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

A	**FILE NO.** फ़ाइल संख्या	GEN/ADJ/ADC/508/2025-Adjn-O/o Pr Commr-Cus-Mundra
B	**OIO NO.** आदेश संख्या	MCH/ZDC/ADC/534/2025-26
C	**PASSED BY** जारीकर्ता	Dipak Zala, Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुंद्रा।
D	**DATE OF ORDER** आदेश की तारीख	09.01.2026
E	**DATE OF ISSUE** जारी करने की तिथि	09.01.2026
F	**SCN No. & Date** कारण बताओ नोटिस क्रमांक	GEN/ADJ/ADC/508/2025-Adjn-O/o Pr Commr-Cus-Mundra dated 20.02.2025
G	**NOTICEE/ PARTY/ IMPORTER** नोटिसकर्ता/पार्टी/आयातक	i. M/s. Shri Nath Agro Industries (IEC: ACBFS0218H), ii. M/s. Arjun Das Rathi, Partner of M/s. Shri Nath Agro Industries iii. M/s. ALX Shipping Agencies India Pvt. Ltd.
H	**DIN/**दस्तावेज़ पहचान संख्या	20260171MO0000555B95

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1. यहआदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकताहै-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

"सीमाशुल्कआयुक्त) अपील(,
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन 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. उक्तअपील यहआदेश भेजने की दिनांक से 60दिन 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 -/रुपए 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 be 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 सं° 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 ड्यूटि /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, सीमाशुल्क) अपील (नियम, 1982और सीमाशुल्क 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.

BRIEF FACTS OF THE CASE

Specific intelligence gathered by the Directorate of Revenue Intelligence (hereinafter referred to as 'DRI') indicated that **M/s. Shri Nath Agro Industries (IEC: ACBFS0218H)** (*hereinafter also referred to as the "Importer"*) having address as '**E-1-270 & 271, Agro Food Park, Boranada, Jodhpur, Rajasthan - 342012**' is indulged into illegal import of Watermelon Seeds (also known as Melon Seeds) by way of violation of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry (**RUD No. 1**). As per said notification *"Import Policy of Melon Seeds is 'Free' with effect from 01st May 2024 up to 30th June 2024. Consignments with 'shipped on board' Bill of lading issued till 30th June 2024 shall be treated as 'Free' to import"*.

2. Acting upon the intelligence, the containers covered under the Bill of

Entry No. 5373154 dated 02.09.2024 filed by the importer M/s Shri Nath Agro Industries, were tracked from the website of M/s Aladin Express Line (https://erpalx.aladinxp.com/ecomonline/tracking.do). Primarily it was noticed that there were major discrepancies between the details mentioned in BL of Lading No. ALXUPZU00000018 for BE No. 5373154 dated 02.09.2024 and the tracking details downloaded from aforementioned website i.e. Voyage of the vessel, Shipped on Board date, etc. Accordingly, the import consignment covered under Bill of Entry No. 5373154 dated 02.09.2024 filed by the importer M/s Shri Nath Agro Industries lying in the CFS of M/s Central Warehousing Corporation (CWC), APSEZ, Mundra was put on hold for examination by officers of DRI. The goods covered under Bill of Entry No. 5373154 dated 02.09.2024 were examined by officers of DRI on 13.09.2024 (for 2 containers) and 07.11.2024 (for 3 containers) and accordingly panchnama dated 13.09.2024 and 07.11.2024 were drawn at the CFS of M/s Central Warehousing Corporation (CWC), APSEZ, Mundra in respect of the same.

3. During the investigation, a search was conducted at the office premise of M/s ALX Shipping Agencies India Pvt. Ltd. (General Agent working in India on behalf of M/s Aladin Express Line) (*hereinafter M/s ALX Shipping Agencies India Pvt. Ltd. also referred to as "M/s ALX Shipping"*) having office situated at '201, Rajkamal Arcade, 2nd Floor, Plot No. 353, Ward 12-B, Gandhidham-370201' under Panchnama dated 17.09.2024. During the Panchnama proceedings carried out at the said address, some documents and e-mail correspondences relating to present investigation were resumed by the visiting officers of DRI on a reasonable belief that the same were required for DRI investigation.

4. During the course of investigation, statements of concerned persons were recorded under Section 108 of the Customs Act, 1962 as given below:

4.1 Statement of Shri Rahul Virchand Lodaya, Branch Manager of M/s ALX Shipping (Delivery Agent of Shipping Line i.e. M/s Aladin Express Line), having address as '201, Rajkamal Arcade, 2nd Floor, Plot No. 353, Ward 12-B, Gandhidham-370201', was recorded under Section 108 of the Customs Act, 1962 on 11.09.2024 wherein he inter alia stated that he is working as Branch Manager in M/s ALX Shipping for Kandla and Mundra locations. He stated that they generally receive e-mail communications regarding consignments sent by M/s Aladin Express Line and on arrival of the consignments, they work as a delivery agent on behalf of line. He further submitted two Bills of Lading bearing no. ALXUPZU00000018 wherein one BL was showing date of Shipped-on-Board as 28.06.2024 (Received from Line Agent, Sudan Port) while another was showing Shipped-on-Board date as 26.07.2024 (Received in system/software shared to them by M/s Aladin Express). He stated that due to some issues, 5 containers bearing nos. FCIU8464395, SEGU4917609, SEGU6295850, TCLU8243427 and TCNU3018246 were shut out and hadn't shipped on board on 26.07.2024 at Sudan Port and actual date of shipped on board is 26.07.2024 as per Bill of Lading No. ALXUPZU00000018 dated 26.07.2024. He stated that his system software is most updated and accurate date of Shipped on Board is 26.07.2024 for container nos. FCIU8464395, SEGU4917609, SEGU6295850, TCLU8243427 and

TCNU3018246. On being shown tracking of said containers available on website of M/s Aladin Express Line official website (https://erpalx.aladinxp.com/ecomonline/tracking.do), he confirmed that shipped on board date 26.07.2024 is correct as per official website of M/s Aladin Express Line as it is correctly updated and accurate.

4.2 Statement of Shri Arjun Das Rathi, Partner of M/s. Shri Nath Agro Industries, E-1-270 & 271, Agro Food Park, Boranada, Jodhpur, Rajasthan - 342012, was recorded under Section 108 of the Customs Act, 1962 on 01.10.2024 and 03.12.2024 wherein he inter alia stated that he is partner of M/s Shri Nath Agro Industries since May, 2007 and looking after the work related to purchase, sales and import for M/s Shri Nath Agro Industries; that he is holding 97% of share in the firm while other three partners are having 1% share each. He further submitted some documents i.e. copy of commercial invoice dated 28.06.2024, Packing list dated 28.06.2024, B/L no. ALXUPZU00000018 (Shipped on board 28.06.2024), COO etc. and stated that the same were received from his overseas supplier Shri Mukesh Maheshwari based in Dubai. Shri Arjun Das Rathi submitted that he got idea of importing watermelon seeds through Shri Jayesh Maheshwari of Unjha, Gujarat who introduced him to Shri Mukesh Maheshwari who was earlier living at Unjha. On being shown the statement dated 11.09.2024 of Shri Rahul Virchand Lodaya, Branch Manager of M/s ALX Shipping (Delivery Agent of Shipping Line i.e. M/s Aladin Express Line), Shri Arjun Das Rathi submitted that B/L no. ALXUPZU00000018 dated 26.07.2024 appears to be correct. On being shown the e-mail communications email communication dated 10.09.2024 at 16:19 received on their email ID shrinathgum.chemical@gmail.com from operation@venusshippingco.com (Venus Shipping Co. Ltd.) which stated that "*please note actually subject B/ L # ALXUPZU00000018 sailed from Sudan on 26th July and we already informed shipper about the discrepancies in the B/L Date*", he put his dated signature on copy of email communication and stated that this email communication has been handled by Shri Govind Vaishnav, Accountant of his firm. On being shown the container tracking report in respect of all 05 container nos. FCIU8464395, SEGU4917609, SEGU6295850, TCLU8243427 and TCNU3018246 downloaded from the official website https://erpalx.aladinxp.com/ecomonline/tracking.do, he stated that BL documents may have been tampered by someone as actual date of shipped on board is 26.07.2024. Shri Arjun Das Rathi submitted that he has made part payment of 200000$ on 30.05.2024 for the subject consignment.

4 . 3 Statement of Shri Maheshvari Jaykumar Khajuromal son of Maheshvari Khajuromal, Proprietor of M/s. Maheshwari Brothers was recorded under Section 108 of the Customs Act, 1962 on 11.12.2024 wherein he inter alia stated that Shri Arjun Das Rathi's firm is engaged in the business of agricultural products and Shri Arjun Das Rathi was interested in importing watermelon seeds from Sudan and asked him about overseas brokers dealing in watermelon seeds. He informed Shri Arjun Das Rathi about his elder brother, Shri Mukesh Maheswari, living in Dubai and engaged in business of agricultural products, including watermelon seeds and pulses. He further stated that he was not aware of

the said consignment under BL No. ALXUPZU00000018 dated 26.07.2024 and Shri Mukesh Maheshwari has also never informed him about the consignment under BL No. ALXUPZU00000018 dated 26.07.2024.

4 . 4 Statement of Shri Manoj Kumar Manglani, Authorized person of M/s Right Ship Agency (Customs Broker), recorded under Section 108 of the Customs Act, 1962 on 03.01.2025 wherein he inter alia stated that he filed the bill of entry on the basis of Bill of Lading no. ALXUPZU00000018 dated 28.06.2024. On being shown tracking of subject 5 containers available on official website of M/s Aladin Express Line (https://erpalx.aladinxp.com/ecomonline/tracking.do), he stated that It appears that someone has manipulated/forged the documents and try to show shipped on board date as before 30th June. He further stated that if his firm had known in advance that the shipment was shipped on board after 30th June 2024; he would never have filed the Bill of Entry on behalf of the importer.

5. Evidences available on record during investigation :

5.1 Tracking details of containers: The container movement details were tracked from the official website of M/s Aladin Express Line (https://erpalx.aladinxp.com/ecomonline/tracking.do) which shows that all the 5 containers bearing nos. FCIU8464395, SEGU4917609, SEGU6295850, TCLU8243427 and TCNU3018246 covered under Bill of Lading No. ALXUPZU00000018 were actually loaded on vessel on 26.07.2024. It shows that Bill of Lading No. ALXUPZU00000018 dated 28.06.2024 showing 'Shipped on Board' date as 28.06.2024, which was submitted for filing IGM and Bill of Entry at Mundra Custom House were manipulated/forged to get the 'Restricted' goods cleared. The Notification No. 05/2023 dated 05.04.2024 issued by DGFT stipulates that if 'watermelons seeds' have been loaded or shipped on board before 30th June 2024 then only it will be under 'Free' category.

