

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62	
A. File No.	:	GEN/ADJ/ADC/81/2021-Adjn-O/o Pr Commr-Cus-Mundra
B. Order-in- Original No.	:	MCH/ADC/MK/85/2023-24
C. Passed by	:	Smt. Mukesh Kumari Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order passed	:	19.06.2023
E. Date of order issued	:	21.06.2023
F. Show Cause Notice No. & Date	:	S/43-14/SIIB-A/Inv-Brindavan/CHM/2019-20 dated 30.12.2020
G. Noticee(s)/Party/ Importer	:	M/s Brindavan Exim Trading, IEC No 37133000824, Plot No. 72, RS No.198, Nanji Patel Vadi, Behind MSV High School, Navavas, Madhapar, Taluka Bhuj (Kutch) – 370020.

DIN-20230671MO000000F096

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 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- 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 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

**“ सीमा शुल्क आयुक्त (अपील), मुंद्रा
चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड,
नवरंगपुरा, अहमदाबाद 380 009”**

**“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 4th Floor, HUDCO Building, Ishwar Bhuvan Road,
Navrangpura, Ahmedabad-380 009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

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

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

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

(i) उक्त अपील की एक प्रति और A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

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

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

Sub.:- SCN No. S/43-14/SIIB-A/Inv-Brindavan/CHM/2019-20 dated 30.12.2020 issued to M/s Brindavan Exim Trading, Plot No. 72, RS No. 198, Nanji Patel Vadi, Behind MSV High School, Navavas, Madhapar, Taluka Bhuj (Kutch) – 370020

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BRIEF FACTS OF THE CASE

Acting upon a specific information regarding mis-declaration of goods imported by M/s Brindavan Exim Trading, IEC No 37133000824, (hereinafter referred to as 'the Importer'), situated at Plot No. 72, RS No. 198, Nanji Patel Vadi, Behind MSV High School, Navavas, Madhapar, Taluka Bhuj (Kutch) – 370020, a Bill of Entry No. 5447438 dated 25.09.2019 filed by said importer was put on hold by SIIB Section for detailed verification and further examination.

1.1 The said Bill of Entry No. 5447438 dated 25.10.2019 was filed by M/s Brindavan Exim Trading at Mundra port for the import and clearance of imported goods declared as "Aluminium UBC Scrap (Used Beverage Cans) (TALDON/TALDORK as per ISRI)" under Customs Tariff Heading No. 76020010 through their authorised CB M/s SMG ICB Logistics. The details of the Bill of Entry was as under-

Sr. No	Bill of Entry & date	Bill of Lading No & Date	Description of goods as declared	CTH as declared	Quantity Declared	Declared Invoice Value of goods
1	5447438 dated 25.10.19	JCL3446JEAMUN (Container No.) TCNU9017580 TRDU4574272 PMLU9014015 CLHU8713680	Aluminium UBC Scrap (Used Beverage Cans) (Taldon/Taldork as per ISRI)	76020010	64100 Kgs	Rs. 34,75,822/-

1.2 Based on the above intelligence, officers of the SIIB section intercepted the Containers Nos. TCNU9017580, TRDU4574272, PMLU9014015 and CLHU8713680 covered by the said Bill of Entry and detailed examination of the goods was carried out in presence of two independent panchas and CHA representative vide Examination Report dated 06.11.2019. On examination of the containers, it was found cans of Energy Drink of the brand "Formula 1" packed in crates on pallets were stuffed in all containers. Detailed inventory of the goods found on examination is as under-

Container No.	No. of Pallets	No. of Rows	No. of Crates in each row	Total No. of Cans in each crate	Total Nos of Cans in the Container
TRDU4574272	21	13	(5*3) 15	24	98,280
PMLU9014015	23	13	(5*3) 15	24	1,07,640
	1	5	(5*3) 15	24	1,800
TCNU9017580	21	13	(5*3) 15	24	98,280
CLHU8713680	21	13	(5*3) 15	24	98,280
Total Numbers of Cans of Energy Drink					4,04,280

Furthermore, on checking the labelling, it was found that the Best Before Date was 17.04.2019 and the same had already passed. Representative samples were drawn in presence of the panchas and forwarded for testing.

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1.3 The goods imported by M/s Brindavan Exim Trading vide Bill of Entry No. 5447438 dated 25.10.2019 were found grossly misdeclared with respect to the description and appeared liable for confiscation under the Customs Act, 1962 and therefore vide Seizure Memo dated 11.11.2019, the goods covered under Bill of Entry No. 5447438 dated 25.10.2019 were seized under Section 110 of the Customs Act, 1962 and the handed over to the Custodian for safe custody.

