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F.No. GEN/ADJ/COMM/89/2023-Adjn
DIN:- 20240471MO000000FA99

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|  | <p>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421 PHONE:02838-271426/271423 FAX:02838-271425 Email:adj-mundra@gov.in</p> |  |
| File No. | : GEN/ADJ/COMM/89/2023-Adjn-O/o Pr Commr-Cus - Mundra | |
| Order-in-Original No. | : MUN-CUSTM-000-COM-006-24-25 | |
| Passed by | : K. Engineer Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra. | |
| Date of order and Date of issue | : 25.04.2024 25.04.2024 | |
| SCN No. & Date | : SCN No. GEN/ADJ/COMM/89/2023-Adjn dated 08.05.2023, issued by Commissioner of Customs, Customs. | |
| Noticee(s) / Party / Importer | : M/s. Om Chem and others | |
| DIN | : 20240471MO000000FA99 | |

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 (1)6 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129 A (1) के अंतर्गत प्रपत्र सीए-3 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।

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

4. उक्त अपील के साथ 1000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो -/5000 रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच अहमदाबाद 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 रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मद सं 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 paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ज्यूटि /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. 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.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग 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.

BRIEF FACTS OF THE CASE

M/s. Om Chem, Plot No. 13, Krushna Park Society, Near Water Tank, Victoria Park Road, Bhavnagar, Gujarat, India(IEC No. 2415004677) (hereinafter referred to as 'the importer' or 'M/s. Om Chem') were engaged in import of 'Raw Magnesium carbonate lumps', 'Natural Magnesium Carbonate (Magnesite) lumps', 'Magnesium Carbonate lumps', 'Natural Magnesium Carbonate (Magnesite)', 'Raw Magnesite powder', etc. (hereinafter referred to as 'the subject goods') under declared CTH 25191000 of the Customs Tariff Act, 1975. Intelligence gathered by the officers of Directorate of Revenue Intelligence (DRI) indicated that the M/s. OM Chem was importing the subject goods originated from Pakistan, which were falling under CTH 98060000 of the Customs Tariff Act, 1975 and attracting Basic Customs Duty @ 200% Adv under CTH 98060000 w.e.f. 16.02.2019 in terms of Notification No. 05/2019-Customs dated 16.02.2019 but the same were mis-declared in the Bills of Entry by way of showing the same originated from Turkey with intent to evade differential Customs Duty payable thereon. While the subject goods imported from countries other than Islamic Republic of Pakistan attract BCD at much lower rate i.e. @ 5%. The intelligence further indicated that prior to issuance of said Notification, the importer was declaring correct Country of Origin of the subject goods i.e. Pakistan in the Bills of Entry being filed by them and the import documents and not a single consignment was imported by the importer from any country other than Pakistan in the previous five years.

2. Acting upon the intelligence, search was conducted at the office premises of the importer under Panchnama dated 04.06.2019. During the Panchnama proceedings at searched places some files/ documents/records relating to sale/purchase/import of the importer and some printouts of email conversations held between the importer and the suppliers of subject goods were resumed by the visiting officers on a reasonable belief that the same were required for DRI investigation. Further, during the Panchnama proceedings at the office premises of the importer on 04.06.2019, Smt. Pallavi Dhavalbhai Bhatt, Proprietor of the importer firm M/s. Om Chem was present. Smt. Pallavi Dhavalbhai Bhatt informed during Panchnama that all the work relating to importer firm was looked after by her husband Shri Dhaval Bhatt who was out of the town that day and went Gandhidham.

3. Accordingly, Statement of Shri Dhaval Bhatt was recorded on 04.06.2019 under Section 108 of Customs Act, 1962 at DRI office, Gandhidham. In his Statement dated 04.06.2019, Shri Dhaval Bhatt, Authorised Signatory of the importer firm M/s. Om Chem, interalia stated that the firm M/s Om Chem was a trading firm dealing with trading/import of the subject goods in Lumps and Powder form; that the firm was established in the year 2015 and they were importing the subject goods at Mundra Port and earlier they were also importing the subject goods at Tuticorin Port. Shri Dhaval Bhatt further stated that he looked after overall operations such as sales, purchase, marketing etc. of the importer firm M/s Om Chem which was being operated from his residential address i.e. Plot No. 13, Krushna Park Society, Nr.

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Water Tank, Victoria Park Road, Bhavnagar, Gujarat; that they did not have any stock of the subject goods and the imported goods were directly being delivered to the customer after delivery from the port of import. He informed that in their import documents, the address of importer firm was mentioned as G 1, Raghukul Building, Kaliyabid, Bhavnagar, Gujarat -364002, which was not as per the address declared in IEC records and the same was not intimated to DGFT also. He clarified that the address of premises declared in their IEC record was taken by them on rent and they left the same one year back. Shri Dhaval Bhatt voluntarily surrendered his Samsung S9 make mobile phone for investigation purpose.

4. Further Statement of Shri Dhaval Bhatt, Authorized Signatory of the importer was recorded under Section 108 of Customs Act, 1962 on 05.06.2019 wherein inter-alia he stated that he was looking after the import work relating to the importer and he himself discussed and finalized the deal for supply of subject goods with overseas suppliers through Whatsapp Chat, Whatsapp Call and email also. On being asked to provide the printouts of emails and Whatsapp Chat communications held by him with overseas suppliers of subject goods during the period from 16.02.2019 onwards, he stated that he had deleted all records of Whatsapp chats and Whatsapp calls. On being asked, why he had deleted the Whatsapp Chat/Call conversations regarding import of the subject goods, Shri Bhatt stated that the consignments of subject goods imported by them after 16.02.2019 were having goods originated in Pakistan and there was higher Customs Duty i.e. BCD @200% in respect of goods exported from or originated in Pakistan, hence to escape from higher duty implication and higher costing of import goods, he had declared the goods as of Turkey Origin in the Bills of Entry and other import documents having incorrect& fabricated Country of Origin. He added that he was afraid of being caught by any anti-evasion agency and therefore he had deleted such Whatsapp Chats/Calls and other relevant records from his mobile phone.

4.1 The mobile phone surrendered by Shri Dhaval Bhatt during his statement dated 04.06.2019, was opened in his presence and it was found that one contact 'RM Amin Patel Pakistan' was saved in the contact list. On being asked about the said Contact No., Shri Dhaval Bhatt stated that he was a supplier of subject goods from Pakistan, but they had not imported any consignment from the said Pakistani supplier after 16.02.2019. He further stated that his firm had not imported subject goods from any other country than Pakistan prior to 16.02.2019; that he telephonically finalized the deal for import of subject goods with one Mr. Mujtaba Ahmed Paracha of M/s. Super Terra Pvt. Ltd. having Head Office at Singapore and branches at Pakistan and Dubai.

4.2. During recording his statement, Shri Dhaval Bhatt was shown some Whatsapp chat conversations found in his mobile phone in a WhatsApp group viz. "Mundra shipment" created by the said Mujtaba Bhai and the screenshots of the chat conversations were taken in presence of Shri Dhaval Bhatt. The relevant images

/ screenshots taken from the mobile phone of Shri Dhaval Bhatt and brief content thereof as emerged during investigation have been produced in Show Cause Notice. Shri Dhaval Bhatt was asked to offer his comments after perusal of the Chat messages/conversations as per printouts of Screenshots running in Page No. 1 to 18 , for which Shri Dhaval Bhatt stated that he did not know the details of other members of the said Whatsapp group other than himself and two contacts saved in the name of Mujtaba bhai, and one Shahab Superterra DUBAI who was dealing with dispatch matters in M/s. Super Terra (hereinafter referred to as M/s. Superterra Pvt. Ltd./Superterra SDN BHD/Superterra Container Line). He explained that the conversations held in the said Whatsapp group were relating to arrangement of supply of subject goods originated in Pakistan and imported by the importer through M/s. SuperTerraPvt. Ltd. after 16.02.2019. Shri Dhaval Bhatt further informed that to change the Country of Origin of subject goods from Pakistan, the overseas parties (who arranged for supply of goods to them under Certificate of Origin having incorrect/fabricated details) purchased/imported the goods from Pakistan and got clearance of the same at Dubai port; that to hide the factual status of country of origin from enforcement agencies, the subject goods imported from Pakistan were taken out of the port at Dubai and then the seals of containers were changed; that after changing the seals, the same goods were loaded on different vessel showing the same as afresh export to India from Dubai; that the goods were of Pakistan origin and exported from Pakistan but the same were subsequently transported from UAE to India declaring the Country of Origin of such goods as Turkey. Shri Dhaval Bhatt further revealed that sometimes only container seals were changed and the containers remained same for transportation to India from UAE and in some cases, the containers were also changed for transportation of same goods. On being asked to provide the details of such containers, he stated that he would check his records and assured to submit the details of such containers which were received by them with goods originated from Pakistan but (the containers dispatched from Pakistan with same goods) were changed at Dubai. But he failed to provide the same stating the reason that the supplier/agent did not respond to the request made by them in this regard.

4.3. On being asked to explain content of a message dated 15.05.2019 at 21.45 from Mujtaba Bhai Super Tera appearing in his Whatsapp Chat, Shri Dhaval Bhatt explained that the containers which were having goods originated from Pakistan were not changed as suggested by Mujtaba Bhai; that as regards another message at 21.46 (dated 15.05.2019), he stated that the documents for 10 containers had not been received by him so far, therefore he could not comment at that point of time as to whether those 10 containers were changed, or otherwise. However, he assured that he would revert back after getting enquired but he did not submit any documents/details in this regard stating the reason that the supplier/agent did not respond to the request made by them.

4.4. As regards another message found received in the mobile phone of Shri Dhaval Bhatt at 23.24 hrs on 15.05.2019, from a contact saved as Shahab Superterra DUBAI, Shri Dhaval Bhatt informed that the sender was the dispatch handling person of M/s. Super Terra Pvt. Ltd. from Dubai and confirmed that seal of 04 containers imported by his firm vide B/E No.3440387 dated 29.05.2019 were changed at Dubai. He clarified one more message found received in his mobile phone at 13.57 on 20.05.2019 from Shahab Superterra DUBAI, that the subject goods were arrived from Karachi. Similarly, he explained the content of message received at 18.43 on 27.05.2019 from Shahab Superterra DUBAI, that they had prepared the Analysis Report on the basis of documents received by them from Karachi.

4.5. Shri Dhaval Bhatt was shown the printouts of container movements tracking (from the website of Karachi International Container Terminal Ltd.) in respect of the containers in which the importer had imported goods covered under Bs/E Nos. 2640924 dtd. 30.03.2019, 3164987 dtd. 09.05.2019 and 3440387 dtd. 29.05.2019 and 3469719 dtd. 31.05.2019 and asked to offer his comments regarding country of origin of the goods imported by them vide said Bills of Entry. On perusal of these printouts of container movements tracking, Shri Dhaval Bhatt stated that all the containers mentioned in those printouts were pertaining to import made by their firm M/s. Om Chem and the goods imported in those containers were originated in Pakistan.

4.6. Shri Dhaval Bhatt stated that he had started paying up the differential duty and would pay up the entire differential duty alongwith interest in installments in respect of goods originated from Pakistan and imported by the importer during the period from 16.02.2019 onwards.

5. The mobile phone Samsung Model S9 (IMEI No. 355224091653805/02 and 355225091653802/02) of Shri Dhaval Bhatt, Authorized Signatory of the importer firm M/s. Om Chem was sent for data retrieval at Cyber Forensic Laboratory, DRI Zonal Unit, Mumbai where the same was unsealed under Panchnama dated 02.07.2019. During the Panchnama, part of the data contained in the mobile phone of Shri Dhaval Bhatt was extracted and retrieved /stored in a Hard Disc Drive of Toshiba Make external USB 3.0. However, the CFL forensic expert conducting the data retrieval process informed that the security patch of Samsung S9 was latest and the Whatsapp chats could not be extracted. Accordingly, Shri Dhaval Bhatt was requested to present himself at DRI office, Gandhidham for examination of his Whatsapp data in his presence under Panchanama.

5.1. Shri Dhaval Bhatt vide Authorization letter dated 05.07.2019 authorized Shri Malkhan Singh Shekhawat, Authorized Representative of Customs Broker firm M/s. S.N. Shipping to remain present during the Whatsapp data retrieval process under Panchanama. Accordingly, in the presence of two independent panchas and Shri Malkhan Singh Shekhawat, the mobile phone Samsung Model S9 (IMEI No.

355224091653805/02 and 355225091653802/02) of Shri Dhaval Bhatt was opened and the data regarding Whatsapp Chat along with attachments and other relevant content were exported to the computer system installed in the DRI office through Bluetooth and a data cable, under Panchnama dated 05.07.2019. Then the printouts of the relevant Whatsapp chats conversations alongwith the attachments and other relevant images/documents etc. were taken out and placed in two made up files.

6. In furtherance of investigation, statement of following persons of containers lines engaged in importing of goods were recorded under Section 108 of Customs Act, 1962:-

- (i) Statement of Mr. Abdul Majid Zainuddin Shaikh, Proprietor of M/s. Super Container Line, 202, Godgift Tower, M.S. Road, Near Lucky Hotel, Bandra West-50, was recorded on 17.06.2019
- (ii) Statement of Shri P. Shajish Sivaraj, General Manager, M/s. Hubs & Link Logistics (I) Pvt. Ltd., Gandhidham was recorded on 18.06.2019.
- (iii) Statement of Shri Jaymin Jagdishkumar Thakkar, General Manager of M/s. Sarang Maritime Logistics Pvt. Ltd., Mani Complex, Office No. 14, Ground Floor, Plot No. 84, Gandhidham, was recorded on 27.11.2019.

7. Further Statement of Shri Dhaval Bhatt, Authorized Signatory of M/s Om Chem, Bhavnagar was recorded under Section 108 of the Custom Act, 1962 on 09.07.2019. During the statement, printouts taken out from the data source of his mobile phone was shown to him and his comments was sought. Shri Dhaval Bhatt explained the content of Chat messages/documents etc. placed in the made up file No. 1 and made up file No. 2. Shri Dhaval Bhatt was requested to peruse the statement dated 17.06.2019 of Mr. Abdul Majid Zainuddin Shaikh, Prop. of M/s. Super Container Line, Mumbai and statement dated 18.06.2019 of Shri P. Shajish Sivaraj, General Manager, M/s. Hubs & Link Logistics (I) Pvt. Ltd., Gandhidham (discussed in subsequent para no. 14 and 16 respectively) and to offer his comments. On perusal of the said statements, Shri Dhaval Bhatt stated that the facts stated by those persons in the statements relating to his firm M/s. Om Chem were correct to the best of his knowledge.

7.1 On being asked Shri Dhaval Bhatt stated that all their import consignments after 16.02.2019 were of goods originated from Pakistan but as regards the goods imported by them vide Bill of Entry No. 3483024 dated 01.06.2019, he submitted that the goods were of Iran origin. He added that he had produced the chat conversations held between him and the Iran based supplier and the documents evidencing the loading of containers at Bandar Abbas Port, Iran; that he had also inquired from the respective shipping line and it was informed by them that they had already provided the container movement history to DRI and claimed that the containers covered under Bill of Entry No. 3483024 dated 01.06.2019 were loaded from Bandar Abbas Port, Iran. He further deposed that as the trade between Pakistan

to Iran was banned, therefore it was not feasible to take consignments from Karachi (Pakistan) to Bandar Abbas (Iran) and then bring to Mundra (India) due to higher rates of freight; that he truthfully stated that the goods covered under Bill of Entry No. 3483024 dated 01.06.2019 were directly imported from Iran to India.

7.2 On being asked why they had imported the goods from Iran as all his previous and later import of subject goods were of Pakistan origin, Shri Dhaval Bhatt stated that they had placed orders for Iran consignment later to the Pakistan origin consignments for which Bill of Entry had not been filed till date and therefore they started genuine dealings with the order for import of said Iran origin and they were ready to pay the applicable differential duty alongwith interest towards the import of Pakistan origin goods. He intimated that after initiation of inquiry by DRI, his firm voluntarily paid differential Customs duty of Rs. 23,41,329/- alongwith interest of Rs. 46,025/-.

7.3. As regards the documents/details required for investigation, such as actual Country of Origin and initial documents relating to supply of subject goods from Pakistan, the importer vide letter dated 12.03.2020 informed that they were trying to get the documents for shipment from Pakistan to Dubai since last 2-3 months and they had been trying to contact the supplier but they were not responding.

8. During the course of investigation, it was confirmed that the M/s. OM Chem had been importing subject goods from Pakistan since 2015 and not a single consignment of subject goods was imported by them from a country other than Pakistan. During the period from October, 2015 till 16.02.2019, the importer imported goods under 133 Bills of Entry and all these consignments were declared as originated in Pakistan. Whereas, after implementation of Notification No. 05/2019-Customs dated 16.02.2019, the importer had imported the following consignments of subject goods by declaring Country of Origin other than Pakistan in the Certificate of Origin and other import documents relating to the Bills of Entry.

| Sr. No. | Bill of Entry No. & Date | Description of import goods | Qty. (MT) | Declared Assessable Value (Rs.) | Duty paid (Rs.) | Declared Country of Origin | Container Line/ India n Agent (M/s.) |
|---------|--------------------------|-------------------------------|-----------------------|---------------------------------|-----------------|----------------------------|--|
| 1 | 2640924 dated 30.03.2019 | Raw Magnesium Carbonate Lumps | 24.92 (one Container) | 122108 | 13157 | Turkey | M.R. Container Line (associate of M/s. R-Ways Container line)/ Sarang Maritime Logistics Pvt. Ltd. |

| | | | | | | | |
|--------------|--------------------------------|--|---|----------------|---------------|--------|--|
| 2 | 2829526 dated 13.04.2019 | Raw Magnesite Powder | 81.132 (Three Containers) | 563185 | 60683 | Turkey | Super Terra SDN BHD/ Super Container Line |
| 3 | 2942157 dated 22.04.2019 | Natural Magnesium Carbonate (Magnesite) | 128.5 (Five Containers) | 711206 | 76632 | Turkey | Super Terra SDN BHD/ Super Container Line |
| 4 | 3164987 dated 09.05.2019 | Magnesium Carbonate Lumps | 135.05 (Five Containers) | 711713 | 76687 | Turkey | Super Terra SDN BHD/ Super Container Line |
| 5 | 3440387 dated 29.05.2019 | Natural Magnesium Carbonate (Magnesite) | 108 (Four Containers) | 710870 | 76596 | Turkey | Super Terra SDN BHD/ Super Container Line |
| 6 | 3483024 dated 01.06.2019 | Magnesium Carbonates Lumps | 264.13 (Ten Containers) | 1710384 | 184294 | Iran | Em Kay Line Pvt. Ltd./ Hub & Links Logistics (I) Pvt. Ltd. |
| Total | | | 741.732 MT (28 Containers) | 4529466 | 488049 | | |

8.1. The Bill of Entry wise details of containers arrived at Mundra Port in connection with import of subject goods made by the importer are as under:-

| Sr. No. | Bill of Entry No. & Date | No. of Containers | Container numbers |
|---------|--------------------------|----------------------|---|
| 1 | 2640924 dated 30.03.2019 | 01 | WHLU2494691 |
| 2 | 2829526 dated 13.04.2019 | 03 | APZU3013931 REGU3087363 SOLU2539659 |
| 3 | 2942157 dated 22.04.2019 | 05 | GESU2376060 MSKU2635876 PCIU3885730 TGHU2476307 REGU3129601 |
| 4 | 3164987 dated 09.05.2019 | 05 | CRXU3062771 FCIU2072437 FSCU3610006 FSCU7786400 FSCU2252120 |
| 5 | 3440387 dated 29.05.2019 | 04 | CLHU2978017 GATU1233412 GESU2366713 RJC8201283 |

| | | | |
|---|--------------------------|----|--|
| 6 | 3483024 dated 01.06.2019 | 10 | CBHU3822353 EMCU3259899 EMKU7874750 EMKU7880666 GESU2201879 HLXU2311739 MOAU0116149 PCIU3983696 TEMU0633236 TEMU5382853 |
|---|--------------------------|----|--|

9. In order to verify the Country of Origin of subject goods imported at Mundra port vide the above mentioned containers, inquiries were made from the website of M/s. Karachi International Container Terminal Ltd. (www.kictl.com) and other container tracking websites. The container tracking records available on inquiry section of said website were examined and printouts of container tracking records were taken. The outcome of the inquiry in respect of 10 containers covered under 03 Bills of Entry mentioned at Sr. No. 1,4 & 5 of Table at Para 8.1 above, bearing B/E Nos. 2640924 dated 30.03.2019, 3164987 dated 09.05.2019 and 3440387 dated 29.05.2019 is summarized hereunder: -

| Sr. No. | Container No. | Origin | Destination | Vessel /Voyage | Container Line |
|---------|---------------|-------------------|---------------------------------|-----------------|---|
| 1 | WHLU2494691 | Karachi, Pakistan | Jebel Ali, United Arab Emirates | Diyala V-19010 | Rways Logistics |
| 2 | CRXU3062771 | Karachi, Pakistan | Jebel Ali, United Arab Emirates | BOTANY BAY/005W | Not specified |
| 3 | FCIU2072437 | Karachi, Pakistan | Jebel Ali, United Arab Emirates | BOTANY BAY/005W | Not specified |
| 4 | FSCU3610006 | Karachi, Pakistan | Jebel Ali, United Arab Emirates | BOTANY BAY/005W | Not specified |
| 5 | FSCU7786400 | Karachi, Pakistan | Jebel Ali, United Arab Emirates | BOTANY BAY/005W | Not specified |
| 6 | FSCU2252120 | Karachi, Pakistan | Jebel Ali, United Arab Emirates | BOTANY BAY/005W | Not specified |
| 7 | CLHU2978017 | Karachi, Pakistan | Jebel Ali, United Arab Emirates | Diyala/19018 | Superterra SDN BHD. (Super Terra Pvt. Ltd.) |
| 8 | GATU1233412 | Karachi, Pakistan | Jebel Ali, United Arab Emirates | Diyala/19018 | Superterra SDN BHD. (Super Terra Pvt. Ltd.) |

| | | | | | |
|----|-------------|-------------------|---------------------------------|--------------|---|
| 9 | GESU2366713 | Karachi, Pakistan | Jebel Ali, United Arab Emirates | Diyala/19018 | Superterra SDN BHD. (Super Terra Pvt. Ltd.) |
| 10 | RJCU8201283 | Karachi, Pakistan | Jebel Ali, United Arab Emirates | Diyala/19018 | Superterra SDN BHD. (Super Terra Pvt. Ltd.) |

9.1. As regards the subject goods stuffed in container no. WHLU2494691 mentioned at Sr. No. 1 of above Table at Para 9, further corroborative evidences were gathered during investigation. In this regard, inquiries carried out with the Pakistan based container line viz. M/s. R-Ways Container Line and its associate M/s. M.R. Container Line through their Indian agent M/s. Sarang Maritime Logistics Pvt. Ltd. M/s. R-Ways Container Line vide email dated 27.09.2019 informed that 24.92 MT subject goods (RAW MAGNESIUM CARBONATE) covered under Bill of Lading No. RCLTUMUN18363A dated 19.03.2019 (vessel- Northern General V-075) shipped to Om Chem, Bhavnagar, Gujarat (India) were arrived at Jebel Ali, Dubai (UAE) from Karachi, Pakistan. They further submitted that the shipping line from Karachi to Dubai was different than M/s. R-Ways Container Line and not known to them hence the related documents were not available on their part.

9.1.1. From the mobile phone data of Shri Dhaval Bhatt images of two more purported Bills of Lading bearing nos. RCLKHLJE18363 dated 11.03.2019 and RCLBNDMUN18363A dated 11.03.2019 pertaining to the first consignment of the importer after 16.02.2019 for 24.92 MT subject goods, were recovered. These three Bills of Lading (including one submitted with Customs) are having following details:-

| Bill of Lading No. & Date | Gross Weight/Description of Goods | Container Line | Vessel | Port of Loading | Shipper | Notify Party |
|----------------------------------|--|-----------------------|------------------|------------------|---|-----------------------------|
| RCLKHLJE A18363 dated 11.03.2019 | 24.92 MT Raw Magnesium Carbonate Lumps | R-Ways Container Line | V-19010 | Bandar Abbas | Avizhe Siraz Commercial Trading LLC, Shizar | Pearltainer FZE, Sharjah |
| RCLBNDMUN18363A dated 11.03.2019 | 24.92 MT Raw Magnesium Carbonate Lumps | M.R. Container Line | Diyala V-19010 | Bandar Abbas | Avizhe Siraz Commercial Trading LLC, Shizar | Pearltainer FZE, Sharjah |
| RCLTUMUN18363A dated 19.03.2019 | 24.92 MT Raw Magnesium Carbonate Lumps | M.R. Container Line | Northern General | Gemlik (Gempert) | Af Gumurukleme Nakliye Ve Tic Ltd | Bab Al Zain General Trading |

| | | | | | | |
|--|--|--|--|--|------------------|---------------|
| | | | | | STI, Istambul | LLC, Dubai |
|--|--|--|--|--|------------------|---------------|

9.1.3. In the said Bill of Lading submitted with Customs House, Mundra and the concerned Bill of Entry No. 2640924 dated 30.03.2019, the port of loading was declared as Gemlik (Gempport), Turkey, whereas as per the respective Commercial Invoice bearing no. ZH2503 dated 25.03.2019 issued by declared supplier exporter M/s. Bab Al Zain Gen. Trading LLC, Dubai, UAE and Packing List dated 25.03.2019, the Port of Loading was shown as Jebel Ali, UAE.