5.2 E-mail conversation: The e-mail conversation details as provided by Shri Rahul Virchand Lodaya, Branch Manager of M/s ALX Shipping Agencies India Pvt. Ltd. (Delivery Agent of Shipping Line i.e. M/s Aladin Express Line) during his statement recorded under Section 108 of the Customs Act, 1962 on 11.09.2024 and recovered during search conducted under Panchnama dated 17.09.2024 at the office Premise of M/s ALX Shipping Agencies India Pvt. Ltd., Gandhidham (General Agent working on behalf of M/s Aladin Express Line) indicated that various communications were made between officials of M/s Aladin Express Line and M/s ALX Shipping Agencies India Pvt. Ltd. (General Agent working in India on behalf of M/s Aladin Express Line) to manipulate the Bill of Lading for clearance of subject goods covered under BL No. ALXUPZU00000018. Some of the relevant e-mail conversations are mentioned in given below Table:

E-m	Sender Name, Designation, Firm Name	Receivers Name and E-mail IDs	Relevant portion of e-mail text

ail Date			
16.07.2024	Rejith, Venus Shipping Co. Ltd., Sudan (*operation@venusshipping.com*)	Abdallah Omeir with cc to Ravindra Singh (e-mail *ravindras.rathore@aladinxp.com*)	Dear Abdallah, Please Note vessel sailed yesterday but still final load list not received.
17.07.2024	Rejith, Venus Shipping Co. Ltd., Sudan (*operation@venusshipping.com*)	Abdallah Omeir with cc to Ravindra Singh (e-mail *ravindras.rathore@aladinxp.com*)	Dear Abdallah, Please be inform that after several follow ups we receive the final load list from your agent in whatsapp. 5 units are shut out which is purely mistake from your agent side.... Now we are in a bad situation and customer is very upset about the shutout units.
16.07.2024	Govind Vaishnav, Shri Nath Gum & Chemicals (*shrinathgum.chemical@gmail.com*)	Sachin Nair & Namdev Patil of M/s ALX Shipping Agencies India Private Limited and cc to various others	Dear Sir, Import Shipment BL No. ALXUPZU00000018. ... Please check and update us on Asap.
22.07.2024	Satish Goswami, Manager – Documentation, M/s ALX Shipping Agencies India Private Limited (*satish.goswami@aladinxp.co.in*)	Govind Vaishnav, Shri Nath Gum & Chemicals	Dear Customer, Your BL is under draft status, still not confirm pls check.
22.	Govind Vaishnav, Shri Nath Gum & Chemi	Satish Goswami, Manager – Documentation, M/s ALX Shipping Agencies I	Dear Sir, Original BL is already issued, please find herewith attached for your r

07.2024	cals (*shrinathgum.chemical@gmail.com*)	ndia Private Limited (*satish.goswami@aladinxp.co.in*) and cc to 2 others	eference.
20.08.2024	Govind Vaishnav, Shri Nath Gum & Chemicals (*shrinathgum.chemical@gmail.com*)	Satish Goswami, Manager – Documentation, M/s ALX Shipping Agencies India Private Limited (*satish.goswami@aladinxp.co.in*) and cc to 2 others	Dear Sir, Import Shipment BL No. ALXUPZU00000018. … Please check and update us on Asap.
24.08.2024	Rejith, Venus Shipping Co. Ltd., Sudan (*operation@venusshipping.com*)	Satish Goswami, Manager – Documentation, M/s ALX Shipping Agencies India Private Limited and cc to 2 others.	Dear Satish, For the subject B/L kindly amend the B/L date to 28th Jun in IGM system as per attached B/L so that customer will file the BOE from their side.
10.09.2024	Harsh Patel (E-,ail ID: info@agritouch.in)	Deena Susan Thomas (Deena.Thomas@aladinxp.com) with copy to shrinathgum.chemical@gmail.com	Good Day !! Ref. to subject e-mail, we kindly request confirmation of the Shipped-on-Board date as 28/06/2024, for the Bill of Lading Number ALXUPZU00000018. This confirmation is specifically required by Indian Customs.
10.09.2024	Rejith, Venus Shipping Co. Ltd., Sudan (*operation@venusshipping.com*)	*shrinathgum.chemical@gmail.com* with cc to Satish Goswami, Manager – Documentation, M/s ALX Shipping Agencies India Private Limited and various others	Dear All, Please note actually subject B/L#ALXUPZU00000018 sailed from Sudan on 26th July and we already informed shipper about the discrepancies in the B/L date. And We will reissue them the new B/L with correct date.

The email correspondences referenced above, while not exhaustive, provide sufficient evidence to demonstrate that all parties involved—namely representatives from M/s Aladin Express Line, M/s ALX Shipping Agencies India Pvt. Ltd., M/s Venus Shipping Co. Ltd., Sudan and the consignee (importer) — were fully aware of the restrictions on the import of watermelon seeds. Despite being cognizant of the applicable penalties imposed by customs, these entities deliberately concealed the fact that the actual 'Shipped on Board' date was 26 July, 2024 for BL No. ALXUPZU00000018. Through intentional misrepresentation and manipulation of dates, they sought to facilitate the clearance of restricted cargo in violation of the established regulations.

6. Seizure:

During the investigation, it was observed as per tracking details available on official website of M/s Aladin Express Line and as per other evidences gathered during investigation including statements of various persons, that the imported goods i.e. Watermelon Seeds have been loaded on board on 26.07.2024 i.e. after 30.06.2024 and hence are restricted goods as per Notification no. 05/2023 dated 05.04.2024 issued by the DGFT. Thus, it appears that the imported goods by M/s Shri Nath Agro Industries, under Bill of Entry No. 5373154 dated 02.09.2024 filed at Mundra Custom House, appears to have been mis-declared in documents submitted to the Customs. Therefore, there being a reasonable belief that that the said goods are liable for confiscation under the provisions of Section 111 of the Customs Act, the same were placed under seizure under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 13.11.2024.

7. Brief of investigation conducted and liability of imported goods for confiscation:

7.1 Iinvestigation conducted by DRI has revealed that all the 5 containers covered under Bill of Entry No. 5373154 dated 02.09.2024 filed at Mundra Custom House, were shipped from Sudan port on 26.07.2024, well beyond the cut-off date of 30.06.2024 specified in DGFT Notification No. 05/2023 dated 05.04.2024. The tracking details on the official website of M/s Aladin Express Line (https://erpalx.aladinxp.com/ecomonline/tracking.do) confirm that the containers were Shipped-on-Board on 26.07.2024, further corroborating the lapse in compliance with the notification's timeline. Moreover, email correspondences and other evidence clearly demonstrate that a forged Bill of Lading No. ALXUPZU00000018 dated 28.06.2024 was created, falsely reflecting the 'shipped on board' date as 28.06.2024, instead of the actual date of 26.07.2024. This deliberate manipulation of shipping documents was aimed at unlawfully availing the benefits under the DGFT Notification No. 05/2023. The investigation indicates that the importer, in collusion with representatives of M/s Aladin Express Line, M/s ALX Shipping Agencies India Pvt. Ltd. and M/s Venus Shipping Co. Ltd., Sudan, orchestrated the falsification of relevant dates on the Bill of Lading to facilitate the clearance of restricted cargo. By doing so, the importer has failed to adhere to the conditions of DGFT Notification No. 05/2023, thereby violating the provisions of the Foreign Trade Policy 2023. This

constitutes a serious breach of regulatory compliance and evidences deliberate intent to mislead customs authorities.

7.2 The facts and evidence discussed above indicate that the Directorate General of Foreign Trade (DGFT), through Notification No. 05/2023 dated 05.04.2024, amended the import policy for Melon Seeds under CTH 12077090. As per the notification, the import of Melon Seeds was classified as 'Free' from 1st May 2024 to 30th June 2024. Consignments with 'shipped on board' Bill of lading issued till 30th June 2024 shall be treated as 'Free' to import". It means that all consignments of Watermelon Seeds which have shipped on board before 01.07.2024 can be imported in India on 'Actual User' basis to processors of Melon Seeds having a valid FSSAI Manufacturing License. However, as established in the preceding paras, M/s. Shri Nath Agro Industries, located at E-1-270 & 271, Agro Food Park, Boranada, Jodhpur, Rajasthan - 342012, illegally imported Watermelon Seeds under Bill of Entry No. 5373154 dated 02.09.2024, in violation of Notification No. 05/2023. The investigation conclusively proved that the goods were shipped on board on 26th July 2024 i.e. beyond the permissible date of 30th June 2024 using a forged Bill of Lading. Furthermore, it was revealed during the investigation that the importer deliberately withheld critical information from Customs Authorities, failing to disclose that the goods were shipped on board after the specified date of 30th June 2024. This reflects intentional non-compliance with the DGFT Notification No. 05/2023. Hence, the goods declared as 'Watermelon Seeds' under CTH 12077090 covered under Bill of Entry No. 5373154 dated 02.09.2024 having total quantity **135** MTs and declared assessable value of **Rs. 2,02,71,328/-** imported by M/s. Shri Nath Agro Industries are liable for confiscation under confiscation under Section 111(d), 111(m) and 111 (o) of the Customs Act, 1962.

8. Roles of persons/firms involved:

8.1 Role of the importer M/s Shri Nath Agro Industries(IEC No. ACBFS0218H)

The importer M/s. Shri Nath Agro Industries was well aware of the Import policy and Notification. M/s. Shri Nath Agro Industries had imported watermelon seeds covered under Bill of Entry No. 5373154 dated 02.09.2024 in by way of violation of import policy mentioned in Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry. The total quantity of the said goods covered under the subject Bill of entry is **135 MTs** having declared Assessable value of **Rs. 2,02,71,328/-**. As per Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry, the import of said goods with shipped on board dated after 30th June is under restricted category. The importer must comply with the conditions outlined in the said Notification. Further, the notification was issued for a definite period and it is the obligation of the firm utilizing that authorization to ensure that no condition of the Notification has been violated. Email correspondences in the name of Shri Govind Vaishnav, Accountant of the

firm M/s. Shri Nath Agro Industries, further indicate that they sought to obtain forged dates from shipping line representatives in a manner that would mislead customs and enable the clearance of restricted cargo. The acts of commission and omission on the part of the importer rendered the subject goods liable to confiscation under Section 111(d), 111(m) and 111 (o) of the Customs Act, 1962 and therefore is liable to penalty under **Section 112 (a) and 112 (b)** of the Customs Act, 1962. By not uploading the original and correct documents as mandated during filing of Bill of Entry, the importer has attempted to mislead the department thereby rendering themselves liable to penalty under **Sec 114AA** of Customs Act, 1962.

8.2 Role of Shri Arjun Das Rathi, Partner of M/s Shri Nath Agro Industries (IEC No. ACBFS0218H):

Statement of Shri Arjun Das Rathi, Partner of M/s. Shri Nath Agro Industries, E-1-270 & 271, Agro Food Park, Boranada, Jodhpur, Rajasthan - 342012, was recorded under Section 108 of the Customs Act, 1962, on 01.10.2024 and 03.12.2024. In his statement, Shri Arjun Das Rathi admitted to look after all business operations of M/s Shri Nath Agro Industries, including purchase, sales, and import related activities. Despite being fully aware of Notification No. 05/2023 dated 05.04.2024, issued by the DGFT, he failed to disclose the actual facts to the customs department. Instead, he attempted to facilitate the clearance of restricted cargo. Email correspondences in the name of Shri Govind Vaishnav, Accountant of his firm, further indicate that he sought to obtain forged dates from shipping line representatives in a manner that would mislead customs and enable the clearance of restricted cargo. By engaging in the creation of forged Bills of Lading in collusion with shipping line representatives, Shri Arjun Das Rathi not only misled the customs department but also rendered himself liable to penalties under **Section 112(b)** and **Section 114AA** of the Customs Act, 1962.

8.3 Role of M/s ALX Shipping Agencies India Pvt. Ltd.:

The facts and evidence gathered during the search, including email correspondences, clearly establish that M/s ALX Shipping Agencies India Pvt. Ltd., acting on behalf of M/s Aladin Express Line, deliberately colluded with importer, shipper and Rejith of M/s Venus Shipping Co. Ltd., Sudan, to manipulate the actual dates on the Bill of Lading and create a forged Bill of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. These actions reflect a blatant disregard for regulatory compliance and an intent to mislead the authorities. The deliberate acts and omissions by M/s ALX Shipping Agencies India Pvt. Ltd. make them liable for penalties under **Section 112(b)** of the Customs Act, 1962. Furthermore, their involvement in the creation of forged Bills of Lading constitutes a violation that renders them liable to penalties under **Section 114AA** of the Customs Act, 1962.

9. Relevant Legal provisions :

9.1. Import of Watermelon seeds falling under HS Code 12077090 was made from “Free” to “Restricted” for vide Notification No. 05/2023 dated

05.04.2024 issued by the Directorate General of Foreign Trade, Ministry of Commerce & Industry under Section 3 and Section 5 of the FT(D&R) Act, 1992 read with Paragraph 1.02 and 2.01 of the Foreign Trade Policy (FTP), 2023 as amended from time to time. The Import of watermelon seeds is subject to Policy condition No. 4 of Chapter 12 of the ITC (HS) Classification.

9.2 Whereas vide Notification No. 05/2023 dated 05.04.2024 issued by the Directorate General of Foreign Trade, Ministry of Commerce & Industry, it has been envisaged that *"Import Policy of Melon Seeds is 'Free' with effect from 01st May 2024 up to 30th June 2024. Consignments with 'shipped on board' Bill of lading issued till 30th June 2024 shall be treated as 'Free' to import"*. As a corollary, all consignments of Watermelon Seeds which have shipped on board before 01.07.2024 can be imported in India on 'Actual User' basis to processors of Melon Seeds having a valid FSSAI Manufacturing License in line FSSAI Order dated 15.03.2024.

9.3 The other relevant policy provisions pertaining to the import of watermelon seeds along with relevant penalty provisions of the Customs Act, 1962 are as follows:

9.3.1 FTDR Act, 1992 :

Section 3 of the FTDR Act, 1992: ***Powers to make provisions relating to imports and exports***–

(1) The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods.

