification No.18/2015-Cus., dt. 01.04.2015** as amended, by way of diverting the impugned imported goods in local market and consequently evading the Customs duty. **I place reliance on the following relevant judgements of various Courts wherein evidentiary value of statements recorded under Section 108 of the Customs Act, 1962 is emphasized.**

- The Hon'ble Apex Court in the case of **Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC)** has held that statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner inculpating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962 can be used as substantive evidence in connecting the applicant with the act of contravention.
- In the case **Collector of Customs, Madras and Ors vs D. Bhoormull 1983(13) ELT 1546(S.C.)** the Hon'ble Supreme Court has held that Department was not required to prove its case with mathematical precision. The whole circumstances of the case appearing in the case records as well as other documents are to be evaluated and necessary inferences are to be drawn from these facts as otherwise it would be impossible to prove everything in a direct way.
- **Kanwarjeet Singh & Ors vs Collector of Central Excise, Chandigarh 1990 (47) ELT 695 (Tri)** wherein it is held that strict principles of evidence do not apply to a quasi-judicial proceedings and evidence on record in the shape of various statements is enough to punish the guilty.
- Hon'ble High Court decision in the case of **Assistant Collector of Customs Madras-I vs. Govindasamy Ragupathy-1998(98) E.L.T. 50(Mad.)** wherein it was held by the Hon'ble Court confessional statement under Section 108 even though later retracted is a voluntary statement and was not influenced by threat, duress or inducement etc. is a true one.
- In the case of **Govind Lal vs. Commissioner of Customs Jaipur**

{2000(117) E.L.t. 515(Tri)}- wherein Hon'ble Tribunal held that Smuggling evidence statement- when statement made under Section 108 of the Customs Act, 1962 never retracted before filing the replies to the Show Cause Notice- retraction of the statement at later stage not to affect their evidence value.

➤ In the case of **Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC.** Hon'ble Supreme Court held that statement made before Customs Officer though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs is a valid evidence under law.

32. In view of above, I find that **M/s Piyush** have deliberately contravened the above said legal provisions with an intention to evade payment of Customs Duty by resorting to importing PVC Resins under Advance Authorization Scheme and instead of using the same in manufacture of export product, sold these in local market. Thus, they have **misused the scheme of Advance Authorization in contravention to conditions of Notification No.18/2015-Cus., dt. 01.04.2015** as amended, with intent to evade the Customs duty. I hold that M/s Piyush had contravened the provisions of Section 46(4A) of the Customs Act, 1962 in as much as they while filing Bills of Entry, failed to ensure the accuracy and completeness of the information filed by them and thereby failed to fulfill their legal obligation of providing correct classification of the imported goods, in the Bills of Entry and other documents presented by them before customs.

33. DUTY DEMAND UNDER SECTION 28(4) OF CUSTOMS ACT, 1962

33.1. The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. —

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

- (a) collusion; or*
- (b) any wilful mis-statement; or*
- (c) suppression of facts."*

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

Explanation- For the purposes of this section, "relevant date" means,-

- (a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;*
- (b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;*

(c) in a case where duty or interest has been erroneously refunded, the date of refund

(d) in any other case, the date of payment of duty or interest.

33.2. CONFISCATION OF THE GOODS UNDER SECTION 111(o) OF THE CUSTOMS ACT, 1962:

(i). I find that it is alleged in the subject SCN that the goods are liable for confiscation under Section 111(o) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of **Section 111(o) of the Customs Act, 1962** are reproduced below:

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

(ii). On plain reading of the above provisions of the Section 111(o) of the Customs Act, 1962 it is clear that any imported goods subject to any condition, and if the prescribed condition is not observed, will be liable for confiscation. As discussed in the foregoing para's, it is evident the Importer has deliberately sold the imported goods imported under Advance Authorisation scheme with a malafide intention to evade duty. Further they also failed to submit the correct Country of Origin Certificates prerequisite to avail the benefit of Notification No.18/2015-Cus., dt. 01.04.2015 as amended. In light of these acts of mis-use of Advance Authorisation scheme, I find that the impugned imported goods are liable for confiscation as per the provisions of **Section 111(o) of Customs Act, 1962**. I hold so.