9.1.4. From the images and tabular summary made on the basis of details available on these Bills of Lading, it is apparent that there mentioned different shippers, notify parties, port of loading, container lines, vessel etc. in different Bills of Lading for a single consignment of 24.92 MT subject goods. As per these evidences, it appears that after 16.02.2019 (the date on which 200% BCD was introduced on import of goods originated in/exported from Pakistan), the importer had taken a chance on test check method to clear a small consignment of only one container for which they had made preparation for fabricating the documents and accordingly they prepared different sets of Bills of Lading and other related documents. On being asked to clarify these documents, Shri Dhaval Bhatt, Authorised Signatory of importer firm M/s. Om Chem admitted in his statement dated 09.07.2019 that the goods covered under this consignment were originated in Pakistan.

9.2. As regards the subject goods stuffed in container nos. mentioned at Sr. No. 2 to 6 of Table at Para 9 above, further corroborative evidences such as Bill of Lading and invoices issued by Pakistan based supplier to route the subject goods from Karachi, Pakistan to Dubai, UAE were gathered during investigation from the mobile phone of Shri Dhaval Bhatt.

9.3. During the investigation, further corroborative evidences i.e. origin Bill of Lading (bearing No. SPT/KHI/JEA/671/18-19 dated 06.05.2019) & Packing List for journey from Pakistan to UAE, and actual Certificate of Original bearing reference no. 402478 dated 06.05.2019 gathered which clearly establishes that the subject goods stuffed in the container nos. mentioned at Sr. No. 7 to 10 of Table at Para 9 above, were originated in Pakistan. It is an admitted fact that to avoid interception of actual country of origin of subject goods i.e. Pakistan, the route of transportation was splitted from Pakistan to UAE and UAE to India for which container seal numbers were changed at Jebel Ali Port, Dubai (UAE).

9.3.1. From above documents, it is clear that the material particulars with respect to subject goods i.e. container no. and quantity etc. are same in both sets of the Bills of Lading which is further corroborated with the Whatsapp chat conversations between the importer and overseas supplier/agent regarding change of container seals and admittal statements of Shri Dhaval Bhatt, Authorised Signatory of the importer indicate that subject goods were originated in Pakistan.

9.4. Further, investigation revealed that some containers were replaced /changed in connivance of the importer, suppliers and their associates with other containers at the Jebel Ali Port, UAE, in order to hide the actual country of origin of goods. Details of the such containers are as under:-

| S r. N o. | Original Containe r No. | Original Seal No. | Origin From | Destinatio n to | Container Line | Changed Containe r No. | Change d Seal No. | Container Line | Declared Origin and destinati on |
|--------------------|-------------------------------|----------------------|----------------------|--|---|------------------------------|-------------------------|---|--|
| 1 | APZU30 00678 | SPT117 9 | Karachi, Pakistan | Jebel Ali port, United Arab Emirates | Superterra SDN BHD. (Super Terra Pvt. Ltd.) | GESU23 76060 | 73572 33 | Superterr a SDN BHD. (Super Terra Pvt. Ltd.) | from UAE to Mundra |
| 2 | CZZU37 52723 | SPT116 0 | Karachi, Pakistan | Jebel Ali, United Arab Emirates | Superterra SDN BHD. (Super Terra Pvt. Ltd.) | MSKU2 635876 | 24967 2 | Superterr a SDN BHD. (Super Terra Pvt. Ltd.) | |
| 3 | GESU26 77715 | SPT112 6 | Karachi, Pakistan | Jebel Ali, United Arab Emirates | Superterra SDN BHD. (Super Terra Pvt. Ltd.) | PCIU38 85730 | 59829 6 | Super Terra Container Line | |
| 4 | GESU29 85934 | SPT113 1 | Karachi, Pakistan | Jebel Ali, United Arab Emirates | Superterra SDN BHD. (Super Terra Pvt. Ltd.) | TGHU24 76307 | 10761 1 | Super Terra Container Line | |
| 5 | TALU22 54080 | SPT110 6 | Karachi, Pakistan | Jebel Ali, United Arab Emirates | Superterra SDN BHD. (Super Terra Pvt. Ltd.) | REGU31 29601 | 15870 6 | Super Terra Container Line | |

9.4.1. In order to split the route of transportation of subject goods from Pakistan to UAE and UAE to India, separate Bill of Lading was arranged for both the routes changing the containers at Jebel Ali Port, Dubai, UAE.

9.4.2. The importer and the suppliers/agents/container lines were using a term "Switching of Bill of Lading" for splitting the route of transportation from Pakistan to UAE and UAE to India after changing containers/seals at UAE. The suppliers/agents/container lines were charging extra for such "Switching of Bill of Lading" to suppress the actual country of origin of goods and to escape from higher rate of BCD @200% in India. This is evident from the Whatsapp Chat conversations between Shri Dhaval Bhatt and suppliers/agents/container lines and images of documents such as two sets of invoices extracted from the mobile phone of Shri Dhaval Bhatt, Authorised Signatory of the importer firm M/s. Om Chem.

It is relevant to mention here that from the mobile phone data of Shri Dhaval Bhatt, an image of letter dated 09.03.2019 issued by M/s. Saifee Expo, Karachi Pakistan

was extracted vide which the said Pakistani supplier claimed that they were having huge stock of subject goods in their godowns and their mines and they offered Shri Dhaval Bhatt to supply the subject goods as the cheapest rates in Pakistan. It appears that the above invoice bearing no. 51525426 dated 28.03.2019 which is corresponding to the subject goods imported by the importer vide Bill of Entry No. 2942157 dated 22.04.2019 was a result of said offer presented by the Pakistani supplier vide letter dated 09.03.2019.

9.5. Further, it was revealed during investigation that the 03 containers covered under Bill of Lading SPTJEAMUN1904674 dated 11.04.2019, were changed at Jebel Ali Port, Dubai, UAE. This fact is corroborated by the evidences recovered from the mobile phone of Shri Dhaval Bhatt, Authorized Signatory of importer during his statement dated 09.07.2019, that the containers and Seals of this consignment were changed at Dubai and then shipped to Mundra, India declaring them of Turkey origin. As regards the details of container nos. and supporting documents relating to the route of transportation of subject goods covered under this consignment from Pakistan to UAE, Shri Dhaval Bhatt informed that he had requested the suppliers/agent/container lines to provide the details and documents, but they did not provide. The details for shipment of said consignment from Jebel Ali Port, UAE to Mundra, India are as under:

| Sr. No. | Original Container No. | Original Seal No. | Origin | Destination | Container Line | Changed Container No. | Changed Seal No. | Container Line | Shipment |
|---------|------------------------|-------------------|-------------------|---------------------------------|----------------|-----------------------|------------------|---|--------------------|
| | | | From | to | | | | | |
| 1 | Not available | Not available | Karachi, Pakistan | Jebel Ali, United Arab Emirates | Not available | APZU3 01393 1 | EU14010 304 | Superterra SDN BHD. (Super Terra Pvt. Ltd.) | from UAE to Mundra |
| 2 | Not available | Not available | Karachi, Pakistan | Jebel Ali, United Arab Emirates | Not available | REGU 30873 63 | MMS4821 8 | Superterra SDN BHD. (Super Terra Pvt. Ltd.) | |
| 3 | Not available | Not available | Karachi, Pakistan | Jebel Ali, United Arab Emirates | Not available | SOLU2 53965 9 | MMS4820 4 | Superterra SDN BHD. (Super Terra Pvt. Ltd.) | |

10. The importer and other key persons involved in this conspiracy were attempting to camouflage the actual country of origin of the subject goods by way of changing the route of transportation (switching of Bill of Lading) in documents and changing containers (Cross stuffing) at Jebel Ali Port, Dubai. For this purpose, they are preparing two sets of documents i.e. one for Pakistan to Dubai and another for Dubai to India having different details of suppliers to show the latter as a separate sell/export from Dubai to India. The entire arrangement was being made by the key

persons of M/s. Superterra Pvt. Ltd. involved in the matter as container line. It is apparent from above narrated Whatsapp conversations between Shri Dhaval Bhatt and such key persons of M/s. Superterra Pvt. Ltd. that they were themselves arranging supply/export of goods invoices contained name of Superterra and also apparent from documents including a Certificate issued by M/s. Superterra SDN BHD./ M/s. Superterra Pvt. Ltd. regarding composition/properties of subject goods. Moreover, the payment of invoice value towards supply of subject goods was also made by the importer to M/s. Superterra Pvt. Ltd. as evident from the email dated 27.01.2021 of the importer enclosing their Bank Statement and Swift Copy of payment made by them towards import of subject goods.

11. From the facts and evidences narrated above, it is apparent that the subject goods stuffed and transported in the said 18 containers covered under said 05 Bills of Entry filed by the importer during the period after 16.02.2019 were originated in Pakistan.

12. Apart from the above consignments, one consignment of 10*20' containers of subject goods covered under declared Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019 has also been imported by the importer.

12.1. Investigation revealed that on the basis of Documents received from container line viz. Certificate of Origin (showing Pakistan as Country of Origin) alongwith BL, Whatsapp chat & email conversations between the importer and supplier/agent, Invoice, and admittal explanation/ statement of Shri Dhaval Bhatt in his statement dated 09.07.2019, it emerges that the said goods were originated in Pakistan and shipped to Mundra Port in the name of M/s. Om Chem, Bhavnagar after splitting the route of transportation from Karachi to Dubai and Dubai to Mundra. However, the importer had not filed Bill of Entry for this consignment. On being inquired, the Deputy Commissioner of Customs (SIIB), Customs House, Mundra vide letter dated 08.05.2020 informed that the CFS authorities had issued notices to the importer under Section 48 of Customs Act, however, no response was received from the importer. The importer was asked vide Notice dated 26.07.2019 and Final Notice dated 17.08.2019 issued by Mundhra CFS Authorities to get cleared the consignment within 10 days failing which necessary action would be taken for disposal of the cargo. The importer, vide letter dated 20.03.2020 addressed to the Deputy Commissioner of Customs, Customs House Mundra (showing acknowledgement by Customs on 18.05.2020) relinquished the title of the goods covered under said 10 containers. The importer submitted the reason for relinquishing the subject consignment that the consignor had not provided the import documents in spite of various reminders. In this regard, inquiries were also carried out with concerned Bank i.e. Union Bank of India, Bhavnagar (M) Branch, vide letters dated 27.04.2020 followed by reminders dated 15.05.2020, 01.06.2020. In response, the Branch Manager, Union Bank of India, Bhavnagar (M) Branch vide letter dated 02.06.2020 informed that they did not receive any documents relating to said Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019. Thus, it appears

that the title of goods covered under these 10 containers has been relinquished by the importer and accordingly separate action under Customs Act, 1962 are being taken for disposal of 270 MT subject goods stuffed under the said 10 containers covered under Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019.

13. In order to substantiate the findings that the subject goods imported by the importer vide aforementioned five Bills of Entry were originated from Pakistan, inquiries were also carried out with respective container lines and their Indian agents. The Bill of Entry wise details of container lines involved in this case are as under:-

| Sr. No. | Bill of Entry No. & Date | Container line in import documents submitted with Customs, Mundra for declared route Dubai to Mundra (M/s.) | BL No. & Date (w.r.t. Col. 3) | Container No. declared at Mundra port | Container line for Karachi to Dubai, in documents gathered during investigation | BL no. & Date (w.r.t. Col. 5) | DRI correspondence made with the container lines |
|---------|--------------------------|---|---|--|---|--|--|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| 1 | 2640924 dated 30.03.2019 | M.R. Container Line/R-Ways Container Line | RCLTURM UN18363A dated 19.03.2019 | WHLU2494 691 | M/s. R-Ways Container Line/M/s. M.R. Container Line (as per two purported and mischevious Bill of Lading, though may be draft recovered from the mobile phone of Shri Dhaval Bhatt) | Actual Bill of Lading no. not available. | 08.06.2020, 23.01.2021 |
| 2 | 2829526 dated 13.04.2019 | Superterra SDN BHD. (Super Terra Pvt. Ltd.) | SPT/JEA/MUN/19/0 4/674 dated 11.04.2019 | APZU3013 931 REGU3087 363 SOLU2539 659 | Not available | Not available | 24.07.2019, 06.09.2019, 25.02.2020, 27.04.2020, 13.05.2020, 19.05.2020 (through their Indian Agent M/s. Super Container Line) and 23.01.2021 |
| 3 | 2942157 dated 22.04.2019 | Superterra SDN BHD. (Super Terra Pvt. Ltd.) | SPT/JEA/MUN/19/0 4/698 dated 18.04.2019 | GESU2376 060 MSKU2635 876 PCIU38857 30 REGU3129 601 TGHU2476 307 | Superterra SDN BHD. (Super Terra Pvt. Ltd.) | SPT/KHI /JEA650 /18-19 dated 08.04.2019 | |
| 4 | 3164987 dated 09.05.2019 | Superterra SDN BHD. (Super Terra Pvt. Ltd.) | SPT/JEA/MUN/19/0 4/787 dated 05.05.2019 | CRXU3062 771 FCIU20724 37 FSCU3610 006 FSCU7786 400 | Superterra SDN BHD. (Super Terra Pvt. Ltd.) | SPT/KHI /JEA/65 6/18-19 dated 24.04.2019 | |

| | | | | | | | |
|---|--------------------------------|---|---|---|--|---|--|
| | | | | GESU2252 120 | | | |
| 5 | 3440387 dated 29.05.2019 | Superterra SDN BHD. (Super Terra Pvt. Ltd.) | SPTJEAMU N1905855 dated 29.05.2019 | GESU2366 713 RJC8201 283 CLHU2978 017 GATU1233 412 | Superterra SDN BHD. (Super Terra Pvt. Ltd.) | SPT/KHI /JEA/67 1/18-19 date 06.05.20 19 | |

13.1. Letters dated 24.07.2019 and 06.09.2019 were issued to Mr. Abdul Majid Zainuddin Shaikh, Proprietor of M/s. Super Container Line, Mumbai, an Indian agent for principal container line M/s. Superterra SDN BHD (Super Terra Pvt. Ltd.) and Bills of Lading and other related documents were sought with respect to route of transportation of subject goods from Pakistan to UAE or any other country.

In response, Mr. Abdul Majid Zainuddin Shaikh, Proprietor of M/s. Super Container Line, Mumbai vide email dated 16.09.2019 and 19.09.2019 provided copy of a Bill of Lading bearing no. SPT/KHI/JEA/671/18-19 dated 06.05.2019 and SPT/KHI/JEA/656/18-19 dated 24.04.2019, respectively which were showing Karachi as port of loading of subject goods stuffed in 04 containers covered in Bill of Entry mentioned at Sr. No. 5 of above Table i.e. B/E No. 3440387 dated 29.05.2019 and goods stuffed in 05 containers, mentioned at Sr. No. 4 in the above table covered under Bill of Entry No. 3164987 dated 09.05.2019, filed by the importer. Vide the said emails dated 16.09.2019 and 19.09.2019, Mr. Abdul Majid Zainuddin Shaikh, Proprietor of M/s. Super Container Line, Mumbai forwarded emails dated 14.09.2019 and 18.09.2019, respectively received by him from Mr. Mustafa Ahmed Paracha, of their Principal Container Line company M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd.) in this regard wherein Mr. Mustafa Ahmed Paracha stated that during checking with their Jebel Ali Port, Dubai office, their agent told them that the consignee M/s. Al Sakhra Al Fiddiya General Trading LLC, had placed booking from Jebel Ali Port, Dubai to Mundra and instead of getting released of Delivery Order and or shipment, they took NOC to re-ship the same containers to Mundra on new documents; that they were very much surprised as they neither have any idea nor have any intimation from shipper/consignee or else to the same. Mr. Mustafa Ahmed Paracha further deposed vide said email dated 14.09.2019 that what activity done was purely between the shipper and the consignee in India and they (including their Indian agent) were certainly blind and unaware. Investigation revealed that for other consignments wherein M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd.), provided/released containers as declared in the import documents submitted at Mundra port, the originating containers stuffed with subject goods were changed by the fraudsters at Jebel Ali Port, Dubai. Evidently, the source Bill of Lading and other documents/Whatsapp chats divulging the route of transportation of subject goods from Karachi to Dubai could be recovered/gathered from the mobile

phone data of Shri Dhaval Bhatt, Authorized Signatory of importer as explained and admitted by him in his respective statements. The Container Line M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd.) vide email dated 18.05.2020 claimed that the containers covered under rest of consignments were originated from Jebel Ali Port, UAE and not from Pakistan. In this regard, M/s. Superterra Pvt. Ltd. through their Indian Agent Mr. Abdul Majid Zainuddin Shaikh, Proprietor of M/s. Super Container Line, Mumbai vide Summons dated 19.05.2020 and 23.01.2021 was asked to provide Export Declaration, Shipping Bill, Certificate of Origin etc. filed at Customs UAE with respect to such subject consignments claimed to have been exported from UAE to India, however they deliberately not provide the same.

13.2. As regards the import consignment covered under Bill of Entry No. 2640924 dated 30.03.2019, inquiries were carried out with respective Indian agent of container line i.e. M/s. Sarang Maritime Logistics Pvt. Ltd. In this context, Shri Jaymin Thakkar, General Manager of M/s. Sarang Maritime Logistics Pvt. Ltd. provided printout of email conversations held between his company M/s. Sarang Maritime Logistics Pvt. Ltd. and their principal container line M/s. R-Ways Container Line wherein vide email dated 27.09.2019 informed that 24.92 MT subject goods (RAW MAGNESIUM CARBONATE) covered under Bill of Lading No. RCLTURMUN18363A dated 19.03.2019 (vessel- Northern General V-075) shipped to Om Chem, Bhavnagar, Gujarat (India) were arrived at Jebel Ali, Dubai (UAE) from Karachi, Pakistan but shipping line from Karachi to Dubai was different than M/s. R-Ways Container Line and not known to them hence the related documents were not available with them. In the 02 more purported Bills of Lading recovered from the mobile phone of Shri Dhaval Bhatt and the Bill of Lading submitted with Customs Authorities at Mundra port, the names of container lines were appearing as M/s. R-Ways Container Line and their sister concern M/s. M.R. Container Line. Accordingly, to get further evidences with respect to journey of subject goods from Pakistan to UAE, Summons dated 23.01.2021 were issued, however no details and documents were provided by these container lines.

14. Apart from above narrated consignments, the importer had also declared Country of Origin 'Iran' in respect of subject goods covered under Bill of Entry No. 3483024 dated 01.06.2019 (ELIN-MJN-90626 dated 26.05.2019) imported vide following containers :-

- (i) CBHU3822353
- (ii) EMCU3259899
- (iii) EMKU7874750
- (iv) EMKU7880666
- (v) GESU2201879
- (vi) HLXU2311739
- (vii) MOAU0116149
- (viii) PCIU3983696
- (ix) TEMU0633236

(x) TEMU5382853

14.1. The said consignment was pending for clearance at Mundra port but as per the ongoing investigation, the said containers were put on hold vide DRI letter dated 04.06.2019 until further orders /verification. The examination of subject goods stuffed in these containers covered under Bill of Entry No. 3483024 dated 01.06.2019 was carried out by DRI officers under Panchnama dated 19.07.2019 drawn at Mundra Port. In order to check the actual country of origin of subject goods imported by the importer vide Bill of Entry No. 3483024 dated 01.06.2019, inquiries were carried out through Online container tracking website of Karachi International Container Terminal Pvt. Ltd., but the result were not showing origin of containers from Pakistan in the year 2019. Accordingly further inquiries were carried out with the respective container line. In this regard, **statement of Mr. P. Sajish Sivaraj, General Manager of M/s Hub & Link Logistics (I) Pvt. Ltd., 220, Mani Complex, 2nd Floor, Plot No. 84, Sector-8, Gandhidham-370201,** was recorded under Section 108 of the Customs Act, 1962, on 18.06.2019.

14.2. On the basis of result of Online container tracking through website of Karachi International Container Terminal Pvt. Ltd., submissions of container line agent M/s. Hub & Links Logistics, non recovery of any evidence showing country of origin/ export as Pakistan (for said 10 containers pertaining to B/E No.) from the data extracted from the mobile phone of Shri Dhaval Bhatt and during further course of investigation, the live consignment covered under said Bill of Entry No. 3483024 dated 01.06.2019 in the 10 containers was allowed to be cleared from Customs and not being made part of the demand of differential duty in the present case.

INQUIRIES WITH DECLARED OVERSEAS SUPPLIERS/AGENTS:-

15. Letters were issued to the following parties declared as overseas suppliers/agents in the import documents/Bills of Entry and required details/documents/evidence were sought. However, none of these parties have responded to the letters issued to them.

| Sr. No. | Bill of Entry No. & Date | Declared Supplier | DRI correspondence made with these declared suppliers |
|---------|--------------------------|--|---|
| 1 | 2640924 dated 30.03.2019 | M/s. Af Gumrukleme Nakliye Ve Tic. Ltd., Turkey | 08.06.2020, 23.01.2021 |
| 2 | 2829526 dated 13.04.2019 | M/s. Al Sakhra Al Fiddiya General Trading LLC, Dubai | 28.05.2020 08.06.2020, 23.01.2021 |
| 3 | 2942157 dated 22.04.2019 | M/s. BAB AL Zain General Trading LLC, P. O. Box 838572, Dubai, UAE | 08.06.2020, 23.01.2021 |

| | | | |
|---|--------------------------|--|------------------------------------|
| 4 | 3164987 dated 09.05.2019 | M/s. Al Sakhra Al Fiddiya General Trading LLC, Dubai | 28.05.2020, 08.06.2020, 23.01.2021 |
| 5 | 3440387 dated 29.05.2019 | M/s. Al Sakhra Al Fiddiya General Trading LLC, Dubai | 28.05.2020, 08.06.2020, 23.01.2021 |

15.1. As discussed in Para 9.1.1 above, as per two purported Bills of Lading recovered from mobile phone of Shri Dhaval Bhatt, M/s. Avizhe Siraz Commercial Trading LLC, Shizar was shown as Shipper. Accordingly, letters dated 08.06.2020, 23.01.2021 were issued under Section 108 of Customs Act, 1962 to M/s. Avizhe Siraz Commercial Trading LLC, Shizar to get documents/clarification from them but they did not respond.

INQUIRIES WITH CUSTOMS BROKERS:-

16. The following Customs Brokers have attended the filing of said 05 Bills of Entry on behalf of the importer and thereby clearance of subject goods from Customs Authorities at Mundra port. On scrutiny of the import documents submitted by the importer at Customs House, Mundra alongwith Bills of Entry through these Customs Brokers, several discrepancies have been noticed which could have been prima facie pointed out by the Customs Broker to the importer.

| Sr. No. | Bill of Entry No. & Date | Customs Broker through whom the Bills of Entry were filed by the importer | Discrepancy noticed during investigation in the import documents submitted with Customs, which were overlooked by the Customs Broker |
|---------|--------------------------|---|---|
| 1 | 2640924 dated 30.03.2019 | M/s. Seapath Shipping LLP | As per Commercial Invoice bearing no. ZH2503 dated 23.03.2019 issued by declared supplier exporter M/s. Bab Al Zain Gen. Trading LLC, Dubai, UAE and corresponding Packing List dated 25.03.2019, the Port of Loading is Jebel Ali, UAE whereas in the respective Bill of Lading, the Port of loading is shown as Gemlik (Gempport), Turkey. No query was raised to the importer with respect to Certificate of Origin, nor the Customs authorities were informed about such discrepancies. |
| 2 | 2829526 dated 13.04.2019 | M/s. Shri Dharm Raj Singh | --- |

| | | | |
|---|--------------------------------|---------------------------|---|
| 3 | 2942157 dated 22.04.2019 | M/s. Shri Dharm Raj Singh | -- |
| 4 | 3164987 dated 09.05.2019 | M/s. S.N. Shipping | There were four containers in the Certificate of Origin whereas the no. of containers was five in other related documents such as Invoice, Bill of Lading etc. No query was raised to the importer with respect to Certificate of Origin, nor the Customs authorities were informed about such discrepancies. The total 05 containers were mentioned in this Bill of Entry. |
| 5 | 3440387 dated 29.05.2019 | M/s. S.N. Shipping | <p>There was difference in container No. which was mentioned as GATU1233452 in the Certificate of Origin bearing no. 18816497 dated 29.05.2019 whereas, the same was mentioned as GATU1233412 in the Bills of Entry and other related documents such as Invoice, Packing List etc.</p> <p>Variation in declared description of goods in various import documents such as 'Magnesium Carbonate Lumps' in the Bill of Entry and Natural Magnesium Carbonate (Magnesite) Lumps in the invoice, and 'Natural Magnesium Carbonate (Magnesite)' in the Certificate of Origin.</p> |

16.1 In order to get explained the discrepancies discussed in above Table and to get further facts/evidences relating to the case, inquiries were extended to the Customs Brokers appointed by the importer for filing of Bills of Entry and thereby clearance of subject goods from Customs House, Mundra. Summons/letters were issued to the said respective Customs Brokers and their statements recorded under Section 108 of Customs Act, 1962. The person whose statement and their version/explanation recorded during proceedings of statements are as under:-

- (i) Statement of Mr. Mahmad Rafik Sama, Partner of Customs Broker Firm M/s. Seapath Shipping LLP, Office No. 204, Second Floor, Sunshine Arcade-2, Plot No. 37, Sector-8, Gandhidham
- (ii) Statement of Shri Landa Somesh, Authorised Representative working as Executive M/s. S.N. Shipping, Office Flat No. 97, 1st Floor, I.P. Colony, Sector 30-33, Faridabad (Haryana), Branch Office –Office No. 2, 205, 2ND Floor, BMCB Commercial Complex, Plot No. 19, Sector-9, Nr. SBI Bank, Gandhidham (Kutch)

16.2. The importer M/s. Om Chem, Bhavnagar had filed Bill of Entry No. 2942157 dated 22.04.2019 and 2829526 dated 13.04.2019 through Customs Broker, Shri Dharam Raj Singh. In order to record statement of the said Customs Broker, Summons dated 25.02.2020 was issued to him to get the documents/evidences and to record statement on 17.03.2020. However, due to engagement of DRI officers in other unavoidable urgent official assignment, his statement could not be recorded on the said given date. Subsequently, on account of COVID-19 pandemic, his appearance in DRI office was avoided and a letter dated 15.05.2020 was issued to Shri Dharam Raj Singh vide which following required details/documents/clarifications were sought: -

- (i) Total No. of consignments of the importer which had been cleared by Customs Broker, Shri Dharam Raj Singh since inception of the firm till the date of issuance of letter.
- (ii) Total No. of consignments of the said importer which were cleared by them or pending for clearance since 16.02.2019 till the date of issuance of letter.
- (iii) All Documents related to Bill of Entry No. 2942157 dated 22.04.2019 and Bill of Entry No. 2829526 dated 13.04.2019 filed by the importer alongwith supporting documents such as Bill of Lading, Packing List, Certificate of Origin Certificate etc., for the journey of shipment from Pakistan to Jebel Ali Port, Dubai.
- (iv) Copy of appointment letter issued by the importer M/s. Om Chem, Bhavnagar assigning the Customs clearance work to Customs Broker, Shri Dharam Raj Singh.
- (v) Copies/printouts of all correspondence through letter/e-mail/chat etc. with the importer i.e. M/s. Om Chem, Bhavnagar.
- (vi) KYC documents of the importer if called for by the Customs Broker, Shri Dharam Raj Singh for verification of genuineness of the importer.
- (vii) Check Lists for filing Bills of Entry sent by Customs Broker, Shri Dharam Raj Singh and approval thereof by the importer M/s. Om Chem, Bhavnagar.
- (viii) Details of efforts made by Customs Broker, Shri Dharam Raj Singh for verification of genuineness of declared origin of subject goods imported by the importer on or after 16.02.2019.
- (ix) Details of person/persons of importer who had contacted them for clearance of import consignments.