2. Brief of statements recorded during investigation;

2.1 Shri. Jiten Devjibhai Dabasiya, proprietor of M/s Brindavan Exim Trading in his statements recorded on 08.11.2019, 25.11.2019, 27.11.2019 and 05.12.2020 under section 108 of the Customs Act, 1962 stated that-

- Shri. Amit Nenwani wishes to import the consignment of Aluminium UBC Scrap for one of his client's M/s IMT Enterprises, 805, Mahakant building, Ellisbridge, Ahmedabad in the name of his firm.
- Shri. Amit Nenwani was also aware about his 2nd firm i.e. M/s New Ocean Export, FZE and asked him to use that firm for export purpose.
- All the work related to export i.e. filling of shipping bill/bill of export at UAE was undertaken by Shri. Amit Nenwani.
- On being asked by Shri. Amit Nenwani, he only prepared import documents i.e. Commercial Invoice, Packing List, Form -9 and Country of Origin and forwarded the same to Shri. Amit Nenwani.
- Shri. Amit Nenwani himself procured PSIC certificate.
- Later he come to know that Shri. B. Ram Krishna was the forwarder and Shri. Mohsin Tapia is the actual owner of the goods.
- That he had no idea that Shri. Amit Nenwani was going to import expired energy drinks in the name of Aluminium UBC Scrap.

2.2 Shri. Amit Nenwani of M/s Vansh Logistics in his statement dated 20.11.2019 and 22.10.2020 recorded under section 108 of Customs Act, 1962 stated that-

- He worked as forwarding agent and one of his friend Shri. B. Ram Krishna told him that M/s IMT Enterprises wanted to import Aluminium UBC Scrap from Dubai and asked him to arrange importer as well as exporter.
- That forwarder of M/s IMT Enterprises at Dubai had loaded the containers and he got copy of Bill of Lading and the same was forwarded to Shri. Jiten Devji Dabasiya with request to prepare other documents i.e. Commercial Invoice, Packing List, Form -9 and Country of Origin.

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- He procured PSIC certificate from someone named Mitesh or Ritesh, however he was unable to recollect his correct name and further details; that he agreed that the best before date had already passed at the time of import.

2.3 Shri B. Ram Krishna, partner of M/s Shri Balaji Logistics, in his statement dated 25.11.2019 recorded under Section 108 of the Customs Act, 1962 stated that-

- He gave reference of Shri. Mohsin Tapia of M/s IMT Enterprises to Shri. Amit Nenwani for the import of cargo under the Bill of Entry No. 5447438 dated 25.10.2019.
- That daughter of Shri. Mohsin Tapia and his son studied in the same school and he met Shri. Mohsin Tapia in a Parents Teacher Meeting.
- He provided contact details of Shri. Aditya to Shri. Mohsin Tapia and Shri. Mohsin Tapia had provided the contact details of Shri. Sumit to Shri. Aditya; Shri. Aditya provided, booked and transported containers whereas Shri. Sumit completed customs clearance process at Dubai.
- He received a Bill of Lading No. JCL3446JEAMUN on whatsapp from Shri. Aditya and the same was forwarded to Shri. Amit Nenwani.
- All the documentation work related to import of subject consignment was prepared and arranged by Shri. Amit Nenwani.
- He just introduced Shri. Amit Nenwani and Shri. Mohsin Tapia once and after that they had been in contact with each other directly.
- He received a document named BOE & doc. Pdf from Shri. Mohsin Tapia wherein description was energy drink and HSN was 22021029 and on being asked Shri. Mohsin Tapia about the same Shri. Mohsin Tapia replied that the goods as declared on the Transit Declaration i.e. "BOE & dpc.pdf" was filed at Free Zone Transit out and that as during the checkout from the Free Zone, the customs authority at Dubai verifies the documents /description on them with the description of goods mentioned on the declaration submitted during the check-in of the goods in Free Zone area and so the Shipping document/BOE was having the description as Energy Drink; otherwise it was empty energy drink cans only and that is why the BL was prepared for the Aluminium Used Beverage Scrap.

3.0 Search was conducted at the office premises of M/s IMT Enterprises and residence address of Shri. Mohsin Tapia, however M/s IMT Enterprises was not found functional from their given address and the partners have left the office premises as well as their residential address.

3.1 Further investigation revealed that the PSIC certificate bearing No. TUBY/2019/RGV/41044197 dated 10.10.2019 issued by M/s Tubby Impex Private Limited produced for the import and clearance of the goods declared as "Aluminium UBC Scrap (Used Beverage Cans) (Taldon/Taldork as per ISRI)

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covered under the Bill of Entry No. 5447438 dated 25.10.2019 was fake and fabricated. Further on scrutiny of other documents i.e. Country of Origin and Form-9, it was noticed that these documents had been made without actually dealing with the goods and prepared fraudulently.

4.0 Accordingly, a Show Cause Notice F.No. S/43-14/SIIB-A/Inv-Brindavan/CHM/2019-20 dated 30.12.2020 was issued wherein M/s Brindavan Exim Trading (Proprietor Shri Jiten Devjibhai Dabasiya), was called upon to show cause to the Additional Commissioner of Customs at Custom House, PUB, Mundra, as to why:

(i) The description and classification of the goods i.e. "Aluminium UBC Scrap (Used Beverage (TALDON/TALDORK as per ISRI) under CTH 76020010 should not be rejected and the goods should not be classified as "Formula 1 Energy Drink" under CTH 22021029 of the First Schedule to Customs Tariff Act, 1975.