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

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

(iv) A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. I find that redemption fine can be imposed in those cases where goods are either physically available or the goods have been released provisionally under Section 110A of Customs Act, 1962 against appropriate bond binding concerned party in respect of recovery of amount of redemption fine as may be determined in the adjudication proceedings.

(v). As regards applicability of Section 111(o) of the Customs Act, I find that any goods could be held liable for confiscation only when the goods were physically available for being confiscated. If the imported goods were seized and then released provisionally, then also such goods may be held liable for confiscation because they were released on provisional basis. But in this case, the goods imported by them have never been seized; on the contrary, the goods imported by them have been legally allowed to be cleared for home consumption. These goods are not available for confiscation at this stage. In case of **Manjula Showa Ltd. 2008 (227) ELT 330**, the Appellate Tribunal has held that goods cannot be confiscated nor could any condition of redemption fine be imposed when there was no seizure of any goods. The Larger Bench of the Tribunal in case of **Shiv Kripalspat Pvt. Ltd. 2009(235) ELT 623** has also upheld this principle. When no goods imported by them have been actually seized nor are they available for confiscation, the proposal to redemption of such non-existent goods does not hold ground.

(vi). In this regard, I find that the impugned goods **618 MTs of PVC Resins** were neither seized, nor released provisionally. Hence, neither the goods are physically available nor bond for provisional release under Section 110A of the Customs Act covering recovery of redemption fine is available. I, therefore, find that redemption fine cannot be imposed in respect of subject imported goods.

34. NOW I PROCEED TO EXAMINE THE ROLES OF THE VARIOUS NOTICEES IN THIS ELABORATE SCHEME TO WRONGLY AVAIL THE BENEFIT OF SAID NOTIFICATION WITH INTENT TO DEFRAUD THE GOVERNMENT EXCHEQUER.

34.1. ROLE PLAYED BY M/S. PIYUSH INDUSTRIES:

i. I find that **M/s Piyush Industries** have failed to discharge their export obligation against the imports made by them under **Advance Authorization No. 0510407399 dated 01.08.2018**. I find that no business activities were found to have been carried out at the known premises of M/s Piyush Industries. Instead, another firm was found to be working at the declared business premises of M/s Piyush Industries. It has been also found that no stock of either PVC resin imported duty free or the declared manufactured goods viz. pipes and fittings were found during the search conducted at the known premises of M/s Piyush Industries. Therefore, I find that the PVC resin imported duty free have been removed clandestinely to the Domestic Tariff Area/local market without payment of the applicable Customs Duty. They imported **618 MT** of PVC resin without payment of duty having assessable value and duty foregone as **Rs.4,13,20,291/- (Rupees Four Crore Thirteen Lakh Twenty Thousand Two Hundred Ninety-One Only)** and **Rs.1,89,41,263/- (Rupees One Crore Eighty-Nine Lakh Forty-One Thousand Two Hundred Sixty-Three only)** respectively. I find that they have violated the actual user condition till the export obligation is completed, enunciated under Advance Authorization Scheme more explicitly made in the CBIC Notification No. 18/2015-Customs dated 01.04.2015. I find that the same is substantiated with the admission of **Sh. Piyush Gupta**, the proprietor of the import firm M/s Piyush Industries, who while tendering his voluntary statements has admitted to have signed the documents for clearance of the duty free PVC resin imported under Advance Authorization. He has admitted to have done so

for monetary consideration from Sh. S. K. Arora. I find that till date of issuance of show cause notice none from the above firm appeared with any documents showing the fulfilment of export obligation against the above referred advance authorization while the period for fulfilment of export obligation is already over. I find that this act of the importer clearly reveal intent to defraud the government exchequer by evading huge amount of customs duty in the case. Since they have not fulfilled the export obligation against the advance authorization scheme and have also violated the actual user condition till the export obligation is completed, enunciated under Advance Authorization Scheme more explicitly made in the CBIC Notification No. 18/2015-Customs dated 01.04.2015, therefore, they have rendered the bond and bank guarantee executed at the time of obtaining the license liable to be enforced. **M/s Piyush Industries** have not discharged export obligation in respect of the inputs imported duty free (PVC resin) against the said Advance Authorization within stipulated time of 18 months from the date of issuance of Advance Authorization as till date they have not submitted any documents showing proof of the export obligation against the imports made by them. Thus, they had contravened the provisions of Para 4.03 of Chapter the FTP 2015-20120; and conditions to the Advance Authorization Notification No. 18/2015-Cus dated 01.04.2015.