Shri Dharm Raj Singh vide letter dated 26.05.2020 sent their reply wherein they interalia submitted that they were not the regular Custom Broker for said importer M/s. Om Chem and due to some restrictions in the CB License of M/s. S. N. Shipping during this shipment period they were appointed to facilitated the clearance. They added that they had received the import documents and verified the same before filing and on verifying the import documents nowhere it was found that the shipment was from Pakistan to Jebel Ali Port, Dubai; that they have cleared only two consignments of the said importer since inception of their firm and both the consignments were cleared after 16.02.2019 and no consignment was pending for clearance. Shri Dharm Raj Singh provided copy of B/E No. 2829526 dtd. 13.04.2019 and B/E No. 2942157 dated 22.04.2019 alongwith supporting documents such as invoice, Bill of Lading, Packing List, Certificate of Origin issued by Dubai Chamber of Commerce and submitted that as per these documents the origin of subject goods was Turkey and that they did not know anything regarding shipment from Pakistan to Jebel Ali Port, Dubai. Shri Dharm Raj Singh also provided photocopies of their appointment letter dated 01.04.2019 issued by the importer alongwith KYC documents. As regards the verification of genuineness of declared origin of subject goods covered under said consignments, Shri Dharm Raj Singh deposed that they received the original Certificate of Origin issued by Dubai Chamber of Commerce, alongwith other documents which appeared genuine, therefore they filed the said Bills of Entry and cleared the consignments after payment of applicable Customs Duties. He added that the importer had paid differential Custom Duty and interest in respect of the said 02 consignments vide Mundra Customs Challan No. 558/12.06.2019 for Rs. 14,67,520/- and 663/27.06.2019 for Rs. 6,00,000/- in respect of case booked under DRI File No. DRI/AZU/GRU/INT-05/2019.

16.3. The work of filing of Bills of Entry for clearance of import consignments of the importer was assigned to the above mentioned Customs Brokers through forwarder M/s. Cargotrans Maritime Pvt. Ltd. who were issuing bills to the importer for collecting various charges such agency charges, CFS Charges, Container line charges etc. from the importer. In this regard, **statement of Shri Malkhan Singh Shekhawat, Manager and Authorized Representative of M/s. Cargotrans Maritime Pvt. Ltd.,** Shyam Paragon, 1st& 2nd Floor, DBZ-South/61A, Near Rotary Bhavan, Gandhidham (Kutch)-370201 Gujarat, was recorded under Section 108 of the Customs Act, 1962, on **29.01.2021.**

17. During the investigation, the importer M/s. Om Chem, Bhavnagar had paid Differential duty of Rs. **26,41,329/-** alongwith interest of Rs. **46,029 /-** towards their total liability in respect of import made by them after 16.02.2019 vide said five Bills of Entry. The details of payment challans and intimation letters received from the importer/Customs Broker are as under :-

| Sr. No. | Letter /email dated | Challan No. & Date | Amount of Differential Duty paid (Rs.) | Interest Paid (Rs.) |
|---------|--|-----------------------|--|---------------------|
| 1 | 11.06.2019 | 558 dated 12.06.2019 | 17,41,329 | 46,029 |
| 2 | Shri Dhaval Bhatt during stated dated 09.07.2019 | 663 dated 27.06.2019 | 6,00,000 | 0 |
| 3 | 11.10.2019 | 1564 dated 15.10.2019 | 1,00,000 | 0 |
| 4 | 27.11.2019 | 1910 dated 29.11.2019 | 2,00,000 | 0 |
| | | Total | 26,41,329 | 46,029 |

18. In view of above, Show Cause Notice F.No.GEN/ADJ/COMM/89/2013 dated 08.05.2023 was issued to M/s. Om Chem, Plot No. 13, Krushna Park Society, Near Water Tank, Victoria Park Road, Bhavnagar, Gujarat, India(IEC No. 2415004677) wherein they were called upon to show cause in writing to the Pr. Commissioner of Customs, Customs House Mundra, PUB Building, Adani Port & SEZ, Mundra in terms of the provisions of Customs Act, 1962, in respect of the import made vide Bills of Entry bearing no. 2640924 dated 30.03.2019, 2829526 dated 13.04.2019, 2942157 dated 22.04.2019, 3164987 dated 09.05.2019 and 3440387 dated 29.05.2019, as to why:-

- (i) The **477.602 MT** import goods valued at **Rs.28,19,082/-** as covered in said five Bills of Entry, should not be classified under CTH 98060000 of Customs Tariff Act,1975 and the declared classification of the import goods under CTH 25191000 should not be rejected.
- (ii) The **270 MT** import goods valued at **Rs.18,56,195/- (Rs. Eighteen Lakh Fifty Six Thousand One Hundred and Ninety Five Only)**as covered under SPTJEAMUN1905917 dated 05.06.2019 and IGM No. 2226539 dated 06.06.2019 filed at Mundra Port, should not be classified under CTH 98060000 of Customs Tariff Act.
- (iii) The differential customs duty totally amounting to **Rs. 84, 24,123/- (Rupees Eighty Four Lakh Twenty Four Thousand One Hundred and Twenty Three only)** on the import of **477.602 MT**covered under above mentioned 05 Bills of Entry of Raw Magnesium Lumps and Raw Magnesite Lumps,

should not be demanded and recovered from them in terms of Section 28 (4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962.

- (iv) The Customs duty totally amounting to **Rs. 57,46,780/- (Rupees Fifty Seven Lakh Forty Six Thousand Seven Hundred and Eighty only)** on the import of **270 MT** covered under under SPTJEAMUN1905917 dated 05.06.2019 and IGM No. 2226539 dated 06.06.2019 of Raw Magnesium Lumps, should not be demanded and recovered from them in terms of Section 28 (4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962.
- (v) The **477.602 MT** import goods valued at **Rs. 28,19,082/-** as covered in said five Bills of Entry, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962. However, said goods had already been cleared by the importer and therefore not available for confiscation.
- (vi) The **270 MT** import goods valued at **Rs.18,56,195/-** as covered under SPTJEAMUN1905917 dated 05.06.2019 and IGM No. 2226539 dated 06.06.2019 filed at Mundra Port, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- (vii) Penalty should not be imposed on them under Section 112(a), 112(b), 114A, Section 114AA and Section 117 of the Customs Act, 1962.

19. Vide the above Show Cause Notice dated 08.05.2023 the following persons were also called upon to the Commissioner of Customs, Mundra for penal provisions under Customs Act, 1962 against them.

| S. No. | Name (S/Shri/Ms/Smt/ M/s) | Penal provisions under Customs Act, 1962 | | | |
|--------|--|--|--------|-------------|-----|
| (1) | (2) | (3) | (4) | (5) | (6) |
| 1 | M/s. Om Chem | 112(a) | 112(b) | 114A, 114AA | 117 |
| 2 | Shri Dhaval Bhatt | 112(a) | 112(b) | 114AA | 117 |
| 3 | M/s. AF Gumrukleme Nakliye VE TIC. Ltd. Sti., Turkey | 112(a) | 112(b) | 114AA | 117 |
| 4 | M/s. Al Sakhra Al Fiddiya General Trading LLC, UAE | 112(a) | 112(b) | 114AA | 117 |
| 5 | M/s. BAB AL Zain General Trading LLC, UAE | 112(a) | 112(b) | 114AA | 117 |
| 6 | M/s. Avizhe Siraz Commercial Trading LLC, Shizar, Iran | - | - | - | 117 |

| | | | | | |
|----|---|--------|--------|-------|-----|
| 7 | M/s. Superterra SDN BHD.(Super Terra Pvt. Ltd./Superterra Container Line) | 112(a) | 112(b) | 114AA | 117 |
| 8 | Shri Mujtaba Ahmed Paracha | 112(a) | 112(b) | 114AA | 117 |
| 9 | Shri Mustafa Ahmed Paracha | 112(a) | 112(b) | 114AA | 117 |
| 10 | Shri Muhammad Sahab | 112(a) | 112(b) | 114AA | 117 |
| 11 | M/s. M. R. Container Line, an associate of M/s. Rways Container Line, UAE | 112(a) | 112(b) | 114AA | 117 |
| 12 | M/s. Rways Container Line, UAE | 112(a) | 112(b) | 114AA | 117 |
| 13 | M/s. Super Container Line | 112(a) | 112(b) | 114AA | 117 |
| 14 | Mr. Umair Lakdawala | 112(a) | 112(b) | 114AA | 117 |
| 15 | M/s. S.N. Shipping, Gandhidham | 112(a) | 112(b) | 114AA | |
| 16 | M/s. Seapath Shipping LLP, Gandhidham | 112(a) | 112(b) | 114AA | |
| 17 | M/s. Cargo Trans Maritime Pvt. Ltd. | 112(a) | 112(b) | 114AA | |

WRITTEN SUBMISSION

20. Ms. Pallavi Dhaval Bhatt, Proprietor of M/s. Om Chem vide letter dated 20.04.2024 filed written submission wherein she has submitted as under:-

20.1. The allegations and averments leveled in the SCN are hereby denied. Save and except what is specifically admitted herein, no part of SCN which is not expressly dealt with, shall be deemed to be admitted. The submissions made hereunder are independent of and without prejudice to each other.

20.2.I hereby say and submit that the impugned notice is issued to me without recording my statement. It is nowhere coming forth that I had any knowledge about import of goods of allegedly Pakistan origin in the name of my firm at Mundra port. As per the impugned notice, Shri Dhaval Bhatt, Authorized Signatory used to handle all the transactions commencing with placing orders to arranging custom clearance by presenting himself as authorized signatory, However, I have never authorized him to import any goods from Pakistan nor he informed me at any point in time about import of such goods in the name of M/s. Om Chem. DRI recorded several statements of Shri Dhaval Bhatt but there is no reference or mention about my involvement or knowledge about import of any such goods so as to attract penal provisions of Section

112 (b) as well as 114AA of Customs Act,1962. Hence, it is prayed to vacate the proposals invoking Section 112 (b) and 114AA both of which would require knowledge on my part about the incriminating nature of goods. In the alternative, I request your Honour to allow me to cross-examine Shri Dhaval Bhatt to bring on record that I had absolutely no knowledge about the country of origin of the goods under consideration.

20.3. It is respectfully submitted that the impugned notice is directed against 05 bills of entry detailed on page 72 to 75 of the impugned notice.

20.3.1 As per the crux of allegations, country of origin in respect of goods covered by all the above bills of entry was falsely declared as Turkey (which as per the impugned notice was Pakistan) except 03 bills of lading Nos. SPT/KHI/JEA650/18-19 dated 08.04.2019, SPT/KHI/JEA/656/18-19 dated 24.04.2019 and SPT/KHI/JEA/671/18-19 dated 06.08.2019 where country of origin as per certificate of origin allegedly recovered from the mobile phone of Shri Dhaval Bhatt showed Pakistan).

20.3.2. Your Honour may kindly appreciate that the notice heavily relies upon the following set of evidences (apart from the statement of Shri Dhaval Bhatt) to allege mis-declaration of country of origin with intent to evade duty levied on goods of Pakistan origin or exported from Pakistan, in terms of Notification No. 05/2019-Customs dated 16.02.2019:

- (i) messages, images/screen shots taken from mobile phone of Shri Dhaval Bhatt (as per para 5 of impugned notice).
- (ii) whatsapp data retrieval as narrated in para 6.1 of impugned notice. According to this, data was 'exported' from mobile phones to the computer system installed in DRI office through blue tooth and a data cable in the presence of Shri Malkhan Singh Shekhawat and panchas.
- (iii) Statement & letters of persons associated with shipping lines,

20.3.3 The evidences comprising of (i) and (ii) above does not satisfy the legal requirements of Section 138 C of Customs Act,1962. Moreover, there is no legal provision enabling transfer of data from a mobile phone to computer of DRI and

taking print out from such computer. Hence, no evidentiary value can be attached to (i) and (ii) above. I request your Honour to allow me to cross-examine Shri Malkhan Singh Shekhawat and the panchas who witness this exercise.

20.03.4 The impugned notice relies upon statements of various persons associated with shipping lines. At best, these persons could have explained movement of containers but they can never be said to enjoy any authority about country of origin of goods, be it of Turkey, Pakistan or other country. Nonetheless, in the event if evidence gathered from them in the form of statement/letters is sought to be relied to hold the goods of Pakistan origin, it is prayed to permit cross-examination of these persons with a 15 days advance notice.

20.03.5 I say and submit that all the statements have been recorded in the backdrop of third-party data printed from the computer of DRI without any legal provisions sanctioning data retrieval in such a manner. As per the notice, the data was retrieved from mobile phones of Shri Dhaval Bhatt and hence, the same is third party data insofar as I am concerned. Therefore, I must be allowed to cross-examine Shri Dhaval Bhatt and confront him with this data said to have been retrieved from his phones and to this extent, principles of natural justice may kindly be observed.

20.03.6 The notice does not cite any documents like Shipping Bill, Certificate of origin, etc. filed with Pakistan Customs to lend credence to the proposition that goods were of Pakistan origin. No reference is made to the authority who have issued Certificate(s) of Origin showing the country of origin as Turkey with a request to cancel the certificate (s) after causing proper inquiry. As such, the Certificates of Origin on the basis of which M/s. Om Chem filed bill of entry hold the field even today.

20.03.7 It is an admitted position that goods have arrived at Mundra from UAE. There is no challenge to the port of loading shown in the bills of lading produced along with bills of entry filed in the name of M/s. Om Chem. Hence, it cannot be said that goods were exported from Pakistan. The bills of lading available on record clearly indicate that goods have been exported to India from UAE.

20.03.8. Hence, it is submitted that the impugned notice fails to substantiate the allegation regarding origin of goods as Pakistan and/or export thereof from Pakistan.

20.04. Without prejudice to above, it is submitted that demand of duty and penal action proposed in respect of 10 containers covered by Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019 is not tenable in the eyes of law in view of admitted position that Branch Manager, Union Bank of India, Bhavnagar is on record stating that no documents in respect of these containers have been received.

20.05. Owing to above, it is submitted that demand of duty on aforesaid 10 containers from M/s. Om Chem under Section 28 (4) of Customs Act, 1962, interest under Section 28AA and proposal to impose penalty under Section 114A is not tenable in the eyes of law.

20.06. Inasmuch as the Certificate of Origin based on which bills of entry were filed are valid and have not been cancelled, it is not established that goods are of Pakistan origin. Hence, the goods are not liable to confiscation under Section 111 (m) of Customs Act, 1962, there being no mis-declaration with regard to country of origin. Consequently, there is no occasion to impose penalty under Section 112 (a), 112 (b) and 114AA of Customs Act, 1962.

20.07. Provisions of Section 112 (a) and (b) operate in different situations and hence, both cannot be invoked simultaneously.

20.08. Provisions of Section 117 are residuary in nature and hence, cannot be invoked once Section 112 (a) and/or (b) and 114AA are invoked.

20.09. Inasmuch as the entire demand of duty (and interest) is not tenable in law, being in non-conformity with Section 138 of Customs Act, 1962 and seeks to override valid Certificate(s) of Origin without any legal authority, the same is liable to be vacated. The proposals to impose penalty on me under Section 112 (a), 112 (b), 114A, 114AA and 117 of Customs Act, 1962 is also liable to be dropped.

21. Shri Dhaval Bhatt, Authorized Signatory of M/s. Om Chem vide letter dated 20.04.2024 filed written submission wherein he has submitted as under:-

21.1. It is respectfully submitted that the impugned notice is directed against 05 bills of entry detailed on page 72 to 75 of the impugned notice.

21.1.1 As per the crux of allegations, country of origin in respect of goods covered by all the above bills of entry was falsely declared as Turkey (which as per the

impugned notice was Pakistan) except 03 bills of lading Nos. SPT/KHI/JEA650/18-19 dated 08.04.2019, SPT/KHI/JEA/656/18-19 dated 24.04.2019 and SPT/KHI/JEA/671/18-19 dated 06.08.2019 where country of origin as per certificate of origin allegedly recovered from my mobile phone showed Pakistan).

21.1.2 Your Honour may kindly appreciate that the notice heavily relies upon the following set of evidences (apart from my own statements that were recorded under constant threat of arrest) to allege mis-declaration of country of origin with intent to evade duty levied on goods of Pakistan origin or exported from Pakistan, in terms of Notification No. 05/2019-Customs dated 16.02.2019:

- (i) messages, images/screen shots taken from my mobile phone (as per para 5 of impugned notice).
- (ii) whatsapp data retrieval as narrated in para 6.1 of impugned notice. According to this, data was 'exported' from mobile phones to the computer system installed in DRI office through blue tooth and a data cable in the presence of Shri Malkhan Singh Shekhawat and panchas.
- (iii) Statement & letters of persons associated with shipping lines.

21.1.3 The evidences comprising of (i) and (ii) above does not satisfy the legal requirements of Section 138 C of Customs Act, 1962. Moreover, there is no legal provision enabling transfer of data from a mobile phone to computer of DRI and taking print out from such computer. Hence, no evidentiary value can be attached to (i) and (ii) above.

21.1.4. The impugned notice relies upon statements of various persons associated with shipping lines. At best, these persons could have explained movement of containers but they can never be said to enjoy any authority about country of origin of goods, be it of Turkey, Pakistan or other country. Nonetheless, in the event if evidence gathered from them in the form of statement/letters is sought to be relied to hold the goods of Pakistan origin, it is prayed to permit cross-examination of these persons with a 15 days advance notice.

21.1.5. I say and submit that all my statements have been recorded in the backdrop of data printed from the computer of DRI without any legal provisions sanctioning data retrieval in such a manner and under constant threat of arrest.

21.1.6. The notice does not cite any documents like Shipping Bill, Certificate of origin, etc. filed with Pakistan Customs to lend credence to the proposition that goods were of Pakistan origin. No reference is made to the authority who have issued Certificate(s) of Origin showing the country of origin as Turkey. Hence, the Certificates of Origin on the basis of which M/s. Om Chem filed bill of entry hold the field even today.

21.1.7. It is an admitted position that goods have arrived at Mundra from UAE. There is no challenge to the port of loading shown in the bills of lading produced along with bills of entry filed by M/s. Om Chem. Hence, it cannot be said that goods were exported from Pakistan. The bills of lading available on record clearly indicate that goods have been exported to India from UAE.

21.1.8. Hence, it is submitted that the impugned notice fails to substantiate the allegation regarding origin of goods as Pakistan and/or export thereof from Pakistan, is not substantiated.

21.2. Without prejudice to above, it is submitted that demand of duty and penal action proposed in respect of 10 containers covered by Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019 is not tenable in the eyes of law in view of admitted position that Branch Manager, Union Bank of India, Bhavnagar is on record stating that no documents in respect of these containers have been received.

21.3. Owing to above, it is submitted that demand of duty against M/s. Om Chem under Section 28 (4) of Customs Act, 1962 is not tenable in the eyes of law.

21.4. Provisions of Section 112 (a) and (b) operate in different situations and hence, both cannot be invoked simultaneously.

21.5. Provisions of Section 117 are residuary in nature and hence, cannot be invoked once Section 112 (a) and/or (b) and 114AA are invoked.

21.6. Inasmuch as the entire demand is not tenable in law, being in non-conformity with Section 138 of Customs Act, 1962, the proposals to impose penalty on me under Section 112 (a), 112 (b), 114AA and 117 of Customs Act, 1962 is also liable to be quashed and set aside.

22. CB, M/s. Seapath Shipping has filed written submission dated 22.06.2023. Their point wise submissions are as under:-

22.1 The noticee, deals in Custom Clearance (BREAK BULK & CONTAINER), Freight Forwarding & Transportation Services at Gujarat Major Port Kandla and Mundra And is also registered in ISO 9001:2015.

22.2 Mr. Gyan Shankar from the **Cargo Trans Maritime Pvt Ltd ("CTMPL")** vide mail dated Mar 30, 2019, shared the documents related to M/s Om Chem for filing the Bill of Entries. The Extract of the Email sent to us is attached herewith as **Annexure – A** along with attachments in the mail.

22.3 Though **CTMPL** has contacted us before as well for clearing the consignments of Pakistan Origin. Now, imports from Pakistan are not illegal, but the noticee has a policy not to assist importers importing goods from Pakistan.

22.4 Please be informed that the attachment contains the Checklist already, as prepared by **M/s S N Shipping**, as it was informed to us by **M/s S N Shipping** that their system is not working thus they sought our assistance in filing a Bill of Entries.

22.5 Now, the documents received from **CTMPL** contained below mentioned documents: -

| | |
|-------------------------|---|
| ➤ Document | ➤ Information |
| ➤ Bill of Lading | ➤ Port of Loading - Turkey |
| ➤ Certificate of Origin | ➤ Country of Origin – Turkey |
| ➤ Invoice | ➤ Bain AL Zain General Trading LLC i.e., Seller is from Dubai and Port of Loading – Jabal Ali Port Dubai, UAE |
| ➤ Packing List | ➤ Port of Loading – Jabal Ali Port Dubai, UAE |

22.6 Since the impugned mail contained the Checklist already prepared by **M/s S N Shipping** thus, taking the Bill of Lading, Certificate of Origin, and Checklist as a base, the noticee prepared the checklist once again and sent the same to **CTMPL**. Accordingly, the Bill of Entry 2640924 dated 30.03.2019 was filed by the noticee.

22.7 The Noticee never mentioned the Port of Loading as "Dubai", but it has mentioned the Port of Loading as Turkey. Mail conversation along with the revised checklist is attached herewith as **Annexure – B**

22.8 Now, later on, the officials of DRI vide Summon u/s 108 of the Customs Act, 1962 called upon the noticee Partner Mr. Mahmad Rafik Sama, wherein the inquiry in respect of **M/s Om Chem** was made, it was informed that the alleged person is indulged in malpractices of importing the goods of Pakistan Origin by showing wrong certificate or origin or routing the same through the different port to evade the High Tax Rate imposed vide Notification No. 05/2019-Customs Dated: 16th

February 2019. After getting an inquiry from the DRI, the noticee informed the **M/s Om Chem and CTMPL** for making payment of differential duty as well.

22.9. The noticee had provided and assisted DRI officials with all the information the noticee had.

22.10. As mentioned, the noticee is not a new or immature professional but handles good clientele for shipping services.

22.11. As mentioned in the Show Cause Notice, it is mentioned that the noticee "overlooked" certain document discrepancies which it verbally communicated but never communicated in the email. This allegation implies that the mistake that occurred is completely inadvertent, also the noticee never got any extra amount/money from performing above mentioned tasks/assignments.

22.12. Thus, we request before the office of your goodself to kindly have a look at a few legal provisions and precedents to support our claim for dropping the penalty levied through impugned show cause notice.

22.13 M/s. Seapath Shipping in their submission have quoted legal provisions of Section 112(a), 112(b) and have relied on following case laws:-

- a) Indian Aluminium Company Limited v/s Thane Municipal Corp-1991 (55) ELT 454 (SC), has also affirmed this view that "Even non-observance of a procedural condition is not to be condoned if it is likely to facilitate the commission of fraud or introduce administrative inconvenience."
- b) But Coming the second part of this clause 112(a) which is separated by the word "abets the doing or omission of such an act" has to mention the word "abet" implying the presence of knowledge.
- c) Abetment is defined under Section 107 of IPC and Section 3(1) of the General Clauses Act, 1987, and the same has not been defined in the Customs Act, 1962 and the rule made thereunder. Section 107 of IPC says that the abetment is constituted by.
 - Instigating a person to commit an offense or
 - Engaging in a conspiracy to commit it, or
 - Intentionally aiding a person to commit it
- d) The Perusal of this Section revealed that for abetting an offense the existence of mens rea is an essential ingredient due to the mention of the word "abet". The second part is applied to other persons such as Customs Broker (CB), Shipping-line, Custodian, Courier, etc., or any other person, who facilitate or assist the principal offender (importer, exporter, and/or beneficial owner) in improper Customs clearance work as stated above. Thus, for the noticee, the Second Part of 112(a) is relevant.
- e) Therefore, for invocation of the second part of Section 112(a) on stakeholders, who assist importer/exporter/beneficial owner in

customs clearance and rendered the goods liable for confiscation, mens rea is an absolute necessity. Without animus on the part of such stakeholders, it is difficult to invoke Section 112(a) or bring them under the four corners of these penal provisions.