(ii) The value of the goods as declared i.e. Rs. 3475822.5/- should not be rejected and the value of the goods be taken as Rs. 62,15,784.30/- for the purpose of assessment in terms of Section 14 of the Customs Act, 1962 read with Customs Valuation Rules, 2007 (As amended time to time).

(iii) The imported goods i.e. 404,280 cans of Formula 1 Energy Drink totally valued at Rs. 62,15,784.30/- should not be confiscated under Section 111(d) & 111(m) of the Customs Act, 1962.

(iv) Penalty should not be imposed on them under Section 112 & 114AA of the Customs Act, 1962.

(v) Penalty should not be imposed on M/s IMT Enterprises under Section 114AA and 117 of the Customs Act, 1962.

(vi) Penalty should not be imposed on Shri. Mohsin Tapia of M/s IMT Enterprises under Section 112, 114AA and 117 of the Customs Act, 1962.

(vii) Penalty should not be imposed on Shri. Amit Nenwani of M/s Vansh Logistic under Section 112 and 114AA of the Customs Act, 1962.

(viii) Penalty should not be imposed on M/s New Ocean Export in FZE, Ajaman Free Zone, UAE under Section 112 and 114AA of the Customs Act, 1962.

(ix) Penalty should not be imposed on M/s Jupiter Container Lines PTE Ltd under Section 112 and 114AA of the Customs Act, 1962.

(x) Penalty should not be imposed on M/s SMG ICB Logistics under Section 112 of the Customs Act, 1962.

(xi) Penalty should not be imposed on Shri. B. Ram Krishna of M/s Shri Balaji Logistics under Section 112 and 114AA of the Customs Act, 1962.

Records of Personal Hearing and Defence Submission

5. Following the principal of natural justice, opportunities of personal hearing in the subject case were and Shri. Amit Nenwani of M/s Vansh

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Logistics, Shri. B. Ram Krishna of M/s Shri. Balaji Logistics, Shri. Jiten Devjibhai Dabasiya of M/s Brindavan Exim Trading and Shri. Mahip Sahi of M/s SMG ICB Logistics appeared for personal hearing and reiterated the facts of the case. In spite of 3 opportunity of personal hearing, Shri. Mohsin Tapia of M/s IMT Enterprises neither appeared for personal hearing nor submitted any defence reply.

5.1 Shri. Amit Nenwani of M/s Vansh Logistics vide their letter dated 06.12.2022 submitted that he denied the allegations and averments levelled against him in the Show Cause Notice. He was in the business of freight forwarding and acted at the behest of Shri. B Ram Krishna and extended assistance in clearance of used beverage cans belonging to Shri. Mohsin Tapia (an acquaintance of Shri. Ram Krishna) at Mundra. He requested one of his old clients Shri. Jiten Dabasiya to file the Bill of Entry for clearance of the Aluminium UBC Scrap. He also stated that during the course of investigation, he had repeatedly requested officers of SIIB section to permit destruction of energy drinks cans.

He also stated that he never caused preparation of any documents with the knowledge or intention that the goods were expired energy drinks cans. He also submitted that the declaration filed before Dubai Customs was not in his knowledge as he was not aware that the goods he was handling are Energy Drinks Cans and Aluminium UBC Scrap and he was not liable for penal action under section 112 and 114AA of Customs Act, 1962.

During the personal hearing Shri. Amit Nenwani stated that he worked as forwarding agent/customs clearance since 2015; that he got reference of Shri. B. Ram Krishna from shipping line and knew Shri. B. Ram Krishna since 2018-19. Shri. B. Ram Krishna introduced him with Shri. Mohsin Tapia on telephone and Shri. Mohsin Tapia intimated that he wants to clear a consignment of scrap from Dubai and requested to arrange an importer with GPCB license and later requested to arrange exporter also. He arranged importer/exporter as per instructions of Shri. Mohsin Tapia. He arranged PSIC certificate through Ritesh or Mitesh. He gave draft bill of lading to Shri. Jiten Devjibhai and asked him to prepare documents i.e. Commercial Invoice, Packing List, Country of Origin, Form-9 and the same were mailed to him by Shri. Jiten Devjibhai. He was not aware that the goods under import are cans of energy drinks. As Shri. Mohsin Tapia is not responding his calls, he asked Shri. B. Ram Krishna to transfer Rs. 3,00,000/- to crush the empty cans. He is willing to pay the fine/penalty leviable on him, however requested for the minimum fine/penalty.

5.2 Shri Jiten Devjibhai Dabasiya of M/s Brindavan Exim Trading vide letter dated 13.12.2022 stated that Shri. Amit Nenwani asked him to use his IEC for the import and clearance of goods i.e. Aluminium UBC Scrap and as he has good relations with Shri. Amit Nenwani in the past, he allowed Shri. Amit Nenwani to file the Bill of Entry on the name of his firm. Further Shri. Amit Nenwani asked him to prepare import documents i.e. Commercial Invoice, Packing List, Country of Origin, PSIC certificate, Form-9. On being asked to submit copy of Bill of Lading, Weightment Slip, PSIC

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documents, Shri. Amit Nenwani only provided Bill of Lading through Whatsapp. As directed by Shri. Amit Nenwani he prepared import documents i.e. Commercial Invoice, Packing List, Country of Origin and Form 9. He has no idea that the goods under import are Energy Drinks Cans and not Aluminium UBC Scrap; that he had not knowingly or intentionally made, signed, or used any declaration, statement or documents which is false or incorrect in any material particular; that he had no interest in the impugned goods as he allowed Shri. Amit Nenwani to import Aluminium UBC Scrap only in good faith. Shri. Jiten Devjibhai Dabasiya further requested to drop the proceedings initiated against him.