(3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

Section 5 of the FTDR Act, 1992: ***Foreign Trade Policy—***

The Central Government may, from time to time, formulate and announce, by notification in the Official Gazette, the foreign trade policy and may also, inlike manner, amend that policy:
Provided that the Central Government may direct that, in respect of the Special Economic Zones, the foreign trade policy shall apply to the goods, services and technology with such exceptions, modifications and adaptations, as may be specified by it by notification in the Official Gazette.

9.3.2 Foreign Trade Policy, 2023 :

Para 1.02: Amendment to FTP

Central Government, in exercise of powers conferred by Section 3 and Section 5 of FT (D&R) Act, 1992, as amended from time to time, reserves the right to make any amendment to the FTP, by means of notification, in public interest.

Para 2.01: Policy regarding import /Exports of goods

(a) Exports and Imports shall be 'Free' except when regulated by way of 'Prohibition', 'Restriction' or 'Exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports. The list of 'Prohibited', 'Restricted', and STE items can be viewed under 'Regulatory Updates' at https://dgft. gov.in

(b) Further, there are some items which are 'Free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force.

9.3.3 Relevant Sections of the Customs Act, 1962 :

SECTION 112 of the Customs Acts Penalty for improper importation of goods, etc.*- Any person, -*

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

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

shall be liable, -

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

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

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

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the

declared value and the value thereof or five thousand rupees, whichever is the highest;

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

SECTION 114AA. Penalty for use of false and incorrect material. *- If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

10.1 Accordingly, Show Cause Notice GEN/ADJ/ADC/508/2025-Adjn-O/o Pr Commr-Cus-Mundra dated 20.02.2025 was issued to M/s. Shri Nath Agro Industries (IEC: ACBFS0218H) wherein they were called upon to show cause in writing to the Additional Commissioner of Customs, Custom House, Mundra as to why:

(a) The imported goods declared as 'Watermelon Seeds' under CTH 12077090 covered under Bill of Entry No. 5373154 dated 02.09.2024 having total quantity **135** MTs and declared assessable value of **Rs. 2,02,71,328/-** should not be confiscated under Section 111 (d),111(m) and 111(o) of Customs Act, 1962.

(b) Penalty under Section 112(a), 112(b) and Section 114AA of the Customs Act, 1962 should not be imposed on M/s. Shri Nath Agro Industries (IEC: ACBFS0218H), E-1-270 & 271, Agro Food Park, Boranada, Jodhpur, Rajasthan – 342012.

10.2 Shri Arjun Das Rathi, Partner of M/s. Shri Nath Agro Industries (IEC: ACBFS0218H), was called upon to show cause in writing to the Additional Commissioner of Customs, Custom House, Mundra as to why penalty should not be imposed on him under Section 112(b) & Section 114AA of the Customs Act, 1962.

10.3 M/s ALX Shipping Agencies India Pvt. Ltd. was called upon to show cause in writing to the Additional Commissioner of Customs, Custom House, Mundra as to why penalty should not be imposed on M/s ALX Shipping Agencies India Pvt. Ltd. under Section 112(b) & Section 114AA of the Customs Act, 1962.

WRITTEN SUBMISSION OF NOTICEES

11. Submission of Noticee No. 1 i.e. M/s. Shri Nath Agro Industries-

11.1 Noticee No. 1submitted their written submission dated 30.03.2025 in response to the Show Cause Notice wherein inter-alia stated as under

that:-

11.2 At the onset, it is submitted that Notification No. 05/2023 dated 5th April, 2024 issued by the Directorate General of the Foreign Trade, Ministry of Commerce and Industry permitted import of "Melon Seed" under the "Free" category with effect from Ist May, 2024 up to 30th June 2024 if the consignment is "shipped on board" and Bill of Lading is issued till 30th June 2024. Accordingly, the noticee placed order to M/s. Agritouch DMCC, Dubai for import of impugned consignment of "watermelon seed" on advance payment of USD 200000/- with specific direction that the same must be loaded prior to 30.06.2024. Thus, to import "melon seeds" under the free category it is mandatory that the date of "shipped on board" and date of Bill of Lading must be on or before 30.06.2024.

11.3 The instant matter is heavily based on the tracking report downloaded from the website of M/s. Aladin Express Line, wherein there is no mention of date of date of Shipped on board but having mention of POL sail date. On the basis of the same the department is trying to prove the date of vessel sailing as the date of "shipped on board". Thus it is imperative to know the term "Shipped on board" and Bill of Lading.

Bill of Lading: A "Bill of Lading" is a legal document that details the type, quantity and destination of then goods being transported. It is contract between the shipper and the carrier, and a receipt for the goods shipped A Bill of Lading is a document issued by the carrier (or agent) to acknowledge receipt of the cargo shipment.

Shipped On Board: The "Shipped On Board" is a notation added by the Bill of Lading issuer that confirms the cargo has been loaded on the board. This notation is created at origin by the carrier or the carrier's agent, and it indicates the name of the vessel on which the goods have been shipped. "Shipped On Board" Bills of Lading give greater security to the importers and importers' banks.

Shipped On Board date: Shipped On Board indicates the date goods are officially loaded onto the shipping vessel.

Bill of Lading date: "Bill of Lading date" is the date on which the Bill of Lading was issued.

Difference between both the aforesaid dates: The "Shipped On Board date" and "Bill of Lading date" are two different dates, and may not be the same. The "Bill of Lading date" is different from the "Shipped On Board Date" as the container may have been loaded on board the ship on a different date, while the Bill of Lading was issued to the customer at a later date.

For example, if a container was shipped on board on April 2, 2018, its Bill of Lading date cannot be earlier than the "Shipped On Board Date" since a Bill of Lading can only be issued after a container has been physically shipped on board. The "Bill of Lading Date" has to be on, or after, the "Shipped On Board Date."

From the above, it is evidently clear that Bill of lading can be issued only after the container (consignment) has been loaded on vessel. It is further strengthened by the fact that the bill of lading contains the date of 'Shipped on Board, hence, if the date of shipped on board is later than the date of bill of lading, the same ca1111ot be mentioned on Bill of lading as the same has already been issued on a prior date.

11.4 In this regard, the noticee submits the following chronology of events in the matter, which will establish beyond doubt that the date of shipped on Board' is 30.06.2024 as mentioned in Bill of Lading No. ALXUPZU00000018 dated 2810612024:

Sr. No.	Date	Chronology of Events in the matter
1.	*30/05/2024*	Order placed by the noticee for the impugned consignments of Watermelon seeds
2.	*06/06/2024*	Advance payment ofUSD *2000001-* made by the notice to *Mis* Agritouch DMCC
3.	*28/06/2024*	Commercial Invoice No. AT 2629 B issued by *Mis.* Agritouch DMCC unto the Noticee along with Packing List dated *2810612024* and Fumigation Certificate dated *2310612024* issued by Ministry of Agriculture & Forest Deptt. and Certificate of Origin.
4.	28.06.2024	Full Container in the port
5.	28.06.2024	Bill of lading issued containing date of 'shipped on board'
6.	26.07.2024	Vessel Sailing

From the above chronology of events, it is very much clear that:

a. All the containers reached at the Fumigation of all the containers was done on 22.06.2024 as per the Fumigation Certificate No. 0150310/PQ dated 23.06.2024 issued by the Ministry of Agriculture & Forest, Republic of Sudan. Copy of the same is annexed herewith.

b. Thus, the containers were stuffed on or before 27.06.2024 and all the loaded containers reached at the Port of Sudan on 28.06.2024.

c. Since the Bill of Lading was issued on 28.06.2024, it is quite obvious that the date of 'shipped on Board' could be at the most

30.06.2024 but not later than 30.06.2024.

11.5 Since the Fumigation Certificate No. 0150310/PQ dated 23.06.2024 has been issued by the Ministry of Agriculture & Forest, Republic of Sudan, its authenticity can be got verified from the Government of Sudan. It is therefore, requested to kindly get the authenticity of the said Fumigation Certificate verified from the Government of Sudan at the earliest before proceeding further in the matter.

11.6 In light of the facts above, it is established beyond doubt that the date of 'shipped on Board' and date of issuance of Bill of Lading mentioned in the BL is correct date i.e. 28.06.2024 and the department's allegation that the 'shipped on board date' as 26.07.2024 is unfunded and baseless. Thus, in the premise aforesaid, the impugned SCN deserves to be quashed.

11.7 Date of vessel sailing from POL is not relevant for the purpose of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry:

Without prejudice to submissions made above, it is submitted that the aforesaid Notification permits import of 'Melon seeds' under 'Free' Category subject to two following conditions:

a. The consignment must have been shipped on Board' on or before 30.06.2024

b. Bill of Lading must have been issued on or before 30.06.2024.

However, the notification nowhere mandates that the vessel must have sailed on or before 30.06.2024.

In the present matter, the department is trying to prove that the date of shipped on board as 26.07.2024 solely based on the date of vessel sailing.

Since bill of lading was issued on 28.06.2024, the date of shipped on Board cannot be later than 30.06.2024 as the bill of lading is issued only after the consignment is shipped on Board.

In view of above, it is clear that date of vessel sailing is not relevant for availment of benefit of the aforesaid Notification No. 05/2023 dated 5th April, 2024. Thus, the impugned SCN is liable to be quashed on this ground as well.

11.8 ALLEGATIONS OF "COLLUSION" MADE IN THE SCN AGAINST THE NOTICEE ARE WRONG IN TOTALITY, NON-SUSTAINABLE IN THE EYES OF LAW AND DENIED:

Without prejudice to submissions made above, the noticee denies and disputes the allegations of collusion made in the show cause notice in totality. It is further submitted that the investigation has proceeded on

totally wrong premises and the present Show Cause Notice has been issued by wrongly apprehending the factual position and adopting a totally erroneous construction of the facts and provisions of law. Noticee's submission in this regard will explicitly establish that the allegations made in the Show Cause Notice against the noticee are not tenable in the eyes of law.

The basic allegation made in the Show Cause Notice is that the noticee was in collusion with the representative of M/s Aladin Express Line, M/s ALX Shipping Agencies India Pvt. Ltd. and M/s Venus Shipping Co. Ltd., Sudan orchestrated the falsification of relevant dates on the Bill of Lading to facilitate the clearance of restricted cargo. In this regard, the noticee has mentioned in para supra the chronology of events which clearly establishes that the date of Bill of Lading and 'shipped on Board' is correct and not manipulated in any manner. It is further submitted that M/s Aladin Express Line has nowhere stated any involvement of the noticee in preparation of Bill of lading. Rather, on being detention of the cargo by the DRI, CHA of the noticee emailed to M/s Aladin Express Line to provide Cargo Tracking Details along with transshipment details. Furthermore, none of the RUDs indicate any involvement of the noticee in the alleged manipulation, if any. Thus, the department totally failed to corroborate their allegations.

11.9 The noticee relies upon the following judgment in the matter:

The Division Bench of Hon'ble High Court of Madras while dismissing the appeal filed by Revenue in the case of **Commissioner of Cus. (Exports), Chennai Versus I. Sahaya Edin Prabhu [2015 (320) E.L.T. 264 (Mad.)]** found that the Tribunal by taking note of the fact that there was no finding of a positive role of the first respondent, i.e., assessee therein or licensee therein, in attempting to smuggle out Red Sanders wooden logs, held that, imposition of penalty under Section I 14(i) of the Customs Act was not sustainable. The relevant paragraphs of this judgement are reproduced below:

*The Tribunal, taking note of the fact that there is no finding of a **positive role of** the first respondent in the attempt to smuggle out red sander wooden logs, held that imposition of penalty under Section l 14(i) of the Customs Act is not sustainable.*

The Tribunal allowed the appeal filed by the first respondent and set aside the penalty imposed, by observing that for failure to discharge functions as a Customs House Agent, penalties are provided in the Customs House Agents' Licensing Regulations.

The Tribunal has rendered a categorical finding that there is no finding of a positive role of the first respondent in the attempt to smuggle out red sander wooden logs. Even in the order of the Original Authority, it is held

that the custom house agent has not discharged his duty in the normal course of his service. As rightly observed by the Tribunal, for failure to discharge functions as a Custom House Agent, penalties are provided in the Customs House Agents Licensing Regulations. Therefore, imposition of penalty under Section l 14(i) of the Customs Act is unwarranted. We, therefore, find no reason to differ with the finding of the Tribunal."