- f) In this regard, reliance is placed on the case of **AMRITLAKSHMI MACHINE WORKS Versus COMMR. OF CUS. (IMPORT), MUMBAI, 2016 (335) E.L.T. 225 (Bom.)** wherein it was held that; Normally where Section 112(a) of Customs Act, 1962 is invoked, (except for cases of abetment on the part of a person),

In cases other than abetment falling under Section 112(a) ibid liability for penalty is strict without any reference to mens rea/knowledge unlike Section 112(b) ibid, mens rea/knowledge is irrelevant (except in cases of abetment),

Parliament has specifically included abetment in Section 112(a) of the Act, to include acts done with knowledge, otherwise the first portion thereof "Any person – (a) who concerning any goods does or omits to do any act" would cover acts done or omitted to be done on account of instigation and/or encouragement without knowledge. However, the first portion of Section 112(a) of the Act is only to make the person of first degree concerning the act or omission strictly liable. Persons who are not directly involved in the act or omission to act, which has led to the goods becoming liable for confiscation cannot be made liable unless some knowledge is attributed to their act. Therefore, it is to cover such cases that Section 112(a) of the Act also includes a person who abets the act or omission to act which has rendered the goods liable to confiscation. Imposing penalty upon an abettor without any mens rea on his part would bring all business to a halt as even innocent facilitation provided by a person who has made possible the act or omission to act possible could result in the imposing of penalty. [paras 25, 27, 29].

- g) The noticee submits that due diligence to the possible extent has been taken by the noticee and there is no reason available on record or proved by the adjudicating authority to show that the appellant had prior knowledge about the importer being impugned items by misdeclaration. The noticee submits that all the documents were forwarded to the noticee by Cargo Trans Maritime Private Limited and S N Shipping, the noticee had no reason so far to doubt the documents. The appellant relied on the following cases:

- V. Esakia Pillai Vs CC Chennai 2001 (138) ELT 802 (Tri. Chennai)
- Hindustan Steel Ltd. Vs State of Orrisa 1978 (2) ELT J159(SC)

- Union of India (UOI) and Ors. Vs Raja Agencies 1993 (42) ECC 166 which has been confirmed by the Hon'ble Supreme Court reported in 1998 (102) ELT A154
 - U. Shivasubramanianv. CC Trichy reported in 2004 (165) ELT 97 (Tri. Chennai)
- h) Also, there is no allegation in this case that the Noticee as Custom House Agent had received any extra benefit or additional amounts from Cargo Trans Maritime Private Limited and S N Shipping. The Noticee has been cooperating with the team of DRI in their investigation by providing the relevant facts.
- i) Thus, the levy of Penalty under Section 112(a) is not tenable and should be dropped.

22.14. Imposition of Penalty under Section 112(b): Penalty under Section 112(b) of the Customs Act, 1962, can be imposed when a person acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111 of the Customs Act, 1962. It is not the case of the Revenue that the Appellant has indulged in any of the activities as mentioned under Section 112(b) of the said Act. As the Noticee did not acquire possession of or in any way concerned with the seized goods, a penalty under Section 112(b) of the Act ought not to have been imposed. Reliance is placed on following case Laws:-

- i. MAYEEN UDDIN Versus COMMISSIONER OF CUSTOMS (PREV.), SHILLONG, 2020 (371) E.L.T. 779 (Tri. - In Kolkata,
- ii. VIKRAM SINGH Versus COMMISSIONER OF CUSTOMS, 2007 (207) E.L.T. 373 (Del.),
- iii. NABA KUMAR SAHAV versus COLLECTOR OF CUSTOMS Order No. 382/Cal./90-382, dated 10-8-1990 in C. Appeal No. 205 of 1989 (Cal.),-
- iv. DINESH ISHWARLAL PATEL Versus COLLECTOR OF CUSTOMS, BOMBAY, 1988 (34) E.L.T. 382 (Tribunal),
- v. IDASS PHOTO ELECTRONICS Versus COLLECTOR OF CUSTOMS, NEW DELHI, 1987 (30) E.L.T. 988 (Tribunal),
- vi. ANA JAMIL Versus COMMISSIONER OF CUSTOMS (PREV.), SHILLONG, 2016 (342) E.L.T. 248 (Tri. - Kolkata)
- vii. SHANKESHWAR METAL CORPORATION Versus COMM. OF CUS. (IMPORTS), MUMBAI, 2014 (312) E.L.T. 344 (Tri. - Mumbai)

- viii. Commissioner of Central Excise vs. Ramesh Kumar Rajendra Kumar & Co. [2015 (325) E.L.T. 506],
- ix. Ankneedu Chowdhry Vs. Commissioner of Customs [2004 (178) E.L.T. 578]
- x. Shri Vipul Joshi v. CC, Ahmedabad (Customs Appeal No.10053 of 2022) vide Final Order No.A/11181/2022 dated 04.10.2022

22.15 M/s. Seapath shipping has submitted that they are also not liable to penalty under section 114AA of customs Act, 1962. They have submitted as under:-

22.15.1 As per the SECTION 114AA, a Penalty for the use of false and incorrect material can be levied - 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 this Act, shall be liable to a penalty not exceeding five times the value of goods.

22.15.2 Since the rationale of Section 112(b) is squarely applicable to the levy of penalty under Section 114AA. Thus, the noticee contests the levy of Penalty under Section 114AA.

22.16 M/s. Seapath Shipping in his written submission has sought cross-examination of following persons:-

- Cargo Trans Maritime Private Limited and S N Shipping .

22.17. In view aforesaid submission, M/s. Seapath Shipping submitted that penalties proposed in the SCN is not sustainable and also sought personal hearing in the matter.

23. Shri Umair Lakdawala(Noticee No. 14) have filed written submission dated 20.06.2023 wherein he has submitted as under:-

23.1. At the outset, I state that the present Show Cause Notice against me is absolutely misconceived and without merit as I have no role and/or authority with either of the shipping lines and/or importer. I say that was a mere employee working for a salary with the Shipping Line Agent Super Container Line. I say that I have no knowledge, consent or part of any conspiracy to circumvent the Custom laws in India by the importer M / s Om Chem and Mr. Dhaval Vora and the Shipping Company M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd./Superterra Container Line).

23.2. I say that with reference to paragraph no. 7.1, Colum Serial No. 15 page no. 183 of the made up file the alleged chat of 12/3 / 2019 and 30/5 / 2019 and the explanation provided by Mr. Dhaval Vora, is absolutely false, frivolous and concocted. On the contrary state that I have never been employed by M/s Superterra, Pakistan or any of its subsidiaries at any point of time in the past, present and/or future. I say that I have been employed with Super Container Line an Indian

Shipping Agent since 2015 until I left my job in 2020. I say that therefore the alleged statement by Mr. Dhaval Vora that I am an agent and/or employee of M/s. Superterra, Pakistan is nothing but an absolute false and concocted allegation. I further state that the said alleged chat dated 12/3 / 2019 and 30/5 / 2019 has been falsely interpreted and explained by Mr. Dhaval Vora. I say that on 12/3 / 2019 Mr Dhaval had called me and asked if we i.e. Super Container Line have services from Jebel Ali to Mundra. Since M / s Superterra was having their own services and office from Jebel Ali, I had provided direct contact of Mr. Mujtaba i.e. the owner M / s Superterra, so that all the future dealings can be done by Mr. Dhaval Vora directly with M / s Superterra. I further say that exactly after one month the chats from 11/04/2019 between Mr. Dhaval Vora and I, I had sent him a BL draft as it was forwarded by M / s Superterra, as per industry standard to get approval from consignee, as shipper was not confirming BL. I was being asked to push consignee and get BL draft approved for filing IGM and releasing Bill of Lading. For which Mr. Dhaval replied and asked for some changes in the BL. I was under the impression that the changes referred to change in the name of and details of parties due to an error in typing. I had no clue and/or knowledge that the changes he referred to and had intention of was the conspiracy by Mr. Dhaval and N / s Super terra to change country of origin to evade duty. I say that I just had a limited job of seeking approval from consignee and I was not privy and / o * r party to the conspiracy hatched by Mr. Dhaval and M / s Superterra. In the fact the draft BL forwarded to me by M/s. Superterra, which I then sent to Mr. Dhaval for approval did not bear the country of Origin as Pakistan. Thus, I myself was in the dark that the BL forwarded by M / s Superterra was a manipulated BL and that Mr. Dhaval was also aware of the same. The copy of the Appointment Letter and Relieving Letter of Mr. Umair Lakdwala is annexed at " Exh -A:

23.3. I say that with reference to paragraph no. 14.10, I once again deny the allegation that I was working for M/s Supreterra, Pakistan and I repeat and reiterate all the contentions mentioned above regarding the same as well as regarding the alleged whats app chats. I say that it is true that at the time of the alleged chats I was working for Super Container Line. I say that it is also true that at the time of the issuance of notice to Super Container line I has left the job with the said Firm. As stated above I left the job with Super Container Line in 2020. I say that in fact or about August, 2020, I have shifted to U.A.E., Dubai for work purposes as my new job is located in the said country. I say that it is true that I received Summons from you via Email. I say that however it is absolutely false that I did not provide information to you and the relevant documents. I say that after receiving the Summons I replied to your Email via my Email Reply dated 06/03/2021 wherein I clearly mentioned that I have left my job with Super Container Line in the year 2020 and as per Firm rules I have handed over the information, documents and other relevant communications regarding the said Firm when I left the job. I further advised you to collect the documents sought by you from Super Container Line. In fact it may be noted that while leaving a job a Firm will make sure that the exiting

employee hands over all the sensitive and relevant documents and communications to the Firm. Thus, he too handed over the same and since 2020 until today I do not have in my possession any documents and/or communication with regard to Super Container Line, M/s. Superterra and Mr. Dhaval Vora. Thus, the allegation that I failed to reply and that I refused to produce documents is absolutely false and baseless. It is obvious that I would be unable to produce something which is no longer in my possession and failure to produce the same does not cast and/or prove my alleged guilt in any manner and as per provisions of law. The copy of the Email Reply dated 06/03/2021 is annexed at "Exh-B

23.4. I say that with reference to paragraph no. 12.3 and sub- paragraph nos. 27.3.1 to 27.3.5, I vehemently deny the false, frivolous, concocted and baseless allegations and contentions mentioned therein in toto. I repeat and reiterate all the contentions mentioned in the foregoing paragraphs. I once again say that I have no knowledge and/or role in the conspiracy between Mr. Dhaval Vora and M/s. Superterra. I say that the chats mentioned and/or alleged in the present Notice and submitted by Mr. Dhaval Vora does not reflect that I had any knowledge of the true origins of the consignments mentioned herein. I say that I have forwarded draft BL mentioning the origin of consignment as Jebel Ali from M/s. Superterra and I was never given and/or shared the original BL showing that the consignment was actually from Pakistan. Hence I had no knowledge that the said consignment was from Pakistan and not Jebel Ali. I forwarded the draft BL as received by me from M / s Superterra as is and I had no knowledge that the intention of Mr. Dhaval Vora and M / s Superterra was to change the country of origin in the said BL. Furthermore I was an employee of Super Container line whose limited job was to act as an agent in India as just a shipping Liner/Agent and they have no role in the actual relationship between the Shipper and Consignee nor are they privy to any other details and/or knowledge of the consignment except the contents of the consignment. I say that in fact both I and Super Container Line were also kept in dark about the intentions Mr. Dhaval Vora and M / s Superterra to manipulate the country of origins in the BL's of consignments and we have also been duped by the same parties. In fact it is pertinent to note that M / s Superterra after initiation of the present investigations by you have stopped communicating with Super Container Line and have also failed to work with the said Firm. Furthermore I am just a salaried employee with no inside knowledge and I work as per instructions provided to me. I expressly state that I have no knowledge of the origins of the consignments mentioned in the present Show Cause Notice nor do I have any hand in creating the manipulated BL's ceased from Mr. Dhaval Vora. Thus, I say that no liability can be assigned to for the alleged offence as mentioned in the present Notice. I further say that I may be provided an opportunity to defend myself and that I may be heard.

23.5 I say that therefore, I have provided my say/defense in details and I pray that I may be granted an opportunity to be heard in the matter and the that proper

investigation be carried out and that I may be acquitted for the offences levied on me by you.

24. Shri Abdul Majid Zainuddin Proprietor of M/s. Super Container Line have filed written submission dated 21.06.2023 wherein he has submitted as under:-

24.1. At the outset I state that the present Show Cause Notice against me is absolutely misconceived and without merit as I nor my Firm had any role in the conspiracy and offence committed by the shipping lines and/or importer. I say that my firm is just a Shipping Line Agent based in India and has nothing to do with the actual booking of consignment and preparation of documents. I say that we as a Shipping Liner/Agent have no role in the actual relationship between the Shipper and Consignee nor are we privy to any other details and/or knowledge of the consignment except the contents of the consignment. I say that I and my Firm has no knowledge, consent or part of any conspiracy to circumvent the Custom laws in India by the importer M/s. Om Chem and Mr. Dhaval Vora and the Shipping Company M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd./Superterra Container Line).

24.2. I say that I have read the contents of the said Show Cause Notice and I shall reply to the specific allegations and/or portions wherein I and my Firms' alleged role is mentioned. I further state that I confirm and repeat the statement provided by me to you prior investigations.

24.3. I say that with reference to paragraph no. 7.1, Column Serial No. 15-page no. 183 of the made up file the alleged chat of 12/03/2019 and 30/05/2019 and the explanation provided by Mr. Dhaval Vora, is absolutely false, frivolous and concocted. I on the contrary state that Mr. Umair Lakadwala has never been employed by M/s. Superterra, Pakistan or any of its subsidiaries at any point of time in the past, present and/or future. I say that he has been employed with my Firm since 2015, in the position of Import/Export Executive, until he left the job in 2020. I say that therefore the alleged statement by Mr. Dhaval Vora that Mr. Umair an agent and/or employee of M / s Superterra, Pakistan is nothing but an absolute false and concocted allegation. I further state that the said alleged chat dated 12/3 / 2019 and 30/5 / 2019 has been falsely interpreted and explained by Mr. Dhaval Vora. I say that on 12/3 / 2019 Mr. Dhaval had called Mr. Umair and asked if we i.e. Super Container Line have services from Jebel Ali to Mundra. Since M / s Superterra was having their own services and office from Jebel Ali, Mr. Umair had provided direct contact of Mr. Mujtaba i.e. the owner of M/s. Superterra, so that all the future dealings can be done by Mr. Dhaval Vora directly with M / s Superterra. I further say that exactly after one month the chats from 11/4 / 2019 between Mr. Dhaval Vora and Mr. Umair, Mr. Umair had sent him a BL draft as it was forwarded by M / s Superterra, as per industry standard to get approval from consignee, as shipper was not confirming BL. I say that we were being asked to push consignee and get BL draft approved for filing IGM and releasing Bill of Lading. For which Mr. Dhaval replied to Mr. Umair, who was doing his job for us and asked for some changes in

the BL. We were under the impression that the changes referred to the change in the name of and details of parties due to an error in typing. Neither Mr. Umair nor I had clue and/or knowledge that the changes he referred to and had the intention of, was the conspiracy by Mr. Dhaval and M / s Super terra to change country of origin to evade custom duty. I say that Mr. Umair was tasked with just had a limited job of seeking approval from consignee and neither he nor I were privy and/or party to the conspiracy hatched by Mr. Dhaval and M/s. Superterra. In the fact the draft BL forwarded to Mr. Umair by M / s Superterra, which he then sent to Mr. Dhaval for approval did not bear the country of Origin as Pakistan. Thus, both I and Mr. Umair were kept in the dark that the BL forwarded by 11 / s Superterra was a manipulated BL and that Mr. Dhaval was also aware of the same. The copy of the Appointment Letter and Relieving Letter of Mr. Umair Lakdawala is annexed at "Exh - A".

24.4. I say that with reference to paragraph no. 8, Column Serial Nos. 2, 3, 4 & 5, as well as paragraph no. 13, Column Serial Nos. 2, 3, 4, & 5, we were involved in the shipments mentioned therein however our role was of a delivery agent and we had no knowledge of shipper/consignee's motive or intention. We had no involvement in preparing any documents and our job was very limited.

24.5. I say that with reference to Bill of Ladings annexed at pages 34 to 38, we have received prepared BL from M/s . Superterra showing Port of loading as Jebel Ali and Port of Discharge as Mundra, we have at no point of time informed regarding the origin of the shipment from Pakistan to Dubai or received any BL regarding the same. As far as our knowledge the said shipments were loaded from Jebel Ali. Any illegal manipulation of BL regarding country of origin was done by M/s. Superterra and Mr. Dhaval Vora. We submitted and/or dealt with the BL handed over to us by M/s. Superterra mentioning Jebel Ali as port of origin.

24.6. I say that with reference to paragraph no. 13.1, it is true that I received the letters mentioned therein and I also state that Emails dated 16.09.2019 and 19.09.2019 as well as Emails dated 14.09.2019 and 18.09.2019 are true and correct. I say that however I would like to clarify that again I have acted as an agent of M/s. Superterra and all the information provided to me via Email dated 14.09.2019 and 18.09.2019 by M/s. Superterra has been forwarded as is to your via Emails dated 16.09.2019 and 19.09.2019. Thus I have no personal knowledge about the said BL adduced in the said Emails as the same have not been prepared by me or my Firm. I say that therefore I or my Firm had no involvement with the said BL originating from Pakistan and M/s. Superterra is the one preparing the said BL's as well shipping the goods whereas my and my Firm's sole job is to handle documentation once the consignment ships in India.

24.7. I say that with reference to paragraph nos. 14.1 to 14.5, the contents mentioned therein are true and correct.

24.8. I say that with reference to paragraph no. 14.6, I emphasize that Is when I was shown the printouts/copy of online track record of containers mentioned therein, it

was the first time I had seen the same and I had no prior knowledge of the same. I say that I myself was shocked that the said containers originated from Pakistan and the same was revealed to me for the first time when I was shown the said track record by you. I say that I again say that it was not my or my Firm's job to track the containers. As mentioned again and again my Firm's job is very limited and keeping track of containers is not within the preview of the job we were hired.

24.9. I say that with reference to paragraph nos. 14.7 to 14.9, we have on your directions Emailed M/s. Superterra regarding the queries raised by you via Emails and have even called them. However to our shock and surprise M/s. Superterra since on or about December 2020 stopped communicating with and never replied to any of our Emails. Thus, we have concluded that M/s. Superterra has also manipulated and lied to us about the origin of the consignments and that they and Mr. Dhaval Vora are the masterminds behind the conspiracy to dupe the custom laws of this Country. We say that we are also the victims of the illegal acts of M / s Superterra and Mr. Dhaval Vora. We say that we ourselves are in the dark and since all the relevant documentations and explanations required by you is in the exclusive possession and control of M / s Superterra, we are unable to provide you the same. Thus, neither I nor my Firm can be held liable for the inability to provide the information not known to us and/or documents not in our possession. The copy of the Emails forwarded to M / s Superterra seeking information and documents is annexed at " Exh -B"

24.10. I Is say that with reference to paragraph no. 14.10, we once again deny the allegation that Mr. Umair was working for M / s . Supreterra, Pakistan and I repeat and reiterate all the contentions in the foregoing paragraphs regarding the same as well as regarding the alleged whats app chats. I say that it is true that at the time of the alleged chats Mr. Umair was working for my Firm. I say that it is also true that at the time of the issuance of notice to my Firm Mr. Umair had left the job with my Firm. As stated above Mr. Umair left he job with Super Container Line in 2020 and in fact or about August, 2020, he has shifted to U.A.E., Dubai for work purposes as his new job is located in the said country. I say that in fact we provided you with the contact details and address of Mr. Umair as we wanted to be as transparent as possible. I say that it is true that I received Summons from you via Email.

24.11. I say that with reference to paragraph no. 27.1, sub-paragraph no. 27.1.2, it can be clearly seen that from my statement provided to you among other factors was responsible for you to determine that M/s. Superterra is the culprit company which manipulated the laws this country to try and evade the customs duty. Thus, I and my Firm have been completely transparent with you and have made all endeavors to assist you and provide you with the information to the best of my knowledge. I further say that as mentioned I and my Firm have been manipulated and defrauded by M / s Superterra as well and we are much the victims of the conspiracy by m / s Superterra and Mr. Dhaval Vora. As their actions have involved me and my Firm to be defaulters of the customs laws as well as cost us reputation in the industry.

24.12. I say that with reference to paragraph no. 27.3 and subparagraph nos. 27.3.1 to 27.3.5, I vehemently deny the false, frivolous, concocted and baseless allegations and contentions mentioned therein in toto. I repeat and reiterate all the contentions mentioned in the foregoing paragraphs: I once again say that I have no knowledge and/or role in the conspiracy between Mr. Dhaval Vora and M / s Superterra. I say that the chats mentioned and/or alleged in the present Notice and submitted by Mr. Dhaval Vora does not reflect that that either I or my erstwhile employee Mr. Umair had any knowledge of the true origins of the consignments mentioned herein. I say that my erstwhile employee Mr. Umair has forwarded draft BL mentioning the origin of consignment as Jebel Ali from M / s Superterra and he was never given and/or shared the original BL showing that the consignment was actually from Pakistan. Hence neither he nor I had any knowledge that the said consignment was from Pakistan and not Jebel Ali. Mr. Umair forwarded the draft BL as received by him from M/s. Superterra as is and neither he nor I had any knowledge that the intention of Mr. Dhaval Vora and M / s Superterra was to change the country of origin in the said BL. Furthermore I and my Firm had a limited job was to act as an agent in India as just a shipping Liner/Agent and we have no role in the actual relationship between the Shipper and Consignee nor are we privy to any other details and/or knowledge of the consignment except the contents of the consignment. I say that in fact both I, my Firm and my erstwhile employee Mr. Umair were also kept in dark about the intentions Mr. Dhaval Vora and M / s Superterra to manipulate the country of origins in the BL's of consignments and we have also been duped by the same parties. In fact it is pertinent to note that M/s. Superterra after initiation of the present investigations by you have stopped communicating with my Firm and have also failed to work with my Firm. I expressly state that I have no knowledge of the origins of the consignments mentioned in the present Show Cause Notice nor do I have any hand in creating the manipulated BL's ceased from Mr. Dhaval Vora. Thus, I say that no liability can be assigned to me or my Firm for the alleged offence as mentioned in the present Notice. I say that I was called for recording my statement and for assisting the investigation in June, 2019 i.e. almost 3 years prior to the present Notice being sent and at the time I submitted all the documents available with me. I say that in fact as mentioned above the said M/s. Superterra has stopped all communication as well as business with me and my Firm and we are no longer in contact with them. Thus, after passage of such a long time many records are also not available with us. I further say that I may be provided an opportunity to defend myself and that I may be heard.

24.13. I say that therefore, I have provided my say/defence in detail and I pray that I may be granted an opportunity to be heard in the matter and that proper investigation be carried out and that I may be acquitted for the offences levied on me by you.

24. M/s. S.N. Shipping vide letter dated 10.04.2024 has filed written submission wherein they have submitted as under:-

24.1 M/s. SNS says and submits that the charge of abetment does not pass muster on account of following facts which have been stated by Shri Landa Somesh, our Authorized Representative, in his statement dated 16.03.2020 recorded by DRI officers during investigation:

"Q.10:- Please inform whether any confirmation/clarification was sought by you from the Importer, in respect of import consignment covered under said Bills of Entry with respect to the Country of Origin?"

Ans:- We had asked the importer to ensure that the subject consignments (after 16.02.2019) were not originated in or exported from Pakistan? But he assured us that the same were originated from the country as mentioned in the Certificate of Origin provided by the importer to us. Accordingly, as per the Certificates of Origin provided by the importer and approval of Check Lists, we filed the Bills of Entry.

..

Q.15:- Please state at the time of preparing check list/filing Bs/E, whether you were aware that the items imported under said Bills of Entry No. 3164987/09.05.2019 and 3440387/29.05.2019 were actually originated in Pakistan/exported from Pakistan and attracted higher rate of duty?

Ans. No. We were not aware about the same till the initiation of DRI investigation. We have come to know about it now only after booking of case by DRI.

..

Q.20:- From the facts of the case and answers to the question given by you as above, it appears that you have failed in complying with your obligation as Customs Broker. Please offer your comments.

Ans:- We filed the said Bills of Entry on the basis of documents provided to us by the importer M/s. Om Chem and they did not inform us about the correct country of origin and actual country of export at that time. As and when we came to know about the issue of mis-declaration of country of origin, we insisted the importer to pay up the appropriate differential duty, interest, penalty, etc."

24.2. The above facts have not been rebutted in the notice by any oral and/or documentary evidence. No one, including Shri Dhaval Bhatt, Authorized Representative of M/s. Om Chem, the importer whose statements have been recorded from time to time during investigation have implicated M/s. SNS as having knowledge about the alleged origin of goods as Pakistan. All in all, there is no evidence to show that Shri Landa Somesh, Authorized Signatory of M/s. SNS and/or any employee of our firm had knowledge that goods covered by the documents received from importer and passed over to the Customs Brokers originated from or were exported from Pakistan.