During the personal hearing, Shri. Jiten Devjibhai Dabasiya stated that he knew Shri. Amit Nenwani since 2018 as Shri. Amit Nenwani looked after the customs clearance work of the containers imported by him. Shri. Amit Nenwani informed him that the goods under import are Aluminium UBC Scrap and asked him to file the bill of entry on his firm's name i.e. M/s Brindavan Exim Trading; that the firm used for export purpose i.e. M/s New Ocean Export, FZE (Exporter) also belongs to him; that he prepared documents i.e. Commercial Invoice, Packing List, Country of Origin, Form-9 on the instructions of Shri. Amit Nenwani and mailed all documents to Shri. Amit Nenwani; that he also asked Shri. Amit Nenwani to provide PSIC and photos of cargo, however the same was not provided by Shri. Amit Nenwani; that No transaction has been done between him and Shri. Amit Nenwani; that he was not aware that the goods under import are cans of energy drinks; that he had trust on Shri. Amit Nenwani that's why he gave his IEC for import and export; that he doesn't want the goods and requested for the destruction of cargo. That he is ready to pay fine/penalty leviable on him.

5.3 Shri. B. Ram Krishna of M/s Shri. Balaji Logistics vide letter dated 03.06.2021 denied the allegations as mentioned in the Show Cause Notice and stated that-

He worked as forwarding agent and he was casually acquainted with Shri. Mohsin Tapia as their children studied in the same school. Shri. Mohsin Tapia approached him for some business transactions accordingly, he arranged a conference call between Shri. Mohsin Tapia and Shri. Amit Nenwani, however no financial dealings were discussed during the call. He had merely forwarded the documents received by him either to Shri. Amit Nenwani or Shri. Mohsin Tapia however he had no role in preparations of documents.

He noticed that in the export documents, description was energy drink under HSN 22021029 however Shri. Mohsin Tapia wanted the description as Scrap of Beverage Cans under HSN 76020010 in the bill of lading. On being asked to Shri. Mohsin Tapia and Shri. Mohsin Tapia informed him that the goods were cleared at free zone transit for ultimate export and the goods under import are empty energy drink cans only.

On allegations of financial transactions, he stated that he asked Shri. Mohsin Tapia to transfer Rs. 3,00,000/- in Shri. Amit Nenwani account as Shri. Mohsin Tapia is not responding Shri. Amit Nenwani calls.

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During the course of personal hearing, Shri. B. Ram Krishna stated that the submission dated 03.06.2021 given by him is final and also requested for the minimum fine/penalty.

5 . 4 Shri. Mahip Sahi, authorised representative of M/s SMG ICB Logistics appeared for personal hearing and stated that he was authorised representative of M/s SMG ICB Logistics and in the work of customs clearance since 2016. He got documents from Shri. Amit Nenwani and filed the bill of entry No. 5447438 dated 25.10.2019 with first check request.

He also stated that he has completed all KYC procedures and scrutinized all documents. He has no idea that the goods under import are cans of energy drinks and came to know only after the examination. He stated that he has completed KYC process and address verification process, further produced importer and forwarder to give statement. He filed the bill of entry on the basis of documents received from Shri. Amit Nenwani and was not aware that the goods under import are cans of energy drinks hence requested for the minimum fine/penalty.

6. Re-determination of Value- Investigation also revealed that the documents presented alongwith the goods are fabricated and have been admittedly issued without supply of the corresponding goods by showing an arbitrary price. The declared value of goods in documents i.e. USD 750 PMT total value USD 48075 (Rs. 34,75,822.5/-) is not the correct transaction value of the goods. On scrutiny of documents submitted at the time of shipping before Dubai Customs by the actual supplier, it is evident that the actual value of the goods is AED 309243 i.e. (Rs. 62,15,784.30 /- Exchange rate 20.10/- as per notification No. 076/2019-customs (N.T) dated 17.10.2019.

DISCUSSION AND FINDINGS

7. I have carefully gone through the instant Show Cause Notice dated 30.12.2020 and the defence submissions of Noticee and the records of personal hearing dated 06.12.2022 and the available records of the case. I find that the following issues are involved in the subject Show Cause Notice, which are required to be decided –

(i) Whether the description and classification of the goods i.e. "Aluminium UBC Scrap (Used Beverage (TALDON/TALDORK as per ISRI) under CTH 76020010 is liable for rejection and reclassification as "Formula 1 Energy Drink" under CTH 22021029 of the First Schedule to Customs Tariff Act, 1975.

(ii) Whether the declared value i.e. Rs. 3475822.5/- is liable for rejection and re-determined to Rs. 62,15,784.30/- for the purpose of assessment in terms of Section 14 of the Customs Act, 1962 read with Customs Valuation Rules, 2007 (As amended time to time).