In the matter of **COMMISSIONER OF CUSTOMS (IMPORT) Versus TRINETRA IMPEX PVT. LTD. (2020 (372) E.L.T. 332 (Del.)],** the Hon'ble High Court of Delhi while dismissing the appeal filed by Revenue held that:

*Now coming to the facts of the present case. The facts noted above are not disputed before us, however, the Customs Department is aggrieved by the deletion of the penalties imposed on the CHA. In respect of the show cause notice dated 6-3-2013, penalty has been imposed under Section 112(b) as well as 114AA of the Act. A perusal of the said provisions clearly reveals that the penalty under the said provisions can be imposed wherever there is an element of mens rea or conscious knowledge, which is a sine qua non for imposition of the penalty. This is evident from a plain reading of Sections 112 and 114AA of the Act, which uses the expressions "does or omits to do", "or abets the doing or omission of such act", "which he knows or has reason to believe are liable to confiscation under Section 111 in Section 112 and "knowingly or intentionally in Section 114AA. The facts of the case in hand do not reveal any such element of mens rea or conscious knowledge qua the importer. There is no active role attributed to the respondent, which justifies the imposition of the penalty under Section **112(b)** and Section 114AA of the Act. Nothing has emerged even in the criminal investigation.*

*In respect of the show cause notice dated 8-7-201 I, the imposition of the penalty has been made under Section **112(a)** of the Act in respect of the goods which have been held to be liable to be confiscated under Section **111** of the Act. Here, the imposition of the penalty on the CHA is founded on the ground that he has abetted the offence. Though, for imposition of penalty in respect of the cases falling under Section 112(a) of the Act, mens rea may not be required to be proved as condition precedent, however, when it comes to imposition of the penalty on an abettor, it is necessary to show that the said essential element/ingredient is present. (Ref.: Amritlakshmi Machine Works v. The Commissioner of Customs (Import), (2016 sec Born 66=2016 (335) E.L.T. 225 (Born.)).*

In the present case, there is no element of mens rea or conscious knowledge which can be attributed to the CHA. The investigation caiTied out by the CBI and other facts reveal that the CHA acted bona fide and merely facilitated the imports on the strength of the documents which were handed over to him by the importer. There is no sufficient material

*on record to show that the CHA was actively involved **in** the fraudulent availment of the exemption by the importer, warranting levy of personal penalty.*

Therefore, we do not find any ground to interfere with the findings of the Tribunal vis-a-vis the respondent.

Since, the present appeal does not raise any substantial question of law that requires any adjudication by this Court under Section 130 of the Customs Act, the appeal is dismissed in limine without any order as to costs.

ARIF 1. PATEL Versus COMMISSIONER OF CUSTOM (PREV). MUMBAI [2014 (308) E.L.T. 698 (Tri. Mumbai)]

We have gone through the impugned order and the argument advanced by all the parties. The role of Shri Kashyap J. Bodekha is limited by introducing importer to Shri Arif Patel for clearance of the goods and to help the importer to get IEC. He has nothing to do with the import of contraband goods. We further find that the role of Shui Arif Patel was only for the clearance of the goods and for the clearance of the earlier consignment, nothing has been proved against the appellant, that he was having no knowledge of the modus operandi of the importation of the contraband goods by replacing aluminium scrap. Further, in this case the container was intercepted at Bombay port itself and it was opened and the appellant came to know about the container with contraband goods only after examination. In these circumstances, the appellant was not having any knowledge of importation of contraband goods by the importer.

As per Section 112A of the Customs Act, 1962, the penalty can be imposed on the person who act of aiding and abetting the importation of contraband goods. As discussed above, there was no role of the appellant in aiding and abetting the importation of contraband goods. Therefore, penalties under Section 112(a) of the Act are not imposable on the appellants.

RAVINDRA MARUTI MANSUKH Versus COMMISSIONER OF CUS. (IMPORT), MUMBAI [2013 (291) E.L.T. 363 (Tri. - Mumbai))

From the reading of the said section it is abundantly clear that there should be a statutory requirement on the person to commit an act or the person should have abetted the commission/omission of the act. In the case of import transaction, the statutory requirements relate to carrier of the goods, the importer, or the CHA. A person who has merely handed over the import documents to a CHA has no statutory obligation cast on him to attract any penal consequences for any violation. The second issue is whether the person aided or abetted. In the instant case the documents have been handed over to CHA and it is the CHA who is required to do the act under the law. If the CHA is not guilty of any commission or

omission, the person who handed over the documents cannot be said to be responsible for commission or omission. Therefore, we do not find any legal basis for imposition of penalty on the appellant in the instant case. Accordingly, the appeal is allowed. Stay application is also disposed of.

A . V . GLOBAL CORPORATION PVT. LTD. Versus ADDITIONAL DIRECTOR GENERAL (ADJUDICATION), DIRECTORATE OF REVENUE INTELLIGENCE, MUMBAI [2022 (382) E.L.T. 65 (Tri. Mumbai)]

Since the issue in respect of the classification and admissibility of exemption notification has been determined in favour of the appellants hence the penalty imposed on them under Section 114A to cannot be sustained to the extent it relates to these aspects. Thus the penalty imposed under this section is set aside. In respect of the short payment of countervailing duty as we are remanding the matter back to the adjudicating authority for re-quantification of demand penalty if any is imposable on the appellant.

Section l 14AA of the Customs Act, 1962 read as follows:

"**Section 114AA. Penalty for use of false and incorrect material.***If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

From plain reading of the said section it is quite evident that penalty under this section is imposable only in case where the person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act. Thus for imposing penalties under this section, adjudicating authority is required to determine existence of such declaration, statement or document which is false or incorrect in material particulars. In the present case without making any determination to this penalties under this section have been mechanically imposed by the adjudicating authority. Such penalties imposed without determining existence of such documents and the connection of the such document with the person, penalties imposed under this section cannot be sustained. Thus we set aside the order imposing penalties under this section.

In such cases which are based on the interpretation of tariff entries and admissibility of exemption notification, we find that charges of deliberate misdeclaration to evade duty cannot be sustained, more so over when these issues have been determined in the favour of appellants. In our

view the order imposing the penalties on functionaries of the importers and CHA cannot be sustained without assigning specific role to them. We therefore set aside the penalties under Sections 112(a) an 114AA imposed on the functionaries of importer and customs broker, following the decision in case of Anand Metal Industries [2005 (187) E.LT. ill (T)).

In respect of the penalties imposed on the firm as well as on the partner, as the dispute in question in respect of classification which is purely a legal issue, therefore, the penalties imposed on the firm as well as on the partner are set aside"

In light of above facts and case law quoted, the impugned SCN deserves to be dropped.

11.10 THE PERSON WHO WAS NOT PART OF THE OFFENCE 'KNOWINGLY' CAN NOT BE PENALIZED UNDER CUSTOMS ACT UNDER SECTION 114AA:

Without prejudice to the submissions made above, it is submitted that Section l l4AA of the Customs Act, 1962 reads as under:

114AA. *If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or uses, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods*."

Therefore, penalty under Section 114AA can only be imposed in the cases where the wrongful act is done with core elements given in the section knowingly or intentionally. Where a person does not possess knowledge underlying the wrong act and does not have any wrongful intent while doing it, he cannot be penalized under Section 114AA. It is submitted that the noticee was not part of any manipulation, if any, as elaborated in foregoing paras and did not perform any act and/ or omission knowingly that constitutes an offence under the Customs Act, 1962, in the matter, in any manner howsoever.

It is submitted that to further strengthen the above contention of the noticee, meaning of knowingly as it appears in Black's Law Dictionary is reproduced below:

With knowledge, consciously; intelligently. The use of this word in an indictment is equivalent to an averment that the defendant knew what he was about to do, and, with such knowledge, proceeded to do the act charged. U.S. v. Claypool (D. C.) 14 Fed. 128.

Therefore, a person to do an act knowingly should have knowledge of the scheme of things covered in the act. He should be knowing the **truth of**

wrongfulness and he must be having such knowledge and information. Here, in this case the noticee was not aware of any manipulation in date of' shipped on Board' and his CHA on being detained the consignments by DRI, had mailed *M/s* Goodrich Logistics to provide consignment track report and resultantly M/s. Goodrich Logistics requested M/s. Atlantic Shipping Co. Ltd. to provide the same.

11.11 The noticee has sufficiently explained above that he was not aware of the matter. The noticee relies on following case laws, which affirms the stand of the noticee that the person, who was not knowingly part of the offence, cannot be held guilty.

Kalekhan versus State of Madhya Pradesh reported as 1990 Cri LJ 1119 by Hon'ble High Court of Madhya Pradesh.

The crux of the offence under Section 25 of the Act lies in knowingly permitting, use of any place or conveyance for commission of any offence under the Act. These terms knowingly permitting raise the perennial problem of mens rea, in the form of guilty knowledge is an essential requirement of this particular offence. The difficulty sometimes in interpreting the phrase 'knowingly permit' is no doubt there, but a distinction, though subtle does exist between 'knowingly permitting' goes further and requires proof that the person permitting use of his house, room, enclosure, animal or conveyance, was aware of the fact that such place or conveyance was intended to be used for commission of an offence under the Act. The insertion of the extra word 'knowingly', it must be presumed, has been intentionally used by the legislature and is not redundant.

The insertion of the crucial word 'knowingly pe1mits in a new enacted law (Narcotic Drugs and Psychotropic Substances Act, 1985) is evidently with a view to avoid construing nebulously worded statutory offences. The use of the word knowingly in statutory offence is valuable in the sense that it reflects the legislative intent and insistance for mens rea' as an ingredient of the offence. It is a well-established principle of interpretation that penal enactments must be construed strictly. The classic exposition as to mens rea ***in*** *statutory offence, was made as back as 1895 in Sherras v. De Rutzen (1895) IQB 918 by Wright* ***J.:***

There is a presumption that mens rea an evil intention, or a knowledge of the wrong-fullness of the act is an essential ingredient in every offence, but that presumption is liable to be displayed either by the words of the statute creating the offence or by the subject matter with which it deals and both must be considered."

Balbir Sing versus State of Orissa, 1995(2) Crimes 158: 1995(2)EFR 280: 1995 Cri LJ 1762, by Hon'ble High Court of Orissa.

For the aforesaid reasons, I am of the considered opinion that merely because the petitioner is the owner of the vehicle, that by itself is not sufficient to sustain the charge under section 25 of the Act. Something more is necessary to indicate that the petitioner knowingly permitted his vehicle to be used for commission of offence by others which is lacking.

Ramu versus State reported as 2000 Cri LJ 3412: 2001 Drugs Cases 239, by Hon'ble Supreme Court of India.

It is no doubt true that the boxes were placed in the van in a clandestine manner and that the boxes were covered by blanket and other materials. The trial Court seems to have been influenced by the above fact for holding that the accused had knowledge that two other persons were travelling with contraband. As already stated, when two other persons are allowed to travel in the van with boxes the accused would not have had any knowledge that the other persons placed ganja inside the boxes. From the mere fact that P. W. 4 recovered the blankets and planks inserted with iron rods, it cannot be concluded that the accused had knowledge that the boxes contained ganja. For the above reasons, I hold that the prosecution failed to prove that the driver knowingly permitted the other two persons to carry the contraband in the van Therefore, the accused cannot be convicted for the alleged offence under Section 8(c) read with Section 25 of the Act. The Trial Court fail to advert to the above aspects of the case, that is, the applicability of Section 25 of the Act.

Balvinder Singh versus Asst. Commr. Customs and Central Excise, reported as 2005(4) SCC 146 by Hon'ble Supreme Court of lndia.

The present appellant has been found guilty on the ground that he was the registered owner of the vehicle PJA 8677. Counsel for the appellant contends that he purchased this lorry in 1982, along with one Kesar Singh but in 1986 he transferred the vehicle with a third party and the Investigating Officer PW 13, who was examined, deposed that during the course of his investigation he came to know that though the present appellant was the original owner of vehicle bearing registration No. PJA 8677, he had sold the vehicle to one Sucha Singh in 1986, however the registration was not changed in his name. This appellant was convicted solely for the reason that he was the registered owner of the vehicle PJA 8677. There is no evidence to prove that he knowingly allowed any person to use the vehicle for any illegal purpose. There is also no evidence to prove the conspiracy set up by the prosecution. Therefore, it is clear that though the articles were recovered from the lorry, there is no evidence to show that the appellant had any control over the vehicle nor he was in possession of these drugs. In the result, we allow the appeal and acquit the appellant Balwinder Singh of all charges framed against him.

Thus, the impugned Show Cause Notice deserves to be set aside on this

ground also.