24.3. In absence of any evidence showing prior and positive knowledge on the part of Shri Landa Somesh, our Authorized Representative or any other employee of M/s. SNS, Section 112 (b) as well as 114AA of Customs Act, 1962 would not apply.

24.4. Provisions of Section 114AA of Customs Act, 1962 would require the department to establish knowledge or intention. Inasmuch as the notice does not disclose any evidence to establish knowledge or intention on our part to make, sign or use or cause to be made, signed or used, any declaration, statement or document

which is false or incorrect in any material particular, in the transaction of any business for the purposes of Customs Act,1962. Hence, Section 114AA is not attracted.

24.5. Even otherwise, invocation of Section 114AA against proprietor or his proprietorship firm without recording his statement is not justified inasmuch as no inference can be made regarding his knowledge or intention as envisaged in Section 114AA without causing inquiry with him.

24.6. For the same reason as above, invocation of Section 112 (b) of Customs Act,1962 against M/s. SNS is unsubstantiated and hence, not tenable in the eyes of law.

24.7. The allegation regarding discrepancy regarding country of origin is factually incorrect inasmuch as Certificate of Origin clearly mentioned that details of containers were given in the attached invoice and there is no dispute over the fact that invoice was duly attached and available for all custom purposes at the time of assessment. The allegation regarding minor variation between container number GATU 1233452 in Certificate of Origin No. 18816497 dated 29.05.2019 as against GATU 1233412 mentioned in the Bill of Entry No. 3440387 dated 29.05.2019 as well as description is a typographical error. Moreover, it may be appreciated from the summation of notice as contained in the headings "mis-declaration and mis-classification of import goods" and "confiscation of import goods" contained in concluding paragraphs 21.1 to 21.3 and 22.1 to 22.2 respectively that the proposals involving confiscation under Section 111 (m) of Customs Act,1962 as well as penal action proposed under Section 112 (a) and/or (b) ibid is not based on any of the above discrepancies. The proposals are based solely on account of evidences and hence allegations regarding incorrect country of origin gathered from mobile phones and statements of importer, which are exculpatory insofar as Custom Broker is concerned.

24.8. Further, reliance is placed on the following amongst other decisions to say and submit that when bills of entry were prepared on the basis of documents like invoice, bill of lading, certificate of origin, etc. received from the importer and there is no dispute over description and classification and the dispute about country of origin arose based on recovery of certain evidences from the mobile phone of importer and there is no evidence about prior knowledge of goods originating from the country other than mentioned in the aforesaid documents, Custom Broker cannot be held liable to penalty under Section 112 (a) and/or (b) as well as Section 114AA of Customs Act,1962. Moreover, a Custom Broker is not required to inquire into the correctness of declarations made by the importer/exporter.

| | | | |
|-------|------------------------|---|--------------------------------|
| (i) | Jeena and Company | - | 2021 (378) ELT 528 (T-Bang) |
| (ii) | Advent Shipping Agency | - | (2023) 2 Centax 157 (Tri-Cal) |
| (iii) | D. Ankineedu Chowdry | - | 2005 (182) ELT 206 (Tri-Che) |
| (iv) | Prime Forwarders | - | 2008 (222) ELT 137 (Tri.-Abad) |
| (v) | G. M. Enterprises | - | 2010 (262) ELT 796 (Tri.-Mum) |
| (vii) | Sindhu Cargo Services | - | 2008 (226) ELT 282 (Tri.-Che) |

| | | |
|--|---|--------------------------------|
| (viii) Akanksha Enterprises | - | 2006 (203) ELT 126 (Tri.-Del.) |
| (viii) Vetri Impex | - | 2004 (172) ELT 347 (Tri.-Che.) |
| (ix) Mahendra Patni | - | 2004 (164) ELT 259 (Tri.-Kol.) |
| (x) V. Esakia Pillai | - | 2001 (138) ELT 259 (Tri.-Kol.) |
| (xi) Moriks Shipping and Trading Pvt. Ltd. | - | 2008 (227) ELT 577 (Tri.-Che) |
| (xii) Brijesh International | - | 2017 (352) ELT 229 (Tri.-Del.) |

24.9. It is prayed to give due consideration to the above submissions and citations and drop the proceedings initiated against the Custom Broker.

25. M/s. Cargo Trans Maritime Pvt. Ltd., Gandhidham vide letter dated 09.04.2024 filed written submission wherein they have submitted as under:-

25.1 We have received impugned notice proposing penalty under Section 112 (a), 112 (b) and 114AA of Customs Act, 1962 in connection with goods of alleged Pakistani origin covered by Bills of Entry filed by M/s. Om Chem, Bhavnagar with Custom House, Mundra.

25.2. Your Honour may kindly appreciate the role of M/s. Cargo Trans Maritime Pvt. Ltd. contained in para 29.1 of the notice, which is reproduced below for the ease of ready reference:

"29.1 M/s. Cargo Trans Maritime Pvt. Ltd. have acted as a forwarder in this case. They have forwarded the work relating to customs clearance to the above-mentioned Customs Brokers ...The importer used to send the import documents to M/s. Cargo Trans Maritime Pvt. Ltd. who further used to forward the same to the said Customs Brokers for filing of Bills of Entry and they themselves issue consolidated Bills to the importer for collecting various charges including Customs Clearance Agency charge, CFS charges etc. These Customs Brokers used to send check list to M/s. Cargo Trans Maritime Pvt. Ltd. before finalizing the Bills of Entry. M/s. Cargo Trans Maritime Pvt. Ltd., in turn used to forward the check list to the importer and after getting approval from the importer regarding correctness of material particulars in the Bills of Entry, M/s. Cargo Trans Maritime Pvt. Ltd. used to send their approval for filing Bills of Entry..."

25.3. Thus, our role was limited to handing over the documents received from importer (M/s. Om Chem) to Custom Brokers and passing over check lists prepared by Custom Brokers to the said importer for his confirmation about material particulars entered into the same by the Custom Brokers.

25.4. No legal provision is cited in the notice to show that there is any legal obligation cast upon a forwarder to check the material particulars appearing in the check list for filing a bill of entry. Hence, the following averment contained in para 29.1 does not enjoy any legal support:

"..Thus, it appears that M/s. Cargo Trans Maritime Pvt. Ltd. were also required to correctly check the material particulars of check list for filing the Bills of Entry before approving the check list for finalization/filing of the Bills of Entry in EDI system of Customs"

25.5. We hereby say and submit that penalty is proposed against us under Section 112 (a), 112 (b) and 114AA of Customs Act, 1962 on the sole ground of abetment. However, the charge of abetment does not pass muster on account of following facts which have been stated by Shri Malkhan Singh Shekhawat, our Manager and Authorized Representative in his statement dated 29.01.2021 recorded by DRI officers during investigation:

“..On being asked,..I state that we were told by the importer that the goods were of Turkey origin. Since the importer M/s. Om Chem was our regular client, we relied on the version/claim of the importer about country of origin of the subject goods. Me and my company/Directors came to know that the subject goods imported by M/s. Om Chem were originated in Pakistan **only after booking of DRI case against the said importer.**”

(Underline Supplied)

25.6.The above facts have not been rebutted in the notice by any oral and/or documentary evidence. No one, including Shri Dhaval Bhatt, Authorized Representative of M/s. Om Chem, the importer whose statements have been recorded from time to time during investigation have implicated us as having knowledge about the alleged origin of goods as Pakistan. All in all, there is no evidence to show that Shri Malkhan Singh Shekhawat and/or any employee of our Company had knowledge that goods covered by the documents received from importer and passed over to the Customs Brokers originated from or were exported from Pakistan.

25.7.In absence of any evidence showing prior and positive knowledge on the part of Shri Malkhan Singh Shekhawat, our Manager and Authorized Representative or any other employee of our Company, Section 112 (b) as well as 114AA of Customs Act,1962 would not apply.

25.8.Without prejudice to above, reliance is placed on the decision of Hon'ble Tribunal in the case of Metro Marine Services Pvt. Ltd. v/s Commissioner of Customs, Kandla, 2008 (223) ELT 227 (Tri. – Chennai), wherein, it is held that Firms cannot have mens rea and penalty under Section 112(b) cannot be imposed on firms. Therefore, on this ground also, we are not liable to penalty under Section 112 (b) of Customs Act,1962.

25.9.Provisions of Section 114AA of Customs Act,1962 would require the department to establish knowledge or intention. Inasmuch as the notice does not disclose any evidence to establish knowledge or intention on our part to make, sign or use or cause to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of Customs Act,1962. Hence, Section 114AA are not attracted.

25.10. Further, reliance is placed on the decision of Sandeep Vats v/s Commissioner of Central Excise, New Delhi, 2019 (370) ELT 723 (Tri. – Del.), wherein, it is held that:

“6. I find that in support of imposition of penalty on the appellant, the Adjudicating Authority had relied upon the statement dated 7-5-2014 recorded from the appellant under summon. On perusal of the statement available in the case records, I find that excepting the job profile i.e. booking of airlines at negotiated price and receiving of E-mails from the concerned persons, the appellant did not state anything with regard to his knowledge of exportation of prohibited Red Sanders. Thus, it is not the case of Revenue that the appellant was either involved in smuggling of the prohibited goods, or encouraged and supported the wrongdoer in doing the wrongful act, in attempting to export the goods. Therefore, imposition of penalty under Section 114 of the Act cannot be sustained against the appellant.”

(Emphasis Supplied)

25.11. Inasmuch as in the case in hand also, our role does not go beyond receiving documents like invoice, packing list, bill of lading, etc. from the importer

and passing them over to the Custom Brokers, the ratio of the above decision is squarely applicable.

25.12. We also say and submit that we are neither importer nor Custom Broker, who is responsible for filing and/or preparing bills of entry. Hence, we are not liable to penalty under Section 112 (a) of Customs Act, 1962.

25.13. The allegation regarding discrepancy regarding country of origin is factually incorrect inasmuch as Certificate of Origin clearly mentioned that details of containers were given in the attached invoice and there is no dispute over the fact that invoice was duly attached and available for all custom purposes at the time of assessment. The allegation regarding minor variation between container number GATU 1233452 in Certificate of Origin No. 18816497 dated 29.05.2019 as against GATU 1233412 mentioned in the Bill of Entry No. 3440387 dated 29.05.2019 as well as description cannot be attributed to us inasmuch as it is a typographical error on the part of Custom Broker and not us who had merely handed over the Certificate of Origin received from the importer to the Custom Broker. Moreover, it may be appreciated from the summation of notice as contained in the headings "mis-declaration and mis-classification of import goods" and "confiscation of import goods" contained in concluding paragraphs 21.1 to 21.3 and 22.1 to 22.2 respectively that the proposals involving confiscation under Section 111 (m) of Customs Act, 1962 as well as penal action proposed under Section 112 (a) and/or (b) *ibid* is not based on any of the above discrepancies. The proposals are based solely on account of evidences and hence allegations regarding incorrect country of origin gathered from mobile phones and statements of importer.

25.14. Further, reliance is placed on the decision of Hon'ble Tribunal in the case of Vaz Forwarding Ltd. v/s Commissioner of Customs, Calcutta, 2000 (118) ELT 724 (Tribunal), decision of Hon'ble Tribunal in the case of Ruby Impex v/s Commissioner of Customs, Ghaziabad, 2020 (373) ELT 674 (Tri.-All) and P. D. Manjrekar v/s Commissioner of Customs, Mumbai, 2007 (213) ELT 405 (Tri. - Mumbai) to say and submit that in the absence of knowledge on our part regarding alleged origin of goods as Pakistan, we are not liable to penalty under Section 112 (a), 112 (b) and 114AA of Customs Act, 1962.

25.15. Accordingly, it is prayed to drop the proceedings initiated against us.

PERSONAL HEARING

26. Following the principles of natural justice and the provisions laid down in Customs Act, 1962, opportunity of personal hearing in the case was given to the Noticees on 17.01.2024, 14.02.2024 & 03.04.2024.

26.1. 1st PH on 17.01.2024:

26.1.1 Shri Suhel Memon, Advocate appeared on behalf of Noticee No. 13 and Noticee No. 14 on 17.01.2024 before me. He reiterated his written submission dated 20.06.2023 in respect of noticees no. 13 and Noticee No. 14. Shri Abdul Majid Shaikh, Proprietor of M/s. Super Container Line (Noticee No. 13) and Shri Umair Lakdawala (Noticee No. 14) was also present during the hearing.

26.1.2 Shri Navjot Singh, CA, Authorised representative of M/s. Seapath Shipping LLP, Gandhidham appeared before me on 17.01.2024. He reiterated his earlier submission made vide letter dated 22.06.2023.

26.2. 2nd PH on 14.02.2024

27.2.1 No one appeared in the personal hearing fixed on 14.02.2024

26.3. 3rd PH on 03.04.2024

27.3.1 Shri Vikas Mehta, Authorized Representative appeared on behalf of Noticee No. 1,2,13 & 14 of above list. He submitted that they have paid some part of Duty during the investigation. Further, he requested to give some time and defer adjudication, as they want to approach Settlement Commission after payment of Duty & Interest.

DISCUSSION AND FINDINGS

27. I have carefully gone through Show Cause Notice; relied upon documents, legal provisions, submissions made by the Noticees and the records available before me. The main issues involved in the above cases which are required to be decided in the present adjudication are as below: -

- (i) Whether 477.602 **MTs** import goods, valued at **Rs.28,19,082/-**, as covered in five Bills of Entry classified under CTH 25191000 is liable to rejected and the same is liable to be re-classified under CTH 98060000 of Customs Tariff Act,1975.
- (ii) Whether **270 MTs** import goods, valued at **Rs.18,56,195/-** as covered under Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019 and IGM No. 2226539 dated 06.06.2019 filed at Mundra Port is liable to be classified under CTH 98060000 of Customs Tariff Act.
- (iii) Whether differential customs duty totally amounting to **Rs. 84, 24,123/- (Rupees Eighty-Four Lakh Twenty-Four Thousand One Hundred and Twenty-Three only)** on the import of **477.602 MT** covered under above mentioned 05 Bills of Entry of Raw Magnesium Lumps and Raw Magnesite Lumps is liable to be demanded and recovered from them in terms of Section 28 (4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962.
- (iv) Whether Customs duty totally amounting to **Rs. 57,46,780/- (Rupees Fifty Seven Lakh Forty Six Thousand Seven Hundred and Eighty only)**

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on the import of **270 MT** covered under under SPTJEAMUN1905917 dated 05.06.2019 and IGM No. 2226539 dated 06.06.2019 of Raw Magnesium Lumps is liable to be demanded and recovered from them in terms of Section 28 (4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962.

- (v) Whether the **477.602 MT** import goods valued at **Rs. 28,19,082/-** as covered in said five Bills of Entry are liable for confiscation under Section 111(m) of the Customs Act, 1962.
- (vi) Whether the **270 MT** import goods valued at **Rs.18,56,195/-** as covered under SPTJEAMUN1905917 dated 05.06.2019 and IGM No. 2226539 dated 06.06.2019 filed at Mundra Port are liable for confiscation under Section 111(m) of the Customs Act, 1962.
- (vii) Whether M/s. OM Chem is liable to penalty under Section 112(a), 112(b), 114A, Section 114AA and Section 117 of the Customs Act, 1962.
- (viii) Whether the persons/Companies/Firms/Concerns mentioned in table at Para-31 of Show Cause Notice are liable to penalties under the Customs Act, 1962 as proposed against their names.

28. After having framed the main issues to be decided, I find that importer and other noticees have also raised some contentions on legality of evidences, proceedings adopted by DRI etc. and have also sought cross-examination of some persons. Therefore, I firstly examine such contentions one by one before deciding the merits of case.

29. The importer in their written submission dated 20.04.2024 and Shri Dhaval Bhatt in his written submission have submitted that evidences in the form of messages, images/screen shots taken from mobile phone of Shri Dhaval Bhatt do not satisfy the legal requirements of Section 138 C of Customs Act, 1962.

29.1 I find that during the recording of statement, Shri Dhaval Bhatt had voluntarily surrendered his mobile for investigation purpose on 04.06.2019. Further, screen shots from the mobile phone was taken by DRI during the recording of Statement of Shri Dhaval Bhatt on 05.06.2019. Further, Shri Dhaval Bhatt vide Authorization letter dated 05.07.2019 authorized Shri Malkhan Singh Shekhawat, Authorized Representative of Customs Broker firm M/s. S.N. Shipping to remain present during the Whatsapp data retrieval process under Panchanama. Accordingly, in the presence of two independent panchas and Shri Malkhan Singh Shekhawat, the mobile phone Samsung Model S9 (IMEI No. 355224091653805/02 and 355225091653802/02) of Shri Dhaval Bhatt was opened and the data regarding WhatsApp Chat along with attachments and other relevant content were exported to the computer system installed in the DRI office through Bluetooth and a data cable, under Panchnama dated 05.07.2019. As, proceedings on the both days was a part of Section 108 of

Customs Act, 1962, I observe that in the present case there was no requirement of issuance of certificate under the provisions of Section 138(c) of Customs Act, 1962.

30. Ms. Pallavi Dhaval Bhatt, Proprietor of Om chem, and Seapath Shipping LLP have sought cross-examination of the following persons:-

- Shri Dhaval Bhatt
- Shri Malkhan Singh Shekhawat
- Panchas present during Panchanama proceedings on 05.07.2019
- Cargotrans maritime Limited (Cross-examination request of M/s. Seapath Shipping LLP)
- S.N. Shipping (Cross-examination request of M/s. Seapath Shipping LLP)

30.1 I find that Ms. Pallavi Dhaval Bhatt was present during the Panchnama proceedings carried out at the office premises on 04.06.2019 and on being asked by visiting officers of DRI, she informed that all the work relating to importer firm was looked after by her husband Shri Dhaval Bhatt. Shri Dhaval Bhatt in his statement tendered before DRI on 04.06.2019 has categorically admitted that he looked after overall operations such as sales, purchase, marketing etc. of the importer firm. Surprisingly, now she has sought cross-examination of her husband Shri Dhaval Bhatt and Shri Malkhan Singh Shekhawat, who was duly authorized by Shri Dhaval Bhatt, without any substantive reasons.

30.2 I find that the investigating agency DRI have sincerely carried out investigation and based their case on various corroborative evidences. When there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross examination. Reliance is placed on Judgement of Hon'ble Supreme Court in case of K.L. Tripathi vs. State Bank of India & Ors [Air 1984 SC 273], as follows:

"The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action."

Therefore, I find that cross examination in the instant case is not necessary.

30.3. I observe that the principles of proving beyond doubt and cross examination cannot be applied to a quasi-judicial proceeding where principle remains that as per the preponderance of probability the charges should be established. The cross examination of persons can be allowed during a quasi-judicial proceeding. It is true that as per 138B(2) the provision regarding cross examination shall so far as may be

apply in relation to any other proceedings under the customs act. The usage of phrase 'so far as may be' in section 138B (2) shows that cross examination is not mandatory in all cases but the same may be allowed as per circumstances of the case.

30.4. I find that the investigating agency DRI have diligently carried out their investigation which is corroborated by irrefutable evidences gathered and scrutinized during the investigation process. In the present case, the act of mis-classification of impugned imported goods, and mis-statement of facts by way of submitting invalid Country of Origin certificates has been repeatedly admitted by Shri Dhaval Bhatt and records like manipulated bills of lading, copy of parallel invoices/packing list recovered during the investigation, tracking status from M/s. Karachi International Container Terminal Ltd.(www.kictl.com) are sufficient evidences on record which proves that goods were originated in Islamic Republic of Pakistan. Further, the importer did not appear in first and second personal hearing fixed on 17.01.2024,14.02.2024 but they choose to appear in the third personal hearing on 03.04.2024 and even during the third hearing they did not seek cross-examination of any persons. Now, vide their written submission dated 20.04.2024 have sought cross-examination of such persons who are very close to them which shows that their request for seeking the cross-examination has sole reason to delay the adjudication proceedings. Therefore, I observe that at this stage no purpose would be served to allow cross-examination of such persons as requested by Ms. Pallavi Dhaval Bhatt and M/s. Sepath Shipping LLP as the same would only unnecessarily protract the proceedings.

30.5 I find that denial of Cross-examination does not amount to violation of principles of natural justice in every case. Further, it is a settled position that proceedings before the quasi-judicial authority is not at the same footing as proceedings before a court of law and it is the discretion of the authority as to which request of cross examination to be allowed in the interest of natural justice. I also rely on following case-laws in reaching the above opinion:-

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

the principles of natural justice, We find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized (Para 9)

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

31. Shri Dhaval Bhatt authorized person of M/s. Om chem in his written submission has alleged that his statement was recorded under constant threat. Statements of Shri Dhaval Bhatt was recorded by DRI on 04.06.2019, 05.06.2019 and 09.07.2019 under the provisions of Customs Act, 1962 and in each statement he has endorsed in his own handwriting that statement has been given voluntarily, without any fear, threat, greed and coercion. I find that Shri Dhaval Bhatt has admitted in their statements that they had given statement(s) voluntarily and without any inducement, threat, and coercion or by any Improper means. Further, the said Noticees have also certified in their statements that they had read the statement(s) and found it to be correct. The submission of the said Noticees that the statement(s) was given under threat/pressure/duress is obviously an afterthought and strategy to mislead of delude the entire process.

31.1. Also, I do not find mention of any specific details of how the Noticees have been coerced or threatened by DRI officers during recording of voluntary statements. No Noticee has adduced his claim of any physical harm allegedly inflicted by the DRI officers with copy of any medical report on the date of voluntary submission wherein it has been explicitly made clear that statement u/s 108 of the Act, ibid is voluntary and they were at liberty to not endorse the typed statements or hand written statements if the same had been taken under coercion as alleged.

31.2. Therefore, I do not find any force in the contention of the said Noticees in this regard. It is on record that the said Noticees had tendered their statement(s) voluntarily under Section 108 of the Customs Act, 1962. I find that the statement recorded under Section 108 of the Customs Act, 1962 has evidentiary value under the provisions of law.

31.3. I find that the Hon'ble Supreme Court in the case of Surjeet Singh Chhabra Vs. U.O.I. [reported in 1997 (89) E.L.T. 646 (S.C.)] has held that evidence confession statement made before Customs officer, though retracted within six days, is an admission and binding, since Customs Officers are not Police Officers under Section 108 of the Customs Act and FERA.

31.4. The Hon'ble Supreme Court, in the case of Naresh J. Sukhawani v. Union of India reported in 1996 (83) E.L.T. 258, also held that the statement recorded under

Section 108 of the Customs Act, 1962 made before the Customs officials, is not a statement recorded under Section 161 of Cr.P.C. Therefore, it is a material piece of evidence collected by the Customs officials under Section 108 of the Customs Act, 1962 and it can be used as substantive evidence connecting the petitioners with the contravention of Customs Act.

31.5. The Hon'ble Supreme Court in another matter of Gulam Hussain Shaikh Chougule versus S. Reynolds, Supdt. of Cus., Marmagao [reported in 2001(134) ELT 3 (SC)], has categorically held that "statement recorded by Customs Officers under Section 108 of the Customs Act is admissible in evidence. The Court has to test whether the inculpatory portions were made voluntarily or whether it is vitiated on account of any of the premises envisaged in Section 24 of the Evidence Act...."

31.6. Apex Court in the case of Percy Rustomji Basta Versus the State of Maharashtra [1983 (013) ELT 1443 (S.C.)], a case in which the appellant was convicted under Section 135 of the Customs Act and 120-B of the IPC, considered the question whether Section 24 of the Evidence Act was a bar to the admissibility of a statement given by the accused of offences under the Customs Act. This Court repelled the contention based on Section 24 of the Evidence Act and the facts.

31.7. It was again followed in Veera Ibrahim versus the State of Maharashtra 1983 (013) ELT 1590 (S.C.). The Hon'ble Apex Court in the case of Badaku Joti Svant versus State of Mysore reported at 1978 (2) ELT J 323 (SC) held as,

"In this view of the matter the statement made by the appellant to the Deputy Superintendent of Customs and Excise would not be hit by Section 25 of the Evidence Act and would be admissible in evidence unless the appellant can take advantage of Section 24 of the Evidence Act. As to that it was urged on behalf of the appellant in the High Court that the confessional statement was obtained by threats. This was not accepted by the High Court and therefore, Section 24 of the Evidence Act has no application in the present case. It is not disputed that if this statement is admissible, the conviction of the appellant is correct. As we have held that a Central Excise Officer is not a Police officer within the meaning of those words in Section 25 of the Evidence Act, the appellant's statement is admissible. It is not Ruled out by anything in Section 24 of the Evidence Act and so the appellant's conviction is correct and the appeal must be dismissed."

31.8. In view of above judicial pronouncements, I find that statement tendered before DRI officers are still admissible.

32. Now, I proceed to discuss and the issues alleged in the Show cause Notice. The foremost issue before me to decide in this case is as to whether the goods imported by M/s. OM Chem are mis-classified under customs Tariff Item 25191000 and the same is to be re-classified under Customs Tariff Item 98060000.

33. I find that in the present case the dispute of classification has arisen solely on the basis of origin of goods. The Government of India vide Notification No. 05/2019-Customs dated 16.02.2019 has inserted a specific entry "9806 00 00" in customs Tariff Act, 1975 which stipulates that the all goods originating in or exported

from the Islamic Republic of Pakistan shall be classifiable under Custom Tariff Item "9806 00 00" in Chapter 98 of Section XXI, in the First Schedule to the Customs Tariff Act. The show cause notice alleges that the goods originated in Pakistan, therefore, it is correctly classified under customs Tariff Item-98060000.