(iii) Whether the imported goods i.e. 404,280 cans of Formula 1 Energy Drink totally valued at Rs. 62,15,784.30/- are liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962.

(iv) Whether M/s Brindavan Exim is liable for penal action under Section

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112 & 114AA of the Customs Act, 1962.

(v) Whether M/s IMT Enterprises is liable for penal action under Section 117 & 114AA of the Customs Act, 1962.

(vi) Whether Shri. Mohsin Tapia is liable for penal action under Section 112, 114AA and 117 of the Customs Act, 1962.

(vii) Whether Shri. Amit Nenwani of M/s Vansh Logistic is liable for penal action under Section 112 & 114AA of the Customs Act, 1962.

(viii) Whether M/s New Ocean Export in FZE, Ajaman Free Zone, UAE is liable for penal action under Section 112 and 114AA of the Customs Act, 1962.

(ix) Whether M/s Jupiter Container Lines PTE Ltd is liable for penal action under Section 112 and 114AA of the Customs Act, 1962.

(x) Whether M/s SMG ICB Logistics is liable for penal action under Section 112 of the Customs Act, 1962.

(xi) Whether Shri. B. Ram Krishna of M/s Shri Balaji is liable for penal action under Section 112 and 114AA of the Customs Act, 1962.

7.1 I find that one Bill of Entry bearing No. 5447438 dated 25.09.2019 filed by M/s Brindavan Exim Trading situated at Plot No. 72, RS No. 198, Nanji Patel Vadi, Behind MSV High School, Navavas, Madhapar, Taluka Bhuj (Kutch) – 370020 for the import and clearance of goods declared as "Aluminium UBC Scrap (Used Beverage Cans) (TALDON/TALDORK as per ISRI)" under Customs Tariff Heading No. 76020010 was put on hold by SIIB Section and on examination it was found cans of Energy Drink of the brand "Formula 1" packed in crates on pallets were stuffed in all containers instead of goods declared as Aluminium UBC Scrap. Detailed inventory of the goods found on examination is as under-

Container No.	No. of Pallets	No. of Rows	No. of Crates in each row	Total No. of Cans in each crate	Total Nos of Cans in the Container
TRDU4574272	21	13	(5*3) 15	24	98,280
PMLU9014015	23	13	(5*3) 15	24	1,07,640
	1	5	(5*3) 15	24	1,800
TCNU9017580	21	13	(5*3) 15	24	98,280
CLHU8713680	21	13	(5*3) 15	24	98,280
Total Numbers of Cans of Energy Drink					4,04,280

Furthermore, on checking the labelling, it was also found that the Best Before Date was 17.04.2019 and the same had already passed.

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7.2 I find that the value declared by the import at the time of import i.e. USD 750 PMT total value USD 48075 (Rs. 34,75,822.5/-) is not the correct transaction value of the goods as the documents i.e. Commercial invoice, packing list are fabricated and have been admittedly issued without supply of the corresponding goods. I also find in the documents submitted at the time of shipping before Dubai Customs by the actual supplier declared the value of the goods as AED 309243 i.e. (Rs. 62,15,784.30 /- Exchange rate 20.10/- as per notification No. 076/2019-customs (N.T) dated 17.10.2019. I find that actual value of the goods is 62,15,784.30 /- (Rupees Sixty-Two Lakh Fifteen Thousand Seventy-Eight Hundred Four only) as discussed in para 6 above.

Hence, I find that the value of goods i.e. Rs. 34,75,833 /-) declared by the importer at the time of import is not the correct transaction value and therefore it is liable for rejection under Rule 12 of the Customs Valuation (Determination of value of the imported goods), Rules 2017 and to be redetermined to 62,15,784.30 /- (Rupees Sixty-Two Lakh Fifteen Thousand Seventy-Eight Hundred Four only) under Rule 3(I) of the Customs Valuation (Determination of value of the imported goods), Rules 2017

7.3 I find that the goods which have been mis-declared as "Aluminium UBC Scrap (Used Beverage Cans) (TALDON/TALDORK as per ISRI)" under CTH 76020010 are actually "Formula 1 Energy Drink" falling under Customs Tariff Heading No. 22021029 and it should conform to the Standards for Beverages- Non Alcoholic- Carbonated as per regulation no. 2.10.6 & Food Category System No. 14.1.4 of the Food Safety and Standards (Food Products & Food Additives) Regulations, 2011. However, the same does not conform to it and it also contravenes the Regulations of Food Safety and Standards (Packaging and labelling) Regulations, 2011. Further it also contravenes the Regulation No. 5(6) [Gazette of India Extraordinary, Part III, Section 4, Notification no. F. Reg/11/25/Import Amendment/FSSAI-2017 dated 07.02.2018] and Regulation no. 6(4)(a) (b) & (c) of Chapter III of the Food Safety and Standards (Food import) Regulations, 2017.