11.12 EVIDENCES WITHOUT CROSS-EXAMINATION/EXAMINATION IS NOT ADMISSIBLE AND CANNOT BE RELIED UPON.

Without prejudiced to submissions made above, it is submitted that the whole case is based either on the tracking report downloaded from website of Mis Goodrich Logistics or on the statements of Shri Surya Prakash Mishra, Branch Manager of M/s Goodrich Logistics P. Ltd. The Noticee asserts that in terms of the track report submitted by Mis Atlantic Shipping Co. Ltd., Sudan and as per the Fumigation Certificate dated 30.06.2024 issued by the Govt. of Sudan, the date of Bill of Lading and the date of shipped on Board is 30.06.2024 and not 30.07.2024 and thus denies averments of Shri Surya Prakash Mishra and challenge the veracity of the same. Thus, it becomes imperative for the department to provide opportunity of examination/cross-examination of Shri Surya Prakash Mishra.

Cross examination and examination is part and parcel of the fair play in adjudication proceedings. When proceedings are initiated by relying on someone's statement or averment, the noticee has right to cross examine such person on whose statement reliance is placed for issuance of SCN. Further, to prove his bonafide, a noticee has right to examine persons who are involved in the alleged transaction such as transporters/ weighbridge owners, etc. jurisprudences. In its submissions, noticee relies upon following.

Kalra Glue Factory vs. Sales Tax Tribunal and Ors. (02.03. I 987-SC): MANU/SC/0585/ 1987

We allow this appeal solely on the ground that the statement of Banke Lal which was not tested by cross examination was used in order to reach the conclusion that the transaction was an inter-State sale. We are told that Banke Lal has now died. Under the circumstances,

we set aside the order of the High Court as also of the Sales Tax Tribunal and remit back the matter to the Sales Tax Tribunal at Meerut .....

Dr. U.S. Awasthi Vs. Adjudicating Authority PMLA (2023/DHC/000265, dt. 10.01.2023)

An application for cross-examination filed before the Adjudicating Authority would be an integral part of the process of adjudication and would not be alien to Section 8 proceedings, when considered in this

above statutory scheme and context.

The Petitioner is relegated to the Appellate Tribunal under PMLA for agitating the challenge to the impugned order. Since the entire process of adjudication is to be concluded within 180 days, the present writ petition is directed to be transmitted by the Registry to the Appellate Tribunal, so that the same can be taken up in an expeditious manner. Considering that it is a short application seeking permission to cross examine, the Appellate Tribunal shall decide the challenge to the said order or the application for cross-examination, within a period of two weeks from the date of first listing.

Andaman Timber Industries Vs. CCE ((2015) 281 CTR 241 (SC)]

As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the adjudicating authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/ witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the adjudicating authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dt. 17-3-2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.

In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the show-cause notice.

In light of above facts and jurisprudences it is clear that the noticee will be devoid of natural justice if he is not allowed cross examination/examination of the person whose statements were relied upon in issuance of impugned SCN.

11.13 STATEMENT OF CO-NOTICEES CANNOT BE RELIED UPON TO PENALIZE NOTICEE:

Without prejudice to submission made above, it is submitted that the statement of the co-noticee recorded under Section 108 of the Customs

Act is subjective & prejudiced in nature and cannot be relied upon for the purpose of framing charges.

Reliance is placed on Mohtesham Mohd. Ismail Vs. Spl. Director, Enforcement Directorate & Anr. 2007 (11) SCALE 741. Relying on Ripen Kumar Vs. Department of Customs, 2001 Cr.LJ 1288 and Anand Kumar Vs. Naresh Arora, 2006 (3) JCC 1491 it is further contended that the testimony of Subhash Narain (PW 1) recorded during the pre-trial stage cannot be relied upon as his testimony is not complete.

In **Kashmira Singh v. State of Madhya Pradesh,** Hon'ble High Court relied upon the decision of the Privy Council in **Bhuboni Sahu v. The King** and laid down as under:

"*Gurubachan's confession has played an important part in implicating the appellant, and the question at once arises, how far and* ***in*** *what way the confession of an accused person can be used against a co-accused? It is evident that it is not evidence in the ordinary sense of the term because, as the Privy Council say in* ***Bhuboni Sahu v. The King*** *"It does not indeed come within the definition of evidence contained* ***in*** *section 3 of the Evidence Act., It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross examination."*

Their Lordships also point out that it is obviously evidence of a very weak type.. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. They stated in addition that such a confession cannot be made tile foundation of a conviction and can only be used in "support of other evidence.

Thus, in view of these remarks it would be pointless to cover the same ground. Such evidences cannot be used to corroborate an accomplice or, as in the present case, a witness who, though not an accomplice, is placed in the same category regarding credibility. Thus, the impugned Show Cause Notice based on wrong evidences and premise deserves to be dropped on this score as we.

11.14 THE PENALTY IS NOT IMPOSABLE ON THE NOTICEE UNDER SECTION 112(a), 112 (b) and 114AA

The Show Cause Notice also invoked penal provisions under Section **112(a)**, 112 (b) and **114AA** of the Customs Act, 1962 against the noticee.

In the para supra it has been discussed in detail that the impugned consignment was shipped on Board on 30.06.2024 and accordingly the BL was issued on the very same date i.e. 30.06.2024, he is entitled to import 'melon seeds' under free category in terms of Notification No. 05/2023 dated 5 April, 2024. Since there is no violation of any of the

conditions of the aforesaid notification, the noticee is not liable to any penalty.

THE PENALTY IS NOT IMPOSABLE ON THE NOTICEE UNDER SECTION 114AA OF CUSTOMS ACT, 1962 AS THE SAME PERTAINS TO EXPORT MATTERS

Without prejudice the submission made above, it is submitted that the Show Cause Notice invoked penal provisions under Section I 14AA of the Customs Act, I 962 against the noticee. Thus, it becomes imperative to understand the rationale behind the introduction of Section I 14AA and to analyse the provisions of the section.

The need of introduction of Section 114AA

Taxation Laws (Amendment) Bill, 2005 whereby Section l 14AA was proposed to be inserted in the Customs Act, 1962 was introduced in Lok Sabha on 12.05.2005. The proposed Section 114AA reads as under:

"114AA. If a person **knowingly or intentionally makes**, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

The aforesaid Taxation Laws (Amendment) Bill proposed to carry out certain amendments in the Income Tax Act, 1961, the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944 and the Central Sales Tax Act, 1956 with the object of rationalising and simplifying certain procedures, widening of tax base and plugging loopholes leading to leakage of revenue. Hence, the same was referred to the 'Standing Committee on Finance' on 13.05.2005 for examination and report thereon

The rationale and purpose of introducing Section 114AA

The Standing Committee submitted its report on the aforesaid Bill on 12.12.2005. The rationale and purpose of introducing the provisions of the Taxation Laws (Amendment) Bill, 2005, as seen from the Notes furnished by the Ministry and the Statement of Objects and Reasons of the Bill were detailed in para 6 to 66 of the report. **Para no. 62 to 66 pertain to rationale and purpose of introducing Section 114AA, which read as under:**

Clause 24 (Insertion of new section 114AA)

After section 114A of the Customs Act, the following section shall be inserted, namely:-

"114AA. Penalty for use of false and incorrect material-if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

The information furnished by the Ministry states as follows on the proposed provision: "Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A."

It was inter-alia expressed before the Committee by the representatives of trade that the proposed provisions were very harsh, which might lead to harassment of industries, by way of summoning an importer to give a 'false statement etc. Questioned on these concerns, the Ministry in their reply stated as under:

"The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefits under various export promotion schemes. The apprehension that a n importer can be summoned under section I 08 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because person summoned under Section 108 are required to state the truth upon any subject respecting which they are being examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an offence case."

The Ministry also informed as under:

"The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only

on paper and no goods crossed the

Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes."

The Committee observe that owing to the increased instances of wilful fraudulent usage of export promotion schemes, the provision for levying of penalty upto five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment.

From the above, it is evidently clear that the provisions of Section 114AA pertains to export and not to import cases.

The noticee in this regard places reliance on following case laws:

The Hon'ble CESTAT in the matter of **Commissioner of Customs, Sea, Chennai** II Vs. ***M/s.* Sri Krishna Sounds and Lightings** held as under.

The Id. AR has submitted that the Commissioner (Appeals) has set aside the penalty under section 114AA for the reason that penalty has been imposed by the adjudicating authority under section l 12(a) and therefore there is no necessity of further penalty under section 114AA. I find that this submission is incorrect for the reason that in the impugned order in para 7 and 8, Commissioner (Appeals) has discussed in detail the provision with regard to Section 114AA. It is seen stated that as per with Taxation Laws (Amendment) Bill, 2005, introduced in Lok Sabha on 12.5.2005, the Standing Committee has examined the necessity for introducing a new Section l 14AA. The said Section was proposed to be introduced consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The said Section envisages enhanced penalty of five times of the value of the goods. The Commissioner (Appeals) has analyzed the object and the purpose of this Section and has held that in view of the rationale behind the introduction of Section 114AA of the Customs Act and the fact that penalty has already been imposed under Section 112(a), the appellate authority has found that the penalty under Section 114AA is excessive and requires to be set aside. Thus, the penalty under Section 114AA is not set aside merely for the reason hat penalty under Section l 12(a) is imposed. After considering the ingredients of Section 114AA and the rationale behind

the Introduction of Section 114AA, the Commissioner (Appeals) has set aside the penalty under Section 114AA.

On appreciating the evidence as well as the facts presented and after hearing the submissions made by both sides, I am of the view that the Commissioner (Appeals) has rightly set aside the penalty under Section 114AA since the present case involves importation of goods and is not a situation of paper transaction. I do not find any merit in the appeal filed by the department and the same is dismissed. The cross- objection filed by respondent also stands dismissed.

The Hon'ble CESTAT in the matter of **ACCESS WORLD WIDE CARGO Versus COMMISSIONER OF CUSTOMS, BANGALORE [2022 (379) E.L.T. 12 (Tri. Bang.)]** held as under:

After considering the submissions of both the parties and perusal of the material on record, I find that the appellant who is the Customs Broker has only filed the shipping bills pertaining to the exports made by the ADPL Customs Intelligence Unit conducted the investigation and prima facie found that the mobile phones exported were not manufactured in India and have been manufactured in China and the exporter ADPL was not entitled to drawback under Section 75 of the Act. A SCN was issued demanding drawback of Rs. 1,20,02,815/- along with interest but after following the due process, the Additional Commissioner only confirmed the demand of drawback to the tune of Rs. 50,48,749/- as per Rule 16 of Customs, Central Excise & Service Tax Drawback Rules, 1995. Further, the rejection of this amount is under challenge before the Revisionary Authority. This, itself, shows that the exporter ADPL is contesting the denial of drawback which is sub judice. Further, I find that in the present case, penalty has only been imposed on the CHA under Section I 14AA of the Act and no penalty has been imposed on the exporter. ***Further, I find that the ingredients of Section 114AA of the Act is not applicable to the CHA and is meant against the fraudulent exporter as is made out from 27th Report of the Standing Committee on Finance*** *(cited supra). I also find that in the present case, the Department has failed to prove that there was a mala fide and wilful mis-representation by the Customs Broker. It seems that the Commissioner (Appeals) has totally misunderstood the facts and has wrongly observed that the appellant (Customs Broker) and the exporter have been operating from the same premises and have an identical ICE Code which leads one to suspect the bona fides of the appellant. This finding of the Commissioner is factually incorrect and without any basis. Further, the Commissioner on the basis of these facts has wrongly come to the conclusion that the appellant is involved in the illegal export whereas the appellant is only a Customs Broker who has filed the shipping bills on the basis of the documents furnished by the exporter.*

Therefore, in view of these facts, the imposition of penalty itself is not sustainable in law and therefore I set aside the imposition of penalty on the

appellant by allowing the appeal of the appellant.

In view of above, it is requested that proposed penalty undersection 114AA may kindly be dropped.

11.15 As elaborated in foregoing paras, the noticee was not aware of any manipulation, if any, as alleged in the SCN but not proved. The noticee had merely filed the Bill of Entry on the basis of B/L provided by the principal Shipping Line deeming the same as true. There was neither any mens rea nor any previous knowledge about the any manipulation in date of shipped on board, if any. Thus, penalty under Section 114AA cannot be imposed on the noticee in the matter.

Further, the section **114AA** provides penalty dependent upon the value of the goods and not duty levaible on the same. This further strengthen the legislative intent of imposing penalty under Section **114AA** for fraudulent export cases only.