33.1. I find that M/s. Om Chem, Bhavnagar, a proprietorship firm owned by Smt. Pallavi Dhavalbhai Bhatt, had been importing the goods viz. 'Raw Magnesium carbonate lumps', 'Natural Magnesium Carbonate (Magnesite) lumps', 'Magnesium Carbonate lumps', 'Natural Magnesium Carbonate (Magnesite)', 'Raw Magnesite powder', etc. only from Pakistan since its beginning i.e. from the year 2015 onwards and clearing their import consignments from Customs in routine manner. The importer had filed 133 Bills of Entry for import of subject goods and has declared the origin of goods in all consignments from Pakistan till 16.02.2019 (date of issuance of Notification No. 05/2019-Customs dated 16.02.2019). They had not even imported a single consignment from any other country than Pakistan prior to 16.02.2019. After publication of said notification, the importer suddenly changed the origin of the imported goods as Turkey.

33.02. After 16.02.20219 (date of publication of Notification No.05/2019-customs), M/s. Om Chem have imported consignments of subject goods declaring the origin of goods other than Pakistan in Six Bills of Entry. Further, M/s. OM Chem had also imported 10 containers of goods under Bill of Lading No SPTJEAMUN1905917 dated 05.06.2019. During the investigation no evidences in respect of goods imported under Bill of Entry No. 3483024 dated 01.06.2019 were found which could substantiate that the goods were of Pakistan Origin, therefore, the demand of said Bill of Entry No. 3483024 dated 01.06.2019 has not been raised in the present Show Cause Notice. In the present case, the origin of goods imported under following Bills of Entry/Bills of lading are in dispute: -

| Sr. No. | Bill of Entry No. & Date/Bill of Lading No. and Date | Description of import goods | Qty. (MT) | Duty paid (Rs.) | Declared Country of Origin | Container Line/Indian Agent (M/s.) |
|---------|--|---|---------------------------|-----------------|----------------------------|--|
| 1 | 2640924 dated 30.03.2019 | Raw Magnesium Carbonate Lumps | 24.92 (one Container) | 13157 | Turkey | M.R. Container Line (associate of M/s. R-Ways Container line)/ Sarang Maritime Logistics Pvt. Ltd. |
| 2 | 2829526 dated 13.04.2019 | Raw Magnesite Powder | 81.132 (Three Containers) | 60683 | Turkey | Super Terra SDN BHD/ Super Container Line |
| 3 | 2942157 dated 22.04.2019 | Natural Magnesium Carbonate (Magnesite) | 128.5 (Five Containers) | 76632 | Turkey | Super Terra SDN BHD/ Super Container Line |

| | | | | | | |
|---|--|--|-----------------------------|-----------------|--------------|--|
| 4 | 3164987 dated 09.05.2019 | Magnesium Carbonate Lumps | 135.05 (Five Containers) | 76687 | Turkey | Super Terra SDN BHD/ Super Container Line |
| 5 | 3440387 dated 29.05.2019 | Natural Magnesium Carbonate (Magnesite) | 108 (Four Containers) | 76596 | Turkey | Super Terra SDN BHD/ Super Container Line |
| 6 | Bill of Lading No. SPTJEAMUN 1905917 dated 05.06.2019 | Magnesium Carbonate Lumps | 270 MT(Ten Containers) | BE Not filed | BE Not filed | Vessel Name: ALS FIDES |

33.03. I find that during the Panchanama proceedings on 04.06.2019, Smt. Pallavi Dhavalbhai Bhatt, Proprietor of M/s. OM Chem informed the investigating agency that all the work relating to importer firm was looked after by her husband Shri Dhaval Bhatt. Shri Dhaval Bhatt in his statements dated 04.06.2019, 05.06.2019 and **09.07.2019** tendered before the DRI under Section 108 of Custom Act, 1962 has repeatedly admitted that the goods were of Pakistan Origin and after publication of Notification No. 05/2019-Customs dated 16.02.2019 he in connivance with overseas suppliers had envisaged a plan to evade higher Customs Duty imposed by the said notification. He further stated that he was looking after the import work relating to M/s. Om chem and he himself discussed and finalized the deal for supply of subject goods with overseas suppliers through Whatsapp Chat, Whatsapp Call and email also. He has stated that he has started paying up the differential duty and would pay up the entire differential duty alongwith interest in installments in respect of goods originated from Pakistan and imported by the importer during the period from 16.02.2019 onwards.

33.04. It is pertinent to take a note that during the course of statement of Shri Dhaval Bhatt under Section 108 of Customs Act, 1962 evidences in the form of whatsapp chat /images of Bills of Ladings, Invoices, packing lists were recovered from the mobile phone of Shri Dhaval Bhatt clearly evidencing that the goods were of Pakistan Origin and the same were imported to India diverting through Jabel Ali Port, Dubai

33.05. I find that in order to verify the Country of Origin of subject goods imported at Mundra port vide the above mentioned containers, inquiries were made from the website of M/s. Karachi International Container Terminal Ltd. (www.kictl.com) and other container tracking websites. The container tracking records available on inquiry section of said website were examined and printouts of container tracking records were taken. On inquiry, it revealed that 10 containers of goods imported under 03 Bills of Entry(B/E Nos. 2640924 dated 30.03.2019, 3164987 dated 09.05.2019 and 3440387 dated 29.05.2019) were loaded from Karachi, Pakistan and destined to Jebel Ali, United Arab Emirates. Further, from the

Mobile Phone of Shri Dhaval Bhatt, data in the form of Bills of Lading No. SPT/KHI/JEA/650/18-19 dated 08.04.2019, SPT/KHI/JEA/656/18-19 dated 24.04.2019 and SPT/KHI/JEA/671/18-19 dated 06.05.2019 and other relative documents like invoices, packing list were recovered, which clearly disclosed that the goods were loaded from Karachi, Pakistan and the same has been confirmed by Indian agent for principal container lines during the investigation.

33.06. In respect of goods imported in 05 containers under Bill of Entry No. 2942157 dt. 22.04.2019, during the investigation, it has emerged that in order to hide the actual country of origin of goods containers were replaced /changed in connivance of the importer, suppliers and their associates with other containers at the Jebel Ali Port, UAE. In order to split the route of transportation of subject goods from Pakistan to UAE and UAE to India, separate Bill of Lading was arranged for both the routes changing the containers at Jebel Ali Port, Dubai, UAE. Evidences in the form of bills of Lading bearing no. SPT/KHI/JEA/650/18-19 dated 08.04.2019 (for Karachi, Pakistan to Dubai, UAE) and SPT/JEA/MUN/19/04/698 dated 08.04.2019 (for Dubai, UAE to Mundra, India), and invoice for journey from Pakistan bearing no. 51525426 dated 28.03.2019 recovered from Mobile phone and his admitted statements clearly establishes that the goods imported in 05 containers covered under Bill of Entry No. 2942157 dt. 22.04.2019 originated from Pakistan.

33.07. Other 03 containers covered under Bill of Lading SPTJEAMUN1904674 dated 11.04.2019 corresponding to Bill of Entry No. 2829526 dated 13.04.2019 were changed at Jebel Ali Port, Dubai, UAE. This fact is corroborated by the evidences recovered from the mobile phone of Shri Dhaval Bhatt, Authorized Signatory of importer during his statement dated 09.07.2019, that the containers and Seals of this consignment were changed at Dubai and then shipped to Mundra, India declaring them of Turkey origin. As regards the details of container nos. and supporting documents relating to the route of transportation of subject goods covered under this consignment from Pakistan to UAE, Shri Dhaval Bhatt informed that he had requested the suppliers/agent/container lines to provide the details and documents, but they did not provide.

33.08. M/s. OM Chem had also imported one consignment of 10*20' containers of subject goods covered under declared Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019. On the basis of documents received from container line viz. Certificate of Origin (showing Pakistan as Country of Origin) alongwith BL, Whatsapp chat & email conversations between the importer and supplier/agent, Invoice and admittal explanation/ statement of Shri Dhaval Bhatt in his statement dated 09.07.2019, it emerges that the said goods were originated in Pakistan and shipped to Mundra Port in the name of M/s. Om Chem, Bhavnagar after splitting the route of transportation from Karachi to Dubai and Dubai to Mundra. However, the importer had not filed Bill of Entry for this consignment.

33.09. I find that M/s. Om Chem in connivance with their suppliers arranged to camouflage the actual Country of Origin of the subject goods, and tried to show split route of transportation of subject goods which to escape higher rate of Customs Duty. As a part of the conspiracy, the subject goods were first loaded from Karachi to Dubai and necessary documentation for the same was made at Karachi port, as is evident from the Bills of Lading & other evidences gathered from the container lines and also traced out from the mobile phone data of the importer's authorized signatory Shri Dhaval Bhatt. At Jebel Ali Port, Dubai, these containerized goods were got unloaded from the vessel and the containers' seal or the containers were changed. Then the subject goods were remained in either the same containers with changed seals, or shifted to different set of containers with different seals for subsequent transportation to Mundra port under different Bill of Lading. Evidently, in the cases where only container seals were changed, both sets of the Bills of Lading were containing the same details of container numbers, description of goods and quantity of goods. However, different set of documents viz. Commercial Invoice, Packing List, Certificate of Origin were prepared for transportation of subject goods from Dubai to Mundra. The Bills of Lading & other evidences gathered by DRI for the route of subject goods from Karachi to Dubai contained the name of other suppliers in Pakistan as shipper which clearly established that the subject goods imported by the importer were originated in and exported from Pakistan. As regards the consignments for which the containers were changed at Jebel Ali Port, Dubai, a number of evidences have been gathered from the mobile phone (Whatsapp Chats and details/documents of actual origin and country of export of subject goods) of Shri Dhaval Bhatt, Authorised Signatory of the importer M/s. Om Chem. These evidences were corroborated and confirmed by Shri Dhaval Bhatt in his statements recorded under Section 108 of Customs Act, 1962. Thus, the subject goods imported by the importer at Mundra Port and the Country of Origin of the same was mis-declared as 'Turkey' in the Bill of Entry and other related import documents which was filed at Mundra port. The plot of conspiracy was designed, processed and materialized by using WhatsApp Chats or calls.

33.10. From the evidences and records placed before me in the present case viz. statements of representatives of agents of Container Lines/ Shipping lines, evidences such as of Bills of Lading, Certificate of Origin, Invoices from Karachi to Dubai for the subject goods, printouts of Container tracking records from the website of Karachi International Containers Terminal Limited and admitted statements of Customs Brokers, whatsapp chats and other evidences extracted from the mobile phone data of the importer's authorized signatory and his confessional statements, I find that the goods covered under above 5 Bills Of Entry and One Bill of Lading No. **SPTJEAMUN1905917 dated 05.06.2019** (Bill of Entry Not filed) whose origin are in dispute originated from Pakistan.

REJECTION OF CLASSIFICATION AND RE-CLASSIFICATION OF GOODS

34. In above paras, I have held the goods imported under above 05 Bills of Entry and Bill of Lading No. **SPTJEAMUN1905917 dated 05.06.2019** originated in Pakistan, now, I proceed to determine the classification of impugned goods.

34.1 I find that Government of India vide Notification No. 05/2019-Customs dated 16.02.2019 has inserted tariff item 98060000 in Ch. 98 of the First Schedule to Customs Tariff Act, 1975. The relevant portion of the Notification 05/2019-Customs dated 16.02.2019 is produced hereunder for sake of clarity: -

"In the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, after tariff item 9805 90 00 and the entries relating thereto, the following tariff item and entries shall be inserted, namely: -

| 1 | 2 | 3 | 4 | 5 |
|-------------|--|---|-------|----|
| "9806 00 00 | All goods originating in or exported from the Islamic Republic of Pakistan | - | 200 % | -" |

From the above notification is clear that all goods originating in or exported from the Islamic Republic of Pakistan will fall under Customs Tariff item irrespective of their other entries in Customs Tariff Act, 1975.

34.2 In terms of Notification No. 05/2019-Customs dated 16.02.2019, it is crystal clear that any goods originated in or exported from Islamic Republic of Pakistan can only be classifiable under Customs Tariff Item 98060000 of Customs Tariff Act, 1975 irrespective of any other entry in Customs Tariff Act, 1975. The subject goods imported by M/s. OM Chem under Bills of Entry No. Bills of Entry bearing no. 2640924 dated 30.03.2019, 2829526 dated 13.04.2019, 2942157 dated 22.04.2019, 3164987 dated 09.05.2019 and 3440387 dated 29.05.2019 and Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019 originated from Pakistan, I find that it is rightly classifiable under Tariff item 9806 00 00 of Customs Tariff Act, 1975 in irrespective of their any other entry in Customs Tariff Act, 1975. Therefore, I hold that the declared classification of goods under Custom Tariff Item 25191000 by the Importer is liable to be rejected and impugned goods are rightly classifiable under Tariff item 9806 00 00 of Customs Tariff Act, 1975.

Applicability of extended period under section 28(4) of the Customs Act, 1962

35. The demand in the present show cause notice has been raised under the provisions of Section 28(4), therefore, it is imperative to examine whether the section 28(4) of Customs Act, 1962 has been rightly invoked or not. 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 willful 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.

The term "relevant date" For the purpose of Section 28 ibid, has been defined in Explanation 1, as under:

Explanation 1 . - For the purposes of this section, "relevant date" means,-

(a) in a case where duty is 21[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.

35.1. I find that with the introduction of self-assessment and consequent upon amendments to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it was the obligatory on the part of the importer to declare the actual country of origin and correct classification of the goods imported by them and pay the duty applicable in respect of the said goods. Therefore, by not disclosing the true and correct facts to the proper officer, at the time of clearance of imported goods, the importer appears to have indulged in mis-declaration and mis-classification by way of suppression of facts and wilfully mis-declared and mis-classified the imported goods with intent to evade the payment of applicable Custom duties. Thus, the importer has contravened the provisions of Section 46(4) & 46(4A) of the Customs Act, 1962, in as much as they have mis-classified and mis-declared the goods imported by them, by suppressing the true and actual description of the goods, while filing the declaration seeking clearance at the time of importation of impugned goods. **Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011-Customs dated 08.04.2011** cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self- assessment, is required to ensure that he declared the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry.

35.2 The facts and evidences placed before me clearly state that the Importer was wilfully indulging in mis-stating and suppressing the fact that the goods were of Pakistan Origin. The importer had mis-declared the Country of Origin of such goods covered under the said Bills of Entry as Turkey. The importer got cleared the import consignments on payment of Customs Duty at the rate of BCD@5%, whereas, in terms of Notification No. 05/2019-Customs dated 16.02.2019, the import goods is covered under residual entry of CTH 98060000 and attracts BCD@200%. Prior to issuance of Notification No. 05/2019-Customs dated 16.02.2019, the importer was correctly declaring Country of Origin i.e. Pakistan in all the import consignments of subject goods and had paid the applicable Customs Duty. However, on an increase in the rate of BCD from 5% to 200% w.e.f.16.02.2019, the importer knowingly and deliberately started suppressing the material facts of Country of Origin from the Department and mis-declared the same in the Bills of Entry with a clear intention to evade the differential Customs Duty. Had the DRI not initiated investigation into the matter, the importer would have succeeded in his manipulations and the evasion of duty could not have been unearthed. As the importer has deliberately evaded the Customs Duty by suppressing material facts, extended period of demand of duty as laid down under Section 28(4) of the Customs Act, 1962 is clearly attracted in the instant case. Had the investigating agency i.e. DRI not initiated investigation against the Importer, the evasion of Customs Duty would not have come to the knowledge of the department I find that the Importer has breached the trust reposed on him after introducing of self-assessment. I hold that there is no flaw in invoking Section 28(4) of Customs Act, 1962 to demand the duty in respect of goods cleared under in bills of Entry No. Bills of Entry bearing no. 2640924 dated 30.03.2019, 2829526 dated 13.04.2019, 2942157 dated 22.04.2019, 3164987 dated 09.05.2019, 3440387 dated 29.05.2019.

36. M/s. OM Chem in their submission has contended the demand raised on 270 MTs of goods covered under Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019 & IGM No. 2226539 dated 06.06.2019 in 10 containers. I find that, the subject goods were imported during meantime of investigation and it was established that the goods originated from Pakistan however the importer did not filed bill of entry for clearance of goods and latterly they relinquished the title of said goods. The present Show Cause Notice has also raised the demand amounting to **Rs. 57,46,780/-** under the provisions of Section 28(4) of the Customs Act, 1962 against the said import, therefore it is imperative to examine the contention of the importer whether demand raised in the show cause Notice is in accordance with law.

36.1. I find that the provision of Section 28(4) of the Customs Act, 1962 provides for demand of duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. As M/s OM Chem wilfully mis-declared the description of impugned imported goods by suppressing material facts, the said condition of Section 28 ibid is fulfilled in the instant case. Further, I find that the

said provision provides that duty can be demanded by proper officer within five years from the relevant date. Thus, I find that Section 28(4) *ibid* provides mechanism to demand duty during the period starting from the relevant date and within five years from such relevant date. The relevant date has been defined in above mentioned Explanation-I of Section 28. I find that in this case subject Bill of Entry has not been filed hence order for clearance of the goods under Section 47 *ibid*. Therefore, after importation, the impugned goods are still lying in customs area and out of charge under Section 47 *ibid* is yet to be granted. In view of clause (a) of the said Explanation-1, I find that the relevant date in this case will start from the date on which proper officer of Customs will make an order for the clearance of impugned goods.

36.2 The Hon'ble CESTAT Principal Bench Delhi in case of *EVERSHINE CUSTOMS (C & F) PVT LTD vs COMMISSIONER OF CUSTOMS* in CUSTOMS APPEAL NO. 51320 of 2019 answering the question "Can a differential duty can be demanded under section 28(4) on the goods even before the goods have been cleared for home consumption? - has held as under:-

30. Thus, the legal position settled by the Hon'ble Supreme Court in the above case laws is that the power under Section 28 is a power of review which has been specially conferred on the proper officer who has done the assessment or his successor in office. Only he can issue the SCN for the purpose.

31. It is also evident from the 'Relevant date' for calculating the limitation of time for issuing a notice under Section 28. It is the defined in the explanation to Section 28 as follows:

Explanation 1- 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.

32. Evidently, if the order clearing the goods for home consumption was not issued, the assessment is still open and the goods are still imported goods assessable to duty under section 17. There cannot be any demand under section 28. In the present case, the goods were not yet cleared. The importer (or his CB) filed a Bill of Entry self assessing the duty which has been found to be erroneous. The duty has to be reassessed and a speaking order has to be passed by the proper officer. If the officer of DRI is also the proper officer [under Section 28(11) or otherwise] and has done the reassessment, he must pass a speaking order. Any SCN under Section 28 can only arise after the goods have been cleared for Home Consumption and not before. This is because a demand under section 28 is in the nature of review of the

assessment already done under section 17 by the proper officer. Without the assessment under section 17 being completed, there cannot be review under section 28 and the relevant date under section 28 for reckoning the time limit has not yet arisen. For this reason, the demand under section 28 in respect of the goods which have not yet been cleared for home consumption cannot be sustained and the answer to the question (c) which we raised is 'No demand under section 28 can be issued unless the goods have been cleared for home consumption and hence the demand does not sustain'.

36.3 As till date no order for clearance of impugned goods has been granted, I find it premature to demand the duty under Section 28(4) *ibid*, as this Section would kick in only after clearance of goods by customs after importation.

Determination of duty under Section 28(8) Customs Act, 1962 read with Section 28(4) of Customs Act, 1962.

37. In foregoing paras, I have held that the goods imported by M/s. OM Chem are correctly classifiable under Tariff Item 98060000 of the first Schedule of Customs Tariff, 1975, therefore, the importer is liable to pay the differential duty with the applicable rate at the material time in respect of all the 5 Bills of Entry in terms of Section 28(8) read with Section 28(4) of Customs Act, 1962 as tabulated below:-

| B/E No. & Date | Declared Assessable Value (Rs.) | BCD Payable @200% (Rs.) | SWS payable @10% (Rs.) | IGST Payable @28% (Rs.) | Total Customs Duty payable (Rs.) | Total Customs Duty paid (Rs.) | Differential Duty payable (Rs.) |
|--------------------------|---------------------------------|-------------------------|------------------------|-------------------------|----------------------------------|-------------------------------|---------------------------------|
| 2640924 dated 30.03.2019 | 122108 | 244216 | 24422 | 109409 | 378046 | 13157 | 364889 |
| 2829526 dated 13.04.2019 | 563185 | 1126370 | 112637 | 504614 | 1743621 | 60683 | 1682938 |
| 2942157 dated 22.04.2019 | 711206 | 1422412 | 142241 | 637241 | 2201894 | 76632 | 2125262 |
| 3164987 dated 09.05.2019 | 711713 | 1423426 | 142343 | 637695 | 2203463 | 76687 | 2126776 |
| 3440387 dated 29.05.2019 | 710870 | 1421740 | 142174 | 636940 | 2200854 | 76596 | 2124258 |
| Total | 2819082 | 5638164 | 563816 | 2525897 | 8727878 | 303755 | 8424123 |

Confiscation of the goods under section 111 (m) of the customs act, 1962:

38. As far as confiscation of goods are concerned, I find that Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(m) of the Customs Act, 1962 are reproduced below: -

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

38.1. On plain reading of the above provisions of 111(m) of the Customs Act, 1962 it is clear that goods which are imported by way of mis-declaration, will be liable to confiscation. In above paras, I have hold that the subject import goods were mis-classified and mis-declared with respect to its description (CTH & Country of Origin) with intent to avoid the payment of BCD@200% and other duties as per provisions of Customs Act, 1962. Further, good covered under one Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019 were actually originated from Islamic Republic of Pakistan and during the investigation after unearthing by DRI the importer relinquish the title. Had the DRI not started investigation, the importer will have become successful in their objectives. Therefore, I hold that the goods imported under 05 Bills of Entry and Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019 are liable are liable for confiscation under Section 111(m) of Custom Act, 1962 and are also treated as smuggled goods within the meaning of Section 2(39) of the Customs Act, 1962.

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

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

38.3. A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. 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.

38.4 I find that the goods imported under Bills of Entry No. Bills of Entry bearing no. 2640924 dated 30.03.2019, 2829526 dated 13.04.2019, 2942157 dated 22.04.2019, 3164987 dated 09.05.2019 and 3440387 dated 29.05.2019, have never been neither seized nor provisionally released; 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 have any legs to stand.

38.5 In this regard, I find that the goods imported under bills of entry mentioned in above para were neither seized, nor released provisionally. Hence, neither the goods are physically available nor bond for provisional release under Section 110A ibid covering recovery of redemption fine is available. I, therefore, find that redemption fine cannot be imposed in respect of imported goods under above 05 Bills of Entry. I hold so.

38.6 As regards applicability of redemption fine on goods, having value of Rs. 18,56,195/- covered under Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019, being unclaimed and unclear cargo, disposal proceedings of the goods were started by the CFS authorities and CFS authorities had issued notices to the importer under Section 48 of Customs Act, however, no response was received from the importer. The importer was asked vide Notice dated 26.07.2019 and Final Notice dated 17.08.2019 issued by Mundhra CFS Authorities to get cleared the consignment within 10 days failing which necessary action would be taken for disposal of the cargo. The importer, vide letter dated 20.03.2020 addressed to the Deputy Commissioner of Customs, Customs House Mundra (showing acknowledgement by Customs on 18.05.2020) relinquished the title of the goods covered under said 10 containers. The importer submitted the reason for relinquishing the subject consignment that the consignor had not provided the import documents in spite of various reminders. In this regard, inquiries were also carried out with concerned Bank i.e. Union Bank of India, Bhavnagar (M) Branch, vide letters dated 27.04.2020 followed by reminders dated 15.05.2020, 01.06.2020. In response, the Branch Manager, Union Bank of India, Bhavnagar (M) Branch vide letter dated 02.06.2020 informed that they did not receive any documents relating to said Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019. Thus, it appears that the title of goods covered under these 10 containers has been relinquished by the importer and accordingly separate action under Customs Act, 1962 are being taken for disposal of 270 MT subject goods stuffed under the said 10 containers covered under Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019.

38.6.1 On being inquired from disposal section, it has been apprised that the goods covered under Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019 is currently pending for disposal. Section 23 of Customs Act, 1962 which deals with "Remission of duty on lost, destroyed or abandoned goods" provides as under: -

23. Remission of duty on lost, destroyed or abandoned goods.

(1).....

.....

[2] The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.]

[Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.] [Inserted by Act 21 of 2006, Section 58 (w.e.f. 18.4.2006).]

36.8.2 In view of above provisions of Customs Act, 1962, I find that, at this stage, the importer cannot be allowed to relinquish the title of the said goods. The impugned imported goods are not prohibited goods, an option of redeeming the goods is required to be granted to M/s. OM Chem, against the order of confiscation by paying redemption fine as provided under Section 125 of the Customs Act, 1962. M/s. OM Chem will have to pay amount of differential duty along with the redemption fine while exercising option to redeem the confiscated goods for home consumption. Thus, in view of these provisions, I hold that the goods can be redeemed by M/s OM Chem on payment of redemption fine if they choose to do so.

39. Imposition of Penalty on M/s. Om Chem under Section 112(a),112(b), 114A, Section 114AA and Section 117 of Customs Act, 1962.

39.1. Imposition of Penalty under Section 114A and 112(a),112(b) on Importer:-

39.1.1. In above paras, I have hold that M/s. Om Chem has suppressed the facts to the department and has willfully evaded the Customs Duty by way of fraud, collusion and willful mis-statement, therefore, liable to pay duty under Section 28(8) read with Section 28(4) of the Customs Act, 1962.