7.4 I find that the Show Cause Notice seeks to confiscate the goods under the provisions of section 111 (d) and 111 (m) of Customs Act, 1962. In this regard, the provisions of section 111 (d) and 111 (m) of Customs Act, 1962 are reproduced below-
Section 111: Confiscation of improperly imported goods, etc. -

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

- (a) xxx
- (b) xxxx
- (c) xxxx

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being

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imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) xxxx

(f) xxxx

(g) xxx

(h) xxx

(i) xxx

(j) xxx

(k) xxx

(l) xxx

(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

.....

(n) xxxx

(o) xxx

(p) xxxx

I find that the goods which have been mis-declared as "Aluminium UBC Scrap (Used Beverage Cans) (TALDON/TALDORK as per ISRI)" under CTH 76020010 are actually "Formula 1 Energy Drink" are liable for confiscation under section 111(d) and 111 (m) of the Customs Act, 1962.

7.5 I find that Shri Jiten Devjibhai Dabasiya, who was the proprietor of M/s Brindavan Exim Trading (Importer) and filed the Bill of Entry No. 5447438 dated 25.10.2019 and prepared incriminating documents such as the Commercial Invoice of the supplier, Packing List, Form 9 and Country of Origin without the actual supply of the goods mentioned in these documents as per the directions given by Shri. Amit Nenwani. I also find that the supplier unit i.e. M/s New Ocean Export as shown in commercial invoice and other documents is also owned by Shri. Jiten Devjibhai Dabasiya. Hence, Shri. Jiten Devjibhai Dabasiya not only gave his IEC for import but also for export purpose.

I find that Shri. Jiten Devjibhai Dabasiya prepared incriminating documents without any verification and has not even seen the photographs during loading of containers at the exporting port or the PSIC certificate of the consignment.

(i) Commercial Invoice - It shows the description of goods as UBC (Used Beverages Cans) whereas it is Aluminium UBC Scrap (Used Beverage Cans) (TALDON/TALDORK as per ISRI) in other documents such as Bills of Entry, PSIC Certificate etc.

(ii) Packing List - It shows the packing as "Palate" whereas the same is in "compressed bales" in other documents such as PSIC, Form 9 etc.

(iii) Form 9 - It shows the goods as UBC (Used Beverages Cans) Scrap whereas the same is not so. Again it also shows that the packing type is compressed bales, which is again wrong. Further the waste identification code written is "B3020", which is not for Aluminium Scrap but is for Paper,

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paperboard and paper product wastes. It shows that the Form 9 has been issued / prepared fraudulently.

(iv) Certificate of Origin - The certificate of origin issued by the supplier i.e. M/s New Ocean Export shows the origin of the goods as "Iraq Origin" whereas the goods are found to be of German origin.

I find that Shri. Jiten Devjibhai Dabasiya of M/s Brindavan Exim Trading filed the Bill of Entry with wrong declarations with the Customs Department and have imported "Formula 1 Energy Drink" by mis-declaring the same as "Aluminium UBC Scrap (Used Beverage Cans) (TALDON/TALDORK as per ISRI)". The said Energy drinks are also found to have passed their best before date and have been proved to be unfit for consumption as the same did not conform to the standards prescribed for the Non-Alcoholic Beverages in the country making the goods liable for confiscation under section 111 (d) and 111(m) of Customs Act, 1962 as discussed in para 7.4 above and from this act, the importer M/s Brindavan Exim Trading render himself liable for penal action under section 112a(i) and 114AA of Customs Act, 1962. During the course of personal hearing, Shri. Jiten Devjibhai Dabasiya requested for the destruction of cargo and ready to pay fine/penalty leviable on him.

7.6 From the voluntary statement of Shri. Jiten Devjibhai Dabasiya and submission made by Shri. Amit Nenwani during the personal hearing, I find that Shri. Amit Nenwani forwarded draft Bill of Lading to Shri. Jiten Devjibhai Dabasiya and asked him to prepare import documents and accordingly, Shri. Jiten Devjibhai Dabasiya, on the directions given by Shri. Amit Nenwai of M/s Vansh Logistics filed the Bill of Entry No. 5447438 dated 25.10.2019 and prepared incriminating documents such as the Commercial Invoice of the supplier, Packing List, Form 9 and Country of Origin without the actual supply of the goods mentioned in these documents. I find that Shri. Amit Nenwani in his statement stated that he received the PSIC (Pre-Shipment Inspection Certificate) from Shri. Mitesh or Ritesh however he did not remember exactly how the PSIC certificate had been received. During the course of investigation, it was also revealed the PSIC Certificate) bearing No. TUBY/2019/RGV/41044197 dated 10.10.2019 issued in the name of M/s Tubby Impex Private Limited was also fabricated.

From the above facts, I find that Shri. Amit Nenwani arranged the importer with GPCB (Gujarat Pollution Control Board) License and an exporter from Dubai in the subject case on the directions of Shri. Mohsin Tapia and ask the proprietor M/s Brindavan Exim Trading to prepare false and incorrect documents such as "Commercial Invoice", "Packing List", "Certificate of Origin" and "Form-9" without actual supply of the goods. Further, He arranged PSIC certificate himself which was also fabricated. I find that Shri. Amit Nenwani has not only got fabricated himself, he has also asked the importer to prepare false and incorrect documents and thus rendered himself liable for penal action under section 112 (a)(i) & 114 AA of Customs Act, 1962.