The noticee places reliance on following judgments:

NAAM EXPORTS Versus COMMISSIONER OF CUSTOMS, TUTICORIN (2022 (382) E.L.T. 251 (Tri. Chennai)]

On perusal of the orders passed by the authorities below, nothing is brought out to prove and establish that the appellant has knowingly and intentionally made any false documents. It is explained by them that the excess quantity was loaded in order to compensate the loss on account of drying of the onion which are perishable goods. Taking these facts into consideration, the penalty imposed under Sec. 114AA is set aside.

M.S. EXIM SERVICES Versus C.C., LUDHIANA [2021 (377) E.L.T. 615 (Tri. Chan.)]

I find that in show cause notice, the allegation against the appellant is that the appellant being customs broker had filed 4 bills of entry for clearance of consignment of cold rolled coil (non-alloy) and cold rolled sheets (non-alloy) of prime nature which were found on examination as secondary and defective nature and the appellant being an experienced customs broker was expected to understand the difference between prime material and secondary & defective material. Therefore, he has made a false declaration in respect of the said import consignment.

Admittedly, no where it has been placed on record that the appellant was having prior knowledge of defective/secondary material. In fact, in the

invoices, high-seas agreements, test certificates, it is mentioned that the material is of prime nature. Moreover, whatever documents have been supplied to the appellant by the importer, the appellant has filed bills of entry for clearance. On the basis of those documents merely being the appellant an experienced person it cannot be alleged that the appellant was having mala fide intentions for clearance of the said goods by misdeclaring the same. The Revenue has failed to establish against the appellant that he has omitted to do any act which act or omission would render the such goods liable to confiscation. The Revenue has further failed to establish the fact that the appellant abats the doing omission of the act which would render the goods liable for confiscation.

A similar issue came in the knowledge of the Hon'ble Delhi High Court in the case of Trinetra Impex Pvt. Ltd. (supra) where the Hon'ble High Court has held as follows :-

In the present case, there is no element of mens rea or conscious knowledge which can be attributed to the CHA. The investigation carried out by the CBI and other facts reveal that the CHA acted bona fide and merely facilitated the imports on the strength of the documents which were handed over to him by the importer. There is no sufficient material on record to show that the CHA was actively involved in the fraudulent availment of the exemption by the importer, warranting levy of personal penalty. Therefore, we do not find any ground to interfere with the findings of the Tribunal vis-a-vis the respondent. Therefore, the penalty is imposable on the appellant.

Further, in the case of **P.S. Bedi & Company (supra)** this Tribunal again has observed as under:-

Considering the submissions, I note that, before proceeding to impose a penalty on the CHA under Section 112(a) of the Customs Act, it is incumbent on the Departmental authorities to record a finding in the first instance that some commission or omission of the CHA had rendered the goods confiscable. Such a finding is not forthcoming in the order of the Deputy Commissioner or that of the Commissioner (Appeals). In the absence of such a finding, penalty cannot be imposed under Section I 12(a) of the Act. The adjudicating authority has not even mentioned the provision of law under which the penalty was imposed. The order of the adjudicating authority has been upheld by the lower appellate authority. This is a clear case of non-application of mind on the part of the Commissioner (Appeals), to the findings of the adjudicating authority. I further observe that, apart from stating that the case law relied on by the appellant is not relevant the Commissioner (Appeals) has not stated as to why the case law was not relevant. The impugned order is, therefore, not a speaking order on the point.

Further, the case laws relied by the Ld. AR are not relevant to the facts of this case as in those case, it is in the knowledge of CHA regarding the description of goods before filing the shipping bills. There is no allegation in the show cause notice in respect of the test certificate produced by the appellant. The mere allegation is that the appellant being an experienced person should know the difference between prime and secondary/defective material. The act of filing the test certificate shows that the appellant has no mens rea and filed the documents being a bona fide facilitator.

WCI SHIPPING PVT. LTD. Versus COMMISSIONER OF CUSTOMS, CHENNAI [2020 (372) E.L.T. 369 (Tri. - Chennai)]

From the facts narrated as above, it is seen that Mr. Santosh and Mr. Janaki Raman are employees of the appellant who is a Customs Broker. The case of the department is that "H" and "G" card was given by the appellant to these employees and that they misused the same for Facilitating the import of undeclared goods. The main allegation which emanates from the facts of the case as well as the SCN is that Mr. Santosh and Mr. Janaki Raman filed Bill of Entry without verifying KYC/antecedents of the importer and thus abetted in the import of undeclared goods in para 3 of the Ol O itself, it is noted that as per DGFT website. Mis Greenway Communication is a proprietorship concern of which Mohamed Hanifa is the proprietor. The address of the registered premises is also exhibited in the website. The appellants have argued that KYC norms/IEC details were verified from the DGFT website. When the Ministry of Commerce who has granted IE licence has exhibited the details of IEC holders in their website which can be verified, the appellant cannot be found fault when the same has been accepted to be true and correct. The other ground is that Mr. Santosh and Mr. Janaki Raman had given statements that previous consignment of the same importer also non-declared goods and therefore they ought to have been more cautious. The goods were cleared and apart from the statement there is no evidence to doubt the previous consignments. The statements were retracted. They were not subjected to cross-examination though a request was made. Apart from the allegation that appellant ought to have been cautions, there is no evidence to show that appellant had any knowledge of the import of undeclared goods. When the importer consciously conceals certain facts from the Customs Broker, it cannot be presumed that the Customs Broker has abetted in such offence merely because he has no to cross not met the importer face to face.

From the evidence placed before me, I find nothing to hold that appellant had intentionally connived or abetted in the non-declaration/concealment of the goods. The impugned order is set aside with respect to the penalties imposed on this appellant. Appeal is allowed with consequential benefits, if any, as per law.

COMMISSIONER O F CUSTOMS (IMPORT) Versus TRINETRA IMPEX PVT. LTD. (2020 (372) E.L.T. 332 (Del.))

Now coming to the facts of the present case. The facts noted above are not disputed before us, however, the Customs Department is aggrieved by the deletion of the penalties imposed on the CHA. In respect of the show cause notice dated 6-3-2013, penalty has been imposed under Section112 (b) as well as ***114AA*** *of the Act. A perusal of the said provisions clearly reveals that the penalty under the said provisions can be imposed wherever there is an element of mens rea or conscious knowledge, which is a sine qua non for imposition of the penalty. This is evident from a plain reading of Sections 112 and* ***114AA*** *of the Act, which uses the expressions "does or omits to do", "or abets the doing or omission of such act", "which he knows or has reason to believe are liable to confiscation under Section* ***111"*** *in Section 112 and "knowingly or intentionally in Section* ***114AA****. The facts of the case in hand do not reveal any such element of mens rea or conscious knowledge qua the importer. There is no active role attributed to the respondent, which justifies the imposition of the penalty under Section* ***112(b)*** *and Section* ***114AA*** *of the Act. Nothing has emerged even in the criminal investigation.*

In respect of the show cause notice dated 8-7-2011, the imposition of the penalty has been made under Section 112(a) of the Act in respect of the goods which have been held to be liable to be confiscated under Section ***111*** *of the Act. Here, the imposition of the penalty on the CHA is founded on the ground that he has abetted the offence. Though, for imposition of penalty in respect of the cases falling under Section 112(a) of the Act, mens rea may not be required to be proved as condition precedent, however, when it comes to imposition of the penalty on an abettor it is necessary to show that the said essential element/ingredient is present. (Ref. Amritlakshmi Machine Works v. The Commissioner of Customs (Import),*

(2016 sec OnLine Born 66 2016 (335) ELT. 225 (Born)}.

In the present case, there is no element of mens rea or conscious knowledge which can be attributed to the CHA. The investigation carried out by the CBI and other facts reveal that the CHA acted bona fide and merely facilitated the imports on the strength of the documents which were handed over to him by the importer. There is no sufficient material on record to show that the CHA was actively involved in the fraudulent availment of the exemption by the importer, warranting levy of personal penalty. Therefore, we do not find any ground to interfere with the findings of the Tribunal vis-a-vis the respondent.

Since, the present appeal does not raise any substantial question of law that requires any adjudication by this Court under Section 130 of the Customs Act, the appeal is dismissed in limine without any order as to costs.

SREE AYYANAR SPINNING & WEAVING MILLS LTD. Versus C.C., TUTICORIN [2019 (370) E.L.T. 1681 (Tri. Chennai)]

The issue can be looked at from different angles: First PSC which directed for deportation/ destruction of the imported cotton, came to be adjudicated vide Order-in-Original dated 27-6-2018. During the pendency of the appeal against this Order-in-Original, the appellant procured a second report i.e., PSC which is dated 24-9-2018, wherein the same issuing authority has remarked differently and cleared the cotton for home consumption. Taking note of this development, the Ld. First Appellate Authority remanded the matter and the observations are already extracted elsewhere in this order and the gist of the First Appellate Authority's order is to re-decide based on PSC dated 24-9-2018. Following the First Appellate Authority's direction, the Adjudicating Authority acts upon the second PSC and grants substantial relief, but for penalty under Section 114AA. The question is, therefore, when admittedly no fault is found by the authority, can its report be still held to be available, if not for anything, but for levying penalty alone under Section l 14AA ibid?

The impugned penalty is for an express default and when the report itself has a clean slate, there cannot be any penalty, at least with respect to that report. This is also for the reason that the Commissioner (Appeals) has, in her first order, set aside the entire issue for passing adjudication order in the light of the second report. The natural corollary is that the first report becomes non est. Hence, I do not find any basis for imposition nor has the Revenue brought out any raison d'etre for imposition of the impugned penalty on record since the very basis i.e., the alleged fake report is itself not there on board anymore.

Viewed from any angle, it is but obvious that the Adjudicating Authority has been injudicious and peremptory in imposition of the impugned penalty under Section l 14AA ibid, since, unless it is proved that the person to be penalized has knowingly or intentionally implicated himself in use of false and incorrect materials, there can be no justification for penalty under this Section. This requirement of factual finding itself is not there and nor has it been answered satisfactorily either in the show cause notice or in the orders of the lower authorities and hence, I do not have any hesitation in setting aside the same.

Without prejudice the submission made above, it is requested that since it has nowhere been proved that the aforesaid Bill of Lading, Fumigation Certificate has been manipulated at any stage by the noticee, and the noticee is nowhere involved in any such manipulation, if any, and further that the date of shipped on board was clearly reflected in all the official documents available with the Noticee, therefore, in light of the facts hereinabove, the penal provisions invoked against the noticee deserves to be dropped.

In view of the submissions made above, it is humbly prayed that proceedings initiated by the impugned Show Cause Notice may please be dropped and Opportunity to cross examine the line may please be granted.

RECORD OF PERSONAL HEARING

12.1 Shri Arjun Das Rathi, Partner in M/s. Shri Nath Agro Indutries appeared in-person for personal hearing on 11.04.2025. He re-iterated written submission as submitted earlier. He requested for re-export of the goods on minimal fine and penalty as they are already in heavy loss on account of advance made to seller in foreign country and now they would not get any refund amount from the seller.

12.2 Advocate Ms. Suman Mandal appeared for personal hearing on 23.09.2025 through virtual mode on behalf of M/s. ALX Shipping Agencies India Pvt. Ltd. She inter-alia submitted that:

1. ALX Shipping acted only as delivery agent for M/s. Aladin Express Line, a foreign shipping line.

2. The Billl of Lading was issued by Venus Shipping Co. Ltd. Sudan. ALX shipping has no role in its issuance or modification.

The Company's involvement was limited to: (i) Filing the cargo manifest with customs as per the Customs Act. (ii) Issuing delivery orders. (iii) Collecting local charges from customer.

3. ALX Shipping had no role in the import transactions.

4. The alleged discrepancy in BL dates (28.06.2024 vs. 26.07.2024) originated from the overseas shipping Line.

5. The Bill of entry was filed by the Custom Broker on behalf of importer and ALX shipping had no role in custom clearance.

6. The Company did not get any financial benefit from the consignment and not involved in any conspiracy.

7. ALX shipping provided original system data including the BL issued date to Customs.

She further requested to consider their submission and requested to drop the proceedings and withdraw penalties under Section 112(b) and 114AA of the Customs Act, 1962.