39.1.2. I find that section 114A stipulates that the person who is liable to pay duty by reason of collusion or any wilful mis-statement or suppression of facts as determined under Sub Section 8 of Section 28 of Customs, 1962, is also be liable to pay penalty under section 114A. I find that for these acts and omissions, the importer is liable for penal action under Section 114A of the Customs Act, 1962 in respect of goods imported under 05 Bills of Entry only.

39.1.3. However, I find that as per 5th proviso of section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under section 112 is not imposable.

39.1.4. I find that there is a mandatory provision of penalty under section 114A of customs act, 1962 where duty is determined under Sub Section (8) of Section 28 of customs act, 1962. Therefore, I refrain from imposing penalty under section 112(a) and 112(b) of Customs Act, 1962 in respect of goods imported under 05 Bills of Entry only.

39.2 I find that section 112(a) stipulates the penalty for improper importation of goods on any person who in relation to 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 omissions of such an act.

39.2.1 In the instant case, the importer M/s. Om Chem, Bhavnagar had imported 270 MT subject goods stuffed under the said 10 containers covered under Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019 originated from Pakistan by way of diverting route from UAE with sole intension to evade the duty and thereby rendered the import goods have been held liable for confiscation under Section 111(m). Further, from the Whatsapp chat conversations of Shri Dhaval Bakulesh Bhatt, Authorized Signatory of the importer firm with the suppliers/consigners with respect to manipulate the origin of goods and actual country of export vis-à-vis the confessional statements Shri Dhaval Bhatt and other evidences gathered during investigation, it is clear that the importer were knowingly and deliberately cleared the offending/smuggled import goods in connivance with the overseas suppliers/consigners. Therefore, I find that for these acts and omissions, the importer is liable for penal action under Section 112(a)(ii) of the Customs Act, 1962 in respect of goods imported by them covered under Bill of Lading No.

SPTJEAMUN1905917 dated 05.06.2019 and IGM No. 2226539 dated 06.06.2019 filed at Mundra Port yet they have relinquished the title.

39.3. Imposition of Penalty under Section 114AA of Customs Act, 1962 on M/s. Om Chem:- I find that M/s. Om Chem through its Authorized Signatory Shri Dhaval Bakulesh Bhatt knowingly and intentionally made/signed/used the import document (Bill of Entry etc.) and caused to make and use the documents such as Certificate of Origin and other related documents, which were false or incorrect in material particular Country of Origin, CTH etc., for the purposes of avoiding differential amount of Customs Duty, therefore, I find that they are liable to penalty under **Section 114AA** of the Customs Act, 1962.

39.4 Imposition of Penalty under Section 117 of Customs Act, 1962 on M/s. Om Chem:-As regards imposition of penalty under Section 117 of Customs Act, 1962, I observe that penalty under Section 117 of the Customs Act, 1962 is imposable for contravention, etc., not expressly mentioned, M/s. Om Chem has been held liable for penalty under Section 114 A of Customs Act, which is expressly mentioned, I don't find the need to impose penalty under Section 117 of the Customs Act, 1962 on M/s. OM Chem. **I hold so.**

Imposition of penalty on Shri Dhaval Bakulesh bhatt, Authorised signatory of importer firm M/s. Om chem, Bhavnagar under Section 112(a),112(b),114AA, 117 of Customs Act, 1962

40. Smt. Pallavi Dhavalbhai Bhatt, Proprietor of M/s. Om Chem and wife of Shri Dhaval Bakulesh Bhatt, Authorized Signatory of the importer firm M/s. Om Chem informed the DRI that all the import activities are looked after by her husband Shri Dhaval Bakulesh Bhatt. Further, Shri Dhaval Bhatt in his statement tendered before the investigating agency has admitted that he was looking after all import related activities in the importer firm M/s. Om Chem, Bhavnagar and he himself used to place orders with overseas suppliers, negotiated the rates and finalized the deal for import of subject goods. Investigation revealed that after increase in the rate of BCD from 5% to 200% with respect to goods originated in or exported from Pakistan, he in connivance with suppliers /consignees, container lines and their associates hatched the conspiracy of manipulating the country of origin/export of subject goods by way of wrongly and advertently splitting the route of transportation of subject goods from Pakistan- India to Pakistan-UAE and UAE-India. As evident from the Whatsapp chat conversations held between Shri Dhaval Bhatt and the suppliers/consignees, container lines etc viz. Mujtaba Bhai (Mujtaba Ahmed Paracha), Mustafabhai (Mustafa Ahmed Paracha), Shahab (Muhammad Sahab)etc. of M/s. Superterra Pvt. Ltd./Superterra Container Line, and suppliers/consignees based in Pakistan and Dubai, they prepared documents manipulating the actual country of origin/export i.e. Pakistan. As narrated in foregoing paras, Shri Dhaval Bhatt used to insist the other Pakistan/UAE based associates in the ploy through

Whatsapp chat/calls to change the containers at Dubai, fabrication of documents etc. with intent to get cleared the subject goods from Customs Mundra under assessment for a much lower and improper rate of Customs Duty by way of mis-classifying and mis-declaring the CTH and country of origin of subject goods.

40.1 I find that Shri Dhaval Bakulesh Bhatt had actively abetted the evasion of Customs Duty and contravention of the provisions of Customs Act, 1962 and his act rendered the subject goods liable for confiscation under Section 111(m) of Customs Act, 1962. He was knowingly and directly dealing with the subject goods which were liable to confiscation under Section 111(m) of Customs Act, 1962. By these acts of commission and omission on his part, Shri Dhaval Bhatt has rendered himself liable to penalty under **Section 112 (a). I hold so.**

40.2. As regards, imposition under Section 112(b) of Customs Act, 1962, it is applicable in the case where a person *"who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111"*. Shri Dhaval Bhatt has been held liable for penalty under Section 112(a)(ii) of Customs Act, 1962, I find that the same person cannot be penalized two times for same offence, therefore, I refrain from imposing a penalty on them under Section 112(b) of customs Act, 1962. **I hold so.**

40.3 I find that Shri Dhaval Bhatt knowingly and intentionally made/signed/used the import document (Bill of Entry etc.) and caused to make and use the documents such as Certificate of Origin and other related documents, which were false or incorrect in material particulars for the purposes of avoiding huge differential amount of Customs Duty, therefore he is also liable to penalty under **Section 114AA** of the Customs Act, 1962.

40.4 As regards imposition of penalty under Section 117 of Customs Act, 1962, I observe that penalty under Section 117 of the Customs Act, 1962 is imposable for contravention, etc., not expressly mentioned, Shri Dhaval Bhatt has been held liable for penalty under Section 112(a) of Customs Act, which is expressly mentioned, therefore, I don't find the need to impose penalty under Section 117 of the Customs Act, 1962 on Shri Dhaval Bhatt. **I hold so.**

IMPOSITION OF PENALTY ON DECLARED SUPPLIERS.

41. From the documentary evidences submitted before the Customs and documents found during the investigation, the following declared suppliers of such Bills of Entry have been identified.

| Sr No. | Declared Supplier | Bills of Entry No. and Date/ Bill of Lading No. | |
|--------|---|--|--|
| 01 | M/s. Al Sakhra Al Fiddiya General Trading LLC, Dubai | 2829526 dated 13.04.2019, 2942157 dated 22.04.2019, 3164987 dated 09.05.2019, 3440387 dated 29.05.2019, Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019 and IGM No. 2226539 dated 06.06.2019 | |
| 02 | M/s. BAB AL Zain General Trading LLC, P. O. Box 838572, Dubai, UAE (Shipper as per Bill of Lading: M/s. Af Gumrukleme Nakliye Ve Tic. Ltd., Turkey, Notify party- M/s. BAB AL Zain General Trading LLC) | 2640924 dated 30.03.2019 | |

41.1 Imposition of Penalties under Section 112(a) and Section 114AA of Customs Act, 1962 on declared suppliers:- Section 112(a) of Customs Act, 1962 mandates imposition of a penalty on a person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act. The imported goods were originated in Pakistan, the declared supplier M/s. Al Sakhra Al Fiddiya General Trading LLC, Dubai, M/s. BAB AL Zain General Trading LLC, P. O. Box 838572, Dubai, UAE and M/s. Af Gumrukleme Nakliye Ve Tic. Ltd., Turkey by way of generating a false/fake documents, falsely in connivance with M/s. OM Chem and M/s. Superterra Pvt. Ltd./Superterra SDN BHD actively participated in an act which have rendered the goods liable for confiscation. These so called suppliers were involved in abetting illegal documentation and facilitating import of subject goods at Mundra port with incorrect particulars. Consequently, on the basis of these documents, the importers had filed Bills of Entry indicating incorrect and fabricated Country of Origin of goods, etc. Therefore, I hold that the declared suppliers viz. M/s. Al Sakhra Al Fiddiya General Trading LLC, Dubai, M/s. BAB AL Zain General Trading LLC, P. O. Box 838572, Dubai, UAE and M/s. Af Gumrukleme Nakliye Ve Tic. Ltd., Turkey are liable to penalty under the provisions of Section 112(a)(ii) of Customs Act, 1962 and Section 114AA of Customs Act, 1962.

41.2 Imposition of penalties under Section 112(b) and 117 of Customs Act, 1962 on declared suppliers:- The declared suppliers M/s. Al Sakhra Al Fiddiya General Trading LLC, Dubai, M/s. BAB AL Zain General Trading LLC, Dubai, UAE, M/s. Af Gumrukleme Nakliye Ve Tic. Ltd., Turkey have been held liable to penalty under Section 112(a) of customs Act, 1962, I find that the same person cannot be

penalized two times for same offence, therefore , I refrain from imposing a penalty on them under Section 112(b) of customs Act, 1962.

41.3. As regards imposition of penalty under Section 117 of Customs Act, 1962, I observe that penalty under Section 117 of the Customs Act, 1962 is imposable for contravention etc. not expressly mentioned, the declared suppliers has been held liable for penalty under Section 112(a)(ii) and Section 114AA of Customs Act, which is expressly mentioned, I don't find the need to impose penalty under Section 117 of the Customs Act, 1962 on M/s. Al Sakhra Al Fiddiya General Trading LLC, Dubai, M/s. BAB AL Zain General Trading LLC, Dubai, UAE, M/s. Af Gumrukleme Nakliye Ve Tic Ltd. **I hold so.**

41.4 Imposition of Penalty on M/s.Avizhe Siraz Commercial Trading LLC, Shizar, Iran:- I find that from the mobile phone data of Shri Dhaval Bhatt images of two purported Bills of Lading bearing nos. RCLKHLJEA18363 dated 11.03.2019 and RCLBNDMUN18363A dated 11.03.2019 pertaining to the first consignment of the importer after 16.02.2019 for 24.92 MT subject goods loaded in container no. WHLU2494691, were recovered. In both of these documents, M/s.Avizhe Siraz Commercial Trading LLC, Shizar, Iran was shown as shipper. Accordingly, letters dated 08.06.2020 and 23.01.2021 were issued under Section 108 of Customs Act, 1962 to M/s. Avizhe Siraz Commercial Trading LLC, however, they have not responded and did not produce the documents/clarification sought from them. The non-cooperation in investigation by this company were to defeat the investigation and are in contravention of the provisions of Section 108 of the Customs Act, 1962. Accordingly, I hold that M/s. Avizhe Siraz Commercial Trading LLC, Shizar, Iran have rendered themselves liable to penalty under Section 117 of Customs Act, 1962.

IMPOSITION OF PENALTIES ON CONTAINER LINES

42. M/S. SUPERTERRA SDN BHD., SINGAPORE (M/S. SUPER TERRA PVT. LTD./ SUPER TERRA CONTAINER LINE) AND ITS KEY PERSONS VIZ. S/SHRI MUJTABA AHMED PARACHA, MUSTAFA AHMED PARACHA, MUHAMMAD SAHAB:- From the facts and evidences it has emerged that M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd./Superterra Container Line), was the Principal Container Line who rendered transportation and logistics services to the supplier and importer with respect to the subject goods covered under Bill of Entry No. 2829526 dated 13.04.2019, 2942157 dated 22.04.2019, 3164987 dated 09.05.2019 and 3440387 dated 29.05.2019. The employees/Directors of M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd./Superterra Container Line) were acting as suppliers of subject goods. During the course of investigation, it has revealed that M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd.) played prominent role in manipulation of country of origin of the subject goods and thereby intending evasion of Customs Duty by wrongly showing the split route of transportation from Pakistan to UAE and subsequently

from UAE to India. They have also arranged documents in the name of different declared suppliers/consigners having other incorrect material particulars whereas the payment against the supply of subject goods was made by the importer to M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd.).

42.1 From the Whatsapp chat conversations between importer's representative Shri Dhaval Bhatt and key persons /handlers of Container line M/s. Superterra SDN BHD. (Shri Mujtaba Ahmed Paracha, Shri Mustafa Ahmed Paracha and Shri Muhammad Sahab), confessional Statement of Shri Dhaval Bhatt, Statement of the Indian agent of said container line, viz. Mr. Abdul Majid Zainuddin Shaikh Prop. of M/s. Super Container Line, it is clear that the M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd.) through their key persons/Directors (Shri Mujtaba Ahmed Paracha, Shri Mustafa Ahmed Paracha and Shri Muhammad Sahab) in connivance with the declared consignor and consignee deliberately and wrongly shown splitted route of transportation of the shipment from Karachi, Pakistan to Dubai, UAE and then from Dubai, UAE to Mundra, India to suppress the actual country of origin of goods i.e. Pakistan. They have not properly and correctly responded to the Summons/letters issued to them and on being inquired through their Indian Agent, they had sent evasive, irrational and unsatisfactory reply that the consignee at Dubai might have sent the goods to Mundra, India and showed their unawareness about the same. The Whatsapp Chat conversations between the importer's representative Shri Dhaval Bhatt and key persons of said Container line M/s. Superterra SDN BHD (Shri Mujtaba Ahmed Paracha, Shri Mustafa Ahmed Paracha, Shri Muhammad Sahab)) as narrated above, clearly revealed that the container line had deliberately shown split route of transportation of subject goods to suppress the actual country of origin of subject goods i.e. Pakistan.

42.2. From above facts, I find that M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd.) and Shri Mujtaba Ahmed Paracha, Shri Mustafa Ahmed Paracha and Shri Muhammad Sahab were knowingly involved in the conspiracy of mis-classification, mis-declaration and thereby evasion of Customs Duty in respect of subject goods covered under said four Bills of Entry. M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd.) and Shri Mujtaba Ahmed Paracha, Shri Mustafa Ahmed Paracha, Shri Muhammad Sahab abetted the smuggling of subject goods by way of suppressing the actual Country of Origin of the subject goods and thereby rendered the goods liable for confiscation under Section 111(m) of Indian Customs Act, 1962. Their deliberate concern in selling, purchasing, transporting and dealing with subject goods have made them for penalty under Section 112(a)(ii) of the customs Act, 1962. Therefore, I hold that M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd.), Shri Mujtaba Ahmed Paracha, Shri Mustafa Ahmed Paracha and Shri Muhammad Sahab are liable to penalty under Section 112 (a)(ii) of the Customs Act, 1962.

42.3. M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd.) and Shri Mujtaba Ahmed Paracha, Shri Mustafa Ahmed Paracha and Shri Muhammad Sahab knowingly and

intentionally shown split route of transportation of the shipment from Karachi, Pakistan to Dubai, UAE and then from Dubai, UAE to Mundra, India to suppress the actual country of origin of goods i.e. Pakistan. They had also arranged documentation thereof resulting in caused to make/sign/use Certificate of Origin, Bills of Entry and other related documents which were having incorrect material particulars such as country of origin of subject goods, CTH etc. Thus, the said container line M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd.) Shri Mujtaba Ahmed Paracha, Shri Mustafa Ahmed Paracha, Shri Muhammad Sahab has caused to manipulate and falsify the import documents for the subject goods destined for Mundra Port. By doing so, M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd.) , Shri Mujtaba Ahmed Paracha, Shri Mustafa Ahmed Paracha and Shri Muhammad Sahab have made themselves liable for penalty under **Section 114AA** of the Indian Customs Act, 1962.

42.4. As regards imposition of penalty under Section 112(b) and Section 117 of Customs Act, 1962, I observe that above noticees viz M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd.) and Shri Mujtaba Ahmed Paracha, Shri Mustafa Ahmed Paracha and Shri Muhammad Sahab have been held liable for penalty under Section 112(a)(ii) of Customs Act, 1962, penalty under Section 112(b) can not be imposed on them as the Penalty under Section 112(a) and Section 112(b) is mutually exclusive. Further, penalty under Section 117 of the Customs Act, 1962 is imposable for contravention, etc., not expressly mentioned, M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd.) , Shri Mujtaba Ahmed Paracha, Shri Mustafa Ahmed Paracha and Shri Muhammad Sahab has been held liable for penalty under Section 112(a)(ii) of Customs Act and 117 of customs Act, 1962, which is expressly mentioned, therefore, I don't find the need to impose penalty under Section 117 of the Customs Act, 1962 on them. **I hold so.**

43. ROLE AND CULPABILITY OF M/S. M. R. CONTAINER LINE, AN ASSOCIATE OF M/S. R-WAYS CONTAINER LINE, DUBAI AND M/S. R-WAYS CONTAINER LINE, DUBAI:-

43.1. M/s. M. R. Container Line, an associate of M/s. R-ways Container Line, Dubai, was the Principal Container Line who rendered transportation and logistics services to the supplier and importer in respect to the subject goods covered under Bill of Entry No. 2640924 dated 30.03.2019. Investigation revealed that after 16.02.2019 i.e. the date from which 200% BCD was effected in respect of goods originated in or exported from Pakistan, the importer M/s. Om Chem, Bhavnagar had imported this consignment having only one container of subject goods from Pakistan mis-declaring the country of origin on trial basis. For such first consignment covered in Container no. WHLU2494691, M/s. M. R. Container Line (associate of M/s. Rways Container Line, Dubai) and M/s. Rways Container Line played prominent role in manipulation of country of origin of the subject goods and thereby evasion of Customs Duty by way of importation of subject goods from

Pakistan through Dubai, UAE. Following purported Bills of were gathered during investigation with respect to transportation of subject goods in the said Container No. WHLU2494691:-

| Sr. No. | Bill of Lading No. & date | Container No. | Port of loading | Port of discharge |
|---------|---|---------------|--------------------------|-------------------|
| 1 | RCLTURMUN18363A dated 19.03.2019 (actually declared in Customs Documents) | WHLU2494691 | GEMLIK (GEMPORT), TURKEY | MUNDRA (INDIA) |
| 2 | RCLBNDMUN18363A dated 11.03.2019 | | BANDAR ABBAS, IRAN | MUNDRA (INDIA) |
| 3 | RCLKHIJEA18363 dated 11.03.2019 | | BANDAR ABBAS, IRAN | MUNDRA (INDIA) |

From the codes used in the purported Bill of Lading number mentioned at Sr. No. 3 in the above table i.e. 'RCLKHIJEA', it was clear that the consignment containing Container No. WHLU2494691 was prepared by M/s. Rways Container Line (RCL) for Shipment from Karachi, Pakistan (KHI) to Jebel Ali Port, Dubai (JEA). However, in order to hide the Country of origin of goods the Port of loading was shown as Bandar Abbas, Iran and Port of discharge as Mundra, India.

43.1.1 Investigation revealed that the importer in connivance with the Container line and the shipper arranged the Bill of Lading No. RCLTURMUN18363A dated 19.03.2019 showing Port of loading as 'GEMLIK (GEMPORT) Turkey' and port of discharge as 'Mundra, India'. On the basis of these facts and evidences, it emerged that the importer, in connivance of said container line and others, have mis-declared the goods purportedly showing of originated in Turkey origin and evaded the applicable Customs duty by way of mis-classification and Mis-declaration of Country of origin. Further, Shri Dhaval Bhatt in his statement has clearly admitted this fact that the said consignment was originated in Pakistan. These facts are also strengthened and corroborated by the container tracking records (movement of container) available on the website of 'Karachi International Terminal', which shows that said container (with the goods contained therein) was shipped from Pakistan.

43.1.2 M/s. Rways Container Line, Dubai vide e-mail dated 27.09.2019 issued to their Indian agent M/s. Sarang Maritime Logistics submitted that the consignment of 24.920 MT goods (Raw Magnesium Carbonate) covered under BL No. RCLTURMUN1836A dated 19.03.2019 (B/E No. 2640924 dated 30.03.2019), vessel NORTHERN GENERAL V-075 was arrived at Jebel Ali, Dubai from Karachi

(Pakistan) but the shipping line for Karachi to Dubai was different from their Principal, therefore, the BL and other documents for Karachi to Dubai for said consignment were not available with them. It was though confirmed by M/s. Rways Container Line appears that the said consignment of subject goods was originated in Pakistan, the contention of the container line M/s. Rways Container Line appears not tenable that the shipping line for Karachi to Dubai was different from them, therefore, the BL and other documents for Karachi to Dubai for said consignment were not available with them. On the contrary, they themselves had declared the incorrect port of loading as Gemlik (Gempport), Turkey in the said Bill of Lading so as to facilitate the importer and other key persons involved in the ploy of suppression of actual country of origin of subject goods and thereby evasion of Customs Duty. The Bill of Lading submitted by the importer was having name of M/s. M.R. Container Line, an associate of M/s. Rways Container Line, however two separate Bill of Lading recovered from the mobile phone of Shri Dhaval Bhatt, Authorised Signatory of importer M/s. Om Chem were pertaining to both these firms viz. M/s. M. R. Container Line and M/s. Rways Container Line. In order to get clarified the facts contained in these Bills of Lading and to get further details/ documents, letters dated 08.06.2020 and 23.01.2021 were issued to M/s. M. R. Container Line (an associate of M/s. Rways Container Line) but no reply received from the Container Line. It thus appears that both M/s. Rways Container Line and M/s. M.R. Container Line, an associate of M/s. Rways Container Line are involved in the instant conspiracy.

43.2 From the above facts, I find that that M/s. Rways Container Line and M/s. M.R. Container Line, an associate of M/s. Rways Container Line were knowingly involved in the conspiracy of mis-classification, mis-declaration and thereby evasion of Customs Duty in respect of subject goods covered under said one Bill of Entry. They had abetted the smuggling of subject goods by way of suppressing the actual Country of Origin of the subject goods and thereby rendered the goods liable for confiscation under Section 111(m) of Indian Customs Act, 1962. M/s. Rways Container Line and M/s. M.R. Container Line, an associate of M/s. Rways Container Line were deliberately concerned in transporting and dealing with subject goods liable for confiscation which rendered them liable to penalty each under **112 (a)(ii)** of the Indian Customs Act, 1962.

43.3 I find that M/s. Rways Container Line and M/s. M.R. Container Line, an associate of M/s. Rways Container Line knowingly and intentionally wrongly shown splitted the route of transportation of the shipment from Karachi, Pakistan to Dubai, UAE and then from Dubai, UAE to Mundra, India to suppress the actual country of origin of goods i.e. Pakistan. They had also arranged documentation thereof resulting in caused to make/sign/use Certificate of Origin, Bills of Entry and other related documents which were having incorrect material particulars such as country of origin of subject goods, CTH etc. Thus, the said container M/s. Rways

Container Line and M/s. M.R. Container Line, an associate of M/s. Rways Container Line caused to manipulate and falsify the import documents for the subject goods destined for Mundra Port. By doing so, they are liable to penalty under **Section 114AA** of the Indian Customs Act, 1962. I hold so.

43.4. Imposition of penalties under Section 112(b) and 117 of Customs Act, 1962 on:- M/s. Rways Container Line and M/s. M.R. Container Line, an associate of M/s. Rways Container Line have been held liable to penalty under Section 112(a)(ii) of customs Act, 1962, I find that same person cannot be penalized two times for same offence, therefore, I refrain from imposing a penalty on them under Section 112(b) of customs Act, 1962.

43.5 As regards imposition of penalty under Section 117 of Customs Act, 1962, I observe that penalty under Section 117 of the Customs Act, 1962 is impossible for contravention etc. not expressly mentioned, the declared suppliers has been held liable for penalty under Section 112(a)(ii) and Section 114AA of Customs Act, which is expressly mentioned, I don't find the need to impose penalty under Section 117 of the Customs Act, 1962 on M/s. Rways Container Line and M/s. M.R. Container Line, an associate of M/s. Rways. **I hold so.**

44. IMPOSITION OF PENALTY ON M/S. SUPER CONTAINER LINE, MUMBAI (PROP. MR. ABDUL MAJID ZAINUDDIN SHAIKH), INDIAN AGENT OF M/S. SUPERTERRA SDN BHD., SINGAPORE (M/S. SUPER TERRA PVT. LTD./ SUPER TERRA CONTAINER LINE) AND MR. UMAIR LAKDAWALA:-

44.1 M/s. Super Container Line, Mumbai was acting as an agent of their Principal Container line M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd./Superterra Container Line), who rendered transportation and logistics services to the supplier and importer with respect to the subject goods covered under Bill of Entry No. 2829526 dated 13.04.2019, 2942157 dated 22.04.2019, 3164987 dated 09.05.2019 and 3440387 dated 29.05.2019. As per the Whatsapp conversations held between Mr. Umair Lakdawala of M/s. Super Container Line and Shri Dhaval Bhatt, Authorised Representative of the importer, it is clear that Mr. Umair Lakdawala was aware about the intentionally showing the split route of transportation of subject goods from Pakistan to UAE and UAE to India to suppress the actual Country of Origin i.e. Pakistan. Mr. Umair Lakdawala was in constant touch with the mastermind Shri Mustafa Ahmed Paracha of M/s. Superterra SDN BHD. (Super Terra Pvt. Ltd.) as emerged from the content of said Whatsapp Chat conversations. He was conveying the images of import documents having manipulated particulars received from said Pakistani suppliers/container lines to the importer/Shri Dhaval Bhatt for his approval and finalization of the import on the basis of documents having manipulated details of Country of Origin and other material particulars. Thus, Mr. Umair Lakdawala and M/s. Super Container Line were connived with importer's representative Shri Dhaval Bhatt and key persons /handlers of Container line M/s.