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7.7 I also find that Shri. B. Ram Krishna introduced Shri. Mohsin Tapia of M/s IMT Enterprises and Shri. Amit Nenwani of M/s Vansh Logistics and later introduced Shri. Mohsin Tapia to Shri. Aditya, a forwarding agent at Dubai. Further I also find that Shri. Amit Nenwani of M/s Vansh Logistics, Shri. Mohsin Tapia of M/s IMT Enterprises and Shri. B. Ram Krishan were communicating through a whatsapp group in the name of "4*40 hq shipment". In the subject group, Shri. B. Ram Krishna shared a copy of Bill of Export document "BOE and dpc.pdf" which clearly stated that the goods under import were Energy Drink with HSN 22021029. From the above I find that Shri. B. Ram Krishna was aware about the description of goods in export documents was energy drink under HSN 22021029. During the course of personal hearing Shri. B. Ram Krishna stated that he noticed that in the export documents, description was energy drink under HSN 22021029 however Shri. Mohsin Tapia wanted the description as Scrap of Beverage Cans under HSN 76020010 in the bill of lading and on being asked to Shri. Mohsin Tapia and Shri. Mohsin Tapia informed him that the goods were cleared at free zone transit for ultimate export and the goods under import are empty energy drink cans only. However, Shri. B. Ram Krishna failed to submit any evidence/proof co-relating the submissions made during the personal hearing. I find that Shri. B. Ram Krishna was aware about the mis-declaration of cargo and suppressed the facts, hence rendered himself liable for penal action under section 112(a)(i) and section 114AA of Customs Act, 1962.

7.8 I find that M/s IMT Enterprises is the notified party of the consignment and the proprietor of M/s IMT Enterprises Shri. Mohsin Tapia is the main conspirator in the subject case. Shri. Mohsin Tapia neither responded the summons issued by the investigation section nor appeared before the adjudicating authority. I also find that Shri. Mohsin Tapia first contacted Shri. B. Ram Krishna then Shri. Amit Nenwani and asked him to arrange importer in India with GPCB License and also an exporter at Dubai for carrying out the illegal import. I also find that though the name of M/s IMT Enterprises was mentioned in the Bill of Lading as "Notified Party" however the said firm was not functioning from the registered address. I find that Shri. Mohsin Tapia had vacated the premises as well as the place/house he had residing without informing the department. I find that Shri. Mohsin Tapia has not presented himself before Customs and has also stopped attending the calls of the persons, with whom he had done all the conspiracy to defraud the exchequer and to import the expired energy drinks in the country against all the restrictions and malafide intent. I find by doing this act, Shri. Mohsin Tapia rendered himself liable for penal action under Section 112 (a)(i) & Section 114AA of Customs Act, 1962.

I also find that the firm M/s IMT Enterprises which is the notified party in the subject case is equally responsible for attempt to cause the fraud, with use of the fake documents which they had belief were false and incorrect documents. M/s IMT Enterprises has not uploaded its address with the authorities and have not co-operated in the investigation. I find that M/s IMT Enterprises suppressed the facts with respect to the goods under import, hence rendered itself liable for penal action under section

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112 & Section 114AA of Customs Act, 1962.

7.9 I also find that M/s New Ocean Export in FZE, Ajaman Free Zone, UAE (acting through its proprietor Shri Jiten Devjibhai Dabasiya) is the party which has been shown as the Exporter in the documents produced by the importer. It has been admitted by the Proprietor of M/s New Ocean Export that they have prepared false and incorrect documents without the actual supply of the goods covered therein. These false and incorrect documents prepared by them have been used by the importer, so M/s. New Ocean Export have rendered himself liable for penal action under Section 112 (a) (i) & Section 114AA of Customs Act, 1962. Further the noticee neither submitted any defence submission nor appeared for personal hearing.

7.10 I also find that M/s Jupiter Container Lines PTE Ltd, has prepared a false and incorrect Bill of Lading which has been presented by the importer for clearance of their goods. They have not taken into consideration the load port documents while preparing the Bill of Lading. As per the load port documents the goods are Energy Drinks of German Origin falling under HS Code 22021029 having a value of AED 309243/- and. the name of the Exporter is M/s CNS Logistics whereas M/s Jupiter Container Lines PTE Ltd have prepared the Bill of Lading by showing the goods as Aluminium Scrap Taldon/Taldork falling under HS Code 76020010 and consignor/shipper as M/s New Ocean Export, UAE, thus they have rendered themselves liable for penal action under Section 112 (a) (i) & Section 114AA of Customs Act, 1962. Further the noticee neither submitted any defence submission nor appeared for personal hearing.

7.11 I now turn to the last issue, namely, the issue of liability of penalty on M/s SMG ICB Logistics. The Show Cause Notice seeks to impose a penalty under Section 117 of the Customs Act, 1962 on them. In this connection, I have gone through the provisions of Section 117 of Customs Act, 1962 which reads as under:

Section 117. Penalties for contravention, etc., not expressly mentioned. -

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

5.9 In this context, the CB M/s SMG ICB Logistics during personal hearing stated that they filed the Bills of Entry as per the documents provided by the importer. There is nothing on record to show that any act or omission on his part has rendered the goods liable for confiscation of goods under Section 111.