- ii. I find that **M/s Piyush Industries** by indulging in the unauthorized diversion and sale of duty free goods imported against the impugned License, enriched themselves at the cost of Government exchequer thereby knowingly causing harm to the economy of the nation. The same has also been supported by the voluntary statements of Sh. Piyush Gupta under Section 108 of the Customs Act, 1962, wherein he has admitted to have done so at the instance and instruction of Sh. S. K. Arora for monetary consideration. By doing so, they have contravened the Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 and Rule 14 of the Foreign Trade (Regulation) Rules, 1993. Therefore, it appears that Sh. Piyush Gupta through his firm **M/s Piyush Industries** has knowingly indulged himself in the act of violation of provisions of Foreign Trade Policy 2015-2020 and conditions imposed under Notification No.18/2015 dated 01.04.2015, which rendered the said duty free imported inputs having total assessable value of **Rs. 4,13,20,291/- (Rupees Four Crore Thirteen Lakh Twenty Thousand Two Hundred Ninety-One only)** liable for confiscation under Section 111(o) of the Customs Act, 1962 read with the conditions of the Bond and the Bank Guarantee executed by them at the time of import and has rendered M/s. Piyush Industries liable for imposition of penalty under the provisions of **Section 112 (a) of the Customs Act, 1962**.
- iii. I find that penalty upon **Shri Piyush Gupta**, proprietor of M/s. Piyush Industries has been proposed under Section 112(a) of the Customs Act, 1962; therefore, I observe in catena of legal pronouncements it is held that imposing penalty upon firm as well as the proprietor will amount to double jeopardy. I place reliance upon the judgement of **Hon'ble Delhi High Court in the case of Anil Kumar Mahensaria vs. Commissioner of Customs reported as [2008 (228) ELT 166(Del)]** wherein it was held that only one set of penalty can be imposed either on the appellant or upon his proprietorship firm. Therefore, I refrain from imposing penalty upon M/s.

Piyush Industries since penalty upon Shri Piyush Gupta, proprietor of M/s. Piyush Industries has already been imposed.

iv. I find that no business activities were found to have been carried out at the known premises of M/s Piyush Industries. Instead, another firm was found to be working at the declared business premises of M/s Piyush Industries, neither any stock of either PVC resin imported duty free or the declared manufactured goods viz. pipes and fittings were found during the search conducted at the known premises of M/s Piyush Industries. Therefore, I find that the PVC resin imported duty free have been removed clandestinely to the Domestic Tariff Area/local market without payment of the applicable Customs Duty of **Rs. 1,89,41,263/- (Rupees One Crore Eighty-Nine Lakh Forty-One Thousand Two Hundred Sixty-Three only)** against the above assessable value of the inputs imported amounting to **Rs. 4,13,20,291/- (Rupees Four Crore Thirteen Lakh Twenty Thousand Two Hundred Ninety-One only)** is demandable and recoverable under the provisions of Notification No. 18/2015-Cus dated 01.04.2015 read with the conditions of Bond and Bank Guarantee executed by them as they have failed to comply with the conditions under the above Notification and the Bond & BG executed by M/s. Piyush Industries. Therefore, I find that such act of omission and Commission has rendered M/s. Piyush Industries liable to Penalty under **Section 114AA of the Customs Act, 1962.**

v. I find that penalty under Section 117 of Customs Act, 1962 has also been imposed upon **M/s Piyush Industries**, however, I find that penalty under Section 117 of the Customs Act, 1962 is imposable for contravention of any provision for which no express penalty is elsewhere provided for such contravention or failure. I find that in the instant case, Penalty under Section 114AA of the Customs Act, 1962 has already been imposed upon M/s. Piyush Industries; therefore, it is not warranted to impose penalty under Section 117 of the Customs Act, 1962 upon M/s. Piyush Industries.