Superterra SDN BHD/M/s. Superterra Pvt. Ltd. and assisted deliberately in showing split route of transportation of the shipment from Karachi, Pakistan to Dubai, UAE and then from Dubai, UAE to Mundra, India to suppress the actual country of origin of goods i.e. Pakistan.

44.2. From above facts, I find that M/s. Super Container Line, Mumbai and Mr. Umair Lakdawala were knowingly involved in the conspiracy of mis-classification, mis-declaration and thereby evasion of Customs Duty in respect of subject goods covered under said four Bills of Entry. They have abetted the smuggling of subject goods by way of suppressing the actual Country of Origin of the subject goods and thereby rendered the goods liable for confiscation under Section 111(m) of Indian Customs Act, 1962. They were deliberately concerned in selling, purchasing, transporting and dealing with subject goods liable for confiscation which have rendered M/s. Super Container Line, Mumbai (Prop. Mr. Abdul Majid Zainuddin Shaikh), and Mr. Umair Lakdawala liable to penalty under **Section 112 (a)(ii) of Customs Act, 1962.**

44.3 I find that penalty under Section 114AA of Customs Act, 1962 is imposed on a person who 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. I find that there is no evidence on the record which makes them liable under Section 114AA of Customs Act, 1962, therefore, I refrain from imposing penalty on M/s. Super Container Line, Mumbai (Prop. Mr. Abdul Majid Zainuddin Shaikh), and Mr. Umair Lakdawala under Section 114AA of Customs Act, 1962.

44.4 As regards imposition of penalty under Section 117 of Customs Act, 1962, I observe that penalty under Section 117 of the Customs Act, 1962 is imposable for contravention etc. not expressly mentioned, M/s. Super Container Line, Mumbai (Prop. Mr. Abdul Majid Zainuddin Shaikh), and Mr. Umair Lakdawala under Section 114AA has been held liable for penalty under Section 112(a)(ii), which is expressly mentioned, I don't find the need to impose penalty under Section 117 of the Customs Act, 1962 on M/s. Rways Container Line and M/s. M.R. Container Line, an associate of M/s. Rways. **I hold so.**

IMPOSITION OF PENALTIES ON CUSTOMS BROKERS:-

45. During the investigation, in respect of three Bills of Entry discrepancies noticed in the documents submitted before the Customs. As the following Customs Brokers have attended the filing of Bills of Entry on behalf of the importer the show cause notices proposes the penal provisions against them:-

| Sr. No. | Bill of Entry No. & Date | Customs Broker through whom the Bills of Entry were filed by the importer | Discrepancy noticed during investigation in the import documents submitted with Customs, which were overlooked by the Customs Broker | Penalties Proposed in Show Cause Notice |
|---------|---|---|--|---|
| 01 | 2640924 dated 30.03.2019 | M/s. Seapath Shipping LLP | As per Commercial Invoice bearing no. ZH2503 dated 23.03.2019 issued by declared supplier exporter M/s. Bab Al Zain Gen. Trading LLC, Dubai, UAE and Packing List dated 25.03.2019, the Port of Loading is Jebel Ali, UAE whereas in the Bill of Entry, the Port of loading is shown as Gemlik (Gempport), Turkey. | Section 112(a), 112(b) and 114AA of Customs Act, 1962 |
| 02 | 3164987 dated 09.05.2019, 3440387 dated 29.05.2019 | M/s. S.N. Shipping | Bill of Entry No. 3164987 dated 09.05.2019, There were four containers in the Certificate of Origin whereas in other documents, the no. of containers was five as declared in the Bill of Entry. No query was raised to the importer with respect to Certificate of Origin, nor the Customs authorities were informed about such discrepancies. Bill of Entry No. 3440387 dated 29.05.2019 There was difference in container No. which was mentioned as GATU1233452 in the Certificate of Origin bearing no. 18816497 dated 29.05.2019 whereas, the same was mentioned as GATU1233412 in the Bills of Entry and other related documents such as Invoice, Packing List etc. Variation in declared description of goods in various import documents such as 'Magnesium Carbonate Lumps' in the Bill of Entry and Natural Magnesium Carbonate (Magnesite) Lumps in the invoice, and 'Natural Magnesium Carbonate (Magnesite)' in the Certificate of Origin. | Section 112(a), 112(b) and 114AA of Customs Act, 1962 |

45.1 Imposition of Penalties on CBs viz. M/s. Seapath Shipping LLP and M/s. S.N. Shipping under Section 112(a) of Custom Act, 1962:- Section 112(a) proposes penalty on a person *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act.*

45.1.1. The present case has been booked on the basis of evidences recovered from whatsapp messages Mobile Phone of Shri Dhaval Bhatt from and admitted statements of Shri Dhaval Bhatt. All the documentary evidences like Parallel Invoices, Bills of Ladings evidencing split route of transportation, packing list have been recovered from "Mundra Shipment" group created in whatsapp chat from the mobile phone of Shri Dhaval Bhatt. In "Mundra Shipment" Group Shri Dhaval Bhatt, Mujtaba bhai, and Shahab Supertara, Dubai were members, no one CBs were members of this whatapp Group.

45.1.2. No evidences from the mobile phone of Shri Dhaval Bhatt has recovered which substantiate that CBs were a part of connivance. Further, no action from part of CBs is noticed which prove that they abetted in rendering the goods liable for confiscation. The Show Cause Notice merely alleged some discrepancies were in documents which were required to be noticed by CBs but has been overlooked by them. Therefore, I find that penalty under Section 112(a) is not imposable on CBs viz. M/s. Seapath Shipping LLP and M/s. S.N. Shipping.

45.2 Imposition of Penalties on CE's viz. M/s. Seapath Shipping LLP and M/s. S.N. Shipping under Section 112(b) of Custom Act, 1962: I find that for imposition of penalty under Section 112(b), the following conditions must be satisfied:-

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

(ii) The person must have knowledge or have reason to believe that the goods acquired by him or dealt with by him in the manner as mentioned above, are liable for confiscation under Section 111

i.e. he has knowledge or has reason to believe that any one or more of the contraventions mentioned in Clause (a) to (p) of Section 111 have been committed in respect of the imported goods acquired or dealt with by him. For imposition of penalty under Section 112(b) of Customs Act, 1962, it is also necessary to prove that the person had knowledge or had reason to believe that the goods acquired or dealt with by him are liable for confiscation under Section 111.

45.2.1 There are no such records/evidences before me which prove that the person had knowledge or had reason to believe that the goods acquired or dealt with by him are liable for confiscation under Section 111 and they were engaged in such activities prescribed under Section 112(b) of Customs Act, 1962. Therefore, I refrain from imposing penalty under Section 112(b) of the customs Act, 1962 on M/s. Seapath Shipping LLP and M/s. S.N. Shipping.

45.3 I find that penalty under Section 114AA of Customs Act, 1962 is imposed on a person who 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. I find that there is no evidence on the record which makes them liable under Section 114AA of Customs Act, 1962, therefore, I refrain from imposing penalty on M/s. Seapath Shipping LLP and M/s. S.N. Shipping under Section 114AA of customs Act, 1962

46. Imposition of penalty on forwarder M/s. Cargo Trans Maritime Pvt. Ltd.:-

46.1 I find that M/s. Cargo Trans Maritime Pvt. Ltd. have acted as a forwarder in this case. They have forwarded the work relating to customs clearance to the above mentioned Customs Brokers viz. M/s. S.N. Shipping, M/s. Seapath Shipping LLP and M/s. Shri Dharm Raj Singh. The present Show Cause Notice proposes imposition on penalty on M/s. Cargo Trans Maritime Pvt. Ltd under Section 112(a), Section 112(b) and Section 114AA of Customs Act, 1962 for the reasons that the

importer used to send the import documents to M/s. Cargo Trans Maritime Pvt. Ltd. who further used to forward the same to the said Customs Brokers for filing of Bills of Entry and they themselves issue consolidated Bills to the importer for collecting various charges including Customs Clearance Agency charges, CFS charges etc. I find that being forwarder M/s. Cargo Trans Maritime Pvt. Ltd. have very limited role to forward the documents received from the Importer to the CBs and collecting various charges including Customs Clearance Agency charges, CFS charges etc. There is no evidence the record which proves that they had any role in such transaction & connivance any other activities mentioned in Section 112 and 114AA of Customs Act, 1962, therefore, I refrain from imposing penalty on them under Section 112(a), 112(b) and 114AA of Customs Act, 1962.

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

ORDER

- (i) I reject the declared classification under CTH 25191000 of 477.602 MT import goods valued at **Rs.28,19,082/-** as covered in said five Bills of Entry of the imported goods and order to re-classify them under CTH 98060000 of Customs Tariff Act, 1975 with consequential duty.
- (ii) I hold that 270 MT import goods valued at **Rs.18,56,195/- (Rs. Eighteen Lakh Fifty-Six Thousand One Hundred and Ninety-Five Only)** as covered under SPTJEAMUN1905917 dated 05.06.2019 and IGM No. 2226539 dated 06.06.2019 filed at Mundra Port is rightly classifiable under CTH 98060000 of Customs Tariff Act;
- (iii) I confirm the demand of differential customs duty totally amounting to **Rs. 84, 24,123/- (Rupees Eighty Four Lakh Twenty Four Thousand One Hundred and Twenty Three only)** on the import of **477.602 MT** covered under above mentioned 05 Bills of Entry of Raw Magnesium Lumps and Raw Magnesite Lumps and order to recover from them in terms of Section 28(8) read with Section 28 (4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962;
- (iv) I hold that demand of Customs duty totally amounting to **Rs. 57,46,780/- (Rupees Fifty-Seven Lakh Forty-Six Thousand Seven Hundred and Eighty only)** on the import of **270 MT** covered under Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019 and IGM No. 2226539 dated 06.06.2019 of Raw Magnesium Lumps under Section 28 (4) of the Customs Act, 1962 prior to clearance of goods is premature and thus do not demand the same under that provision. Accordingly, the proposal to demand of interest on such duty in terms of Section 28AA of the Customs Act, 1962 is also premature and thus do not demand the same;


- (v) I hold that the **477.602 MT** import goods valued at **Rs. 28,19,082/-** as covered in said five Bills of Entry are liable for confiscation under Section 111(m) of the Customs Act, 1962. Since, the subject goods are neither physically available nor released provisionally, I refrain from imposing any redemption fine under Section 125 of the Customs Act, 1962;
- (vi) I hold that the **270 MT** import goods valued at **Rs.18,56,195/-** as covered under Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019 and IGM No. 2226539 dated 06.06.2019 filed at Mundra Port are liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give M/s. OM Chem an option to redeem the goods on payment of Fine of Rs. 4,00,000 /- (Rs. Four Lakh only) under Section 125 of the Customs Act, 1962;
- (vii) I impose a penalty of **Rs. 84, 24,123/- (Rupees Eighty Four Lakh Twenty Four Thousand One Hundred and Twenty Three only)** plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at (iii) on M/s. OM Chem under the provisions of Section 114A of Customs Act, 1962 in respect of goods covered under 05 Bills of Entry;
- (viii) I impose a penalty of Rs.10,00,000/- (Rs. Ten Lakh only) on M/s. OM Chem under the provisions of Section 114AA of Customs Act, 1962;
- (ix) I refrain from imposing penalty on M/s. OM Chem under the provisions of Section 112 and Section 117 of the Customs Act, 1962 in respect of goods covered under 05 Bills of Entry for the reasons discussed above;
- (x) I impose a penalty of Rs. 4,00,000/- (Rs. Four Lakh only) on M/s. OM Chem under the provisions of Section 112 (a)(ii) of the Customs Act, 1962 in respect of goods covers under Bill of Lading No. SPTJEAMUN1905917 dated 05.06.2019 and IGM No. 2226539 dated 06.06.2019;
- (xi) I impose a penalty of Rs. 5,00,000/- (Rs. Five Lakh only) on Shri Dhaval Bhatt under the provisions of Section 112(a)(ii) of Customs Act, 1962;
- (xii) I impose a penalty of Rs. 2,00,000/- (Rs. Two Lakh only) on Shri Dhaval Bhatt under the provisions of Section 114AA of Customs Act, 1962;
- (xiii) I refrain from imposing penalty on Shri Dhaval Bhatt under the provisions of Sections 112(b) and 117 of the Customs Act, 1962 for the reasons discussed above;
- (xiv) I impose a penalty of Rs. 2,50,000/- (Rs. Two Lakh Fifty Thousand only) on M/s. AF Gumrukleme Nakliye VE TIC. Ltd. Sti., Turkey under Section 112(a)(ii) of Customs Act, 1962;
- (xv) I impose a penalty of Rs. 2,50,000/- (Rs. Two Lakh Fifty Thousand only) on M/s. AF Gumrukleme Nakliye VE TIC. Ltd. Sti., Turkey under Section 114AA of Customs Act, 1962;

- (xvi) I refrain from imposing penalty on M/s. AF Gumrukleme Nakliye VE TIC. Ltd. Sti., Turkey under the provisions of Section 112(b) and 117 of the Customs Act, 1962 for the reasons discussed above;
- (xvii) I impose a penalty of Rs. 3,00,000/- (Rs. Three Lakh only) on M/s. Al Sakhra Al Fiddiya General Trading LLC, UAE under Section 112(a)(ii) of Customs Act, 1962;
- (xviii) I impose a penalty of Rs. 3,00,000/- (Rs. Three Lakh only) on M/s. Al Sakhra Al Fiddiya General Trading LLC, UAE under Section 114AA of Customs Act, 1962;
- (xix) I refrain from imposing penalty on M/s. Al Sakhra Al Fiddiya General Trading LLC, UAE under the provisions of Section 112(b) and Section 117 of the Customs Act, 1962 for the reasons discussed above;
- (xx) I impose a penalty of Rs. 3,00,000/- (Rs. Three Lakh only) on M/s. BAB AL Zain General Trading LLC, UAE under Section 112(a)(ii) of Customs Act, 1962;
- (xxi) I impose a penalty of Rs. 3,00,000/- (Rs. Three Lakh only) on M/s. BAB AL Zain General Trading LLC, UAE under Section 114AA of Customs Act, 1962;
- (xxii) I refrain from imposing penalty on M/s. BAB AL Zain General Trading LLC, UAE under the provisions of Section 112(b) and 117 of the Customs Act, 1962 for the reasons discussed above;
- (xxiii) I impose a penalty of Rs. 3,00,000/- (Rs. Three Lakh only) on M/s. Avizhe Siraz Commercial Trading LLC, Shizar, Iran under Section 117 of Customs Act, 1962;
- (xxiv) I impose a penalty of Rs. 2,00,000/- (Two Lakh only) on M/s. Superterra SDN BHD.(Super Terra Pvt. Ltd./Superterra Container Line) under Section 112(a)(ii) of Customs Act, 1962;
- (xxv) I impose a penalty of Rs. 1,00,000/- (One Lakh only) on M/s. Superterra SDN BHD.(Super Terra Pvt. Ltd./Superterra Container Line) under Section 114AA of Customs Act, 1962;
- (xxvi) I refrain from imposing penalty on M/s. Superterra SDN BHD.(Super Terra Pvt. Ltd./Superterra Container Line) under the provisions of Section 112(b) and Section 117 of the Customs Act, 1962 for the reasons discussed above;
- (xxvii) I impose a penalty of Rs. 2,00,000 (Two Lakh only) on Shri Mujtaba Ahmed Paracha under the provisions of Section 112(a)(ii) of Customs Act, 1962;
- (xxviii) I impose a penalty of Rs. 1,00,000/- (One Lakh only) on Shri Mujtaba Ahmed Paracha under Section 114AA of Customs Act, 1962;
- (xxix) I refrain from imposing penalty on Shri Mujtaba Ahmed Paracha under the provisions of Section 112(b) and Section 117 of the Customs Act, 1962 for the reasons discussed above;

- (xxx) I impose a penalty of Rs. 2,00,000/- (Two Lakh only) on Shri Mustafa Ahmed Paracha under the provisions of Section 112(a)(ii) of Customs Act, 1962;
- (xxxi) I impose a penalty of Rs. 1,00,000/- (One Lakh only) on Shri Mustafa Ahmed Paracha under the provisions of Section 114AA of Customs Act, 1962;
- (xxxii) I refrain from imposing penalty on Shri Mustafa Ahmed Paracha under the provisions of Section 112(b) and Section 117 of the Customs Act, 1962 for the reasons discussed above;
- (xxxiii) I impose a penalty of Rs. 2,00,000/- (Two Lakh only) on Shri Muhammad Sahab under Section 112(a)(ii) of Customs Act, 1962.
- (xxxiv) I impose a penalty of Rs. 1,00,000/- (One Lakh only) on Shri Muhammad Sahab under Section 114AA of Customs Act, 1962.
- (xxxv) I refrain from imposing penalty on Shri Muhammad Sahab under the provisions of Section 112(b) and Section 117 of the Customs Act, 1962 for the reasons discussed above;
- (xxxvi) I impose a penalty of Rs. 1,00,000/- (One Lakh only) on M/s. M. R. Container Line, an associate of M/s. Rways Container Line, UAE under Section 112(a)(ii) of Customs Act, 1962.
- (xxxvii) I impose a penalty of Rs. 25,000/- (Twenty Five Thousand only) on M/s. M. R. Container Line, an associate of M/s. Rways Container Line, UAE under Section 114AA of Customs Act, 1962.
- (xxxviii) I refrain from imposing penalty on M/s. M. R. Container Line, an associate of M/s. Rways Container Line, UAE under the provisions of Section 112(b) and Section 117 of the Customs Act, 1962 for the reasons discussed above;
- (xxxix) I impose a penalty of Rs. 1,00,000/- (One Lakh only) on M/s. Rways Container Line, UAE under Section 112(a)(ii) of Customs Act, 1962;
- (xl) I impose a penalty of Rs. 25,000/- (Twenty Five Thousand only) on M/s. Rways Container Line, UAE under Section 114AA of Customs Act, 1962.
- (xli) I refrain from imposing penalty on M/s. Rways Container Line, UAE under the provisions of Section 112(b) and Section 117 of the Customs Act, 1962 for the reasons discussed above;
- (xlii) I impose a penalty of Rs. 1,00,000/- (One Lakh only) on M/s. Super Container Line under Section 112(a)(ii) of Customs Act, 1962;
- (xliii) I refrain from imposing penalty on M/s. Super Container Line under the provisions of Section 112(b), 114AA and 117 of the Customs Act, 1962 for the reasons discussed above;
- (xliv) I impose a penalty of Rs. 50,000/- (Fifty Thousand only) on Mr. Umair Lakdawala under the provisions of Section 112(a)(ii) of Customs Act, 1962;

- (xliv) I refrain from imposing any penalty on Mr. Umair Lakdawala under Section 112(b), Section 114AA and Section 117 of Customs Act, 1962;
- (xlvi) I refrain from imposing any penalty on Customs Brokers, M/s. Seapath Shipping LLP, Gandhidham and M/s. S.N. Shipping, Gandhidham under Section 112(a), Section 112(b) and Section 114AA of Customs Act, 1962;
- (xlvii) I refrain from imposing any penalty on forwarder M/s. Cargo Trans Maritime Pvt. Ltd., under Section 112(a), Section 112(b) and Section 114AA of Customs Act, 1962.

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.


(K. Engineer)
Pr. Commissioner of Customs
Custom House, Mundra.

F.No. GEN/ADJ/COMM/89/2023-Adjn
DIN:- 20240471MO000000FA99

Date:-25.04.2024

To

By Speed Post/E-mail

List of Noticees:

(As Per Annexure-A to this order)

Copy for information and further necessary action / information/ record to:

- a. The Chief Commissioner of Customs, CCO, Ahmedabad.
- b. Deputy Director, DRI(RU), Gandhidham, Kutchh.
- c. The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House, Mundra
- d. The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- e. The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- f. Notice Board
- g. Guard File

Annexure-A to OIO No. MUN-CUSTM-000-COM- 006-24-25

(List of Noticees)

| Sr. No. | Name of the Noticee | Address/Contact details |
|---------|---|--|
| 1 | M/s. Om Chem | Plot No. 13, Krushna Park Society, Near Water Tank, Victoria Park Road, Bhavnagar, Gujarat (omchembvn@gmail.com, dbb71@rediffmail.com) |
| 2 | Shri Dhaval Bhatt | Plot No. 13, Krushna Park Society, Near Water Tank, Victoria Park Road, Bhavnagar, Gujarat (omchembvn@gmail.com, dbb71@rediffmail.com) |
| 3 | M/s. AF Gumrukleme Nakliye VE TIC. Ltd. Sti., Turkey | M/s. Af Gumrukleme Nakliye Ve Tic. Ltd., Turkey, Cennet Mah Alpaslan CAD, A Block K:4, Kucukcekmece, Istanbul, Turkey |
| 4 | M/s. Al Sakhra Al Fiddiya General Trading LLC, UAE | M/s. Al Sakhra Al Fiddiya General Trading LLC, Dubai, P.O Box No. 117570, Dubai, UAE, email-alsakhra@emirates.net.ae, info@sfgtuac.com |
| 5 | M/s. BAB AL Zain General Trading LLC, UAE | M/s. BAB AL Zain General Trading LLC, UAE, P.O Box No. 238572, Dubai, UAE |
| 6 | M/s. Avizhe Siraz Commercial Trading LLC, Shizar, Iran | M/s. Avizhe Siraz Commercial Trading LLC, Shizar, Iran-009809177223703 |
| 7 | M/s. Superterra SDN BHD.(Super Terra Pvt. Ltd./Superterra Container Line) | M/s. Superterra SDN BHD.(Super Terra Pvt. Ltd./Superterra Container Line), through M/s. Super Container Line, 202, Godgift Tower, M. S. Road, Near Lucky Hotel, Bandra West, Mumbai-400050 (email id-majid@stslines.com majid318@gmail.com,) |
| 8 | Shri Mujtaba Ahmed Paracha | Shri Mujtaba Ahmed Paracha (email-mujtaba.ahmed@stslines.com, mzp11@hotmail.com) through M/s. Super Container Line, 202, Godgift Tower, M. S. Road, Near Lucky Hotel, Bandra West, Mumbai-400050 (email id-majid@stslines.com majid318@gmail.com,) |
| 9 | Shri Mustafa Ahmed Paracha | Shri Mustafa Ahmed Paracha mustafa.ahmed@stslines.com, mzp11@hotmail.com and through M/s. Super Container Line, 202, Godgift Tower, M. S. Road, Near Lucky Hotel, Bandra West, Mumbai-400050 (email id-majid@stslines.com majid318@gmail.com,) |
| 10 | Shri Muhammad Sahab | M/s. Superterra SDN BHD.(Super Terra Pvt. Ltd./Superterra Container Line), through |

| | | |
|----|---|---|
| | | M/s. Super Container Line, 202, Godgift Tower, M. S. Road, Near Lucky Hotel, Bandra West, Mumbai-400050 (email id-majid@stslines.com majid318@gmail.com) |
| 11 | M/s. M. R. Container Line, an associate of M/s. Rways Container Line, UAE | M/s. M. R. Container Line, an associate of M/s. Rways Container Line, UAE, 201, 2 nd Floor Khalid Bin Waleed Building Bur Dubai, P.O. Box No. 33514, Dubai, UAE (email- info@rwaysgroup.com , info@rwayslog.com , info@seafalconpk.com) |
| 12 | M/s. Rways Container Line, UAE | M/s. M. R. Container Line, an associate of M/s. Rways Container Line, UAE, 201, 2 nd Floor Khalid Bin Waleed Building Bur Dubai, P.O. Box No. 33514, Dubai, UAE (email- info@rwaysgroup.com , info@rwayslog.com , info@seafalconpk.com) |
| 13 | M/s. Super Container Line | M/s. Super Container Line, 202, Godgift Tower, M. S. Road, Near Lucky Hotel, Bandra West, Mumbai-400050 (email id-majid@stslines.com majid318@gmail.com ,) |
| 14 | Mr. Umair Lakdawala | Mr. Umair Lakdawala, 407, F-Wing, J.J. CHS Bazar Road, Bandra West, Mumbai-400050 (email- umair14193@gmail.com) |
| 15 | M/s. S.N. Shipping, Gandhidham | M/s. S.N. Shipping, Regd. Office Flat No. 97, 1 st Floor, I.P. Colony Sector-30-33, Faridabad, Haryana, Branch office-Office No. 2, 205, 2 nd Floor BMCB commercial complex, Plot No. 19, Sector-9, Nr. SBI Bank, Gandhidham, Kutch, Gujarat (email @cargotrans.in , joshikatyogesh1@gmail.com) |
| 16 | M/s. Seapath Shipping LLP, Gandhidham | M/s. Seapath Shipping LLP, Gandhidham, Office No. 204, Second Floor, Sunshine Arcade-2, Plot No. 37, Sector-8, Gandhidham (info@seapathshipping.com , rafixsama@gmail.com) |
| 17 | M/s. Cargo Trans Maritime Pvt. Ltd. | M/s. Cargo Trans Maritime Pvt. Ltd., Shyam Paragon, 1 st & 2 nd floor, DBZ South 61A, Near Rotary Bhavan, Gandhidham- (email- imp@cargotrans.in , shekhawatmalkhansingh@gmail.com) |