There is nothing on record to show that the CB had knowledge of the true nature of the goods or that the CB had any interest in the mis-declaration. The CB is expected to discharge his obligations under CBLR, 2018 which does not include having knowledge of what goods were

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actually imported or examining the imported goods before filing the Bill of Entry.

8. In view of the forgoing discussions and findings, I pass the following order

ORDER

- i. I reject the description and classification of the goods i.e. UBC Scrap (Used Beverage (TALDON/TALDORK as per ISRI) under CTH 76020010 and order to reclassify the same as "Formula 1 Energy Drink" under CTH 22021029 of the First Schedule to Customs Tariff Act, 1975.
- ii. I reject the declared value i.e. Rs. 3475822.5/- and order to re-assess the same as Rs. 62,15,784.30/- for the purpose of assessment in terms of Section 14 of the Customs Act, 1962 read with Customs Valuation Rules, 2007 (As amended time to time).
- iii. I order for absolute confiscation of imported goods i.e. 404,280 cans of Formula 1 Energy Drink totally valued at Rs. 62,15,784.30/- be confiscated under Section 111(d) & 111(m) of the Customs Act, 1962 and order for destruction within three months from the receipt of this order. I also order M/s Brindavan Exim Trading to pay the destruction charges and ensure no environmental pollution and degradation occurs during the destruction.
- iv. I impose penalty of Rs. 1,00,000/- (Rupees One Lakh only) under 112 (a) (i) and Rs. 2,00,000/- (Rupees Two Lakh only) under section 114AA of Customs Act, 1962 on M/s Brindavan Exim Trading.
- v. I impose penalty of Rs. 2,00,000/- (Rupees Two Lakh only) under 112 (a) (i), Rs. 5,00,000/- (Rupees Five Lakh only) under section 114AA of Customs Act, 1962 on Shri. Mohsin Tapia of M/s IMT Enterprises.
- vi. I impose penalty of Rs. 1,00,000/- (Rupees One Lakh only) under 112 (a) (i), Rs. 2,00,000/- (Rupees Two Lakh only) under section 114AA of Customs Act, 1962 on M/s IMT Enterprises.
- vii. I impose penalty of Rs. 1,00,000/- (Rupees One Lakh only) under 112 (a) (i) and Rs. 2,00,000/- (Rupees Two Lakh only) section 114AA of Customs Act, 1962 on Shri. Amit Nenwani of M/s Vansh Logistics.
- viii. I impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) under section 112 (a) (i) and Rs. 1,00,000/- (Rupees One Lakh only) under section 114AA of Customs Act, 1962 on M/s New Ocean Export.
- ix. I impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) under section 112 (a) (i) and Rs. 1,00,000/- (Rupees One Lakh only) under section 114AA of Customs Act, 1962 on M/s Jupiter Container Lines PTE Ltd.
- x. I don't impose any penalty on M/s SMG ICB Logistics under 117 of the Customs Act, 1962.
- xi. I impose penalty of Rs. 1,00,000/- (Rupees One Lakh only) under 112 (a) (i) and Rs. 2,00,000/- (Rupees Two Lakh only) section 114AA of Customs Act, 1962 on B. Ram Krishna of M/s Shri. Balaji

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Logistics.

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

Signed by

Mukesh Kumari

Date: 19-06-2023 18:58:50

Additional Commissioner of Customs**Custom House, Mundra****By RPAD/ By Hand Delivery/Email/Speed Post**

To,

- i. M/s Brindavan Exim Trading, Address 72/198, Behind MSV High School, Nanji Patel Vadi, Madhapar, Bhuj- Kutch.
- ii. Shri. Amit Nenwani, proprietor of M/s Vansh Logistics, residing at Plot No. 279, Ward 3A, Adipur, Kutch
- iii. Shri. Mohsin Tapia of M/s IMT Enterprises, 805, Mahakant Building, Ellisbridge, Ahmedabad
- iv. M/s IMT Enterprises, 805, Mahakant Building, Ellisbridge, Ahmedabad
- v. M/s New Ocean Export in FZE, Ajaman Free Zone, UAE
- vi. M/s Jupiter Container Lines, PTE Ltd, UEN- 201614567N, 111, North Bridge Road, 08-19 peninsula plaza, Singapore- 179098
- vii. M/s SMG ICB Logistics, Plot No. C-49, US Villa, Baroi Road, Mundra- 370421
- viii. Shri. B. Ram Krishna of M/s Shri Balaji Logistics, B-62 Management Enclave, Near Mansi Circle, Vastrapur, Ahmedabad- 380015
- ix. The Deputy/Assistant Commissioner (Disposal Section), Custom House, Mundra.
- x. The Deputy/Assistant Commissioner (RRA), Custom House, Mundra.
- xi. The Deputy/Assistant Commissioner (TRC), Custom House, Mundra.
- xii. The Deputy/Assistant Commissioner (Group-IV), Custom House, Mundra.
- xiii. The Deputy/Assistant Commissioner (SIIB), Custom House, Mundra.
- xiv. Guard File

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