34.2. ROLE PLAYED BY SH. PIYUSH GUPTA PROPRIETOR OF M/S. PIYUSH INDUSTRIES:

I find that by indulging in the unauthorized diversion and sale of duty free goods imported against the impugned License, M/s Piyush Industries enriched themselves at the cost of Government exchequer thereby knowingly causing harm to the economy of the nation. The same has also been corroborated by the voluntary statements of **Sh. Piyush Gupta** under Section 108 of the Customs Act, 1962, wherein he has admitted to have done so at the instance and instruction of Sh. S. K. Arora for monetary consideration. By doing so, they have contravened the Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 & Rule 14 of the Foreign Trade (Regulation) Rules, 1993. Therefore, **Sh. Piyush Gupta** through his firm M/s Piyush Industries has knowingly indulged himself in the act of violation of provisions of **Foreign Trade Policy 2015-2020 and conditions imposed under Notification No.18/2015 dated 01.04.2015**, which rendered the said duty free imported inputs liable for confiscation under Section 111(o) of the Customs Act, 1962. Therefore, **Sh. Piyush Gupta**, has rendered himself liable for imposition of penalty under the provisions of Section 112 (a)(ii) of the Customs Act, 1962. Further, I find that no business activities were

found to have been carried out at the known premises of M/s Piyush Industries. I find that Sh. Piyush Gupta, while tendering his voluntary statements has admitted to have signed the documents for clearance of the duty free PVC resin imported under Advance Authorization. He has admitted to have done so for monetary consideration from Sh. S. K. Arora. Therefore, it is evident that he had intent to evade the Customs duty. I find that such act of the omission and commissions committed by Shri Piyush Gupta has rendered him liable to penalty under **Section 114AA of the Customs Act, 1962.**

I find that penalty under Section 117 of Customs Act, 1962 has also been imposed upon **Sh. Piyush Gupta**. However, I find that penalty under Section 117 of the Customs Act, 1962 is imposable for contravention of any provision for which no express penalty is elsewhere provided for such contravention or failure. I find that in the instant case, Penalty under Section 112(a)(ii) and Section 114AA of the Customs Act, 1962 has already been imposed upon Sh. Piyush Gupta; therefore, it is not warranted to impose penalty under Section 117 of the Customs Act, 1962 upon **Sh. Piyush Gupta** Proprietor of M/s. Piyush Industries.

34.3. ROLE PLAYED BY SH. S. K. ARORA:

(i) I find that **Sh. S. K. Arora**, who controlled and directed all the actions of M/s Piyush Industries through Sh. Piyush Gupta, the proprietor of import firm M/s Piyush Industries and acting in a manner that he could go scot-free, he appears to be the mastermind in the case. This is substantiated by the voluntary statements of Sh. Piyush Gupta, the proprietor of the import firm, tendered under Section 108 of the Customs Act, 1962 wherein he categorically has admitted to have acted at behest of Sh. S. K. Arora and worked for monetary consideration. He has stated that it was only Sh. S. K. Arora who floated the idea of import under Advance Authorization and lured him for monetary consideration and he then signed the documents for all the formalities needed for import under Advance Authorization. Sh. Piyush Gupta has also stated that it was Sh. S. K. Arora behind the entire episode of the import of PVC Resin and he was not aware at all about as to where the goods were imported from (overseas suppliers) or to whom the goods were diverted in the Domestic Tariff Area/local market as it was Sh. S. K. Arora who used to handle all such things on his own. The involvement of Sh. S. K. Arora is further corroborated through the bank statement of the import firm M/s Piyush Industries which revealed the transactions between M/s Piyush Industries and M/s Well Rope International, a firm owned by Sh. S. K. Arora and total sum of **Rs.12,22,665/-** were transferred to the account of M/s Piyush Industries in a short period of 5 days. In addition to that some transactions from M/s Piyush Industries have also been made with Mrs. Raj Arora, the wife of Sh. S. K. Arora. The role of Sh. S. K. Arora is further substantiated by the recovery of some documents pertaining to M/s Piyush Industries, from the premises of Sh. S. K. Arora. Sh. S. K. Arora has been given ample opportunities to present his version in the case and he was issued summons dated 17.08.2020, 11.09.2020, 28.09.2020, 18.01.2021, 01.02.2021, 30.03.2021, 08.04.2021, 21.06.2021, 06.07.2021, 14.07.2021 and 15.09.2021 to tender his voluntary statement. However, he did not appear for tendering his statement and instead has sent reply stating his medical condition while replying to some of the summons sent