DISCUSSION AND FINDINGS

13. I have carefully gone through the facts of the case, SCN, records of the case, written submission of the noticees. The principles of natural justice have been complied with by granting adequate opportunities to the noticee to present their defence. Now, I proceed to examine the issues involved in the present case in light of available records, statutory provisions and judicial precedents. On careful perusal of the Show Cause Notice and case records, I find that the following issues arise for determination in this adjudication:

(i) Whether the imported goods i.e. "Water Melon Seed" are liable for confiscation under section 111(d), 111(m) and 111(o) of the customs Act, 1962 or otherwise;

(ii) Whether the noticees are liable for penalty as proposed under the SCN or otherwise.

14. After having identified and framed the main issues to be decided, I now proceed to deal with each of the issues individually for analysis in light of facts, submissions, and circumstances of the case, provisions of the Customs Act, 1962 and nuances of various judicial pronouncements.

15.1 I find that M/s. Shri Nath Agro Industries (Importer) imported Watermelon seed in five containers under Bill of entry No.5373154 dated 02.09.2024. Based on intelligence gathered by DRI, Gandhidham that importer is indulged into illegal import of Watermelon Seeds (Melon Seeds) by way of violation of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, hold the subject consignment. The proceedings of the examination were recorded under panchnama dated 13.09.2024 and 07.11.2024 drawn at M/s. Central Warehousing Corporation (CWC), APSEZ, Mundra.

15.2 I observed the container tracking report, retrieved from the official website of M/s. Aladin Express Line (https://erpalx.aladinxp.com/ecomonline/tracking.do) shows that all five containers covered under Bill of Lading No. ALXUPZU00000018 were loaded on vessel on 26.07.2024.

15.3. I observed that email conversation details as provided by Shri Rahul Virchand Lodaya, Branch Manager of M/s. ALX Shipping Agencies India Pvt. Ltd. (Delivery agent of shipping line i.e. M/s. Aladin Express Line) to DRI during his statement on 11.09.2024 and also recovered from the office premise of M/s. ALX Shipping Agencies India Pvt. Ltd during search conducted by DRI on 17.09.2024. Some relevant specifically mail sent by M/s. Venus Shipping Co. Ltd is reproduced below:-

- 17.07.2024: Dear Abdallah, Please be inform that after several follow ups we receive the final load list from your agent in whatsapp. 5 units are shut out which is purely

mistake from your agent side. Now we are in a bad situation and customer is very upset about the shutout units.

- 24.08.2024: Dear Satish (ALX Shipping), for the subject B/L kindly amend the B/L date to 28th Jun in IGM system as per attached B/L so that customer will file the BOE from their side.

- 10.09.2024: Please note actually subject B/L#ALXUPZU00000018 sailed from Sudan on 26th July and we already informed shipper about the discrepancies in the B/L date. And We will reissue them the new B/L with correct date.

Upon examination of email correspondence, it is clearly established that vessels sailed from Sudan on 26.07.2024 and details in Bills of lading have been manipulated/forged to facilitate the clearance of restricted goods by falsely claiming eligibility period as stipulated in Notification No. 05/2023 dated 05.04.2024 issued by DGFT.

15.4.1 I observed that Shri Rahul Virchand Lodaya, Branch Manager of M/s. ALX Shipping (Delivery Agent of Shipping Line i.e. M/s Aladin Express Line) in his voluntary statement dated 11.09.2024 before DRI submitted two Bills of Lading bearing no. ALXUPZU00000018 wherein one BL was showing Shipped-on-Board date as 28.06.2024 (Received from Line Agent, Sudan Port) while another was showing Shipped-on-Board date as 26.07.2024 (Received in system/software shared to them by M/s Aladin Express). He stated that their system software is updated and accurate which shows Shipped on board date is 26.07.2024 for the subject consignments for five containers. On being shown tracking details of subject containers (available on website if M/s. Aladin Express Line), he admitted and confirmed that Shipped on board is 26.07.2024 and the same is updated on their system software.

15.4.2 I observed that Shri Arjun Das Rathi, Partner of M/s. Shri Nath Agro Industries has given his statement dated 01.10.2024 and 03.12.2024 before DRI wherein email communication being shown to him. Some relevant mail communications are as follows:-

10.09.2024: received on their mail id (shrinathgum.chemical@gmail.com) from (operation@venusshippingco.com) Venus Shipping Co. Ltd. which stated that *"Please note actually subject B/ L # ALXUPZU00000018 sailed from Sudan on 26th July and we already informed shipper about the discrepancies in the B/L Date".*

Further, on being shown the container tracking report downloaded from the official website https://erpalx.aladinxp.com/ecomonline/tracking.do of all five containers, he admitted that the actual shipped on board date is 26.07.2024.

15.5 I consider statements of noticee as material evidence in this case. It is relevant here to refer to some landmark judicial pronouncements on the issue of acceptability and evidentiary value of statements recorded under provisions of section 108 of the Act.

i. The Hon'ble Supreme Court in the case of **Romesh Chandra Mehta**[1] and in the case of **Percy Rustomji Basta**[2] has held "*that the provisions of Section 108 are judicial provisions within which a statement has been read, correctly recorded and has been made without force or coercion. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence".*

ii. The Hon'ble Supreme Court in the case of **Badaku Jyoti Svant**[3] has decided that "*statement to a customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct".*

iii. Hon'ble Punjab and Haryana High Court in the case of **Jagjit Singh**[4] has decided that *"It is settled law that Customs Officers were not police officers and the statements recorded under Section 108 of the Customs Act were not hit by Section 25 of the Evidence Act. The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in the matter of Ram Singh*[5]*, in which it is held that recovery of opium was from accused by officers of Narcotic Bureau. Accused made confession before said officers. Officers of Central Bureau of Narcotics were not police officers within the meaning of Section 25 and 26 of the Evidence Act and hence, confessions made before them were admissible in evidence".*

15.6 In view of the foregoing discussion, I find that the statements recorded by DRI under the provisions of Section 108 of the Act form reliable evidence in the case supporting the charge of mis-declaration of import documents and submission of forged/manipulated Bills of lading.

15.7 <u>Cross Examination sought by the Noticees:</u>

(i) I find that M/s. Shri Nath Agro Indutries (Noticee no. 1) has requested for cross-examination Shipping line in his written submission.

(ii) I find that each noticee was given ample opportunity to present their defense, access all relied-upon documents (RUDs), and participate in personal hearings. The noticees were afforded full opportunity to defend themselves during hearings, this satisfied principles of audi alteram partem. I find that their request for cross-examination is baseless and an attempt to delay the adjudication proceedings.

(iii) Further, it is a settled position that proceedings 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)".

f. **In the case of *Patel Engg. Ltd. vs UOI* reported in 2014 (307) ELT 862 (Bom.) Hon'ble Bombay High Court has held that;**

g. "Adjudication — Cross-examination — Denial of—held does not amount to violation of principles of natural justice in every case, instead it depends on the particular facts and circumstances — Thus, right of cross-examination cannot be asserted in all inquiries and which rule or principle of natural justice must be followed depends upon several factors — Further, even if cross-examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated." [para 23]

h. **In the case of *Suman Silk Mills Pvt. Ltd. Vs. Commissioner of Customs & C.Ex., Baroda* [2002 (142) E.L.T. 640 (Tri.-Mumbai)], Tribunal observed at Para 17 that—**

"Natural Justice — Cross-examination — Confessional statements — No infraction of principles of natural justice where witnesses not

cross-examined when statements admitting evasion were confessional."

i. **In the case of *Commissioner of Customs, Hyderabad v. Tallaja Impex* reported in 2012 (279) ELT 433 (Tri.), it was held that—**

"In a quasi-judicial proceeding, strict rules of evidence need not to be followed. Cross-examination cannot be claimed as a matter of right."

j. **Hon'ble Tribunal in the case of *P. Pratap Rao Sait v/s Commissioner of Customs* reported as 1988 (33) ELT (Tri) has held in Para 5 that:**

"The plea of the learned counsel that the appellant was not permitted to cross-examine the officer and that would vitiate the impugned order on grounds of natural justice is not legally tenable."

Upon comprehensive review of the record, including the established facts, the corroborated documentary evidence presented, I find that request for cross-examination is devoid of legal or procedural merit. Accordingly, the application requesting to conduct of cross-examination is hereby denied.

15.8 As per my findings in Para 15.2, 15.3 and 15.4 above, the impugned goods did not fulfill the condition outlined as per the provisions of notification no. 05/2023 dated 05.04.2024 issued by DGFT stipulates that if 'watermelons seeds' have been loaded or shipped on board before 30th June 2024 then only it will be under 'Free' category. However, evidence suggests that the importer intentionally submitted manipulated/forged Bills of Lading in a deliberate attempt to facilitate the customs clearance of restricted goods unlawfully.

15.9 I also find that it is a fact that consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011; 'Self-Assessment' has been introduced in Customs. Section 17 of the Customs Act, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. Provisions of the Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make proper & correct entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962) the Bill of Entry shall be deemed to have been filed and after self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declares 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. Thus, with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

15.10 From the above, I find that the Noticee has violated Sub-Section (4) and 4(A) of Section 46 of the Customs Act as they have mis-declared and mis-classified the goods and evaded the payment of applicable duty. I find that the Noticee was required to comply with Section 46 which mandates that the importer filing the Bill of Entry must make true and correct declarations and ensure the following:

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

15.11 I find that the Show Cause Notices propose confiscation of goods under the provisions of Section 111 (d), 111(m) and 111(o) of the Customs Act, 1962. Provisions of Sections are re-produced herein below:

111. Confiscation of improperly imported goods, etc.- goods are liable for confiscation:-

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

(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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54]

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

In the present case, the importer failed to comply with the condition of DGFT notification no. 05/2023-Cus dated 05.04.2024, which rendered the subject goods prohibited, hence, contravened the provisions of Section 46 of the Customs Act, 1962. I find that Bills of lading provided were forged /manipulated to meet the requirement of notification no. 05/2023-Cus dated 05.04.2024. This deliberate manipulation confirms malafide intention of noticees. These acts of omission and commission on the part of the importer rendered the goods liable for confiscation under the

provisions of Section 111 (d), 111(m) and 111(o) of the Customs Act, 1962.

1 6 . I find that the Show Cause Notices propose penalty on noticees under the provisions of Section 112(a), 112(b) and 114AA of the Customs Act, 1962. Provisions of Sections are re-produced herein below:

"SECTION 112. Penalty for improper importation of goods, etc. — Any person, -

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

……

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

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 5[not exceeding the value of the goods or five thousand rupees], whichever is the greater;

SECTION : 114AA. Penalty for use of false and incorrect material.*-If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]*

<u>Roles and culpability of persons/firms involved:</u>

16.1 Role and culpability of M/s. Shri Nath Agro Industries:

M/s. Shri Nath Agro Industries was well aware of the Import policy and Notification. M/s. Shri Nath Agro Industries had imported watermelon seeds covered under Bill of Entry No. 5373154 dated 02.09.2024 in by way of violation of import policy mentioned in Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry. The total quantity of the said goods covered under the subject Bill of entry is **135 MTs** having declared Assessable value of **Rs. 2,02,71,328/-**. As per Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry, the import of said goods with shipped on board dated after 30th June is under restricted category. The importer must comply with the conditions outlined in the said Notification. Further, the notification was issued for a definite period and it is the obligation of the firm utilizing that authorization to ensure that no condition of the Notification has been violated. Email correspondences in the name of Shri Govind Vaishnav,

Accountant of the firm M/s. Shri Nath Agro Industries, further indicate that they sought to obtain forged dates from shipping line representatives in a manner that would mislead customs and enable the clearance of restricted cargo. The acts of commission and omission on the part of the importer rendered the subject goods liable to confiscation under Section 111(d), 111(m) and 111 (o) of the Customs Act, 1962 and therefore is liable to penalty under **Section 112 (a) and 112 (b)** of the Customs Act, 1962.

I find that the evidences clearly indicating malafide intention on their part in respect of the imported goods warranting imposition of penalty under Section 112 (a) (i) as the fact of non-compliance of conditioned outlined in the Notification No. 05/2023-Cus dated 05.04.2024 issued by DGFT. Result is that proposal to impose penalty under Section 112 (a) (i) is correct and sustainable in law.

I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty; therefore, I refrain from imposition of penalty on M/s. Shri Nath Agro Industries under Section 112(b) of the Customs Act, 1962.

I find that the SCN proposed imposition of penalty on the Importer under Section 114AA of the Customs Act, 1962. I find that in spite of well aware of import policy and conditioned outlined in the notification no. 05/2023-Cus dated 05.04.2024 issued by DGFT. As it is the obligation of the firm to ensure that proper and correct documents are maintained and as forged Bill of Lading was submitted which constitutes the violation, thus renders themselves liable to penalty under Sec 114AA of Customs Act, 1962. These acts of omission and commission on the part of the importer made the provisions of Section 114AA invokable. Therefore, I agree with the proposal of imposition of penalty on the importer under Section **114AA** *ibid*.