to him. From the actions of Sh. S. K. Arora, it appears that he has adopted an evasive approach to obfuscate investigation and has till date not jointed the investigation in spite of issuance of various summons to him. He too while acting through Sh. Piyush Gupta, the proprietor of the import firm M/s Piyush Industries, has defrauded the government exchequer and evaded huge amount of duty of **Rs.1,89,41,263/- (Rs. One Crore Eighty-Nine Lakh Forty-One Thousand Two Hundred Sixty-Three only)** by importing the inputs through M/s Piyush Industries and then got it diverted to the local market without payment of applicable duty. Therefore, Sh. S. K. Arora acting through Sh. Piyush Gupta, the proprietor of import M/s Piyush Industries has knowingly indulged himself in the act of violation of provisions of Foreign Trade Policy 2015-2020 and conditions imposed under Notification No. 18/2015 dated 01.04.2015, which rendered the said duty free imported inputs liable for confiscation under Section 111(o) of the Customs Act, 1962 and has rendered himself liable for imposition of penalty under the provisions of Section 112 (a)(ii) and Section 114AA of the Customs Act, 1962. Since he is the mastermind behind the entire gamut and thus by his actions (by acting through Sh. Piyush Gupta) has also violated the provisions of Foreign Trade Policy 2015-2020 and conditions of Custom Notifications as discussed above, therefore, the inputs (PVC Resin) imported duty free having total assessable value at **Rs.4,13,20,291/- (Rupees Four Crore Thirteen Lakhs Twenty Thousand Two Hundred Ninety-One only)** are liable for confiscation under Section 111(o) of the Customs Act, 1962 read with the conditions of the Bond and the Bank Guarantee executed by them at the time of import. Similarly, the total duty amount to **Rs.1,89,41,263/- (Rs. One Crore Eighty-Nine Lakh Forty-One Thousand Two Hundred Sixty-Three only)** against the above assessable value of the inputs imported amounting to **Rs.4,13,20,291/- (Rupees Four Crore Thirteen Lakhs Twenty Thousand Two Hundred Ninety-One only)** is liable to be demanded/recovered also from Sh. S. K. Arora under the provisions of Notification No. 18/2015-Cus dated 01.04.2015 read with the conditions of Bond and Bank Guarantee executed by them as they have failed to comply with the conditions under the above Notification and the Bond and BG executed by them. The interest as prescribed is also liable to be demanded from them under Notification no. 18/2015-Cus dated 01.04.2015 read with the conditions of Bond and Bank Guarantee executed by them at the time of imports. In view of the above discussion, it is evident that Sh. S. K. Arora by his acts of omissions and commission, has made the goods liable for confiscation under Section 111(o) of the Customs Act, 1962 and evasion of Customs duty rendered themselves liable for penalty under section 112(a) (ii) and Section 114AA of the Customs Act, 1962.

I find that penalty under Section 117 of Customs Act, 1962 has also been imposed upon **Sh. S. K. Arora**. However, I find that penalty under Section 117 of the Customs Act, 1962 is imposable for contravention of any provision for which no express penalty is elsewhere provided for such contravention or failure. I find that in the instant case, Penalty under Section 112(a)(ii) and Section 114AA of the Customs Act, 1962 has already been imposed upon **Sh. S. K. Arora**; therefore, it is not warranted to

impose penalty under Section 117 of the Customs Act, 1962 upon **Sh. S. K. Arora**.

(iii) I observe that **Section 112 (a)(iii)** provides that penalty not exceeding ten percent of the duty or five thousand rupees, higher of either, is leviable in case of improper importation of dutiable goods.

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 5[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:*
 - (iii) ...
 - (iv) ...
 - (v) ...

35. IN VIEW OF DISCUSSION AND FINDINGS SUPRA, I PASS THE FOLLOWING ORDER:

ORDER

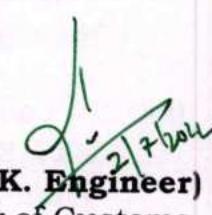
- (i) I order to confiscate **618 MTS of PVC RESINS imported duty free by M/s Piyush, (IEC No. AJJPG4682N)** under Notification No. 18/2015-Cus, dated 01.04.2015, as amended, having assessable value of **Rs.4,13,20,291/- (Rupees Four Crore Thirteen Lakh Twenty Thousand Two Hundred Ninety-One Only)**; under Section 111(o) of the Customs Act, 1962, for violation of conditions of said Notification.
- (ii) I confirm the demand of Duty of Customs amounting to **Rs.1,89,41,263/- (Rupees One Crore Eighty Nine Lakh Forty One Thousand Two Hundred Sixty Three only)** payable on the aforesaid quantity of 618 MTS of PVC Resins diverted and sold in market in violation of conditions of Notification No. 18/2015-Cus, dated 01.04.2015, as amended; and order to recover the same from **M/s Piyush Industries (IEC No. AJJPG4682N) through its proprietor Shri Piyush Gupta, and Shri S.K. Arora jointly or severely** under the conditions of Notification No. 18/2015-Cus dated 01.04.2015 and in terms of the provisions of Section 28(8) read with Section 28(4) of the