16.2 Role of Shri Arjun Das Rathi, Partner of M/s Shri Nath Agro Industries:

Statement of Shri Arjun Das Rathi, Partner of M/s. Shri Nath Agro Industries, E-1-270 & 271, Agro Food Park, Boranada, Jodhpur, Rajasthan - 342012, was recorded under Section 108 of the Customs Act, 1962, on 01.10.2024 and 03.12.2024. In his statement, Shri Arjun Das Rathi admitted to look after all business operations of M/s Shri Nath Agro Industries, including purchase, sales, and import related activities. Despite being fully aware of Notification No. 05/2023 dated 05.04.2024, issued by the DGFT, he failed to disclose the actual facts to the customs department. Instead, he attempted to facilitate the clearance of restricted cargo. Email correspondences in the name of Shri Govind Vaishnav, Accountant of his firm, further indicate that he sought to obtain forged dates from shipping line representatives in a manner that would mislead customs and enable the clearance of restricted cargo. The deliberate acts and omissions by Shri Arjun Das Rathi make them liable for penalties under **Section 112(b)** of the Customs Act, 1962. Furthermore, their involvement in the creation of forged Bills of Lading constitutes a violation that renders them liable to penalties under **Section 114AA** of the Customs Act, 1962.

16.3 Role of M/s ALX Shipping Agencies India Pvt. Ltd.:
The facts and evidence gathered during the search, including email correspondences, clearly establish that M/s ALX Shipping Agencies India Pvt. Ltd., acting on behalf of M/s Aladin Express Line, deliberately colluded with importer, shipper and Rejith of M/s Venus Shipping Co. Ltd., Sudan, to manipulate the actual dates on the Bill of Lading and create a forged Bill of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. These actions reflect a blatant disregard for regulatory compliance and intent to mislead the authorities. The deliberate acts and omissions by M/s ALX Shipping Agencies India Pvt. Ltd. make them liable for penalties under **Section 112(b)** of the Customs Act, 1962. Furthermore, their involvement in the creation of forged Bills of Lading constitutes a violation that renders them liable to penalties under **Section 114AA** of the Customs Act, 1962.

17. In view of the above facts of the case and findings on record, I pass the following order:-

ORDER

i. I order to absolute confiscation of impugned goods i.e. **135 MTS "Watermelon Seed"** imported vide Bill of Entry No. 5373154 dated 02.09.2024, having declared assessable value **Rs. 2,02,71,328/- (Two Crore Two Lakh Seventy-One Thousand Three Hundred and Twenty-Eight only)** under Section 111(d), 111(m) & 111(o) of the Customs Act, 1962.

ii. I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** on the importer M/s. Shri Nath Agro Industries under Section 112 (a) (i) of the Customs Act, 1962, for their act of omission and commission.

iii. I refrain from imposing penalty on the importer M/s. Shri Nath Agro Industries under Section 112(b) of the Customs Act, 1962.

iv. I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakh only)** on the importer M/s. Shri Nath Agro Industries under Section 114AA of the Customs Act, 1962.

v. I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** on Shri Arjun Das Rathi, Partner of M/s. Shri Nath Agro Industries under Section 112 (b)(i) of the Customs Act, 1962.

vi. I impose penalty of **Rs.50,000/-(Rupees Fifty Thousand only)** on Shri Arjun Das Rathi, Partner of M/s. Shri Nath Agro Industries under Section 114AA of the Customs Act, 1962.

vii. I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakh only)** on M/s. ALX Shipping Agencies India Pvt. Ltd. under Section 112 (b)(i) of the Customs Act, 1962.

viii. I impose penalty of **Rs. 1,00,000/-(Rupees One Lakh only)** on the M/s. ALX Shipping Agencies India Pvt. Ltd. under Section 114AA of the Customs Act, 1962.

18. 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.

19. The Show Cause Notice bearing no. GEN/ADJ/ADC/508/2025-Adjn dated 20.02.2025 stands disposed in above terms.

Digitally signed by Dipakbhai Zala
Date: 09-01-2026 18:19:17

(Dipak Zala)
Additional Commissioner,
Custom House, Mundra.

F.No. GEN/ADJ/ADC/508/2025-Adjn-O/o Pr. Commr- Cus-Mundra

To,

1. **M/s. Shri Nath Agro Industries (IEC: ACBFS0218H)**,
E-1-270 & 271, Agro Food Park,
Boranada, Jodhpur, Rajasthan – 342012
(E-mail: shrinathagro.industries1@gmail.com, shrinathgum.chemical@gmail.com)

2. **Shri Arjun Das Rathi, Partner of**
M/s. Shri Nath Agro Industries (IEC: ACBFS0218H),
E-1-270 & 271, Agro Food Park, Boranada,
Jodhpur, Rajasthan – 342012
(E-mail: shrinathagro.industries1@gmail.com, shrinathgum.chemical@gmail.com)

3. **M/s ALX Shipping Agencies India Pvt. Ltd.,**
201, Rajkamal Arcade, 2nd Floor,
Plot No. 353, Ward 12-B, Gandhidham-370201
(***E-mail: Satish.Goswami@aladinxp.co.in, Rahul.lodaya@aladinxp.com)***

Copy to:

1. The Additional Director, Directorate of Revenue Intelligence, Ghandidham.
2. The DC/AC, (RRA/TRC/EDI), Custom House, Mundra.
3. Guard File

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

DIN: 20260471MO0000333EBC Date: 16-04-2026

ADDENDUM TO ORDER IN ORIGINAL NO. MCH/ZDC/ADC/534/2025-26 dated 09.01.2026

Subject: Adjudication of Show Cause Notice no. GEN/ADJ/ADC/508/2025-Adjn-O/o Pr Commr-Cus Mundra dated 20.02.2025 issued to M/s. Shri Nath Agro Industries (IEC: ACBFS0218H), in the matter of illegal import of Watermelon Seeds by way of violation of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade.

This is in reference to the Order-in-Original no. MCH/ZDC/ADC/534/2025-26 dated 09.01.2026 in the subject matter, wherein the impugned goods i.e. Watermelon Seeds imported by the noticee were ordered to be confiscated absolutely.

2 . Being aggrieved by the above OIO dated 09.01.2026, the noticee filed special civil application no. **3755 of 2026** in the High Court of Gujarat, Ahmedabad. The Hon'ble High Court, vide oral order dated 02.04.2026, directed the respondent, i.e. the undersigned, to pass an appropriate order after considering the judgment passed by the Hon'ble Punjab and Haryana High Court in the case of *Shree Balaji Industries Vs. Additional / Joint Commissioner of Customs, 2024 (387) ELT 294 (P&H) in Civil Writ Petition No. 4108 of 2023 decided on 06.06.2023*, within a period of two weeks. The relevant portion of the order dated 02.04.2026 is re-produced below for reference:

> *"1. At the outset, learned advocates appearing for the respective parties have submitted that the issue is squarely covered in light of the judgment passed by the Punjab and Haryana High Court in the case of Shree Balaji Industries Vs. Additional / Joint Commissioner of*

Customs, 2024 (387) ELT 294 (P&H) in Civil Writ Petition No.4108 of 2023, decided on 06.06.2023.

2. Learned Senior Standing Counsel Mr.Utkarsh Sharma, on instructions, has submitted that an appropriate decision will be taken by the authority after considering the judgment rendered in the case of Shree Balaji Industries (supra) by the Punjab and Haryana High Court.

3. Under the circumstances, we direct the respondents to pass an appropriate order after considering the aforesaid judgment in the case of Shree Balaji Industries (supra), rendered by the Punjab and Haryana High Court, within a period of two weeks.

...”

3. Further, I also note that the Hon’ble Punjab & Haryana High Court, *in the case of* ***Shree Balaji Industries [2024 (387) E.L.T. 294 (P&H.)]*** vide order dated 06.06.2023, has directed to release the watermelon seeds. The relevant portion of that order is reproduced below for reference:

“…

23. In the present case, the Watermelon seeds are restricted goods but they cannot be treated as prohibited goods and in the absence of any permission/authorization for DGFT, provisional release can be done as per the judgment of the Hon'ble Supreme Court passed in Commissioner of Customs's case (supra). Moreover, during the pendency of this writ petition, report from Plant and Quarantine Department has come in favour of the petitioner as regards Watermelon Seeds and in the case of Red Kidney Beans, they have been ordered to be released provisionally subject to conditions as per order dated 23.02.2023 (Annexure P-1). The order with the same conditions can be passed in this case as well as the Watermelon Seeds do not fall under the “prohibited” category and they fall under the “restricted” category as per notifications dated 26.04.2021 and 21.06.2022. The provisional release can be ordered subject to final decision taken by the Adjudicating Authority under Section 105 of the Customs Act, 1962.

24. Keeping in view the above observations, writ petition is allowed and order dated 23.02.2023 (Annexure P-1) is set aside qua Watermelon Seeds with direction to the respondent to pass provisional release order of Watermelon Seeds as per conditions imposed in the

case of "Red Kidney Beans" under order dated 23.02.2023, within a period of one week."

4. **Imposition of Redemption Fine**: Considering the above facts and in compliance of order dated 02.04.2026 of the Hon'ble High Court Gujarat, Ahmedabad, an option is hereby extended to the importer to redeem the goods on payment of redemption fine under the provisions of Section 125(1) of the Customs Act, 1962. Section 125 of the Customs Act, 1962 is reproduced below:

"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."

(2).....

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending."

4 . 1 Without prejudice, I note that in the case of M/s. Shree Balaji Industries (supra), the adjudicating authority had imposed a redemption fine of approximately 20% of the value of the goods while passing Order No. LDH-CUS-JC-RT-14-2024-25 dated 10.05.2024, that case involved watermelon seeds smuggled under the false declaration of beans. The issue here is related to the violation of the DGFT Notification governing the import of watermelon seeds by producing a forged Bill of Lading but goods were declared correctly as Watermelon seed only. In view of these considerations, I am of the opinion that imposing a 20% redemption fine would be disproportionate in nature. Accordingly, I restrict the redemption fine to approximately 10% of the value of the impugned goods.

5. Thus, I pass the following order:-

ORDER

(i) I order to confiscate the impugned goods i.e. 135 MTS "Watermelon Seed" imported vide Bill of Entry no. 5373154 dated 02.09.2024 having value Rs. 2,02,71,328/- (Rupees Two Crore Two Lakh Seventy-One Thousand Three Hundred and Twenty-Eight only) under Section 111(d), 111(m) & 111(o) of the Customs Act, 1962. However, in suppression of para 17(i) of the OIO dated 09.01.2026, which ordered for absolute confiscation, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of **Rs. 20,27,000/- (Rupees Twenty Lakh Twenty Seven Thousand Only)** under Section 125 (1) of Customs Act, 1962. Further, in terms of Section 125(3) of the Customs Act, 1962, the option for redemption of the subject goods shall be exercised within a period of one hundred and twenty days from the date of receipt of this order, failing which the said option shall become void, unless an appeal against this order is pending.

Digitally signed by Dipakbhai Zala
Date: 16-04-2026 13:35:25

(Dipak Zala)
Additional Commissioner of Customs,
Custom House, Mundra

By Speed Post/Regd. Post/E-mail/Hand Delivery

To,

1. M/s. Shri Nath Agro Industries (IEC: ACBFS0218H)

E-1-270 & 271, Agro Food Park, Boranada, Jodhpur, Rajasthan 342012

(E-mail:shrinathagro.industries1@gmail.com, shrinathgum.chemical@gmail.com)

2. Shri Arjun Das Rathi, Partner of M/s. Shri Nath Agro Industries (IEC: ACBFS0218H), E-1-270 & 271, Agro Food Park, Boranada, Jodhpur, Rajasthan - 342012

(E-mail:shrinathagro.industries1@gmail.com, shrinathgum.chemical@gmail.com)

3. M/s ALX Shipping Agencies India Pvt. Ltd., 201, Rajkamal Arcade, 2nd Floor, Plot No. 353, Ward 12-B, Gandhidham-370201 (E-mail: Satish.Goswami@aladinxp.co.in, Rahul.lodaya@aladinxp.com)

Copy to:

1. The Additional Director, Directorate of Revenue Intelligence, Ghandidham.

2. The DC/AC, (RRA/TRC/EDI), Custom House, Mundra.

3. Guard File