Customs Act, 1962; along with interest at appropriate rate under Section 28AA of the Customs Act, 1962 on the above confirmed demand of duty;

- (iii) I impose Penalty of **Rs. 10,00,000 (Rupees Ten Lakh only)** upon **M/s Piyush Industries, (IEC No. AJJPG4682N)** under **Section 114AA of the Customs Act, 1962**, for the reasons discussed in foregoing paras.
- (iv) I refrain from imposing penalty upon M/s Piyush Industries, (IEC No. AJJPG4682N) under **Section 112(a) of the Customs Act, 1962**, since imposing penalty upon firm as well as the proprietor would amount to the double jeopardy.
- (v) I order to invoke and enforce, the Bonds and Bank guarantees furnished by them at the time of import, for recovery of Customs duty, interest, fine and penalty.
- (vi) I impose penalty of **Rs. 10,00,000/- (Rupees Ten Lakh only)** upon **Shri Piyush Gupta, Proprietor of M/s Piyush Industries, (IEC No. AJJPG4682N)**, under **Section 112(a)(ii) of the Customs Act, 1962**, for the reasons discussed in foregoing paras;
- (vii) I impose penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** upon **Shri Piyush Gupta, Proprietor of M/s Piyush Industries, (IEC No. AJJPG4682N)**, under **Section 114AA of the Customs Act, 1962**, for the reasons discussed in foregoing paras;
- (viii) I impose penalty of **Rs. 15,00,000/- (Rupees Fifteen Lakh only)** upon **Shri S.K. Arora**, under **Section 112(a)(ii) of the Customs Act, 1962**, for the reasons discussed in foregoing paras;
- (ix) I impose penalty of **Rs. 10,00,000/- (Rupees Ten Lakh Only)** upon **Shri S.K. Arora**, under **Section 114AA of the Customs Act, 1962**, for the reasons discussed in foregoing paras;
- (x) I refrain from imposing penalty upon **M/s Piyush Industries, (IEC No. AJJPG4682N)**, **Shri Piyush Gupta, Proprietor of M/s Piyush Industries, (IEC No. AJJPG4682N)**; **Shri S.K. Arora**, under Section 117 of the Customs Act, 1962, for the reason discussed hereinabove.

36. This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

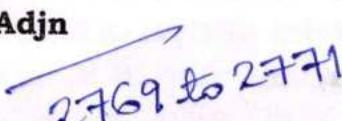
dc


(K. Engineer)

Principal Commissioner of Customs,
Custom House Mundra.

Date: 02.07.2024.

F.No. CUS/ADJ/COMM/306/2022-Adjn



**BY SPEED POST/BY EMAIL/BY HAND/ NOTICE BOARD OR BY OTHER
LEGALLY PERMISSIBLE MEANS:**

To,

1. **M/s Piyush Industries, (IEC-AJ JPG4682N)**
Flat No. 1, Poorvi Apartments,
Vasant Vihar, New Delhi 110057.
2. **Sh. Piyush Gupta,**
Flat No. 1, Poorvi Apartments,
Vasant Vihar, New Delhi 110057
3. **Sh. S. K. Arora, (i) G-13, South Extension, Part II, New Delhi & (ii) A-43, South Extension, Part II, New Delhi**

Copy to:

1. The Chief Commissioner of Customs, CCO, Ahmedabad
2. The Additional Director General, DRI, Lucknow Zonal Unit, 2/31 Vishal Khand, Gomti Nagar, Lucknow (UP)-226010.
3. The Additional DGFT, Udyog Bhawan, H-wing, Gate No-02, Maulana Azad Road, New Delhi -110011 for information and necessary action.
4. The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House, Mundra.
5. The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
6. The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
7. Notice Board
8. Guard File.